

BEPS Action Plan 13 – Guidance on implementation of Transfer Pricing Documentation and Country-by-country reporting

13 February 2015



The Organisation for Economic Cooperation and Development (OECD) had issued a guidance in September 2014 recommending three-tier documentation structure for Multinational Enterprises (MNEs). Each MNE having inter-company transactions with their group companies would be required to prepare a Master file, Local file and Country-by-Country (CbC) Report for the groups inter-company transactions. Our news flash regarding OECD's September 2014 guidance is attached herewith.

The OECD has now issued Guidance on 6 February 2015 relating to implementation of CbC Report (the Guidance). It has been recommended that the master file and local file documentation standards will be implemented by all countries in their local country legislations. Master file and local file will be required to be filed directly with the tax-authorities by group entities of each countries' jurisdiction.

The Guidance now issued by OECD only covers the following important aspects of CbC Reporting.

- (i) Timing of preparation and filing of the CbC Report;
- (ii) Threshold limit of Euro 750 million consolidated revenues has been prescribed for mandatory filing of CbC report by MNE;
- (iii) Necessary conditions underlying the obtaining and use of CbC Report by Revenue Authorities; and
- (iv) Framework for exchange of CbC Reports between governments and the work plan for developing an implementation package.

Key Recommendations

First CbC Report: The MNEs shall be required to file the first CbC reports for fiscal years beginning on or after 1 January 2016 within a deadline of one year from the end of the fiscal year for which the CbC report relates to i.e. by 31 December 2017.

The **MNE fiscal year** shall relate to the MNE's *consolidated reporting period* for financial statement purposes and not to taxable years or to the financial reporting periods of its individual subsidiaries.

CbC Report for prior years not required: The countries participating in OECD/G20 BEPS project have agreed that they will not require filing of CbC Report for MNE fiscal years beginning prior to 1 January 2016.

Which companies shall be required to file CbC report: The Guidance recommends that all MNE group parent entities would be required to file the CbC Report each year with the following exceptions:

- Companies with annual consolidated group revenue less than Euro 750 million in the immediately preceding fiscal year e.g. If consolidated revenue of MNE Group for calendar year 2015 is Euro 625 million there would be no requirement to file CbC report in any country for calendar ending 2016.
- OECD believes that the recommendations with respect to a threshold of Euro 750 million, will exclude approximately 85 to 90 per cent of MNE groups from CbC reporting. Nevertheless, the CbC Report will still be filed by MNE groups controlling approximately 90 per cent of corporate revenues and will therefore ensure an appropriate balance of reporting burden on taxpayers and benefit to tax administrations.
- There are no exemptions from filing of CbC Report for any industry, investment fund, non-corporate or non-public corporate entities.

Necessary conditions applicable to Revenue Authorities for obtaining and use of the CbC Report:

- **Confidentiality:** The Guidance recommends that each jurisdiction should incorporate and enforce legal protection laws for the confidentiality of reported information. These laws should be at least be equivalent to the protection provisions under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a Treaty Information and Exchange Agreement (TIEA) or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
- **Consistency:** It is proposed in the Guidance that, no jurisdiction shall exempt the MNE Group's parent entity which is a resident from CbC reporting except as recommended in this Guidance. Further, the Guidance insists that, in the interest of consistency, there should be no modifications in the information requested as per the standard template i.e. Annexure III of the OECDs September Report on TP documentation.
- **Appropriate use:** The Guidance advocates the commitment from jurisdictions to use the CbC Report only for the limited purpose of assessing high-level transfer pricing risk and other BEPS related risk and not to propose Transfer Pricing adjustments on the basis of income allocation formula. However, the Guidance does not restrict or limit the Revenue Authorities from making further enquiries based on information in the CbC Report.

Framework for government-to-government mechanisms to exchange CbC Reports and implementation package

Framework:

The Guidance requires each jurisdiction, to ensure CbC reporting by the resident ultimate parent entity of the MNE Group and exchange this information with the jurisdictions in which the MNE Groups operate. In case a country fails to provide information to another country on the CbC Reporting, **a secondary mechanism** would be considered as appropriate, through local filing or by moving the obligation of CbC reporting and automatically exchanging these reports to the next tier parent country.

Implementation package:

Countries participating in the OECD/G20 BEPS Project have agreed to develop a work-plan for exchange mechanisms of CbC Reports between governments. This work-plan will focus primarily on the following:

- To develop the key elements of domestic legislation requiring the ultimate parent entity of an MNE group to file the CbC Report in its country of residence and the key elements of secondary mechanisms
- To develop arrangements for the automatic exchange of the CbC Reports under international agreements in consideration of the conditions set out above. These implementation arrangements shall be enabled by developing the competent authority agreements (CAAs) based on existing international agreements (the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties and TIEAs). Both bilateral and multilateral CAAs shall be explored, drawing on the existing models developed by the OECD working with G20 countries for the automatic exchange of financial account information.
- To develop a comprehensive implementation package for CbC reporting by April 2015.

KPMG in India views

India has been actively involved with OECD in the BEPS discussions. The prescribed threshold limit for CbC Reporting, of Euro 750 million which is approximately equivalent to INR5,250 crore seems to be on the higher side and is likely to impact only a few hundred Indian headquartered companies. Though one may think that India could lower this threshold, it may practically seem difficult to deviate from a global guidance as OECD has suggested all participating countries to remain consistent. The OECD and G20 countries under the BEPS project have recommended a new standard on Automatic exchange of information (AEOI) which was endorsed by all countries. The countries signing the multilateral competent authority agreement (MCA) are required to commit themselves to keeping data shared under the MCA confidential.

India has committed to sign the MCA agreement for exchange of information, but has not yet signed the same because of some local procedural compulsions and ambiguity. The Indian government has sought clarity on the presence of confidentiality clauses in international treaties from the Supreme Court following its recent ruling, where the Supreme Court insisted that certain information about account holders who have stashed black money in overseas banks should be made available to it, as the money was 'locked' away, even though the same was restricted.

The Indian government would be expecting the Indian headquartered companies to start providing information under CbC Reporting for transactions pertaining to financial year 2016-17, but there could be certain practical challenges such as sharing of such information with other countries and fiscal to calendar year mismatch and reconciliation. Also, the OECD will have to work along with countries on the mechanism to electronically access and share the information.

Ahmedabad

Commerce House V,
9th Floor, 902 & 903,
Near Vodafone House,
Corporate Road, Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar,
4th Floor, Road No.11,
Banjara Hills,
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604, 6th Floor,
Tower – 1, Godrej Waterside, Sector – V,
Salt Lake, Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name, logo and “cutting through complexity” are registered trademarks of KPMG International Cooperative (“KPMG International”), a Swiss entity.