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India releases final rules on country-by-country reporting and master file

India's Central Board of Direct Taxes (CBDT) on 31 October released the final rules on country-by-country (CbC) reporting and master file requirements (notification no. 92/2017), incorporating few amendments and some clarifications to the draft rules that had been previously issued.

India has been an active member of the base erosion and profit shifting (BEPS) initiative. On May 5, 2016, India introduced core elements of the CbC reporting requirement and the concept of master file in the Indian Income Tax Act, 1961, through Finance Act 2016, effective 1 April 2016.

To take the initiative forward, the CBDT on 6 October 2017 released draft rules providing detailed instructions for compliance with CbC reporting and master file requirements in India, which were open for public comments until 16 October 2017. Those rules have now been finalized.

Executive Summary

A brief snapshot of the key provisions of the final rules follows.

Master file

The following entities are required to file the master file in India (Form No. 3CEAA):

Part A of the master file: Part A comprises basic information relating to the international group (IG) and the constituent entities of the IG operating in India (such as name, permanent account number, and address). The final rules have clarified that Part A of the master file will be required to be filed by every constituent entity of an IG, without any threshold.

Part B of the master file: Part B includes the main master file information that provides a high-level overview of the IG's global business operations and transfer pricing policies. Every constituent entity of an IG that meets the following thresholds will be required to file Part B:

- The consolidated group revenue for the accounting year exceeds INR 5,000 million (the draft rules had provided that this threshold is to be determined considering the group revenue for the preceding accounting year); and
- For the accounting year, the aggregate value of international transactions exceeds INR 500 million, or the aggregate value of intangible property-related international transactions exceeds INR 100 million.

The master file information required to be submitted in India is largely consistent with BEPS Action 13 guidance. However, a few additional data requirements have been incorporated into the final rules, requiring IGs to customize their master files for India.

The following table summarizes the additional requirements released in the final rules:

Master file requirement	Summary of OECD BEPS requirement	Additional requirements as per Indian final rules
Organization structure	Chart illustrating IG's legal and ownership structure and geographical location of operating entities	Addresses of all entities of the IG (the draft rules had proposed submission of details of only the IG's operating entities)
Description of IG's business	• Description of important drivers of business profit • Description of supply chain for five largest products/services in terms of revenue and/or that contribute to more than 5 percent of IG's revenues • Functional analysis of the principal contributors to value creation • Important business restructuring transactions	Functions, assets, and risk (FAR) analysis of entities contributing at least 10 percent of the IG's revenue *or* assets *or* profits. (The draft rules did not clarify the manner of application of the 10 percent threshold)

Master file requirement	Summary of OECD BEPS requirement	Additional requirements as per Indian final rules
IG's Intangibles	• IG's strategy for ownership, development, and exploitation of intangibles • List of important intangibles with ownership • Important agreements and corresponding transfer pricing policies in relation to research & development (R&D) and intangibles	• Names and addresses of all entities of the IG engaged in development and management of intangible property • Addresses of entities legally owning important intangible property and entities involved in important transfers of interest in intangible property
IG's intercompany financial activities	• Description of how the IG is financed, including identification of important financing arrangements with unrelated lenders • Identification of entities performing central financing function including their place of operation and effective management and corresponding transfer pricing policies	• Names and addresses of top 10 unrelated lenders • Addresses of entities providing central financing functions, including their place of operation and effective management

The final rules provide that the accounting year for which the master file is being submitted must be specified in Part A of the master file. This requirement was not provided in the draft rules.

The master file must be furnished by the due date for filing the income tax return (30 November following the financial year). However, for financial year 2016-17, the due date is extended to 31 March 2018.

IGs with multiple constituent entities in India can designate one Indian constituent entity to file the master file in India, provided a notice to this effect is made in Form No. 3CEAB 30 days prior to the due date for filing the master file in India.

CbC report

1. The threshold for applicability of CbC reporting has been specified as consolidated group revenue of INR 55,000 million in the preceding year.
2. The format of the CbC report (Form No. 3CEAD) is aligned with the BEPS action 13 template.
3. The due date for filing the CbC report in India continues to be the due date for filing the income tax return (30 November following the financial year). However, for FY 2016-17, the due date is extended to 31 March 2018 (as per CBDT Circular 26/2017, released on 25 October 2017).

CbC report notification

1. Every Indian constituent entity of an IG headquartered outside India (a "foreign IG") is required to file the CbC report notification in the prescribed format (Form No. 3CEAC).
2. The "reportable accounting year" must be specified in Form No. 3CEAC. This requirement was not included in the draft rules.
3. The CbC report notification must be filed at least two months prior to the due date for filing the CbC report, which is aligned to the due date for filing the income tax return of the Indian constituent entity. As mentioned above, the due date for filing the CbC report for FY 2016-17 has been extended to 31 March 2018; accordingly, the due date for the first CbC report notification for FY 2016-17 has also been extended to 31 January 2018.
4. Currently, no option has been provided for filing a consolidated CbC report notification for multiple Indian constituent entities of a foreign IG.

Summary of new forms released in the final rules

The following forms are required to be filed electronically with the Director General of Income Tax (Risk Assessment) within the prescribed due dates. The procedure for electronic filing will be prescribed subsequently.

Particulars	Purpose of Form	Form No.	Applicable to:
Master file-related forms	Filing of the master file	3CEAA	**Part A of Form No. 3CEAA:** Every constituent entity of an IG (no threshold is applicable) **Part B of Form No. 3CEAA:** Every constituent entity of an IG meeting the prescribed threshold discussed above
	Notification of designated Indian constituent entity of an IG	3CEAB	IGs with multiple constituent entities resident in India
CbC reporting related forms	CbC report notification	3CEAC	Every Indian constituent entity of a foreign IG
	Filing of CbC report	3CEAD	• Indian-headquartered IG • Indian constituent entity of a foreign IG designated as alternate parent entity • Indian constituent entity of a foreign IG required to submit CbC report in India under the specified circumstances
	Notification of designated Indian constituent entity of foreign IG for filing CbC report in India under specified circumstances	3CEAE	Foreign IG with multiple constituent entities resident in India

Signatory to the CbC and master file related forms

The final rules specify that the above forms must be signed by a person competent to verify the return of income (under section 140 of the Act) of the entity. This requirement was not specified in the draft rules and has been incorporated in the final rules.

Detailed discussion of final rules on CbC reporting and master file

A detailed discussion of the salient features of the final rules, and insights on CbC reporting and master file related obligation in India, for an Indian constituent entity, follows.

Master file

Under BEPS action 13 guidance, the master file is intended to provide a high-level overview of the IG's global business operations and transfer pricing policies. This would enable tax authorities to place the IG's transfer pricing practices in their global economic, legal, financial and tax context. Thus, information submitted in the master file ought to provide a blueprint of the IG.

