

OVERVIEW OF MASTER FILE + COUNTRY-BY-COUNTRY REPORTING PROVISIONS ALONG WITH THEIR COMPLIANCE REQUIREMENT



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Introduction:

The Master File (“MF”) and Country-by-Country Reports (“CbCR”) were introduced through Action 13 of the BEPS program. The BEPS program was introduced to have check on the tax arbitrage sought by the various multinational entities (“MNEs”). Currently, BEPS’ Action 13 regulations are made applicable for large MNEs with a consolidated turnover of more than Euro 750 million. However, this limit is only in the nature of guidance and each jurisdiction is eligible to determine their own limits.

These reports are predominantly MNE Group’s transfer pricing policies due to which it is important that the MNE Groups file the same reports (*with certain modifications to comply with the local regulations*) across the geographies to maintain a synchronization of the information provided to the Revenue. The Revenue departments across the globe have commenced to analyse these two reports for any possible tax arbitrage. This analysis will get deeper with the Revenue officials learning new techniques of using the available information. Thus, it is important that MNE Groups prepare these reports according to their transfer pricing policies before they are filed as it has become easier to exchange information within the Revenue department of various geographies and at times, without the knowledge of the taxpayer.

The Finance Minister through amendment to Section 92D and introduction of new Section 286 along with introduction of Rules 10TA and 10TB have formally adopted the provisions for the applicability and filing requirements of MF and CbCR.

The Indian Revenue authorities through Rule 10TA and 10TB have determined the eligibility criteria for filing of CbCR. An MNE Group with a consolidated¹ group turnover of above INR 6400 crores² would be eligible for CbCR filings in India while for the purpose of filing of MF, entities with a consolidated group turnover of above INR 500 crores **and** tangible international transaction(s) of at least INR 50 crores **or** intangible international transaction(s) of at least INR 10 crores would be eligible.

For the purpose of reporting of MF and CbCR the Indian Revenue has introduced various Forms including Forms for filing notification. These forms are in-line with the OECD recommended forms with limited edits to serve for Indian Revenue. Each of these Forms and their usage is discussed in the ensuing paragraphs:

A. Master File

Section 92D requires a constituent entity³ to maintain, keep and furnish information and documentation related to the international transactions and specified domestic transactions. Section 92D(1)(ii) requires a constituent entity to keep and maintain information relating to the MNE Group. The details to be maintained as per this clause is provided for in Rule 10DA which was introduced vide Income-tax (Twenty Forth Amendment) Rules 2017 w.e.f. 31 October 2017 and later substituted by the Income-tax (Second Amendment) Rules, 2020, w.e.f. 1-4-2020.

¹For the purposes of determining the INR value of the consolidated group turnover, the Telegraphic Transfer Buying Rate (TTBR) of such foreign currency would be considered.

²Erstwhile INR5500 crores was amended vide the Income-tax (Ninth Amendment) Rules, 2021, w.e.f. 1-4-2021.

³Constituent Entity is defined in Section 286(9)(d) of the Income-tax Act, 1961.

Details to be maintained:

Rule 10DA(1) provides for the details of the information to be maintained by the constituent entity, some of the key information to be maintained includes:

1. list of all the entities of the international group (including branch offices, permanent establishments and dormant entities) along with their addresses
2. MNE Group's ownership chart along with the legal status of each of the constituent entity
3. nature of the business
4. important profit drivers of such businesses
5. supply chain for the MNE Group's five largest products or services
6. details of important service arrangements made among the constituent entities (except for R&D services)
7. details of the main service providers within the MNE Group
8. details of the major geographical markets for the products and services offered by the MNE Group
9. detailed functional, asset and risk analysis of the entities constituting to at least ten (10) percent of revenues or assets or profits of the MNE Group
10. details of any business restructuring transactions including acquisitions, divestments, etc.
11. details related to intangible properties of the MNE Group
12. details of the policies and arrangements relating to R&D
13. details relating to the MNE Group's top ten (10) unrelated lenders
14. details pertaining to MNE Group's financing arrangements
15. copy of annual consolidated financials of the MNE Group
16. details of any unilateral advance pricing agreements, etc.

