

ACUERDO DEL 30 DE AGOSTO DE 2017
DIRECCIÓN DE IMPUESTOS Y ADUANAS NACIONALES

Santiago Rojas Arroyo
General Director
Dirección de Impuestos y Aduanas Nacionales
Carrera 8 N° 6C - 38 Piso 6
Edificio San Agustín
Bogotá 110711
Colombia

Dear Mr. Arroyo:

Pursuant to the BEPS Action 13 report (Transfer Pricing Documentation and Country- by-Country, or CbC, Reporting), the Government of the United States of America and the Government of Colombia have agreed to implement an arrangement for the automatic exchange of the CbC Reports. Such arrangement should set forth rules and procedures for the Competent Authorities to automatically exchange CbC Reports.

After consultations between the Competent Authorities of the Contracting States, the Competent Authorities have agreed to a Competent Authority Arrangement ("CAA"). Enclosed is an original, executed CAA, signed by the United States Competent Authority and the Colombian Competent Authority. We look forward to discussing publication with you.

If you have any questions, please contact Mr. Michael Hayden, Acting Senior Program Manager, Automatic Exchange of Information Program, at Michael.A.Hayden@irs.gov or by phone at (202) 317-8684.

Sincerely,

Douglas W. O'Donnell
United States Competent Authority

ARRANGEMENT BETWEEN THE COMPETENT AUTHORITY OF THE UNITED STATES OF AMERICA AND THE COMPETENT AUTHORITY OF THE REPUBLIC OF COLOMBIA ON THE EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS

Whereas the Government of the United States of America and the Government of the Republic of Colombia 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 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 laws of the United States and Colombia require the Reporting Entity of an MNE Group to annually file a CbC Report;

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 Article 4 (Exchange of Information) of the Agreement Between the Government of the United States of America and the Government of the Republic of Colombia for the Exchange of Tax Information, done at Bogota, March 30, 2001 (the "TIEA"), authorizes the exchange of information for tax purposes, including the automatic exchange of information;

Whereas the United States and Colombia recognize that each jurisdiction has in place the appropriate safeguards with respect to confidentiality and use of information exchanged and the infrastructure for an effective exchange relationship;

Whereas the competent authorities of the United States and Colombia (the "Competent Authorities") desire to conclude this Arrangement on exchange of CbC Reports based on domestic reporting and reciprocal automatic exchange pursuant to the TIEA and subject to the confidentiality and other protections provided for in the TIEA, including the provisions limiting the use of the information exchanged under the TIEA; Now, therefore, the Competent Authorities declare their intent as follows:

SECTION 1

Definitions

For the purposes of this Arrangement, the following terms have the following meanings:

- 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 Colombia, (A) 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, (B) any separate business unit that is excluded from the MNE Group's consolidated financial statements solely on size or materiality grounds, and (C) any permanent establishment of any separate business unit of the MNE Group included in (A) or (B) 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; and

(ii) 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;

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 Colombia, the annual accounting period with respect to which the Reporting Entity prepares its financial statements; and

(ii) 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

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," "Colombia," "Competent Authority," and "Contracting Party" have the meaning they have in the TIEA.

3. As regards the application of this Arrangement at anytime by a Competent Authority, any term not defined in this Arrangement, unless the context otherwise requires or the Competent Authorities decide on a common meaning (as permitted by domestic law), is intended to have the meaning that it has at that time under the law of the Contracting Party applying this Arrangement, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under

other laws of that Contracting Party.

SECTION 2

Exchange of Information with Respect to MNE Groups

Pursuant to the provisions of Article 4 of the TIEA, each Competent Authority intends to exchange with the other Competent Authority 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.

