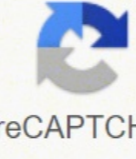


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EFFECTIVE TREATMENT OF TAX RULINGS SUBJECT TO THE EXCHANGE BETWEEN TAX ADMINISTRATIONS

By Subgroup 1 of the IOTA Forum on Implementation of Measures to Counter Base Erosion and Profit Shifting (BEPS)



2019 December



pricing risk assessment. Based on the risk assessment only selected taxpayers having high risk shall be selected for transfer pricing audit.

3. **Transfer pricing audit** - To provide tax administrations with detailed information during the audit. In the current scenario as detailed information is not expressly required as per the documentation requirement, tax administrations during the transfer pricing audit were not able to fetch the detailed information. With the introduction of the new guidelines, the requirement of documenting holistic information has been provided which will enable tax administrations to conduct extensive audit of the transactions.

C. Master File

1. Information required to be reported in master file

The information required in the master file provides a "blueprint" of the MNE group and contains relevant information categorized under the five heads. A summary of the information required as per the template is provided by OECD as summarized hereunder:

<p>1. Organization structure describing</p> <ol style="list-style-type: none"> ownership structure and geographical location of constituent entities¹ <p>2. General description of the MNE's business including the following information</p> <ol style="list-style-type: none"> Important drivers of business profits With regard to the group's five largest products and/ or service offerings and product/ services amounting to 5% of the group turnover <ul style="list-style-type: none"> Description of the supply chain of each such product/ service Turnover from the product/ service For inter group services <ul style="list-style-type: none"> List of all important service arrangements between member of MNE group/constituent entities¹, other than R&D services Capabilities of service provider for important service arrangement Transfer pricing policies for allocating service cost/prices charged for inter group services. Functional analysis, risk assumed and asset employed that depicts the value creation by constituent entities¹. Business restructuring/ acquisition / diversification during the year <p>3. Information on group intangibles</p> <ol style="list-style-type: none"> General description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management. List of important intangibles of MNE group that are important for transfer pricing purpose. Legal owner of said intangibles List of agreements related to development of intangibles - cost contribution arrangement, research service arrangement, and license agreement. Transfer pricing policy related to intangibles/R&D Details of transfer of intangibles, if any, during the year.
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JGarg Economic Advisors Private Limited
707, Pearl Beach Heights II, C-9 Netaji Subhash Place, Pitampura, New Delhi - 110034
E-mail Id : gaarg@jgarg.com
Website : www.jgarg.com

resident in India	Exempt/penalty
Parent entity is resident outside India and subsidiary co. in India	The Indian constituent entity needs to file CBC report in India if (i) The parent is resident in a country with which India does not have an agreement providing exchange of information under the CBC report or (ii) There has been a systemic failure of that country and the said failure has been intimated by the prescribed authority to such constituent entity. "Systemic failure" means the foreign country has : a) Violated the automatic exchange of information agreement with India by suspending the same, or b) Persistently failed to provide report to India in respect of any international group having a constituent entity resident in India.
Parent entity is resident outside India, designated alternate entity resident outside India	Entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by the Indian tax authorities and the prescribed authority in India has not conveyed any systemic failure in respect of said country.

Deadlines for reporting - The Indian Parent entity of an international multinational group or any other designated group entity in India (referred to as an alternate reporting entity) to file a CBC report for financial year 2016-17 before the due date of filing of Return of Income i.e. 30 November 2017.

Threshold - the threshold for filing the CBC report has been maintained at ₹50 million. At current rates, threshold in Indian currency would be equivalent to INR 53,950 million. The threshold to be based on exchange rate as on the last day of the previous year. Further, the threshold would be determined based on the consolidated revenues of the group during the immediately preceding year.

Details - The CBC report will be required to furnish following:

- The aggregate information in respect of the amount of revenue, profit or loss before income-tax, the amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates
- The details of each constituent entity of the group, including the country or territory in which such constituent entity is incorporated or organized or established and the country or territory where it is resident
- The nature and details of the main business activity or activities of each constituent entity.

Format of the report - the format shall be notified in the Rules at a later date. However, it is proposed in the memorandum that the OECD prescribed template will be adopted.

Calling for further details - The prescribed authority may request for such document and information from the entity furnishing the CBC report for the purpose of verification. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days.

Penalty Provisions - following penalties have been proposed under the CBC provisions:

- Failure to furnish information and documentation under the proposed three tier documentation structure by the due date will be INR50,000
- Failure on account of CBC reporting :

Particular	Delay upto one month	Delay beyond one month	Delay in payment of penalty after order
Failure to furnish CBC report by the due date of filing of return of income	INR 5,000 per day	INR 15,000 per day	INR 50,000 per day
Non-submission of information	INR 5,000 per day from the day on which the period for furnishing the information and document expires.		INR 50,000 per day
Inaccurate information filed under CBC report	INR 50,000		

The penalty is levied if:
The entity has acknowledged the inaccuracy at the time of discovery but fails to inform the prescribed authority.
The entity discovers the inaccuracy after the CBC report is furnished and fails to inform the prescribed authority and furnish a correct report within a period of fifteen days of such discovery.
The entity furnishes inaccurate information or document in response to request for additional information and documents.

