

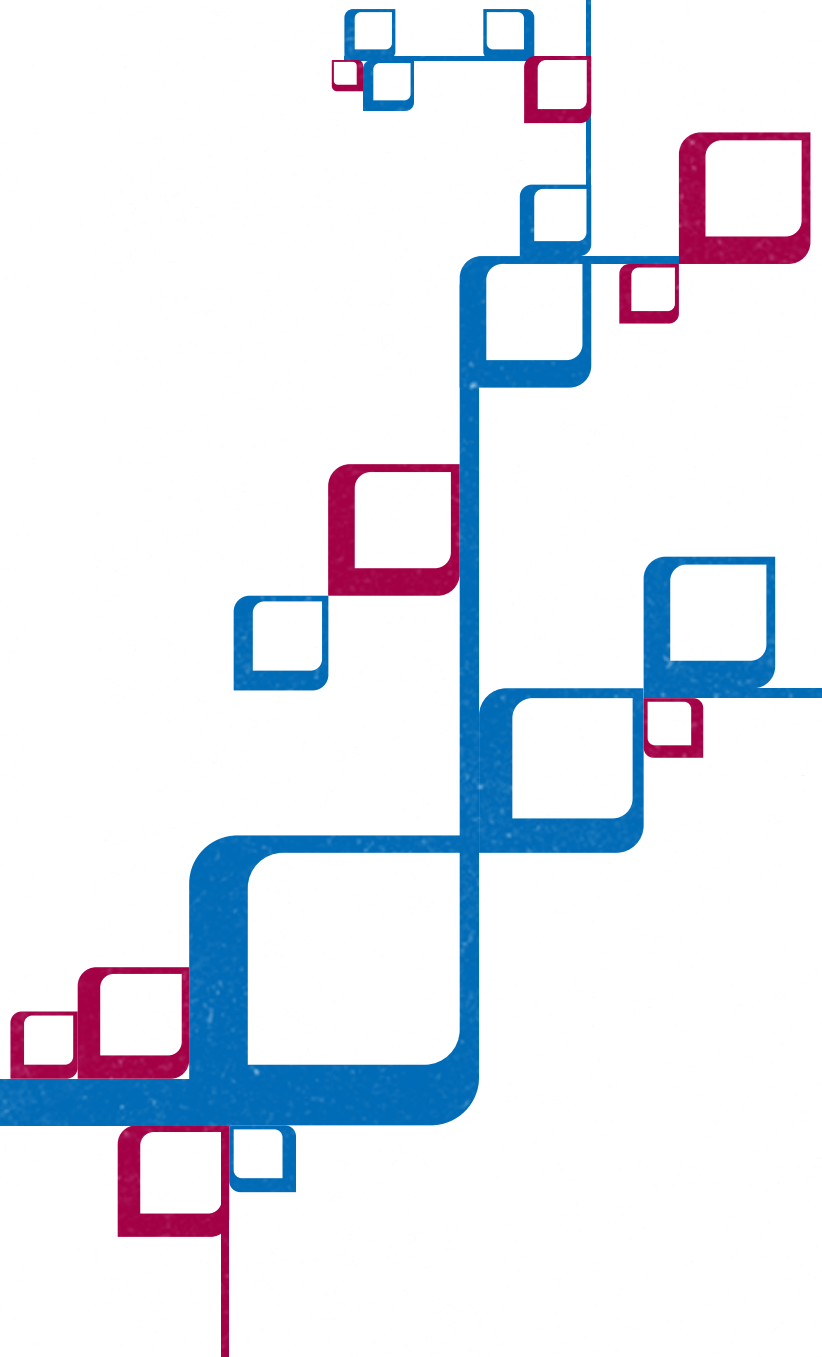


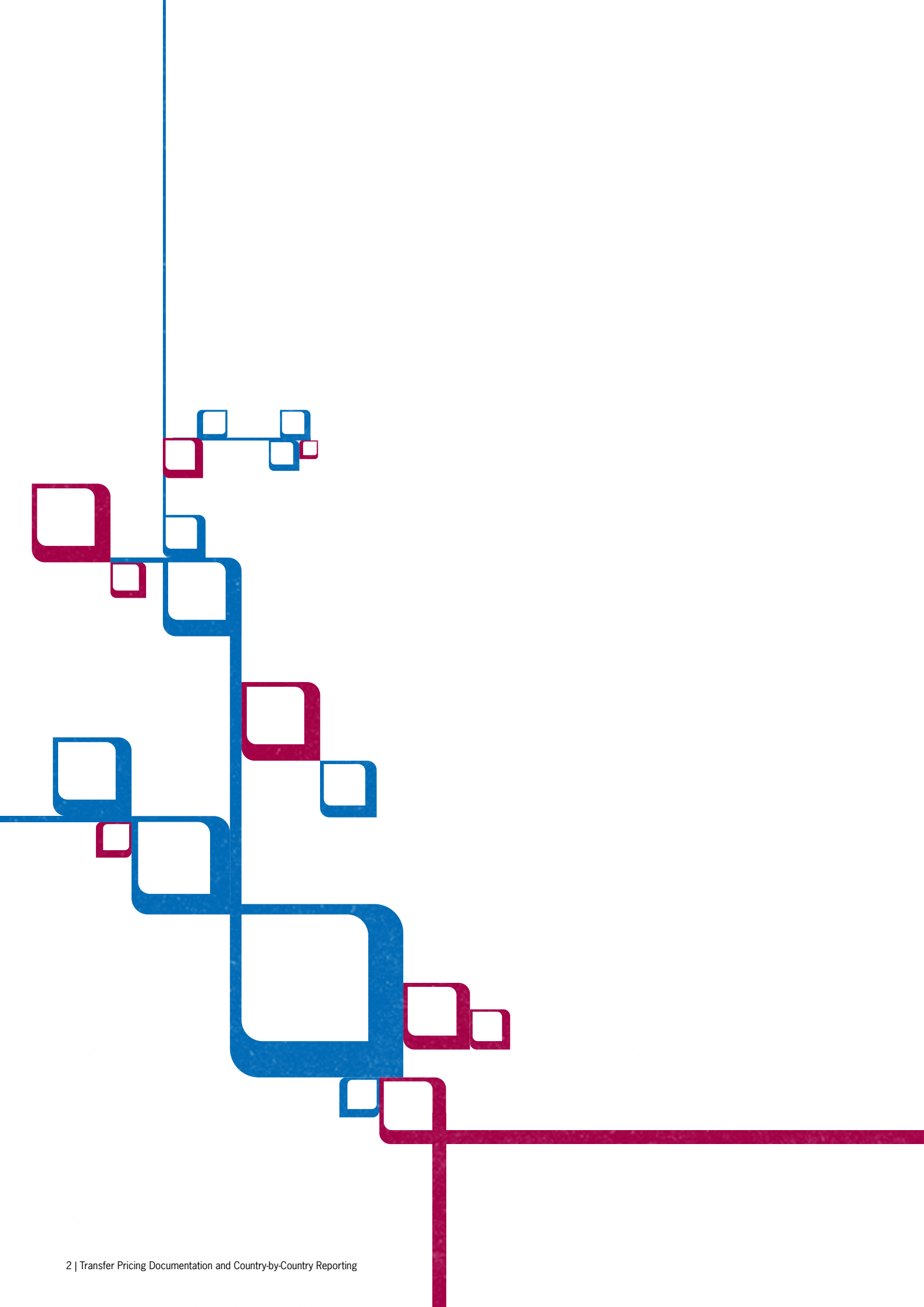
Grant Thornton

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Action 13: Transfer Pricing Documentation and Country- by-Country Reporting

Outlook Paper





An effort to enhance transparency



Why

- Base Erosion and Profit Shifting (“BEPS”) creates an alarming situation - annual tax losses estimated at around USD 100 to 240 Bn

Who

- G20 countries and OECD join hands to tackle BEPS - OECD comes out with detailed reports on 15-point Action Plan to revamp international taxation

How

- Action 13 provides guidance on TP documentation and CbC reporting - suggests a three tier documentation structure: master file, local file, and CbCR

What

- CbCR - a risk assessment tool
- Provides an overview of allocations of income, taxes, economic activity, etc. between members of MNE group
- Added requirement to maintain a CbCR and a master file for MNE’s with global turnover of more than 750mn Euros
- Enhanced transfer pricing documentaton and increased exchange of information between countires lies at the heart of CBCR.

Next

- India’s commitment to BEPS project - The Finance Minister proposes CbC reporting in the Union Budget 2016
- Draft regulations in line with OECD’s recommendations

CbC reporting goes beyond plain reporting obligations and is more than a simple number-crunching exercise. Grant Thornton India LLP, through this paper, discusses Action 13 and analyses the impact of CbC reporting in India. We also suggest some preliminary steps which may be undertaken by the affected MNE members to be prepared for the change.

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Base erosion and profit shifting (BEPS)

Over the years, globalisation has brought major changes in the world trade. It has resulted in free movement of technology, people and capital as well as a gradual removal of trade barriers across the globe. With economies moving towards greater integration, business houses too shifted to greater integration. Globalisation resulted in shift from country-specific operating models to global business models with the entire value chain spread across various countries. As a result, the world has seen a magnificent growth in number of MNEs operating across the globe which have been able to increase their global footprint by establishing a network of subsidiaries, joint ventures, etc.

The initial challenge that was faced by countries in the light of above developments was the problem of double taxation. While execution of bilateral trade and tax treaties between nations provided a solution to the said problem, lately there has been a growing concern internationally about erosion of the tax base of countries. This is possible by way of claiming excessive deductions, avoiding taxable presence in a country, etc. which results in non-taxation or low taxation of income, i.e., “base erosion”, and artificial allocation of income away from jurisdiction where real activity occurs i.e. “profit shifting”.

What is BEPS?

Base erosion and profit shifting (“BEPS”) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid¹.

Simply speaking, BEPS refers to business modelling/restructuring strategies which are designed to reduce the overall tax liability of an MNE group. The BEPS strategies adopted by taxpayers across the world are not illegal. They are only the result of clever tax planning exercise which MNEs carry out to exploit gaps in the tax law of any country.

Need to tackle BEPS?

As mentioned earlier, globalisation has completely transformed world trade. It has resulted in growth in number as well as size of multinational enterprises (“MNEs”). Consequently, MNEs have enhanced their global presence by establishing an extensive network of group companies.

BEPS practices are not a new phenomenon. As global trade grew, so did the movement of capital. This necessitated the presence of bilateral double tax avoidance treaties between countries. These treaties were designed with the primary objective of avoiding double taxation of income and allocating taxing rights between treaty partners. The allocation of rights generally skew in favour of the capital exporting country vis-à-vis a capital importing country. This meant that developing countries ceded allocation rights in favour of developed countries in order to attract capital. The skewed allocation of taxing rights coupled with inadequate expanse of treaty network gave rise to gap in international tax framework leading to tax avoidance.

Tax jurisdictions across the world have their own set of policies and laws. Differences in tax policies across jurisdictions are often exploited by MNE groups who use such differences in domestic tax rules and international regulations to their advantage for eliminating or significantly reducing taxation.

Another factor which has contributed to BEPS is the competing objective of countries to attract investment through favourable tax regimes.

The BEPS problem has become pronounced in the last decade or so on account of, inter-alia, the following developments:

- The advent of new economy where geographical barriers lose relevance and intangible property has become the value creator . This has led to innovative business models which the current international tax best practices are unable to fully address.
- The rise of economic prowess of developing countries which have been demanding greater share of the tax pie.
- The rising public awareness about the corporate social responsibility. A factor which has generated a lot of public interest in social behavior of corporates, including tax transparency policies of large MNEs, is the slow-down in global economy and the consequent austerity measures which followed, especially in the developed world.

1. <http://www.oecd.org/ctp/beps-about.htm>

“ Research undertaken since 2013 confirms the potential magnitude of the BEPS problem. Estimates conservatively indicate annual losses of anywhere from 4 - 10% of global corporate income tax (CIT) revenues, i.e. US\$ 100 to 240 bn annually

(Source: OECD website)

”

BEPS Project – OECD and G20 initiative

The public and media attention has put BEPS on the political centre-stage as well. In 2012, organisation for economic co-operation and development (“OECD²”) and G20 countries³ recognised the need for a global action plan to counter BEPS. The political endorsement of the action plan was an open acknowledgement of the urgency required to address the BEPS issue.

“

Cross-border tax evasion and avoidance undermine our public finances and our people's trust in the fairness of the tax system. Today, we endorsed plans to address these problems and are committed to take steps to change our rules to tackle tax avoidance, harmful practices, and aggressive tax planning.

G20 leaders declaration (St Petersburg, 06 September 2013)

”

OECD and G-20 nations embarked on the journey to revise the international tax rules with an ambitious objective of realigning the tax law to global economic developments and ensure taxation of profits in jurisdictions where economic activities are carried out and value is created. Furthermore, it is also intended to give business community greater certainty by reducing disputes over the application of international tax rules, and standardising compliance requirements to the extent possible.

“

We reiterate the need to prevent base erosion & profit shifting and we will follow with attention the ongoing work of the OECD in this area

G20 leaders declaration (Mexico, 19 June 2012)

”

The project to tackle BEPS was started in June 2012. In February 2013, OECD released the report “Addressing Base Erosion and Profit Shifting”. The said report gave an insight into BEPS by providing an overview of the data available in public domain to highlight the existence and magnitude of BEPS and describing the key taxation principles that govern the cross-border business activities as well as the BEPS opportunities they present.

Following this, OECD released its report, “Action Plan on Base Erosion and Profit Shifting” in July 2013. The said report laid out a 15-point Action Plan to address BEPS. The said report called for fundamental changes to current mechanisms and strongly supported adoption of new consensus-based approaches to counter BEPS.



Key BEPS challenges:

- ✓ International mismatches in entity and instrument characterisation
- ✓ Application of treaty concepts to profits derived from the delivery of digital goods and services
- ✓ The tax treatment of related party debt-financing, captive insurance and other inter-group financial transactions
- ✓ Transfer pricing
- ✓ The effectiveness of anti-avoidance measures
- ✓ The availability of harmful preferential regimes

2. Founded in 1961, OECD is an international organisation of 34 nations. It stimulates economic progress and world trade. It is a forum which provides a platform to countries to compare policy experiences, seeking answers to common problems, identify good practices and coordinate domestic and international policies of its members.

3. G20 is an international forum for the governments and central bank governors from 20 major economies. The members include 19 individual countries—Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, South Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom and the United States—along with the European Union.

While OECD dedicated two separate action plans to address the tax challenges of digital economy and development of a multilateral instrument to give effect to modification of bilateral tax treaties, the remaining action plans were primarily organised around three pillars –

Coherence of corporate taxation at international level

Interplay of gaps as well as mismatches that exist in the domestic tax laws of different countries has given rise to a large number of BEPS related problems. Such lack of synchronisation at the global level has resulted in problems of double non-taxation or low taxation of income through methodologies designed to artificially segregate taxable income from the economic activity generating them. Increasing globalisation and integration of world economies means countries today cannot design their domestic tax laws in isolation. This calls for development of new set of corporate taxation standards which can prevent double taxation, while at the same time ensuring coherence between domestic tax laws to avoid non-taxation or low taxation through aggressive tax planning.

Need to realign taxation and substance

Although the current bilateral arrangements have been successful in preventing double taxation, they haven't been effective in preventing BEPS when tax laws of more than two countries interact. MNEs have been successful in reducing their overall tax liability by positioning third countries in the bilateral treaty arrangements. An example of such arrangements can be use of shell companies that have little or no substance in terms of resources owned and/or employed. Furthermore, aggressive TP planning has also been used to artificially shift income. In the above backdrop, there is a need to tax income where activity from which it arises is performed to tackle BEPS. This is why realignment of taxation and substance is required.

