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Information Circular

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Subject: GUIDELINES FOR THE APPROPRIATE USE OF INFORMATION
CONTAINED IN CBC REPORTS

These Guidelines are issued to provide guidance to the staff of the Service, Multinational Enterprises (MNEs) operating in Nigeria, all taxpayers, taxpayers' representatives or advisers and the general public on the appropriate use of information contained in the Country-by-Country (CbC) Reports.

Part I Preliminary

1. Introduction

- i. **Mindful** that the Action 13 Report introduced a three-tiered approach to transfer pricing documentation, consisting of a master file (containing standardised information relevant for all members of a multinational group); local file (referring specifically to material transactions of the local taxpayer); and a Country-by-Country Report ("CbC Report" or "CbCR" containing certain information relating to the global allocation of an MNE group's income and taxes, together with the location of its economic activity "which may also be referred to as CbCR information").
- ii. **Given** that Where Country-by-Country Reporting (CbC Reporting) applies, the ultimate parent entity (UPE) of an MNE group with annual consolidated group revenue equal to or higher than EUR 750 million (or near equivalent in domestic currency as of January 2015) in the preceding fiscal year is required to file a CbC Report on behalf of the group with its local tax authority.
- iii. **Mindful** that the tax authority with which the CbC Report is filed will exchange the CbC Report with the tax authority in other jurisdictions where the group has operations, under a Qualifying Competent

- Authority Agreement (QCAA) and an International Agreement that permits the automatic exchange of information.
- iv. **Realising** that, in addition to jurisdictions having a legal framework for CbC Reporting in place, the CbCR information exchange is subject to three (3) conditions namely, confidentiality, consistency and the **appropriate use** of the information. Parties may deny or be denied access to CbCR information where previous information is established not to have been used appropriately.
 - v. **Acknowledging** the “OECD (2017), BEPS Action 13 on Country-by-Country Reporting – Guidance on the appropriate use of information contained in Country-by-Country reports”, which was relied upon in developing these Guidelines.
 - vi. The Federal Inland Revenue Service hereby issues these Guidelines on the appropriate use of CbCR information.

2. Legal background

These Guidelines are given to supplement the CbC Regulations issued by the Federal Inland Revenue Service (“the Service”) pursuant to *Section 61 of the Federal Inland Revenue Service (Establishment) Act, 2007* and paragraph 2 of Section 5 of the Multilateral Competent Authority Agreement on Country-by-Country Reporting (CbC MCAA). The Guidelines will give effect to Nigeria’s commitment under the Inclusive Framework on Base Erosion and Profit Shifting, as well as other Exchange of Information Instruments.

Part II Appropriate Use

3. Conditions for obtaining and using CbC Reports

The ability of Nigeria to obtain and use CbC Reports is conditional upon using it appropriately. This condition is described in paragraphs 25 and 59 of the Action 13 Report and given effect through regulation 10 of the Income Tax (Country-by-Country Reporting) Regulations, 2018 and paragraph 2 of Section 5 of the CbC MCAA. Accordingly, every person or Authority in Nigeria that accesses information from CbC Reports must use same appropriately in line with these Guidelines, the CbC Regulations, the CbC MCAA and other legal instruments relating to Exchange of Information.

4. What constitutes “Appropriate Use”

For the purposes of the CbC Reports, appropriate use is restricted to:

- a) the assessment of high level transfer pricing risk assessment;

- b) the assessment of other base erosion and profit shifting related risks; and
- c) economic and statistical analysis, where appropriate.

5. Instances of inappropriate use

In accordance with Paragraphs 25 and 29 of BEPS Action 13 Report and Section 5 of the MCAA, the use of Country-by-Country Reports is inappropriate if the information is used:

- a) 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;
- b) as a conclusive evidence that transfer prices are or are not appropriate;
- c) to propose transfer pricing adjustments based on a global formulary apportionment of income; and
- d) to propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data obtained therefrom.

However, the usage of the Country-by-Country Reports data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit will not be considered as inappropriate.

Similarly, nothing in this guideline shall prevent the Service from using intelligence obtained from CbC Reports for the purposes of planning tax audits or other compliance actions, or as a basis for making further enquiries to taxpayers or to other tax authorities. Further enquiries directed to another tax authority, however, must meet the foreseeable relevance standard.

6. The use of CbCR information in planning a tax audit

The Service may use CbCR information in planning a tax audit or as the basis for making further enquiries into the group's transfer pricing arrangements or other tax matters in the course of an audit. The Service makes no commitment that these enquiries must relate specifically to potential risks identified through the use of CbCR information. For example, CbCR information (such as the details of constituent entities in Table 2 of the Report) may be used as the basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit. The OECD Forum on Tax Administration's handbook on making effective use of CbCR information for the purposes of tax risk assessment is hereby incorporated for further clarity on the use of the information for tax risk assessment.

7. The use of CbC reports for economic and statistical analysis

CbCR information may be used for economic and statistical analysis where appropriate. However, it may not be used as stated above where the relevant exchange of information agreement forbids same.

