



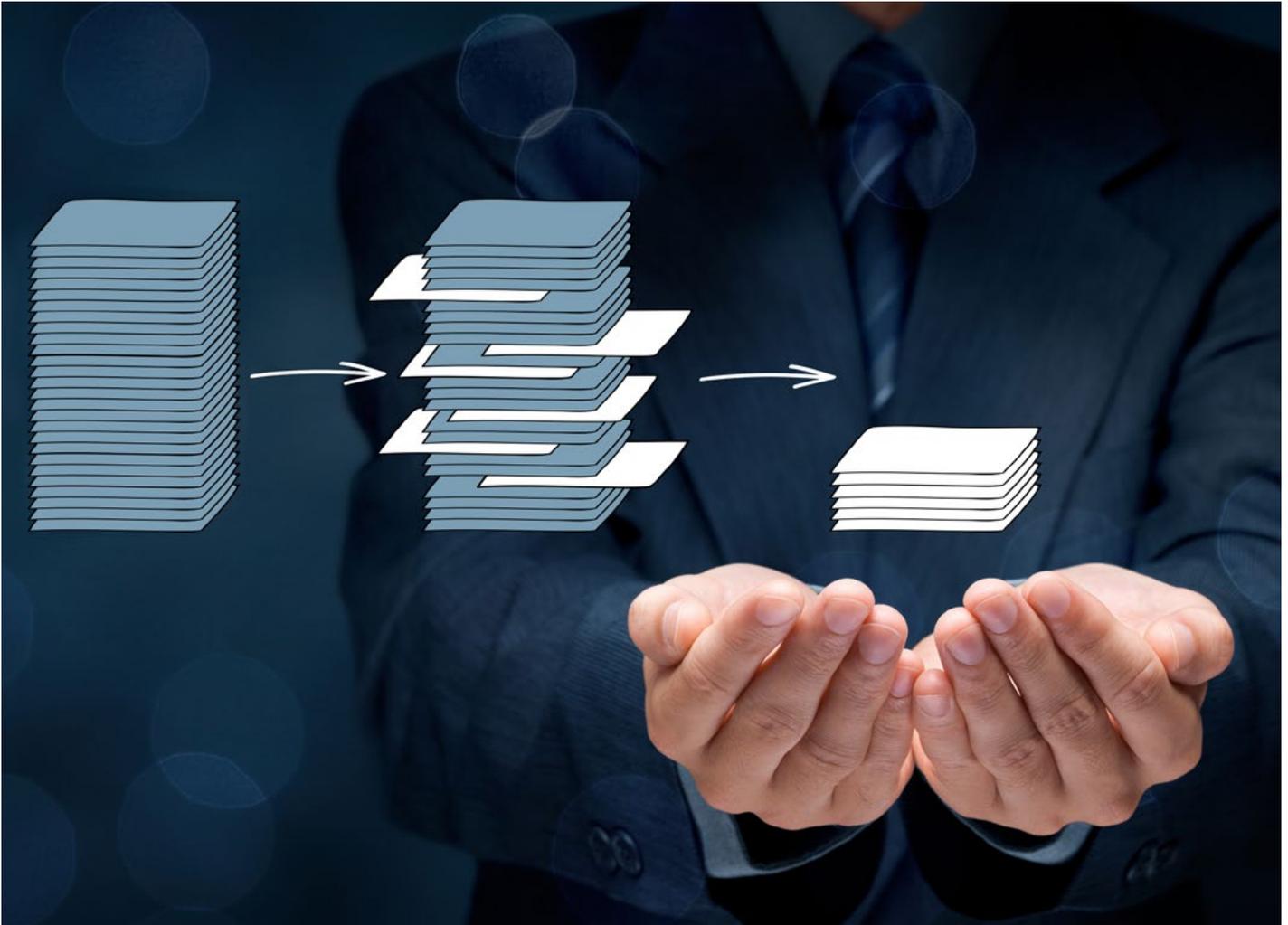
BEPS Action 13 – India implementation

India releases the final rules on
Country-by-Country Reporting
and Master File

December 2017

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Overview

India has been one of the active members of the Base Erosion and Profit Shifting (“BEPS”) initiative. To this effect, on May 5, 2016, India introduced core elements of the Country-by-Country (“CbC”) reporting requirement and the concept of Master File in the Indian Income Tax Act, 1961 (“the Act”) through Finance Act 2016, effective from 1 April 2016.