Transparency, coupled with certainty and predictability

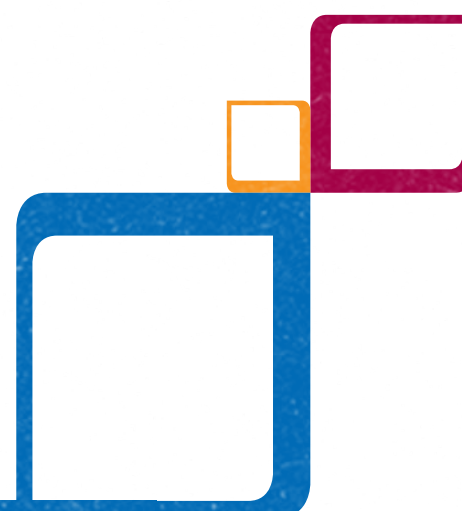
Risk-assessment is the starting point of any tax audit exercise. For such assessment to be effective and comprehensive, it is imperative that accurate and relevant data is available with tax authorities on a timely basis to enable them to identify risk areas. While audits provide key information to administrations, they lack the tools for early detection of aggressive tax planning strategies. Accordingly, it is essential to develop new tools and avenues to enhance transparency between taxpayers & tax administrations and ensuring tax administrations have ready access to all relevant and reliable information for detection of BEPS related risks. Further, businesses require greater certainty for estimating tax exposures to make informed business related investment decisions.

The July 2013 report, identifying all the action plans, also laid down timelines for their roll-out. In September 2014, interim reports were issued on seven out of 15 action plans. Finally, on 05 October 2015, after extensive deliberation by the working parties of OECD, release of draft reports for public discussions, public consultations and review of stakeholder's comments, OECD presented the final reports on 15 Action plans to address various international taxation issues such as treaty abuse, identifying permanent establishments, TP policies, disclosure of information, etc., the interplay of which leads to BEPS.

Given below is an overview of target areas which are specifically dealt with by the different action plans:

Table: List of BEPS Action Plans

Pillar	Action	Topic
Digital economy	1	Addressing the tax challenges of the digital economy
Coherence	2	Neutralising the effects of hybrid mismatch arrangements
	3	Designing effective controlled foreign company rules
	4	Limiting base erosion involving interest deductions and other financial payments
	5	Countering harmful tax practices more effectively, taking into account transparency and substance
Substance	6	Preventing the granting of treaty benefits in inappropriate circumstances
	7	Preventing the artificial avoidance of permanent establishment status
	8 to 10	Aligning Transfer pricing (“TP”) outcomes with value creation
Transparency	11	Measuring and monitoring BEPS
	12	Mandatory disclosure rules
	13	TP documentation and CbCR
	14	Making dispute resolution mechanisms more effective
Multilateral instrument	15	Developing a multilateral instrument to modify bilateral tax treaties



Action 13 – Background

Presently, chapter V of the OECD guidelines provides guidance on TP documentation. Action 13 aims to streamline the existing guidance by providing detailed recommendations on TP documentations and CbC reporting.

Action 13 prescribes the minimum reporting standards which should be considered by the countries implementing OECD’s recommendations in the final report for revising their existing TP documentation norms.

Why is TP documentation required?

The TP documentation serves varied purposes. The objectives intended to be achieved from maintenance of TP documentation are also clearly laid out in the final report for Action 13. Given below is an overview of the objectives of having TP documentation requirements:

(i) Taxpayer’s assessment of its compliance with arm’s length principle (“ALP”):

In the absence of any local TP documentation requirements, there is a risk of taxpayers’ resorting to reporting of reasonably aggressive numbers in their corporate tax returns without any cogent basis on hand. TP documentation requirements tend to obligate the taxpayer with the need to adopt a TP method after an in-depth FAR analysis. It also helps in creating a culture of self-compliance as the taxpayer is more likely to take reasonable steps to ensure compliance with the ALP at the time of return filing in order to avoid penalties.

(ii) TP risk assessment:

Risk assessment represents the starting point of any audit cycle. As mostly countries have limited resources at their disposal for conducting TP audits, it is practically impossible for them to carry out in-depth scrutiny of each and every transaction entered by taxpayers. Therefore, in order to utilise the resources judiciously for effective scrutiny, it is important that the tax authorities are able to identify high risk TP areas which warrant further analysis during the course of audits.

Chapter V of OECD Guidelines also stressed the importance of taxpayer’s analysis of its transfer pricing positions.

To conduct such assessment of high risk areas, availability of reliable, relevant and correct information to tax authorities is an important pre-requisite. Maintenance of robust documentation by the taxpayer will ensure that reliable and correct factual data is available on records which can be relied upon by the tax administration for making effective risk assessments at early stages of audit cycle.

(iii) TP audit

TP audits are generally complex as they tend to be fact-based and may involve analysis of complex transactions/ issues. For effective completion of audits, tax authorities may require documents pertaining to the taxpayer’s transactions. Since majority of the information required is in possession of the taxpayer, tax authorities are primarily dependent on the taxpayer for the same to perform effective audits.

Accordingly, such documentation, if properly maintained, can help in satisfying the information needs of tax authorities to a great extent and can significantly curb the need to make any unusual and special information requests during the course of audit.

The TP documentation maintained by the taxpayer in relation to its intra-group transactions is of utmost importance, particularly, for the tax authorities of the taxpayer’s country. The importance of TP documentation is clearly evident from the fact that over the years, various countries across the globe have introduced their own local legislation relating to TP, which in turn includes documentation requirements. Furthermore, the growing realisation among nations about the importance of transparency between tax authorities and taxpayer to establish effective and robust tax machinery as well as to tackle growing BEPS related issues has in-turn resulted in enhanced focus on documentation needs.

“It would be unduly burdensome and inefficient for transfer pricing documentation to attempt to anticipate all of the information that might possibly be required for a full audit. Accordingly, situations will inevitably arise when tax administrations wish to obtain information not included in the documentation package. Thus, a tax administration’s access to information should not be limited to, or by, the documentation package relied on in a transfer pricing risk assessment. Where a jurisdiction requires particular information to be kept for transfer pricing audit purposes, such requirements should balance the tax administration’s need for information and the compliance burdens on taxpayers.”

(Source: Final Report)

”

Overview of chapter V of the OECD Guidelines

Chapter V of the OECD Guidelines provides generic guidance for tax administrations on documents to be obtained from taxpayers in relation with a TP enquiry. It further provides guidance to assist taxpayers in identifying documents they can use to defend the arm’s length nature of the inter-company transactions undertaken by them. OECD suggested that taxpayer should endeavour to determine the ALP for its inter-company transactions at the time of entering into the transaction or at the time of return filing subject to the following:

- There should not be any contemporaneous documentation filing obligations – information request at the time of return filing should be restricted to documents and/or information which are fundamental to identification of cases that merit further examination.
- Tax administrations, while requesting information from taxpayers, should endeavor to strike a balance between their information needs and the cost and administrative burden borne by the taxpayer.
- Taxpayer should not be expected to retain documents for periods for which TP assessment is time-barred beyond a reasonable period of time.
- Taxpayers should not be expected to produce documents that are not in their actual possession or control or cannot be reasonably obtained.
- Factors such as time, cost and difficulties involved should be factored in while making requests for information pertaining to foreign associated enterprises from the taxpayer.
- Tax administrations should endeavor to maintain confidentiality of taxpayer’s data.

In addition to the above, chapter V of the OECD guidelines provided that though it is not possible to lay down a precise list of information that can satisfy information needs of tax administrations in all cases, there are few information requirements that are generally applicable in all circumstances such as details of taxpayer, associated enterprises, nature of the transactions, FAR analysis, basis of pricing such transactions, information pertaining to general commercial and industry conditions that could have an impact on the taxpayer, relevant financial information, and information derived from independent enterprises engaged in similar transactions or businesses.

Gap in chapter V of the OECD guidelines

The Chapter V of the OECD Guidelines suffers from following limitations:

- **TP was in nascent stages:** The guidance laid down in the chapter V of the OECD Guidelines was drafted in an environment when TP legislation in most of the developing nations was in nascent stages. Both the taxpayers and the tax administrations were unable to foresee the information that could be crucial for robust arm’s length analysis as well as for effective TP risk assessments and audits.
- **No detailed list of information/ documents provided:** Neither did the chapter V of the OECD contain any list of documents that could form part of TP documentation package, nor did it provide any clear guidance for establishment of link between the process for documenting TP positions, administration of penalties, and the burden of proof. With the experience gained from arm’s length analysis conducted over the years and their consequent scrutiny during tax audits, tax administrations/ taxpayers have come to develop a knowledge base on TP in general and are better placed to predict their information requirements.

Other factors resulting in a need for revised TP documentation guidelines

In addition to the above gaps in Chapter V of the OECD guidelines, following factors contributed further to the need for revised TP documentation guidelines:

- **Problem of BEPS:** Over the years, the problem of BEPS has grown exponentially. A significant part of BEPS related issues arise from TP planning exercises undertaken by MNEs. Through their aggressive planning strategies, MNEs have been successful in defeating tax laws of multiple jurisdictions. Recognition of BEPS as a global issue gave rise to unending discussions to find possible solutions to tackle BEPS.
- **No standardised format of reporting:** The G20 nations have increasingly pressed for development of a standardised reporting format that provides a comprehensive picture of the MNE group’s global allocation of income, economic activities giving rise to such income and the taxes paid by them in different countries to enable their tax authorities to conduct effective risk assessments

“Comprehensive and relevant information on the financial position of multinational enterprises aids all tax administrations effectively to identify and assess tax risks. The information would be of greatest use to tax authorities, including those of developing countries, if it were presented in a standardised format focusing on high level information on the global allocation of profits and taxes paid. We call on the OECD to develop a common template for country-by-country reporting to tax authorities by major multinational enterprises, taking account of concerns regarding non-cooperative jurisdictions. This will improve the flow of information between multinational enterprises and tax authorities in the countries in which multinationals operate to enhance transparency and improve risk assessment.”

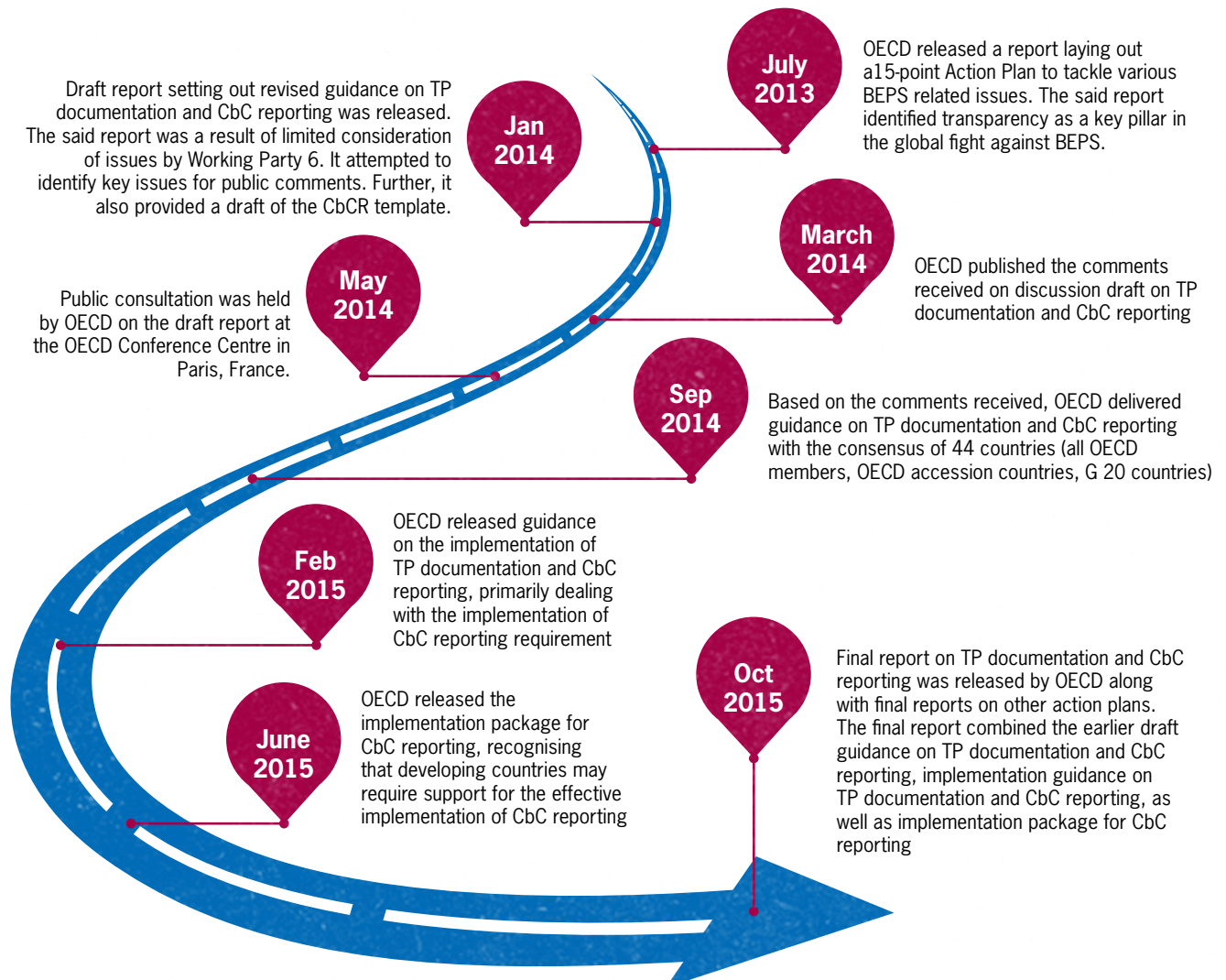
(G-8 summit meeting’s communique, held on 17 – 18 June 2013 at Lough Erne)

- **Growing need for enhanced transparency:** TP planning is a major contributor to the problem of BEPS along with other factors. Over time, there has been an increasing realisation that transparency can be very crucial in curbing the role of TP planning in BEPS. Availability of timely, accurate and reliable information with the tax administrations will equip them with the tools necessary to identify potential risk areas as well conduct effective analysis during TP audits.

Birth of Action 13

Action 13 was an attempt to address the above limitations of chapter V of OECD guidelines and to answer the call of G-20 nations’ for development of a standardised reporting template for effective risk assessments. OECD was also directed to strike a balance between the need for enhanced transparency and the compliance costs borne by businesses while developing revised documentation guidelines.

