Grant Thornton

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TP Niche

A spectrum of transfer pricing issue

Quarterly Edition: October to December 2017

Contents

Perspective

This section provides a perspective on the final Indian rules on master file and CbCR issued by the CBDT, and its implication. It also highlights various challenges which maybe faced by companies in the wake of first-time compliance with the new reporting requirement.

Detailed rules in respect of country-by-country report ("CbCR") and master file ("MF") have been awaited for a long time. Ending the wait, the draft rules in respect of CbCR and MF were released by Central Board of Direct Taxes ("CBDT") on 6 October 2017. Continuing with its inclusive framework, Indian government had also invited comments on the draft rules.

Finally, post receipt of comments from various stakeholders, the final rules laying out the detailed provisions for CbCR and MF were issued by the CBDT on 31 October 2017, vide notification No. 92 /2017/ F. No. 370142/25/2017-TPL. The final rules are largely in line with OECD's recommendations in its report on Action 13 of Base Erosion and Profit Shifting ("BEPS") Project.

Given below is a summary of the final provisions introduced under the Indian Income Tax Rules, 1962 ("the Rules").

Acquirer	Target	Sector	Deal type
Threshold	Applicable to international groups with consolidated group turnover exceeding INR 5,500 crores during the immediately preceding financial year ("FY")[1]	Applicable to an Indian constituent entity ("CE") of an international group if: i. Group's consolidated turnover exceeds INR 500 crore[2] during the relevant accounting year; and ii. Value of international transactions entered during the accounting year exceeds: • INR 50 crore in aggregate; or • INR 10 crore for transactions of purchase, sale, transfer, lease or use of intangible property.	India has adopted the INR equivalent of Euro 750 million threshold for CbCR as recommended by OECD. Furthermore, the Indian government has laid down a criteria for MF applicability, even though no threshold was suggested by OECD. However, the threshold is low and may result in coverage of large number of international groups. The adoption of such a low turnover based threshold for MF may result in situations where an international group maybe required to prepare MF for their entire global business operations for filing in India, even if they do not have any MF reporting obligation under the laws of other countries where the group is present. In addition to the above, the guidance on foreign currency exchange rate to be used for computing INR value of group turnover will also provide certainty to taxpayer for determining applicability of CbCR and MF reporting requirements.
Contents	In line with the 3-table template recommended by OECD in BEPS Action 13	Largely in line with the OECD's recommendations with few deviations	Though India has largely adopted OECD's recommendations, the minor deviations in the contents of MF may enhance the reporting burden on the taxpayer.

1. The INR value of foreign currency denominated group turnover has to be computed using the State Bank of India's telegraphic transfer buying rate prevailing as on the last day of the immediately preceding accounting year.
2. The INR value of foreign currency denominated group turnover has to be computed using the State Bank of India's telegraphic transfer buying rate prevailing as on the last day of the accounting year.

Acquirer	Target	Sector	Deal type
Format for filing	Form No. 3CEAD	Form No. 3CEAA: i. Part A of the said Form is to be filed by every person being a CE of an international group ii. Part B to be filed by only the CEs meeting the prescribed threshold discussed above	Although Part A of Form No. 3CEAA requires reporting of simple information, still it brings additional reporting obligation on small taxpayers.
Mode of filing	Electronic	Electronic	Detailed procedure for online filing is yet to be prescribed. However, taxpayer may face some challenges in furnishing MF online since it will contain extensive qualitative data, especially if there is a character limit in online filing mode.
Due date for filing	By the due date of furnishing return of income (however, for FY 2016-17, the due date has been extended to 31 March 2018)	By the due date of furnishing return of income (however, for FY 2016-17, the due date is 31 March 2018)	OECD had recommended allowing a period of one year after the close of international group's FY for furnishing of CbCR. However, India has chosen to adopt its income tax return filing date as the due date for filing of CbCR. It goes without saying that the extended due date of 31 March 2018 for CbCR as well as MF for FY 2016-17 has come as a huge relief for the taxpayer.
Notification of details of parent/ alternate reporting entity	Every CE entity resident in India, if its parent entity is not resident in India, is required to intimate details of its parent/ alternate reporting entity in Form No. 3CEAC at least two months prior to the due date for furnishing of CbCR.	Not applicable	The notification in Form No. 3CEAC is required to be filed electronically – detailed procedure for the same will be notified in future. However, such notification is required to be furnished by every CE of an international group resident in India, if its parent entity is not resident in India. This will result in enhanced reporting burden on a foreign headquartered international group having multiple CEs in India.
Reporting obligation where there are multiple CEs of an international group resident in India	Form 3CEAC (intimation about the Parent/Alternate reporting entity) has to be filed by every CE resident in India if Parent entity is not resident in India. Form No. 3CEAD may be furnished by anyone of such CEs after notifying the details of such designated CE to the Director General of Income-tax (Risk Assessment) (hereinafter referred to as "prescribed authority") in Form No. 3CEAE	Form No. 3CEAA may be furnished by anyone of such CEs after notifying the details of such designated CE to the prescribed authority in Form No. 3CEAB, at least thirty days before the due date of filing the MF.	It is interesting to note that no due date has been prescribed for filing of notification in Form No. 3CEAE.

