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**Newsflash: Income Tax – Draft Rules with respect to Country-by-Country reporting and furnishing of master file**

## 1.0 Introduction to Base Erosion and Profit Shifting (BEPS)

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.

## 2.0 Framing of rules in respect to Country-by-Country reporting and furnishing of master file

In view of insertion of Section 286 and amendment of Section 92D of the IT Act for implementation of BEPS project of OECD, the CBDT has issued a draft Notification F. No. 370142/25/2017-TPL dated 6 October 2017 for comments on proposed new Rules 10DA, 10DB and new Forms 3CEBA to 3CEBE which are to be inserted in IT Rules, for laying down the guidelines for maintaining and furnishing of transfer pricing documentation in the Master File and Country-by-Country report. The said rules are applicable from assessment year 2017-18 (FY 2016-17).

**The following rules 10DA and 10DB are proposed to be inserted in the Rules after the existing rule 10D:**

***"Information and documents to be kept and maintained under proviso to sub-section (1) and to be furnished in terms of sub-section (4) of Section 92D.***

- 10DA.** (1) Every person, being a constituent entity of an international group shall,-
- (i) if the consolidated revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year preceding such previous year, exceeds five hundred crore rupees; and
  - (ii) the aggregate value of international transactions,-
    - (A) during the reporting year, as per the books of accounts, exceeds fifty crore rupees, or
    - (B) in respect of purchase, sale, transfer, lease or use of intangible property during the reporting year, as per the books of accounts, exceeds ten crore rupees,
- keep and maintain the following information and documents of the international group:-
- (a) a list of all the operating entities of the international group along with their addresses;
  - (b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;
  - (c) a description of the business of international group during the reporting accounting year including,-
    - (I) the nature of the business or businesses;
    - (II) the important drivers of profits of such business or businesses;
    - (III) a description of the supply chain for the five largest products or services of the international group in terms of revenue plus any other products and/or services amounting to more than five per cent. of group turnover or revenue;
    - (IV) a list and brief description of important service arrangements among members of the international group, other than those for research and development services;
    - (V) a description of the capabilities of the main service providers within the international group;
    - (VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;
    - (VII) a list and description of the major geographical markets for the products and services offered by the international group;
    - (VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent. of the revenues, assets and profits of the group; and
    - (IX) a description of the important business restructuring transactions, acquisitions and divestments during the accounting year;

(d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangibles, including location of principal research and development facilities and their management;

(e) a list of all the entities of the international group engaged in development and management of intangibles along with their addresses;

(f) a list of all the important intangibles or groups of intangibles owned by the international group along with the names and addresses of the group entities that legally own such intangibles;

(g) a list and brief description of important agreements among members of the international group related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements;

(h) a detailed description of the transfer pricing policies of the international group related to research and development and intangibles;

(i) a description of important transfers of interest in intangibles, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers;

(j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders;

(k) a list of group entities that provide central financing functions, including their place of operation and of effective management;

(l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities;

(m) a copy of the annual consolidated financial statement of the international group; and

(n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.

(2) The report of the information referred to in sub-rule (1) shall be in Form No. 3CEBA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139: **Provided that** the information in Form No. 3CEBA for the reporting accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.

(3) Information-

(i) in Part A of Form No. 3CEBA shall be furnished by every person, being a constituent entity of an international group;

(ii) in Part B of Form No. 3CEBA shall be furnished by the person referred to in sub-rule (1).

(4) Where there are more than one constituent entities of an international group, resident in India, then the report referred to in sub-rule (2) may be furnished by that constituent entity if it has been designated by the international group to furnish the said report and the same has been notified by the international group or the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEBE.

(5) The notification referred to in sub-rule (4) shall be made at least 30 days before the due date of filing the report as prescribed under sub-rule (2) above.

(6) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEBA and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

(7) The information and documents specified in sub-rule (1) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

(8) The terms "accounting year", "consolidated financial statement", "international group" and "reporting accounting year" shall have the same meaning as assigned in sub-section (9) of Section 286.

### ***Furnishing of Report in respect of an International Group.***

- 10DB.** (1) For the purposes of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, notify the Director General of Income-tax (Risk Assessment) in Form 3CEBB, the following, namely:-
- (a) whether it is the alternate reporting entity of the international group; or
  - (b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.
- (2) The notification referred to in sub-rule (1) shall be made on or before sixty days prior to the due date for furnishing of report as prescribed under sub-section (2) of section 286.
- (3) Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report referred to in sub-section (2) of section 286 to the Director General of Income-tax (Risk Assessment) in Form 3CEBC.
- (4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-rule (3), shall furnish the report referred to in sub-rule (3) within the time specified therein if the provisions of sub-section (4) of Section 286 are applicable in its case.
- (5) If there are more than one constituent entities of an international group, resident in India, other than the entity referred to in sub-rule (3), then the report referred to in sub-rule (4) may be furnished by that entity if it has been designated by the international group to furnish the said report and the same has been notified to the Director General of Income-tax (Risk Assessment), in Form 3CEBD.
- (6) For the purposes of sub-section (7) of Section 286, the total consolidated group revenue of the international group shall be 5,500 crore rupees.
- (7) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEBB, Form No. 3CEBC and Form No. 3CEBD and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.
- (8) The terms “accounting year”, “alternate reporting entity”, “consolidated financial statement”, “international group” and “reporting accounting year” shall have the same meaning as assigned in sub-section (9) of Section 286.”



**3.0 Forms 3CEBA to 3CEBE are summarized below, these are proposed to be inserted in the Rules after the existing Form 3CEB**

Form Name	Description
FORM NO. 3CEBA	Report to be furnished under sub-section (4) of Section 92D of the Income-tax Act, 1961
FORM NO. 3CEBB	Notification Report by a constituent entity, resident in India, of a non-resident international group for the purposes of sub-section (1) of Section 286 of the Income-tax Act, 1961
FORM NO. 3CEBC	Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the Income-tax Act, 1961
FORM NO. 3CEBD	Notification on behalf of the international group for the purposes of the proviso to sub-section (4) of section 286 of the Income-tax Act, 1961
FORM NO, 3CEBE	Notification Report by a constituent entity, resident in India, of a non-resident international group for the purposes of sub-section (4) of Section 92D of the Income-tax Act, 1961

**4.0 The comments and suggestions of stakeholders and general public on the above draft notification have been invited by the CBDT and can be submitted electronically latest by 16th October, 2017 at the email address [dirtpl1@nic.in](mailto:dirtpl1@nic.in)**



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This newsflash is general in nature. In this newsflash, we have summarized the CBDT Notification F. No. 370142/25/2017-TPL dated 6 October 2017 draft notification no. 9/2017, dated 19 September 2017 issued by CBDT. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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