Section 92D of the Act was amended through the Finance Act 2016 to provide for maintaining of the master file by every constituent entity of an IG. Detailed rules governing applicability, content, manner of furnishing the information, due date, etc. were eagerly awaited.

The draft rules provided detailed instructions for compliance with the master file requirements in India, by constituent entities of an IG (through insertion of rule 10DA in the Income-tax Rules, 1962 ("the Rules")). After considering public comments received on the draft rules, the CBDT has now released the final rules providing the following requirements and instructions with respect to master file compliance in India:

Applicability and threshold for master file

A constituent entity of an IG is required to file the master file in India with effect from FY 2016-17. The final rules prescribe a specific format for furnishing the master file – Form No. 3CEAA. Form No. 3CEAA comprises two sections:

Part A of Form No. 3CEAA: This section is required to be submitted by every constituent entity of an IG. The final rules have clarified that no threshold is applicable for applicability of Part A of the master file.

Part B of Form No. 3CEAA: Information under this section is required to be furnished by constituent entities of an IG, only when the following threshold is met:

- Consolidated group revenue of the IG in the accounting year exceeds INR 5,000 million (approx. USD 75 million/EUR 65 million). The draft rules had provided that this threshold must be determined considering the group revenue for the preceding accounting year, which has been amended in the final rules to the current accounting year. The final rules clarify that the exchange rate for calculating the consolidated group revenue in rupees shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year; and
- The aggregate value of international transactions:
  - As per the books of accounts, exceeds INR 500 (approx. USD 7.5 million/EUR 6.5 million) during the accounting year; or
  - In respect of purchase, sale, transfer, lease, or use of intangible property during the accounting year, as per the books of accounts, exceeds INR 100 million (approx. USD 1.5 million/EUR 1.33 million).

Format and content of master file

As mentioned above, the master file must be furnished in Form No. 3CEAA, comprising Part A and Part B. The information required is as follows:

Part A of Form No. 3CEAA: This section comprises basic information relating to the IG and its constituent entities operating in India.

Information is required on:

1. Details of the IG such as name and address;
2. Details of all the constituent entities of the IG operating in India providing name, permanent account number, and address;
3. Details of the Indian constituent entity submitting the master file in Form No. 3CEBA; and
4. Accounting year for which the report is being submitted. This requirement was not earlier specified in the draft rules.

Part B of Form No. 3CEAA: This section comprises the main master file information of the IG (that meets the prescribed master file threshold as discussed in para 1.1 above). As per the final rules, the information required to be submitted under this section is aligned to action 13 master file requirements. However, the final rules have prescribed a few additional information requirements in this section that are more specific and detailed than the action 13 requirements. The master file information required to be submitted under this section can be grouped under five categories. Below are the information requirements:

Organizational structure: This section is intended to provide the entire legal and ownership structure of all the entities of an IG.

Under the draft rules, only the details of operating entities were required to be provided. However, the final rules have now prescribed that the details for all the entities of an IG are required be provided.

Description of IG's business(es): This section is intended to provide a brief description of the group's business, the important drivers of business profit, along with an understanding of the IG's global supply chain activities and a FAR analysis of the principal contributors to value creation.

It is important to highlight that under this category, the final rules have prescribed a specific requirement compared to action 13 guidance. The final rules have quantified that the FAR analysis must be submitted for group entities that contribute at least 10 percent of the IG's revenues or assets or profits, while action 13 recommended that analysis be provided only for principal contributions to value creation. Under the draft rules, there was ambiguity regarding the manner of application of the 10 percent threshold. The final rules have now clarified that the FAR analysis must be submitted when the 10 percent criteria is satisfied for any one of the factors.

This clarification would be helpful to IGs, as it provides specific guidance. However, this constitutes an additional requirement to be addressed while preparing the master file for India.

IG's intangible property: This section intends to capture important information related to the IG's intangible property. A brief description of important intangible property of the IG and the IG's overall business strategy for development, ownership, and exploitation of such intangible property should be provided.

It is important to highlight that in addition to the above action 13 requirements, the Indian rules require a list of all entities engaged in the development and management of intangible property and the addresses of entities that legally own important intangible property and entities involved in transfers of interest in intangible property. By contrast, action 13 only requires submission of a list of legal owners of important intangible property for transfer pricing purposes. Accordingly, irrespective of the ownership of the intangible property, the entities involved in development and management of intangible property will have to be disclosed. Hence, IGs will have to gather and submit the above additional information while preparing the master file for India.

It is pertinent to note that the term "intangibles" as referred to earlier in the draft rules has been replaced in the final rules with the term"intangible property," to be consistent with the definition provided under the Act.

IG's intercompany financial activities: This requirement is intended to obtain a description of how the group is financed, including important financial arrangements with unrelated lenders. Additionally, the list of group entities providing central financing function for the IG and a description of transfer pricing policies related to financing arrangements between group companies is also required to be provided.

It is important to highlight that in addition to the above action 13 requirements, the Indian rules have quantified that with respect to the IG's financing arrangements, the names and address of the top 10 unrelated lenders must be provided. Even though the clarification would be helpful to the IGs in quantifying the list of important financing arrangement with unrelated lenders, this would be an additional requirement to be complied with by IGs while preparing the master file for India. The Indian rules also require the addresses of the group entities providing central financing function.

IG's financial and tax positions: This requirement is intended to cover the IG's financial and tax position. The information requirement under this category includes the IG's annual consolidated financial statement. Also, a list and brief description of existing unilateral advance pricing agreements (APAs) and other tax rulings in respect of the IG that relate to the allocation of income among countries must be provided.

Form No. 3CEAA must be filed electronically with the Director General of Income Tax (Risk Assessment).

Due date for furnishing the master file

The information in Form No. 3CEAA is required to be furnished by the due date for filing the income tax return (30 November following the financial year). However, for submission of the master file for the first year (FY 2016-17), the due date has been extended to 31 March 2018.

Option for filing one master file on behalf of all Indian constituent entities of an IG

The final rules provide some flexibility in that, when an IG has multiple constituent entities in India, the master file may be submitted by only one of the constituent entities resident in India. The flexibility to provide one master file is available to both Indian-headquartered IGs and foreign IGs, and is also applicable to both parts of the master file (Part A and Part B). The IG would need to identify one of the constituent entities resident in India as the designated entity and inform the Director General of Income-tax (Risk Assessment) in the prescribed format (Form No. 3CEAB). This notice is required to be made by the designated entity at least 30 days before the due date for filing the master file.

The mode of filing Form No. 3CEAB was not specified in the draft rules. However, the final rules provide that Form No. 3CEAB must be filed electronically with the Director General of Income Tax (Risk Assessment).

Signatory to master file related forms

The final rules specify that the master file in Form No. 3CEAA and the intimation in Form No. 3CEAB must be signed by a person competent to verify the return of income (under section 140 of the Act) of the constituent entity. This requirement was not included in the draft rules.

