

BEPS Action Plan 13 – Three tier transfer pricing documentation

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BEPS Action 13 - Three-tier transfer pricing documentation

BEPS Action 13 – Three tier transfer pricing documentation

OECD recommendations

Background

Organisation for Economic Co-operation and Development's (OECD), BEPS Action 13 has provided for a three-tier structure for TP documentation, namely Master File, Local File and Country by Country ("CbC") reporting framework. Majority of the countries having TP regulations have adopted BEPS Action 13 as a part of their regulatory framework, increasing onus of compliance by the enterprises operating in multiple geographies.

Three components of transfer pricing documentation based on BEPS guidance



**CbC
Reporting**

MNEs are required to provide a global financial snapshot of the MNE Group. The CbC report sets out for each jurisdiction, specified data pertaining to revenue, income, taxes, number of employees, capital and tangible assets



**Master
File**

MNEs are required to provide the tax administration with high level information regarding their global business operations and transfer pricing policies



**Local
File**

MNEs are required to maintain a detailed transactional transfer pricing documentation specific to each country and company's transfer pricing determination

BEPS Action 13 – Three tier transfer pricing documentation

OECD recommendations

COUNTRY-BY-COUNTRY REPORT

- Applicable to MNE group having consolidated revenue exceeding € 750 million in the immediately preceding fiscal year
- Aggregate tax jurisdiction-wide information
- Contents - 2 main tables + 1 for additional information
- To be filed by the ultimate parent entity or the alternate reporting entity in its tax jurisdiction
- To be finalized within 1 year following the last day of FY of the Ultimate Parent
- Constituent entities to notify the details of ultimate parent entity or alternate reporting entity to their local tax jurisdiction

MASTER FILE

- No threshold prescribed by OECD
- “Blueprint” of the Group as a whole
- Contents - 5 main categories
- To be submitted by local constituent entities with local tax administrations

LOCAL FILE

- No threshold prescribed by OECD
- Focus on specific intercompany transactions
- To be submitted by local constituent entities with local tax administrations

CbC reporting

BEPS Action 13 – Three tier transfer pricing documentation

Overview of CbC reporting

What is CbC reporting?

CbC reporting is part of the OECD's BEPS Action Plan 13. In essence, large MNEs have to provide an annual return, the CbC report, that breaks down key elements of the financial statements by jurisdiction. A CbC report provides local tax authorities visibility to revenue, income, tax paid and accrued, employment, capital, retained earnings, tangible assets and activities.

Who is impacted?

CbCR will apply to MNEs with a combined group revenue of 750 million Euros or more and who prepare or would be required to prepare the consolidated financial statements.

What is the governing principle to determine the constituents of an MNE group for CbC reporting ?

The governing principle to determine an MNE Group for the purpose of CbC reporting is to follow the accounting consolidation rules governed in the tax jurisdiction of the parent entity.

When does it take effect?

This depends on when countries implement CbCR into their own legal system, but the intention is that reports will be required for the fiscal years starting on or after the 1st of January 2016 (FY16) and should be filed within 12 months of the relevant year end.

BEPS Action 13 – Three tier transfer pricing documentation

Overview of CbC reporting

Where is a CbC report filed?

CbC reports are primarily to be filed where the parent company is headquartered (HQ). If the HQ country has not implemented CbCR, MNEs should file in the country with CbC reporting where their most significant activities occurs.

Which jurisdictions will have access to the CbC report filed by the parent company?

The countries participating in the BEPS project will exchange CbC report through Multilateral Competent Authority Agreement/bilateral tax agreements for exchange of CbC report.

With respect to confidentiality, the participating countries have agreed to have in place and be prepared to enforce legal protections of the confidentiality of the information in the CbC report equivalent to those under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a tax information exchange agreement (TIEA) or a tax treaty.

Why are CbC reports needed?

CbCR provides tax authorities information to help them assess transfer pricing risks and make determinations on how they allocate tax audit resources.

Contents of CbC report

Contents of CbC report

Model templates - Table 1, Table 2 and Table 3

Table 1: Information included in CbC

| | |
|--------------------------------------|--|
| Revenues (related, unrelated, total) | Profit/loss before income tax |
| Income tax paid (cash) | Income tax accrued |
| Stated capital | Accumulated earnings |
| Number of employees | Tangible assets other than cash and cash equivalents |

Table 2: Information included in CbC – for each tax jurisdiction

Tax Jurisdiction of organization or incorporation if different

Main business activity of each of the entity

Main business activity(ies)

- Research and development
- Holding or managing intellectual property
- Purchasing or procurement, Manufacturing or production
- Sales, marketing or distribution
- Provision of services to unrelated parties
- Internal financial services
- Holding shares or equity instruments, Dormant, Others

Table 3:

To include any further brief information or explanation that taxpayer may consider necessary or that would facilitate the understanding of the compulsory information provided in the CbC Report.

