

New TP Documentation and CbCR Rules



The Central Board of Direct Taxes (CBDT) has issued the final rules pertaining to Master File (MF) and Country by Country reporting (CbCR) on 31st October 2017. This is an outcome of the OECD/G20 BEPS Action Plan 13. India has been an active participant of the OECD BEPS (Base Erosion and Profit Shifting) project. The Finance Act, 2016 introduced Section 286 in the Income-tax Act, 1961 (the Act) providing for furnishing of Country by Country Report (CbCR) in respect of an International Group (IG). Further, Section 92D of the Act has also been amended to provide for filing of the Master File. In the present article the author has discussed these provisions in detail. Read on to know more....

Background:

Action Plan 13 of BEPS: Transfer Pricing Documentation and Country by Country Reporting final report issued in 2015 recommended a three



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tiered approach to transfer pricing documentation to be maintained by Multinational Enterprises (MNE) to aid tax administrations effectively conduct tax audits, collect tax and share information across jurisdictions. It has replaced the earlier guidance in Chapter V with these new requirements based on the outcomes from the Action Plan. The three-tiered documentation package consists of Master File, Local File and CbC reporting template.

1. **Master File (MF):** The MF should provide an overview of the MNE business, and the nature of its global operations, overall TP policies,

allocation of income and economic activity. MF is not intended to provide exhaustive details. It will basically contain the group structure, description of the business, intangibles, intercompany financial activity between members of the group, and MNE financial and tax positions.

2. **Local File (LF):** This is more detailed in nature and provides specific intercompany transactions. It supports MF in assuring that the MNE has complied with arm's length principle in material transactions affecting a specific jurisdiction. Its focus is on the transactions between local country affiliate and associated enterprises in other countries which are material to the local jurisdiction and local tax authorities. It includes financial information of transactions, comparability analysis and selection of most appropriate method.
3. **Country by Country reporting (CbCR):** It requires tax jurisdiction wise information relating to global income allocation, taxes paid, economic activity like employees, assets and such other parameters as specified. This is an exhaustive data base at entity level and jurisdiction level in all the jurisdictions in which the MNE operates. It has to be filed in the jurisdiction of the parent of the MNE group and the information will be shared with the other participating jurisdictions as per protocol developed.

Indian Scenario

The final action plan for OECD's BEPS project was published in October 2015. The Indian Government took immediate steps to incorporate the contents of Action Plan 13 and through Finance Act, 2016 introduced provisions relating to MF and CbCR. A new Section 286 was inserted into the Income-tax Act, 1961 (the Act) by Finance Act, 2016, providing for furnishing of a CbCR in respect of an International Group (IG) by its constituent or parent entity. Amendments have also been made to Section 92D of the Act to require maintenance of MF by

Rule 10DA sets the threshold for applicability for MF, information and documents required to be maintained by the Constituent Entity (CE), it also provides timelines and furnishing of information. OECD has not specified any indicative threshold for maintenance of MF, hence threshold and the calculation methodology varies across jurisdictions.

every Constituent Entity (CE) of an IG, which will need to be filed as per prescribed rules before the due date.

New rules 10DA and 10DB are inserted into Income-tax Rules, 1962 (Rules), and new forms Form 3CEAA to 3CEAE have been notified for furnishing information. The overall MF and CbCR requirements are largely in line with BEPS Action Plan - 13, with minor tweaks and significant penalties in case of violation of the provisions.

Rule 10DA

Rule 10DA sets the threshold for applicability for MF, information and documents required to be maintained by the Constituent Entity (CE), it also provides timelines and furnishing of information. OECD has not specified any indicative threshold for maintenance of MF, hence threshold and the calculation methodology varies across jurisdictions. For example Netherlands, Austria, France specified Euro 50 million of global turnover threshold for maintaining MF, whereas the same is set at Euro 100 million in Germany pertaining to local turnover. Some countries like Belgium specified a mix of turnover or balance sheet size or number of employees.

