



BEPS ACTION PLAN 13 MASTER FILE AND COUNTRY BY COUNTRY REPORTING

**Recommendations on rules and FAQs before
the Central Board of Direct Taxes
Ministry of Revenue
Government of India**

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The Finance Act, 2016 has introduced the concepts of Master File and Country by Country (CbC) reporting in the Indian transfer pricing (TP) regulations with effect from the fiscal year beginning 1st April, 2016, in line with OECD/ G-20 BEPS Action Plan 13. Detailed rules with respect to the manner of preparation of Master File and CbC reporting, are expected to be prescribed by the Central Board of Direct Taxes (CBDT) in due course. Given the intentions of the Parliament, as manifested in the relevant object's clause of the Finance Bill, 2016, it is apparent that India intends to introduce the concepts of Master File and CbC reporting exactly on similar lines as BEPS Action Plan 13.

There are a number of issues with respect to Master File and CbC reporting, for which we seek clarity from the CBDT, while framing the detailed rules or providing answers to frequently asked questions. Some of the said issues, along with our suggestions for the same, are captured below:

Issue No 1 Determination of "reporting entity" for CbC reporting purposes, in case of an Indian outbound MNE group, having multiple holding companies in India

Hypothetical Facts

- A Co is the ultimate parent of an Indian MNE group, being registered in India. A Co is merely a holding company, not having any business operations.
- B Co is a listed entity of the group, being also registered in India. A Co holds 30% equity in B Co; and the balance equity are held by public, financial institutions, etc.
- B Co has very large operations, both in India; and also abroad. The foreign operations are carried out by 20 associated enterprises (AEs), i.e. where equity stake of B Co is more than 26%. Out of those 20 AEs, 15 are subsidiaries, namely where B Co holds more than 50% equity, whereas the balance 5 are associate entities of the Group, where B Co holds less than 50% of the equity.
- There are identically similar step down conglomerates in the form of C Co and D Co, being listed entities of the Indian MNE group in India, having similar step down AEs across the globe. The only difference between B Co and the other companies, is that A Co holds 60% equity in each of the said companies, namely C Co and D Co (balance equity being held by public, financial institutions, etc.), as against only 30% in B Co.

Several factual matrices are conceived of as follows :

- a) The consolidated revenues of B Co alone; and its step down 15 overseas subsidiaries, cross the monetary threshold limit of CbC reporting, namely the Indian Rupee equivalent of Euro 750 million.
- b) The consolidated revenues of B Co alone; and its step down 15 overseas subsidiaries, fall below the monetary threshold limit of Euro 750 million (say Euro 700 million), but that along with the aggregate revenues of the balance 5 associates (say Euro 100 million), exceed the threshold limit of Euro 750 million.
- c) Similar situations, as conceived for the entire step-down overseas structure of B Co above, are also applicable to the entire step-down overseas structures of C Co and D Co.

Questions

- A. For the respective entire step down overseas structures under B Co, C Co and D Co, who would be the "reporting entity" in India for the purposes of CbC report, namely whether it would be A Co, being the ultimate parent entity; or B Co and/ or C Co and/ or D Co ?
- B. In case for any one or more of the entire step down structures of B Co, C Co and D Co, if A Co is held to be the "reporting entity" for CbC report, can A Co appoint B Co and/ or C Co and/ or D Co, as the "alternate reporting entity" for the purposes of CbC reporting ?