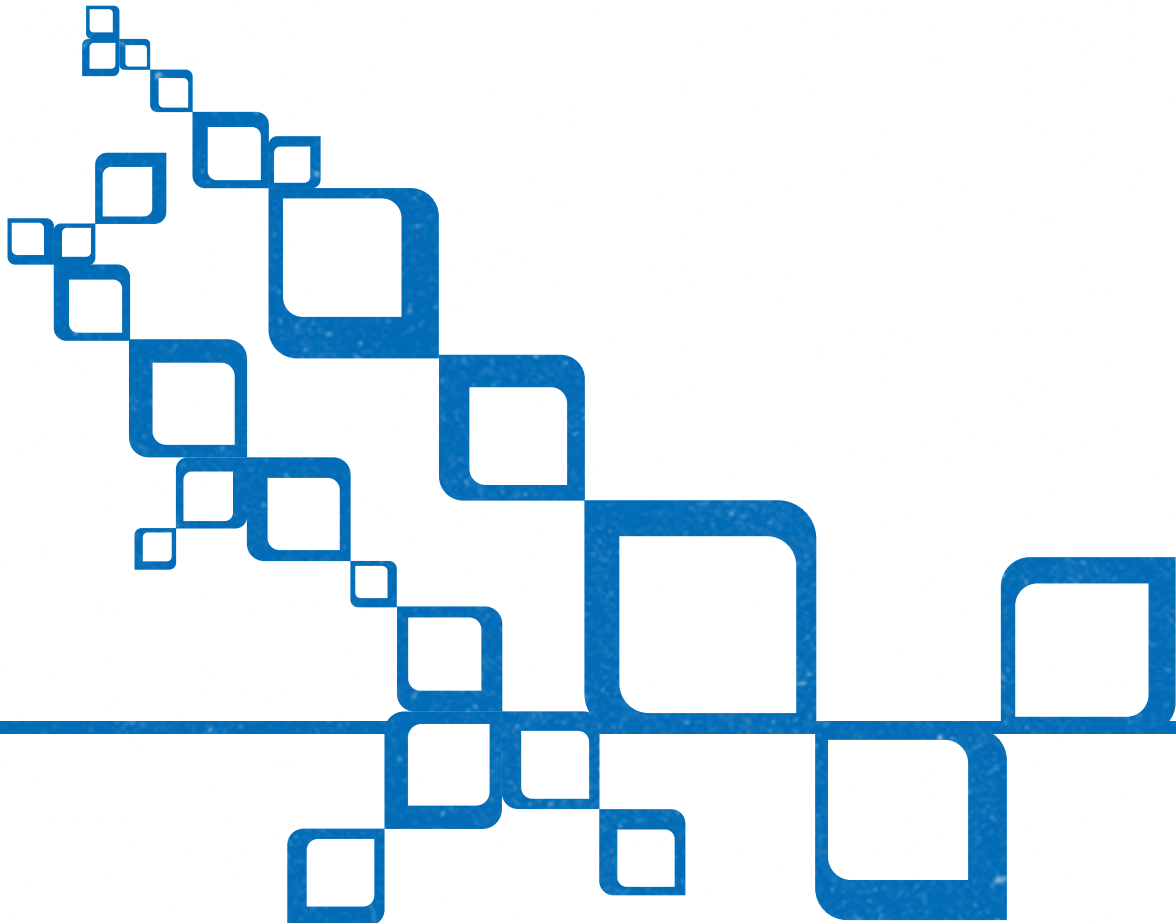
Accordingly, OECD, at the behest of G20 countries, through its subsidiary body, Working Party 6, drafted Action 13. Action 13 lays down detailed guidelines for TP documentation and also provides a standardised reporting format called “Country-by-country Report”. Given below is an overview of the important developments which ultimately resulted in the roll-out of final report on Action 13:



The guidance provided under Action 13 overcomes the limitations of chapter V of OECD Guidelines by:

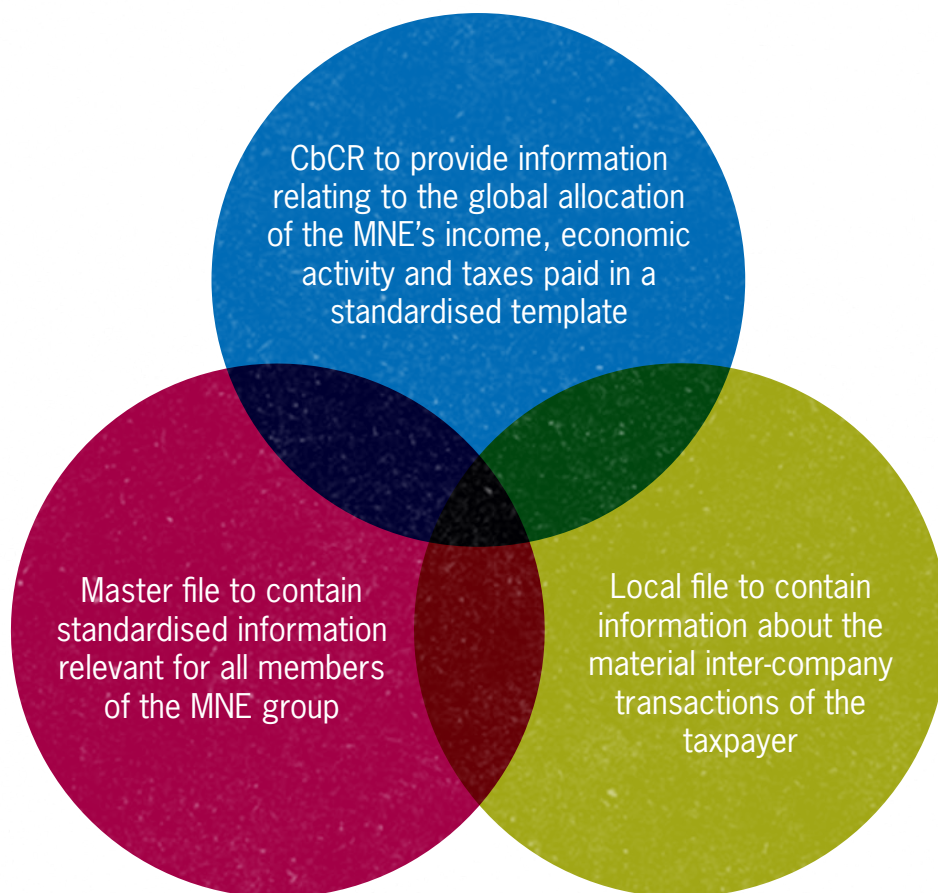
- Establishing a three-tier structure for maintenance of TP documentation comprising local file, master file and CbCR;
- Providing detailed guidance on the composition of local file, master file and country by country report;
- A model template of CbCR along with detailed instructions;
- Identifying various implementation challenges with regard to the new guidance and suggesting possible solutions to tackle the same; and
- Providing an implementation package that aims at ensuring smooth implementation of CbCR filing requirement as well as automatic exchange of such information across jurisdictions

The subsequent sections of this report capture the key propositions made by OECD under Action 13 with regard to preparation, maintenance and effective exchange of TP documentation and CbCR, developments across the globe for implementing CbC reporting, and an analysis of the impact of such developments on India.



New approach to transfer pricing documentation

Action 13 sets out a three-tiered standardised approach to TP documentation which consists of the following:



The above approach will enable taxpayers to formulate consistent TP positions and will provide tax administrations with useful information to assess TP risks, make determinations about audit resources, and for the commencement of audit inquiries.

The subsequent sections of this report provide a detailed analysis of OECD's recommendations on local file, master file and CbCR.

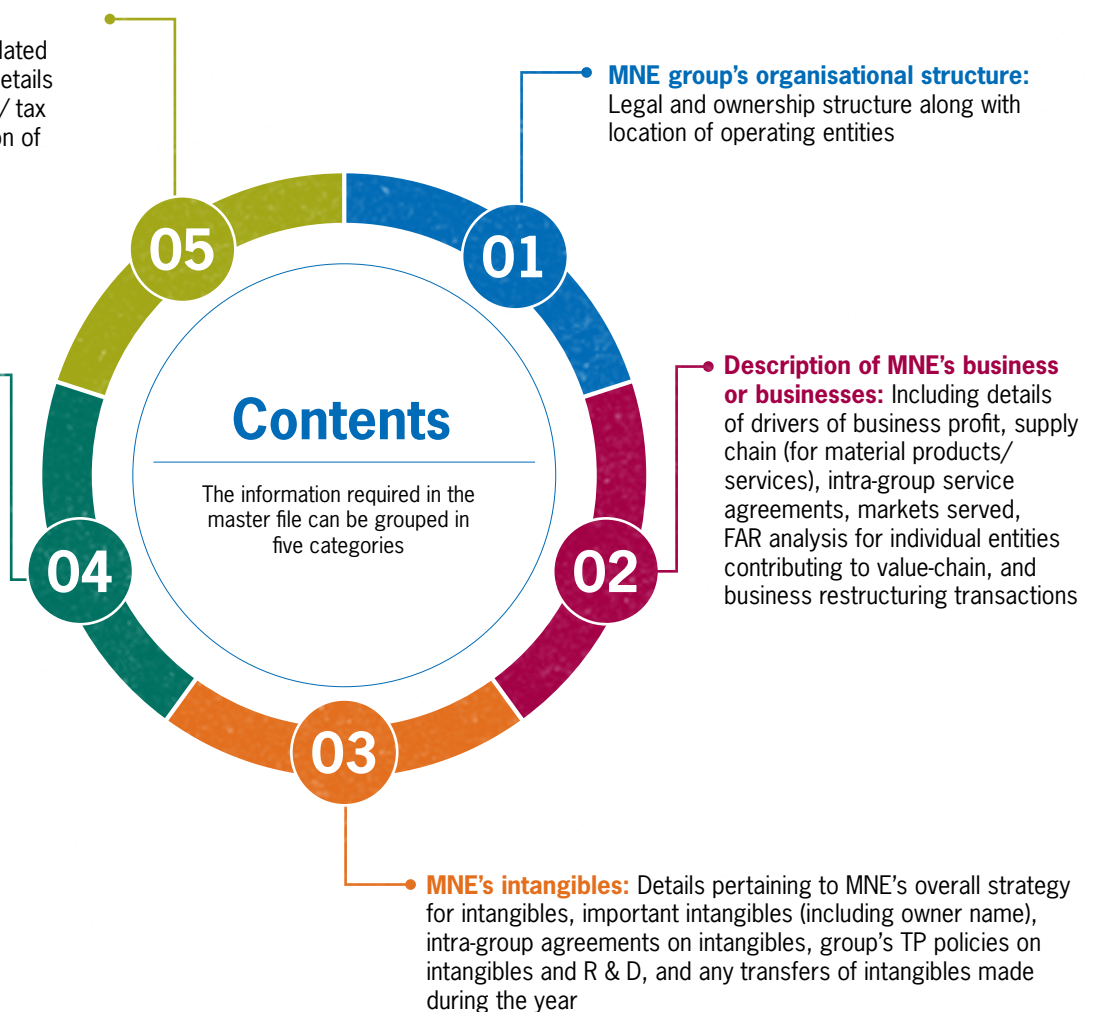
Master file

Action 13 recommends that the master file should provide an overview of the MNE group business, the nature of its global business operations, its overall TP policies, and its global allocation of income and economic activity in order to place the MNE group's TP practices in their global economic, legal, financial and tax context. In producing the master file, taxpayers should use prudent business judgment in determining the appropriate level of details for the information supplied, keeping in mind the objective of the master file to provide tax administrations with a high-level overview of the MNE's global operations and policies.

In certain justifiable instances, presentation of information in master file is also permitted by MNE's line of business

MNE's financial and tax positions: MNE's consolidated financial statements and details of existing unilateral APA's/ tax rulings relating to allocation of income among countries

MNE's intercompany financial activities: Details of important financing arrangements of the group, members performing central financing function for the group (if any), intra-group financing arrangements



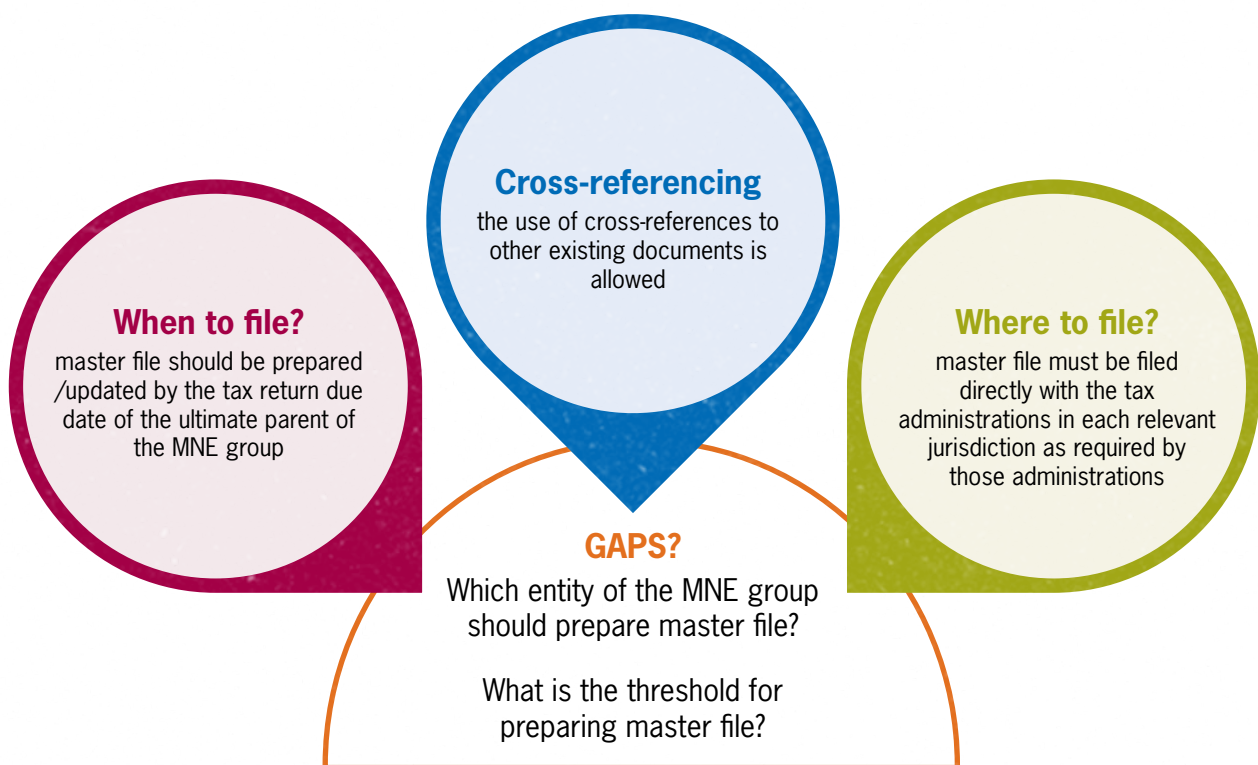
(Please refer Appendix III for detailed contents of master file)

“ The master file shall contain information which may not be restricted to transaction undertaken by a particular entity situated in particular country. In that aspect, **information in master file would be more comprehensive than the existing regular transfer pricing documentation.** ”

(Source: Budget memorandum, Indian Union Budget 2016)

Maintaining the master file

Given below is an overview of some aspects in relation to the maintenance of master file:



Indian regulations

Indian TP regulations are contained in section 92 to 92F of the Act. The TP documentation requirements are contained in section 92D of the Act. However, until now, there was no requirement for maintenance of master file in India. The Finance Bill 2016 proposes to introduce the said requirement in India w.e.f. FY 2016-17.

Although detailed regulation in this regard is yet to be prescribed, it is expected that such regulations will be in line with OECD’s mandate as described above.

Key proposals made in the budget memorandum for Union Budget 2016 with regard to master file are as follows:

- Master file will be required to be maintained by an Indian entity part of the MNE;
- Detailed documentation requirement shall be laid down under the rules;
- Such documentation will be furnished before Indian revenue authorities on demand; and
- Penalty of INR 5,00,000 may be imposed for non-furnishing of such documentation upon request.

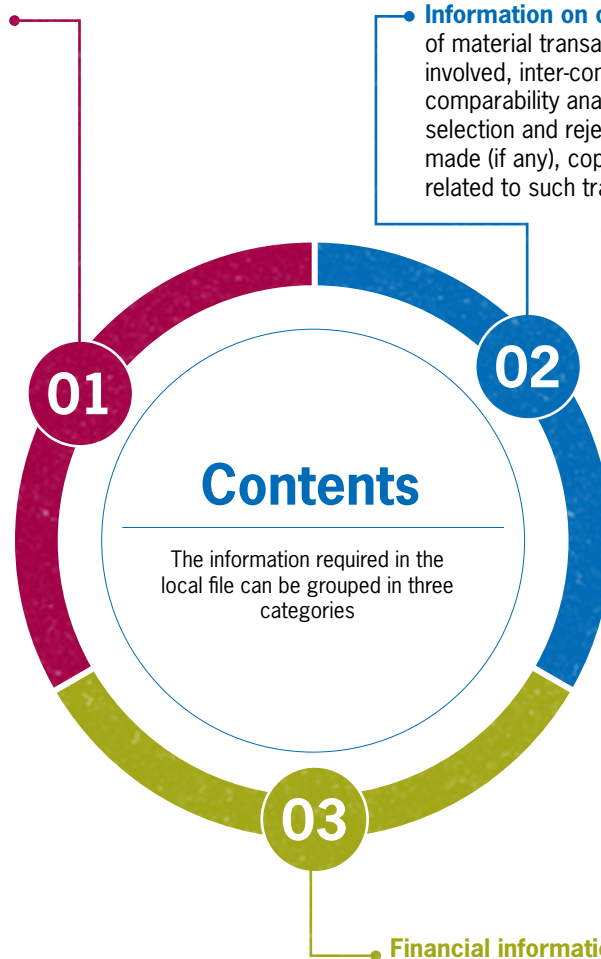
Local file

The local file would provide more detailed information relating to specific material intercompany transactions. The information required to be maintained in the local file will supplement the master file. It will help in assuring that the objective of meeting the ALP is achieved in respect of material TP positions affecting a specific jurisdiction. The local file focuses on information relevant to the TP positions related to transactions taking place between a local country affiliate and AEs in different countries.