The Indian requirements of MF shall be applicable to every CE of an IG, subject to the following two conditions. The rule follows a two layered approach for MF.

1. Consolidated group revenue for the IG of which the CE is a part of, as reflected in its consolidated financial statements for the previous accounting year, should exceed INR 500 Cr. (and)
2. The aggregate value of international transactions of the CE:
 - During the reporting accounting year, as per books exceeds INR 50 Cr. (or)
 - Aggregate value of international transactions of the CE in respect of purchase, sale, transfer, lease or use of intangible property, during the reporting accounting year, as per books, exceeds INR 10 Cr.

The criteria which provides a mix of both global and local thresholds for reporting, this ensures that CEs though part of a larger group, will not be subject to the hassles of maintaining elaborate data if they are insignificant in size.

As the thresholds are specified in INR, the consolidated group revenue from foreign currency has to be translated using the telegraphic transfer

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buying rate of such currency on the last date of the accounting year as specified in the rules.

India also requires MF to be mandatorily filed on or before the due date for filing the tax returns once the thresholds are met, rather than countries like Austria, China, Germany, Malaysia and a few other countries which require MF to be maintained by the tax payer but are required to submit only on request by the authorities. This requirement places additional burden on assesses during the filing season as the penalties for non-compliance are high.

Form 3CEAA

The rules prescribe a new Form 3CEAA with two parts (Part A & Part B) for electronically furnishing the MF details with Director General of Income Tax [DGIT] (Risk Assessment), on or before the due date for filing the return of Income as specified in Section 139 of the Act. A relaxation is given for FY 2016-17 for which MF may be filed by 31st March 2018.

Part-A is to be furnished by every CE of an IG. It consists of limited information relating to details of taxpayer, IG to which it belongs to, number of group entities in India and their permanent account number, addresses, etc. This information is to be filed by every member of the IG irrespective of whether there is an international transaction or the threshold being met or not.

Part-B requires more exhaustive information on more than twenty items listed as part of MF. However Part-B needs to be furnished only by those CEs that qualify the threshold for maintaining of MF. This part seeks information which can broadly be summarised under five areas.

Organisation Structure: Points 1&2 require names, address and a chart showing the CE and the ownership structure of the entire IG.

Business Description: Point 3 has 9 parts which help the tax authorities briefly understand the business of the tax payer, key products, drivers, intra

group service agreements, supply chain, capabilities of intra group service providers, TP policies, key markets, functions assets and risk analysis of the key constituent entities in the group and any important business restructuring transaction, acquisitions or divestments. This provides substantial information that the tax department will have at its disposal to understand the business of the assessee and ensure transactions are carried at arm's length and the tax positions are not skewed.

Intangible Property (IP): Across the globe a lot of thrust has been placed by tax authorities on gaining information related to IP, which to an extent is easily amenable for cross border transfer, share of IP in entities revenues has increased over years to the extent that many companies now derive their value only through IP. Hence, considerable emphasis is placed in this form on obtaining the information pertaining to IP. Points 4 through 9 require information pertaining to the group's IP and Research and Development (R&D) activities. Information on overall IP development and exploitation strategy of the group is requested along with the entities that do the R&D functions and the IP that is owned along with the entities that own them. TP policies of the group around R&D and IP and also any transfers of IP or interest therein between the group entities is required to be provided. Additional requirement in India is that the group will have to disclose all the entities that are involved in development and management of IP and not just the legal owners as required by OECD AP 13.

Financing Activities:

Points 10, 11 and 12 capture how the group is financed, including important financial arrangements with unrelated lenders. It requires a list of group entities and addresses which perform the central financing function and description of TP policies pertaining to financing arrangements. In addition to OECD AP 13 requirements, Indian rules require the names and address of the top ten unrelated lenders with respect to the financing arrangements. Some of these requirements like information pertaining to unrelated lenders may not be available with the CE in India and to that extent prove difficult for the CEs to compile.