CbC reporting requirements

CbC report: The Finance Act 2016 introduced the requirement to file the CbC report in India for Indian-headquartered IGs. Indian constituent entities of a foreign IG are also required to file the CbC report in India if they satisfy certain specified criteria/conditions. The Finance Act, however, did not provide detailed rules regarding the practical implementation of the CbC reporting requirements, including the form and manner of furnishing the information.

In this regard, the draft rules prescribed the detailed instructions for furnishing the CbC report in India through insertion of rule 10DB in the Rules. After considering public comments received on the draft rules, the CBDT has now released the final rules providing the following requirements and instructions regarding CbC reporting requirements in India.

Applicability and threshold: The Act provided that the CbC reporting obligation would be applicable to IGs whose consolidated group revenue for the preceding financial year as reflected in consolidated financial statements exceeded a threshold, as may be prescribed. The memorandum explaining the introduction of the provision had indicated that the threshold would be the INR equivalent of EUR 750 million, prescribed under BEPS action 13. The final rules have specified that the prescribed INR threshold for applicability of the CbC reporting requirement would be consolidated group revenue in excess of INR 55,000 million in the preceding financial year. The final rules clarify that the exchange rate for calculating the consolidated group revenue in INR shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

Content and manner of submission of CbC report: 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, neither the Act nor the memorandum provided any details, data definitions, or format for the CbC report, which were specifically provided under the BEPS action 13 guidance.

The final rules have released the prescribed format (Form No. 3CEAD) in which the CbC report must be filed. Form No. 3CEAD is similar to the BEPS action 13 CbC report template.

It is pertinent to note that the business activity in connection with “administrative, management, and support services” was not earlier included in the format of Part B of the CbC report provided in the draft rules. The final rules have now incorporated this business activity in Part B of the CbC report, to align with Table 2 of the BEPS action 13 model template.

Form No. 3CEAD also provides definitions of the data points required to be reported in the CbC report, including the list of specific inclusions or exclusions. These data definitions are identical to the original definitions provided under the final Action 13 guidance (released in October 2015). The OECD has subsequently released additional implementation guidance providing more clarifications in respect of the data definitions. However, this additional guidance on data definitions has not been incorporated in the final rules.

The CbC report in Form No. 3CEAD must be furnished electronically, for every reporting accounting year, to the Director General of Income-tax (Risk Assessment).

Further, to facilitate the uniform implementation of CbC reporting and for automatic exchange of CbC reports between competent authorities, the OECD had released the CbC XML (extensible mark-up language) schema and related user guide. In this regard, the final rules provide that the procedure for electronic filing of Form No. 3CEAD will be specified subsequently. Accordingly, it is expected that the XML utility for furnishing the CbC report in India will be released shortly.

Due date for submission of CbC report: As per provisions of the Act, Indian-headquartered IGs are required to file the CbC report on or before the income tax return filing date – 30 November following the financial year. This due date is much earlier than the BEPS Action 13 recommended timeline of 12 months from the last day of the reporting financial year of the IG, and it was expected that the Indian tax authorities could release a specific notification extending the due date for submission of the CbC report in India.

The CBDT has now extended the due date for filing the CbC report for FY 2016-17 to 31 March 2018, vide Circular 26/2017 dated 25 October 2017.

Regulations in relation to CbC report filing requirements for the Indian constituent entity of a foreign IG: The Act also provided that a constituent entity of a foreign IG resident in India would be required to furnish the CBC report in India under specific circumstances (provided under Section 286 (4)). Under the Act, the Indian constituent entity will be required to furnish the CbC report in India if the parent entity is resident of a country or territory:

1. With which India does not have an agreement providing for exchange of the CbC report; or
2. There has been a systemic failure of jurisdiction of reporting entity in sharing the CbC report, and that failure has been notified by the prescribed authority to the Indian constituent entity.

The final rules specify that the due date for submission of the CbC report (Form No. 3CEAD) by the income tax return filing due date is also applicable to Indian constituent entities obligated to file the CbC report in India under the above circumstances. Considering that the due date for filing the CbC report for FY 2016-17 in relation to section 286(2) is extended to 31 March 2018, the due date for filing the CbC report for FY 2016-17 by Indian constituent entities of a foreign IG under the above circumstances has also been extended to 31 March 2018.

The final rules also provide that when there are multiple Indian constituent entities of a foreign IG (that is required to file the CbC report in India under the above circumstances), the foreign IG can designate one constituent entity in India to furnish the CbC report in India. The IG would be required to notify the designated entity to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE. The rules have not provided the due date for filing the intimation in Form No. 3CEAE.

CbC report notification: The Finance Act 2016 introduced an obligation on the Indian constituent entities of a foreign IG, to notify the details of its parent entity or its alternate reporting entity to the Indian authorities. However, detailed rules providing the form and manner of notification, content, and the filing due date were expected.

The final rules provide the following requirements regarding CbC report notification:

Contents and manner of submission of the CbC report notification: The final rules prescribe the format in which the above notification must be filed (Form No 3CEAC). The notification is required to provide the following details:

- Details of the Indian constituent entity such as name, address, and permanent account number;
- Name of the foreign IG;
- Details of the parent entity such as name, address, and country of residence;
- Details of the alternate reporting entity, if applicable, such as name, address, and country of residence; and
- Reportable accounting year must be submitted in the notification. This requirement was not specified in the draft rules.

Under the Indian final rules, the CbC notification form (Form No. 3CEAC) must be submitted electronically to the Director General of Income-tax (Risk Assessment). The Indian rules do not provide the option of filing a consolidated CbC notification for multiple Indian constituent entities of an IG.

Due date for submission of the CbC report notification: The Indian final rules prescribe that the CbC notification must be filed two months before the due date for filing the CbC report, which is the due date for filing the income tax return of the Indian constituent entity.
As mentioned above, the due date for filing the CbC report for FY 2016- 17 has been extended to 31 March 2018. Therefore, the due date for the first CbC report notification for FY 2016-17 has also been extended to 31 January 2018.

Signatory to CbC report related forms: The final rules specify that the CbC report related forms (Form No. 3CEAC, Form No. 3CEAD, and Form No. 3CEAE) are required to be signed by a person competent to verify the return of income (under section 140 of the Act) of the entity. These signatory requirements were not specified earlier in the draft rules.

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

Adequate safeguards in place to maintain confidentiality of information

As recommended by Action 13, the rules provide that adequate safeguards be implemented to protect confidential information (trade secrets, scientific secrets, etc.) 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 above-mentioned forms.

Key takeaways

The final rules on CbC reporting and the master file requirement in India are significantly aligned with the BEPS Action 13 guidance, 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 final rules incorporate various clarifying amendments to the draft rules, but few noteworthy modifications to the draft rules.

Given that, under the final rules the Indian transfer pricing documentation requirements are relatively prescriptive, the tight timelines could pose a practical challenge for IGs, although some respite has been provided for the first year – FY2016-17 – by extending the due date for filing the CbC report and the master file to 31 March 2018.