Local entity information:

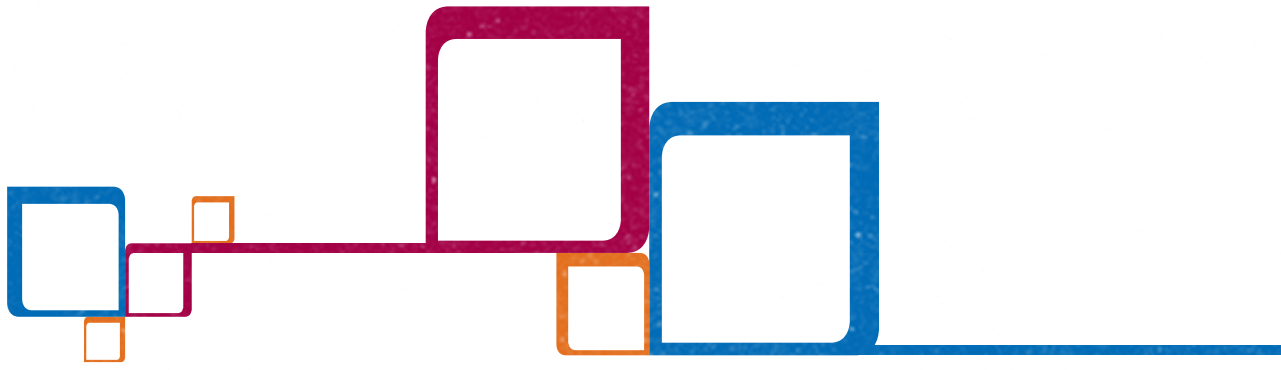
Includes management structure/organisation chart, details pertaining to management reporting, business description, business strategy, any restructurings/transfer of intangibles, and key competitors

Information on controlled transactions: Description of material transactions such as details of AEs involved, inter-company agreements, functional and comparability analysis, most appropriate TP method selection and rejection, comparability adjustments made (if any), copy of existing APAs/ other tax rulings related to such transactions



Financial information: Financial data of the local entity as well as of the comparables selected

(Please refer Appendix IV for detailed contents of local file)



Maintaining the local file

The figure below provides answers to some critical questions in respect of maintenance of local file:



Indian regulations

An Indian taxpayer entering into international transactions/ SDT (controlled transactions) is required to maintain documentation as prescribed under Rule 10D. In essence, such documentation serves the purpose for which local file is intended to be prepared. Therefore, it can be said that local file requirements are already in place in India.

Key provisions of local documentation requirements in India as under:

- Documentation/ information maintained should, as far as possible, be contemporaneous;
- Documentation should be in place latest by the due date of filing income tax return;
- Rule 10D lays down 13-point documentation requirement in respect of controlled transactions – such requirement not applicable where the aggregate value of international transactions does not exceed INR 1 cr.
- Such documentation is required to be furnished to the income tax authorities during the course of assessment proceedings upon request within prescribed period; and
- Specific penalties prescribed for failure in complying with above requirements.

It is interesting that the existing provisions of section 92D of the Act read with rule 10D of the Rules for maintenance of TP documentation (akin to local file) are primarily in line with recommendations given in Action 13. The same is evident from the summary presented in the table below:

Provision with respect to local file: Indian TP Regulations vis-à-vis OECD's recommendations			
Sr. No.	Particulars	Provision under Indian TP Regulations	Remarks
1	Who to file	Indian taxpayer entering into international/ specified domestic transaction(s)	In line with OECD's recommendation
2	When to file	Documentation should be in place latest by the due date of filing income tax return – however, same is to be furnished with tax authorities during course of assessment upon request	In line with OECD's recommendation
3	Threshold	Limit of INR 1 cr prescribed in respect of preparation of detailed documentation for a taxpayer entering into international transactions	In line with OECD's recommendation
4	Where to file	To be filed with Indian tax authorities	In line with OECD's recommendation

CbCR

The CbCR requires aggregate tax jurisdiction-wise information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. It also requires a listing of all the CEs for which financial information is reported, including their tax jurisdiction of incorporation, where different from the tax jurisdiction of residence and the nature of the main business activities.

The CbC reporting template is divided into three tables:

- **Table I.** Overview of allocation of income, taxes and business activities by tax jurisdiction

Table 1- Contents of CbCR			
Revenues (from related and unrelated party transactions)	Profit (loss) before income tax	Income tax paid (on cash basis)	Income tax accrued – current year
Stated capital	Accumulated earnings	Number of employees	Tangible assets (excluding cash and equivalents)

- Table II. List of all CEs of the MNE group included in each aggregation by tax jurisdiction, including description of main business activity
- Table III. Additional information

(Please refer Appendix V for CbCR templates)

CbCR reporting – “A tax risk assessment tool”

The CbCR would be helpful for high-level TP risk assessment purposes. It may also be used by tax administrations in evaluating other BEPS related risks and where appropriate for economic and statistical analysis. However, the information in the CbCR should not be used as a substitute for a detailed TP analysis of individual transactions and prices based on a complete functional and comparability analysis.

In addition to providing model templates for CbCR, OECD has also provided following recommendations in relation to preparation of CbCR:

Particulars	OECD's recommendation	Possible challenge
Source of information	A wide variety of sources for obtaining financial information (e.g., consolidated reporting packages, separate entity statutory statements, regulatory financial statements, or internal management accounts) may be used	Flexibility to use any source of information may result in difficulties in tracing the data reported in CbCR
Reconciliation of information	Reconciliation of the revenue, profit, and tax reported with the consolidated financials is not required	To ensure accuracy, reconciliation of CbCR data with multinational's consolidated financial statements may still be required for practical purposes
Difference in accounting policy	Adjustments for differences in accounting principles applied in different tax jurisdictions is not required	Different accounting policies would not depict the true picture of the consolidated financial position of the MNE group in CbCR

Implementation

Consistent and effective implementation of the TP documentation standards and in particular of the CbCR is essential. Therefore, countries participating in the OECD/G-20 BEPS Project agreed on the core elements of the implementation of TP documentation and CbC reporting. Action 13 states that the CbCR should be filed in the jurisdiction of tax residence of the UPE and shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms such as the Convention, bilateral tax treaties or tax information exchange agreements. In limited circumstances, secondary mechanisms, including local filing or filing of CbCR by a SPE and automatic exchange of the said report by its country of residence may be used as a backup.

“ Completing the template is more difficult than most initially envisage. We've hosted client workshops in which even seasoned tax professionals from large companies have struggled within the many grey areas over what should and shouldn't go in.

Wendy Nichollas, Grant Thornton U.K

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OECD further recommends that the date for completion of CbCR may be extended under the circumstances where the financial statements and the other relevant information for CbC data may not be finalised until the due date for some countries for a given financial year.

Countries participating in the OECD/G20 BEPS project agree that MNE groups with income derived from international transportation or transportation in inland waterways that is covered by treaty provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one jurisdiction, should include the information required by the CbC template with respect to such income only against the name of the jurisdiction to which the relevant treaty provisions allocate these taxing rights.

The threshold of € 750 mn will exclude approximately 85 to 90% of MNE groups from CbC reporting requirement. However CbCR will be filed by MNE groups controlling approximately 90% of corporate revenues.

“ Although some multinationals are taking a “wait and see” approach in South Africa, certain of our clients are being more proactive in their approach – even though CbCr is not yet compulsory in South Africa, they are working with the CbCR template in order to ensure that the required information is available in the required format. Taking this a step further, they have asked us to assist them in analysing the output in order to identify areas of inconsistency and risk so that they are able to address these well in advance of the formal introduction.

AJ Jansen van Nieuwenhuizen, Grant Thornton South Africa

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Conditions necessary for obtaining and use of the CbCR

Following conditions are crucial for obtaining and the use of the CbCR:

Confidentiality	Consistency	Appropriate use
<p>Jurisdictions should have adequate legal protections in place for the confidentiality of the reported information.</p> <p>Such protections include limitation of the use of information, rules on the persons to whom the information may be disclosed, etc.</p>	<p>Jurisdictions should use their best efforts to adopt a legal requirement that MNE groups' UPEs resident in their jurisdiction prepare and file the CbCR, unless exempted.</p> <p>The OECD guidance encourages countries to adopt the template provided in Annex III of the Action 13 guidance and specifically to not require more or less information than in the template.</p>	<p>Jurisdictions should commit to use the CbCR for assessing high-level TP risk or other BEPS-related risks.</p> <p>Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbCR.</p> <p>If any such adjustments based on CbCR data are made by the local tax administration of the jurisdiction, the jurisdiction's CA would concede the adjustment in any relevant CA proceeding.</p>

Framework for government-to-government mechanisms to exchange CbCR

Action 13 recommends that the ultimate parent of a MNE resident in their country should file the CbCR. The country would exchange this information with jurisdictions in which the MNE operates on an automatic basis pursuant to government-to-government mechanisms such as the Convention, bilateral tax treaties or tax information exchange agreements.

If a jurisdiction fails to provide information to another jurisdiction, a secondary mechanism would be accepted, either through local filing or by nominating another CE of the group for filing of the CbCR and automatically exchanging such information to the next tier parent country

“ As on 04 February 2016, CAs of 32 jurisdictions have signed the CbC MCAA including Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Senegal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, and United Kingdom.

(Source:<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf>)

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Implementation package

Recognising the fact that countries, particularly, developing ones may require some support for the smooth implementation of the new CbC reporting requirement, countries participating in the OECD/BEPS project have developed an implementation package for CbC reporting. This package includes:

1. Model legislation:

The implementation package consists of a model legislation that can be used by countries to implement the requirement of filing of CbCR by the UPE of an MNE group in its jurisdiction of residence.

2. Model competent authority agreements (“CAA”):

The package also provides three model CAAs which could be used by each country to effect exchange of CbCR across jurisdictions. Such exchange can be achieved through:

- Convention on mutual administrative assistance in tax matters (“MAAT”);
- Information exchange provisions contained in the double tax conventions; or
- Tax Information Exchange Agreements.

The model legislation contained in the implementation package has been framed without accounting for the constitution and legal system or the structure and wording of the tax law of any particular tax jurisdiction, thereby enabling different jurisdictions to adapt the model legislation to their own legal systems.

(Refer Appendix VI for detailed overview of the implementation package)

CbC reporting: XML Schema introduced on 22 March, 2016

On 22 March 2016, OECD released an Extensible Markup Language (“XML”) schema or the CbC reporting XML Schema v. 1.0, along with a user guide, for the purpose of facilitating the automatic electronic exchange of CbC reports between the CAs of various jurisdictions.

Although the said schema has been developed for automatic exchange of CbCRs, it may be adopted by individual countries as a medium for furnishing of CbCR by the reporting entities before the tax authorities as well.





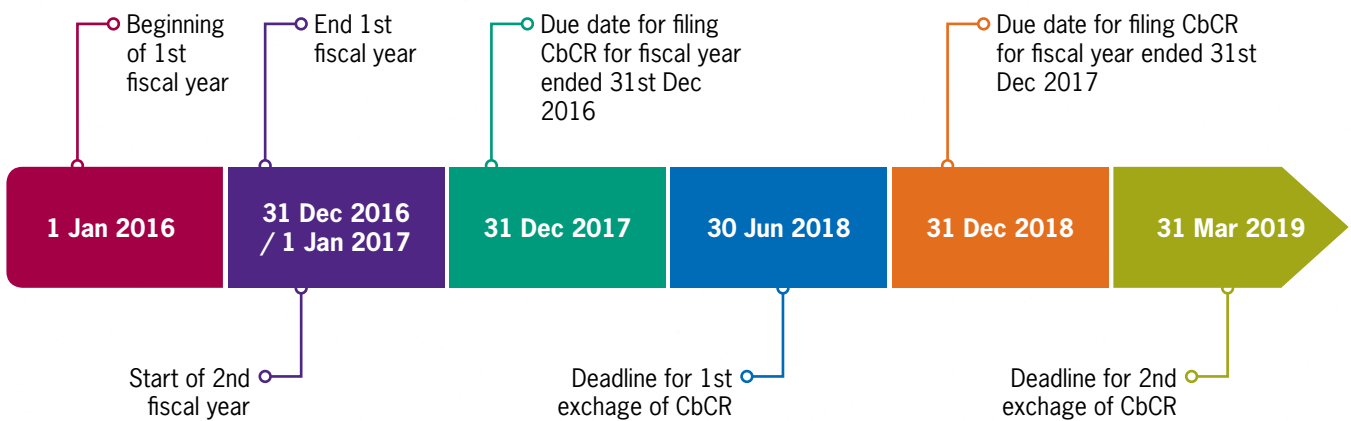
BEPS is a reality. The report presents a consensus among G20 nations.

Akhilesh Ranjan

Joint secretary, Ministry of Finance, Govt. of India (Source: Business Standard)

Suggestive CbCR timeline as per OECD

While OECD has given clear recommendations for CbCR in the main section of the final report, there was no clarity on the timeline for exchanging the same. However, timeline for exchange of the same has been laid down in the implementation package. Taking this into account, given below is the suggestive timeline for preparation and filing of CbCR as well as its exchange. (The timeline below has been developed for the first 2 CbCR filings applicable on an MNE group for Fiscal Year ended 31 December 2016 and 31 December 2017 respectively):



Indian regulations

While the TP documentation requirements as contained in the Indian TP Regulations are similar to the local file, however, the concept of “master file” and “CbCR” is yet to be implemented as a legal requirement.

India was an active participant in OECD’s BEPS Project. Keeping in line with its commitment to the BEPS Project, India’s finance minister tabled the proposal of introducing CbC reporting requirement in India while presenting Union Budget 2016.

The key propositions made in Union Budget 2016 in respect of CbC reporting are explained below:

1. Amendment in the Act

- Section 286 to be inserted in the Act to introduce the requirement of CbC reporting in India
- Penalty provisions in relation to CbCR to be introduced through amendment of section 271AA and insertion of new section 271GB in the Act

2. Applicability

- CbC reporting will be applicable from FY 2016-17 onwards

Difference in terms used in proposed regulations vis-à-vis OECD’s final report

“UPE” has been referred to as the “parent entity”	“SPE” has been referred to as the “alternate parent entity”	“Fiscal year” has been termed “accounting year”	“MNE Group” has been termed “international group”
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3. Threshold

**€ 750 mn
(INR 5,395 cr)**

- A threshold of € 750 mn (INR 5,395 cr) on consolidated group revenue for preceding accounting year⁴ for filing CbCR

4. When to file

**Income tax
return due date**

- CbCR to be filed on or before the due date of filing income tax return

5. Who to file

**Ultimate
parent entity**

- If the Indian entity is the ultimate parent entity of the MNE group

**Alternate
reporting
entity**

- If the Indian entity has been designated as the alternate reporting entity for the MNE group

**No exchange
agreement**

- Indian CE to file if the country of the ultimate parent entity or the alternate reporting entity does not have an automatic exchange agreement with Indian tax authorities

**Systematic
failure**

- Indian CE to file if there is a systematic failure by UPE/alternate reporting entity in filing or obtaining the CbCR

6. Contents of CbCR

- Language of Section 286 suggests that data required to be reported in CbCR will be in line with OECD's CbCR template. However, additional data requirements may be laid down under the Rules.
- Reporting format for CbCR has not been prescribed yet

7. Preliminary notification requirement

- Every Indian CE, not being a parent entity resident in India, to notify to prescribed authority on or before the prescribed date:
 - Whether it is the alternate reporting entity; or
 - The details of parent or alternate reporting entity as well as the country of which they are resident.

8. Verification of CbCR data

- Prescribed authority may ask for additional information to verify the accuracy of particulars reported in CbCR by issuing necessary notice
- In such case, information to be furnished within 30 days of receipt of notice – such time period may be extended by 30 days upon application made by taxpayer

4. Where the parent entity or the alternate reporting entity is Indian resident, "accounting year" means the previous year, i.e., annual period ending on 31 March every year. For other cases, annual accounting period of parent entity for which it prepares its financial statements is to be considered as the accounting year.

