



**BEPS –
Discussion on Indian draft rules on
CbC Report and Master File**

12 October 2017

Draft rules on Country by Country Reporting (“CbCR”) and Master File Background

- In keeping with India’s commitment to implement the recommendations of *BEPS Action 13 - Transfer Pricing Documentation and CbCR*, India introduced the CbCR and Master File regime in the Indian Income Tax Act, 1961 (“the Act”) through Finance Act 2016
- The core elements of the CbCR requirement and the concept of Master File were introduced in the Act, while the detailed rules were awaited
- The Central Board of Direct Taxes (“CBDT”) released the most awaited draft rules on CbCR and Master File vide notification no. 370142/25/2017-TPL dated October 6, 2017
- The draft rules provide detailed instructions for compliance with these requirements, and are open for public comments till 16 October 2017

CbC Report Overview

Applicability

- Indian head-quartered International Group (IG) meeting the prescribed threshold to file CbC Report in India
- Indian constituent entity of IG head-quartered overseas (foreign IG) also required to file CbC Report in India under specified circumstances or if appointed as the alternate reporting entity

Threshold

- The memorandum to Finance Bill 2016, indicated the threshold as INR equivalent of Euro 750 million, prescribed under Action 13
- The Act provided that CbC reporting threshold would be prescribed
- The draft rules now prescribe consolidated group revenue in excess of INR 55,000 million in the preceding year

Contents

- The format of the CbC report aligned with BEPS Action 13 model template
- Definitions of the data points are identical to the original definitions provided under the Action 13 guidance (released in October 2015)
- Additional implementation guidance on various aspects (aggregation, data definitions, applicability for investment funds, etc.) provided by OECD were not considered in the draft rules

Manner of submission

- CbC Report required to be filed in Form No. 3CEBC
- Form No. 3CEBC to be filed electronically with the Director General of Income-tax (Risk Assessment)

Due date

- By the due date for filing the income-tax return i.e. 30 November following the financial year - expected to be extended

CbC Report

Contents of Form No. 3CEBC – Similar to Action 13 template

Part A: Information included in CbC for each tax jurisdiction

Revenues (related, unrelated, total)	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

Part B: Information included in CbC – for each tax jurisdiction

Tax Jurisdiction of organization or incorporation if different

Main business activity of each of the entity

Main business activity(ies)

- Research and development
- Holding or managing intellectual property
- Purchasing or procurement,
- Manufacturing or production
- Sales, marketing or distribution
- Provision of services to unrelated parties
- Internal Group Finance
- Regulated Financial Services
- Insurance
- Holding shares or other Equity instruments,
- Dormant
- Others

Part C:

To include any further brief information or explanation that taxpayer may consider necessary or that would facilitate the understanding of the compulsory information provided in the CbC Report.

CbC Report

Compliance for Indian constituent entity of a Foreign IG

Criteria/Conditions

- Indian constituent entity of a foreign IG is also required to file CbC report in India
 - If it is appointed as the alternate reporting entity; or
 - On satisfaction of following specified criterias/conditions - If the parent is resident of a country:
 - with which India does not have an “agreement” for exchange of CbC report; or
 - which fails to automatically exchange such information and such failure is intimated by the prescribed authority to the Indian entity

Agreement defined to mean DTAA (?) and any agreement notified by government (MCAA notified though not activated)

Designation of one Indian entity to furnish CbC report in India under above conditions

- If above conditions are satisfied and foreign IG have multiple Indian constituent entities, it can designate a constituent entity in India to furnish the CbC report
- Notify the details of the designated entity to the Director General of Income-tax (Risk Assessment) in Form No. 3CEBD

Due date

- If above conditions are satisfied, Indian constituent entity has to file the CbC report in India by the due date for filing the income-tax return i.e. 30 November

List of signatories to the Multilateral Competent Authority Agreement

As on 6 July 2017 65 countries **including India** are signatories to the MCAA on exchange of CBC reports. India has however not activated the MCAA in relation to any of the other signatories.