With respect to the master file, the Indian final rules provide a staggered threshold. Comparatively, it is observed that the IGs' global revenue threshold (INR 5,000 million) and the international transactions threshold (INR 500 million) provided in the rules is much lower than the threshold provided by few countries (Australia, Germany, Japan, China). However, other countries (Netherlands, Spain, Mexico, Peru) have prescribed a much lower threshold than India. The low threshold for the master file requirement in India could increase the compliance burden for IGs.

For many IGs, the new requirements will necessitate a greater level of global coordination, and a detailed analysis of considerable information not currently readily available. Thus, the Indian rules would significantly increase the Indian compliance obligations for constituent entities in India, especially for foreign IGs. Accordingly, it is vital for such Indian constituent entities to evaluate their preparedness and take appropriate action for compliance with these new obligations in India.

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France provides CbC reporting respite to French subsidiaries of American multinational groups

The French tax authorities on December 5 released an official position that the voluntary filing of the country-by-country (CbC) report in the United States will satisfy French subsidiaries' filing obligation under French Law.

Background

Under OECD guidance, jurisdictions should require the timely filing of CbC reports by the ultimate parent entities of multinational enterprise (MNE) groups resident in their countries and exchange this information, on an automatic basis, with the jurisdictions in which the MNE group operates and in which subsidiaries meet the requirements for filing the CbC report. France introduced this requirement through article 223 quinquies C of the French Tax Law. A July 6 document issued by the finance minister listed the countries with which France will automatically exchange CbC reports; this list does not include the United States.

However, the OECD guidance includes two procedures that may be applicable when a jurisdiction does not exchange CbC reports or does not implement the requirement for fiscal years beginning on or after January 1, 2016, but has its legislation in place (as is the case in the United States):

- **Surrogate parent filing:** To accommodate voluntary CbC report filing by a constituent entity in a different jurisdiction that allows filing of CbC reports by surrogate parent entities. The country of substitution will share the CbC report with other jurisdictions to which it is bound by bilateral agreements.
- **Ultimate parent surrogate filing:** To accommodate voluntary filing for ultimate parent entities resident in their jurisdiction. This would allow the ultimate parent entities of MNE groups resident in those jurisdictions to voluntarily file their CbC report for fiscal periods commencing on or after January 1, 2016, in their jurisdiction of tax residence.

When such a surrogate filing (including ultimate parent surrogate filing) is available, no other local filing obligation is needed for the subsidiaries of the MNE group in any jurisdiction that has an agreement with the ultimate parent entity jurisdiction of residence, because the CbC report will be automatically provided.

France and the United States have begun to negotiate a competent authority agreement specific to CbC reports to design the way the two tax administrations will exchange the CbC reports filed in their territory. However, the agreement has not been signed yet, which is why the United States is not on the July 6 document.

However, the French tax administration has officially made clear, through comments released on its website, that during this transitional period, the voluntary filing of the CbC report in the United States will allow French subsidiaries of US MNE groups to be deemed to have fulfilled their obligation under French Law. This official position is based on the transitional exception provided by the OECD: according to the French tax administration's analysis, even though the bilateral agreement between France and the United States providing for the automatic exchange of CbC reports has not been signed yet, the bilateral tax treaty between the two countries (signed on August 31, 1994, and last amended on January 1, 2009) allows the United States to spontaneously exchange with France the CbC reports as required by the BEPS recommendations and French Tax Law.

For their part, the United States have formally indicated that they will implement the ultimate parent surrogate filing procedure, thereby committing themselves to voluntarily send CbC reports spontaneously filed in the United States to the French tax administration.

Groups seeking greater legal security may choose to send to the French tax administration, before the end of 2017, a hard copy of the CbC report filed with the IRS, to ensure that the French tax administration has the information expected from the IRS.

To ensure that the French tax administration will not further disseminate the copy of the CbC report automatically to other jurisdictions, this CbC report hard copy may be sent to the French tax administration with a cover letter highlighting that the report is shared only for information purposes, and should not be seen as the MNE group's surrogate filing (as described by the OECD).

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Deadlines to preserve taxpayer rights to request competent authority assistance to relieve double taxation

Transfer pricing continues to be the top enforcement priority of tax authorities around the world, and one of the major risks for many multinationals. With foreign tax authorities aggressively asserting transfer pricing deficiencies, many taxpayers are receiving proposed adjustments regarding intercompany transactions. For this reason, it is imperative that taxpayers understand the actions required to preserve the right to request competent authority assistance to relieve double taxation. Failure to do so will likely result in double taxation and impact the affected taxpayer's ASC740 calculations.

Competent authority assistance for double taxation is provided under the mutual agreement procedure (MAP) article of the relevant tax treaty. To obtain relief from double taxation, the United States and other countries' competent authorities must be notified of the proposed transfer pricing adjustments, or a request for MAP assistance must be filed, within specified deadlines under many US tax treaties. For example, in the case of an IRS-initiated adjustment, the foreign tax authority may require notification, and, in the case of a foreign-initiated adjustment, the IRS may need to be notified. Failure to make the appropriate filings can result in the IRS or foreign tax authority denying the taxpayer's request for competent authority relief to eliminate double taxation. In addition, taxpayers generally should not sign closing or similar agreements with the tax authorities if they intend to request competent authority assistance, because doing so may limit their ability to obtain relief from double taxation.

In 2016, the IRS received 176 new US competent authority requests, 128 relating to transfer pricing or attribution cases and 48 relating to non-transfer pricing cases.[1] Given the ever-increasing aggressiveness of foreign tax authorities, taxpayers must be vigilant regarding the tax treaty deadlines to protect their right to request competent authority assistance. These tax treaty deadlines can and do differ from domestic statutes of limitations, and taxpayers must take protective actions to keep recourse to competent authority open. The fact that the domestic statute of limitations may still be open for transfer pricing assessments in one or both of the affected countries is not determinative of the availability of competent authority assistance.

Taxpayers who are either subject to a foreign or IRS-initiated tax audit or who have a reasonable expectation that they may be subject to a foreign or IRS-initiated tax audit should review the relevant tax treaty timelines and consider taking all necessary protective measures. Taxpayers do not need to wait until the conclusion of a transfer pricing audit to take such measures.

Failure to notify the IRS (or foreign tax authority) within the specified time frames will likely preclude the taxpayer from seeking competent authority relief from double taxation, and may also give rise to issues regarding the

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[1] Organization for Economic Cooperation and Development, *Making Dispute Resolution More Effective – MAP Peer Review Report, United States (Stage 1)*, http://www.oecd-ilibrary.org/taxation/making-dispute-resolution-more-effective-map-peer-review-report-united-states-stage-1_9789264282698-en;jsessionid=qnfdgotn1m3m.x-oecd-live-02. Beginning with reporting year 2016, the United States now reports its MAP statistics pursuant to the MAP Statistics Reporting Framework found in *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf. The new reporting framework does not provide for reporting a breakdown of US-initiated adjustments vs. foreign-initiated adjustments in relation to competent authority requests received; therefore, the United States has not reported this information for 2016.

creditability of foreign taxes. *See Procter & Gamble Co. v. US* (S.D. Ohio, Case No. 1:08-cv-00608, defendant's motion for summary judgment granted 7/6/10).