Implications & Way forward - The BEPS action plans recommend to consider/substance over form approach while requesting information/documents by the

<https://www.oecd.org/tax/economic-impact-studies/2016-09-29-13-Action-13-Guidance-on-the-Implementation-of-Transfer-Pricing-Documentation-and-Country-by-Country-Reporting.pdf>

OECD/G20 Base Erosion and Profit Shifting Project

Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting



With the deadlines to present the first country reports by country (CBC) that approach rapidly, many MNE groups are busy doing everything possible to obtain the necessary information, to make sense of that information and get their reports of CBC in a format ready for presentation. At the same time, the organization for economic cooperation and development (OECD) and fiscal authorities continue to provide additional guidance. The short term proved to be a concern for some MNE groups, particularly when the country in which the UPE had a later date of subsequent presentation. In this case, JV is a subsidiary of the MNE groups in the relevant accounting standards applicable to each JV group and finances are reflected in the consolidated financial accounts of each MNE group. A coordinated and systematic approach to the preparation of CBC reports is preferable and, ideally, should be part of the best practices of a group MNE and align with the internal government processes of the MNE Group. Abandoned in the experience of KPMG professionals, it seems that the most important issue to address for the purpose of ensuring that a successful result of the CBCR project is to have the correct internal stakeholders involved in the management and supervision of the CBCR project from the beginning. This question was addressed by Chinese tax authorities by granting an extension to the local presentation date where the Chinese resident entity provides written evidence that a CBC report for the relevant tax period will be archived by the UPE or SPE of the Group MNE in another jurisdiction that has a limit date of subsequent presentation. For example, the OECD has recently issued the "guidance on the implementation of countries reports by country", the action 13, updated in In 2017. As OECD orientation on the income report does not specify whether gross income or net income should be used, Some MNE groups have considered whether to use gross income. However, it is evident that the MNE groups, regardless of The jurisdiction that call home, face many similar implementation problems. While the existing guide is useful, however, it is incomplete and the problems continued to arise as the MNE groups proceed to prepare their first CBC report. This article is based on the experiences of KPMG firms in four ASPAC countries that have adopted CBCR, Australia, China, Japan and Korea, to discuss a range of problems encountered by MNE groups in the preparation of their first CBC report and how these problems are being addressed. The topics identified in this article may not be common to all SPAC countries covered in this survey and local rules or fiscal authority Administrative orientation can determine the approach that must be taken in a particular country. Experience has shown that there is not a single answer to this question and, in many cases, the adopted approach will be influenced by the existence or absence of internal systems to collect reliable financial information in a particular and consistent manner. It is not uncommon to find situations where the financial data audited at the subsidiary level differ materially from the consolidated data available to the UPE (for example, due to the different accounting standards that apply or terminate the different years). To address this concern, the Japanese Fiscal Authority has indicated that it will allow the Japanese reputation entity to present the CBC report before the expiration date of the presentation in the first year of CBC.China, the Ad 42 requires the CBC report to be presented. At the same time, with the presentation of the 'Forms of Reports of the Transactions of the Parties related to the annual PRC' that overcome on May 31 of each year. Similarly, in the infrastructure sector, it is common that they form a consortium and create a joint venture to execute a project. As such, then that accounting standards could lead to income that are perceived to be too established in private jurisdictions and, therefore, present potential fiscal risk. Example 4: Some some Historically groups may not have introduced transfer price policies for their result-related part transactions, the lack of financial performance coherence with respect to foreign subsidiaries who perform similar functions. However, tax authorities in some countries may not grant such presentation extensions. Care is needed. Works 3 (Additional Information) of the CBC Report LOD The issues are we are as early in advance are considered to be considered by a group of MNE, the MNE Group should also consider the possible additional disclosures that may be due to the Table 3 (Additional Information) of the CBC Report (Table 3) and the possible implications of such disclosures. The key disclosures required in Table 3 with respect to the financial information disclosed in Table 1 refer to the data sources used. While the financial information disclosed in Table 1 can use data from the MNE Group Consolidation Report packages, statutory financial statements of separate entities, the regulatory financial statements, or internal management accounts, the OECD seems to have clearly the intention clearly that the CBC reports must systematically use the same sources of data from year to another. A series of these problems are discussed below. What is the main parent entity (UPE)? In many cases, the identification of the UPE is likely to be simple. For the MNE groups they face the possibility of having to prepare and present their first CBC report, the key recommendation does not leave things until the last minute. Enable scripts and reload this page. While these developments must provide better results of general transfer pricing that are presented, potential fiscal risks could Given the lack of coherence in the years prior to the introduction of the CBC reports presentation. MissMotions between the time of presentation for the tax and the accounting information. The problem that the groups faces. Missing between the presentation of deadlines for fiscal information (including including CBC Report) and accounting information in multiple jurisdictions. Under the accounting standards that apply to joint agreements, the revenues of joint operations may be recognized in the accounting statements, either in the revenue line (which would be disclosed in Table 1 as income) or as an investment using the MA © All participation (which may not be disclosed in Table 1 Revenue). However, the identification of the UPE is not as direct when a significant interest (eg, more than 50%) in the entity listed is carried out a group of related private companies incorporated into another jurisdiction that has adopted CBCR.Example 2: Built-in agreements of the joint venture (JV) between two different MNE groups, where each group has 50% of the actions in the JV, also raises the question of which the MNE Group, the JV it belongs to (and, therefore, that your UPE is). The two examples below show some potential fiscal risks identified by MNE-based groups à c



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