S. No.	Country	S. No.	Country	S. No.	Country	S. No.	Country
1	Argentina	18	Estonia	35	Japan	52	Poland
2	Australia	19	Finland	36	Jersey	53	Portugal
3	Austria	20	France	37	Korea	54	Russian Federation
4	Belgium	21	Gabon	38	Latvia	55	Senegal
5	Belize	22	Georgia	39	Liechtenstein	56	Singapore
6	Bermuda	23	Germany	40	Lithuania	57	Slovak Republic
7	Brazil	24	Greece	41	Luxembourg	58	Slovenia
8	Canada	25	Guernsey	42	Malaysia	59	South Africa
9	Cayman Islands	26	Haiti	43	Malta	60	Spain
10	Chile	27	Hungary	44	Mauritius	61	Sweden
11	Costa Rica	28	Iceland	45	Mexico	62	Switzerland
12	Colombia	29	India	46	Netherlands	63	Turks and Caicos Islands
13	Croatia	30	Indonesia	47	New Zealand	64	United Kingdom
14	Curaçao	31	Ireland	48	Nigeria	65	Uruguay
15	Cyprus	32	Isle of Man	49	Norway		
16	Czech Republic	33	Israel	50	Pakistan		
17	Denmark	34	Italy	51	Peoples Republic of China		

CbC Notification



CbC Notification

Applicability	Format & manner of filing	Content	Due date
<ul style="list-style-type: none"> Every Indian constituent entity of a foreign IG to file the CbC notification in India 	<ul style="list-style-type: none"> Electronically file the CbC notification in Form No. 3CEBB with the Director General of Income-tax (Risk Assessment) 	<p>The information required in the CbC notification form includes –</p> <ul style="list-style-type: none"> Indian constituent entity : Name, address and permanent account number; Name of the foreign IG; Parent entity: Name, address and country of residency Alternate reporting entity(if applicable): Name, address and country of residence 	<ul style="list-style-type: none"> Sixty days prior to the due date for the filing the CbC report (i.e. 60 days prior to 30th November following the fiscal year) Due date for FY 2016-17 i.e. 1 October 2017 – already lapsed – extension expected

Currently no option provided for filing a consolidated CbC notification on behalf of all Indian constituent entities of a foreign IG

Key recommendations – CbC reporting

Mechanism to adopt CbC Report related implementation guidance released by OECD to supplement guidance in the Indian transfer pricing regulation

Due date for filing CbC report in India to be extended – to be aligned with the BEPS Action 13 recommended deadline of 12 months from the end of the reporting Year of the IG

Clarification on the due date for filing the CbC notification for the FY 2016-17 - as it has already lapsed

Revisit declaration to be made by the signatory

Master File requirements

Overview



Applicability

- Part A – Every constituent entity of an IG having international transactions / specified domestic transactions
- Part B – Every constituent entity of an IG meeting the prescribed threshold



Contents

- Largely consistent with the BEPS Action 13 requirements
- Few important additional data requirements introduced, requiring IGs to customize their Master File for India



Submission

- Requirement to electronically file the Master File in Form No. 3CEBA with the Director General of Income-tax (Risk Assessment)
- Master File is not a part of exchange mechanism (like the CbC Report), required to be filed locally in India by constituent entity in India



Due date

- By the due date for filing the Indian income tax return of the Indian constituent entity (i.e. 30th November following the financial year)
- For FY 2016-17 – Due date extended to 31 March 2018



