



Final rules on Master File and Country by Country reporting released by Indian Government

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 furnishing of Master File.

The Central Board of Direct Taxes (CBDT), Ministry of Finance, Government of India, on 6 October 2017, released draft rules¹ and forms in relation to Master File and CbCR and sought recommendations and suggestions from the relevant stakeholders till 16 October 2017. After due consideration, on 31st October, 2017, the CBDT has released the Final Rules².

Rules 10DA and 10DB have been inserted in the Income-tax Rules, 1962 (the Rules). Forms 3CEAA, 3CEAB, 3CEAC, 3CEAD and 3CEAE have also been notified under the Rules.

- Rule 10DA lays down the thresholds for applicability, timelines, requirements and procedures in relation to Master File. The relevant information and intimation related to Master File is required to be filed in Forms 3CEAA and 3CEAB
- Rule 10DB lays down the requisite details and procedures for CbCR filing. The relevant information and intimations is required to be filed in Forms 3CEAC, 3CEAD and 3CEAE.

Detailed analysis of the final rules are provided in the ensuing paragraphs.

Master File (MF) – Rule 10DA

Applicability and timelines

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

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

² CBDT Notification No. S.O. 3497(E)

Table 1

Particulars	Dual thresholds (Sub rule 1)	Timeline for filing (Sub rule 2)
1. Consolidated group revenue of the 'International Group' for the accounting year exceeds	INR500 crore (USD77 million)	<u>FY 2016-17</u> To be filed on or before 31 March 2018.
and		
2. Aggregate value of international transaction	INR50 crore (USD7.7 million)	<u>For subsequent years</u> To be filed on or before the due-date for filing of Return of Income.
a. During the accounting year, as per books of accounts exceeds Or b. In respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds	Or INR10 crore (USD1.5 million)	

The rules specify that for the calculation of the value in Indian rupees (INR) of the consolidated group revenue available in foreign currency, the telegraphic transfer buying rate of such currency on the last day of the accounting year shall be used. 'Telegraphic transfer buying rate'³ shall have the same meaning as assigned in the Explanation to rule 26 of the Rules.

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

Requirements under the relevant forms is provided below:

- **Form 3CEAA:** The Rules require filing of Master File in Form 3CEAA. The form consists of two parts
 - Part A is required to be filed by every Constituent Entity (CE) of an international group whether or not it satisfies the aforesaid dual thresholds. This part requires disclosure of basic details such as name of the group, number of CEs in India, their names, addresses and Permanent Account Number (PAN) etc.
 - Part B of the form is required to be filed only by those CEs which satisfy both of the thresholds mentioned in the table above.
- **Form 3CEAB:** Where an international group has more than one CEs resident in India, the group may opt to designate a CE that shall be obliged to file Form 3CEAA (only Part A or both Part A and B, as may be applicable). In such case, the Form 3CEAA has to be filed only by the CE which has been designated by the international group, and intimation of the same is filed by the designated CE in Form 3CEAB with the Director General of Income-tax (Risk assessment).

Simply put, if there is only one CE in India, form 3CEAB is not required to be filed. In case of two or more CEs resident in India, the international group may opt for the Form 3CEAA to be filed only by one designated CE, the intimation of which needs to be filed in Form 3CEAB at least 30 days prior to the due date of filing the Form 3CEAA. Hence, for FY 2016-17 the due date would be 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 in Table 2:-

³ Explanation to Rule 26 - "telegraphic transfer buying rate", in relation to a foreign currency, means the rate or rates of exchange adopted by the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), for buying such currency, having regard to the guidelines specified from time to time by the Reserve Bank of India for buying such currency, where such currency is made available to that bank through a telegraphic transfer.

Table 2

Rule 10DA(1)	Action Plan 13⁴
Requires the description of Functional, Asset and Risk (FAR) analysis of all the CEs that contribute <u>at least 10 percent</u> of the <u>revenues or assets or profits of the group</u> .	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 detailed description of the financial arrangement of the group including the names and address of the <u>top ten unrelated lenders</u> .	A general description of how the group is financed, including important financing arrangements with unrelated lenders.
A list of all the entities of the international group engaged in development and management of intangible property along with their addresses	<i>There is no such disclosure requirement in the BEPS Action Item 13 Final Report</i>

Country by Country Report – Rule 10DB

Applicability and timelines

Rule 10DB (Sub Rules 1 to 8) which provides for filing of CbCR, has been inserted in the Rules. Applicability of CbCR has been laid down in Section 286 (inserted vide the 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:

- **Threshold:** Sub Rule 6 provides the consolidated group revenue threshold of INR5,500 crore (approx. USD846 million) for filing of CbCR or the CbCR notification, as the case may be. This is in line with the threshold prescribed by OECD and would consider the consolidated group revenue of the accounting year preceding the reporting accounting year. The deadline for filing of CbCR for FY 2016-17 has been extended to 31 March 2018 vide circular dated 25 October 2017⁵.