SECTION 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Section 2, the amounts contained in each CbC Report are expected to be stated in a single currency, which is expected to be specified in the CbC Report.
2. A CbC Report is intended to be first exchanged with respect to Fiscal Years of MNE Groups commencing on or after January 1, 2016. Such CbC Report is intended to be exchanged as soon as possible and no later than 18 months after the last day of the Fiscal Year of the MNE Group to which the CbC Report relates. CbC Reports with respect to Fiscal Years of MNE Groups commencing on or after January 1, 2017 are intended 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. Notwithstanding the foregoing, the exchange of CbC Reports is intended to commence only once this Arrangement becomes operative, and a Competent Authority is intended to have until the expiration of the time periods set out in this paragraph or three months after this Arrangement becomes operative, whichever is later, to exchange the CbC Reports.
3. The Competent Authorities intend to exchange the CbC Reports automatically through a common schema in Extensible Markup Language (XML).
4. The Competent Authorities intend to work toward and decide on one or more methods for electronic data transmission including encryption standards.

3. To the extent permitted under applicable law, each Competent Authority intends to notify the other Competent Authority immediately regarding any cases of use or disclosure inconsistent with the rules set out in paragraphs 1 and 2 of this Section, including regarding any remedial actions or measures taken in respect of such cases that are inconsistent with the above-mentioned paragraphs.

SECTION 6 Consultations

1. Where a person considers that an adjustment to the taxable income of a Constituent Entity, as a result of further inquiries based on the data in the CbC Report, results for such person in undesirable economic outcomes, including if such a matter arises for a specific business, and notifies to the Competent Authority of the jurisdiction of tax residence of the Reporting Entity, the Competent Authorities intend to endeavor to resolve the matter.

2. If any difficulties in the implementation of this Arrangement arise, either Competent Authority may request consultations to develop appropriate measures to fully implement this Arrangement.

3. A Competent Authority intends to consult with the other Competent Authority before the first- mentioned Competent Authority determines that there is a systemic failure by the other Competent Authority, which under its domestic law may result in a local filing requirement for a Constituent Entity that is a member of an MNE Group for which CbC Reports are intended to be exchanged under this Arrangement. For purposes of the foregoing, the term "systemic failure" means, with respect to the exchange of CbC Reports by a Competent Authority, such Competent Authority has suspended automatic exchange under this Arrangement (for reasons other than those that are consistent with the terms of this Arrangement) or has otherwise persistently failed to provide automatically the CbC Reports in its possession that are intended to be exchanged with the other Competent Authority under Section 2 of this Arrangement.

SECTION 7 Modifications

This Arrangement may be modified by mutual written decision of the Competent Authorities.

SECTION 8
Term of Arrangement

1. This Arrangement becomes operative on the date of the later of the date of signatures below.

2. A Competent Authority may provide notice in writing to the other Competent Authority that it is temporarily suspending the exchange of information under this Arrangement based on its determination that the other Competent Authority is or has been acting inconsistently with paragraphs 1 and 2 of Section 5 or paragraph 1 of Section 6 of this Arrangement, including the provisions of the T1EA referred to therein, or that the Competent Authority is or has been failing to provide timely or adequate information as intended under this Arrangement. Before making such a determination, the first-mentioned Competent Authority intends to consult with the other Competent Authority. A suspension of the exchange of information under this Arrangement is intended to become operative immediately and is intended to last until the second-mentioned Competent Authority establishes in a manner acceptable to both Competent Authorities that there has been no act inconsistent with the paragraphs referenced above or that the second-mentioned Competent Authority has adopted relevant measures that address such inconsistencies.

3. Either Competent Authority may discontinue this Arrangement and is expected to provide notice*of discontinuation in writing to the other Competent Authority. Such discontinuation is intended to become operative on the first day of the month following the expiration of a period of 12 months after the date of the notice of discontinuation. In the event of discontinuation, all information previously exchanged under this Arrangement remains confidential and subject to the terms of the TIEA.

For the Competent Authority of
the United States of America:

Douglas W. O'Donnell
Commissioner, Large Business &
International, Internal Revenue Service

Place
Date

For the Competent Authority of
the Republic of Colombia:

Santiago Rojas Arroyo
General Director
Directorate of Customs and
National Taxes

Place
Date