



Draft rules on Master File and Country by Country reporting released by CBDT

Background

In keeping with India's commitment to implement the recommendations of Action Plan 13 of Base Erosion and Profit Shifting (BEPS), the Finance Act, 2016 introduced Section 286 of Income-tax Act, 1961 (the Act) providing for furnishing of Country-by-Country Report (CbCR) in respect of an International Group. Section 92D of the Act which contained provisions for preparing TP documentation was also amended to provide for keeping and maintaining of Master File.

In continuation with amendment, Central Board of Direct Taxes (CBDT) on 6 October 2017, released the much awaited draft rules¹ and forms in relation to Master File and CbCR. CBDT has sought recommendations and suggestions on the said rules and Forms from the relevant stakeholders till 16 October 2017.

Briefly put, Rules 10DA and 10DB are proposed to be inserted in the Income-tax Rules, 1962 (the Rules). Forms 3CEBA to 3CEBE are also proposed in relation to the draft rules.

- Rule 10DA lays down the thresholds for applicability, timelines, requirements and procedures in relation to Master File. The relevant information is required to be filed in Forms 3CEBA and 3CEBE
- Rule 10DB lays down the requisite details and procedures for CbCR filing, which is required to be filed in Forms 3CEBB, 3CEBC and 3CEBD.

Detailed analysis of the draft rules are provided in the subsequent sections.

Master File (MF) – Rule 10DA

Applicability and timelines

Rule 10DA (Sub Rules 1 to 8) is proposed to be inserted in the Rules. **Sub rule 1** provides a monetary threshold for the maintenance of Master File. **Sub rule 2** provides the proposed due dates for filing of the required information. The following table captures these requirements:

Particulars	Threshold (Sub rule 1)	Timeline for filing (Sub rule 2)
1. Consolidated Revenue of the 'International Group' in the immediately preceding accounting year exceeds	INR500 crore (USD76 million)	<u>FY 2016-17</u> To be filed on or before 31 March 2018.
AND		
2. Aggregate value of international transaction	INR50 crore (USD7.6 million)	<u>Subsequent years</u> To be filed on or before the due-date for filing of Return of Income.
a. During the reporting year, as per books of accounts exceeds Or b. In respect of purchase, sale, transfer, lease or use of intangible property during the reporting year, as per the books of accounts, exceeds	Or INR10 crore (USD1.5 million)	

¹ CBDT Notification F. No. 370142/25/2017-TPL

As indicated in the table above, the draft rules require both the conditions to be satisfied for applicability of detailed master file information.

Requirements under the relevant forms is provided below:

- **Form 3CEBA:** The Rules require filing of Master File in Form 3CEBA. The form consists of two parts – (a) Part A is required to be filled by Constituent Entities (CEs) resident in India of any 'International Group' irrespective of the aforesaid threshold. It contains basic details such as name of the group, number of CEs in India, their names and addresses etc. (b) Part B of the form is required to be prepared by entities for which Master File is applicable as per thresholds mentioned in the table above.
- **Form 3CEBE:** This form is applicable where the International Group has more than one CE in India. In such a case, the International Group may designate a CE that shall be obliged to file Form 3CEBA. The form has to be filled in either by the 'International Group' or the designated CE, which would notify the details of the designated CE in India. The form has to be filed with the Director General of Income-tax (Risk assessment)

In other words, if there is only one CE in India, form 3CEBE is not required to be filed. The CE is required to file form 3CEBA only. In case there are more than one CE in India, only the designated CE may file the form 3CEBA, provided that form 3CEBE is filed either by the International Group or the designated CE within the prescribed due date.

Sub Rule 5 states that such notification / Form 3CEBE is required to be filed at least 30 days prior to the date of filing the Master File. Hence, for FY 2016-17 the due date is 1 March 2018.

Key highlights of requirements under Master File

Sub Rule 1 of Rule 10DA also prescribes the detailed information and documents that must form part of the Master File. Although the requirements laid down in Rule 10DA are more or less in line with the recommendations in Action Plan 13, the key differences are highlighted below:-

Action Plan 13²	Rule 10DA(1)
A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed and important assets used.	Requires the description of functional, asset and risk (FAR) analysis of all the CEs that contribute <u>at least 10 percent</u> of the revenues, assets and profits of the group.
A general description of how the group is financed, including important financing arrangements with unrelated lenders.	Requires the detailed description of the financial arrangement of the group including the names and address of the <u>top ten unrelated lenders</u> .

Apart from the above, the Rule also requires to include the details of group entities engaged in development and management of intangibles along with their address in the Master File. This requirement is not a part of the Action Plan 13.