To take the initiative forward, the Central Board of Direct Taxes (“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 till 16 October 2017. The CBDT has on 31 October 2017 released the final rules on CbC reporting and Master File requirements in India (vide notification no. 92/2017), incorporating few amendments and certain clarifications to the draft rules.

Impact of the Indian rules on International Group's (“IGs”) operating in India

A summary of the impact of compliance requirements prescribed in the Indian rules for the IGs operating in India is provided below:

Impact on Indian headquartered IGS

Master File

- Every constituent entity meeting prescribed threshold to file Master File in India in Form 3CEAA by 31 March 2018 for FY 2016-17
- Appoint a designated Indian constituent entity to file the Master File in India on behalf of multiple constituent entities resident in India by filing Form 3CEAB by 28 February 2018

CbC reporting requirement

- Parent entity having consolidated group revenue in excess of INR 5,500 crores (in FY 2015-16) to file CbC report in India in Form 3CEAD by 31 March 2018 for FY 2016-17

Impact on foreign IGS

Master File

- Every constituent entity meeting prescribed threshold to file Master File in India in Form 3CEAA by 31 March 2018 for FY 2016-17
- Appoint a designated Indian constituent entity to file the Master File in India on behalf of multiple constituent entities resident in India by filing Form 3CEAB by 28 February 2018

CbC reporting requirement for Indian constituent entity

- File CbC report notification in India in Form No. 3CEAC by 31 January 2018 for FY 2016-17
- File CbC report in India under the specified circumstances [secondary reporting under Section 286(4) of the Act] in Form No. 3CEAD, by 31 March 2018 for FY 2016-17
- Appoint a designated Indian entity to file the CbC report in India on behalf of multiple Indian constituent entities (under specified circumstances) by filing Form 3CEAE

We have discussed below in detail the salient features of the final rules and insights on the transfer pricing compliance obligations in India with respect to CbC reporting and Master File.



1. Master File

As per BEPS Action 13 guidance, the Master File is intended to provide a high level overview of the International Group's ("IG") 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. The detailed rules governing applicability, content, manner of furnishing the information, due date, etc. were awaited.

In this regard, the draft rules provided the 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”). Pursuant to considering public comments received on the draft rules, the CBDT has now released the final rules providing the following requirements and instruction with respect to Master File compliance in India:

1.1. 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 onwards. In this regard, the final rules prescribe a specific format for furnishing the Master File i.e. Form No. 3CEAA. The Form No. 3CEAA comprises of the following 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 the constituent entity of an IG, only where it meets the following threshold:

- Consolidated group revenue of the IG in the accounting year exceeds INR 5,000 Million [approx. USD 75 million/ Euro 65 million]. The Final rules clarifies 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. The draft rules had provided that this threshold has to

be determined considering the group revenue for the preceding accounting year which is now amended to current accounting year in the final rules; and

- The aggregate value of international transactions
 - as per the books of accounts, exceeds INR 500 [approx. USD 7.5 million / Euro 6.5 million] during the reporting accounting year or
 - in respect of purchase, sale, transfer, lease or use of intangible property during the reporting year, as per the books of accounts, exceeds INR 100 million [approx. USD 1.5 million / 1.33 million].

