

Master File and Country by Country Report

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Introduction to Master File and Country by Country Report:

The lack of quality data on corporate taxation has been a major limitation to measuring the fiscal and economic effects of tax avoidance, making it difficult for authorities to carry out transfer pricing assessments on transactions between related companies and even more difficult to carry out audits.

To tackle the above issue and to provide tax authorities with sufficient information about economic activities of multinational group, OECD¹ has prepared Action Plan 13 under the BEPS² Package. Action Plan 13 requires every multinational group to file a detailed report namely 'Country by Country Report' ('CbCr') on its economic activities to tax authorities.

Under this Action Plan, parent entity of a group has to file CbCr to the tax authorities of the country in which such parent entity is resident. CbCr which is filed with the particular country shall be shared with other tax jurisdictions by country with which CbCr is filed. CbCr in substance contains global allocation of income, profit, taxes paid and economic activity among various tax jurisdictions in which it operates.

In addition to the filing of CbCr, Action Plan 13 requires multinational group to file Master File. Master File ('MF') is required to be filed every constituent entity of international group to tax authorities of a country in which such entity is resident. MF in substance contain data relating each entity's economic activity in multinational group.

India being an active participant in OECD BEPS initiative, to implement CbCr recommendations, has introduced Section 286 in ITA³ through Finance Act, 2016 with effective from the Assessment Year 2017-18. Further, Section 92D of ITA has been amended to implement MF requirements under Action Plan 13.

Further, vide Income-tax (Twenty-fourth Amendment) Rules, 2017, two new rules i.e., Rule 10DA and Rule 10DB have been introduced IT Rules⁴ for implementing the CbCr and MF. With the above background, lets proceed to discuss about CbCr and MF in detail.

Important Expressions:

Expression	Meaning
International Group	The expression 'international group' means any group that includes two or more enterprises which are resident of different jurisdictions or one enterprise which carries on any business in other jurisdiction through permanent establishment.
Group	Group includes parent company and all other entities in respect of which parent company is required, under any law for time being in force or accounting standards of the country in which parent company is resident, to prepare consolidated financial statements, or such

¹ Organisation for Economic Co-operation and Development

² Base Erosion and Profit Shifting

³ Income Tax Act, 1961

⁴ Income Tax Rules, 1962

	parent company would have prepared consolidated financial statements had its shares were listed in recognized stock exchange in the country in which such parent is resident.
Parent Entity	<p>Parent entity means any entity ('first mentioned entity') which is holding any interest in other entities and:</p> <ul style="list-style-type: none"> • is required to prepare consolidated financial statements or • it would have prepared the consolidated financial statement had the shares were listed on recognized stock exchange and there is no other entity ('second mentioned entity') which is holding any interest in the first mentioned entity and thereby such entity ('second mentioned entity') is required to prepare consolidated financial statement.
Constituent Entity	<p>Constituent entity means any separate entity that is included in the consolidated financial statement and also includes any entity which is excluded from consolidated financial statement solely on the basis of size and materiality.</p> <p>Permanent Establishment of an entity is also considered as constituent entity of the international group. Which means that single entity operating in other jurisdictions through PE is also considered as international group and obliged to comply with requirements of Master File and CbCR under Rule 10DA and Rule 10DB of the IT Rules respectively.</p>
Consolidated Financial Statements	Consolidated Financial Statements ('CFS') means financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity.
Reporting Accounting Year	Reporting Accounting Year ('RAY') means that accounting year in respect of which CbCr is required to be submitted.
Accounting Year	If the parent entity is resident in India, then previous year i.e., April-March is considered as accounting year. However, if the parent company is not a resident in India, annual accounting year period with respect to which parent entity prepares financial statement is considered as accounting year.

Master File:

Section 92D of ITA requires every constituent entity of an international group to keep and maintain information and documentation in respect of international group. In this regard, Rule 10DA lists out the information or documentation which is required to be kept and maintained and lays down the procedure for filing such information with the tax authorities.

Form:

Form 3CEAA has been prescribed under Rule 10DA for filing of information and documentation with the tax authorities.