1. Information requirements under the Indian MF: A comparison with OECD's recommendations in BEPS Action 13

The table below provides a snapshot of the major deviations under the Indian law in respect of contents of MF vis-à-vis OECD's recommendations:

Information requirement	Provision under the final rules in India	As per OECD
Organisation structure	List of all entities of the group along with their addresses	Geographical location of operating entities of the group
Description of international group's business	Functions, assets and risks ("FAR") analysis of entities contributing at least ten percent of the group's revenue or group assets or group profits	FAR analysis describing the principal contributions to value creation by individual entities within the group
International group's intangibles	List of all the entities of the group engaged in development and management of intangibles with their addresses	No such requirement
	List of important intangibles of the international group along with names and addresses of the entities that legally own them	List of important intangibles of the international group and names of entities that legally own them
International group's inter-company financial activities	Names and addresses of the top ten unrelated lenders	Description of important financing arrangements with unrelated lenders

2. Immediate action plan for impacted Indian CEs

Both MF and CbCR require reporting of extensive information pertaining to the entire group's business operations. While CbCR contains quantitative information, MF is a qualitative report. Considering the vast amount of information that will go into the CbCR and MF, significant efforts will go into their preparation. Furthermore, the groups will also be required to conduct a risk assessment to identify potential mismatches apparent from the information reported in CbCR and MF. The subsequent paragraphs discuss the immediate actions which should be taken by impacted taxpayers to deal with the new reporting requirements.

MF

- Checking applicability of thresholds prescribed for MF reporting – here it is pertinent to note that the value of international transactions is to be tested for the "accounting year" and cannot be simply picked from the accountant's report in Form No. 3CEB prepared for FY 2016-17, especially in case of CEs part of foreign headquartered international groups.
- Such "accounting year" represents the FY followed by the ultimate parent and maybe different from the Indian FY for a CE of foreign headquartered international group.

  Furthermore, obligation to file Part A of Form 3CEAA in cases where thresholds are not met should also be borne in mind.
- In case multiple CEs of a group are subject to such reporting requirement in India, the reporting responsibility under the Indian law needs to be assigned to any one of them.
- Indian CEs of foreign headquartered international groups need to assess the requirement to modify MF prepared in other jurisdictions to make it compliant with the Indian rules.

CbCR

The final rules issued by the Indian Government in respect of CbCR have not posed much surprise for the taxpayers as they are largely consistent with the guidance already provided by the OECD under BEPS Action 13. Furthermore, the Indian government has already signed the Multilateral Competent Authority Agreement ("MCAA") for automatic exchange of CbCR.

This will ensure that Indian CEs of foreign headquartered international groups are not required to file CbCR locally. In such cases, CbCR will be obtained directly by the Indian government from the government of the country where the parent entity or alternate reporting entity of the group resides through automatic route. Although it is expected that such notification/ activation of automatic exchange relationships will occur before 31 March 2018, Indian CEs of foreign headquartered international group should be prepared for the possibility of local filing of CbCR in the event of delayed notification/ activation by the government.

3. Conclusion

FY 2016-17 marked the first year of compliance in respect of furnishing of CbCR and MF. With the fast approaching due date, international groups need to gear up to ensure timely compliance with the new reporting norms. Accordingly, it is imperative for companies to start preparing for the same. CbCR/ MF requires extensive coordination and collaboration within the entire group to gather the requisite data, some of which may not be readily available. Further, data collation is only the first step in a long-drawn process of evaluation and identification of relevant data, preparation of CbCR/ MF, preliminary risk assessment and taking corrective action based on the results of such assessment.