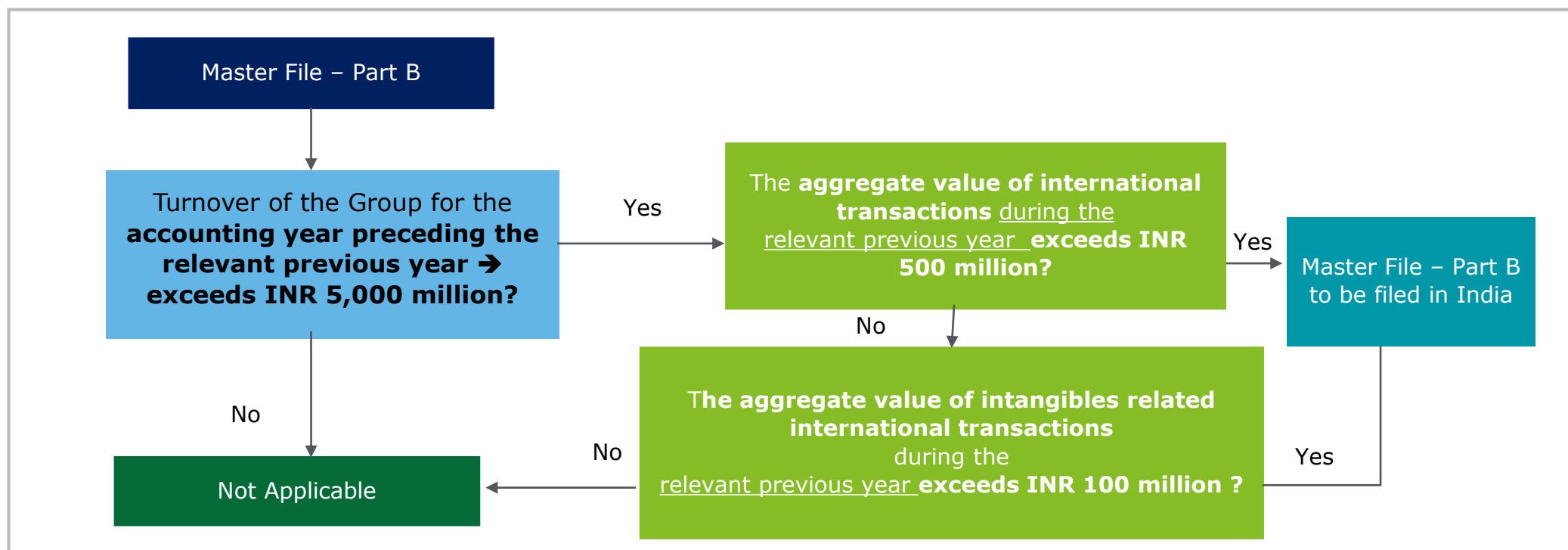
Option for filing one Master File

- IGs with multiple constituent entities in India can file one Master File on behalf of other Indian constituent entities of an IG
- Requirement to notify the designated entity in Form No. 3CEBE
- Form No. 3CEBE currently applicable only for foreign IGs – requires clarification

Master File requirement

Applicability and threshold

Part	Applicable to	Threshold
Part A	Every constituent entity of an IG having international transactions/specified domestic transactions	None
Part B	Every constituent entity of an IG that meets the threshold / criteria	<ul style="list-style-type: none"> • In the preceding year, consolidated group revenue > INR 5,000 million; and • The aggregate value of international transactions, as per books of accounts, for the reporting year : <ul style="list-style-type: none"> - exceeds INR 500 million, or - In relation to intangibles exceeds INR 100 million



Indian Master File rules vs. Global implementation

- Much lower than the threshold provided by countries such as
 - Australia (Global revenue – Euro 685 million) and Japan (Global revenue – Euro 815 million)
 - Germany (Local entity revenue – Euro 100 million)
 - China (Related party transaction of local entity – Euro 130 million)
- Master File is required to be filed in India
 - Similar requirement for filing in countries such as Australia, Belgium, Japan, South Africa
 - whereas, various countries such as Austria, Netherland, Indonesia and Malaysia require only maintenance of Master File by the due date - filing is required at a later date, when called upon during transfer pricing audit (generally 30 days upon request)
- Due date for furnishing of Master File in India i.e. 8 months from the end of the financial year
 - Countries such as Australia, Belgium, South Africa, Japan require filing within 12 months from the end of the financial year
- Requirement to furnish information in addition to BEPS Action 13 Master File recommendation
 - Countries such as China, Germany, Indonesia, Italy, Poland, Slovakia, South Africa also require additional information

