



MASTER FILE AND COUNTRY BY COUNTRY REPORT



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Background

India is emerging as one of the most favoured destinations for global investment. The objective of the government has been to build a modern democratic, socialist, prosperous and forward looking India; maintain a sustained growth in productivity, create gainful employment, and attain international competitiveness. In this regard, one of the initiatives is to promote foreign investment and technical collaborations to bring associated advantages of capital infusion, technology transfer and marketing expertise.

However, the ability of multinational enterprises (MNEs) to shift their employees, know-how, capital and even headquarters overseas and with them their profits, creates unease among governments, as each nation zealously guards its tax base.

Taxation is at the core of countries' sovereignty and fiscal policy, but the interaction of domestic tax rules in some cases leads to gaps and frictions. When designing their domestic tax rules, sovereign states may not sufficiently take into account the effect of other countries' rules. Transfer pricing (TP) rules are used by the countries to attribute fair share of revenue of MNE, in the respective jurisdictions. However, the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD¹, 2013), has clearly identified that these existing rules, may not always plug the loop holes for such fair attribution.

The Action 8-10 of the BEPS Action Plan aims to provide guidance to align these rules, such that each jurisdiction taxes on an arm's length basis (i.e. on a fair basis) the value created by various entities in an MNE group, in that jurisdiction. OECD has issued Actions 8-10 of the BEPS Action Plan in order to address the issue of mis-alignment between the outcomes of allocation of profits and the economic activity that produced such profits. The work under Actions 8-10 of the BEPS Action Plan has targeted this issue, to ensure that the transfer pricing outcomes are aligned with value creation, as existing international standards for transfer pricing can be misapplied and may result in allocation of profits not in sync with the economic activity of the enterprise in the MNE group.

Further, in order to give effect to Actions 8-10, under Action Plan 13, a three-tiered standardised approach to transfer pricing documentation has been recommended. The OECD report on BEPS Action Plan 13 provides for revised standards for transfer pricing documentation and a template for country-by-country reporting of income, earnings, taxes paid and certain measure of economic activity. India has been one of the active members of BEPS initiative and part of international consensus. It is recommended in the BEPS Action Plan that the countries should adopt a standardised approach to transfer pricing documentation.

A three-tiered standardised approach to transfer pricing documentation

Tier 1 – Master File

The MNE group shall provide the tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file". It is the aim of the guidance that such data shall be available to all relevant tax administrations.

Tier 2 – Local File

Further, a detailed transactional transfer pricing documentation shall be provided in a "local file" specific to each country, identifying material related party transactions, the amounts involved in those transactions and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.

Tier 3 – Aggregation of information

Further, large MNEs will need to file a Country-by-Country (CbC) Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

The report mentions that taken together, these three documents (master file, local file and Country-by-

¹ Organisation for Economic Cooperation & Development



Country Report) will require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed and in the event audits are called for, provide information to commence and target audit enquiries.

All OECD and G20 countries have committed to implementing CbC reporting, as set out in the Action 13 Report "Transfer Pricing Documentation and Country-by-Country Reporting". Recognising the significant benefits that CbC reporting can offer a tax administration in undertaking high level risk assessment of transfer pricing and other BEPS related tax risks, a number of other jurisdictions have also committed to implementing CbC reporting (which with OECD members form the "Inclusive Framework"), including developing countries.

Indian Income-tax Act, 1961 (the Act)

Sections 92 to 92F of the Act contain provisions relating to the transfer pricing (TP) regime. Section 92D of the Act contains requirements for maintenance of prescribed information and documents relating to TP. Further, Rule 10D of the Indian TP rules provides for an exhaustive list of such documents that a taxpayer is expected to maintain.

India, being an active member of the BEPS initiative, as part of G20 countries, has already begun aligning its tax regulations with the OECD's BEPS report. Thus, in order to implement the international consensus and in response to the OECD's BEPS project recommendation, the Indian Government through Finance Act, 2016 introduced Section 286 providing for furnishing of CbC Report in respect of an International Group. Section 92D of the Act which contained provisions for preparing TP documentation was also amended to provide for furnishing of Master File.

The Central Board of Direct Taxes (CBDT) vide Notification No. 370142/25/2017-TPL on October 6, 2017 issued Draft Rules (Rule 10DA and 10DB) and forms in respect of keeping, maintaining and furnishing information and documents with respect to Country-by-Country report and Master File, as per section 286 and section 92D of the Act, respectively and sought recommendations and suggestions from the relevant stakeholders till 16 October 2017.