The rules specify that where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year shall be used as the rate of exchange for arriving at the value in INR.

Entities satisfying the above-mentioned threshold can fall into any of the following three categories. The requirements and applicable due dates for each of those is mentioned in Table 3 below.

⁴ OECD/G20 Base Erosion and Profit Shifting Transfer Pricing Documentation and Country-by-Country Reporting : Action 13: 2015 Final Report

⁵ Circular No. 26/2017

Table 3

	Category	Requirement	Applicable due date
1	Parent entity or alternate reporting entity, resident in India (<i>Section 286 (2)</i>)	File CbCR in Form 3CEAD (for every reporting accounting year). The information included in the Form is similar to those recommended in Action Plan 13	For FY 16-17 - 31 March 2018 For subsequent years - Due date of filing tax return
2	Constituent entity resident in India, of Parent entity not resident in India (<i>Section 286 (1)</i>)	File CbCR notification in Form 3CEAC to the Director General of Income-tax (Risk Assessment). Vide this Form the CE intimates <ul style="list-style-type: none"> • 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 entity is a resident 	At least two months prior to the date of furnishing of CbCR in Form 3CEAD. <i>Since the deadline for filing of CbCR for FY 2016-17 has been extended to 31 March 2018, the deadline for filing the Form 3CEAC is 31 January 2018.</i>
3	Constituent entity resident in India, of parent entity not resident in India – Specified cases (<i>Section 286 (4) i.e. no agreement for exchange of CbCR or systematic failure</i>)	File CbCR in Form 3CEAD (for every reporting accounting year). In case there are more than one CEs resident in India, the international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. The intimation of the same needs to be filed by the designated CE in Form 3CEAE with the Director General of Income-tax (Risk assessment)	<u>For filing of CbCR in Form 3CEAD</u> - same due dates as mentioned earlier in the table <u>For filing of intimation of designated CE in Form 3CEAE</u> - the due date of filing this form has not been prescribed.

Our comments

Considering the changes made in the final rules as compared to the draft, it appears that the government aimed to provide clarification on certain ambiguities in the draft rules, based on the recommendations provided by various stakeholders. However, the final rules seemed to have ignored recommendations to reconsider and increase the threshold for Master File and to make the Master File requirement consistent with the BEPS Action Item 13 recommendations.

The relatively low threshold adopted for submission of Master File in India is likely to put additional compliance burden on many MNCs that may not be required to prepare the same in their home jurisdictions. Further, the additional reporting requirement in Master File, as indicated earlier in the flash news, would add to the compliance burden.

Some noteworthy modifications made in the final rules vis-a-vis the draft rules are:

- The Master File requirements in the final rules require a list **of all entities** of the international group whereas the draft rules required a list **of all operating entities** of the international group.
- Rate of exchange has been specified in the final rules as the telegraphic transfer buying rate as on last day of accounting year for the purpose of computing consolidated group revenue for Master File threshold purpose. Further, for the CbCR threshold purpose, the telegraphic transfer buying rate as on last day of accounting year preceding the relevant accounting year is to be considered.
- All the Forms as specified under the Rules have to be signed by the person competent to verify the return of income under Section 140 of the Act.

Some issues that still 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.

- The due date of filing the form 3CEAE has not been prescribed. This seems to have been missed inadvertently, however the same can be aligned to two months prior to the date of furnishing of CbCR.
- On applicability of the Master File provisions to branch / permanent establishment of foreign companies in India there seems to be certain ambiguity. While the proviso to section 92D(1) of the Act and sub-rule (1) of rule 10DA covers constituent entities of an international group, the sub-rule (4) of rule 10DA specifically covers 'constituent entities resident in India'. The inconsistent use of the relevant term 'resident in India' seems to bring the ambiguity on applicability of the provision.
- Lastly, clarity is required with respect to the term 'accounting year' [to be read as defined in Section 286] when used in relation to the Master File second threshold (international transaction/intangible related transactions exceeding INR50 crore/INR10 crore). For CEs of foreign parent companies, the 'accounting year' is defined by Section 286 would mean the annual accounting period 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 any other different fiscal year followed by its parent entity) 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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