Our views and suggestions

1. Section 286(2) of the Income-tax Act, 1961 (Act) requires that every “parent entity” or “alternate reporting entity”, being resident in India, would need to file CbC report in respect of an “international group” with the Indian Tax Authority. Section 286(9)(h) of the Act explains the term, “parent entity”, to mean a “constituent entity” of an “international group”, holding directly or indirectly an interest in one or more other “constituent entities” of the “international group”, such that inter alia it is required to prepare a “consolidated financial statement” under any law for the time being in force; or accounting standards of India; or based on listing requirements; and there is no other “constituent entity” above such “parent entity”, which is required to prepare a “consolidated financial statement” under any of the circumstances referred to above, engulfing the financial statement of the “parent entity”.
2. For the purposes of the relevant FAQ, it is assumed that “interest” in a “constituent entity” is created only through stake in equity; and not through control of affairs, as the “parent entities” and the “constituent entities” are hypothesized to be independent for the purposes of control.
3. Section 286(9)(f) of the Act defines the term, “consolidated financial statement” to mean the 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.
4. The manner in which the term, “consolidated financial statement” has been defined in section 286(9)(f) of the Act, as above, it is plausible to infer that it refers to line by line consolidation, which applies where the entity whose accounts are to be consolidated, is a subsidiary company (equity stake in excess of 50%) of the parent company; and not mere reporting of the share relating to the equity holding, which applies in case of associate companies.
5. Thus, coming to the current situation, A Co would be the “parent entity” for the aggregate or entire step down structures relating to C Co and D Co (as A Co holds > 50% equity each in C Co and D Co), whereas, B Co shall be the “parent company” for the entire step down structure relating to B Co (as A Co holds < 50% equity shares in B Co).
6. The above view finds support from section 286(7) of the Act, providing the monetary threshold of filing CbC report with reference to the consolidated group revenue as reflected in the “consolidated financial statement”, namely the rupee equivalent of Euro 750 million, as mentioned in the relevant object’s clause of the Finance Bill, 2016, which is likely to be prescribed by the CBDT in due course. Therefore unless it is a line by line consolidation, implying the immediate lower tier to be a subsidiary company (equity stake > 50%), the “parent entity” would not have consolidated revenue in any “consolidated financial statement”. Thus, the view taken in paragraph (5) appears to be vindicated.
7. Having said that, let us now consider the various factual matrices, as hypothesized earlier, under the accepted scenario, namely where B Co is the undisputed “parent entity” of its entire step down structure :
 - a. “Constituent entity” has been defined in section 286(9)(d) of the Act to mean any separate entity of an “international group”, that is included in the “consolidated financial statement” for financial reporting purposes.
 - b. “Group” has been defined in section 286(9)(e) of the Act to mean a combination of the “parent entity” and all the entities in respect of which, a “consolidated financial statement” is required to be prepared.
 - c. The term, “international group” has been defined in section 286(9)(g) of the Act to mean, in the context of an Indian “parent entity”, a group where inter alia the Indian “parent entity” has at least one “constituent entity”, which is resident outside India.
 - d. Under the factual matrix that B Co has 20 foreign AEs, out of which 15 are subsidiaries, namely where B Co holds more than 50% equity; and the balance 5 are associate entities, namely where B Co holds less than 50% of the equity, going by the line by line manner of consolidation for financial reporting purposes, only the revenues of the 15 foreign subsidiaries of B Co would be reflected as consolidated revenue in the “consolidated financial statement” prepared by B Co, while those of the remaining 5 associates would not.

- e. In case the consolidated revenues of B Co alone; and the said 15 subsidiaries, cross the CbC monetary threshold of Euro 750 million, then B Co would per se fall within the net of CbC reporting in India, though a plausible view may be taken that the affairs relating to the balance 5 associates would not need to be reported as part of CbC reporting, being not strictly falling within the definition of "constituent entities", though they are AEs for the purposes of the TP provisions of India.
 - f. Thus, while the affairs of the said 5 AEs may find references in the Master File prepared for B Co's Group (in case they are material); and also in the local Indian TP file of B Co (in case B Co has transactions with the said 5 associates), the same would not find a place in the CbC report prepared by B Co.
 - g. In case the consolidated revenues of B Co alone; and the said 15 subsidiaries, fall below the monetary threshold limit of Euro 750 million (say Euro 700 million), but that along with the aggregate revenues of the balance 5 associates (say Euro 100 million), exceed the monetary threshold limit of Euro 750 million, then a plausible view can be taken that B Co goes outside the ambit of CbC reporting, since the consolidated revenue as reflected in the "consolidated financial statement" of its step down structure or "international group" would be less than Euro 750 million.
8. The same principles would apply in the contexts of C Co and D Co as well, however, with the exception that A Co would be the "parent entity"; and accordingly, the "reporting entity", with respect to the entire or aggregate step down structures relating to C Co and D Co. Thus, the monetary threshold for the purposes of preparation of CbC report by A Co, would need to be considered having regard to the entire or aggregate step down structures relating to both C Co and D Co.
 9. Now, coming to the additional point, namely whether A Co can appoint C Co or D Co, as the "alternate reporting entity" for the "international group", comprising of A Co, C Co, D Co and the aggregate of the entire step down structures relating to C Co and D Co, as A Co is merely a holding company, not carrying out any business activity; and thus may not have necessary senior personnel to oversee the preparation and filing of CbC report ?
 10. The term, "alternate reporting entity" has been defined in section 286(9)(c) of the Act to mean any "constituent entity" of the "international group" that has been designated by such group, in place of the "parent entity", to furnish CbC report in the country in which such "alternate reporting entity" is a tax resident (in this case, India), on behalf of the group.
 11. Referring to the plain and unconditional language of section 286(9)(c) of the Act, it appears that A Co can appoint either C Co or D Co as the "alternate reporting entity" for the purposes of CbC reporting with respect to the "international group" comprising of A Co, C Co, D Co and the aggregate of the entire step down structures relating to C Co and D Co.
 12. However, it appears that A Co cannot separately appoint both C Co and D Co as "alternate reporting entities" to prepare CbC reports for their respective step down structures, since apart from the fact that such action might run counter to the provisions of section 286 of the Act, in case the consolidated revenues of either of the step down structures of C Co or D Co fall below the monetary threshold limit of Euro 750 million, there would be possibility of the said step down structure, namely relating to either C Co or D Co, going outside the net of CbC reporting, though the consolidated revenues as per the "consolidated financial statement" prepared at A Co's level, for the "international group", comprising of A Co, C Co, D Co and the aggregate of the entire step down structures relating to C Co and D Co, would far exceed Euro 750 million.
 13. Thus, in case A Co wishes to appoint either C Co or D Co to be the "alternate reporting entity", such delegated entity must prepare the CbC report for the entire "international group", comprising of A Co, C Co, D Co and the aggregate of the entire step down structures relating to C Co and D Co.
 14. If the said "alternate reporting entity", appointed by A Co, namely either C Co or D Co, is inconvenienced to prepare the CbC report for the said "international group", as referred to above, on the ground that it may not have necessary information with respect to the business and operational structure of the other, then A Co would need to take on the responsibility of being the "reporting entity" for the said "international group", comprising of A Co, C Co, D Co and the aggregate of the entire step down structures relating to C Co and D Co.