After due consideration, the CBDT vide Notification No. 92/2017 on October 31, 2017 issued Final Rules, that is, Rule 10DA and 10DB in the Income-tax Rules, 1962 (the Rules), in respect of keeping, maintaining and furnishing information and documents with respect to Master File and CbC Report, as per section 92D and section 286 of the Act, respectively. Form Nos. 3CEAA, 3CEAB, 3CEAC, 3CEAD and 3CEAE have also been notified under the Rules.

Rule 10DA lays down the thresholds for applicability, timelines, requirements and procedure in relation to Master File. The relevant information and intimation related to Master File is required to be filed in Form No. 3CEAA and 3CEAB.

Rule 10DB lays down the requisite details and procedures for CbC Report filing. The relevant information and intimations are required to be filed in Form No. 3CEAC, 3CEAD and 3CEAE.

Further, the Central Government notified the Multilateral Competent Authority Agreement (MCAA) on the Exchange of CbC reports in terms with the OECD recommendations. The aim of the MCAA is to enable consistent and swift implementation of the CbC reporting recommendations which arose from Action Plan 13 of the OECD's BEPS Action Plan. On May 2016, India entered into an agreement on Mutual Administrative Assistance in Tax Matters at Beijing, China.

As per the MCAA, 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 all such other Competent Authorities of Jurisdictions with respect to which it has this Agreement in effect.

RULE 10DA – MASTER FILE

Brief Overview

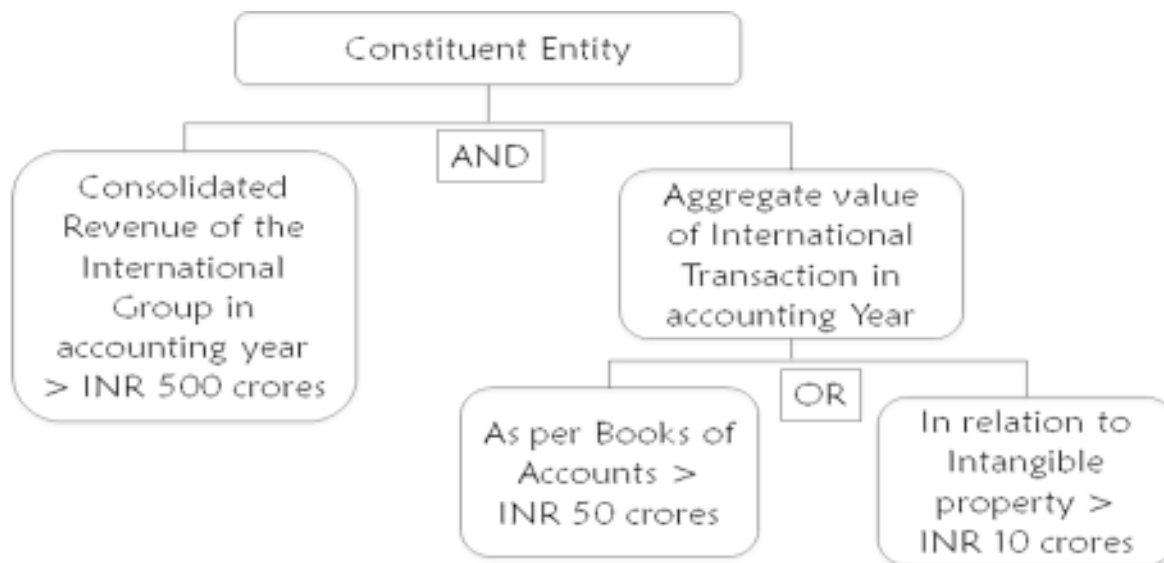
The master file is intended to provide an overview of the MNE group's business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity in order to assist tax administrations in evaluating the presence of significant transfer pricing risk. In general, the master file is intended to provide a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context. The master file shall



contain information which may not be restricted to transaction undertaken by a particular entity situated in particular country. In that aspect, information in master file would be more comprehensive than the existing regular transfer pricing documentation.

Applicability

1. Master File requirements provided in Part A of Form No. 3CEAA are applicable to every constituent entity (CE / entity) of the international group, read with section 92D.
2. Master File requirements provided in Part B of Form No. 3CEAA are applicable, if:



Thus, Part A of Form No. 3CEAA is required to be filed by every constituent entity of an international group whether or not it satisfies the aforesaid dual thresholds.

The reference to accounting year clarifies the applicability of the said rule to the multinationals having parent entity resident in a jurisdiction other than India (inbound) as well as multinationals having parent entity resident in India (outbound). Further, for inbound entities, the accounting year should be read as previous year for the said Rule.

3. In a case, where more than one constituent entity of an international group is resident in India, then the above information would need to be filed by that constituent entity which has been designated by the international group. In such case, Form No. 3CEAA has to be filed only by the CE which has been designated by the international group, and intimation of the same is required to be filed by the designated CE in Form No. 3CEAB before the Director General of Income-tax (Risk Assessment) (DGIT-RA).
4. Such information and documents prescribed in Form No. 3CEAA would need to be kept and maintained for nine years from the end of the previous year.
5. The Rules also specify that for the calculation of the value in Indian rupees (INR) of the consolidated group revenue available in foreign currency, the telegraphic transfer buying rate² (same meaning as assigned in the Explanation to Rule 26 of the Rules), similar of such currency on the last day of the accounting year shall be used.

2 Explanation to Rule 26 - "telegraphic transfer buying rate", in relation to a foreign currency, means the rate or rates of exchange adopted by the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), for buying such currency, having regard to the guidelines specified from time to time by the Reserve Bank of India for buying such currency, where such currency is made available to that bank through a telegraphic transfer.



6. Form No. 3CEAA should be verified and signed by the person who is competent to verify the income-tax return of the constituent entity under the Act (u/s 140).

Key features of Form No. 3CEAA

- Part A of the said form requires a constituent entity to furnish the below:
 - a. name, address and PAN of the assessee,
 - b. name and address of the international group,
 - c. name, address and PAN of the constituent entities of the international group having operations in India
- Part B of the said form requires the constituent entity to furnish the below:

<p>Ownership structure, description of business of the international group</p>	<p>(i). List of all the constituent entities of the international group.</p> <p>(ii). Important profit drivers of businesses</p> <p>(iii). Description of the supply chain of major products or services and its geographical markets</p> <p>(iv). Functions, assets and risks analysis by the constituent entities of the international group that contribute at least 10% of the revenues or assets or profits of the group. However, the assets and profits per se may not have consistent definitions across jurisdictions, which may lead to inconsistent results when applying the 10 percent threshold.</p> <p><i>(The Action Plan 13 requires a brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. functions performed, important risks assumed and important assets used)</i></p> <p>(v). Description of important business restructuring transactions</p> <p>(i). Name and address of the entities engaged in development and management of intangible property.</p>
<p>Description of the overall strategy of the international group for intangible property</p>	<p><i>(The Action Plan 13 requires a general description of location of principal research and development (R&D) facilities and location of R&D management.)</i></p> <p>Accordingly, irrespective of the ownership of the intangibles, the entities involved in development and management of intangibles will have to be disclosed.</p> <p>(ii). Name and address of the entities who legally own the important intangible property of the group</p> <p>(iii). Description of important transfers in intangible property, including names, addresses of parties and compensation for such transfers</p>
<p>Description of financing arrangements of the international group</p>	<p>(i). Detailed description of the financing arrangements of the international group, including name and address of the top ten unrelated lenders</p> <p><i>(The Action Plan 13 requires a general description of how the group is financed, including important financing arrangements with unrelated lenders)</i></p> <p>(ii). Name and address of the group entities that provide central financing functions</p>



Financial details of the international group

- (i). Copy of annual consolidated financial statement
- (ii). Transfer pricing policies of the international group w.r.t. intra-group services, intangible property, etc.
- (iii). Details of the advance pricing agreements and other tax rulings for allocation of income among countries

The above extremely onerous requirements and sensitive information on the operations of the group are now required by the revenue authorities. This information of the Master File will provide a bird's eye view of the group's operations and will increase compliance for constituent entities.

LOCAL FILE

The local file requirements recommended under BEPS Action Plan 13 are to great extent similar to the information and documents required under section 92D(1) of the Act, read with Rule 10D of the Rules. Action Plan 13 has recommended a few additional information requirements. However, the Indian Rules have not introduced any additions to the contents of the existing local transfer pricing documentation requirements in India to align with Action Plan 13 local file requirements.