Part III BEPS-related risk

8. The meaning of BEPS-related risk

Though the phrase BEPS-related risk is not expressly defined in the BEPS Action Plans, the introduction to the February 2013 Report *Addressing Base Erosion and Profit Shifting* (the BEPS Report, OECD 2013) refers to this as "*planning aimed at shifting profits in ways that erode the taxable base to locations where they are subject to a more favourable tax treatment*". The report further states that:

While the specific goals will vary among MNEs, in particular with respect to companies headquartered in different jurisdictions, broadly speaking, BEPS focuses on moving profits to where they are taxed at lower rates and expenses to where they are relieved at higher rates. Specific strategies may also be put in place to make use of existing "tax attributes" such as tax credits, loss-carry forwards, etc. These generic goals are often achieved in a way that aligns with the overall management of the treasury operations of the group, e.g. in terms of cash management, management of foreign exchange risks and efficient repatriation strategies.

9. How BEPS-related risk can arise

The BEPS Report gives a number of examples of how tax rules in place at the time could be used to achieve low or no taxation, based around existing rules on jurisdiction to tax, transfer pricing, and the tax treatment of debt and anti-avoidance rules. These include the use of a low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, the use of derivatives to avoid withholding taxes, and profit shifting using the contractual allocation of risk and the pricing of intangibles.

10. The Action Plan on Base Erosion and Profit Shifting

the BEPS Action Plans released in July 2013, does not change the broad definition of BEPS, but identifies actions needed to address BEPS and the methodology to implement those actions. A number of the items set out in the BEPS 15 Action Plan target specific arrangements (e.g. hybrid

mismatch arrangements in Action 2 and treaty abuse in Action 6), but this is not the case for all of the Action Items. However, taken together and implemented consistently, the 15 Action Items represent a comprehensive response to the BEPS risks faced by countries, by improving coherency and transparency in the international tax system, and ensuring that the location of a group's taxable profit corresponds with the location of its substantial economic activities.

11. The Meaning of “Assessment of other BEPS-related risks”

In consistent with the BEPS Report, the term “assessment of other BEPS-related risks”, should be understood to refer to the high-level assessment of tax risks that may result in the erosion of a country's tax base. In practice, while CbC Reports may be used to identify indicators of possible tax risk, it will usually only be possible to understand the arrangements giving rise to that risk once further enquiries have been conducted. It remains key that CbCR information should be limited to use in risk assessment and as a basis for making further enquiries in the course of a tax audit (and economic and statistical analysis, where appropriate). In the same way that CbCR information on its own does not constitute conclusive evidence that transfer prices are not appropriate, it also does not constitute conclusive evidence that a group is engaged in other forms of BEPS.

Part IV Consequences of Non-Compliance with the Appropriate Use Condition

12. Consequences of breach of Appropriate Use under Action 13 Report and the MCAA

CbCR information must be used in a manner consistent with appropriate use conditions, always bearing in mind that Nigeria's failure to do so would trigger the Action 13 Report's consequences for non-compliance with the appropriate use condition.

For that purpose, Nigeria has the following commitments under the CbC MCAA:

- a) that appropriate use is a condition for receiving and using CbC Reports;
- b) to disclose breaches of appropriate use to the Co-ordinating Body Secretariat (for exchanges pursuant to the MCAA);
- c) to promptly concede inappropriate adjustments in competent authority proceedings; and
- d) to temporarily suspend exchange of CbC Reports following consultation in cases of non-compliance.

In addition to the above, there is a serious risk that inappropriate use of CbC Reports could result in entities being issued incorrect tax assessments.

Part IV General and Miscellaneous provisions

13. Policies on Appropriate Use

These Guidelines communicate the policies of the Service on the appropriate use of CbCR information. The Guidelines will be communicated to all officers of the Service that are likely to have access to CbCR information in the course of their work and will be published on the internal portal and website of the Service.

14. Training on Appropriate Use

The Service shall regularly train staff whose job is or may become relevant to transfer pricing and BEPS related risk assessment on appropriate use of CBCR information. Such training will clearly set out FIRS' obligations and commitments:

- a) to notify the Co-ordinating Body Secretariat pursuant to the MCAA immediately of any cases of non-compliance with the appropriate use condition; and
- b) to promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based on CbCR information

15. Measures to monitor, control and restrict access to CbC Reports

The Service commits to restrict access to CbC Reports and put in place adequate measures to ensure effective control and monitoring of the use of CbCR information to ensure appropriate use. To this end:

- i. only staff handling the exchange of CbCR and members of a compliance team involved in risk assessment shall have access to the Reports;
- ii. risk assessment staff should be located separately from other staff.
- iii. password protected computers should be used to access electronic data relating to CbC Reports;
- iv. physical copies of CbC Reports should be stored in locked rooms or locked filing cabinets with access for authorised persons only;
- v. CbCR information (including complete CbC Reports, extracts from CbC Reports or analyses based on CbC Reports) may be provided to staff in the compliance function, to the extent that this is covered by the appropriate use conditions;
- vi. the Service will put in place, mechanisms that may be used to monitor or record which staff access CbCR information;
- vii. the risk assessment team shall maintain a record of what information was shared, the reason for sharing it, and the staff with whom it was shared;
- viii. the Service should ensure that appropriate use is adequately evidenced;

- ix. the Service shall incorporate the appropriate use condition into their existing review mechanisms; and
- x. the Service shall continually review and monitor the measures put in place to ensure appropriate use of CbC information, and where necessary, introduce control, or expand existing controls, to ensure that CbC Reports are available to staff involved in activities covered by the appropriate use conditions, but restrict access to other staff.

16. Review of the Guidelines

The Service will review this Guidelines, and the procedures put in place to ensure appropriate use of CbCR data, on an ongoing basis, and make changes that are considered desirable as appropriate.

17. Enquiries

All enquiries on any aspect of this circular should be directed to the office of:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House,
No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

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