15. Having said that, we suggest and recommend that the CBDT may consider putting in necessary safeguards in the CbC report for maintaining confidentiality of information within the MNE Groups, concerning different operational verticals, spread across more than one step down structure. To elucidate further :
- a. In the aforesaid example, the common or consolidated CbC report to be prepared by A Co, would carry information with reference to the step down operating structures of both C Co and D Co.
 - b. Now, the CbC report, which A Co would file with the Indian Revenue Authorities, would be shared with Revenue Authorities of most of the countries, where both C Co and D Co would have their subsidiary companies, resulting in the subsidiaries of; and also C Co or D Co, having access to information of the entire operating structure of the other conglomerate, which may not be in the best business interest of the Indian MNE Group.
 - c. Thus, the CBDT may consider to provide for furnishing of separate or segmental CbC reports by the “reporting entity”, being A Co in the current example, for different step down holding conglomerates, e.g. C Co and D Co in the present example.

Issue No 2 Preparation of accounts of; and use of data relating to, overseas subsidiary companies of an Indian MNE Group for the purposes of CbC reporting in India

Question A

Whether data to be incorporated in the CbC report prepared by an Indian parent “reporting entity”, with respect to all the subsidiary companies or “constituent entities”, should be for period 1st April to 31st March ?

Our views and suggestions

- 1 As per the provisions of section 286(9)(a)(i) of the Act, an Indian “parent entity”, being the “reporting entity”, would be required to furnish the prescribed data in the CbC report for the period 1st April to 31st March. A strict or literal interpretation of such provisions might infer that the reporting for all overseas subsidiary companies or “constituent entities” may have to be undertaken for the corresponding period as well.
- 2 Now, it is quite possible for the foreign subsidiary companies or “constituent entities” of the Indian “parent entity” to have different financial year endings, e.g. 31st December. Thus, the Indian “parent entity” might be unnecessarily saddled with additional compliance burden, requiring spending of significant amounts of time and cost, if the accounts of all its foreign subsidiary companies or “constituent entities” were required to be recast with reference to the period 1st April to 31st March.
- 3 Now, BEPS Action Plan 13 [paragraph (1) of page 32] provides necessary discretion to the reporting parent company, to furnish information with respect to the relevant overseas subsidiary company or constituent entity for the purposes of CbC reporting, namely – (a) either for the fiscal year ending on the same date as the fiscal year of the reporting parent entity (in case they match); or (b) ending within the 12 month period preceding such date; or (c) for the fiscal year of the reporting parent company.
- 4 Since the whole purpose of CbC reporting is to provide tax administrators with the necessary information relating to an “international group” to conduct an informed risk based TP assessment or audit, it is not necessary to have the financial information relating to the overseas “constituent entities” correspond with the financial year of the Indian parent “reporting entity”, namely for the period 1st April to 31st March.