9. CbCR - Penalty provisions

CbCR - Penalty provisions	
Nature of default	Amount of penalty
Failure to furnish CbCR to the prescribed authority	<ul style="list-style-type: none"> • INR 5,000 per day, where period of failure does not exceed one month • INR 15,000 per day for every day beyond the above period • INR 50,000 per day, if the default continues beyond the date of service of penalty order
Failure to produce information before the prescribed authority for checking accuracy of data contained in CbCR	<ul style="list-style-type: none"> • INR 5,000 for every day during which default continues • INR 50,000 per day, if the default continues beyond date of service of penalty order
Furnishing inaccurate particulars in CbC report	Penalty of INR 5,00,000 may be imposed

The proposals tabled in the Indian Union Budget 2016 are in line with the OECD's recommendations. Indian law makers have accepted the majority of the minimum reporting standards. The same is demonstrated in the table below:

Provisions with respect to CbCR: Proposals made in Indian Union Budget 2016 vis-à-vis OECD's recommendations			
Sr. No.	Particulars	Proposals under Indian Union Budget 2016	Remarks
1	Who to file	<ul style="list-style-type: none"> • UPE • In few circumstances by the Indian entity, being either the alternate reporting entity or a part of international group/ MNE group 	In line with OECD's recommendation
2	When to file	To be filed by the due date of filing income tax return, i.e., November 30	Indian regulations propose to provide a period of 8 months after the close of relevant financial year while OECD suggested a period of 1 year after the close of relevant financial year
3	Where to file	With the prescribed authority	In line with OECD's recommendation
4	Threshold	€ 750 mn (INR 5,395 cr) on consolidated group revenue for preceding accounting year for CbCR	In line with OECD's recommendation
5	1st reporting period	FY 2016-17	In line with OECD's recommendation to apply CbC reporting requirement for reporting period beginning on or after 1 January 2016

Compliance guidelines

Action 13 contains specific guidance with respect to certain “compliance issues” such as language, documentation, penalties etc. Following illustrates the various issues with specific directions.

Contemporaneous documentation

- Taxpayers to determine transfer prices based upon information reasonably available at the time of the transaction
- Transaction price should confirm the arm’s length nature of the transactions at the time of filing the tax returns
- Taxpayer not to search data when no comparable exists or cost of locating comparable is high

Retention of documents

- Taxpayers should not be required to maintain documents beyond reasonable period
- Documents should be allowed to be maintained as per the discretion of the tax payers (electronically/ physically)

Frequency of documentation updates

- TP documentation to be periodically reviewed to confirm the validity of TP methodology applied. In general, the master file, and the local file and the CbCR should be reviewed and updated annually

Language

- The language in which TP documentation is to be submitted should be established under local laws
- Where translation of document is crucial, specific requests for translation should be made

Penalties

- Penalties should not be imposed on a taxpayer for failing to submit data to which the MNE group did not have access
- Taxpayers should be encouraged to meet TP documentation requirements by designing compliance incentives such as penalty protection or a shift in the burden of proof

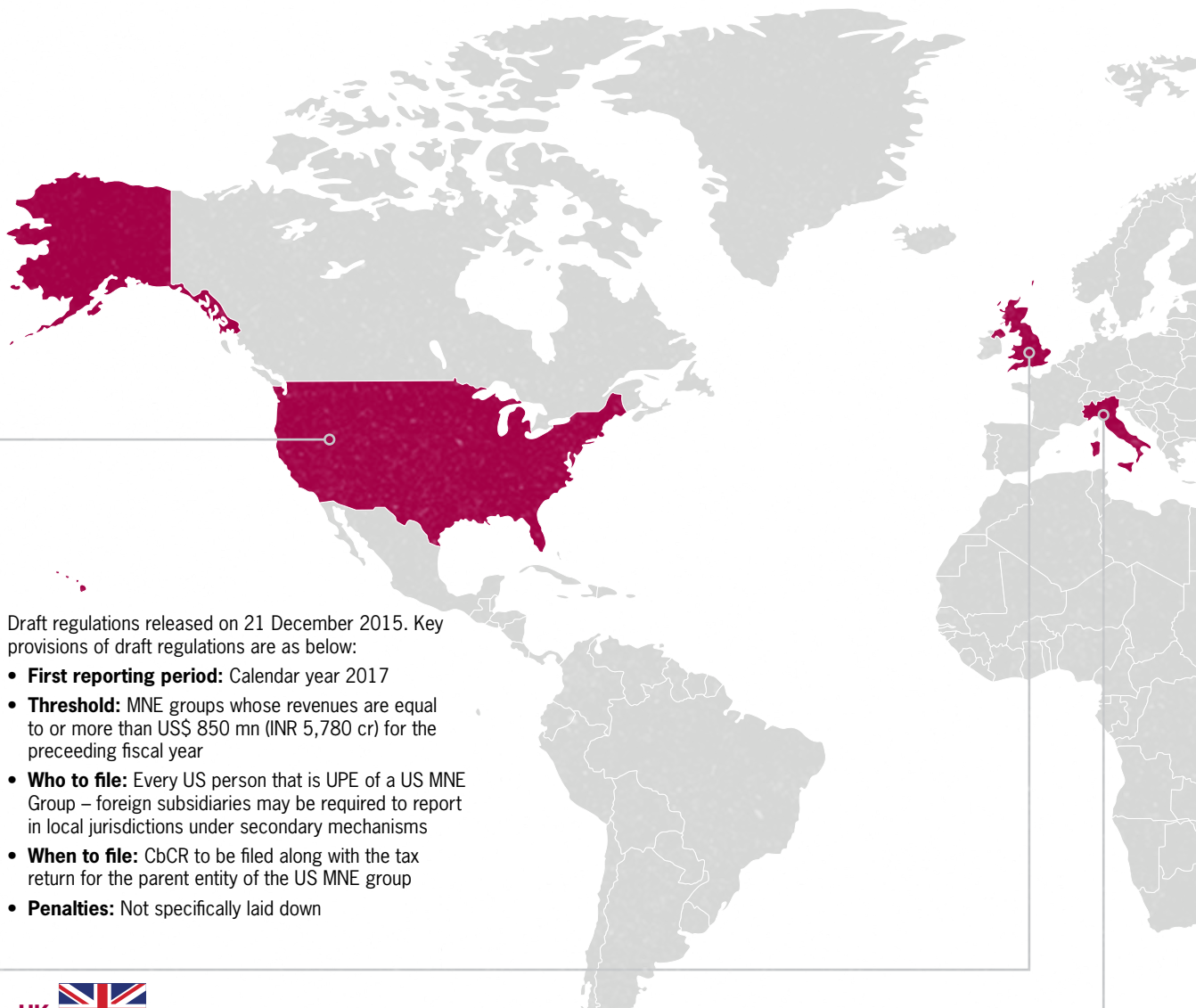
Confidentiality

- Tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information (trade secrets, scientific secrets, etc.) and other commercially sensitive information contained in the documentation package (master file, local file and CbCR)

Other issue

- Use of local comparables should be preferred over the use of regional comparables
- Certification of TP documentation by an outside auditor or other third party should not be required.

CbC reporting implementation – Global update



USA

Draft regulations released on 21 December 2015. Key provisions of draft regulations are as below:

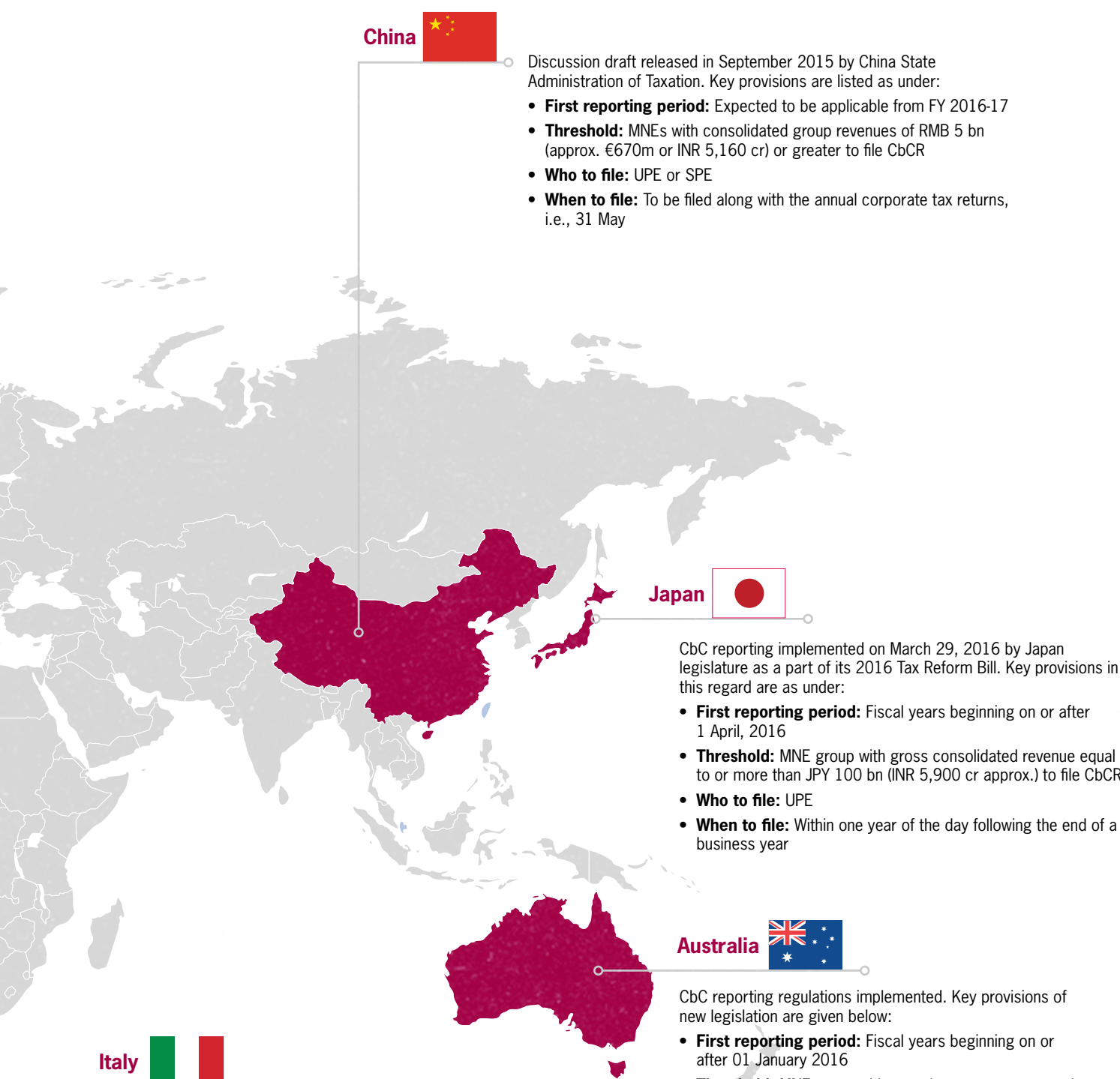
- **First reporting period:** Calendar year 2017
- **Threshold:** MNE groups whose revenues are equal to or more than US\$ 850 mn (INR 5,780 cr) for the preceeding fiscal year
- **Who to file:** Every US person that is UPE of a US MNE Group – foreign subsidiaries may be required to report in local jurisdictions under secondary mechanisms
- **When to file:** CbCR to be filed along with the tax return for the parent entity of the US MNE group
- **Penalties:** Not specifically laid down

UK



The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016” have been implemented in UK w.e.f. 18 March 2016. Key provisions of the new CbC reporting regulations are as below:

- **First reporting period:** Accounting period beginning on or after 01 January 2016
- **Threshold:** MNE groups with consolidated group revenues of €750 mn (INR 5,700 cr approx.) or more
- **Who to file:** UPE or SPE or local CE
- **When to file:** Within a period of 12 months from the end of the accounting period
- **Penalties:** Following penalties laid down:
 - Penalty of £ 300 for failure to file CbCR/ furnish information for verification of CbCR data
 - Penalty upto £ 60 per day if above default continues after assessment of penalty – may be increased to £ 1,000 per day if default continues beyond 30 days
 - Penalty upto £ 3,000 for furnishing inaccurate information



China



- Discussion draft released in September 2015 by China State Administration of Taxation. Key provisions are listed as under:
- **First reporting period:** Expected to be applicable from FY 2016-17
 - **Threshold:** MNEs with consolidated group revenues of RMB 5 bn (approx. €670m or INR 5,160 cr) or greater to file CbCR
 - **Who to file:** UPE or SPE
 - **When to file:** To be filed along with the annual corporate tax returns, i.e., 31 May

Japan



- CbC reporting implemented on March 29, 2016 by Japan legislature as a part of its 2016 Tax Reform Bill. Key provisions in this regard are as under:
- **First reporting period:** Fiscal years beginning on or after 1 April, 2016
 - **Threshold:** MNE group with gross consolidated revenue equal to or more than JPY 100 bn (INR 5,900 cr approx.) to file CbCR
 - **Who to file:** UPE
 - **When to file:** Within one year of the day following the end of a business year

Australia



- CbC reporting regulations implemented. Key provisions of new legislation are given below:
- **First reporting period:** Fiscal years beginning on or after 01 January 2016
 - **Threshold:** MNE group with annual group revenue equal to or exceeding A\$ 1 bn (INR 6,800 cr approx.) for the preceding fiscal year
 - **Exemptions:** CbC reporting not to apply to MNEs exempt from tax. Further, commissioner has discretionary power to exempt an entity, or class of entities
 - **Who to file:** UPE or SPE or local CE
 - **When to file:** Within a period of 12 months from the end of the income tax year
 - **Mode of filing:** Electronically
 - **Penalties:** Administrative penalties laid down

Italy



- CbC reporting regulations were approved by the Senate of the Italian Republic on 22 December 2015. Key provisions are highlighted below:
- **First reporting period:** FY 2016
 - **Threshold:** Companies with annual group revenue equal to or exceeding €750 mn (INR 5,700 cr approx.) in the preceding fiscal year
 - **Who to file:** UPE or local CE
 - **When to file:** MNEs would be expected to file their first CbCR with their income tax returns for 2016 (i.e., filed on 30 September 2017)
 - **Penalties:** Penalties ranging between € 10,000 (INR 7,60,000) and € 50,000 (INR 3,800,000)
- Practical and operational instructions on CbC reporting to be provided through a specific measure that will be issued by the Inland Revenue Agency

Given below is an overview of the developments with respect to CbC reporting in few other countries:

Country	Status of CbC Regulations	Threshold	Timeline	Penalties	Others
Canada⁵	CbC reporting expected to be applicable from 1 July, 2016. Budget 2016 introduced in the Canadian Parliament proposed a new legislation to implement CbC reporting – legislative proposals to be released in the near future for public consultation				
Finland⁶	On 21 December 2015, the Finnish Ministry of Finance released a draft bill to CbC reporting. The provisions likely to be enacted by the beginning of 2017.	Companies with annual group revenue equal to or exceeding €750 mn (INR 5,700 cr approx.) in the preceding fiscal year		Maximum amount of €25,000 (INR 19,00,000 approx).	UPE would be responsible for filing the CbC report with the tax authorities
France⁷	Implemented on 17 December 2015. Applicable for income tax years beginning on or after 01 January 2016.	Companies with annual group revenue equal to or exceeding €750 mn (INR 5,700 cr approx.) in the preceding fiscal year	CbCR is required to be filed online within 12 months from the close of each fiscal year, starting from 01 January 2016	Penalties not exceeding €1,00,000 (INR 7,60,000)	
Ireland⁸	Implemented. Applicable for income tax years beginning on or after 01 January 2016	Companies with annual group revenue equal to or exceeding €750 mn (INR 5,700 cr approx.) in the preceding fiscal year	To be filed within 12 months from the end of the relevant fiscal year		
Netherlands⁹	Implemented. Applicable for income tax years beginning on or after 01 January 2016	CbCR: Companies with annual group revenue equal to or exceeding €750 mn (INR 5,700 cr approx.) in the preceding fiscal year	CbCR must be furnished to the authorities with 12 months from the last day of the relevant fiscal year.	Fines and criminal sanctions laid down for not filing CbCR	Language : Dutch or English
Norway¹⁰	Proposed by the Norwegian government in December 2015	All Norwegian companies of multinational groups with a consolidated turnover of at least NOK 6.5 bn (approximately INR 4,900 cr).	Proposed that CbCR would have to be submitted for the first time before 31 December 2017 for the fiscal year 2016		
South Korea¹¹	Law for the Coordination of International Tax Affairs and subordinate legislation amended in February to mandate maintenance of master file and local file – applicable for taxable years beginning on or after 1 January 2016 CbCR legislation expected by end of 2016 – expected to be applicable from 2017				

5. <http://www.budget.gc.ca/2016/docs/plan/budget2016-en.pdf>

6. <https://tax.thomsonreuters.com/blog/onesource/transfer-pricing-global-tax-compliance/finland-requests-comments-on-transfer-pricing-documentation-rules-and-country-by-country-reporting/>

7. <https://tax.thomsonreuters.com/blog/onesource/french-national-assembly-approves-proposal-to-require-published-country-by-country-reports/>

8. <http://www.irishstatutebook.ie/eli/2015/si/629/made/en/pdf>

9. <https://tax.thomsonreuters.com/blog/onesource/the-netherlands-issues-regulations-on-cbc-reporting-requirements/>

10. <http://regfollower.com/tag/norway/>

11. BNA Tax and Accounting Center

Action 13 – Impact on India

CbCR, is likely to be a game changer, for both the tax administration as well as the MNEs based in India. It will have a far reaching impact on the Indian taxpayer. In this section, we have attempted to gauge the possible implications of CbC reporting on India:

1. Enhanced compliance burden

As and when the proposed three-tier structure is adopted in India, whether in its proposed form or in a modified form, it means that the Indian taxpayer would be required to prepare “master file” and “CbCR” in addition to the already existing local documentation requirements under rule 10D of the Rules.

