



## **Draft Notification containing guidelines for maintaining and furnishing of TP documentation in Master file and Country-by-Country Reporting**

### **Background**

The Organisation for Economic Cooperation and Development (OECD) under the aegis of Base Erosion and Profit Shifting (BEPS) Project, suggested several additional documentation requirements to be maintained by Multinational Enterprises (maintenance of Master File, Local File and Country-by-Country Reporting (CbCR)) through Action Point 13.

As part of the template for CbCR, details of income, earnings, taxes paid and certain measure of economic activity are to be captured. This was in keeping with the requirement for greater transparency of Multinational Enterprise operations.

Based on the recommendations of Action Point 13 of the BEPS Project, section 286 of the Income-tax Act, 1961 (Act) was inserted *vide* Finance Act, 2016. Section 286 provided for furnishing of a CbCR in respect of an international group by a constituent entity. Further, section 92D of the Act was amended *vide* Finance Act, 2016 to provide for maintaining of Master File by every constituent entity of an international group, which was to be furnished as per the rules prescribed.

### **Draft Notification laying down guidelines in respect of Country-by-country reporting and furnishing of master file**

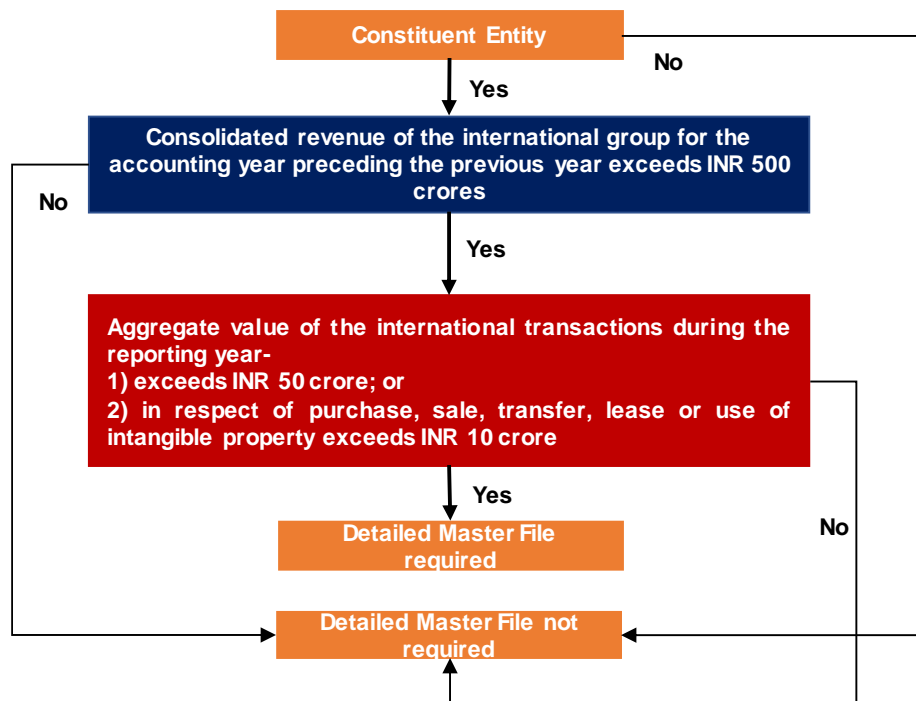
The Central Board of Direct Taxes (CBDT) has now released a draft notification for public comments setting out the guidelines for maintaining and furnishing of transfer pricing documentation in the Master File and CbCR. Comments on this notification can be submitted by 16 October 2017. The contents of the draft notification are briefly summarised below.

The contents of the Master File and CbCR as proposed by CBDT, are largely aligned with the requirements of the Action Point 13 of the BEPS Report and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2017 (OECD TP Guidelines).



## Proposed insertion of Rule 10DA in Income-tax Rules, 1962 (Rules) – Information and documents to be maintained/furnished as part of the Master File

- The draft Rule provides that every constituent entity of an international group, which satisfies prescribed conditions, would be required to comply with the requirements as laid down under the said Rule.



- The above conditions of meeting prescribed minimum limits (turnover and value of international) for maintenance of a detailed Master File is a departure from the OECD TP Guidelines and Action Point 13 of the BEPS project. On satisfying the above threshold, the constituent entity will be required to maintain the following information and documents of the international group as part of the detailed master file<sup>1</sup>-
  - Organisational structure** – including a listing of all the operating entities of the international group along with their addresses, the legal status of the constituent entity and ownership structure of the entire international group;
  - Description of the business of international group** – including a description of the supply chain for the five largest products or services of the international group, service arrangements among members of the international group, etc.;
  - Details of the international group's intangibles** – including an overall strategy of the international group for the development, ownership and exploitation of intangibles, important agreements among members of the international group related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements, etc.;

<sup>1</sup> The list provided is representative and the exhaustive list of details required has been provided in Form 3CEBA and Rule 10DA