While the final rules have considered some of the concerns which were highlighted in the public comments on draft rules, taxpayers may still face some interpretation challenges while carrying out the compliance exercise in the first year such as scope of various terms used in the CbCR tables.

However, the extension of due date for the first year of compliance does provide some relief to the taxpayers. Furthermore, it is pertinent to note that from FY 2017-18 onwards, the due date for CbCR/ MF compliance will be the same as the due date for furnishing return of income. Accordingly, international groups need to ensure sufficient preparedness for facing such shorter timelines in future, especially where the due dates applicable on the group in other jurisdictions falls after the Indian due date.

Our experience

This Section covers certain key considerations on the annual compliance to be carried out by a taxpayer under the Indian TP regulations post entering into an Advance Pricing Agreement.

Advance Pricing Agreement ("APA") was introduced as a dispute avoidance mechanism in the backdrop of rising TP litigations in India.

APA is an agreement between the CBDT and the taxpayer, which determines, in advance, the arm's length price ("ALP") or specifies the manner of the determination of ALP (or both), in relation to international transactions. Under the Indian TP regulations, APA can be unilateral, bilateral, or multilateral – as maybe decided by the taxpayer.

Once concluded, the agreement is binding on the concerned taxpayer and the Principal Commissioner/ Commissioner and the income-tax authorities subordinate to him. This binding force brings comfort and certainty to multinational organisations to enable them to focus on business operations in India.

APA comes with several benefits - certainty on the TP policy/ method adopted, freedom from TP litigation and associated costs.

Post entering into an APA, the Indian law requires a taxpayer to furnish an annual compliance report for each year covered by the agreement, in order to check compliance with the terms agreed under the APA.

1. Reporting requirement

Rule 10-O of the Rules requires a taxpayer having a concluded APA in place to furnish an annual compliance report ("ACR") in Form 3CEF for each year covered by the agreement.

Contents of ACR: Given below is an overview of the information required to be reported in the ACR:

i Particulars of the taxpayer;

ii Particulars of the covered international transaction(s) and the associated enterprise ("AE") with whom such transaction was entered;

iii TP methodology, pricing and related terms/conditions (including critical assumptions) agreed under the APA;

iv Actual results (in respect of pricing and associated parameters) achieved during the concerned FY;

v Deviations (along with reasons) from agreed TP methodology, pricing and related terms/conditions (including critical assumptions) agreed under the APA;

vi Changes in business model of the taxpayer (if any);

vii Changes in functional and risk profile of the taxpayer (if any);

viii Whether the critical assumptions have been met and, if not, the reasons for not meeting them; and

ix Changes in the organisational structure of the taxpayer group and its impact (if any) on the critical assumptions agreed under the APA.

In addition to the above, the taxpayer maybe required to submit such information/ documents as maybe provided under the APA (such as copy of financials, inter-company agreements and invoices, computation of operating margins, etc.).

- **Due date of filing:** Within thirty days of due date of filing the income-tax return for the relevant FY, or within ninety days of entering into an agreement, whichever is later
- **Mode of filing:** Duly signed hard copies in quadruplicate to be filed with the Principal Chief Commissioner of Income Tax ("Pr. CCIT")
- **Consequences of non-compliance:** APA may be cancelled by the CBDT for failure in timely filing of the ACR or in case of a material error in the ACR filed.

Among other things, the ACR helps the tax authorities in ascertaining whether the taxpayer has complied with the:

- TP methodology agreed under the APA;
- ALP agreed under the APA; and
- Critical assumptions/ other terms and conditions agreed under the APA

Further, it also helps in establishing whether the taxpayer continued to function in accordance with the business/ FAR profile agreed under the APA.

2. APA compliance audit

On receipt of ACR (in quadruplicate), the Pr. CCIT forwards one copy each to:

- Competent Authority in India;
- Commissioner of Income-tax ("CIT") having jurisdiction over the assessee; and
- Transfer Pricing Officer ("TPO") having jurisdiction over the assessee.

Rule 10P of the Rules lays down the procedure of annual compliance audit to be carried out under an APA. The compliance audit, a less extensive exercise vis-à-vis a regular audit, is carried out by the TPO for each of the years covered by the APA is order to check adherence with terms agreed under APA. Furthermore, no regular audit is required for the covered transactions unless the APA has been cancelled.

During the course of such compliance audit, the TPO may require the taxpayer to submit such information or documents as maybe required to demonstrate compliance with the APA terms.