Contents of CbC report

Model template - Table 1

A model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

| 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 | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING © OECD 2014

Contents of CbC report

Model template - Table 2

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

| Name of the MNE group: Fiscal year concerned: | | | | | | | | | | | | | | |
|--|---|---|-----------------------------|---|---------------------------|-----------------------------|----------------------------------|--|--|------------------------|------------------------------|-----------|--|---------|
| Tax Jurisdiction | Constituent Entities resident in the Tax Jurisdiction | Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence | Main business activity(ies) | | | | | | | | | | | |
| | | | 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 |
| | 1. | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | |
| | 1. | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | |

² Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

Contents of CbC report

Model template – Table 3

Table 3. Additional Information

| |
|---|
| Name of the MNE group: Fiscal year concerned: |
| <i>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.</i> |

CbC reporting – Implemented in India

CbC reporting – Implemented in India

An overview of CbC reporting introduced

The Finance Act, 2016 introduced the CbC reporting regime to align the Indian domestic legislation with BEPS Action 13:

- CbC reporting regulations introduced with effect from **Assessment Year 2017-18 (FY 2016-17)**
- Threshold to file CbC in line with OECD recommendation i.e. MNE group having consolidated revenue exceeding **Euro 750 million**
- Requirement to file **CbCR notification** by the Indian constituent entity of an MNE Group
- Detailed rules on CbC reporting and CbC notification are awaited
- Stringent penalty norms prescribed

“Indian authorities will have access to useful information to assess TP risks.”

CbC reporting – Implemented in India

Applicability – Threshold

- CbC reporting requirements apply to an international group (i.e., group operating in two or more jurisdictions) having consolidated revenue exceeding the prescribed threshold
- India threshold for applicability of CbC reporting is in line with OECD mandated threshold of Euro 750 million
- The threshold would be determined based on the consolidated revenues of the group in the immediately preceding year
- Threshold to be based on exchange rate as on the last day of the previous year.
 - *Example : CbC reporting for an international group having Indian parent, for the **previous year 2016-17**, shall apply only if the consolidated revenue of the international group in previous year 2015-16 exceeds **INR 5,562 crores***

CbC reporting – Implemented in India

CbC reporting requirements

- **Indian parent of an international group:**
 - Report to be filed on or before the due date of filing return of income
- **Indian entity of a foreign MNE group:**
 - File the CbC report in India, if the parent is resident in a:
 - country with which India will not have an arrangement for exchange of CbC report; or
 - country which fails to automatically exchange such information and such failure is intimated to the Indian entity
 - File CbC notification providing the details of the country of residence of its parent or alternate reporting entity – *manner, form, date to be prescribed*
- **Indian entity appointed as the alternate reporting entity of the Group:**
 - File the CbC report on or before due date of filing return of income

CbC reporting – Implemented in India

Format of CbC report

- CbC report is required to be furnished in the prescribed format i.e. the templates provided in BEPS Action 13
- The contents of CbC report is in line with OECD recommendation :
 - Aggregate information on revenue, profit/loss before income-tax, income-tax paid and income-tax accrued, stated capital, accumulated earnings, number of employees and tangible asset other than cash/cash equivalents – with regard to each country or territory in which the group operates;
 - Details of each constituent entity including the country/territory of incorporation and country of residence;
 - Nature and details of the main business activities of each constituent entity; and
 - Any other information that may be prescribed.

CbC reporting – Implemented in India

Penalties for non-compliance

| Sr. No | Particulars | Default | Penalty |
|--------|---|---|--|
| 1. | Non-furnishing of CbC report by Indian parent or the alternate reporting entity resident in India | Less than a month from due date | ₹ 5,000 per day |
| | | Beyond a month from due date | ₹ 15,000 per day for period exceeding a month |
| | | Continuing default beyond service of penalty order | ₹ 50,000 per day from date of service of penalty order |
| 2. | Non-submission of information | Before initial request date | ₹ 5,000 per day |
| | | Continuing default beyond service of penalty order | ₹ 50,000 per day from date of service of penalty order |
| 3. | Provision of inaccurate information in CbC report | Knowledge of inaccuracy at time of furnishing the report but fails to inform the prescribed authority | ₹ 500,000 |
| | | Inaccuracy discovered after filing and fails to inform and furnish correct report within fifteen days of such discovery | |
| | | Furnishing of inaccurate information or document in response to notice issued | |