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Financial and Tax Positions:

Points 13 and 14 of the form cover the financial and tax position of the IG. Annual consolidated financial statement of the group is to be provided. Finally a list and brief description of existing unilateral advance pricing agreements (APAs) and other tax rulings with respect to the group relating to the allocation of income among countries is to be furnished.

Other aspects:

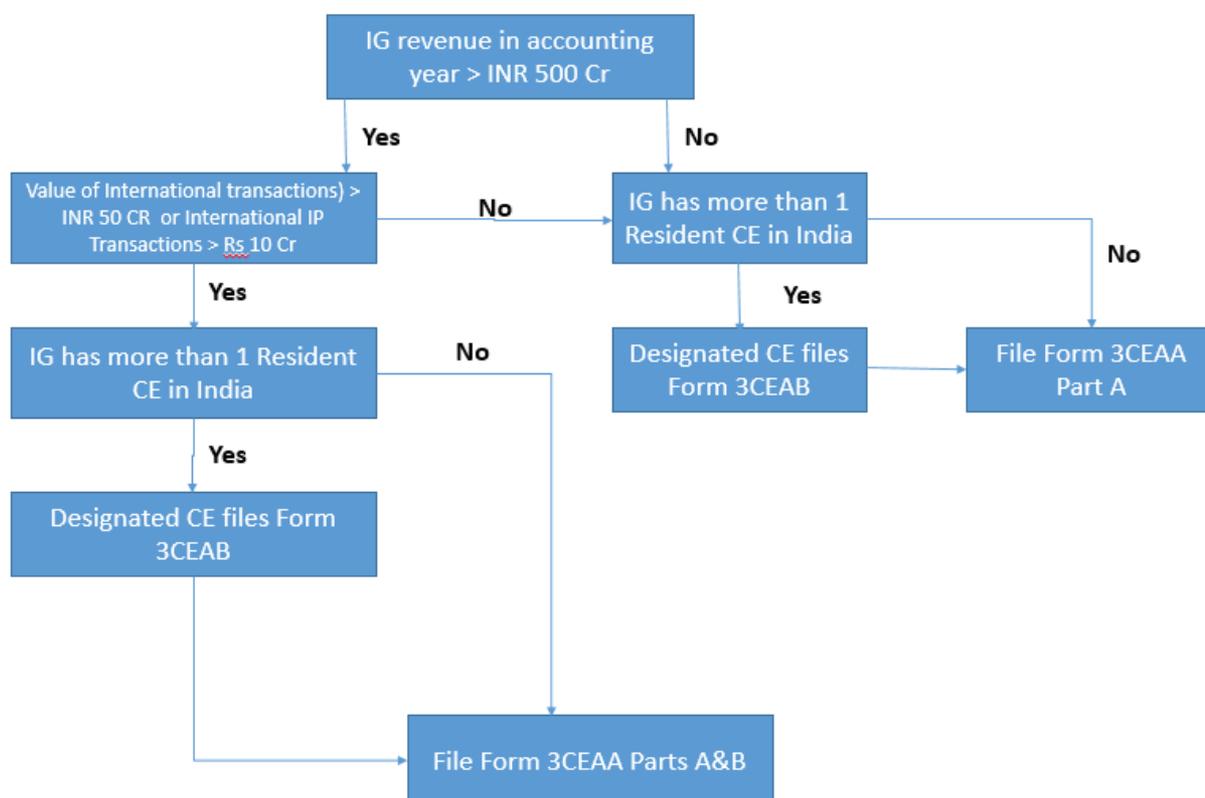
Form 3CEAB: In case the IG has presence through more than one CEs resident in India, the group may designate one of the CE for this purpose and notify DGIT (Risk Assessment) in Form 3CEAB at least 30 days before the due date of filing the MF. The MF shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

The information required by CBDT is broadly in line with the OECD Guidelines and hence not provided in the article to avoid duplication. However some additional data has been requested for in the forms, more than what OECD was looking for.