India’s finance minister has announced a threshold of EURO 750 mn (INR 5,395 cr) on the consolidated group revenue to attract the provision of CbC reporting. For the business houses affected by the same, it would be an added burden in terms of gathering data for the entire group, developing competencies for compiling such vast financial and non-financial data, and finally reporting the same in the standard template.

Another factor that requires consideration is that in some cases, the CbCR is required to be filed by the Indian taxpayer, even though the parent entity or the alternate reporting entity might be filing the same in their own country. Such a provision may result in an exponential increase in the number of taxpayers who will be filing CbCR in India.

What adds to the already mounting compliance burden is the observation made by OECD in the executive summary of its final report that some developing nations including India have expressed interest in setting up certain additional reporting requirements in CbCR for related party interest and royalty payments as well as related party service fees (in addition to the data available in master file and local file for the same). Same may be incorporated as a part of the Rules. Such enhanced documentation requirement will evidently attract significant costs and administrative challenges for Indian MNEs.



OECD has highlighted in the final report that countries from emerging markets (Argentina, Brazil, China, Colombia, India, Mexico, South Africa and Turkey) may require reporting of additional financial information (in particularly related party interest payments, royalties payments, and service fees) to meet the specific needs of the taxing authorities – to perform risk assessment and obtain information on the global information of an MNE group.

Source: Final report



2. Risk based TP assessment

India has moved towards a risk-based approach for TP assessment purposes. As mentioned earlier, the main objective behind development of CbCR template was to provide an overview of MNE group’s global allocation of income, economic activities, and taxes in one standardised format. Such standardised report will help in conducting effective risk assessments. Once CbC reporting is introduced in India, it is likely that the preliminary screening for risk assessment will become more stringent and robust as the Indian tax authority’s access to critical taxpayer data will increase. Furthermore, tax authorities would be in a better position to identify any mismatch in value creation and allocation of income/ profits.

Such effective assessment will help in identifying the high risk TP areas and other BEPS related issues. It may also help in shifting away the focus from widely litigated, redundant TP issues. While such an approach will make the tax administrations more effective and capable of comprehensive analysis, it may also bring some respite for the Indian taxpayer from unending TP litigations.

3. Defending tax authority's analysis of CbCR data

OECD in Action 13 has made it abundantly clear that CbCR data is not to be used as a substitute for a detailed TP analysis of individual transactions. It has encouraged that ALP be determined on the basis of a comprehensive functional analysis and comparability analysis. It goes further to observe that the information in the CbCR on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. Therefore, it suggests that the same should not be used by tax administrations to propose TP adjustments based on a global formulary apportionment of income.

However, with access to details pertaining to MNE group such as income, asset base, employee strength, kind of business activities carried on, etc., taxpayer may be faced with another imminent challenge of tax administration proposing to allocate group profits among various jurisdictions and proposing to apply profit split method to analyse the arm's length nature of the controlled transactions, in ignorance of OECD's recommendations. From the taxpayer's perspective, it is imperative that tax authorities refrain from such prima-facie analysis. Else taxpayers are likely to be burdened with the challenge to tackle new and aggressive assessments strategies.

Example of possible analysis of CbCR data: The CbCR will contain information on MNE's presence in different jurisdictions in terms of number of employees as well as tax paid in each jurisdiction. The tax administration might simply compare the headcount with the taxes paid in each jurisdiction and arrive at some arbitrary conclusions. In some circumstances, there might be valid reasons for differences between taxes paid and headcount across jurisdictions such as parking of low-skilled labour in one location, while another location might have a small team of highly qualified and experienced personnel.

4. Concern for confidentiality

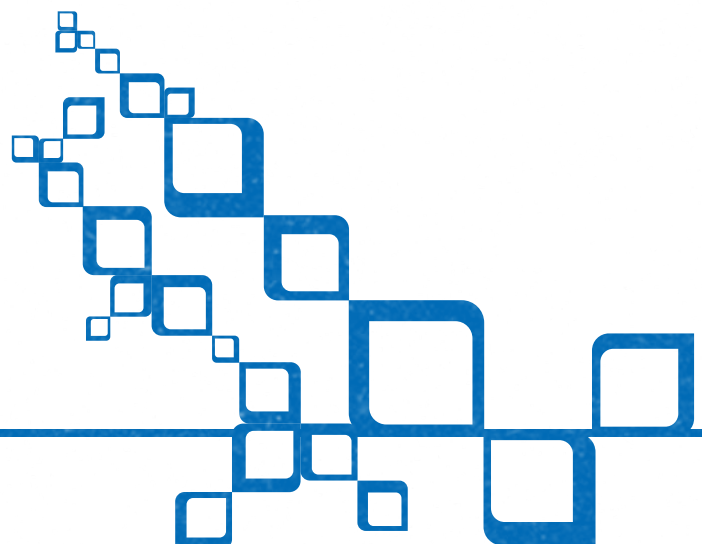
An important pre-requisite for effective implementation and use of CbCR is adequate automatic exchange arrangements for exchanging CbCR filed in one jurisdiction with other jurisdictions where CEs of the MNE group are tax residents. Furthermore, in order to ensure that tax administrations are willing to do such an exchange, it is important that countries have robust data confidentiality systems in place to safeguard taxpayer's information.

Accordingly, in the Indian scenario, before Indian administration proceeds with execution of such exchange arrangements with other countries, it is required that Indian government revisits its data safety norms to ensure that it is aligned with the internationally recognised standards. This practice will help ensure that other countries are willing to enter into information exchange treaties with India.



The IT Department is already in advanced stages of putting in place adequate safeguards to allay concerns among firms regarding the confidentiality of reported information, with the administrative set-up being readied to protect confidentiality and ensure that the information is not misused. The three-tier transfer pricing documentation structure for multinational companies comprises a master file, a local file and a country-by-country (CbC) reporting requirement.

(Source: The Indian Express)



What next?

As anticipated, The Finance Minister tabled the proposal to introduce three-tier documentation structure in India in the Union Budget 2016-17. Considering the Indian government's commitment towards the BEPS project, it is important that taxpayers take necessary action in advance to tackle the new compliance requirements that are expected to be implemented in the near future. Some immediate actions required to be taken by the Indian taxpayer are listed out below:



1. Creating awareness on BEPS as well as CbCR

Currently, awareness about BEPS and CbCR is considerably low among the masses. The situation is equally grim for the employees working in the industry who would be designated with the responsibility to assist companies in complying with the CbC reporting requirements. Therefore, Indian business houses are faced with an urgent need to develop a knowledge base on CbCR and share the same within their group. The introduction of CbC reporting is likely to result in a set of initial challenges such as interpretation issues, sourcing of information from various countries, and organising the same into a template. However, some of these issues can be tackled by taking some preliminary damage control steps:

- Training the relevant personnel and
- Developing a knowledge-base on CbCR.

“ Substance can't be changed overnight and thereafter you will need to start planning now to make sure that any necessary movement in people, operation and tax locations are achieved in time

Chaid Dali Ali, Grant Thornton France

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Training the relevant personnel

Trainings should be organised to ensure relevant personnel are aware about:

- concept of BEPS;
- importance of transparency;
- the proposed three-tier structure and its impact on their organisation;
- the possible risks from CbCR which need to be taken care of; and
- additional responsibilities post introduction of new legislation

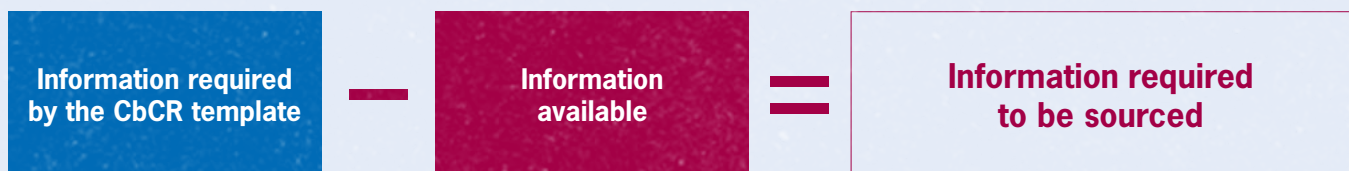
Developing a knowledge-base on CbCR

Attempt should be made to develop a knowledge base on CbCR - same can be used by employees across the group as reference material to resolve their recurring queries on common issues

2. Gap analysis

Post creating awareness about the reporting requirements, business houses should consider completing the CbCR template as a dry run to identify:

- What information does the template require
- What information is available in hand
- What information needs to be sourced from group company(s)



Such a dry run will help in identifying the gaps that exist between the information needed and information available. In addition, it will help in identifying the challenges faced in filling the templates, the areas which run a risk of misinterpretation and the kind of resources that will be required to meet the new compliance requirements.

3. Assessing exposures from information presented in CbCR

Once the draft template is ready, the information presented should be analysed to identify prima-facie exposures, i.e., any mismatch that exist between the reported figures relating to revenue, profits, taxes, headcount and asset base employed. Such inconsistencies between numbers reported can attract uncalled attention, may be misinterpreted as a possible BEPS risk area and can result in intensive audits.

4. Developing justifications

It is important to ensure that tax allocations are substantiated by appropriate justification and supporting documentation, especially in areas that might attract attention from tax authorities as a result of the CbC disclosures. As part of the need for more robust substantiation, a new approach to benchmark the inter-company transactions is expected. Such change may involve a shift in focus from transaction-level justifications to macro-group level justifications. Since this will be a new departure, businesses will need to develop the benchmarking capabilities to carry out such evaluations and provide the supporting documentation.

“ In an increasingly connected world, there are no isolated spots! The tax authorities across the world are gearing to get connected as well so as to get a better view of the big picture. The CbC initiative is the tool which gives tax authorities a complete view of a taxpayers global operations. What this means for taxpayers both in India and globally is that they need to make their compliances more robust as well as adopt risk mitigated growth strategies so as to successfully navigate the challenging regulatory environment

Arun Chhabra, Grant Thornton Advisory Private Limited, India

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5. Restructuring business where actual mismatches exist

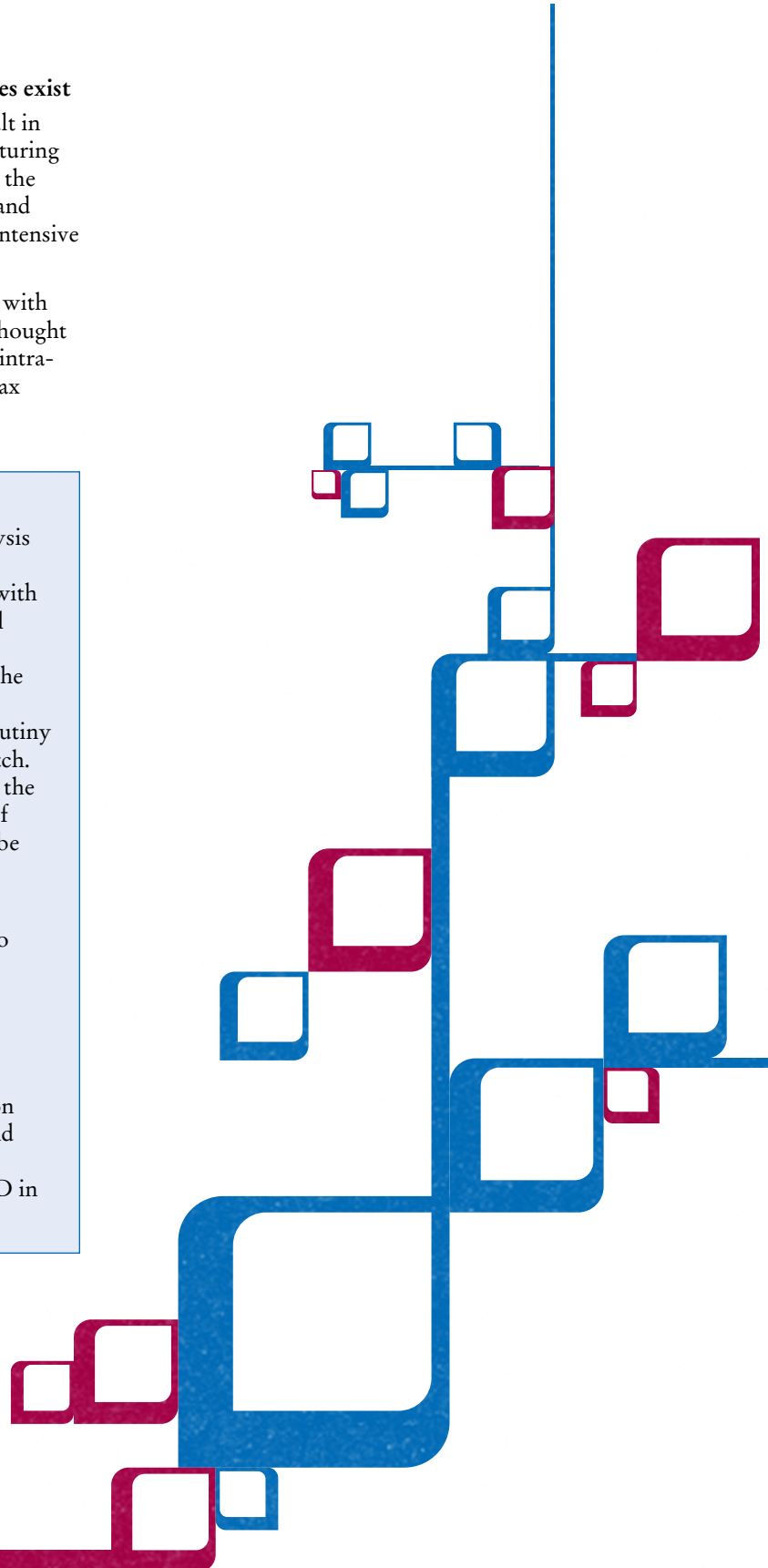
The new CbC reporting requirement is likely to result in business houses giving some consideration to restructuring of their value chains. This may involve reconsidering the group structure as well as need for multiple entities, and revisiting the TP arrangements to reduce the risk of intensive audits and consequent tax demands.