The table below summarizes the notification/filing requirements and applicable time limitations for requesting competent authority assistance between the United States and all of its current tax treaty partners. Some US tax treaties (those with Canada, Finland, Jamaica, Mexico, Netherlands, and Turkey) require notification to the tax authority that did not propose the adjustment within a certain number of years of the taxpayer's tax year-end or the filing of a tax return.

For example, the US-Mexico tax treaty requires notification to the tax authority that did not propose the adjustment within four and a half years from the due date or the date of filing of the taxpayer's tax return in the country whose tax authority did not propose the adjustment, whichever is later. The standard statute of limitations for a tax adjustment in Mexico is five years, which extends past the deadline for notification under the US-Mexico tax treaty. This could potentially lead to situations whereby the taxpayer is not aware of a tax adjustment until after the notification deadline under the US-Mexico tax treaty has passed, which could preclude the taxpayer from seeking competent authority relief from double taxation. To avoid this, taxpayers should consider filing notifications with the IRS Advance Pricing and Mutual Agreement (APMA) program at the onset of any Mexican tax examination, even if they are not certain that the examination will result in a transfer pricing adjustment.

In addition to the original notification, the IRS requires annual notification updates until a complete competent authority request has been filed. Under Rev. Proc. 2015-40, the annual notification must be submitted following the close of each taxable year ending after the taxable year in which the taxpayer submitted the treaty notification, but no later than the date on which the taxpayer timely files a tax return for such taxable year.

Taxpayers should consult with their tax advisors to evaluate the relevant provisions of the applicable tax treaty and their specific application to the taxpayer's facts and circumstances.

US Treaty Partner	Notification/Action Deadline per Tax Treaty
Australia	The case must be presented within three years from the first notification of the tax authority action giving rise to taxation not in accordance with the provisions of the treaty.
Austria	No deadline.
Bangladesh	No deadline.
Barbados	No deadline.
Belgium	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Bulgaria	No deadline.
Canada	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
China	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Cyprus	No deadline.
Czech Republic	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Denmark	No deadline.
Egypt	No deadline.
Estonia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Finland	The competent authority of the country that has been requested to provide a refund must have received notification within six years from the end of the taxable year to which the case relates.
France	The case must be presented within three years of the notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Germany	The case must be presented within four years from the notification of the assessment giving rise to double taxation or to taxation not in accordance with the provisions of the treaty.

US Treaty Partner	Notification/Action Deadline per Tax Treaty
Greece	No deadline.
Greece	No deadline.
Hungary	No deadline.
Iceland	No deadline.
India	The case must be presented within three years of the date of receipt of notice of the action that gives rise to taxation not in accordance with the treaty.
Indonesia	The case must be presented within three years of the first notification of the action giving rise to taxation not in accordance with the provisions of the treaty. Where a combination of decisions or actions taken in both countries results in taxation not in accordance with the provisions of the treaty, the three-year period begins to run only from the first notification of the most recent action or decision.
Ireland	No deadline.
Israel	No deadline.
Italy	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Jamaica	The taxpayer or the competent authority of the United States must give notice within the time limits established by the domestic law of Jamaica to the competent authority of Jamaica that there may be a claim for tax adjustments.
Japan	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Kazakhstan	No deadline.
Korea	No deadline.
Latvia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Lithuania	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Luxembourg	No deadline.
Malta	No deadline.
Mexico	When a resident of one country presents his case to the competent authority of that country, the competent authority of the other country must have been notified of the case within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. In any case arising under any article other than Article 9 (Transfer Pricing) of the treaty, it may be prudent to notify each country within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. As discussed previously, the statute of limitations for a tax adjustment may extend past the due date for notification under the US-Mexico tax treaty. Taxpayers should consider filing notifications with the IRS APMA program at the onset of any Mexican tax examination.
Morocco	No deadline.
Netherlands	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
New Zealand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Norway	No deadline.
Pakistan	No deadline.
Philippines	No general notification deadline, but there is a filing deadline with respect to the Philippines. The claim for refund or credit must be filed in the Philippines no later than two years from the close of the taxable year in which the United States imposed tax is paid, and such claim for refund or credit must be filed within five years from the close of the taxable year in issue.
Poland	No deadline.
Portugal	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Romania	No deadline.

US Treaty Partner	Notification/Action Deadline per Tax Treaty
Mexico	When a resident of one country presents his case to the competent authority of that country, the competent authority of the other country must have been notified of the case within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. In any case arising under any article other than Article 9 (Transfer Pricing) of the treaty, it may be prudent to notify each country within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. As discussed previously, the statute of limitations for a tax adjustment may extend past the due date for notification under the US-Mexico tax treaty. Taxpayers should consider filing notifications with the IRS APMA program at the onset of any Mexican tax examination.
Morocco	No deadline.
Russia	No deadline.
Slovakia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Slovenia	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
South Africa	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty (or in the case of tax collected at source, within three years from the date of collection).
Spain	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Sri Lanka	No deadline.
Sweden	No deadline.
Switzerland	No notification deadline in Treaty; however, a formal request for competent authority assistance must be made within ten years after the final assessment of Swiss or US taxes, as applicable.
Thailand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Trinidad and Tobago	No deadline.
Tunisia	No deadline.
Turkey	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within five years from the end of the taxable year to which the case relates.
Ukraine	No deadline.
United Kingdom	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
Venezuela	No deadline; however, the statute of limitations must be “interrupted in accordance with the steps designated by domestic law” to implement the mutual agreement.
United Kingdom	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
Venezuela	No deadline; however, the statute of limitations must be “interrupted in accordance with the steps designated by domestic law” to implement the mutual agreement.

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Portugal delays deadline for filing CbCR notification

In May 2017, the Portuguese tax authorities (PTA) extended the deadline for filing the country-by-country report (CbCR) notification on the identification of the CbCR submitting entity to 31 October of 2017.

However, because the official electronic form to make that notification has not yet been made available to taxpayers, the Portuguese Secretary of State for Finance has issued a ministerial order again postponing the deadline to comply with this obligation, this time to 31 December 2017.

Despite the fact that the form has not been made public, we believe, based on informal contacts, that the information to be reported on that notification form may include:

- The name of the CbCR reporting entity;
- Tax identification number;
- Address;
- Country of residence; and
- If the reporting entity is not the group's ultimate parent, the reason why a substitute entity has been designated.