Master File requirements

Contents of Form No. 3CEBA - Part A of the Master File

Comprises of basic information relating to the IG and constituent entities of the IG operating in India:

Particulars	Information required
International Group	Name and address
All the constituent entities of the IG operating in India	Name, permanent account number and address
Constituent entity filing Master File in India	Name, permanent account number and address

Master File requirements

Contents of Form No. 3CEBA - Part B of the Master File

Master File Requirement	Summary of OECD BEPS Requirement	Additional requirements as per Indian draft rules
Organization structure	<ul style="list-style-type: none"> Chart illustrating IG's legal and ownership structure and geographical location of operating entities 	<ul style="list-style-type: none"> Addresses of all operating entities of the IG
Description of IG's business	<ul style="list-style-type: none"> Description of important drivers of business profit Description of supply chain for the specified category of products Functional analysis of the principal contributors to value creation 	<ul style="list-style-type: none"> Functions, assets and risk analysis of entities contributing at least 10% of the IG's revenue, assets and profits
IG's Intangibles	<ul style="list-style-type: none"> 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 R&D and intangibles 	<ul style="list-style-type: none"> Names and addresses of all entities of the IG engaged in development and management of intangibles Addresses of entities legally owning important intangibles and entities involved in important transfers of interest in intangibles
IG's intercompany financial activities	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Names and addresses of top ten unrelated lenders Names and addresses of entities providing central financing functions including their place of operation and effective management

Contents of Master File are largely consistent with the BEPS Action 13 requirements - Few important additional data requirements introduced requiring IGs to customize their Master File for India

Forms and due date

CbC Report and CbC notification related forms

Purpose of Form	Form No.	Applicable to	Proposed due date for FY 2016-17
Filing of CbC Report	3CEBC	<ul style="list-style-type: none"> Indian headquartered IG Indian entity of foreign IG designated as alternate reporting entity Indian constituent entity of foreign IG required to submit CbC report in India under the specified circumstances 	By income-tax return filing due date i.e. 30 November 2017 (expected to be extended)
Notification of designated Indian constituent entity of foreign IG for filing CbC report in India (under specified circumstances)	3CEBD	Foreign IG required to file CbC report in India under specified circumstances and having multiple constituent entities resident in India	-
CbC notification	3CEBB	Indian constituent entity of foreign IG	60 days prior to the due date for filing CbC report i.e. 1 October 2017 (Already lapsed – clarification expected)

Forms and due date

Master File related forms

Purpose of Form	Form No.	Applicable to	Proposed due date for FY 2016-17
Filing of the Master File	3CEBA	Part A of Form No. 3CEBA – Every constituent entity of an IG having international transaction/specified domestic transaction Part B of Form No. 3CEBA – Every constituent entity of an IG meeting the prescribed threshold limit	By income-tax return filing due date i.e. 30 November. Extended to 31 March 2018 for the FY 2016-17
Notification of designated Indian Constituent entity of a foreign IG	3CEBE	Foreign IG required to file Master File in Form No. 3CEBA and having multiple constituent entities resident in India	30 days prior to the due date for filing Master File i.e. 1 March 2018 for the FY 2016-17

Systems and safeguards

- **Procedure for filing**
 - Form Nos 3CEBA, 3CEBB, 3CEBC and 3CEBD have to be filed electronically
 - These forms are required to be filed with the Director General of Income-tax (Risk Assessment)
 - The procedure for filing shall be specified subsequently
 - Not specified whether the Form No. 3CEBE has to be filed electronically
- **CbC XML utility**
 - The XML utility for furnishing the CbC report in India is yet to be released
- **Systems and adequate safeguards for confidentiality**
 - Adequate safeguards to be implemented to protect the confidential (trade secrets, scientific secrets, etc.) and other commercially sensitive information received by way of the CbC report and the Master File
 - Appropriate security, archival and retrieval policies in relation to information furnished to be implemented by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems)