Indian Rules for MF require additional data which was not specified in the OECD guidelines.

- List of all entities of the IG in India, along with their addresses.
- Description of the functions performed, assets employed and risks assumed by the entities that contribute at least ten percent of the revenues, assets and profits of the group. OECD AP 13 requires only a brief functional description of the principal value contributing entities of the IG.
- List of names and addresses of entities of IG engaged in development and management of intangibles. OECD AP 13 only requires location of facilities and management pertaining to R&D.
- Name and address requirement in case of transfer of interest in the intangibles.
- Detailed description of the financing arrangement of the IG, including their names and addresses of the top ten unrelated lenders. OECD AP 13 specifies only description of group financing activities and arrangement with lenders.

Flow Chart illustrating Master File filing requirements.



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Rule 10 DB

Rule 10DB provides the guidance for the information to be furnished as part of CbCR, threshold and the procedure of furnishing the information. The CbCR reporting requirements apply to an IG for an accounting year, if total consolidated group revenue, as per its consolidated financial statements for the preceding accounting year exceeds INR 5,500 Cr (Approx. Eur 720 million), it is marginally lower than the threshold as per OECD guidelines of Eur 750 million. However, still better than countries like Malaysia where the threshold is only Eur 620 million or China at Eur 700 million. The lower limit may cause CbCR information to be maintained by the group only for India in case the local requirement is on the higher side. For example in case of a Swiss group the local limit for CbCR is CHF 900 million (Approx. ₹6000 Cr), which may cause such a group to maintain information only for meeting the compliance requirements in India. Also as the foreign exchange rates keep changing, there could be chances that CbCR gets attracted due to fluctuations in exchange rates.

Every Indian parent entity or an alternate reporting entity or as per Section 286(4) an Indian subsidiary of an MNE group whose parent is located in a country with which India does not have an agreement for exchange of CbCR information, or where there is a systematic failure as defined in Section 286(9)(l) to exchange CbCR information

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by that jurisdiction and the fact is informed to the Indian subsidiary of such group, the CbCR shall be furnished to the DGIT (Risk Assessment) in Form 3CEAC, for every reporting accounting year.

Form 3CEAD

Form 3CEAD has been prescribed for reporting CbC information and needs to be filed on or before the date of filing of the return of income. This timeline has been revised for AY 2017-18 to be in line with the time set for the MF filing and avoid inconvenience to the assesses as the rules have been notified late in the year.

The information requested is in line with OECD's recommendations. The Form is divided into three Parts and is a complete replication of the OECD tables.

Part A- Overview of allocation of income, taxes and business activities by tax jurisdiction. Accordingly, for every tax jurisdiction, information pertaining to revenue (both related and unrelated party), profits before income tax, income taxes (both paid and accrued), stated capital, accumulated earnings, employees, tangible assets etc., has to be reported. Breakup is required to be provided as per format specified below.

Tax Jurisdiction	Revenues			Profit(Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued— Reportable Accounting Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Part B- Is a list of all the constituent entities of the MNE group based in each tax jurisdiction. Information such as the main business activity of each of the entities, e.g. R&D, manufacturing, distribution, etc. in each tax jurisdiction has to be reported.

Tax Jurisdiction	Consistent entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organization or Incorporation if Different from Tax Jurisdiction of Residence	Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Main Business Activity(ies)								
								Administrative Management and Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares and other Equity Instruments	Dormant	Other	
	1.															
	2.															