Monetary Threshold:

As the master file contains detailed information and documentation of every entity in international group, it may not be feasible to maintain such information and documentation by every constituent entity. Hence, a monetary threshold has been prescribed under Rule 10DA for applicability of Master File. Every constituent entity of international group shall file MF in Form 3CEAA if,

- the consolidated group revenue of an international group **for the accounting year** as per the consolidated financial statement exceeds INR 500 Crore

and

- the aggregate value of international transactions **for the accounting year** as per the books account exceeds INR 50 Crore (or) the aggregate value of international transactions **for the accounting year** in respect of purchase, sale, transfer, lease or use of intangible assets as per the books of account exceeds INR 10 Crore.

If the above two mentioned conditions i.e., first mentioned condition and either of the limits in second condition, are satisfied simultaneously then, constituent entity of an international group shall file MF in Form 3CEAA. However, if parent entity is not resident in India, then accounting year is defined to mean the accounting year as followed by such parent entity. If parent company follows accounting year from January – December, such period needs to be considered as accounting year under Rule 10DA. In such a scenario, there exists an ambiguity regarding computation of aggregate value of international transactions during the accounting year as constituent entity in India follows financial year as April – March. More clarity is to be provided by CBDT in this connection.

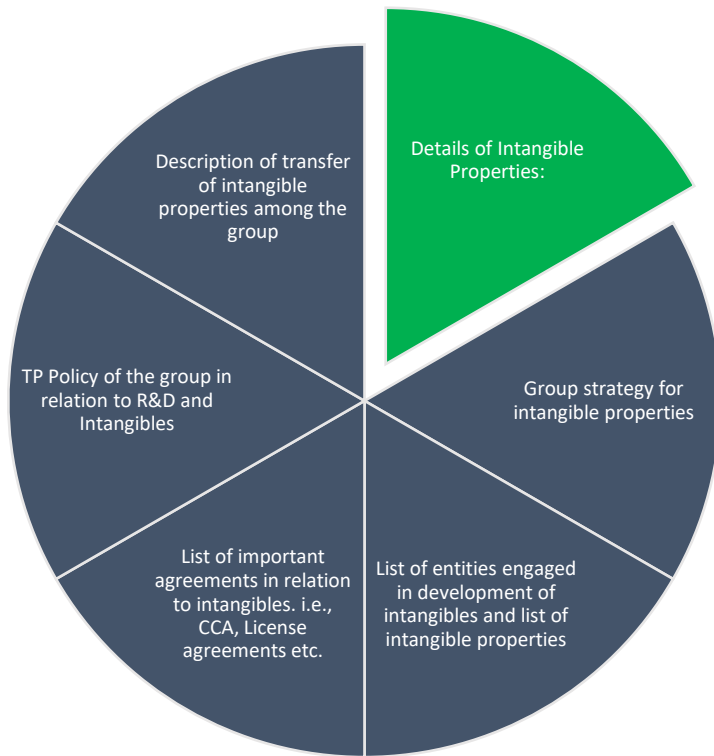
Further, Form 3CEAA contains two parts i.e., Part -A and Part-B. Part -A contains basic information about the entity filing the Form 3CEAA and details of the international group. Part -B is the actual Master File Form which contains the details as mentioned in Rule 10DA (1). Rule 10DA provides that the Part -A of Form 3CEAA is mandatory irrespective of monetary threshold are satisfied or not, which means that every constituent entity of international group shall file Part -A of Form 3CEAA and Form Part -B of Form 3CEAA is applicable only when the monetary threshold as specified above are crossed.

Broad Details:

A broad description of the information and documents which are required to be maintained under Rule 10DA is given below:

- List of all Constituent Entities in the Group along with Ownership Structure
- Business Description of the Group
- Details of Intangible Properties
- Details of Finance Arrangements
- Business description, Details of intangible properties and Finance arrangements of the group includes:





Description of finance arrangements of the group along with top 10 lenders.

List of entities that provides central financing functions.

TP Policy of the group in relation to financing arrangements among the group.

Due date:

Rule 10DA (2) states that Form 3CEAA shall be filed on or before the due date for filing return of income for the relevant period.

Multiple Constituent Entities - Residing in India:

As the MF contains details of each constituent entity, it is sufficient that if such Form 3CEAA is filed by any of the constituent entity located in India. In this regards, international group has to designate any entity located in India as designated entity for filing MF in Form 3CEAA. Such designated entity shall intimate tax authorities that the entity has been designated for filing MF. Such intimation shall be filed in Form 3CEAB 30 days before due date for filing of Form 3CEAA.