1.2. Format and content of Master File

As mentioned above, the Master File is required to be furnished in Form No. 3CEAA, comprising of Parts A and B. The information required is as follows:

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

- Details of the IG such as name and address;
- Details of all the constituent entities of the IG operating in India providing name, permanent account number and address;
- Details of the Indian constituent entity submitting the Master File in Form No. 3CEAA; and
- 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 of 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 also included few additional information data points in this section which are more specific and detailed than the Action 13 requirements. We have discussed the details below:

Master File Requirement	Summary of OECD BEPS Requirement	Additional requirements as per Indian final 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 entities of the IG (the draft rules had proposed submission of details of only 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 five largest products/ services in terms of revenue and/or which contributes to more than 5% of IG’s revenues Functional analysis of the principal contributors to value creation Important business restructuring transactions 	<ul style="list-style-type: none"> Functions, assets and risk (“FAR”) analysis of entities contributing at least 10% of the IG’s revenue OR assets OR profits (the draft rules did not clarify the manner for application of the threshold of 10 %)
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 Research & Development (“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 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	<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 and corresponding transfer pricing policies 	<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

The Master File is required to be filed in Form No. 3CEAA electronically with the Director General of Income Tax (Risk Assessment).

1.3. 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 (i.e. 30th November following the financial year). However, for submission of the Master File for the first year (i.e. FY 2016-17), the due date has been extended to 31 March 2018.

1.4 Option for filing one Master File on behalf of all the Indian constituent entities of an IG

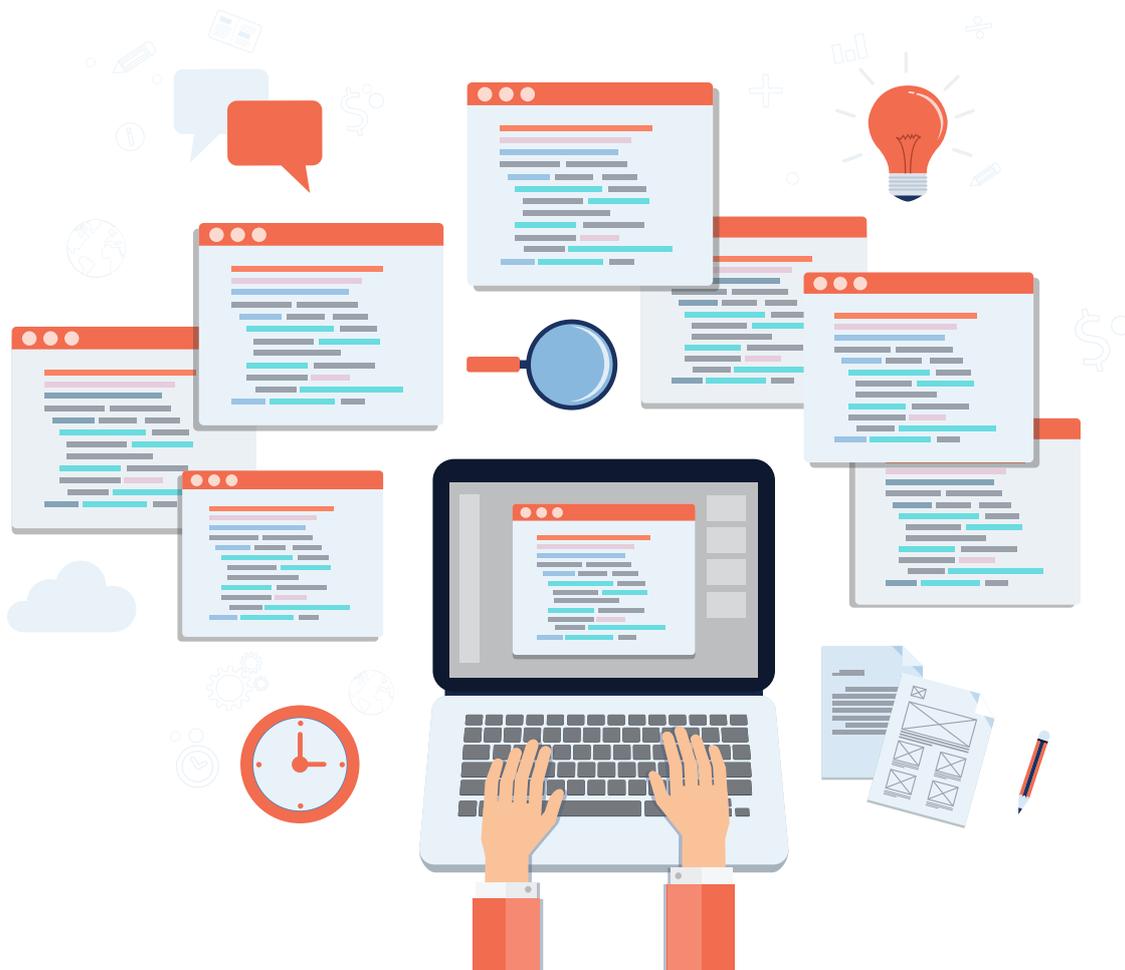
The final rules provide the flexibility that where an IG has multiple constituent entities in India, the Master File may be submitted by only one of the constituent entities resident in India. The flexibility to provide one Master File is available to both Indian-headquartered IGs and foreign IGs and is also applicable for 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 intimate the same to the Director General of Income-tax (Risk Assessment) in the prescribed format (Form No. 3CEAB). This intimation 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 the Form No. 3CEAB was not earlier specified in the draft rules. However, the final rules provide that the Form No. 3CEAB is required to be filed electronically with the Director General of Income Tax (Risk Assessment).