- 5 Differential financial year endings for the Indian parent “reporting entity” and its overseas subsidiary companies or “constituent entities”, would any way be evened out over two CbC reporting cycles; and also would not infringe with the basic purpose of CbC reporting.
- 6 Even the BEPS Action Plan 13 [paragraph (28) at page 16] suggests that tax administrators should balance requests for documentation against the expected cost and administrative burden to the taxpayer. Therefore, taxpayers should not be expected to bear disproportionately high costs and burdens while preparing CbC reporting.
- 7 It is thus suggested that in line with BEPS Action Plan 13, the CBDT may provide necessary flexibility and discretion to an Indian MNE Group or “parent entity” to provide financial information in the CbC reporting, with respect to its overseas subsidiary companies or “constituent entities” either for the financial years adopted by such overseas “constituent entities” for their financial reporting purposes in their respective countries of incorporation; or for the period 1st April to 31st March.

Question B

Whether it would be necessary to reconcile the data furnished in the CbC report for the various “constituent entities” with the “consolidated financial statement” prepared by the Indian parent “reporting entity”?

Our views and suggestions

- 1 As per BEPS Action Plan 13 [paragraph (2) at page 32 of the report], it is not necessary to reconcile the data furnished in the CbC report with the consolidated financial statement prepared by the ultimate parent entity. Further, as mentioned earlier, BEPS Action Plan 13 suggests that tax administrators should balance requests for documentation against the expected cost and administrative burden to the taxpayer.
- 2 We suggest that in line with BEPS Action plan 13, the CBDT may provide necessary clarity in this regard and specify that it is not necessary to reconcile the data furnished in the CbC report for the various “constituent entities” with the “consolidated financial statement” prepared for the Indian parent “reporting entity”.

Question C

Whether reliance should be placed on statutory financial accounts or management accounts of overseas subsidiary companies or “constituent entities” for the purposes of CbC reporting by an Indian “parent entity”?

Our views and suggestions

- 1 BEPS Action Plan 13 [paragraph (2) at page 32 of the report] provides necessary discretion to taxpayers that they may choose to use data for the purposes of CbC reporting, from more than one source, namely separate entity statutory financial statements; regulatory financial statements; or internal management accounts.
- 2 BEPS Action Plan 13 also recommends that the reporting taxpayer should consistently use the same sources of data from year to year in preparing the CbC report; and that the taxpayer should provide a brief description of the sources of data used in preparing the CbC report, in the additional information section of the template. If a change is made in the source of data used from year to year, the reporting MNE should explain the reasons for the change and its consequences in the additional information section of the template.
- 3 We suggest that in line with BEPS Action Plan 13, the CBDT may provide necessary options to the Indian “parent entities”, as aforesaid, for the purposes of CbC reporting.

Question D

Whether data relating to overseas subsidiary companies or “constituent entities” need to be furnished in the CbC report prepared by an Indian “parent entity”, with reference to Indian accounting standards; or accounting standards of respective countries of residence of the overseas “constituent entities”?

Our views and suggestions

- 1 BEPS Action Plan 13 [paragraph (2) at page 32 of the report] provides that there is no need to make adjustments with respect to differences in accounting principles or standards applied in various countries, where the different constituent entities and the ultimate parent company are incorporated.
- 2 We suggest that in line with BEPS Action Plan 13, the CBDT should provide clarity that data relating to overseas subsidiary companies or “constituent entities” need to be furnished in the CbC report prepared by an Indian “parent entity”, with reference to accounting standards of respective countries of incorporation of the overseas “constituent entities”; and that the Indian “parent entity” would not be required to unnecessarily undertake adjustments with respect to differences in accounting principles or standards applied by the different “constituent entities” to bring them in line with Indian accounting standards.

Question E

In which currency would the financial data required to be furnished in the CbC report, to be prepared by an Indian “parent entity”?

Our views and suggestions

- 1 BEPS Action Plan 13 [paragraph (2) at page 32 of the report] provides that if statutory financial statements of various overseas constituent entities are used as the basis for reporting, all amounts should be translated to the stated functional currency of the reporting MNE at the average exchange rate for the fiscal year stated in the CbC report.
- 2 We suggest that in line with BEPS Action Plan 13, the CBDT should provide clarity that the financial data with respect to the various overseas subsidiary companies or “constituent entities” should be translated to Indian Rupees at the average exchange rate for the relevant financial year stated in the CbC report.