Maintaining of Information and Documents:

Information and documents as specified in Rule 10DA shall be kept and maintained for a period of 8 years from the end of the relevant assessment year.

Penalties:

Section 271AA prescribes a penalty of Rs 5,00,000 for failure to furnish the MF.

Country by Country Report:

Section 286 of the Act requires the parent entity or alternate reporting entity which is resident in India to submit the following information in CbCr:

- Aggregate information in respect of amount of revenue, profit before tax, amount of income tax paid, stated capital, accumulated earnings, number of employees and tangible assets with regard to each jurisdiction in which group operates.
- Details of each constituent entity of the group and country in which such entity is incorporated including country of residence of such entity.
- Nature and details of business description of each constituent entity.

Form:

Form 3CEAD has been prescribed under Rule 10DB for the purpose of submitting CbCr.

Monetary Threshold:

Constituent entity being a parent of the group, if such parent company is resident in India, shall submit CbCr in Form 3CEAD if the consolidated group revenue as per the consolidated financial statement for the accounting year preceding to reporting accounting year exceeds Rs.5,500

Crores. Which means that, unlike MF, for the purpose of computing the monetary limits for submitting the CbCr, one needs to check the consolidated revenue for the preceding year.

Responsibility for Submission:

Unlike MF (where MF is required to be submitted by the group to each tax jurisdiction), CbCr is required to be submitted by ultimate parent entity of the group and such CbCr shall be shared with other jurisdictions by such tax jurisdiction with which CbCr is filed.

However, ultimate parent of the group may designate any other constituent of the group to submit the CbCr to the tax authorities of the country in which such alternate reporting entity is resident. In such a case, alternate reporting entity steps into the shoes of parent company and submits the CbCr. OECD has named this alternate reporting entity as surrogate parent entity.

Due Date for Filing – Form 3CEAD:

Section 286 read with Rule 10DB requires the parent company or alternate reporting entity to file CbCr in Form 3CEAD within a period of 12 months from the end of relevant reporting accounting year.

In other words, that if the parent company is resident in India, then Form 3CEAD shall be submitted on or before March 31 of succeeding year. For example, in respect of accounting year 2019-20, CbCr shall be filed on or before March 31, 2021.

However, if the parent company is not resident in India, CbCr shall be submitted on or before 12 months from the end of relevant accounting year of parent company. If the parent entity follows accounting year as January – December, then CbCr shall be submitted within 12 months from relevant accounting year.

Intimation regarding Parent Entity:

If the parent company is not resident in India, then every constituent entity residing in India shall intimate to the tax authorities whether such entity is the alternate reporting entity or details of parent/alternate reporting entity by filing Form 3CEAC.

If there are more than one constituent entities are in India, every constituent entity shall intimate to the tax authorities about parent entity or alternate reporting entity by filing Form 3CEAC.

Due Date - Form 3CEAC:

Every constituent entity shall file Form 3CEAC two months prior to the due date for filing Form 3CEAD.

Filing of CbCr by other Constituent Entities:

As mentioned above, CbCr is to be submitted to one tax jurisdiction and such report is to be shared with other jurisdictions. As sharing of CbCr requires enforcing regulations, OECD has recommended to implement auto exchange of CbCr by multiple jurisdictions.

Such CbCr is automatically exchanged between the jurisdictions by virtue of signatories to the multilateral competent authority agreement or bilateral agreements between the jurisdictions. However, in the following situations, CbCr may not be shared with other tax jurisdictions:

- Where the parent entity is not obligated to file CbCr by virtue of local laws
- India does not have agreement for exchange of CbCr
- There is a systemic failure of the country for exchanging of CbCr

In the above-mentioned circumstances, constituent entity residing in India shall file Form 3CEAD. However, where there is more than one constituent entity residing in India, such CbCr shall be filed by any constituent entity which is designated for submitting CbCr. Information with regard to filing of CbCr by designated entity shall be conveyed to tax authorities by filing Form 3CEAE. However, no time limit has been prescribed under section 286 or Rule 10DB for filing Form 3CEAE.