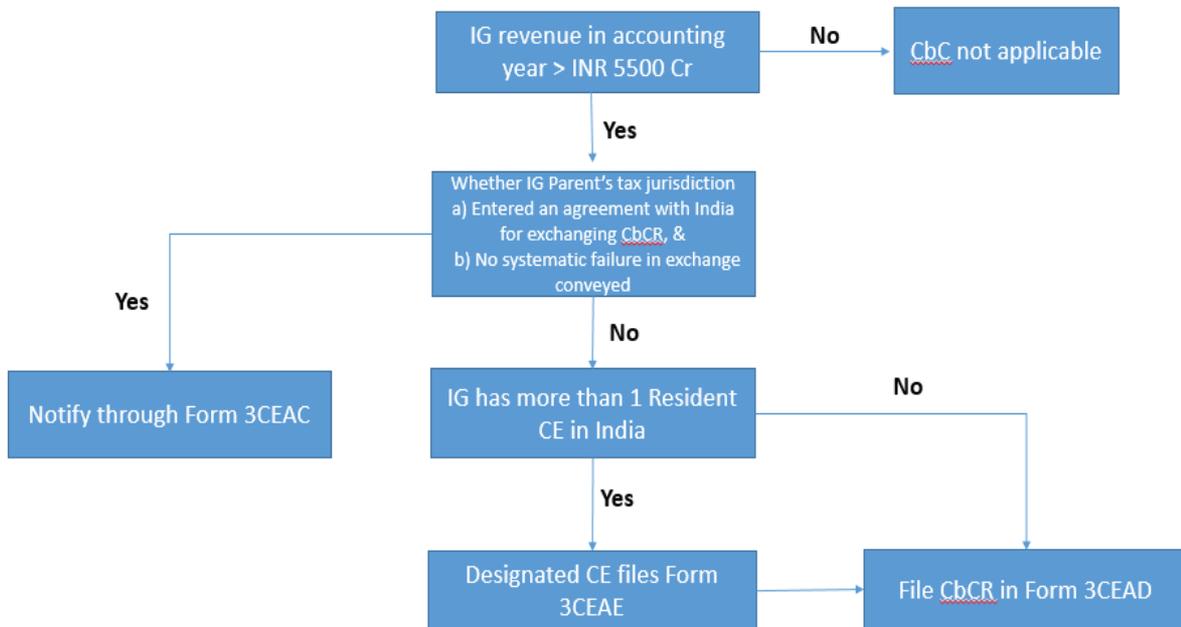
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Part C – Is a free text space which can be used to report any additional information as may be required to be reported or explained.

The rules prescribe form CbC report to be furnished by the due date of filing the return, which is currently 8 months from the end of the financial year, whereas the OECD AP 13 guidelines provide a time of 12 months from the end of the financial year. Thus, the Indian rules specify much lesser time than what is specified by OECD.

The form provides further guidelines clarifying on how the form needs to be filled and describes the information on how the numbers have to be arrived at. It will be good for CBDT to compile a FAQ list for easy reference. For example, Part A requires the stated capital to be mentioned, does this include preference shares or should any adjustments be needed is not specified. The definition has been directly picked from OECD guidelines for reproduction.

Flowchart illustrating CbCR filing requirements



Form 3CEAE: In case the IG has presence through more than one CEs resident in India, the group may designate one of the CE to furnish CbC report in India and notify DGIT (Risk Assessment) in Form 3CEAE.

Form 3CEAC: Every Indian constituent entity of a group headquartered outside India is required to

file the CbC report notification in this form. This is required to be filed atleast two months prior to the due date for filing the CbC report.

Conclusion:

The rules provide a great level of clarity on the information expected by the authorities and the process of furnishing MF and CbCR information where needed. The information requirement being largely in line with OECD guidelines, however certain additional information that has been requested may present challenges. The thresholds either for MF or CbCR are also comparable to other jurisdictions though marginally lower, and not set very low so as to cause inconvenience to the assesses, which is another positive step for a fair administration. It will only help if CBDT doesn't add further information requirements over a period of time or reduce thresholds so as to make reporting more cumbersome and overwhelm organisations with additional compliance burden.

Sources:

1. F. No. 370142/25/2017-TPL – Issued by Government of India, Ministry of Finance, Central Board of Direct Taxes.
2. Final Report: OECD / G20 BEPS Project Final Report Action No: 13.
3. CBDT Notification dated 31st October 2017. ■