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

Notification No. 92 /2017/ F. No. 370142/25/2017-TPL

THE POWER OF BEING UNDERSTOOD



1.0 Background

In view of insertion of Section 286 and amendment of Section 92D of the Income Tax Act (IT Act) for implementation of BEPS project of OECD, the Central Board of Direct Taxes (CBDT) had issued a draft dated 6 October 2017 for public comments. CBDT has on 31 October 2017 issued Notification No. 92 /2017/ F. No. 370142/25/2017-TPL with respect to the new Rules 10DA, 10DB and new Forms namely Form 3CEAA to Form 3CEAE 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.

2.0 The following final rules 10DA and 10DB shall 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 group 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, exceeds five hundred crore rupees; and
- (ii) the aggregate value of international transactions, -
 - (A) during the accounting 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 accounting year, as per the books of accounts, exceeds ten crore rupees,

keep and maintain the following information and documents of the international group, namely:-

- (a) a list of all 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 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 and any other products including services amounting to more than five per cent. of consolidated group revenue;
 - (IV) a list and brief description of important service arrangements made 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 or assets or profits of such group; and
 - (IX) a description of the important business restructuring transactions, acquisitions and divestments;
- (d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management;
- (e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses;
- (f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property;

- (g) a list and brief description of important agreements among members of the international group related to intangible property, 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 intangible property;
 - (i) a description of important transfers of interest in intangible property, 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. 3CEAA 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. 3CEAA for the accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.**
- (3) Information in,-
- (i) **Part A of Form No. 3CEAA** shall be furnished by every person, being a constituent entity of an international group, whether or not the conditions as provided in sub-rule (1) are satisfied;
 - (ii) **Part B of Form No. 3CEAA** shall be furnished by a person, being a constituent entity of an international group, in those cases where the conditions as provided in sub-rule (1) are satisfied.
- (4) Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (i) of sub-rule (3), as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income tax (Risk Assessment) in **Form 3CEAB**.
- (5) The intimation referred to in sub-rule (4) shall be made **at least thirty days before the due date of filing the report** as specified under sub-rule (2).
- (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. 3CEAA and Form No. 3CEAB 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 rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year.

Explanation. - For the purposes of this rule,-

- (A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;
- (B) the terms 'accounting year', 'consolidated financial statement' and 'international group' 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, intimate the Director General of Income-tax (Risk Assessment) in **Form No. 3CEAC**, 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) Every intimation under sub-rule (1) shall be made **at least two months prior to the due date for furnishing of report** as specified 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 No. 3CEAD**.
- (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 resident in India of an international group, 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 which has been designated by the international group to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in **Form No. 3CEAE**.
- (6) For the purposes of sub-section (7) of section 286, the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees.
- (7) Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.
- (8) 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. 3CEAC, Form No. 3CEAD and Form No. 3CEAE and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

Explanation. - For the purposes of this rule,-

- (A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;
- (B) 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 Provisions in Brief

Applicability of CbCR / Master File

Applicable in respect of constituent entity of an international group as under:

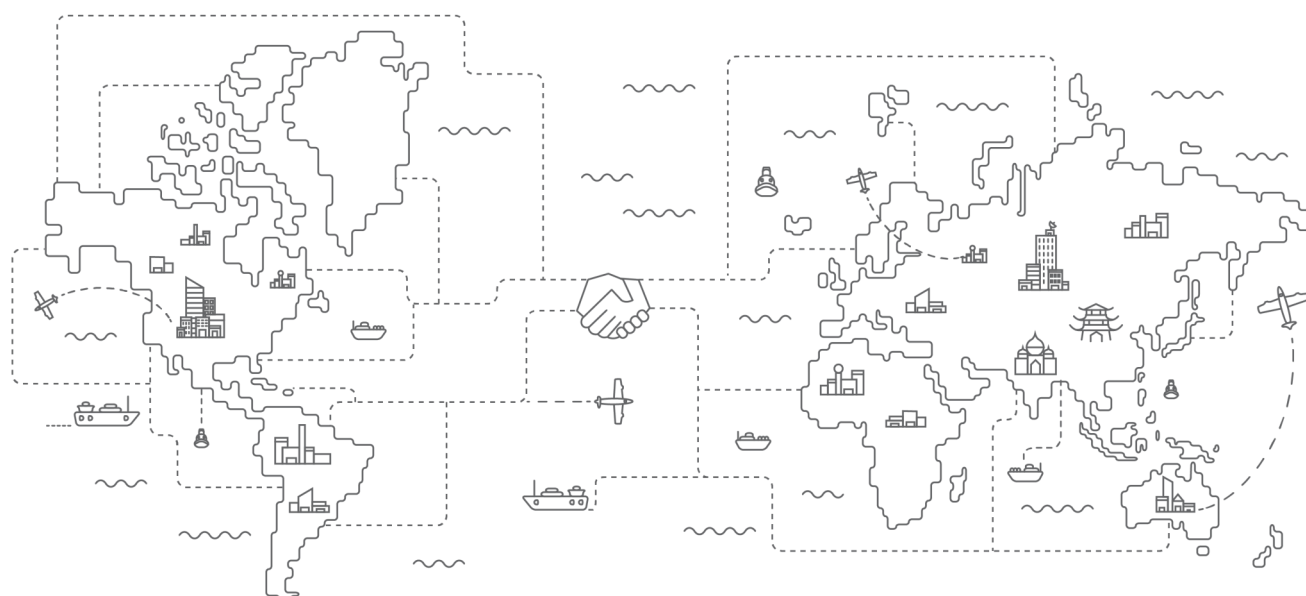
Nature of Document	Criteria	Evaluation Period	Threshold exceeding
Master File	(i) Consolidated revenue of the international group	Year under consideration	500 Crores
	AND		
	(ii) A. Value of international transactions of the constituent entity	Year under consideration	50 Crores
	OR		
	(ii) B. Value of international transactions involving intangibles of the constituent entity	Year under consideration	10 Crores
CbCR	Total consolidated group revenue of the international group	Immediately preceding previous year	5,500 Crores

4.0 Forms to be Filed

Forms 3CEAA to 3CEAE are summarized below, these forms shall be inserted in the Rules after the existing Form 3CEB.

Form Name	Description	In relation to	Who needs to file	For FY 2016-17	Subsequent years
Form No. 3CEAA	Report to be furnished under sub-section (4) of Section 92D of the Income-tax Act, 1961				
PART A	Every person, being a constituent entity of an international group	All constituent entities of international group resident in India		31 st March 2018	30 th November of the assessment year
PART B	Constituent entity of an international group, in those cases where the conditions as provided in Rule 10DA (1) are satisfied	Master File	Designated Constituent entity resident in India		
Form No. 3CEAB	Where there are more than one constituent entity resident in India of an international group, then the constituent entity which has been designated to furnish the master file.	Master File	Designated Constituent entity irrespective of whether the parent entity is resident in India or not	1 st March 2018	31 st October of the assessment year

Form Name	Description	In relation to	Who needs to file	For FY 2016-17	Subsequent years
Form No. 3CEAC	Intimation by a constituent entity, resident in India, for the purposes of sub-section (2) of section 286 of the Income-tax Act, 1961	CbCR	Constituent entity resident in India but parent entity is non-resident in India	31 st January 2018	30 th September of the assessment year
Form No. 3CEAD	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	CbCR	Parent or Alternative reporting entity resident in India	31 st March 2018	30 th November of the assessment year
Form No. 3CEAE	Intimation 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	CbCR	Designated Constituent entity irrespective of whether the parent entity is resident in India or not	1 st March 2018	31 st October of the assessment year



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2 November 2017