



Country-by-Country Reporting

Indian Rules on BEPS requirements

In Brief

The BEPS project was conceived out of significant concerns surrounding multinationals abuse of mismatches between tax regimes across jurisdictions and the exploitation of the gaps in the tax treaty network. India has always supported BEPS since inception and has played a leading and intensive role in the formulation of its proposals, and is committed to implement the “minimum standards” of the Action Plan, including country-by-country (CbCR) reporting.

Reiterating India’s commitment to implement the OECD’s BEPS Action Plan 13, the Indian Central Board of Direct Taxes (CBDT) has prescribed the rules for maintaining and furnishing the Master File (MF) and Country-by-country (CbC) Report in respect of an international group.

It is commendable, on part of CBDT, to consistently follow an inclusive approach and seeking public comments when introducing a new and important regulation. In the draft rules circulated on October 6, 2017 the CBDT had proposed insertion of New Rules 10DA and Rule 10DB of the Income-tax Rules, 1962 (the Rules), and the new Forms were prescribed i.e. Form Nos. 3CEBA to 3CEBE. The final rules in relation to CbCR guidelines have been notified on October 31, 2017.

While in principle there are no major differences in the draft rules and final rules, however a careful reading and comparison reveals certain key changes which have an impact on the nature and extent of disclosures required to be made. The notification of CbCR is likely to significantly increase the compliance burden for MNC subsidiaries and Indian MNC Groups and shall require them to re-strategize their transfer pricing policy in light of heightened disclosure norms laid down under the CbCR / Master File regime.



*In detail***Master File****Threshold for Master File**

The MF will be applicable to every constituent entity (CE) of an international group (IG) [whether inbound- having a parent entity resident in a jurisdiction other than India, or outbound- having a parent entity resident in India], subject to the following two conditions:

- Consolidated group revenue of the IG **in the accounting year exceeds INR 5 billion**. 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; and
- The **aggregate value of international transactions** of the CE
 - ✓ during the accounting year (as per the books of accounts) **exceeds INR 500 million** 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**

Observation: For inbound groups, the prescribed consolidated group revenue threshold is quite low and could result in some groups being required to prepare a MF only for India.

Information and Documents Required

The documentation prescribed in respect of the MF is largely in line with the OECD's final BEPS Action 13 report, but with the following additional requirements:

- Description of the functions performed, assets employed, and risks assumed by CEs of the international group that contribute to at least 10 percent of revenues or assets or profits taken on an individual basis. By contrast, the OECD requires a description of principal contributions to value creation by individual entities of the group.
- List and address of all entities of the international group (rather than that of 'operating entities').

- List of all entities of the international group engaged in development and management of intangibles along with their addresses.
- Names and addresses of the top ten unrelated lenders.
- The Indian MF has, in several instances, warranted the need for 'detailed' information as against 'general description' required by the OECD.

Observations: With respect to the description of functions performed, assets employed, and risks assumed, the financial metric of 10 percent provides a definitive *de minimis* threshold, which the OECD Action 13 report does not. However, it could create a greater compliance burden for groups, since this documentation requirement differs from what is specified under Action 13, where the requirement is only to provide a brief functional analysis describing the principal contributions to value creation by individual entities in the group. In addition, revenue, assets, and profits may not have consistent definitions across jurisdictions, which may lead to inconsistent results when applying the 10-percent threshold.

With respect to intangibles, the focus seems to be not only on legal ownership of intangibles, but also on their economic ownership.

With respect to financing arrangements, clarity is needed on the term 'lenders.'

Overall, since the Indian rules prescribe MF requirements over and above the OECD template, the compliance burden will be higher, because globally prepared MFs will need to be customized for India.

Filing specifications

- The MF is to be filed electronically, and the procedures to do so will be specified.
- The prescribed form contains two parts: Part A and Part B. Part A requires generic information about the CEs in India, and Part B relates to the content of the MF.
- Where there are multiple CEs in India of the same group, the rules provide an option to designate a CE resident in India to undertake the MF compliance on behalf of the group. The designated CE must furnish the MF to the specified Indian Revenue Authority.

Observations: The option of having only the designated entity to undertake the MF-related compliances instead of all CEs of the group is a welcome move, as it will provide administrative relief with respect to filing of MF for groups that have multiple entities operating in India.

However, by referring to CEs 'resident in India,' the rule seems to inadvertently not cover non-resident CEs of an international group (that are required to undertake tax and transfer pricing compliances in India), who will have to file both Part A and Part B of the form for furnishing the MF on an individual basis, thereby increasing their compliance burdens.

Security of information filed in the MF

Specified income-tax authorities shall be responsible for developing and implementing appropriate security, archival and retrieval policies in relation to the information furnished in the MF.

Observation: Various stakeholders had raised concerns about the confidentiality and security of information filed as part of the MF. It is a significant positive that the rules have specifically spelled out that the responsibility for holding security of such information lies with the Indian income-tax authorities.