With the increasing focus on realignment of taxation with substance, it is likely that MNEs will give adequate thought to aggressive tax planning strategies including use of intra-group transactions to shift income to low tax or no-tax jurisdictions.

Conclusion

The CbC reporting is likely to transform TP analysis from a transactional level analysis into a macro or group-level analysis. MNEs might feel burdened with the reporting requirements, especially in the initial years. The preparation of CbCR is seen as a time consuming and expensive exercise. Furthermore, the new documentation requirements are beyond just reporting obligations, but demand an in-depth scrutiny of the figures reported to identify possible mismatch. While tax administrations may be benefitted from the flow of new information, they may find the task of exchanging and analysing the said information to be challenging.

While many countries have already implemented CbC reporting requirement, others are expected to introduce the required changes in the near future. Further, more and more countries are expected to sign treaties for effective exchange of information. Simultaneously, OECD will develop mechanisms to monitor jurisdictions' compliance with their commitments to adopt recommendations of Action 13 and to monitor the effectiveness of the filing and dissemination mechanisms. The outcomes of this exercise will be taken into consideration by OECD in its 2020 review.



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Appendix I: Action 13 definitions

1. CE

A CE of the MNE group is

- i. any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange;
- ii. any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and
- iii. any PE of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such PE for financial reporting, regulatory, tax reporting, or internal management control purposes.

2. Consolidated financial statements

Financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the UPE and the CEs are presented as those of a single economic entity.

3. Excluded MNE Group

A Group shall be excluded from the purview of the term "MNE Group" in respect of any fiscal year, if the total consolidated group revenue of such group during the fiscal year immediately preceding the reporting fiscal year, as reflected in its consolidated financial statements for such preceding fiscal year, is less than 750 mn Euro (or an amount equivalent to 750 mn Euro in local currency as on January 2015)

4. Fiscal year

An annual accounting period with respect to which the UPE of the MNE Group prepares its financial statements.

5. Group

Group means "a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange."

6. International agreement

International agreement means the Multilateral Convention for MAAT, any bilateral or multilateral tax convention, or any tax information exchange agreement to which a country is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.

7. Qualifying competent authority agreement

An agreement

- i. that is between authorised representatives of those jurisdictions that are parties to an international agreement, and
- ii. that requires the automatic exchange of CbCR between the party jurisdictions.

3. Reporting entity

The CE that is required to file a CbC report in its jurisdiction of tax residence on behalf of the MNE Group.

4. Reporting fiscal year

The fiscal year for which the financial and operational results are reflected in the CbCR

5. SPE

SPE means a CE of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the UPE, to file the CbC Report in that CE's jurisdiction of tax residence, on behalf of such MNE Group.

6. UPE

A CE of an MNE Group that meets the following criteria:

- i. it owns directly or indirectly a sufficient interest in one or more other CEs of such MNE Group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- ii. there is no other CE of such MNE Group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned CE.

Appendix II – Definitions as per Indian Finance Bill, 2016

1. **“accounting year”** means,—
 - i. a previous year, in a case where the parent entity or alternate reporting entity is resident in India; or
 - ii. an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;
2. **“agreement”** means an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A or any agreement as may be notified by the Central Government in this behalf;
3. **“alternate reporting entity”** means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;
4. **“constituent entity”** means,—
 - i. any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;
 - ii. any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or
 - iii. any permanent establishment of any separate business entity of the international group included in clause (i) or clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;
5. **“group”** includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—
 - i. is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or
 - ii. would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;
6. **“consolidated financial statement”** means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;
7. **“international group”** means any group that includes,—
 - i. two or more enterprises which are resident of different countries or territories; or
 - ii. an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;
8. **“parent entity”** means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—
 - i. it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or
 - ii. it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange, and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in clause (i) or clause (ii), that includes the separate financial statement of the first mentioned constituent entity;
9. **“permanent establishment”** shall have the meaning assigned to it in clause (iiia) of section 92F;
10. **“reporting accounting year”** means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2);
11. **“reporting entity”** means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2);
12. **“systemic failure”** with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-section (2), but—
 - i. in violation of the said agreement, it has suspended automatic exchange; or
 - ii. has persistently failed to automatically provide to India the report in its possession respect of any international group having a constituent entity resident in India.’

Appendix III: Contents of master file

Organisational structure

- chart illustrating the MNE's legal and ownership structure and geographical locations of operating entities.
- description of the MNE's business(es)
- drivers of business profit
- description of supply chain for -5 largest products/service offerings
- description of intercompany service arrangements
- description of geographical markets
- brief functional assets and risk ("FAR") analysis describing contribution to value chain
- business restructuring transactions

MNE's Intangibles

- general description of MNE's overall strategy for development, ownership and exploitation of intangibles
- list of important intangibles and owner entity
- list of important intercompany agreements related to intangibles
- description of MNE's TP policies regarding research & development ("R&D") and intangibles
- description (including entities, countries and compensation) of important intercompany transfers of interests in intangibles

MNE's intercompany financial activities

- financing information including financing agreements with unrelated lenders
- identification and country of entities performing central financing functions
- general TP policies regarding financing arrangements of the MNE group

MNE's financial and tax positions

- annual consolidated financial statement
- list and description of existing unilateral APA's

Appendix IV: Contents of the local file

A. Information regarding the local entity		
People	Business	Competitors
<ul style="list-style-type: none"> • description of management structure • organisation chart • description of the individuals reported to 	<ul style="list-style-type: none"> • detailed business strategy pursued • business restructuring or intangible transfers 	<ul style="list-style-type: none"> • information about key competitors
B. Controlled transactions (categorical information)		
<ul style="list-style-type: none"> • description and context of the controlled transactions • identification of associated enterprises • most appropriate TP method and the reasons • selection of the tested party • reasons for performing multi-year analysis • comparability adjustments • amount for payments and receipts for each category broken down by tax jurisdiction of the tax jurisdiction of the foreign entity • copy of material intercompany agreements • detailed comparability and functional analysis of the taxpayer and the relevant AE with respect to each documented category of controlled transactions, including any changes compared to last year • summary of assumptions made in applying TP methodologies • list and description of selected comparable uncontrolled price (“CUP”) transactions • conclusion • summary of financial information used • copy of existing unilateral and bilateral/multilateral APA's 		
C. Financial information ¹²		
<ul style="list-style-type: none"> • annual local entity financial accounts for the financial year (“FY”) • information and allocation schedules showing how the financial data used in applying the TP method may be tied to the financial statements • relevant financial data for comparables used and the source 		

12. To the extent this financial analysis duplicates information in the master file, a cross reference to the master file is sufficient

Appendix V: CbCR templates

Annexure 3 of the Action 13 provides a model template for CbCR

(i) Template of Table I

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 1 of the CbC reporting template requires the reporting MNE to provide the following information annually:

i. Tax jurisdiction:

- In the first column of the template, the reporting MNE should list all of the tax jurisdictions in which CE of the MNE group are resident for tax purposes.
- A separate line should be included for all CEs in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes.
- Where a CE is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence.

ii. Revenues:

- Separate columns are provided for revenues generated from unrelated party transactions, revenues from transactions with related parties, and the sum.
- revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts derived from transactions with related or unrelated persons.
- Revenues from payments received from other CE that are treated as dividends in the payer’s tax jurisdiction are excluded.

iii. Profit (Loss) before income tax:

- The sum of the profit (loss) before income tax for all CEs resident for tax purposes in the particular jurisdiction.
- This should include all extraordinary income and expense items.

iv. (Income tax paid (on cash basis):

- The total amount of income tax actually paid during the relevant fiscal year by all CEs resident for tax purposes in the particular jurisdiction to the residence tax jurisdiction and to all other tax jurisdictions.
- Taxes paid should include withholding taxes paid by other entities (both related and unrelated) with respect to payments to a CE.

v. (Income tax accrued (current year):

- The sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all CEs resident for tax purposes in the particular jurisdiction.
- The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

vi. Stated capital & accumulated earnings

- the sum of the stated capital/accumulated earnings of all the CEs resident for tax purposes in the relevant tax jurisdiction.
- PE stated capital /accumulated earning to be reported by the legal entity of which it is a permanent establishment unless there is a defined requirement in the permanent establishment tax jurisdiction for regulatory purposes.

vii. Number of employees

- Total number of employees on a full time equivalent (“FTE”) basis of all CEs resident for tax purposes in the relevant tax jurisdiction.
- independent contractors participating in the ordinary operating activities of the CE may be reported as employees.

viii. Net book value of tangible assets other than cash and cash equivalents

(ii) Template of table II

Name of the MNE group: Fiscal year concerned:			
Main Business Activities			
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Research and Development
			Holding or Managing intellectual property
			Purchasing or Procurement
			Manufacturing or Production
			Sales, Marketing or Distribution
			Administrative, Management or Support Services
			Provision of Services to unrelated parties
			Internal Group Finance
			Regulated Financial Services
			insurance
			Holding shares or other equity instruments
			Dormant
			Other

(iii) Template of Table III

Name of the MNE group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.

Table III of the template provides room for the reporting MNE to include any information or explanation that it considers necessary or that would facilitate the understanding of the required information provided in the template.

Following information may be provided under this table:

- **Period:** Mention the period / year covered
- **Currency:** If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year stated in the additional information section of the template
- **Source:** Brief description of the source of the data uses in preparing the template. In case change is made in source of data used from year to year, explanation of the same should be mentioned.
- **Nature of activity:** nature of activity of the CE should be mentioned if business activity of the CE is selected as “other”.

General instruction for CbCR template

Following are the general instructions provided in the final Report:

- **Treatment of branches and PE:** The PE data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the PE is a part. Residence tax jurisdiction reporting for the business unit of which the PE is a part should exclude financial data related to the PE.

- **Consolidated financial statements:** The consolidated financial statements are the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the UPE and the CEs are presented as those of a single economic entity.
- **Period covered by the annual template:** The template should cover the fiscal year of the Reporting MNE. However, the template should reflect on a consistent basis either (i) information for the fiscal year of the relevant CE ending on the same date as the fiscal year of the Reporting MNE, or ending within the 12 month period preceding such date, or (ii) information for the entire relevant CE reported for the fiscal year of the Reporting MNE.
- **Source of data:** The reporting MNE should consistently use the same sources of data from year to year in completing the template. The Reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

Appendix VI: Action 13 Implementation package

The implementation package consists of model legislation for implementing CbC reporting requirement in various jurisdictions and model agreements to effect exchange of CbCR across jurisdictions.

The model legislation

The model legislation sets out the basic structure that can be used by countries as a base to develop their local tax legislation for mandating filing of CbCR by UPE (or surrogate parent entity (“SPE”) or any other CE(s), as the case maybe) resident in their jurisdiction. An overview of the key provisions embedded in three model legislation is provided as under:

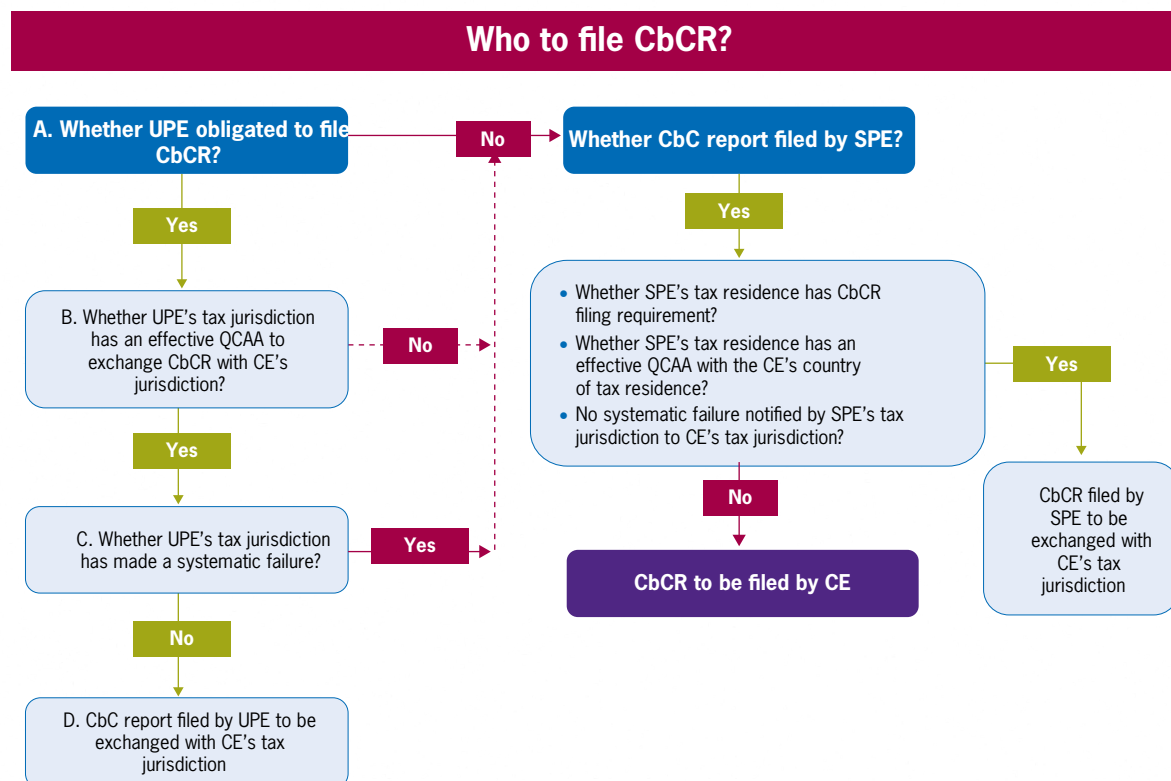
i. Constitution of MNE group:

The model legislation provides a definition of MNE Group. As per the said legislation, MNE Group means any group that:

- i. includes two or more enterprises who are tax residents of different jurisdictions,
 - or
 - ii. includes an enterprise that is resident for tax purposes in one jurisdiction and carries on business operations through a PE in another jurisdiction which is subject to tax in such jurisdiction
- and
- is not an excluded MNE Group.

Furthermore, to avoid any ambiguity and provide further clarity on what constitutes an MNE group, the model legislation defines the terms “Group” as well “excluded MNE Group”.

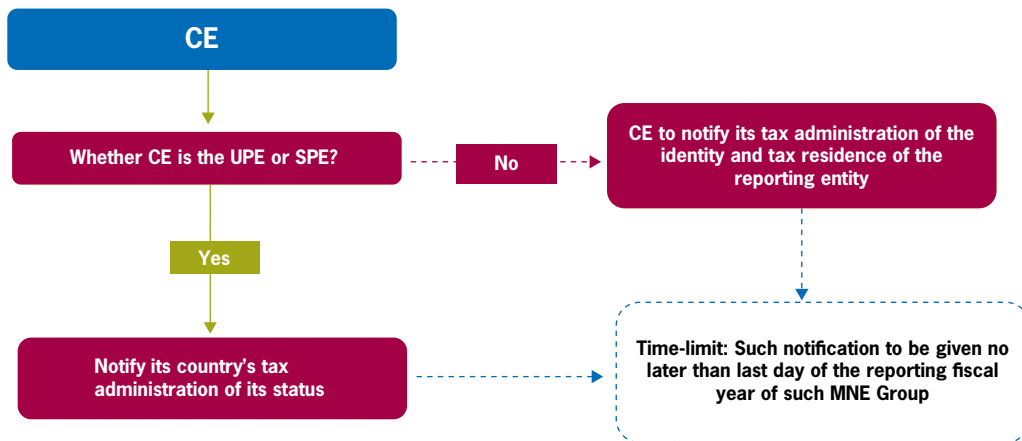
ii. Who is required to file CbCR report?



*In case where more than 1 CEs are resident of the same country, and one or more conditions as set out in a, b and c above are not satisfied, the MNE Group may designate any one of such CEs to file the CbCR with the tax administration of such country and notify the tax administration of such country that such filing is intended to satisfy the filing requirement of all the CEs of such MNE Group that are resident for tax purposes in such country.

iii. Requirement of notifying the tax administrations

The model legislation lays down an additional requirement on the CE for notifying the tax administration of its status in the MNE group with respect to CbCR filing. The provisions in this regard as contained in the model legislation are explained in the figure below:



iv. Use of CbCR information:

Model Legislation suggests that information contained in the CbCR should be used for:

- assessing high-level TP risks and other BEPS related risks including risk of non-compliance with applicable TP Rules; and
- economic and statistical analysis (where deemed fit).

