

COUNTRY BY COUNTRY REPORTING AND MASTER FILE REPORTING RULES

Background:

In keeping with India's commitment to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, **section 286 of the Income-tax Act, 1961 ('the Act') was inserted vide Finance Act, 2016**, providing for furnishing of a Country-by-Country report in respect of an international group by its constituent or parent entity. **Section 92D of the Act was also amended vide Finance Act, 2016 to provide for keeping and maintaining of Master File by every constituent entity of an international group**, which was to be furnished as per rules prescribed in this regard.

Consequent to the aforesaid amendments to the Act, the Indian Government has inserted rules 10DA, 10DB and form nos. 3CEBA to 3CEBE in the Income-tax Rules, 1962 ('the Rules'), laying down the guidelines for maintaining and furnishing of transfer pricing documentation in the Master File and Country-by-Country report.

The attached notification F. No. 370142/25/2017-TPL issued by the Ministry of Finance, Government of India explains in detail about the various new rules.

Salient Features:

The salient features of the Country-By-Country Report and Master File rules are as under:

- The threshold for the Country-By-Country Report is total consolidated group revenue of Rs. 5 billion (EUR 725 million) or more.
- The threshold for the Master File is consolidated group revenue exceeding Rs. 500 crore (EUR 65 million) and either the aggregate value of international transactions as per the books of accounts exceeding Rs. 50 crore (EUR 6.5 million) or aggregate value of international transactions in respect of intangible property exceeding Rs. 10 crore (EUR 1.25 million)
- Report of Master File has to be submitted in Form 3CEAA and the Country-by-Country Report in Form 3CEAD. Please see attached notification for further details.

- An international group having multiple Indian constituent entities may designate one constituent entity to file the Master File.
- Part A of Form 3CEAA is to be filled by every constituent entity of an international group regardless of whether it qualifies under the threshold for furnishing Master File. However, to reduce the compliance burden, such international group having multiple Indian constituent entities can designate one constituent entity to file Part A on its behalf.
- Form 3CEAD for furnishing Country-by-Country Report follows OECD template.

The summarised provisions as per the final rules are:

Applicability of Master File:

Particulars	Threshold	Data to be considered for FY 2016-17
Consolidated revenue of International Group	INR 5 billion or EUR 725 million	Accounting year i.e. FY 2016-17
AND		
Aggregate value of international transactions	INR 500 million or EUR 6.5 million	Accounting year i.e. FY 2016-17
OR		
Aggregate value of international transactions relating to purchase, sale, transfer lease or use of intangible property	INR 100 million or EUR 1.25 million	Accounting year i.e. FY 2016-17

Applicability of the CbCR:

Particulars	Threshold	Data to be considered for FY 2016-17
Consolidated revenue of International Group	INR 55 billion or EUR 725 million	Preceding accounting year i.e. FY 2015-16

Key forms and timelines:
For Master File:

Particulars	Form as per the Final Rules	Timelines as per the Final Rules
Single constituent entity of the group in India	Form No. 3CEAA (Part A & B)	For FY 2016-17 – To be filed on or before 31 March 2018 For subsequent years (like FY 2017-18 or son on), to be filed on or before the due date for filing of Return of Income (30 November)
Multiple constituent group entities in India	Form No. 3CEAB	30 days prior to the date of filing of Master File (for FY 2016-17, the timeline is on or before 1 March 2018)

For CbCR:

Particulars	Form as per the Final Rules	Timelines as per the Final Rules
Intimation of details of parent entity/alternate reporting entity which will file the CbCR	Form No. 3CEAC	2 months prior to furnishing the CbCR (instead of 60 days as mentioned in the draft rules) For FY 2016-17, the due date is 31 January 2018 (refer to the point below)
Filing CbCR - Every parent entity or the alternate reporting entity resident in India	Form No. 3CEAD	The due date for furnishing the CbCR is on or before the due date for filing of Return of Income for the relevant accounting year. However, as per Notification No. 26/2017 dated 25 October 2017, the due date for furnishing of the CbCR for FY 2016-17 has been extended to 31 March 2018 by the CBDT.
Intimation of multiple constituent group entities in India	Form No. 3CEAE	No timeline mentioned in the rules. This needs to be clarified by the Indian authorities.

Penalties for non compliance

From a comprehensive understanding perspective, the penalties prescribed in the Indian Income Tax Act, 1961 with respect to the failure to furnish the enhanced transfer pricing documentation are as follows:

- Failure to furnish information and documentation under the proposed three-tier documentation structure by the due date will attract a penalty of INR 500,000; and
- Failure to furnish the CbCR involves the following graded penalties:

Particulars	Delay up to one month	Delay beyond one month	Delay in payment of penalty even after penalty order
Failure to furnish the CbCR by the due date	INR 5000 per day	INR 15000 per day	INR 50000 per day
Inaccurate information filed under the CbCR	INR 500,000		

Next Steps:

Keeping in mind the stringent penalties and reporting deadlines, it is advised to all Octagona clients to follow them in a timely manner. Alternatively, the clients are requested to give a mandate to Octagona India to complete these reporting compliances in a comprehensive and time bound manner. Our fee for filing FORM 3CEAC is INR 5000 + GST. The deadline for this form is 31st January 2018. For filing of remaining forms, we shall revert with our fee by 12th February 2018.