- 4) **Intercompany financial activities** – including a description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders, etc.;
  - 5) **Financial and tax positions** – including description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries, etc.
- The detailed Master File (Part B of Form 3CEBA) is to be maintained and furnished by all constituent entities who satisfy the consolidated turnover and value of international transaction criteria. For constituent entities that do not satisfy the criteria as mentioned above, a limited Master File (Part A of Form 3CEBA) is required to be maintained.
  - The details to be maintained as part of the limited Master File are name, address and permanent account number of the taxpayer, name and address of the international group of which the taxpayer is a constituent entity and details regarding all other constituent entities in India.
  - Where there is more than one constituent entity of an international group, resident in India, then the international group is required to designate the constituent entity who is required to furnish the Master File.
  - Further, it is proposed that the information and documents specified above shall be kept and maintained for a period of 8 years from the end of relevant assessment year.
  - The aforesaid information shall be furnished in the following manner:

Prescribed Form	Brief highlights
Form 3CEBA	<ul style="list-style-type: none"><li>• Report of the specified information to be furnished to the Director General of Income-tax (Risk Assessment) (DGIT);</li><li>• Report to be submitted on or before the due date for furnishing the Return of Income under section 139(1) of the Act<sup>2</sup>;</li><li>• Part A- To be furnished by every constituent entity;</li><li>• Part B- To be furnished by person satisfying the threshold criteria based on the turnover and value of international transactions</li><li>• Procedure for electronic filing of the form shall be laid down by the specified authorities</li></ul>
Form 3CEBE	<ul style="list-style-type: none"><li>• Where there is more than one constituent entity of an international group, resident in India, then the international group is required to designate the constituent entity who is required to furnish the report</li><li>• International group or designated constituent entity is required to notify to the DGIT</li><li>• The above Form is to be filed at least 30 days before the due date for filing of the Master File</li></ul>

<sup>2</sup> For accounting year 2016-17, a relaxation has been provided for filing (on or before 31 March 2018)



- The **additional reporting requirements** required to be maintained as part of the Master File under the proposed Rule 10DA vis-à-vis Action Point 13 of the BEPS Project and the OECD TP Guidelines 2017, have been summarised below:
  - List of all entities of the international group engaged in development and management of intangibles along with their addresses;
  - Action Point 13 of the BEPS Project and the OECD TP Guidelines, 2017, require a “general” description of the transfer pricing policies of the international group related to research and development and intangibles, the draft Rule 10DA required a “detailed” description.
- The **relief** in respect of reporting requirements required to be maintained as part of the Master File under the proposed Rule 10DA vis-à-vis Action Point 13 of the BEPS Project and the OECD TP Guidelines 2017, have been summarised below:
  - Thresholds have been prescribed for documentation of the functions, assets and risks of constituent entities (only those constituent entities that contribute at least 10% of the revenue, assets and profits of the group are to be covered). No such relief has been prescribed under Action Point 13 of the BEPS Project or the OECD TP Guidelines 2017.
  - Only details of the top ten unrelated lenders are required to be furnished as part of the financing arrangements of the international group. No such relief has been prescribed under Action Point 13 of the BEPS Project or the OECD TP Guidelines 2017.

### Insertion of Rule 10DB – Furnishing of Report in respect of an international transaction

- The CbCR is to be maintained and filed by the constituent entity in India, subject to the consolidated revenue of the international group being INR 5,500 crore or more.
- The draft Rule 10DB provides guidance as regards details to be filed with the DGIT along with the Forms and timelines within which the filings should be made.

Prescribed Form	Brief highlights
Form 3CEBB	<p>Every constituent entity resident in India, <b><u>if its parent entity is not resident in India</u></b>, is required to notify the DGIT-</p> <ul style="list-style-type: none"> <li>• Whether it is the alternate reporting entity of the international group;</li> <li>• Details of parent entity/alternate reporting entity and the country or territory of which the said entity are residents;</li> <li>• File with the DGIT 60 days prior to the due date for filing of Return of Income under section 139(1) of the Act;</li> <li>• Procedure for electronic filing to be specified.</li> </ul>
Form 3CEBC	<p>Every <b><u>parent entity/alternate reporting entity, resident in India</u></b>, is required to furnish a report to DGIT for every accounting year.</p>



	<p>The constituent entity of an international group, resident in India, other than the parent entity/alternate reporting entity, is also required to furnish the report to DGIT, if the parent company is a resident of a country with which-</p> <ul style="list-style-type: none"><li>• India does not have an agreement providing for exchange of the report; or there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity;</li><li>• Time limit is as per section 139(1) for filing of Return of Income;</li><li>• Procedure for electronic filing to be specified.</li></ul>
Form 3CEBD	<ul style="list-style-type: none"><li>• If there is more than one constituent entity, resident in India, other than parent entity/alternate reporting entity, the international group is required to designate the constituent entity to furnish the report;</li><li>• The same shall be notified to the DGIT;</li><li>• Procedure for electronic filing to be specified.</li></ul>

- The reporting requirements for Form 3CEBC are largely consistent with the CbCR requirements as notified in the OECD TP Guidelines 2017 and Action Point 13 of the BEPS Report. However, there is a relaxation in Part B of Form 3CEBC vis-à-vis the CbCR Template as notified by the OECD as details regarding Administrative, Management or Support Services are not required to be provided. Detailed explanations have been provided as regards the information to be submitted as part of the CbCR template in Form 3CEBC.



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