Exception to other Constituent Entities from submission CbCr:

If alternate reporting entity ('ARE') has filed CbCr to the country in which such alternate reporting entity is resident and

- such report is required to be submitted by virtue of local laws of such country
- such report is filed within time limit prescribed in country in which such ARE is resident
- there is a valid agreement in force for exchange of CbCr with India
- there is no systemic failure for exchange of information
- Informed tax authorities of country in which such ARE is resident that it is designated ARE
- Constituent Entities has intimated tax authorities in India regarding filing of CbCr by ARE

then, constituent entity residing in India is not obligated to submit CbCr in Form 3CEAD.

Due Date – Form 3CEAD – Constituent Entity:

Except where there is a systemic failure in exchanging of CbCr, other constituent entity shall submit CbC Report in Form 3CEAD within 12 months from end of reporting accounting year.

In case where there is systemic failure in exchange of CbCr and such failure is intimated by tax authorities to the constituent entity, CbCr shall be submitted within 6 months from the end of month in which such failure is intimated to constituent entity.

Penalties:

Description of the Failure	Amount of Penalty
Failure to Furnish Form 3CEAD	<ul style="list-style-type: none"> • If period of delay does not exceed on month – INR 5,000 per day. • If period of delay exceeds one month – INR 15,000 per day.
Failure to provide information as requested by the tax authorities	INR 5,000 per day during which such failure continues.
Failure to File Form 3CEAD or failure to furnish explanation as mentioned in (1) and (2) above after issuing the order for penalty for the said failures.	INR 50,000 per day during the which such failure continues from the date of service of order.
Furnishing inaccurate information in Form 3CEAD or in explanation to tax authorities.	INR 5,00,000.

Master File (Rule 10DA):

Form	Conditions	Obligation on Indian Entity	Due Date	Broad Details included in Forms
3CEAB (Intimation)	When there is more than one entity resident in India, one entity shall file Form 3CEAB intimating that such entity is designated for filing Form 3CEAA.	Designated Entity in India shall file the Form 3CEAB.	30 days prior to due date for filing Form 3CEAA.	<ul style="list-style-type: none"> • Details of the entity filing the Form 3CEAB. • Name of International group. • Name and address of the ultimate parent entity. • Accounting Year for which the Form is being filed.
3CEAA Part -A (MF)	No specific monetary threshold. To be filed in all instances. To be filed by constituent entity in India.	Designated Entity in India shall file the Form 3CEAA Part -A.	On or before due date for filing ITR.	<ul style="list-style-type: none"> • Details of the entity filing the Form. • Name and address of the international group. • Accounting year for which the Form is being filed. • Details of other constituent entities located in India.
3CEAA Part-B (MF)	Consolidated group revenue for the accounting year > INR 500Cr. and <ul style="list-style-type: none"> • Value of international transactions exceeds INR 50 Cr or • Value of international transactions in respect of intangible property exceeds INR 10 Cr. 	Designated Entity in India shall file the Form 3CEAA Part -B.	On or before due date for filing ITR.	<ul style="list-style-type: none"> • List of all entities in the group along with ownership structure. • Detailed business description of the group viz. details of supply chain, FAR analysis, geographical markets etc. • Detailed information about intangible assets of the group. • Detailed information about finance arrangements of the group.

Country by Country Report (Rule 10DB):

If CbC Report regulations are applicable in India, only then entities residing in India are required to comply with following requirements.

Form	Conditions	Obligation on Indian Entity	Due Date	Broad Details in the Form
3CEAC (Intimation)	If ultimate parent company is not resident in India.	Every constituent entity residing in India.	Two months prior to due date for filing CbC Report.	<ul style="list-style-type: none"> • Details of the entity filing the Form 3CEAC. • Name and address of the ultimate parent company. • Accounting year for which the Form is being filed.
3CEAD	If ultimate parent company is in India or ultimate parent company has not filed CbCr.	Constituent entity in India shall file only if conditions are satisfied.	Within 12 months from the end of relevant accounting year. i.e., due date for the accounting year 2019 is December 31,2020.	<ul style="list-style-type: none"> • Details of revenue, assets, employees, capital, profit before tax and income tax paid with regard to each jurisdiction in which group operates. • Details of constituent entities in the group with business description.

S Limited, an enterprise located in India and engaged in business which is a constituent entity of international group. Let us proceed to understand under what circumstances, S Limited is obliged to file CbCr in India:

