

Country By Country Reporting — An Indian Perspective



Last year, the Organisation for Economic Cooperation and Development (“OECD”) published final reports outlining the action plans 1 to 15 as part of its Base Erosion and Profit Shifting (“BEPS”) project. The BEPS project is a joint effort of G20 countries and OECD, the objective of which is to achieve greater transparency and coherency in the global tax system. The fundamental objective of OECD’s BEPS action plans is to issue guidelines in relation to arrangements that achieve no or low taxation by shifting profits from high tax jurisdiction to low tax jurisdiction. Under action 13 of the BEPS action plan, the OECD recommended a three-tiered approach to transfer pricing documentation that, inter alia, includes a master file, a local file and a CbC report. The objective of action 13 is to re-examine the transfer pricing documentation requirement and to provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment. For implementing the international consensus on Action 13, the Finance Act 2016 introduced rules in relation to CbC reporting that are in line with BEPS Action 13.

What is BEPS

The past one decade has seen a steep increase in the concern of tax authorities worldwide on account of shifting of profit by MNEs from high tax jurisdiction to low tax jurisdiction through certain corporate structuring. Overcoming the fiscal deficit and

getting fair share of tax revenue are the key agenda of Governments. Hence, addressing BEPS has emerged as the key priority of Governments around the globe.

The key objectives of the OECD’s BEPS project is to provide guidance in relation to challenges and inconsistencies in international tax laws and to ensure profits are taxed where economic activities deriving the profits are performed and value is created.

Action Plan 13

OECD’s action plan 13 contains the guidance on a standardised three-tiered approach to transfer



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International Taxation

pricing documentation. The action plan outlined the requirements for large multinational enterprises (MNEs) to provide tax authorities with profitability, information on their global allocation of income, economic activity, and taxes paid among countries according to a common template—the CbC Report.

The three tier approach of transfer pricing documentation comprised of the following:

Master file – Under the master file, the taxpayer or MNE is required to provide an overview of its business, nature of global operations, explanation of the MNE's TP policies in the context of its global economic, legal, financial and tax profile.

Local file – to demonstrate that the taxpayer has complied with the arm's length principle in its intragroup transactions. This mainly includes the functions, assets & risk analysis and economic analysis for computing the arm's length pricing of related party transactions.

CbC report –to provide information to a prescribed authority to enable it to undertake a TP risk assessment, data may also be used to assess wider BEPS related risks. It is required to:

- Provide jurisdiction-wise information on global allocation of income, taxes paid/ accrued, the stated capital, accumulated earnings, number of employees and tangible assets
- Provide entity-wise details of main business activities which will portray the value chain of inter-company transactions.

The aforesaid documentation structure intended to provide a starting point to the tax authorities to identify the key areas of risks and consequently the scale and area of assessment.

The Action plan 13 mentioned that the CbC reports will be required to file within one year of the end of the accounting year, i.e. a multinational enterprise group with an accounting period ending on 31 December 2016 will need to file their CbC report by 31 December 2017. Further, MNE groups having annual consolidated group revenue in the immediately preceding accounting period of less than €750 million (or near equivalent amount in domestic currency) will be exempt from the aforesaid reporting requirement.

Indian Provisions on CbC

India has actively contributed in the BEPS initiative and supported OECD for getting international consensus. The Union Budget 2016 introduces

country-by-country (CbC) reporting into Indian Transfer Pricing legislations as guided by the OECD under the action plan 13. The provisions of the same are as follows:

Master file and Local File

The Memorandum to the Finance Bill states that a master file will have to be maintained and the detailed Rules regarding the same will be notified at a later date. However, no threshold for preparation of master file has been prescribed. Local file related regulations that already exist in the law may continue or may be aligned to the recommendations of the OECD, however the same can be clear only once the detailed Rules in this regards are issued.

CbC Reporting

Under the union Budget 2016, a new Section on CbC reporting has been introduced viz. proposed Section 286 of the Income-tax Act, 1961.

The key provisions of the same are as under:

Who is required to file – the CbC report has to be submitted by the parent entity of an MNE to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group. The provisions are summarised as below:

Particular	CbC Filing
Parent entity is resident in India	To be filed by the parent entity
More than one entities of same group resident in India	The group can nominate (under intimation in writing to the prescribed authority) the entity that shall furnish the report on behalf of the group.
Parent entity is resident outside India and subsidiary co. in India	The Indian constituent entity needs to file CbC report in India if (i) The parent is resident in a country with which India does not have an agreement providing exchange of information under the CbC report or (ii) There has been a systemic failure of that country and the said failure has been intimated by the prescribed authority to such constituent entity.

International Taxation

Particular	CbC Filing
	<p>'Systemic failure' means the foreign country has :</p> <p>a) Violated the automatic exchange of information agreement with India by suspending the same; or</p> <p>b) Persistently failed to provide report to India in respect of any international group having a constituent entity resident in India.</p>
Parent entity is resident outside India, designated alternate entity resident outside India	Entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by the Indian tax authorities and the prescribed authority in India has not conveyed any systematic failure in respect of said country.

Deadlines for reporting- the Indian Parent entity of an international multinational group or any other designated group entity in India (referred to as an alternate reporting entity) to file a CbC report for financial year 2016-17 before the due date of filing of Return of Income i.e. 30 November 2017.

Threshold - the threshold for filing the CbC report has been maintained at €750 million. At current rates, threshold in Indian currency would be equivalent to INR 53,950 million. The threshold to be based on exchange rate as on the last day of the previous year. Further, the threshold would be determined based on the consolidated revenues of the group during the immediately preceding year.

(ii) Failure on account of CbC reporting :

Particular	Delay upto one Month	Delay beyond one month	Delay in payment of penalty after receipt of penalty order
Failure to furnish CbC report by the due date of filing of return of income	INR 5,000 per day	INR 15,000 per day	INR 50,000 per day
Non-submission of information	INR 5,000 per day from the day on which the period for furnishing the information and document expires		INR 50,000 per day

Details – The CbC report will be required to furnish following:

- The aggregate information in respect of the amount of revenue, profit or loss before income-tax, the amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates
- The details of each constituent entity of the group, including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident
- The nature and details of the main business activity or activities of each constituent entity.
- Any other information as may be prescribed

Format of the report - the format shall be notified in the Rules at a later date. However, it is proposed in the memorandum that the OECD prescribed template will be adopted.

Calling for further details - The prescribed authority may request for such document and information from the entity furnishing the CbC report for the purpose of verification. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days.

Penalty Provisions – Following penalties have been proposed under the CbC provisions:

- (i) Failure to furnish information and documentation under the proposed three tier documentation structure by the due date will be INR 500,000

International Taxation

Particular	Delay upto one Month	Delay beyond one month	Delay in payment of penalty after receipt of penalty order
Inaccurate information filed under CbC report	INR 500,000	This penalty levied if: <ul style="list-style-type: none"> - The entity has acknowledged the inaccuracy at the time of furnishing report but fails to inform the prescribed authority - The entity discovers the inaccuracy after the CbC report is furnished and fails to inform the prescribed authority and furnish a correct report within a period of fifteen days of such discovery - The entity furnishes inaccurate information or document in response to request for additional information and documents. 	

Both the Master File and CbC Reporting have greater relevance for the ultimate parent of an MNE group. In the context of India, the Indian outbound MNE groups, having consolidated annual turnover in excess of Euro 750 million, would need to gear up for the CbC reporting.

It is most important for the Indian outbound entities to carry out health check-up of their transfer pricing policies to find out whether there is any mismatch between risks, rewards and functions.

Implications & Way forward

The Indian transfer pricing regulations (Section 92D read with Rule 10D of the Income Tax Rules, 1962) require every enterprise who has entered into an international transaction with its Associated Enterprise to maintain prescribed information / documents for substantiating the arm's length price (ALP) of its transactions with the related parties.

The CbC reporting is likely to increase the compliance burden for MNEs substantially, at least in the initial years of implementation. However, the CbC reporting enables MNEs to adopt a more transparent approach towards collating information, documents and sharing the same with the prescribed authorities. Although the due date for filing of the CbC report for tax year 2016-17 will be 30 November 2017, it is important for the taxpayer to gear up for preparation of the CbC report in order to comply with the deadline and to avoid paying steep penalties.

The details rules and the CbC template have not yet prescribed by the Govt. of India. It would be important to see whether the govt. introduces rules and the CbC template are in line with OECD recommendations. The CbC template will be used by the tax authorities as a risk assessment tool, it would not be very straightforward and there could be practical challenges both for the taxpayers and the tax authorities while implementing CbC reporting and using the same for the assessing the cases.

Although the OECD has provided detailed guidance in relation to CbC reporting, there are many

practical challenges which the taxpayers may have to face such as – challenges while collating the relevant data, different transfer pricing approaches followed in different countries, different in fiscal years & currencies etc. Further, maintaining confidentiality of data will also be a challenge.

Looking at the level of information required to be maintained/submitted, it is very important for the taxpayers to adopt a systematic and a coordinated approach while determining the transfer pricing policies, performing arm's length analysis and collating the required information/documents. Further the taxpayers need to revisit their current structure/model from BEPS perspective and identify the critical areas where controversy may arise. One of the critical areas is to find out whether the profitability of the parent and all other entities is in line with the level of operation performed. Documenting the substance of the group entities shall be very helpful while doing preparation for the CbC reporting.

Ownership and exploitation of intangibles shall also be critical from BEPS and CbC reporting perspective since intangibles play key role in the profitability of any MNE. It is very important for the MNE to identify the key intangibles in business and their arm's length treatment.

Further, the CbC report requires the MNEs to provide details of the number of employees in each tax jurisdiction. In light of this, the Indian MNEs could use this opportunity to re-examine its overall employment structure and supporting documentation to ensure that the count of employees are aligned with the functional profit of entity and profitability.

Thus, it is important for MNEs to undertake a risk assessment exercise to evaluate how the new documentation guidance will impact their current transfer pricing policies and their process for implementing, monitoring, and defending those policies as well as prepare for greater level of scrutiny by the tax authorities. ■