The TPO is required to furnish an annual compliance audit report within six months from the end of the month in which the ACR was received by the TPO. Such report is submitted by the TPO to the Pr. CCIT (International Taxation) (in case of unilateral APA)/ Competent Authority in India (in case of bilateral/multilateral APA). Thereafter, the report is forwarded by Pr. CCIT (International Taxation) to the CBDT, in case the APA is required to be cancelled on account of failure to comply with terms of the APA.

3. Practical nuances of APA annual compliance

Establishing compliance with the APA terms is at the heart of the annual compliance exercise. Considering the risk of cancellation of APA attached to non-compliance with any agreed term, it is imperative that the taxpayers view the entire exercise seriously.

Though preparing and filing of ACR is usually less onerous than the normal TP documentation prescribed under the Indian TP Regulations, it is a rather critical time-bound exercise.

Before starting with preparation of ACR, one must obtain sufficient clarity on the terms agreed under the APA. Thereafter, taxpayer should proceed to check adherence to each of the terms agreed under the APA.

Following terms, if forming part of the methodology/ critical assumptions agreed under the APA, should be checked properly:

- **Classification of various expenses/ income as operating/ non-operating based on the definition of "operating cost" and "operating revenue" provided under APA:** APA may require inclusion of following in the "operating cost":
  - Third party costs reimbursed by AE in the course of business operations – this becomes particularly relevant when taxpayer does not route such reimbursements through the profit and loss account but same are routed through balance sheet.

– "Costs" of support/ services/ assets received from AE for rendering back services to AE – Though inclusion of such costs seem a simple exercise, it may become difficult for the taxpayer to attach value to such services where such support is provided by the AE on free-of-cost basis.

Apart from the above, at times the taxpayer may face some exceptional circumstances. For example – Whether a refund of certain excessive payments which were made to a third party vendor in prior years should be treated as a part of operating income or should be simply reduced from the operating cost – classification of such refunds as income or expense may have a significant impact on the operating margin earned.

- **Computation of operating margins:** There may be a shortfall in the operating margin earned during a year vis-à-vis the margin agreed under the APA. Such shortfall may require additional invoicing. However, care must be taken where APA requires such adjustments to be done prior to closure/ finalisation of books of accounts for the year under consideration.
- **Timely invoicing and collection:** APA may also provide for the date/ interval period within which the invoices in respect of international transactions must be raised. It is important that such dates/ intervals are complied with.

  Furthermore, APA may lay down the credit period to be offered to or availed from AE. In addition, APA may also provide for charging of interest on overdue invoices. Care must be taken while computing such interest (like considering correct LIBOR rate where APA provides for a floating interest rate linked to LIBOR, computation of overdue period, checking if APA requires year to be taken as a period of 360 days, etc.)
- **Identification of any material changes in the business profile of the taxpayer:** The taxpayer must revisit its functional and risk profile applicable during the year under consideration and compare the same with the functional profile agreed under the APA. While changes such as change in the team size may not tantamount to a material change, identification of changes such as variations in the roles and responsibilities of the entities involved are required to be identified.

Apart from identifying instances of non-compliance, the taxpayer should also ensure any documentation/ information required by the APA to be maintained and/or submitted along with ACR is accordingly maintained and/or filed.

Identification of the deviation(s) from the terms agreed under APA is only the first step of APA annual compliance. Thereafter, one needs to decide the corrective or remedial action in order to eliminate or minimise the adverse consequences which may follow. While at times the APA itself may provide for corrective course of action such as charging interest on overdue invoices, a taxpayer may need to resort to other avenues as well. Possibility of discussing the deviations and explaining the business/ commercial rationale for the deviations during the course of compliance audit maybe evaluated. Furthermore, taxpayer may consider intimating the Pr. CCIT (International Taxation) in respect of non-complied terms in order to open gates for renegotiation of APA terms/ revision of the APA.

Although it is no guarantee that intimation of deviations by the taxpayer to the tax authorities will ensure a favorable revision of the APA or prevent cancellation of the APA, maintaining complete transparency with the tax authorities still may a go a long way to arrive at mutually acceptable positions.