1.5 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 is required to be signed by the person competent to verify the return of income (under section 140 of the Act) of the constituent entity. This requirement was earlier not provided in the draft rules.





2. Country-by-Country Report

2.1 CbC Report

The Finance Act 2016 introduced the requirement to file the CbC report in India for the Indian-headquartered IGs. Indian constituent entities of a foreign IG are also required to file the CbC report in India on satisfaction of certain specified criterias/ conditions. The Finance Act however did not provide the detailed rules relating to 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 of the CbC report in India through insertion of rule 10DB in the Rules. Pursuant to 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 CbC reporting requirements in India:

2.1.1 Applicability and threshold

The Act provided that the CbC reporting obligation would be applicable for IGs whose consolidated group revenue for the preceding financial year as reflected in consolidated financial statements exceeded the threshold, as may be prescribed. The memorandum explaining the introduction of the provision had indicated that the threshold would be the INR equivalent of Euro 750 million, prescribed under 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 rupees shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

2.1.2 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, the Act or the memorandum did not provide any details, data definitions or format of the CbC report, which were specifically provided under the BEPS Action 13 guidance.

In this respect, the final rules have released the prescribed format (Form No. 3CEAD) in which the CbC report has to be filed. The Form No. 3CEAD is similar to the Action 13 CbC report template.

It is pertinent to note that the business activity of 'Administrative, Management and Support services' in Part B of CbC report (Form No. 3CEAD) was not earlier included in the format 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 the Table 2 of the 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 is required to be furnished electronically, for every reporting accounting year, to the Director General of Income-tax (Risk Assessment).

Further, in order 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 the Form No. 3CEAD shall be specified subsequently. Accordingly, it is expected that the XML utility for furnishing the CbC report in India will be released shortly.

2.1.3 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 i.e. 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 extended the due date for filing the CbC report for the FY 2016-17 to 31 March 2018, vide Circular 26/2017 dated 25 October 2017.

2.1.4 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 resident in India of a foreign IG would be required to furnish the CbC report in India under specific circumstances (provided under Section 286 (4)). As per 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 –

- with which India does not have an agreement providing for exchange of the CbC report; or
- there has been a systemic failure of jurisdiction of reporting entity in sharing the CbC report and the said failure has been intimated has been intimated by the prescribed authority to Indian constituent entity.

The final rules specify that the due date of submission of 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 an Indian constituent entities of a foreign IG under the above circumstances has also been extended to 31 March 2018.