Penalties for non-compliance

Sr. No	Particulars	Default	Penalty
CbC report			
1.	Non-furnishing of CbC report by Indian parent or the alternate reporting entity resident in India	Each day upto a month from due date	₹ 5,000 per day
		Beyond a month from due date	₹ 15,000 per day
		Continuing default beyond service of penalty order	₹ 50,000 per day
2.	Non-submission of information	Beyond expiry of the period for furnishing information	₹ 5,000 per day
		Continuing default beyond service of penalty order	₹ 50,000 per day from date of service of penalty order
3.	Provision of inaccurate information in CbC report	Knowledge of inaccuracy at time of furnishing the report but fails to inform the prescribed authority	₹ 500,000
		Inaccuracy discovered after filing and fails to inform and furnish correct report within fifteen days of such discovery	
		Furnishing of inaccurate information or document in response to notice issued	
Master File			
1.	Non-furnishing of information and documentation	Failure to furnish the information and document to the prescribed authority	₹ 500,000

Impact on Indian headquartered IGs

CbC reporting requirement

- **Parent entity or the Alternate Reporting Entity** to file CbC report in India in Form No. 3CEBC
- File CbC report by the due date for filing the return of income i.e. 30 November following the end of the financial year
- May refer to OECD guidance in the absence of specific coverage in the Indian provisions

Master File

- File Master File in India in Form No. 3CEBA in the following parts:
 - Part A of Master File : To be filed by every constituent entity of an IG having international or specified domestic transactions - no threshold
 - Part B of Master File : To be filed by every constituent entity of an IG that meets the prescribed threshold
- Filing a notification appointing a designated Indian constituent entity to file the Master File in India on behalf of all the Indian constituent entities – Whether option available to Indian headquartered IG's?
- File Master File by the due date for filing return of income. Extended to 31 March 2018 for FY 2016-17

Impact on Foreign IGs

CbC reporting requirement for Indian constituent entity

- File CbC report in India in Form No. 3CEBC if covered under the specified circumstances by the due date for filing the income tax return
- In case of multiple Indian constituent entities of a foreign IG required to file the CbC Report in India under the specified circumstances (other than being an alternate reporting entity), notify in Form 3CEBD the details of the entity designated to file the CbC report in India
- File CbC notification in Form No. 3CEBB at least 60 days prior to the due date for filing the CbC report

Master File

- File Master File in India in Form No. 3CEBA in the following parts:
 - Part A of Master File : To be filed by every constituent entity of an IG having international or specified domestic transactions - no threshold
 - Part B of Master File : To be filed by every constituent entity of an IG that meets the prescribed threshold
- File Master File by the due date for filing return of income. Extended to 31 March 2018 for FY 2016-17
- File notification appointing a designated Indian constituent entity to file the Master File in India on behalf of all the Indian constituent entities, in Form No. 3CEBE, 30 days prior to due date for filing the Master File in India

Key recommendations – Master File

- Revisit the threshold for filing the Master File in India – Higher threshold adopted by many other countries
- Due date for filing the Master File in India ought to be 31 March of the following year for all subsequent years also
- Threshold of aggregate value of international transactions of INR 500 million to be linked to the income from international transactions
- In Part B of Master File, the draft rules have quantified submission of the functions, assets and risk (FAR) analysis for group entities contributing at least 10% of the revenues, assets and profits of the IG. In this connection:
 - Clarification on the manner of application of the threshold - whether 10% is to be satisfied on a cumulative or standalone basis
 - Revisit the threshold of 10%
 - Link the provision of FAR analysis with principal contributions to value creation as recommended in the BEPS Action 13
- Presently, Form No. 3CEBE allows only Foreign IGs in India to appoint a designated Indian constituent entity to file the Master File in India (on behalf of all Indian constituent entities) - this flexibility / option should also be extended to the Indian headquartered IGs

Questions & Answers



In case of any further queries,
you may contact us at
inbeps@deloitte.com



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