

Agreement Between the Government of the Republic of India and the Government of the United States of America on the Exchange of Country-by-Country Reports

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-UNITED-STATES-OF-AMERICA-ON-THE-EXCHANGE-OF-COUNTRY-BY-COUNTRY-REPORTS-2019

- Published on 25 April 2019
- Commenced on 25 April 2019
- [This is the version of this document from 25 April 2019.]
- [Note: The original publication document is not available and this content could not be verified.]

Agreement Between the Government of the Republic of India and the Government of the United States of America on the Exchange of Country-by-Country Reports Published vide Notification No. S.O.1653(E), dated 25.4.2019 Last Updated 5th July, 2019 Ministry of Finance (Department of Revenue) (Income Tax) S.O.1653(E). - Whereas an Inter-Governmental Agreement for Exchange of Country-by-Country Reports was entered into by the Government of the Republic of India and the Government of the United States of America, which was signed at New Delhi on 27th day of March, 2019 (hereinafter referred to as the said Agreement and enclosed herewith as Annexure); And whereas, the said Agreement shall enter into force on the date on which the second of the two Parties has provided a written notification to the Government of the other jurisdiction in accordance with paragraph (1) of Article 5 of the said Agreement; Now, therefore, in exercise of the powers conferred by item (ii) of clause (b) of sub-section (9) of section 286 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the said Agreement, as set out in the Annexure hereto, and all the provision of the said Agreement shall be given effect to in the Union of India in accordance with paragraph (1) of Article 5 of the said Agreement. Annexure Whereas the Government of the Republic of India and the Government of the United States of America (each, a "Party," and together, the "Parties") desire to conclude an agreement to increase international tax transparency and improve access of their respective tax authorities to information regarding the global allocation of income, taxes paid, and certain indicators of the location of economic activity among tax

jurisdictions in which multinational enterprise groups ("MNE Groups") operate through the automatic exchange of annual country-by-country reports ("CbC Reports"), with a view to assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, as well as for economic and statistical analysis, where appropriate; Whereas the CbC Report is one element of a standardized approach to transfer pricing documentation which is intended to provide tax administrations with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis; Whereas the laws of the Republic of India and the United States of America require the reporting entity of an MNE Group to annually file a CbC Report; Whereas Article 28 (Exchange of Information and Administrative Assistance) of the Convention between the Government of the Republic of India and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related protocol (the "Convention"), signed at New Delhi on 12th September 1989 authorizes the exchange of information for tax purposes, including the automatic exchange of information; Now, therefore, the Parties have agreed as follows: Article 1

1. Definitions.

1. For the purposes of this Agreement and the Arrangement described in paragraph 2 to Article 2 of this Agreement, the following terms shall have the meanings set forth below:

(a) the term "Group" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange; (b) the term "multinational enterprise group" or "MNE Group" means any Group that (i) includes two or more enterprises the tax residences of which are in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group; (c) the term "Excluded MNE Group" means a Group that is not required to file a CbC Report on the basis that the annual consolidated group revenue of the Group during the fiscal year immediately preceding the reporting fiscal year, as reflected in its consolidated financial statements for such preceding fiscal year, is below the threshold that is defined in domestic law by the jurisdiction of tax residence of the Reporting Entity and is consistent with the 2015 Report (for purposes of the foregoing, the threshold includes any modifications that may result from the 2020 review contemplated in the 2015 Report); (d) the term "Constituent Entity" means: (i) with respect to an MNE Group having a Reporting Entity resident for tax purposes in the United States, any "Constituent Entity" as defined in the relevant U.S. Treasury regulations; and (ii) with respect to an MNE Group having a Reporting Entity resident for tax purposes in India, any "constituent entity" as defined in the relevant section of the Income-tax Act, 1961; (e) the term "Reporting Entity" means the Constituent Entity that, by virtue of domestic law in its jurisdiction of tax residence, files the CbC Report in its capacity to do so on behalf of the MNE Group; (f) the term "CbC Report" means the Country-by-Country Report to be filed annually by the Reporting Entity in accordance with the laws

of its jurisdiction of tax residence and with the information required to be reported under such laws covering the items and reflecting the format set out in the 2015 Report (for purposes of the foregoing, the information and format includes any modifications that result from the 2020 review contemplated in the 2015 Report);(g)the term "Fiscal Year" means:(i)with respect to an MNE Group having a Reporting Entity resident for tax purposes in the United States, the "Reporting Period" as defined in the relevant U.S. Treasury regulations; and(ii)with respect to an MNE Group having a Reporting Entity resident for tax purposes in India, the "reporting accounting year" as defined in the relevant section of the Income-tax Act, 1961; and(h)the term "2015 Report" means the final consolidated report, entitled Transfer Pricing Documentation and Country-by-Country Reporting, on Action 13 of the OECD/ G20 Action Plan on Base Erosion and Profit Shifting.

2. The terms "United States", "India", "Competent Authority", and "Contracting State" have the meaning they have in the Convention.

3. As regards the application of this Agreement at any time by a Party, any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the laws of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 2

2. Exchange of Information with Respect to MNE Groups.

1. Pursuant to the provisions of Article 28 of the Convention, the Competent Authority of each Party shall exchange with the Competent Authority of the other Party annually, on an automatic basis, the CbC Report received from each Reporting Entity that is resident for tax purposes in its jurisdiction, provided that, on the basis of the information provided in the CbC Report, one or more Constituent Entities of the MNE Group of the Reporting Entity are resident for tax purposes in the jurisdiction of the other Competent Authority, or are subject to tax with respect to the business carried out through a permanent establishment situated in the jurisdiction of the other Competent Authority.

2. The Competent Authorities shall sign an arrangement under the mutual agreement procedure provided for in Article 27 of the Convention (the "Arrangement"), which shall:

(a) establish the procedure for the time and manner of the exchange of the CbC Reports described in paragraph 1 of Article 2 of this Agreement; (b) set forth the procedure for collaboration on transmission and errors in the exchange of the CbC Reports described in paragraph 1 of Article 2 of this Agreement; (c) provide for confidentiality, data safeguards, and appropriate use with respect to the CbC Reports described in paragraph 1 of Article 2 of this Agreement; (d) provide for consultations with respect to the CbC Reports described in paragraph 1 of Article 2 of this Agreement; and (e) provide for modifications to, and term of, the Arrangement. The Arrangement shall be consistent with this Agreement and the Convention. Article 3

3. Confidentiality and Limitation of Use.

All information exchanged shall be subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged. In the event of termination of this Agreement, all information previously exchanged under this Agreement shall remain subject to such terms of the Convention. Article 4

4. Consultations and Amendments.

1. In case any difficulties in the implementation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.

2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 5 of this Agreement.

Article 5

5. Term of the Agreement.

1. This Agreement shall enter into force on the date on which the second of the two Parties has provided a written notification to the Government of the other jurisdiction that the necessary internal procedures for entry into force of this Agreement have been completed. However, exchange of information under this Agreement shall not commence until the Arrangement is operative

by its terms.

2. This Agreement shall terminate on the earlier of (1) the date of termination of the Convention or (2) the first day of the month following the expiration of a period of 12 months after the date upon which either Party provides notice of termination in writing to the other Party.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement. Done at New Delhi, in duplicate, this 27th day of March, 2019, in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

For the Government of the Republic of India For the Government of the United States of America