

OECD – BEPS Action Plan 13 - Country by Country Reporting ('CbCR')

INTRODUCTION

What are OECD BEPS Action Plans?

The OECD Action Plan on BEPS, introduced in 2013, set out 15 specific action points to ensure international tax rules are fit for an increasingly globalized, digitized business world and to prevent MNE from artificially shifting profits to low or no-tax locations which results in little or no overall corporate tax being paid.

At its core, the BEPS initiative focusses on three parameters: i) Coherence; ii) Substance and iii) Transparency, with significant emphasis on transparency.

In this backdrop, how does transfer pricing comes into picture?

The OECD came up with TP Guidelines in the year 1995 and were subsequently revised multiple times – latest being the 2017 edition. The revised OECD TP Guidelines 2017 aim to sturdily support & build the international consensus on application of arm's length principle on cross-border transactions between associated enterprises; and to reduce the compliance / tax burden of MNEs by propagating a consistent mechanism across jurisdictions.

As a member of G20 and an active participant of the BEPS project, India is committed to the BEPS outcomes. To implement the BEPS actions, India has been consistently amending its domestic tax law as well as tax treaties.

As an active participant to the OECD/G20 BEPS project, India has endorsed the model legislation on transfer pricing documentation through Finance Act, 2016 and has implemented the legislative regulations concerning **Master file and CbCR** in the Income Tax Law. The said regime has been introduced vide a new Section 286 in the Income Tax Act, 1961.

In this regard, few pertinent questions are addressed hereunder:

- **What is Country by Country Reporting ('CbCR') and why is it required?**

It is an annual reporting framework for multinational enterprise ('MNE') groups stipulating provision of financial data by country and by entity. Objective is to provide tax authorities with useful information to assess transfer pricing (TP) risks, assess where audit resources can most

effectively be deployed, and in the event audits are called for, provide information to commence and target audit enquiries.

- **When will an entity be required to submit the CbCR report?**

CbCR reporting requirements will apply to an MNE when consolidated revenues of the group for the previous year exceeds INR 5,500 Crores (Euro 750 million).

- **Who should submit the CbCR report?**

CbCR report is to be filed by the Parent Entity in India or the Alternative Reporting Entity (ARE - nominated by the group) before the prescribed authority.

- **What if the CbCR reports are received in a language different from English?**

Language in which the CbCR report is submitted is determined by the local law of sending jurisdiction. In India same is filed in English.

Guidelines issued by the OECD states that Competent Authorities should agree on how they will undertake translation in the event of exchange of CbCR.

- **Where should the CbCR reports be filed?**

CbC Reports should be filed in the Tax Jurisdiction of the Reporting Entity and shared between jurisdictions through automatic exchange of information.

- **Will this information be made public?**

While the Income Tax Act, 1961 (“Act”) does not specifically deal with this issue, the Indian Tax Authorities have made it known through certain announcements in the media that they intend to treat the information reported in CbCR in a confidential manner.

- **Objective of transfer pricing documentation ?**

Multinational groups, owing to various administrative and practical limitations, fail to maintain a robust documentation. Due to lack of sufficient documents, tax authorities tend to develop their own interpretation of the value chain of a group and more often end up re-characterizing the actual transaction. The revised OECD Guidelines and the AP-13 reminds the taxpayers on how crucial this piece of information is in the whole scheme of things.

Broadly there are three objectives of preparing and maintaining a transfer pricing documentation:

- To ensure that taxpayers give due weightage to transfer pricing requirements in establishing prices;
- To provide tax authorities with robust information to enable to them to conduct informed risk assessment; and
- To enable tax authorities to undertake thorough audit.

- **Is this applicable to all the entities ?**

There is an entity wise materiality threshold prescribed for determining the applicability of CbCR Requirement; which is consolidated group turnover should be greater than 750 million EUROS (INR 5,500 Crores) in the previous year.

- **What type of information is required to be disclosed in the CbCR report?**

- Information relating to amount of revenue, PBT, income tax paid and accrued, total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction;
- MNE to identify & report business activity that each group entity is engaged in;
- Further guidance can be had from the user guide issued by OECD w.r.t CbCR.