From the judiciary

This Section focuses on some of the interesting case laws reported on TP during the quarter, October – December 2017

1. CIT vs. M/s Jaipur Silver Jewels P. Ltd.

Facts of the case

- During the year under consideration, M/s. Jaipur Silver Jewels P. Ltd. ("assessee" or "company") was operating in the jewellery and diamond industry.
- During the course of its business operation, the company had sold certain goods to another company, namely, M/s. India Gem & Beads Inc. ("US Co."). The shares of the US Co. were solely held by Smt. Anupama Singh, who was the sister-in-law (brother's wife) of Shri Vinay Pratap Singh (director of the company).
- During the course of assessment proceedings, the Assessing Officer ("AO") alleged that the assessee company and US Co. are sister concerns and therefore, were AEs within the meaning of section 92A(2)(m) of the Income Tax Act, 1961 ("the Act") by virtue of mutual interest.
- The AO further alleged that conditions of section 92A(2)(j)[3] of the Act were satisfied in the instant case.
- In this regard, the AO also placed reliance on the fact that the business premises used by US Co. was owned by the brother of the director of the assessee company, and neither the director of assessee company nor the US Co. itself had made any payment in lieu of using the said premises.
- Accordingly, the AO alleged that the transaction of sale of goods b/w the assessee company and the US Co. was an international transaction and proposed an adjustment to the ALP of the said transaction.

Order of the Commissioner of Income Tax (Appeals) ("CIT(A)"), Income Tax Appellate Tribunal ("ITAT") and the High Court ("HC")

- The above view of the AO was negated by the CIT(A) and the ITAT on account of the following reasons:
  - Smt. Anupama Singh, sister-in-law (brother's wife) and Shri Vinay Pratap Singh (director of the company) are not relatives within the meaning of 2(41) of the Act. Accordingly, the conditions of section 92A(2)(j) are not satisfied in the instant case.
  - None of the other conditions as laid down u/s 92A of the Act are satisfied.
- Aggrieved by the order of the ITAT, the Revenue had filed an appeal before the Rajasthan HC.
- However, the HC ruling in favour of the assessee, upheld the view adopted by the ITAT and CIT(A).

3. Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual

2. CIT vs. M/s ESPN Software India Ltd.

Fact of the case

- ESPN Software India Ltd. ("the company" or "assessee" or "taxpayer") was engaged in the business of distribution of subscription rights, air-time/ advertisement space sale and production business during the relevant assessment years ("AY"), i.e., AY 2005-06 and AY 2006-07.
- The assessee maintained three separate segments in respect of each of the business activities described above.
- The assessee had entered into certain international transactions with its AEs during the impugned year. For the purposes of determining the ALP of the said transactions, the assessee had aggregated two of its segments, namely, distribution and the advertisement business segments, since the same were closely linked to each other.
- However, such aggregation was disputed by the TPO as the TPO was of the opinion that both the segments are separate and this was evident from the fact that the assessee maintained separate segments for these activities as a part of its audited financial statements.

  Furthermore, it was alleged that the aggregation was done to conceal the loss of the advertisement business by merging it with the profits of the distribution business.

  Apart from the above, the TPO also made some modifications to the comparable companies identified by the assessee in its TP study.
- While the view of the assessee was upheld by the CIT(A) in AY 2005-06, same was rejected by the Dispute Resolution Panel ("DRP") in AY 2006-07.
- In response to the same, the assessee and the revenue filed an appeal before the ITAT for the respective years.

ITAT's order

ITAT allowed the aggregation approach of the assessee on account of the following reasons:

- Based on the trend analysis submitted by the assessee, it was clear that the advertisement air-time revenue had a direct correlation with the number of cricket events and therefore, the advertisement and distribution business were closely linked.
- By virtue of the guidelines issued by Ministry of I&B, Government of India, Indian companies engaged in downlinking of foreign channels must have both – the channel subscription rights as well as the right to sell advertisement air time inventory on the same. Accordingly, on account of the regulatory requirements, the aggregation of the two segments was warranted.
- By operating as a full risk distributor (and not like a commission agent like in the earlier years of business), the assessee undertook all the related business functions and risks in connection with its allotment of advertisement air time inventory in India (i.e. accepting advertiser/sponsor and negotiating prices based on its business fundamentals without recourse to AE). This resulted in assessee getting more control.
- Both, the OECD's TP Guidelines as well as the US TP Regulations, provide for aggregation of two or more transactions, if they are closely linked from a commercial perspective.

HC's order

HC noted that whether two transactions should be segregated or aggregated is entirely a fact dependent exercise that cannot be treated as a question of law. However, accepting the position of CIT(A)/ ITAT as reasonable, the HC did not interfere with their orders.