Forms for filing along with the due dates:

Rule 10DA(2) states that the MF has to be filed in **Form 3CEAA** to the Joint Director **on or before the due date of filing the return of income** as per Section 139(1).

However, if there are **more than one constituent entities in India** then the MNE Group may **nominate one entity** to file the MF on behalf of all the entities in India. The said nominated entity would have to convey this information to the Revenue by filing **Form 3CEAB thirty (30) days before the due date of filing the Form 3CEAA**.

It is pertinent to note here that Rule 10D provides that **part A of Form 3CEAA** has to be filed by **all** the constituent entities of the MNE Group irrespective of any international transactions undertaken by the said entity with their related parties.

Nature of filing

These Forms are to be filed **electronically** by the constituent entity through the **Income-tax e-filing portal**. It is pertinent to note that these Forms are not required to be certified by an independent Chartered Accountant but to be verified and signed by the authorized signatory of the constituent entity / assessee.

B. Country-by-Country Report

CbCR was introduced vide a insertion of a new Section 286 in the Income-tax Act, 1961. This section provides for furnishing of a report (i.e. CbCR) in respect of an international group (i.e. MNE Group). The details pertaining to the Forms to be used and the information to be maintained and furnished is provided in Rule 10DB which was introduced by the Income-tax (Twenty-fourth Amendment) Rules, 2017, w.e.f. 31-10-2017.

Details to be maintained:

As per Rule 10DB(3), the details to be maintained by the Indian parent entity or Indian alternate reporting entity is provided in Form 3CEAD. The said Form requires overview of the MNE Group's information in each tax jurisdiction. The said Form requires key information like

1. revenues earned from related entities and unrelated entities
2. profit / Loss before income-tax
3. income-tax paid (on cash basis)
4. income-tax accrued
5. stated capital
6. accumulated earnings
7. number of employees
8. details of tangible assets other than cash and cash equivalents
9. details of entities engaged in R&D activities, manufacturing activities, purchase or procurement activities, sales activities, dormant entities, etc.

Forms for filing along with the due dates

Form Number	Applicability	Due Date	Remarks
Form 3CEAC	If the Indian constituent entity is not a parent entity or the alternate reporting entity of the MNE Group	Two (2) months before the due date of filing Form 3CEAD	This Form is to be used for notifying the details of the parent entity or the alternate reporting entity of the MNE Group where there is exchange of information agreed between the country of resident of such entity and India
Form 3CEAD	Parent entity or the alternate reporting entity of the MNE Group who is resident in India	Twelve (12) months from the end of the accounting / reporting period	This Form is the CbCR to be maintained and filed.
Form 3CEAE	Notification to convey that the Parent entity or the alternate reporting entity of the MNE Group is a resident of such a country / territory where: (a) parent entity is not obligated to file the CbCR; or (b) India does not have an agreement for exchange of report; or (c) there has been a systemic failure of the said country / territory	Immediately on learning of the systemic failure	The Indian constituent entity of such a parent or alternate reporting entity would be required to furnish the report in Form 3CEAD within Twelve (12) months from the end of the accounting period of the Indian entity. If there are more than one constituent entities in India, then the information in Form 3CEAD needs to be furnished by any one entity if such an intimation is conveyed to the Revenue.

Nature of filing

These Forms are to be filed **electronically** by the constituent entity through the **Income-tax e-filing portal**. It is pertinent to note that these Forms are not required to be certified by an independent Chartered Accountant but to be verified and signed by the authorized signatory of the constituent entity / assessee.

Conclusion:

Considering the above, it is pertinent that the MNE Groups would now have to report significant group related information to the Revenue which not only pertains to financial information but also pertains to operational information. Accordingly, the MNE Group and their constituent entities would have to demonstrate substance in each jurisdiction of their presence failing which the Revenue of respective jurisdictions may undertake stringent actions.