- **What happens if there is no Mutual Exchange Agreement with country of the entity from which the information is demanded?**

Constituent entity will be obligated to furnish the report if country of Parent entity does not have an arrangement for exchange of CbC report with India.

- **Do these rules apply to a Permanent Establishment (PE) in India?**

Section 286(9)(d) of the Act defines “Constituent entity”/ Reporting entity to include a PE where a separate financial statement for such PE for financial reporting, regulatory, tax reporting or internal management control purposes is prepared. Therefore, CbCR applies to a PE.

- **Do Joint Ventures get covered within the purview of CbCR?**

Yes, provided requirement of the MNE group turnover to be greater than 750 million EUR in the previous year is satisfied.

- **If there is more than one qualifying Indian entity, which entity should comply?**

Entity designated/notified as “Reporting entity” by the Group to comply. Form 3CEAE to be filed by the designated entity one month prior to due date of filing CbCR.

- **Does the CbCR information have to pertain to the fiscal year ending 31st March?**

Section 286(9)(a) of the Act defines “accounting year” to mean an annual accounting period, in respect of which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case. Hence does not necessarily have to pertain to FY ending 31st March.

- **Can the information pertain to a period other than a 12 month fiscal period?**

Currently the Act only defines “Accounting year”. There is no other specific guidelines in this regard.

- **What does the term “Employees” refer to in the CbCR?**

- The guidance note issued by OECD states that the total number of employees on a full time basis of all Constituent Entities resident for tax purposes in the relevant Tax jurisdiction to be provided;
- Number of employees to be reported on basis of average employment levels for the year;
- Independent contractors part of ordinary operating activities of the Constituent Entity also to be reported as employees;
- Consistent approach to be applied on year on year basis and across entities.

- **Which financials should be used for CbCR reporting?**

Audited consolidated financials of the International Group in which assets, liabilities, income, expenses and cash flows of parent and constituent entities are presented as those of a single entity

- **Is there any specific format that is recommended for CbCR reporting?**

Yes, India has adopted a specific form, Form No. 3CEAD, for filing CbCR in India.

- **What should be the reporting currency for reporting revenues, profits, etc?**

- However, the CbCR reporting guidelines issued by OECD states that all amounts reported to be in currency of the reporting entity;
- If Statutory financial statements used as basis, all amounts to be translated using average exchange rate for the year.

- **What is the due date by when an entity is required to file the CbCR reports?**

Every parent entity or the alternate reporting entity, resident in India, furnish a report, to the prescribed authority on or before the due date specified under sub-section (1) of section 139, for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed. Due date prescribed is 30th November of the assessment year.

- **What are the penalties that can be imposed for non-filing of CbCR reports within the due date?**

Graded penalty structure has been prescribed by section 271GB of the Act:

- (a) if default is not more than a month, penalty of INR 5000/- per day applies;
- (b) if default is beyond one month, penalty of INR 15000/- per day for the period exceeding one month applies;
- (c) for any default that continues even after service of order levying penalty either under (a) or under (b), then the penalty for any continuing default beyond the date of service of order shall be INR 50,000/- per day.

- **Is there a penalty for reporting inaccurate information?**

The Act provides for a penalty of INR 5,00,000 for non-reporting of CbCR or for reporting inaccurate information.

As the world tax economy enters the post-BEPS era with additional complexities, subjectivities and disclosure requirements, the importance of technology in the tax function of an MNE cannot be understated. In this new world, focus will be on key data which is available on real time and is accurate.

In this regard, Blockchain, the next internet, is seeing gradual adoption and shows considerable potential. The impact of Blockchain is already being felt in multiple business operations with many developers, start-ups and corporates actively evaluating the adoption of blockchain application in their business operations. Given this, with its features of traceability, transparency, completeness, blockchain as much as is a business enabler could significantly transform all areas of taxation beyond recognition.

All of us need to watch this space closely!!