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IRS issues two advance pricing agreement International Practice Units

The Internal Revenue Service on November 6 released two new international practice units (IPUs):

- Advance Pricing Agreement for Tangible Goods Transactions – Inbound
  URL: https://www.irs.gov/pub/int_practice_units/isi_p_06_07_07.pdf
- Advance Pricing Agreement for Tangible Goods Transactions – Outbound
  URL: https://www.irs.gov/pub/int_practice_units/iso_p_01_05_04.pdf

Given the current post-BEPS climate and tax authorities' focus on transfer pricing enforcement, taxpayer interest in securing transfer pricing certainty by negotiating an advance pricing agreement (APA) has increased. Entering into an APA is a voluntary process conducted in a cooperative manner between a taxpayer and the relevant taxing authority(ies) to secure a mutual agreement regarding the transfer pricing methodology used in pricing the taxpayer's specified international transactions for future and potentially prior years.

The IPUs provide a useful overview of the APA process, including the steps involved and factors to consider when requesting and obtaining an APA, the required content and potential scope of an APA request, and the role of different parties during the APA process, including the taxpayer and representative, the Advance Pricing and Mutual Agreement (APMA) Program, the APMA economist, and the IRS examiner.

The IPUs provide examples and a discussion of what is required for APAs from the initial prefiling stage through review of the APA annual reports for compliance with the APA's terms and conditions. The IPUs also outline what issues can be addressed in an APA and when an IRS examiner may recommend to a taxpayer that it consider requesting an APA. The IPUs focus on the procedures set forth in Revenue Procedure 2015-41, 2015-35 I.R.B. 263, which is effective for APA requests filed after December 29, 2015.

The first IPU, *Advance Pricing Agreement for Tangible Goods Transactions – Inbound*, describes the APA process within the context of a US subsidiary that distributes tangible goods purchased from its foreign parent company in Japan. The second IPU, *Advance Pricing Agreement for Tangible Goods Transactions – Outbound*, describes the APA process within the context of a US parent company that distributes tangible goods purchased from its controlled foreign corporation in Japan.

Taxpayers considering an APA should also review the IRS APA statutory annual reports[2] which include: (1) information on the structure, composition, and operation of the APMA Program; (2) presents statistical data; and (3) includes general descriptions of various elements of the APAs executed, including types of transactions covered, transfer pricing methods used, and completion time.
URL: https://www.irs.gov/businesses/corporations/annual-apa-statutory-reports

The IRS began the IPU program to provide IRS staff with explanations of general international tax concepts, as well as information about specific types of transactions. IPUs are not official pronouncements of law or directives and cannot be used, cited, or relied upon as such. IPUs provide a general discussion of a concept, process, or transaction and are a means for collaborating and sharing knowledge among IRS employees. IPUs may not contain a comprehensive discussion of all the pertinent issues, law, or the IRS's interpretation of current law surrounding that issue. In addition, IPUs do not limit an IRS examiner's ability to use other approaches when examining issues. Finally, IPUs and any nonprecedential material (such as private letter rulings, determination letters, or Chief Counsel advice) that may be referenced in an IPU may not be used or cited by taxpayers as precedent. While not authoritative, the IPUs discuss topics that are of interest to the IRS and may be areas of focus by international examiners.

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[2]The annual reports are issued under §521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public on APAs and the APMA Program.

Ireland extends deadline for filing first country-by-country reports

Irish Revenue on 24 November issued an eBrief that extends the upcoming filing deadline for country-by-country (CbC) reports for calendar year 2016 to 28 February 2018.

The first CbC reports were due to be filed by 31 December 2017. Irish Revenue is in the process of developing an electronic CbC reporting system that would include a standard validation module provided by the EU Commission. However, the final version of the validation module is not available yet, and it is not expected that the tested version of the validation module will be integrated into the Revenue system until mid-December. On that basis, Irish Revenue has extended the filing deadline from 31 December 2017 until 28 February 2018.

Details of the eBrief can be found online.
URL: https://www.revenue.ie/en/tax-professionals/ebrief/2017/no-1072017.aspx

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Cambodia introduces transfer pricing rules

Cambodia's Ministry of Economy and Finance (MEF) issued the country's first transfer pricing regulations (Prakas No. 986) on 10 October. The rules, which apply from the date of issuance and adopt the arm's length principle as articulated in the OECD's transfer pricing guidelines, focus on the procedure for allocating income and expenses among related parties and on the interpretation of relevant concepts.
URL: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2017_tpg-2017-en#.Wgo6q3PrtGx

The regulations cover key issues, such as the application of the arm's length principle, comparable transactions, transfer pricing methods, documentation, and penalties for noncompliance. Specific rules apply to intangible property and intragroup services.

Overview

The regulations define "transfer price" as the price at which goods, services, or property are transferred between related parties. The pricing of related-party transactions can shift benefits from one related party to another through an increase or decrease in the price of goods, services, or property to an amount that is not at market value, or the "arm's length price," of an uncontrolled transaction.

Transactions between related parties must be conducted on arm's length terms. The regulations allow the Cambodian tax authorities to make adjustments to income and expenses to prevent the shifting of profits between Cambodian taxpayers and their related parties.

Definition of related parties

A related party is defined in the regulation as a relative of the taxpayer or an enterprise that controls or is controlled by the taxpayer or is under common control with the taxpayer. The term "control" means ownership of 20 percent or more of the equity shares of an enterprise or the voting power in the enterprise's board of directors. Both transactions with domestic and foreign entities fall within the scope of the transfer pricing regulations.

Targeted transactions

The regulations do not identify specific transactions that are targeted for review by the tax authorities, but they do highlight intangible assets and intragroup services as areas of focus.

If intangible property is managed or used by related parties, the following steps are necessary to determine the party that is the owner of the property and to support this determination:

- Determine the party that bears the economically significant risks, such as risks relating to the development, enhancement, maintenance, protection, and exploitation of the intangible property that is managed or used in operations.
- Inspect the agreement between the parties to determine legal ownership by examining the registration conditions and licensing terms, as well as other legal documents that provide evidence of the legal ownership and other rights and obligations, including plans for allocating significant risks between the related parties.
- Analyze the functional practices, property usage, and risk management of each party associated with the development, enhancement, maintenance, protection, and exploitation of intangible property, to identify the party that is responsible for managing external functions and significant economic risks.
- Examine the level of consistency between the conditions of the agreement and the actual practices of each party.
- Demonstrate that the actual controlled transaction relates to the development, enhancement, maintenance, protection, and exploitation of the intangible property.
- Determine the arm's length price for the relevant transactions in a manner that is consistent with the functions, assets, and risk profiles of the parties involved.

For transactions involving intangible property, the arm's length compensation for each party involved should entitle the enterprise to a share of the benefits that is consistent with the actual practices of the parties. This includes a requirement that the share be based on the expenses borne and investment made by the party in question, in relation to the development, enhancement, maintenance, protection, and exploitation of the intangible property.

The regulations specifically state that intragroup services must be necessary to the taxpayer's business and result in economic benefits, and the service fees must be set at arm's length. The analysis to support the amount of the service fee requires a functional analysis of group members to determine the relationship between the services and the relevant actions of the members. The arm's length price for services within a group must be set in accordance with any conditions provided for comparable transactions, the arm's length range, and the relevant transfer pricing methods.

Transfer pricing methods

The regulations recognize the five transfer pricing methods permitted under the OECD guidelines:

- The comparable uncontrolled price method;
- The resale price method;
- The cost plus method;
- The profit split method; and
- The transactional net margin method.

Taxpayers must produce evidence and supporting documentation to justify the appropriateness of the method used, and provide this information to the tax authorities as described below. When there is insufficient support to demonstrate the suitability of the selected method, the tax authorities have the right to determine the appropriate method the taxpayer should use.

Application of the arm's length principle

To comply with the arm's length principle, taxpayers must conduct a comparability analysis to assess the arm's length nature of the price of a controlled transaction and this analysis must meet one of the following two conditions:

- There are no significant differences between the controlled transaction and the comparable transactions that could affect the market price; or
- Reasonably accurate adjustments can be made to eliminate the effects of any significant differences.

The "arm's length range" is a set of finance-related indicators (such as prices or profit margins) determined from comparable uncontrolled transactions by applying the appropriate transfer pricing method. The controlled transaction will not be adjusted if its finance-related indicator falls within the arm's length range. In contrast, if the finance-related indicator falls outside the arm's length range, the indicator will be adjusted to the median of the arm's length range.

Documentation

The regulations introduce documentation requirements for taxpayers engaged in related-party transactions. Taxpayers are required to issue invoices for all transactions and to maintain accounting records, legal documents, and other financial documents as determined under the relevant provisions in the Law on Taxation. These documents must be retained for 10 years from the tax year end for the year in which the transaction took place, and must be submitted as required by the tax authorities.

Cambodian taxpayers with related-party transactions must prepare transfer pricing documentation that details the related-party transactions and the methods used to justify the arm's length nature of a transaction. Information on the following is required:

- General information on the enterprise and related parties (related parties' structure, business strategies, etc.);
- Information about the related-party transaction(s) (transaction documents, including those related to the supply, transport and payment, products, agreements, etc.); and
- Information relating to the transfer pricing method (pricing policy, market information, documents supporting the selected transfer pricing method, and other related documents).

Under current law, certain information on related parties must be provided in the tax on profit (TOP) return.

The documents above must be submitted to the tax authorities upon request.

Penalties

The regulations provide for the imposition of various penalties for failure to comply with the transfer pricing documentation requirements, including revocation of the company's certificate of tax compliance and criminal prosecution of individuals in managerial positions (and possible imprisonment).

Comments

The issuance of transfer pricing regulations is a major development in Cambodia's tax law. With formal guidelines and procedures for mandatory documentation, the tax authorities have sent a clear message that the regulations will be enforced.

Taxpayers should note the following significant points:

- **Deadline for submission of the required documentation:** The regulations do not provide a specific deadline for the submission of transfer pricing documentation. However, taxpayers are required to retain the required documentation and submit it to the tax authorities upon request. Thus, the documents must be prepared in advance of the deadline for submitting the TOP return (three months after the tax year end, that is, 31 March 2018 for the 2017 returns for calendar-year taxpayers), to avoid or minimize possible risks associated with transfer pricing audits and to complete the information required to be disclosed in the TOP return.
- **Database used for benchmarking:** There is no specific provision in the regulations stating the required database needed for a benchmarking analysis. However, in most countries, a local database is the primary source of information; if a local database cannot be utilized, a regional database may be used. In Cambodia, due to the lack of a local database and financial information for benchmarking purposes, confirmation from the tax authorities is needed to ensure that regional databases may be used.
- **Data to be used in benchmarking:** The regulations do not specify whether single-year or multiple-year data should be used for benchmarking purposes. However, based on the OECD transfer pricing guidelines, multiple-year data should be used to enhance the reliability of a comparability analysis. Most countries use three to five years of data for benchmarking purposes.
- **Arm's length range:** There are no specific instructions in the regulations for determining the arm's length range. However, in an example provided in the regulations, a full range (minimum to maximum), as opposed

to an interquartile range (25 percent to 75 percent), was used by the tax authorities. There is still a need for confirmation from the tax authorities regarding to this issue.

- **Loan transactions:** The interest rate for related-party loan transactions must be set according to the arm's length standard. Thus, guidance issued in 2014 (Circular No. 151), which provides that the interest rate on a loan can be set lower than the market rate, or even at a zero rate, will be superseded by the transfer pricing regulations.
- **Prior-year transactions:** The regulations are unclear on whether prior-year transfer pricing documentation must be prepared by taxpayers and accepted by the tax authorities. Hence, clarification from the tax authorities is needed on this point.
- **Advance pricing arrangements (APAs):** APAs are agreements between taxpayers and the tax authorities in one or more jurisdictions that aim to prevent transfer pricing disputes relating to the arm's length principle. The regulations do not cover APAs.

Hopefully, the tax authorities will issue additional clarifications on the above points.

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Belgium extends deadline to file CbC report, master file

The Belgian tax authorities have granted an extension for the submission of the country-by-country (CbC) report and the master file form for assessment year 2017, and the CbC notification related to assessment year 2018, to 31 March 2018.

These documents were initially due on 31 December 2017. The forms now due by the end of March 2018 must be submitted in XML format.

Filing via email

Although Belgian transfer pricing documentation usually must be filed through an XML file upload on MyMinfinPro, it remains possible, through an administrative concession, to submit the local file form and the CbC notification related to the reporting period running until 30 December 2017 (assessment year 2017) by email to the Belgian administration at BEPS13@minfin.fed.be.
URL: mailto:BEPS13@minfin.fed.be

No Belgian representative

The tax authorities also confirmed that the submission of a signed PDF version of all transfer pricing-related forms by email is allowed for companies with no Belgian representative. The email should specify that the above-mentioned administrative concession is being invoked.

The Belgian tax authorities' official communication has been published and may be consulted online.
URL: https://financien.belgium.be/nl/ondernemingen/internationaal/verrekenprijzen-beps-13

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Taiwan's Ministry of Finance releases amended transfer pricing guidelines adopting three-tiered documentation requirements

In response to global developments and trends in anti-tax avoidance, Taiwan's Ministry of Finance (MOF) released amendments to the transfer pricing guidelines on November 13. Under the amended rules, taxpayers that meet certain criteria will be required to prepare three-tiered transfer pricing documentation, including a country-by-country (CbC) report, a master file, and a local file. The new rules' first applicable year is the fiscal year beginning on or after January 1, 2017.

The three-tiered documentation will provide the Taiwanese tax authorities with a higher degree of transparency to review a taxpayer's transfer pricing documents and evaluate whether any intercompany transactions were arranged to avoid tax liability. For calendar-year taxpayers, the FY2017 master file should be ready by May 31, 2018, and the master file and the CbC report should be filed by December 31, 2018.