Country by Country Report – Rule 10DB

Rule 10DB (Sub Rules 1 to 8) which provides for filing of CbCR, is proposed to be inserted in the Rules. Applicability of CbCR has been laid down in Section 286 (inserted in Finance Act 2016) of the Income-tax Act, 1961 (the Act). Most requirements are in line with the prescribed requirements/recommendations under OECD Action Plan 13. Details of filing requirements and filing of relevant forms is provided below:

² OECD/G20 Base Erosion and Profit Shifting Transfer Pricing Documentation and Country-by-Country Reporting : Action 13: 2015 Final Report

- **Threshold:** Sub Rule 6 states the Consolidated Revenue threshold for filing of CbCR. This is in line with the threshold prescribed by OECD [INR5,500 crore or USD840 million in the preceding year].
- **Form 3CEBB:** Sub Rule 1 of Rule 10DB requires every CE resident in India to notify the following to the Director General of Income-tax (Risk Assessment):-
 - Whether it is Alternate Reporting Entity of the group; or
 - The details of Parent Entity or the alternate reporting entity and the country/territory of which said entities are residents.

The said notification has to be furnished sixty days prior to the date of furnishing of CbCR.

- **Form 3CEBC:** Sub-rule 3 of Rule 10DB requires every Parent Entity or Alternate Reporting Entity which is resident in India, to file CbCR in Form 3CEBC (annually) within the due date. The information included in the Form is similar to the requirement under OECD.

The current notification is silent on the due date of filing. However, as per section 286(2), the CbCR must be filed on or before the due date of filing the return.
- **If provisions of Section 286(4) [no agreement for exchange of CbCR or systematic failure] are applicable then the following is required to be done:**
 - If there is only one CE in India, then the CE is required to file the CbCR in India within the due date
 - If there is more than one CE in India, the CE designated by the International Group is required to file CbCR in India within the due date. The notification of such designated CE is required to be done by filing **Form 3CEBD** with the Director General of Income-tax (Risk assessment). The due date of filing this form is however, not prescribed. It is also not specified as to which entity/entities are required to file this form.

Our comments

Notification of the draft rules related to CbCR and Master File, for public comments, before finalisation is an inclusive and transparent move by CBDT. The draft rules are primarily in line with the recommendations provided by OECD in Action Plan 13 of BEPS. Our comments on these draft rules are as under:-

- Different jurisdictions have different thresholds for Master File. Some countries have high thresholds (e.g. Australia, Japan, etc.), whereas some countries (e.g. Mexico, Peru, etc.) have adopted a significantly lower threshold. India too has proposed to adopt a lower threshold of INR500 crore and related party transactions threshold of INR50 / 10 crore. With such a low threshold, many MNCs having presence in India would have the obligation of preparing and filing the Master File in India, even though they may not be required to prepare the same in their home jurisdictions. This may put a compliance burden on such MNCs.
- The Master File requirements under the draft rules are more specific than those prescribed under OECD Action Plan 13. For example, as noted in the previous section, while the OECD Action Item 13 report recommends FAR analysis describing principal contributions of various entities within the group to be documented as part of the Master File, the draft rules specifically prescribe such FAR analysis to be documented for all the entities that contribute to at least 10 percent of the revenues, assets and profits of the group. In a similar manner, the draft rules require specific disclosure of the financial arrangements related to top ten unrelated lenders. For constituent entities, who meet the specified thresholds, these specific requirements may need additional disclosures than those provided in the Master Files that may have been maintained at the parent entity level.
- The draft rules on contents of Master File require disclosure of entities engaged in development and management of intangibles. This requirement seems to lay emphasis on the DEMPE (Development, Enhancement, Maintenance, Protection and Exploitation of Intangibles) functions based on Action Plan 8-10 of the BEPS. While this underscores the importance and relevance of DEMPE analysis of intangibles, it may also seem as a divergence from the Indian tax authorities stand on local marketing intangibles issue.
- The draft rules require furnishing of Master File rather than just maintenance. While this is true for some other countries as well (e.g. Australia, Japan, South Korea, etc.) the deadline for submission is typically one year from the end of the accounting year. This gives sufficient time for the MNC to comply. Given the low threshold provided in the draft rules, the requirement for Master File submission would seem cumbersome for many MNCs.

- It is also pertinent to observe that the deadline to furnish the Master File is 31 March 2018 whereas CbCR is required to be furnished by 30 November 2017. The deadline for both reports is typically the same as observed from regulations of other jurisdictions. Considering the fact that less than 60 days are left for filing of CbCR and the Rules may only be finalised in late October/early November, CBDT may consider revisiting the deadline.
- Certain procedural aspects notified in the draft rules need clarification and possible simplification. For example, the draft rules require every CE resident in India to notify the details of parent or the alternate reporting entity in Form 3CEBB, on or before 60 days prior to the due date of furnishing of CbCR. Given the due date of 30 November 2017 for the filing of CbCR as per the draft rules, the due date for filing Form 3CEBB for FY 2016-17 already expired on 30 September 2017 (60 days prior to due date i.e. 30 November 2017). Hence, clarifications and amendment w.r.t. the notifying timeline must be provided.
- It is imperative to note that the Form 3CEBC (Part B) has a slight divergence from CbCR format recommended by OECD. The column 'Administrative, management or support service' does not form part of Form 3CEBC, which is part of OECD suggestion. Considering the format of exchange within jurisdictions, CBDT may need to address this divergence.
- A significant issue among MNCs is how to account for the difference in the reporting financial year. India typically follows April to March reporting whereas most other jurisdictions follow January to December reporting period. CBDT must acknowledge and provide suggestions on this issue.

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