3. Halcrow Consulting India Pvt. Ltd. vs. DCIT

Facts of the case

- Halcrow Consulting India Pvt Ltd. ('assessee" or "the company" or "taxpayer") is engaged in providing planning, design and management services in the area of infrastructure consultancy.
- During the course of assessment proceedings for the AY 2010-11, the AO made certain additions to the income of the assessee. This included TP adjustments proposed by the TPO and disallowances in respect of balances written off, advances written off and miscellaneous expenses.

  The TPO had adopted Transactional Net Margin Method ("TNMM") as the most appropriate method ("MAM") in respect of the international transaction of provision of services, rejecting Cost Plus Method ("CPM") applied by the assessee. Further, the TPO had also computed NIL ALP in respect of technical services availed by the company, using Comparable Uncontrolled Price ("CUP") method.

  However, the assessee did not dispute any of the additions/ disallowances before higher tax authorities.
- Subsequently, penalty proceedings u/s 271(1)(c) of the Act were initiated and penalty was imposed on the company on account of concealment of income due to furnishing inaccurate particulars.
- Aggrieved, the taxpayer filed an appeal before the CIT(A). The CIT(A) noted that the assessee had not acted in good faith while computing the ALP. Further, as the assessee had not preferred any appeal against the TP adjustment, the assessee had accepted that it had computed the ALP incorrectly and as such, penalty was imposable.
- Consequently, the assessee filed an appeal before the Delhi ITAT challenging the imposition of penalty.

ITAT's order

- The AO while imposing penalty simply relied on the addition/ adjustment made by the TPO and did not examine in detail as to whether penalty was imposable on such adjustments or not.
- The assessee has computed the ALP in accordance with Section 92C of the Act.
- As long as the assessee has not acted dishonesty and has done what a prudent person would have done to determine ALP in accordance with the provisions of Section 92C of the Act, deeming fiction of explanation 7 to section 271(1)(c) of the Act cannot be invoked.
- Addition on account of TP adjustment does not tantamount to lack of good faith and due diligence – a contrary view would imply that each and every case involving TP adjustment would call for imposition of penalty under Section 271(1)(c) of the Act.
- ITAT also placed reliance on various ITAT and HC rulings, including the judgment of the Mumbai ITAT in the case of RBS Equities India P. Ltd [TS-492-ITAT-2011(Mum)-TP], wherein it was held that selection of a different MAM cannot be a ground for levy of penalty under Section 271(1)(c) of the Act.
- Similarly, the assessee had not furnished any inaccurate information or concealed/ withheld any relevant information in respect of other disallowances/ additions.
- ITAT, therefore, deleted the penalty and set aside the impugned penalty order.

Tracker

1. Notifications/ press release

Activation of automatic exchange relationships for exchange of CbCR

Over 1400 automatic exchange relationships have been activated under the MCAA on the Exchange of CbCR. At present, India has 50 "FROM" and 53 "TO" activated bilateral exchange relationships.[4]

India relaxes its position on the acceptance of Mutual Agreement Procedure ("MAP") and bilateral APA requests in respect of TP matters

The CBDT, vide its press release dated 27th November 2017, announced that going forward, the Indian Government will accept requests for MAP and bilateral APA in respect of TP matters, irrespective of the presence of the clause for corresponding adjustment (Article 9(2) or its equivalent Article) in the concerned Double Taxation Avoidance Agreement ("DTAA").

Constitution of task force for drafting a new direct taxation legislation

Recognising the fact that the Act was drafted more than 50 years ago and therefore needs to be redrafted, the Indian Government has set up a task force to review the present legislation and draft a new direct tax law in accordance with the economic needs of the country.

Final rules in respect of preparation and furnishing of CbCR and MF notified

The Indian Government released the final rules in respect of preparation and furnishing of CbCR and MF vide Notification No. 92 /2017/ F. No. 370142/25/2017-TPL on 31st October 2017. The final rules were released after public consultation on the draft rules, which were released in the first week of October 2017.

CBDT extends due-date for furnishing of CbCR for FY 2016-17

CBDT, vide Circular No. 26/2017, extended the due date for filing of CbCR under Section 286(2) of the Act for accounting year 2016-17 to 31st March, 2018.