The table below summarizes the new three-tiered transfer pricing documentation requirements released in the amended transfer pricing guidelines.

Summary of Three-tiered Transfer Pricing Documentation Requirements in Taiwan			
	Master File	**CbC Report**	**Local File**
First Taxable Year	FY2017	FY2017	FY2005 (Update applied for FY2017)
Threshold	Expected to be announced before the end of 2017.	EUR 750 million of consolidated revenue in the preceding fiscal year (approximately NTD 27 billion)	Same as under the existing rules: gross operating revenue of less than NTD 300 million or intercompany transaction amount less than NTD 200 million
Obligation to prepare/file	The constituent entities of an MNE group that are registered in Taiwan (including both local and foreign companies).	• The ultimate parent entity of an MNE group that is located in Taiwan; or • The MNE group's constituent entity in Taiwan whose ultimate parent entity is outside Taiwan and meets one of the following conditions: o The ultimate parent entity is not obligated to file the CbC report in its residence jurisdiction o The ultimate parent entity is obligated to file the CbC report in its residence jurisdiction, but there is no qualifying competent authority agreement (CAA) in place between Taiwan and the ultimate parent entity's residence jurisdiction; o There is a qualifying CAA in place, but there is a failure to exchange the CbC report.	Entities registered in Taiwan.

Summary of Three-tiered Transfer Pricing Documentation Requirements in Taiwan			
	Master File	**CbC Report**	**Local File**
		• The MNE group's constituent entity in Taiwan that is appointed to be the group's surrogate parent entity.	
Submission Deadline	• Should be ready by the deadline for filing the income tax return (for calendar-year taxpayers, the first deadline is May 31, 2018.) • Should be filed with the local tax authority within 12 months from the end of the fiscal year (for calendar-year taxpayers, the first filing deadline is December 31, 2018.)	Should be filed with the local tax authority within 12 months from the end of the fiscal year (for calendar-year taxpayers, the first filing deadline is December 31, 2018.)	• Should be ready by the deadline for filing the income tax return (Same as under the existing rules; for calendar-year taxpayers, the deadline is May 31, 2018.) • Should be submitted to the Taiwan tax authority within one month from the day the profit-seeking enterprise receives a request letter from the Taiwan tax authority
Required Content	MNE group's business description; important drivers of business profit; supply chain and its profit contribution analysis; transfer pricing policy for intangibles and financial activities.	Financial information for all jurisdictions where the MNE group has operations, and the main business activities of all the constituent entities of the MNE group.	Business overview, summary of related-party transactions, and transfer pricing analysis.

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IRS files notice of appeal in *Amazon* case

The Internal Revenue Service on 29 September filed a notice of appeal in *Amazon.com, Inc. v. Commissioner*, T.C., No. 31197-12, 148 T.C. No. 8, to the US Court of Appeals for the Ninth Circuit. The notice of appeal is a short form document and does not contain the IRS's legal arguments in support of the appeal. The Ninth Circuit will soon issue a schedule for the parties to file legal briefs in support of their respective positions.

At issue is the appropriate valuation of 2005 and 2006 cost sharing buy-in payments in relation to a cost sharing arrangement that was entered into by Amazon.com Inc. and its Luxembourg subsidiary. The US Tax Court issued its opinion in favor of Amazon on 23 March 2017.[3] For a detailed summary of the Tax Court opinion, see Global TP Alert 2017-008, 27 March 2017.
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-17-008-27-march-2017.pdf

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[3] The Tax Court entered a stipulated decision, in accordance with its opinion issued on 23 March 2017, on 5 July 2017.

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OECD Forum on Tax Administration issues handbooks to address implementation and use of CbC reports

The OECD Forum on Tax Administration (FTA) put out a communiqué at the conclusion of its plenary meeting on 29 September announcing the publication of two handbooks that are intended to help tax administrations prepare for the first exchanges of country-by-country (CbC) reports in June 2018. The two handbooks, *Country-by-Country Reporting: Handbook on Effective Implementation* and *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*, are meant to assist tax authorities to use the information received through the exchange of country-by-country information within their tax risk assessment framework.
URL: http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-implementation.htm
URL: http://www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-tax-risk-assessment.htm

The FTA, which brings together the tax commissioners of 50 tax administrations worldwide, acknowledges that when CbC reporting is implemented, "it will give tax authorities unprecedented access to information on the global allocation of an MNE group's revenue, profit, tax and other attributes for high level transfer pricing risk assessment and the assessment of other BEPS-related risks." In addition to giving insight into how tax administrations should use CbC information, this action by the FTA is another indicator that along with increased transparency efforts, tax administrators are increasingly inclined to act in a coordinated manner when performing risk assessment and enforcement of transfer pricing and other BEPS-related issues.

The 88-page handbook on effective tax risk assessment supports countries in the effective use of CbC reports by incorporating them into a tax authority's risk assessment process, including:

- A description of the role of tax risk assessment in tax administration, the core characteristics of an effective risk assessment system, and examples of the approaches used in different countries;
- An outline of the information contained in CbC reports, and the potential advantages CbC reports have over data from other sources;
- Consideration of the ways in which CbC reports can be incorporated into a tax authority's risk assessment framework, and a description of some of the main potential tax risk indicators that may be identified using CbC reports;
- A description of some of the challenges a tax authority may face in using CbC reports for tax risk assessment, and how some of these challenges may be dealt with;
- An outline of some of the other sources of data a tax authority may use along with CbC reports; and
- An overview of how the results of a tax risk assessment using CbC reports may be used and the next steps that should be taken.

The handbook includes a list of 19 specific tax risk indicators that could be derived from the information contained in an MNE group's CbC report, although the guidance specifies that none of these indicators, taken by themselves, would suggest that a group poses an increased tax risk in a given jurisdiction:

1. The footprint of a group in a particular jurisdiction
2. A group's activities in a jurisdiction are limited to those that pose less risk
3. There is a high value or high proportion of related-party revenues in a particular jurisdiction
4. The results in a jurisdiction deviate from potential comparables
5. The results in a jurisdiction do not reflect market trends
6. There are jurisdictions with significant profits but little substantial activity
7. There are jurisdictions with significant profits but low levels of tax accrued
8. There are jurisdictions with significant activities but low levels of profit (or losses)
9. A group has activities in jurisdictions that pose a BEPS risk
10. A group has mobile activities located in jurisdictions where the group pays a lower rate or level of tax
11. There have been changes in a group's structure, including the location of assets

12. Intellectual property is separated from related activities within a group
13. A group has marketing entities located in jurisdictions outside its key markets
14. A group has procurement entities located in jurisdictions outside its key manufacturing locations
15. Income tax paid is consistently lower than income tax accrued
16. A group includes dual resident entities
17. A group includes entities with no tax residence
18. A group discloses stateless revenue in Table 1
19. Information in a group's CbC report does not correspond with information previously provided by a constituent entity.

Both handbooks are available in English, Spanish, and French.

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