

**AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE’S REPUBLIC OF CHINA AND GUERNSEY
ON THE AUTOMATIC EXCHANGE OF
COUNTRY-BY-COUNTRY REPORTS**

Whereas, the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) and the Government of Guernsey desire to increase international tax transparency and improve access of their respective tax authorities to information regarding the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which Multinational Enterprise (“MNE”) Groups operate through the automatic exchange of annual 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 laws of the respective jurisdictions require the Reporting Entity of an MNE Group to annually file a CbC Report;

Whereas, the CbC Report is intended to be part of a three-tiered structure, along with a global master file and a local file, which together represent a standardised approach to transfer pricing documentation which will provide tax administrations with relevant and reliable information to perform an efficient and robust transfer pricing risk assessment analysis;

Whereas, Article 24 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the “DTA”), authorises the exchange of information for tax purposes, including the automatic exchange of information, and allows the competent authorities of Hong Kong and Guernsey (the “Competent Authorities”) to agree the scope and modalities of such automatic exchanges;

Whereas, Hong Kong and Guernsey have in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used for the purposes of 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, in accordance with Section 5 of this Agreement, (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement), and (iii) the necessary legislation to require Reporting Entities to file the CbC Report;

Whereas, Hong Kong and Guernsey are committed to endeavour to mutually agree on resolving cases of double taxation in accordance with Article 23 of the DTA, as well as paragraph 1 of Section 6 of this Agreement;

Whereas, the Competent Authorities intend to conclude this Agreement on reciprocal automatic exchange pursuant to the DTA and subject to the confidentiality and other protections provided for in the DTA, including the provisions limiting the use of the information exchanged thereunder;

Now, therefore, the Competent Authorities have agreed as follows:

SECTION 1

Definitions

1. For the purposes of this Agreement, the following terms have the following meanings:
 - (a) the terms “**Hong Kong Special Administrative Region (Hong Kong)**”, “**Guernsey**” and “**Competent Authority**” have the same meaning as in the DTA;
 - (b) 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;

- (c) the term “**Multinational Enterprise (MNE) Group**” means any Group that:
 - (i) includes two or more enterprises the tax residence for which is 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;
- (d) the term “**Excluded MNE Group**” means a Group that is not required to file a CbC Report on the basis that the 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 defined in internal law by the jurisdiction and being consistent with the 2015 Report, as may be amended following the 2020 review contemplated therein;
- (e) the term “**Constituent Entity**” means:
 - (i) any separate business unit of an MNE Group that is included in the consolidated financial statements for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
 - (ii) any separate business unit that is excluded from the MNE Group’s consolidated financial statements solely on size or materiality grounds; and
 - (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

- (f) the term “**Reporting Entity**” means the Constituent Entity that, by virtue of internal law in its jurisdiction of tax residence, files the CbC Report in its capacity to do so on behalf of the MNE Group;
 - (g) 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, as may be amended following the 2020 review contemplated therein; and
 - (h) the term “**2015 Report**” means the 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. As regards to the application of this Agreement at any time by a Competent Authority of a jurisdiction, any term not otherwise defined in this Agreement will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by internal law), have the meaning that it has at that time under the law of the jurisdiction applying this Agreement, any meaning under the applicable tax laws of that jurisdiction prevailing over a meaning given to the term under other laws of that jurisdiction.

SECTION 2

Exchange of Information with Respect to MNE Groups

Pursuant to the provisions of Article 24 of the DTA, each Competent Authority will annually exchange on an automatic basis the CbC Report received from each Reporting Entity that is resident for tax purposes in its jurisdiction with the other Competent Authority, 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.

SECTION 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Section 2, the currency of the amounts contained in the CbC Report will be specified.
2. With respect to Section 2, CbC Reports are to be exchanged with respect to fiscal years of MNE Groups commencing between 1 January 2017 and 31 December 2018. Such CbC Reports are to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE Group to which the CbC Report relates.
3. The Competent Authorities will automatically exchange the CbC Reports through a common schema in Extensible Markup Language.
4. The Competent Authorities will work towards and agree on one or more methods for electronic data transmission including encryption standards.

SECTION 4

Collaboration on Compliance and Enforcement

A Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe, with respect to a Reporting Entity that is resident for tax purposes in the jurisdiction of the other Competent Authority, that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with the respect to its obligation to file a CbC Report. The notified Competent Authority will take all appropriate measures available under its internal law to address the errors or non-compliance described in the notice.

SECTION 5

Confidentiality, Data Safeguards and Appropriate Use

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the DTA, including the provisions limiting the use of the information exchanged.

2. In addition to the restrictions in paragraph 1, the use of the information will be further limited to the permissible uses described in this paragraph. In particular, information received by means of the CbC Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. It is acknowledged that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the CbC Report. Inappropriate adjustments in contravention of this paragraph made by local tax administrations will be conceded in any competent authority proceedings. Notwithstanding the above, there is no prohibition on using the CbC Report data as a basis for making further enquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made.
3. To the extent permitted under applicable law, each Competent Authority will notify the other Competent Authority immediately regarding any cases of non-compliance with the rules set out in paragraphs 1 and 2 of this Section, including any remedial actions, as well as any measures taken in respect of non-compliance with the above-mentioned paragraphs.

SECTION 6

Consultations

1. In cases foreseen by Article 23 of the DTA, the Competent Authorities of both jurisdictions shall consult each other and endeavour to resolve the situation by mutual agreement.
2. If any difficulties in the implementation or interpretation of this Agreement arise, either Competent Authority may request consultations with the other Competent Authority to develop appropriate measures to ensure that this Agreement is fulfilled. In particular, a Competent Authority shall consult

with the other Competent Authority before the first-mentioned Competent Authority determines that there is a systemic failure to exchange CbC Reports with the other Competent Authority.

SECTION 7

Amendments

This Agreement may be amended by consensus by written agreement of the Competent Authorities. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the last signature of such written agreement.

SECTION 8

Term of Agreement

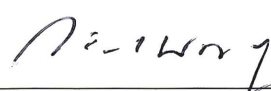
1. This Agreement will come into effect on the date of signature of this Agreement.
2. A Competent Authority may temporarily suspend the exchange of information under this Agreement by giving notice in writing to the other Competent Authority that it has determined that there is or has been significant non-compliance by the other Competent Authority with this Agreement. Before making such a determination, the first-mentioned Competent Authority shall consult with the other Competent Authority. For the purposes of this paragraph, significant non-compliance means non-compliance with paragraphs 1 and 2 of Section 5 and paragraph 1 of Section 6 of this Agreement, including the provisions of the DTA referred to therein, as well as a failure by the Competent Authority to provide timely or adequate information as required under this Agreement. A suspension will have immediate effect and will last until the second-mentioned Competent Authority establishes in a manner acceptable to both Competent Authorities that there has been no significant non-compliance or that the second-mentioned Competent Authority has adopted relevant measures that address the significant non-compliance.

3. Either Competent Authority may terminate this Agreement by giving notice of termination in writing to the other Competent Authority. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the DTA.

Signed in duplicate in the English language.

Competent Authority for
the Hong Kong Special
Administrative Region of
the People's Republic of China

Competent Authority for
Guernsey



WONG Kuen-fai
Commissioner of Inland Revenue
Inland Revenue Department



Nigel Garland
Head of Policy
Revenue Service

Place: *Paris, France*

Place: *Paris, France*

Date: *9th January 2019*

Date: *9 January 2019*