Issue of revised guidance note on accountant's report (in Form No. 3CEB) to be issued u/s 92E of the Act

The Institute of Chartered Accountants of India ("ICAI") released the revised guidance note on accountant's report to be issued under Section 92E of the Act, after incorporating the changes in the Indian TP Regulations brought about by Finance Act, 2017 and the latest edition of the OECD's TP Guidelines for Multinational Enterprises and Tax Administrations.

5. Source: Ministry of finance, Govt. of India Press Release

2. APA updates

Indian APA regime moves forward with signing of two APAs by CBDT in November, 2017

The CBDT has signed 9 APAs signed during the quarter ended December 2017 taking the APA tally to 186. The bilateral APA with Netherlands was also signed during this period.

Sr. No.	APAs signed till date
Bilateral APA	15
Unilateral APA	171

3. Grant Thornton publications

Final rules on MF and CbCR in India – Tackling the practical challenges

The article gives an overview of the final rules issued by CBDT in respect of country-by-country reporting and MF, comparing the Indian provisions with the recommendations of OECD and the practice adopted in other tax jurisdictions. Further, it also discusses the practical implementation challenges and suggests possible way forward for the relevant Indian taxpayers.

MF & CbCR Draft notification - A bird's eye view

The article summarises the draft rules on country-by-country reporting and MF, the various forms and timelines prescribed for filing, and the challenges which maybe faced by Indian CEs.

Global corner

This section highlights the TP environment worldwide to give a wider perspective on what is happening around the world. For this issue we have selected Japan and we are focusing on the guidance issued for taxpayers on MAP by the National Tax Agency, Japan.

1. Recent developments in Japan

Guidance on MAP by the National Tax Agency

MAP is a dispute resolution mechanism which allows a taxpayer to get relief from possible double taxation by approaching the competent authorities of the countries involved to arrive at a mutually acceptable position.

Such double taxation may arise on account of:

- Taxation by one or both of the contracting states which is not in accordance with the provisions of tax treaty; or
- Computation of different ALP in respect of a cross-border intra-group transaction by the tax authorities of the countries involved.

Over the past few years, enhanced interaction between the economies of different countries has resulted in multinational companies ("MNCs") facing double taxation. To resolve such a situation, MNCs may resort to use of MAP.

It is important that countries make adequate arrangements to ensure that the taxpayers understand the MAP programme of their country in order to make it more accessible to them. The importance of enhanced MAP access was also recognised by the OECD in its final report on Action Plan 14 under the BEPS project. One of the recommendations under this report was that countries should take adequate steps to publish rules, guidelines and procedures to access and use MAP, and make such information available to the taxpayer.

Following the above recommendation, the Japanese National Tax Agency ("NTA") recently released guidance on its website for taxpayers on the MAP in the form of a set of questions and answers.

The key issues addressed by the NTA vide the said guidance are summarised in the table below:

Nature of issue	Summary of the guidance issued
Pre-requisite for approaching for MAP	Inclusion of MAP provision (Article 25 of the OECD's model tax convention or equivalent clause) in the tax treaty with the concerned country
No. of countries where Japan has negotiated such MAP provision as a part of the tax treaty	More than 60 countries including India, China, South Korea, Singapore, Australia, US, France, Germany, UK, and Switzerland (Around 22 nations are already engaged in MAP consultation with Japan)
Person eligible to seek MAP assistance	i. Resident, ii. Domestic corporation; iii. Non-resident and,[6] iv. Foreign corporation[7] (Subject to the provisions of applicable tax treaty)

6. MAP request regarding an APA can be made subject to the provision of Japan's APA regime.
7. Non-resident and foreign corporation can make a MAP request only if such a request is allowed in an applicable tax treaty.