Indian MF compliance requirements at a glance

Who	What	When	To Whom
A CE (irrespective of: Whether the entity has entered into an international transaction threshold applicability, Whether the entity is resident or not)	Part A of Form No. 3CEAA	By due date of furnishing Return of Income (ROI), except for FY 2016-17, for which the deadline is on or before March 31, 2018 (Refer Note 1)	Director General of Income-Tax, Risk Assessment (DGIT, RA)
A CE passing the prescribed thresholds	Part B of Form No. 3CEAA	By due date of furnishing Return of Income (ROI), except for FY 2016-17, for which the deadline is on or before March 31, 2018	DGIT, RA
The designated entity, where there are multiple CEs resident in India	Form No. 3CEAA (Part A and B)	Form 3CEAA- by due date of furnishing Return of Income (ROI), except for FY 2016-17, for which the deadline is on or before March 31, 2018	DGIT, RA
	Form No. 3CEAB	Form No. 3CEAB - at least 30 days before the due date of filing Form No. 3CEAA, except for FY 2016-17, for which the deadline is on or before March 1, 2018	

Note 1: The MF filing due date has been aligned to the due date for filing the ROI. It also seems that the MF filing has been contemplated for a reporting accounting year that is the same as the Indian FY (i.e., April to March).

Country-by-Country (CbC) report

Threshold for CbC report

The CbC report provisions apply where the total consolidated group revenue of the international group is **INR 55 billion** or more in the CFS of the preceding accounting year. The rules also provide clarity on the foreign exchange conversion date and rate to be used to compute threshold of INR 55 billion of the international group.

Observation: Although many countries have followed the Euro 750 million threshold, India has established its threshold in local currency. This may not fully align with the Euro 750 million threshold, due to exchange rate movements or because of rounding.

Information requested

The details of the CbC report are consistent with the OECD's final BEPS Action 13 report. The CbC report and related forms are to be filed electronically, procedures for which will be specified.

Security of information filed in the CbC report

The specified income tax authorities shall be responsible for developing and implementing appropriate security, archival, and retrieval policies for the information furnished in the CbC report.



Indian CbC Report compliance requirements at a glance

Who	What	When	To Whom
CE resident in India, which is part of an international group and whose parent is a non-resident (<i>Refer Note 1 below</i>)	Form No. 3CEAC (Notification)	At least two months prior to the due date of furnishing ROI, except for FY 2016-17, for which the deadline is on or before January 31, 2018	Director General of Income-Tax, Risk Assessment (DGIT, RA)
Parent entity, or alternate reporting entity, that is: resident in India; and part of an international group, the consolidated group revenue of which exceeds the prescribed threshold	Form No. 3CEAD (CbC report)	By due date of furnishing Return of Income (ROI), except for FY 2016-17, for which the deadline is on or before March 31, 2018	DGIT, RA
CE resident in India, that is part of an international group and whose parent is non-resident [and if conditions of section 286(4) of the Indian Income-tax Act ('the Act') are satisfied]	Form No. 3CEAD (CbC report)	Filing date will be contingent to the provisions of section 286(4) of the Act	DGIT, RA
The designated entity, where there are multiple CEs resident in India that are part of the same international group and whose parent is non-resident [and if conditions of section 286(4) of the Act are satisfied] (<i>Refer Note 2 below</i>)	Form No. 3CEAE (Intimation)	Not specified, as the filing date will be contingent to the provisions of section 286(4) of the Act	DGIT, RA

Notes continued..

Note 1: The notification allows the inbound CE resident in India to disclose upfront for which period its group's CbC report will be prepared. This information should help Indian Revenue Authorities to track CbCR reporting requirements in the parent entity's jurisdiction with respect to inbound groups.