Question F

Whether data relating to a permanent establishment (PE) should be disclosed separately in the CbC report prepared by the Indian “parent entity”; or should the same be included in the results of the head office of the company of which it is a PE?

Our views and suggestions

- 1 BEPS Action Plan 13 [paragraph (4) at page 31 of the report], provides that the data relating to a PE should be separately reported by reference to the tax jurisdiction in which it is situated; and not by reference to the tax jurisdiction of residence of the company, of which the PE is a part.
- 2 The head office of the company would need to exclude the data relating to the PE for the purposes of the CbC reporting.
- 3 We suggest that in line with BEPS Action Plan 13, the CBDT should provide clarity as above.

Question G

For the purposes of reporting of data relating to the number of employees housed in various “constituted entities” in the CbC report, whether only full time employees would need to be considered; or part time employees should also be taken into account; and further whether the number of employees need to be stated with reference to the beginning or end of the relevant fiscal year?

Our views and suggestions

- 1 BEPS Action Plan 13 [paragraph (4) at page 34 of the report] provides that the number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions; and from year to year.
- 2 Further, for reporting purposes, independent contractors participating in the ordinary operating activities of the constituent entities may be reported as employees. Reasonable rounding off or approximation of the number of employees is permissible, provided that such rounding off or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.
- 3 We suggest that in line with BEPS Action Plan 13, the CBDT should provide clarity as above.

Issue No 3 Preparation and filing of Master File

Question A

Would there be a monetary threshold for the preparation and filing of Master File in India?

Our views and suggestions

- 1 While the Indian Government is seeking to apply a monetary threshold of Euro 750 million with reference to annual consolidated group revenue, for the purposes of CbC reporting, to be in line with the recommendations of BEPS Action Plan 13, there is no clarity as to whether the Indian Government would prescribe a monetary threshold for the preparation and filing of Master File.
- 2 Considering that India is still a developing economy, it would not be fair to burden all taxpayers with onerous TP documentation requirements in the form of Master File.
- 3 The CBDT may need to prescribe a reasonable monetary threshold for preparation and filing of Master File so that small and medium sized Indian MNE Groups do not suffer additional compliance burden.

Question B

Are there any safeguards, which the CBDT needs to build in the rules in the context of Master File to be prepared and filed by an Indian MNE Group?

Our views and suggestions

- 1 There are no set formats provided in BEPS Action Plan 13 [paragraph (18) at pages 14 and 15 of the report] with respect to the manner of presentation of, or the exhaustive list of details to be mandatorily incorporated in, the Master File, since that would restrict the flexibility of taxpayers to prepare the Master File in a manner appropriate for their respective businesses.
- 2 The guidelines in BEPS Action Plan 13 have asked the taxpayers to use prudent judgment in determining the appropriate level of details for the information to be incorporated in the Master File, keeping in mind its objective to provide tax administrators with a high level overview of the MNE group’s global operations and policies. This is especially relevant as the business model of each MNE group may be quite unique and different from the others.

- 3 It is suggested that the CBDT may also frame the rules around Master File on the above lines; and provide an illustrative list of details that may be provided in the Master File, as suggested by BEPS Action Plan 13 at Annexure I [pages 25 and 30 of the report].
- 4 Further, in line with our suggestions given with respect to preparation of CbC report, the CBDT may consider putting in necessary safeguards while preparing Master File as well, for maintaining confidentiality of information within the MNE Groups, concerning different operational verticals, spread across more than one step down structure, as in the cases of A Co, C Co and D Co in the example given earlier.

Issue No 4 Common issues relating to preparation and filing of Master File and CbC report

Question

In case of acquisition or divestment of any step down subsidiary structure by an Indian “parent entity” during any financial year, would the Indian “parent entity” be required to incorporate the affairs of such acquired/ divested subsidiary structure, in the Master File or CbC report of the relevant financial year ?

Our views and suggestions

- 1 It is suggested that in view of the level of details that might be required for the preparation of Master File and CbC report, the obligation to incorporate the affairs of step down subsidiary structures in the Master File and CbC report should arise in the hands of an Indian “parent entity” with reference to its holdings as at the end of the relevant financial year.
- 2 For any step down subsidiary structure acquired during the relevant financial year, the Indian “parent entity” may be required to incorporate the affairs of such structure in the Master File and CbC report for the period beginning with the date of acquisition of the subsidiary structure; and ending with the last date of the relevant financial year.



Thank you

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