RULE 10DB – COUNTRY-BY-COUNTRY REPORT

Brief Overview

The Act provided an overview of the data required to be included in the CbC report. The memorandum explaining the provisions indicated that the information required would be aligned to the Action 13 model template for the CbC report. However, the Act or the memorandum did not provide any details, data definitions or format of the CbC report, which were specifically provided under the BEPS Action Plan 13.

The country-by-country report requires MNEs to report annually and for each tax jurisdiction in which they do business; the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction. Finally, it requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.

Applicability

1. CbC Reporting would be applicable to an international group having total consolidated group revenue of more than INR 5,500 crore (approximately USD 750mn) in the accounting year preceding the reporting year i.e. for reporting accounting year 2016-17, group revenue threshold should be tested for accounting year 2015-16.
2. Every parent entity or an alternate reporting entity, resident in India, would need to furnish CbC reporting prescribed under Form No. 3CEAD.
3. In any other case, constituent entity resident in India, will notify the DGIT-RA in Form No. 3CEAC, that, which entity of the international group shall furnish the CbC reporting.

Key features of Form No. 3CEAD

- Part A of the said form requires a constituent entity to furnish an overview of allocation of income, taxes and business activities aggregated by tax jurisdiction, i.e. information relating to:
 - a. Global revenue of related and unrelated party, profit before taxes, taxes paid;
 - b. Stated capital, accumulated earnings;
 - c. Number of employees, tangible assets



- Part B of the said form requires a list of all the constituent entities of the international group:
 - a. Tax jurisdiction and the constituent entities resident in such tax jurisdiction
 - b. Tax jurisdiction of constituent entities where jurisdiction of organization / incorporation and tax residence is different
 - c. Nature of the main business activities carried out by that constituent entity, i.e. research and development, holding or managing intellectual property, sales, marketing or distribution, internal group finance, holding shares, dormant, etc.
- Part C of the said form requires any further brief information or explanation that is considered necessary to facilitate the understanding of the information provided in Part A and Part B

The above information may allow the revenue authorities to understand the level of economic activity and strategic functions, carried out in various tax jurisdictions, in which the international group operates.

Tabular representation of the applicable due-dates for the various forms to be furnished electronically:

Master File / CbC reporting	Applicability	Forms to be furnished	Due date for Accounting Year 2016-17 ³	Due date for Subsequent Accounting Years
Master File	Every constituent entity (irrespective of: § whether the entity has entered into an international transaction § threshold applicability § whether the entity is resident or not)	Part A of Form No. 3CEAA	31 March 2018	Due date of filing return of income
	Constituent entity covered under section 92D and threshold under Rule 10DA(1) is satisfied	Part B of Form No. 3CEAA	31 March 2018	Due date of filing return of income
	When more than one constituent entity is resident in India, the designated entity shall notify the DGIT-RA	Form No. 3CEAB	1 March 2018	30 days before the due date for filing Form No. 3CEAA
Country-by-Country Report	Every constituent entity resident in India, whose parent is not resident in India	Form No. 3CEAC (Intimation)	31 January 2018	At least 2 months prior to due date for filing Form No. 3CEAD
	Every parent entity or an alternate reporting entity, § resident in India, and § part of an international group, the consolidated group revenue of which exceeds INR 500 crores	Form No. 3CEAD	31 March 2018	Due date of filing return of income

³ Updated by the CBDT vide Circular no. 26 of 2017 [F. No. 370142/25/2017-TPL]



	Every constituent entity resident in India, of an international group, whose parent is non-resident [and if conditions of section 286(4) of the Act are satisfied]	Form No. 3CEAD	Filing date will be contingent to the provisions of section 286(4) of the Act
	The designated entity, where there are multiple constituent entities resident in India of an international group, whose parent is non-resident [and if conditions of section 286(4) of the Act are satisfied]	Form No. 3CEAE (Intimation)	Not specified, as the filing date will be contingent to the provisions of section 286(4) of the Act

Proposed Amendments as per Union Budget 2018-19

The following amendments are proposed to be made in section 286:

- the time allowed for furnishing the CbC Report, in the case of parent entity or alternative reporting entity resident in India, or resident constituent entity having a non-resident parent, is proposed to be extended to twelve months from the end of reporting accounting year
- constituent entity resident in India, having a non-resident parent, shall also furnish CbC Report in case its parent entity outside India has no obligation to file the report in the latter's country or territory
- This amendment will take effect retrospectively from AY 2017-18

Monetary penalty for non-compliance of CbC Report and Master File

Under the Act, monetary penalties are applicable if the reporting entity fails to furnish or furnishes an inaccurate CbC report within the due date, unless the taxpayer is able demonstrate "reasonable cause" for such non-compliance. The prescribed sum of penalties are prescribed hereunder:

Section	Applicability	
Section 271AA	Penalty for failure to keep and maintain Master File (INR 500,000)	
Section 271GB Penalty for failure to furnish CbC report u/s 286(2)	a. INR 5,000 per day upto one month; or b. INR 15,000 per day beyond one month	Failure continues after penalty order INR 50,000 per day
Penalty for failure to produce information and documents for CbC report u/s 286(2)	INR 5,000 per day	
Inaccurate report / information	INR 500,000	NA

Adequate safeguards in place to maintain confidentiality of information

As recommended by Action Plan 13, the Rules provide that adequate safeguards be implemented to protect confidential information and other commercially sensitive information received by way of the CbC report and the master file.



Further, the rules provide that the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAA, Form No. 3CEAB, Form No. 3CEAC, Form No. 3CEAD, and Form No. 3CEAE. They will also be responsible for evolving and implementing appropriate security and archival and retrieval policies regarding information furnished under the abovementioned forms.

Guidance on the Implementation of Country-by-Country Reporting (BEPS ACTION PLAN 13) – Updated November 2017⁴

The OECD has issued implementation guidance which enables various respective jurisdictions to frame law in manner which is consistent across all the countries for smooth exchange of information. These guidelines have attempted to clarify various definitions, terms, etc. in terms of the OECD ideology. However, considering that each jurisdiction is independent, the interpretation and implementation of the reporting requirement would need to be seen from the perspective of the domestic law and the jurisprudence that has evolved in that jurisdiction.

In the context of Indian legislation, the law is still evolving and therefore, it is seen in practice that reliance is placed on, and useful inferences have been drawn from international tax practices followed in some other developed countries, along with the OECD Transfer Pricing Guidelines, 2010.

Conclusion

The final rules on CbC reporting and the master file requirement in India are significantly aligned with the BEPS Action Plan 13, reflecting India's commitment to global consistency. Various aspects of the rules will have India-specific implications, and will also need clarification and additional information.

The holistic approach to tackle BEPS behaviour of MNEs is supported by the transparency requirements agreed under Action Plan 13. Transfer pricing analysis depends on access to relevant information. The access to transparent documentation provided by Action Plan 13 will enable Action Plans 8-10 to be applied in practice, based on relevant information on global and local operations in the master file and local file. In addition, the Country-by-Country Report will enable

better risk assessment practices by providing information about the global allocation of the MNE groups' revenues, profits, taxes, and economic activity. In view of the notification with regard to the maintenance and furnishing of Master File and CBC report, it is imperative that multinational groups should initiate reviewing their operational structures and inter-company transaction flows from a value creation standpoint.

It is also important to note that the threshold for submission of Master File in India is relatively low; thereby a large number of multinational groups would be covered for reporting purposes. Considering the extensive nature of information required to be provided, the multinational groups operating in India could be facing increased compliance burdens as well as tax risks. In addition, the nature of information requested such as: functional analysis of entities contributing at least 10 percent of revenues or assets or profits or detailed description of financing arrangements including names and addresses of the top ten unrelated lenders would certainly lead to customization of the global master file specifically for India.

Further, it is important not only to keep track of the number of statutory forms that have been filed and their associated filing dates for compliance purposes, but also to ensure that the information in the master file is in conformity with other information that may have been provided in the tax returns or that is otherwise accessible to the Indian tax authorities through one of the information exchange mechanisms available in the post-BEPS environment. Thus, taxpayers (International groups) will need to adopt a consistent and harmonized approach to preparing their master file and local files as well as CbC reporting and be prepared for a more detailed information or document requests during an audit.

The new requirements for multinational groups will necessitate greater level of global coordination, detailed analysis of considerable information not currently readily available. Thus, the rules in their present format would result in significant increase in Indian compliance obligations for the constituent entities in India, especially for foreign multinational groups. Accordingly, it is vital for such Indian constituent entities to evaluate their preparedness for compliance with these new obligations.

⁴ <http://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>