The final rules also propose that where 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 intimate the designated entity to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE. It is pertinent to note that the rules have not provided the due date for filing the intimation in Form No. 3CEAE.

2.1.5 Signatory to CbC report

The final rules specify that the CbC report in Form No. 3CEAD and intimation in Form No. 3CEAE is required to be signed by the 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.

2.2 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, the detailed rules providing the form and manner of notification, contents and the filing due date were awaited. In this regard, the final rules provide following requirements with respect to CbC report notification:

2.2.1 Contents and manner of submission of the CbC report notification

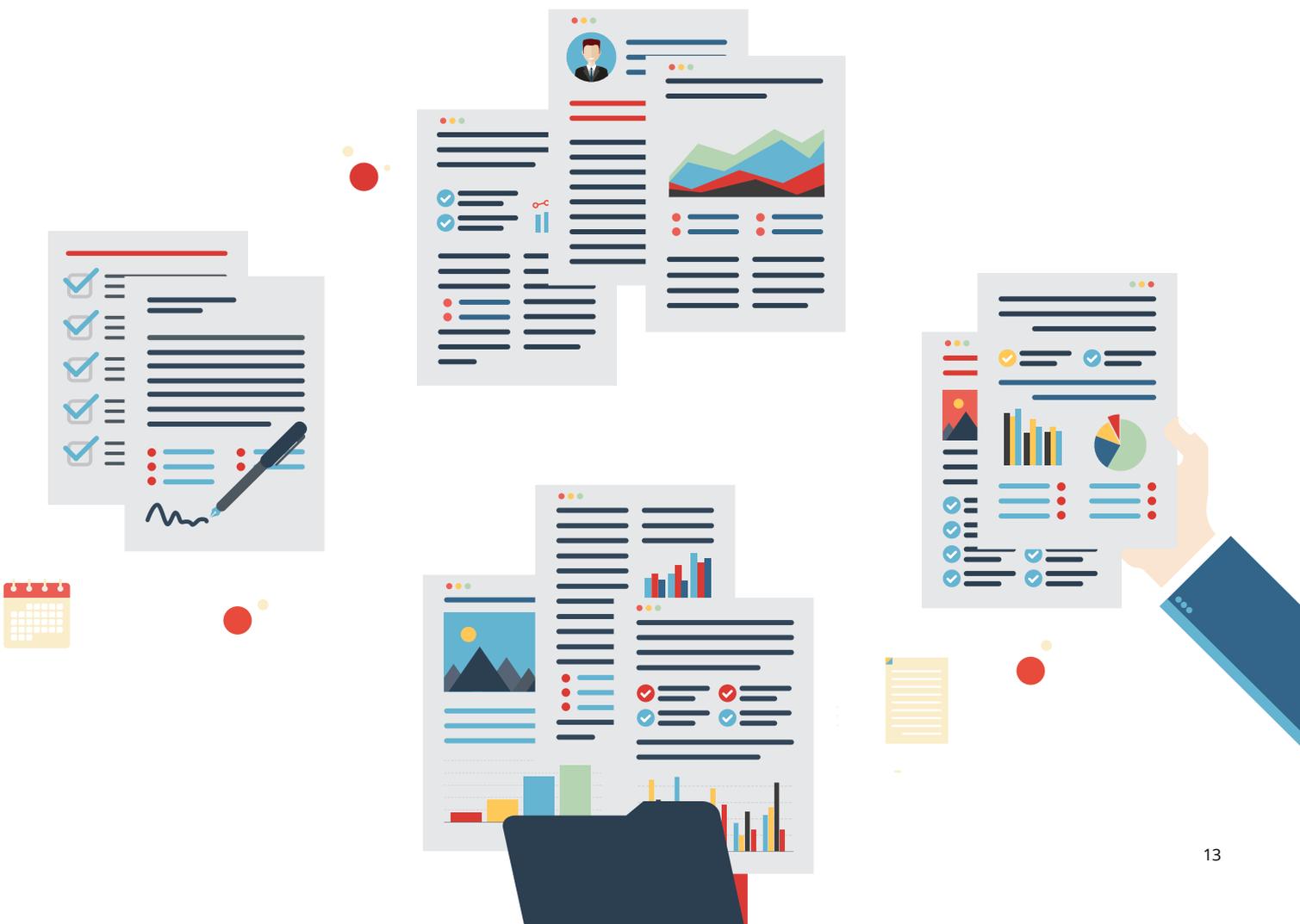
The final rules have prescribed the format in which the above notification has to be filed (Form No 3CEAC). The notification is required to provide the following details:

- 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 residency;
- Details of the alternate reporting entity, if applicable such as name, address and country of residence; and
- Reportable accounting year is also required to be submitted in the notification. This requirement was not specified earlier in the draft rules.

As per the Indian final rules, the CbC notification form in Form No. 3CEAC is required to be submitted electronically to the Director General of Income-tax (Risk Assessment). The Indian rules have not provided an option of filing a consolidated CbC notification for multiple Indian constituent entities of an IG.

2.2.2 Due date for submission of the CbC report intimation

The Indian final rules prescribed the CbC notification to be filed two months prior to the due date of 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.





3. Local File

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

Adequate safeguards in place to maintain confidentiality of information

As recommended by Action 13, the rules provide that adequate safeguards will 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.

Further, the rules provide that the Principal Director General of Income-tax

(Systems) or 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, archival and retrieval policies in relation to information furnished under the above-mentioned forms.



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 shall 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 having international transactions / specified domestic transactions (no threshold is applicable) Part B of Form No. 3CEAA – Every constituent entity of an IG meeting the prescribed threshold discussed above
	Intimation of designated Indian constituent entity of an IG	3CEAB	IGs having multiple constituent entities resident in India
CbC reporting related forms	CbC report notification	3CEAC	<ul style="list-style-type: none"> • Every Indian constituent entity of a foreign IG
	Filing of CbC Report	3CEAD	<ul style="list-style-type: none"> • 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
	Intimation of designated Indian constituent entity of foreign IG for filing CbC report in India (under specified circumstances)	3CEAE	Foreign IG required to file CbC report in India (under specified circumstances) and having multiple constituent entities resident in India

Signatory to the CbC and Master File related forms

The final rules specify that the above Forms are required to be signed by the 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



Key takeaways

The final rules on CbC reporting and Master File requirements in India are significantly aligned with BEPS Action 13 guidance, reflecting India's commitment to global consistency. It is imperative to mention that there are various aspects of the rules that will have specific India implications and will also need clarifications and additional information. The final rules incorporate various clarificatory amendments to the draft rules and there are not many noteworthy modifications to the draft rules.

Further, given that as per the rules, the Indian transfer pricing documentation requirements are relatively prescriptive, the tight timelines could pose a practical challenge for IGs, though some respite has been provided for the first year i.e. FY 2016-17 by extending the due date for filing of CbC report and Master File to 31 March 2018. Also, with respect to the Master File, the Indian final rules provide a staggered threshold. Comparatively, it

is observed that the IGs' global revenue threshold (i.e. INR 5,000 million) and the international transactions threshold (i.e. INR 500 million) provided in the rules is much lower than the threshold limit provided by few countries (Australia, Germany, Japan, China). However, there are other countries (Netherlands, Spain, Mexico, Peru) that have prescribed a threshold much lower than India. The low threshold for Master File in India could increase the compliance burden for IGs. Also for many IGs, the new requirements will necessitate greater level of global coordination, detailed analysis of considerable information not currently readily available. Thus, the Indian rules would significantly increase the Indian compliance obligations for the 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.

Deloitte would be pleased to advise readers on the applicability of the three tier transfer pricing documentation requirements in India as well as globally. For any queries or more information please write to us at inbeps@DELOITTE.com.





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