Nature of issue	Summary of the guidance issued
Pre-filing consultation with NTA	i. Option for free-of-cost pre-filing consultation available ii. Taxpayer can also apply on anonymous basis through an agent iii. Prior appointment to be taken with the MAP office [in case of APA, relevant Regional Taxation Bureaus ("RTBs") can be approached] iv. No deadline for pre-filing consultation (subject to timelines for filing MAP request as per the relevant tax treaty and/or deadline for filing APA request in Japan)[8] v. Suggests basic documents such as summary of issues involved, outline of the intra-group transaction involved (in case of APA), reason for MAP request, etc. which should be prepared for pre-filing process – documents in foreign language should be translated into Japanese)
Manner of applying for MAP assistance	i. Filing application in prescribed form (i.e., Form 1) with the Office of Mutual Agreement Procedures ("the MAP Office") – the guidance also highlights various documents which should be submitted along with the MAP application (Documents translated into Japanese should be submitted in case of foreign language documents) ii. In case MAP assistance is required for an APA, an APA request should also be made to the concerned RTB
Fee for MAP request	NIL
Deadline for filing MAP request	As per the provision of the applicable tax treaty (Generally 3 years from the first notification of the action resulting in taxation issue)
Deficiencies/ modification of MAP request	Taxpayer should immediately contact the MAP office for rectification/ modification. Alternatively, the MAP office may reach out to the taxpayer if any defect is identified by the MAP office.
Withdrawal of request	Taxpayers can withdraw, subject to few exceptions such as where mutual agreement has been reached
Parallel dispute resolution through MAP	Taxpayers can approach for MAP even if they have presented their cases to an administrative tribunal or court
Conclusion of MAP	Before reaching an agreement, MAP office will share the proposed agreement with the applicant. Subsequent to the applicant's acceptance, the MAP office will reach the agreement with the competent authority of the treaty partner.
Timelines for conclusion for a MAP request	Average period - 2 years (although actual time may vary on case-to-case basis)

The guidance further provides an illustrative list of situations in which taxpayer may approach with a MAP request such as TP, disputes pertaining to treaty provisions such as existence of a permanent establishment ("PE") or profit attributable to such a PE. The guidance has also stressed on the importance of transparency on the part of the taxpayer throughout the process of MAP request in order to ensure efficient and effective conclusion of the MAP application. Timely filing of desired information and cooperation with the tax authorities is always helpful in smooth and fruitful conclusion of any MAP request. The NTA has surely demonstrated its commitment to the OECD's BEPS project by bringing out the above guidance on MAP in English language to ensure wider and easy access.

8. NTA recommends that request for pre-filing consultation should be made well in advance in order to provide sufficient time before filing of MAP request.

2. Updates from the OECD

OECD updates CbCR exchange relationship status

The OECD has issued a press release, dated 21st November 2017, notifying active relationships for exchange of CbCR as put forward by Action Plan 13.With the first exchange scheduled to take place in 2018, more than 1400 bilateral exchange agreements have been activated till date.

Additional Guidance on CbCR

The additional guidance addresses a number of specific issues:

- how to report amounts taken from financial statements prepared using fair value accounting;
- how to treat a negative figure for accumulated earnings in Table 1;
- how to treat mergers/acquisitions/de-mergers;
- how to treat short accounting periods:
- the definition of total consolidated group revenue

Citations

The key issues addressed by the NTA vide the said guidance are summarised in the table below:

Case Law	Citation
CIT vs. M/s Jaipur Silver Jewels P. Ltd.	TS-854-HC-2017(RAJ)-TP
CIT vs. M/s ESPN Software India Ltd.	TS-873-HC-2017(DEL)-TP
Halcrow Consulting India Pvt. Ltd. vs. DCIT	TS-848-ITAT-2017(DEL)-TP

Glossary

Abbreviations	Full name
ACR	Annual compliance report
AE	Associated enterprises
ALP	Arm's length price
AO	Assessing officer
APA	Advance Pricing Agreement
AY	Assessment Year
BEPS	Base erosion and profit shifting
CbCR	Country-by-country report
CBDT	Central Board of Direct Taxes
CE	Constituent entity
CIT	Commissioner of Income-tax
CIT(A)	Commissioner of Income Tax (Appeals)
CPM	Cost Plus Method
CUP	Comparable uncontrolled price
DCIT	Deputy Commissioner of Income Tax
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
FAR	Functions, assets and risks
FY	Financial year
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Abbreviations	Full name
HC	High Court
ICAI	The Institute of Chartered Accountants of India
ITAT/Tribunal	Income Tax Appellate Tribunal
MAM	Most appropriate method
MAP	Mutual Agreement Procedure
MCAA	Multilateral Competent Authority Agreement
MF	Master file
MNCs	Multinational Companies
OECD	Organisation for Economic Cooperation and Development
PE	Permanent establishment
Pr. CCIT	Principal Chief Commissioner of Income Tax
Prescribed authority	Director General of Income-tax (Risk Assessment)
RTB	Regional Taxation Bureau
The Act	Indian Income-tax Act, 1961
The Rules	Indian Income-tax Rules, 1962
TNMM	Transactional net margin method
TP	Transfer pricing
TPO	Transfer pricing officer

Notes

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