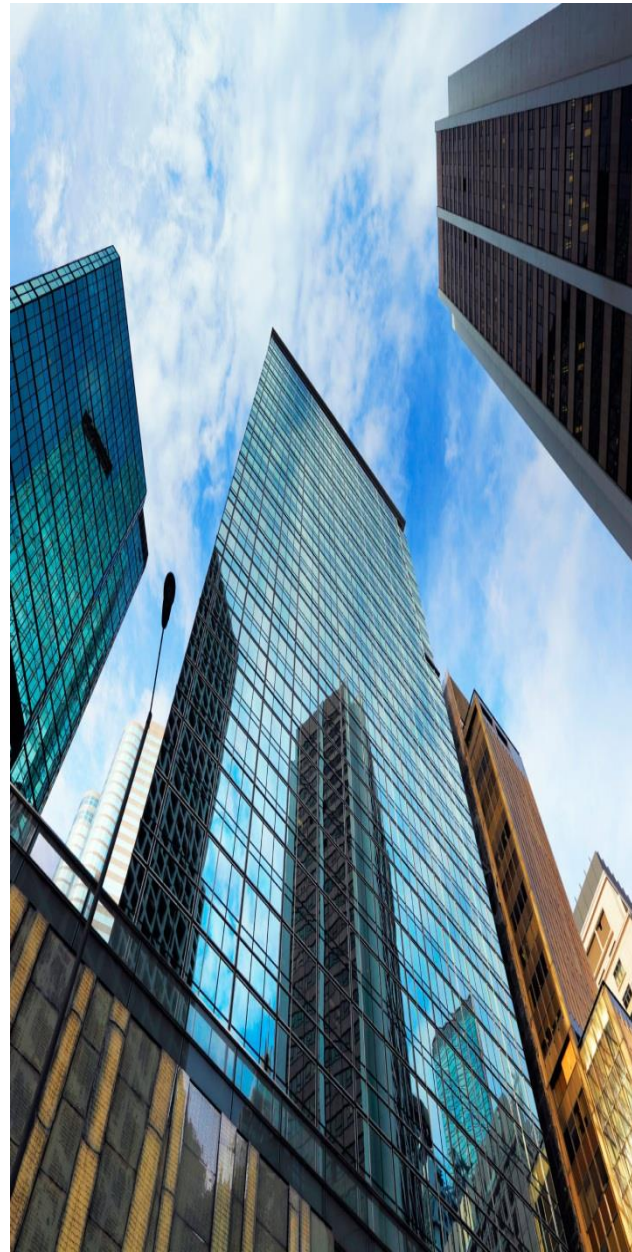
Note 2: The Indian Regulations provide for filing of the CbC report by an inbound CE resident in India in the following situations:

The parent entity of the international group is a resident of a country with which India does not have an agreement providing for exchange of CbC report; or

There is an exchange framework with that country but there has been a systemic failure in exchanging information.

In those situations, the CbC report shall be furnished by the inbound CE resident in India within the specified time. Where there are multiple CEs resident in India that are part of the same international group, the designated CE needs to file the CbC report and file an intimation to that effect in Form No. 3CEAE with the specified Indian revenue authority.

The due date of filing the CbC report by an inbound CE resident in India has not yet been explicitly notified.



The takeaway

Some aspects of the Indian rules appear to require more data than the OECD requirements. There is a need to strike a balance between the provision of more data on the one hand (which will carry a higher compliance burden), versus data that is sufficient for a risk assessment.

With the new rules, both inbound and outbound entities operating in India will need to maintain and disclose a significant amount of information. This will require entities to ensure they have the capability to execute, especially from the perspective of human resources and technology.

For the MF, considering the additional Indian requirements, groups could consider preparing an India supplement to the MF which captures the additional information prescribed under the Indian rules. This would allow the group's 'OECD compliant' MF to remain intact.



Some issues that need clarification

There still remain certain ambiguities in the final rules with respect to applicability and preparation and filing of Master File and CbCR. While suitable recommendations were made in this regard while providing comments on the draft rules, the following issues do not seem to have been addressed:

- Due date of filing Form 3CEAE has not been prescribed.
- There seems to be certain ambiguity on applicability of the Master File provisions to branch/permanent establishment of foreign companies in India. While the proviso to sec 92D(1) of the Act and sub-rule (1) of rule 10DA covers constituent entities of an IG, the sub-rule (4) of rule 10 DA specifically covers 'constituent entities resident in India'. The inconsistent use of the relevant term 'resident in India' brings ambiguity.
- Further, clarity is required w.r.t. the term 'accounting year' [to be read as defined in sec 286] when used in relation to the Master File second threshold (international transaction/ intangible related transactions exceeding INR 500 mn/ INR 100 mn). For CEs of foreign parent companies, the 'accounting year' as defined by sec 286 would mean the annual accounting year generally followed by such foreign parent in its country of residence. For an India constituent entity, following April to March fiscal year, the aggregation of international transactions on any other basis (calendar year or so) would be a significant challenge.

In view of stringent penalties associated to non-compliance of Master File and CbCR requirements, it would be prudent for CBDT to emphatically clarify above issues so as to avoid any ambiguity or unintended hardship for taxpayers.

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Neeraj Bhagat & Company is a team of distinguished **chartered accountant**, corporate financial advisors and **tax consultants in India**. Our firm of chartered accountants represents a coalition of specialized skills that is geared to offer sound financial solutions and advices. The organization is a congregation of professionally qualified and experienced persons who are committed to add value and optimize the benefits accruing to clients.

We are prominent Chartered Accountants in India. We offer services of accounts outsourcing, auditing, company formation in India, Business taxation, corporate compliance, starting business in India, registration of foreign companies, transfer pricing, tax due diligence, taxation of expatriates etc.

Neeraj Bhagat is a member of the Institute of Chartered Accountants of India (ICAI) since 1997. He is also an Associate member of Association of International Accountants, United Kingdom. He is founder of Neeraj Bhagat & Co, an Indian Chartered Accountancy firm serving various MNC'S from across the globe. Neeraj Bhagat & Co. has its offices at New Delhi, Gurgaon and Mumbai. They are part of Allinial Global Accounting Association which is one of the World's Top 10 in accounting associations.