

**TECHNICAL**

**Direct Taxation**

**COUNTRY-BY-COUNTRY REPORTING – LEGISLATIVE ENACTMENTS (1 OF 2)**

Please refer to our [e-CTIM TECH-DT 6/2017](#) dated 18 January 2017 on the issue of Income Tax Rules and Orders on Country-by-Country Reporting, Common Reporting Standard and other related matters.

**Background**

Country by country reporting (CbC Reporting) is part of Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan adopted by the OECD and G20 countries in 2013 with a view to enhancement of transparency for tax administrations by providing them with adequate information to assess high-level transfer pricing and other BEPS-related risks.

Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) requires the Competent Authorities of the Parties to the Convention to mutually agree on the scope of the automatic exchange of information and the procedure to be complied with. Against that background, the **Multilateral Competent Authority Agreement on the Exchange of CbC Reports** (the "Agreement ") has been developed, based on the Convention. ([Read more.](#))

**[INCOME TAX \(MULTILATERAL COMPETENT AUTHORITY AGREEMENT ON THE EXCHANGE OF COUNTRY-BY-COUNTRY REPORTS\) ORDER 2016 \[P.U. \(A\) 358/2016\]](#)**

This Order was gazetted on 23 December 2016.

This e-CTIM provides an overview of the [Order](#) by setting out its Contents in the table below:

<i>Heading/ Section</i>	<i>Notes</i>
<b>Citation</b>	This Order is cited as shown above
<b>Country-by-country reporting</b>	Declares that the arrangements specified in the Schedule have been made by the Government of Malaysia and the government which has signed the Agreement with a view of exchanging information that is foreseeably relevant in relation to taxation and that it is expedient that those arrangements shall have effect.
<b>SCHEDULE</b> MULTILATERAL COMPETENT AUTHORITY AGREEMENT ON THE EXCHANGE OF COUNTRY-BY- COUNTRY REPORTS	States the basis and terms of reference forming the "arrangements" specified in the Schedule, including the declaration in the following statement:  <i>"Whereas the jurisdictions 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;"</i>

Heading/ Section	Notes
<b>SECTION 1</b> Definitions	Sets out the definitions of specific terms found in the Order. (The definitions of the words which are underlined below are found in Section 1.)
<b>SECTION 2</b> Exchange of Information with Respect to <u>MNE Groups</u>	Provides for the annual exchange on an automatic basis, of <u>CbC Reports</u> between one <u>Competent Authority</u> (CA) and another which have the <u>Agreement in effect</u> , such exchange to be carried out within the confines of the qualifying criteria and conditions laid out in the provisions of this Section.
<b>SECTION 3</b> Time and Manner of Exchange of Information	Provides for the timelines for exchange of CbC Reports. The provisions for “manner of exchange...” relate to the currency for reporting and the automatic exchange of CbC Reports through a common schema in Extensible Markup Language. The CAs will work towards and agree on one or more methods for electronic data transmission.
<b>SECTION 4</b> Collaboration on Compliance and Enforcement	Provides for the notification of one CA by another where the latter (the notifier) has reason to believe, with respect to a <u>Reporting Entity</u> (RE) that is resident for tax purposes in the jurisdiction of the former CA (the CA notified), that information reported may be incorrect / incomplete due to error, or there is non-compliance of a RE with respect to the obligation to file a CbC Report.
<b>SECTION 5</b> Confidentiality, Data Safeguards and Appropriate Use	States that information exchanged is subject to confidentiality rules and other safeguards provided for in the Convention, including the provisions limiting the use of the information exchanged. Additionally, use of the information is further limited to “permissible uses” described in paragraph 2 of this Section.
<b>SECTION 6</b> Consultations	Sets out the process for consultation between 2 or more CAs under specified circumstances.
<b>SECTION 7</b> Amendments	Provides that the Agreement may be amended by consensus by written agreement of all the CAs that have the Agreement in effect.
<b>SECTION 8</b> Term of Agreement	Sets out the details to be declared in the notification that a CA is required to make to the <u>Co-ordinating Body Secretariat</u> (CBS) at the time of signature of this Agreement, or as soon as possible thereafter.  Also sets out the circumstances and other matters relating to the temporary suspension of the exchange of information by a CA with another CA.  Termination of participation (by a CA) in this Agreement, or with respect to a particular CA is effected by giving notice of termination in writing to the CBS.
<b>SECTION 9</b> Co-ordinating Body Secretariat	Specifies the role of the CBS to notify all CAs of any notifications that it has received under this Agreement, and to notify all signatories of the Agreement when a new CA signs the Agreement.
ANNEX B & ANNEX C	ANNEX B: LIST OF COMPETENT AUTHORITIES [To be completed] ANNEX C: QUESTIONNAIRES [To be completed]

Members may read the Order in full at the official website of the [Attorney-General's Chambers](#).

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the above [Order](#).

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