

CBDT's Draft Master File and CbCR Rules

The Finance Act 2016 introduced provisions relating to Country by Country Report (CbCR) and master file pursuant to adoption of OECD's BEPS Action Plan-13 in India. While the law was enacted and it was made applicable with effect from 1 April 2017 (i.e. from AY 2017-18 onwards), the detailed rules stipulating relevant threshold, manner and time limit for maintaining and furnishing relevant information was eagerly awaited.

Finally, the CBDT has released Draft Rules on 6 October 2017 providing much awaited guidelines with respect to maintenance and furnishing of Master File and CbCR for public comments and suggestions.

Summarized below are salient features of the Draft Rules.

Master File and Related Compliances

- A constituent entity of an MNE group meeting the following quantitative threshold will be required to file Master File in 'Form 3CEBA' with the Director General of Income-tax (Risk Assessment):
 - The consolidated revenue of the MNE Group exceeds INR 500 crores (approximately USD 75 million/ Euro 65 million) in the accounting year preceding the previous year; and
 - The aggregate value of international transactions exceeds INR 50 crores (approximately USD 7.5 million / Euro 6.5 million) or international transactions relating to intangible property exceed INR 10 crores (USD 1.5 million / Euro 1.33 million) in the reporting accounting year.
- It may be noted that Form 3CEBA has been divided into two parts; Part-A and Part-B. Part-A consists of limited information relating to details of taxpayer, international group to which it belongs to, number of group entities in India and their permanent account number, addresses, etc. Part-B requires exhaustive and descriptive information on more than twenty items listed as part of Master File.
- The Master File has to be furnished by the due date of filing the income-tax return (i.e., 30 November, when Form 3CEB is filed). However, for the Financial Year ended 31 March 2017, the due date has been extended to 31 March 2018.
- In case of more than one Indian constituent entity, the Master File may be furnished by a constituent entity designated by the MNE group. A notification to this effect need to be submitted in Form 3CEBE to the Director General of Income-tax (Risk Assessment) at least 30 days before the due date for filing the Master File.

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- The Master File has to be kept and maintained for the period of eight years from the end of the relevant assessment year

CbCR and Related Compliances

- The Draft Rules provide the consolidated MNE group revenue threshold of INR 5,500 crores (approximately USD 825 million/ Euro 715 million) in the accounting year preceding the reporting accounting year, for applicability of the CbCR rules
- CbCR needs to be submitted in Form No 3CEBC with the Director General of Income-tax (Risk Assessment) and the disclosure requirements are in line with the requirements under BEPS Action 13.
- The due date for filing the CbCR in India continues to be the due date for filing the income-tax return (i.e. 30 November, when Form 3CEB is filed), unless a specific clarification extending the due date is released for FY 2016-17.
- An Indian constituent entity of a MNE group headquartered overseas is required to file a notification in India with the Director General of Income-tax (Risk Assessment), reporting the details of the parent or alternate reporting entity.
- The notification is required to be submitted in Form No 3CEBB on or before sixty days prior to the due date of the filing the income-tax return of the Indian Constituent Entity. Although the due date for the notification for FY 2016-17 has lapsed (being 30 September 2017 for filing in 30 November, 2017), further clarification is expected once the final rules are out.
- A constituent entity of an MNE group in India, which is neither a parent entity nor an alternate reporting entity in India, needs to file the CbCR within the above time limit, if, the parent entity ('PE') of such constituent entity is resident in a country;
 - With which India does not have an agreement for exchange of the CbCR; or
 - There has been a systematic failure and such failure is intimated to the Indian constituent entity.
- In case of more than one Indian constituent entity, the CbCR may be furnished by an entity designated by the MNE group. A notification to this effect need to be submitted in Form 3CEBD to the Director General of Income-tax (Risk Assessment) – It appears that the draft rules do not prescribe any timeline for such notification.

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Summary of Draft Forms and Rules for Master-File

| Section 92D (Master File forms) | Purpose | Conditions for Applicability | Who is to file? | Timeline | Filed to whom? | Statutory Source |
|---------------------------------|---|--|---|---|------------------------|--|
| Form 3CEBA | Part A: - Limited information to be furnished by every constituent entity of an international group. | <ol style="list-style-type: none"> Consolidated revenue > 500 cr; and aggregate international transactions > 50 cr or; intangible related transactions > 10 cr. | The CE in India. | For FY 2016-17 :- 31 st March 2018 Other years :- Return Date | DGIT (Risk Assessment) | Proviso to S.92D(1) :- For keeping and maintenance of report |
| | Part B: - Detailed information to be furnished. (Broadly same as OECD Master File) | | | | | S.92D(4) :- Furnishing of report |
| Form 3CEBE | To notify the CE designated for furnishing Master File | When there is more than one CE in India. | The CE designated for furnishing Master File. | 30 days prior to timeline for Master File. | DGIT (Risk Assessment) | S.92D(4) Read with Rule 10DA |

Summary of Draft Forms and Rules for CbCR

| Section 286 (CBCR forms) | Purpose | When to File? | Who is to file? | Timeline | Filed to whom? | Statutory Source |
|--------------------------|---|--|--|--|------------------------|--|
| Form 3CEB B | To notify ARE or PE (Whether itself or some other) Note: - Only if PE is not resident in India. | If international consolidated revenue > 5500 crores (If CE is resident in India) | Every CE resident in India. | 60 days prior to CBCR filing timeline. As timeline has lapsed, revised instructions awaited. | DGIT (Risk Assessment) | S.286(1) |
| Form 3CEB C | CBCR Reporting | If international consolidated revenue > 5500 crores | <ul style="list-style-type: none"> By PE/ARE, if PE/ARE are in India If only CE in India, CE to file Form 3CEBB to notify information on PE/ARE- and GOI shall obtain information through exchange of information If multiple CEs in India, the designated CE(as per Form 3CEBD) to file CbCR | Same as return timeline in the normal course i.e (November 30 th) | DGIT (Risk Assessment) | S.286(2) :- Furnishing of report S.286(3) :- Contents |

| | | | | | | |
|------------|---|---|--------------------|---|------------------------|---------------------|
| Form 3CEBD | If there are multiple CE's in India, then one of them will be designated to undertake compliances under S.286 | If international consolidated revenue > 5500 crores | The designated CE. | No timeline is prescribed as per the draft rules. | DGIT (Risk Assessment) | Proviso to S.286(4) |
|------------|---|---|--------------------|---|------------------------|---------------------|

Turnover-wise compliance obligations.

| Consolidated Turnover (CT) | Compliance Obligations |
|--|---|
| Upto 500 Crores | Every CE of the international group to file Part A of Form 3CEBA |
| >500 crores but < 5500 crores International transaction < 50 crore or; Intangible related transactions < 10 crores | |
| > 500 crores but < 5500 crores; and International transaction > 50 crore; or Intangible related transactions > 10 crores | Part A and Part B of Form 3CEBA |
| > 5500 crores | CBCR requirements apply |
| >5500 crores; and International transaction > 50 crores; or Intangible related transactions > 10 crores | Maintain and furnishing of Master File. Also, CBCR requirements apply and |

These are draft rules issued by the Government of India and are open for public comments and suggestions until October 16, 2017.

Once final Rules are issued taxpayers are advised to undertake the necessary compliances/reporting action and prevent any penal consequences.

Tax Team

The information contained in this newsletter is solely intended to provide general guidance on matters of interest. Nothing herein constitutes professional or legal advice, nor does any information herein constitute a comprehensive or complete statement of the issues discussed. It is recommended that you seek a professional advice to confirm your understanding on the issues dealt above.

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