However, it dissuades tax administrations from using CbCR data as a basis for arriving at TP adjustments.

v. Confidentiality of CbCR information

In order to ensure governments maintain confidentiality of taxpayers' information contained in CbCR as well as other TP documentation, the model legislation provides that "the [Country Tax Administration] shall preserve the confidentiality of the information contained in the CbCR at least to the same extent that would apply if such information were provided to it under the provisions of the Convention."

vi. Penalties

The model legislation is silent on the penalties that a jurisdiction may impose when a reporting entity fails to comply with the CbC reporting requirements. OECD believed that all jurisdictions may not develop new penalty regimes for non-compliance with CbCR filing requirements. Perhaps, they would wish to extend their existing penalty framework applicable on defaults with TP documentation requirements to CbC reporting as well.

Model competent authority agreements

In addition to the above, the package also provides implementation arrangements for automatic exchange of CbCR under international agreements. Such arrangements include model CAAs for exchange of information. As mentioned earlier, such exchange can be achieved through:

- Convention on MAAT;
- Information exchange provisions contained in the Double Tax Conventions; or
- Tax Information Exchange Agreement.

Article 6 of the Convention requires the CAs of the parties to the Convention to mutually agree on the scope of the automatic exchange of information and the procedure with respect to the same.

In the context of the Common Reporting Standard¹³, this requirement has been translated into a MCAA, which defines the scope, timing, procedures and safeguards according to which the automatic exchange should take place.

Recognising that time and resource efficiency of the implementation of the automatic exchange of information by means of a MCAA in the context of the CRS, it was considered that the same approach could be extended for implementing automatic exchange of information contained in CbCR.

Accordingly, a model CbC MCAA has been developed, based on the Convention and inspired by the MCAA concluded in the context of the implementation of the CRS. In addition to the above, the implementation package provides two further model competent authority agreements for exchange of CbCR under:

- Double Tax Conventions; and
- Tax Information Exchange Agreements

i. Key provisions of model MCAA

A brief overview of the key provisions of model MCAA is provided in the table below:

Sr. No.	Provision	Details pertaining to such provision
1	Expectations from jurisdictions by the time of first exchange of CbCR	<ul style="list-style-type: none"> i. Appropriate safeguards to ensure: <ul style="list-style-type: none"> • confidentiality of information received pursuant to exchange of CbCR; and • use of such information for the purposes as outlined in the model legislation. ii. Infrastructure for effective exchange relationship (this includes processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges, and to achieve collaboration for enforcing compliance requirement of CbCR filing¹⁴) iii. Necessary local legislation to require filing of CbCR by reporting entities
2	Exchange of information	<p>CA of the jurisdiction receiving CbCR from reporting entity to exchange such CbCR on an annual basis with the CAs of all the jurisdictions with which it has an exchange arrangement and where one or more CE(s) of the reporting entity is tax resident subject to the following:</p> <ul style="list-style-type: none"> i. Non-reciprocal jurisdiction to only send CbCRs, but not to receive the same from others; and ii. Reciprocal jurisdictions to send/ receive CbCRs to/ from all jurisdictions excluding the obligation to send the same to non-reciprocal jurisdiction.
3	Timing of exchange of information	<ul style="list-style-type: none"> i. With respect to first fiscal year for which CbCR is required to be filed – exchange to be done within 18 months from the end of such fiscal year ii. For every fiscal year thereafter – within 15 months from the end of such year

13. The CRS, developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. (Source: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>)

14. The model CAA suggests that tax jurisdictions should collaborate to enforce CbC reporting requirement. For this purpose, the CA of one jurisdiction which has reasons to believe that a reporting entity that is resident for tax purposes in the jurisdiction of other CA may have committed an error that could result in incorrect or incomplete information reporting or such reporting entity has not complied with its obligation to file a CbCR, such CA may notify the CA of other jurisdiction about the same so that the notified CA can then take appropriate measures in accordance with its domestic laws to address such errors or non-compliance.

Sr. No.	Provision	Details pertaining to such provision
4	Manner of exchange of information	<ul style="list-style-type: none"> i. Currency of the amounts reported in CbCR to be specified in the same ii. Information to be exchanged automatically iii. Exchange to be done through a common schema in Extensible Mark-up Language iv. To maximize standardisation and minimize costs as well as complexities, CAs to work on and agree on one or more methods for electronic data transmission, including encryption standards – methods and standards agreed to be notified to the co-ordinating Body Secretariat¹⁵
5	Confidentiality and data safeguards	<ul style="list-style-type: none"> i. All information exchanged subject to the confidentiality rules and safeguards provided for in the Convention ii. The model MCAA has a detailed confidentiality and data safeguard questionnaire that checks the preparedness of the jurisdictions for ensuring information confidentiality (attached as annexure to the model agreement)
6	Appropriate use of information	<ul style="list-style-type: none"> i. Information exchanged to be used for assessing high-level TP risks, BEPS risks, and where appropriate, for economic and statistical analysis ii. Information cannot be substituted for a detailed TP analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis – CbCR's cannot provide conclusive evidence to judge appropriateness of transfer prices and consequent TP adjustments Any inappropriate adjustment made in contravention of above to be conceded by local tax administrations in any CA proceedings iii. CbCR data can be used as a basis for making further enquiries into the MNE Group's TP arrangements or into other tax matters in the course of a tax audit – Based on such enquires, taxable income of a CE may be adjusted
7	Notification to be given in case of non-compliance with confidentiality and use norms	<ul style="list-style-type: none"> i. Immediate notification to be given to Co-ordinating body secretariat ii. Any remedial actions/ measures taken in respect of such non-compliance also to be notified iii. All CAs who have a MCAA in effect with such defaulting CA also to be notified by such Co-ordinating Body Secretariat
8	Consultations	<ul style="list-style-type: none"> i. If adjustments to taxable income of a CE (computed after further enquiries made based on the CbCR data) result in undesirable economic outcome, for a specific business, then CAs of jurisdictions in which CEs are residents to consult each other for resolving such issues ii. A CA may request consultations with one or more CAs to resolve any difficulties faced in the implementation or interpretation of MCAA iii. Before a CA concludes that there is a systemic failure by other CA(s), such CA should consult such other CA(s) <ul style="list-style-type: none"> - Such concluding CA to notify such conclusion to the Co-ordinating Body Secretariat which in turn shall notify the other CA concerned as well as all other CAs - If law permits, either CA may, either on its own or through the Co-ordinating Body Secretariat, involve other CA(s) who are party to such MCAA with a view to find an acceptable resolution to the issue iv. A CA requesting consultations for matters specified in (ii) or (iii) above to ensure that the Co-ordinating Body Secretariat is notified of any conclusions that were reached and measures that were developed, including the absence of such conclusions or measures v. Such Co-ordinating Body Secretariat to notify all other CAs, irrespective of their participation in the consultations, of any such conclusions or measures <p>Important: Taxpayer-specific information, including information that would reveal the identity of the taxpayer involved, is not to be furnished.</p>
9	Effect to amendments	<p>Unless otherwise agreed:</p> <ul style="list-style-type: none"> i. Agreement can be amended by written consensus of all the CAs party to such MCAA ii. Such amendment to take effect post expiration of 1 month after the date of the last signature of such written agreement

15. Co-ordinating Body means the co-ordinating body of the Convention that, pursuant to paragraph 3 of Article 24 of the Convention, is composed of representatives of the CAs of the Parties to the Convention, while Co-ordinating Body Secretariat means the OECD Secretariat that, pursuant to paragraph 3 of Article 24 of the Convention, provides support to the Co-ordinating Body

Sr. No.	Provision	Details pertaining to such provision
10	Notification obligations on a CA to Co-ordinating Body Secretariat	<p>i. Jurisdiction has necessary laws in place to require reporting entities to file a CbCR</p> <p>ii. Whether its name is to be included in the list of non-reciprocal jurisdiction</p> <p>iii. One or more methods for electronic data transmission including encryption to be specified</p> <p>iv. Confirmation that it has necessary legal framework and infrastructure to ensure the required confidentiality and data safeguards as well as appropriate use of such information (completed confidentiality and data safeguard questionnaire to be attached)</p> <p>v. List of jurisdictions with which the CA intends to enter into the MCAA, or a declaration that it intends to have this Agreement in effect with all other CAs</p> <p>Note:</p> <p>a. The above notifications to be given either at the time of signing the Agreement or as soon as possible thereafter</p> <p>b. Any change made in contents of above notification to be notified immediately</p>
11	Effective date of the agreement between 2 CAs	<p>i. The date on which the second of the two CAs has provided abovementioned notification to the Co-ordinating Body Secretariat</p> <p>OR</p> <p>ii. The date on which the Convention is in force and is in effect for both Jurisdictions</p> <p>Whichever is later</p>
12	Other duties of Co-ordinating Body Secretariat	<p>iii. To maintain a list of the CAs that have signed the MCAA and between which CAs the agreement is in effect that will be published on the OECD website</p> <p>iv. To publish on OECD website information received under points 10(i) and 10(ii) mentioned above</p> <p>v. To provide information received under points 10(iii) to 10(v) mentioned above to other signatories upon request in writing</p> <p>vi. To notify all CAs of any notification received</p> <p>vii. To notify all signatories when a new CA signs the agreement</p>
13	Temporary suspension of exchange of information	<p>i. In case a CA determines that other CA has made significant non-compliance¹⁶ with the terms of the agreement, it may suspend exchange with such other CA by notifying it in writing (CA to consult other CA before making such determination)</p> <p>ii. Such suspension to be effective immediately and to last until:</p> <ul style="list-style-type: none"> - Defaulting CA establishes in a manner acceptable to both CAs that there has been no significant non-compliance, or - Defaulting CA has adopted relevant measures that address the significant non-compliance <p>iii. Either CA may, either directly or through the Co-ordinating Body Secretariat, involve other CAs party to the agreement, to find an acceptable solution to the issue involved, to the extent applicable law permits</p>
14	Termination of agreement	<p>i. Any CA may terminate its participation in this Agreement in totality or with respect to a particular CA, by giving notice in writing to the Co-ordinating Body Secretariat</p> <p>ii. Termination to take effect 12 months after the date of the above notice</p> <p>iii. Post termination, all information previously received under the Agreement to remain confidential and subject to the terms of the Convention</p>

16. Significant non-compliance means:

- non-compliance with the confidentiality and use norms;
- failure to consult other CA, if adjustments to taxable income of a CE (computed after further enquiries made based on the CbCR data) result in undesirable economic outcome, for a specific business; or
- failure to provide timely or adequate information

ii. Confidentiality and data safeguards questionnaire

The confidentiality and data safeguard questionnaire annexed to the model MCAA sets out a comprehensive list of parameters to check the arrangements made by a participating jurisdiction to preserve and maintain the confidential data exchanged under MCAA. A brief overview of the same is provided below:

Sr. No.	Provision	Details pertaining to such provision
1	Legal framework	Legal framework plays a critical role in ensuring the confidentiality of exchanged information and limiting its use to appropriate purposes. The two basic components of such a framework are: i. Terms of applicable treaty, Tax Information Exchange Agreement or other bilateral agreement for the exchange of information; and ii. Jurisdiction's local legislation.
2	Information security management	In order to preserve taxpayer's confidential information, it is important that the information security management systems used by the respective jurisdiction's tax authorities adhere to data security standards that ensure protection of data. Few examples of such standards are a screening process for employees handling the information, controlled rights to access such information, methodologies to detect and trace unauthorised disclosures. The questionnaire provides that a tax administration should be able to document that it is compliant with the ISO/IEC 27000-series ¹⁷ standards or that it has an equivalent information security framework and that taxpayer's information obtained under an exchange agreement is protected under that framework.
3	Monitoring and enforcement	It is pertinent that tax authorities are capable enough to the use of information exchanged only for agreed purposes. Although compliance with an acceptable information security framework can ensure confidentiality and security of taxpayer's data, it alone cannot adequately protect treaty-exchanged tax data. Accordingly, in addition to such compliance with security standards, the jurisdiction's local law must impose appropriate penalties for improper disclosure or use of taxpayer information. Such provisions should in-turn be backed-up by adequate administrative resources and procedures to ensure their successful implementation.

iii. Double tax convention and tax information exchange agreements

The implementation package also provides model double tax convention and tax information exchange agreements for facilitating exchange of CbCR across tax jurisdictions. Such model agreements have provisions similar to those contained in model MCAA for facilitating exchange of CbCR data. Being bilateral in nature, the terms of the double tax convention and tax information exchange agreements are agreed between two jurisdictions. Consequently,

- There is no involvement of co-ordinating body and co-ordinating body secretariat in such arrangements; and
- There is no provision for being listed as a non-reciprocal jurisdiction as such bilateral arrangement cannot be concluded until both the jurisdictions agree to exchange requirements.
- Furthermore, no confidentiality and data safeguard questionnaire has been attached to the said agreements.

17. The internationally accepted standards for information security are known as the "ISO/IEC 27000-series".

Glossary

Abbreviation	Full Name	Abbreviation	Full Name
Action 13	Action 13: Transfer pricing documentation & country by country reporting	MAAT	Mutual Administrative Assistance in Tax Matters
AE	Associated enterprise	MCAA	Multilateral competent authority agreement
ALP	Arm's length principle	MF	Master file
BEPS	Base erosion profit shifting	MNE	Multinational enterprise
CA	Competent authority	OECD	Organisation for Economic Co-operation and Development
CAA	Competent authority agreement	OECD Guidelines	OECD TP guidelines for multinational enterprises and tax administrations, 2010
CbC	Country – by – country	PE	Permanent establishment
CbC MCAA	Multilateral competent authority agreement on the exchange of country-by-country reports	R&D	Research and development
CbCR	Country – by – country report	SDT	Specified domestic transaction
CE	Constituent entity	SME	Small and medium - sized enterprises
CRS	Common reporting standard	SPE	Surrogate parent entity
CUP	Comparable uncontrolled price	The Act	Indian Income Tax Act 1961
Draft Report	Discussion draft on transfer pricing documentation and CbC reporting (January 2014)	The Convention	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
FAR	Functions, asset and risk analysis	The Rules	Indian Income Tax Rules, 1962
Final report	Transfer pricing documentation & country by country reporting, Action 13 - 2015 final report (October 2014)	TIEA	Tax information exchange agreement
FY	Financial year	TP	Transfer pricing
Implementation package	Country-by-country reporting implementation package	UPE	Ultimate parent entity
LF	Local file	XML	Extensible markup language

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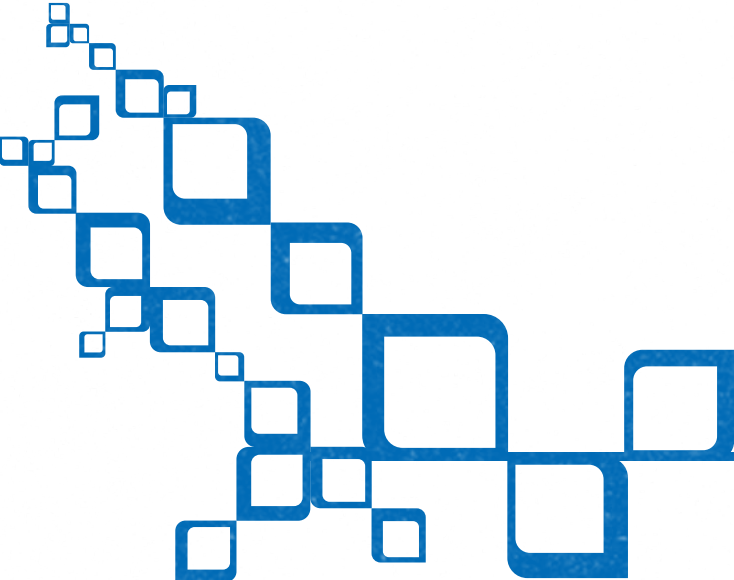
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