CbC reporting – Key challenges

CbC reporting – Key challenges

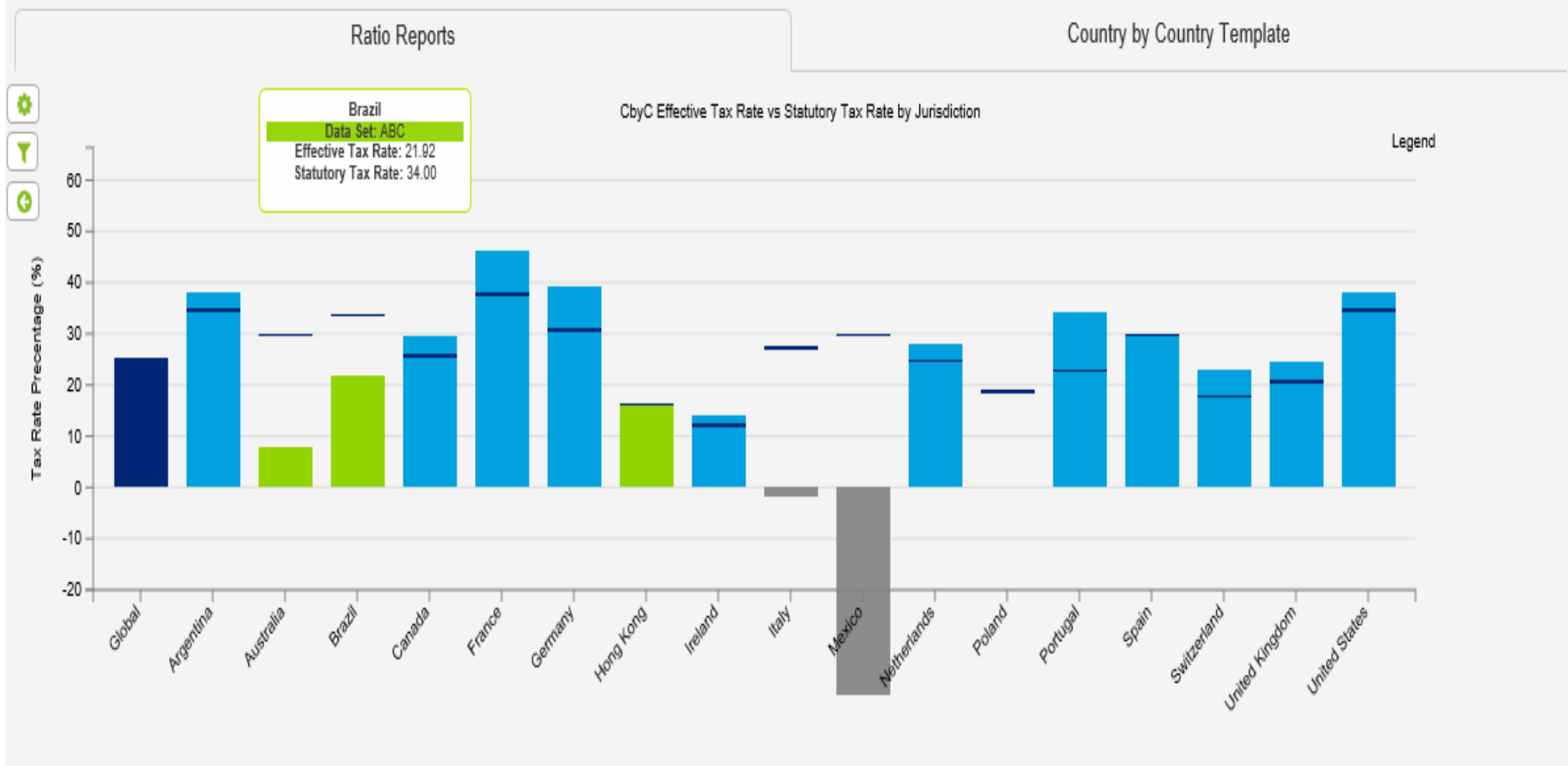
- Identifying the Ultimate Parent Entity and the constituents of an MNE Group
 - Group is held by individuals or Funds or where listed entities are held by an unlisted ultimate parent
 - Application of CbC reporting to joint ventures and associates of the MNE Group
- Inconsistency in the CbC reporting regulations across the globe
 - Timelines for CbC reporting
 - CbC reporting threshold
- Determining the appropriate data for CbC reporting
 - Source of data for reporting
 - Reporting the data per jurisdictions – aggregation of entity level data or consolidated jurisdictional data after eliminations
 - interpretation or absence of the data definitions
- Local country nuances in addition to BEPS Action 13 requirements
- Challenges relating to sharing mechanism for exchange of CbC report
- Risk Assessment exercise to submission of the data

CbC reporting – Technology tools

Technology tools

Sample graph – Cash effective tax rate vs. statutory rate

The reporting allows you to review and analyse the data which has been captured as part of the data collection process. The Report Ratios section allows you to review different financial ratios per jurisdiction. The Country by Country Template allows you to review the reportable data based on the OECD template.



CbC reporting – Global implementation status

Global implementation status

- Around 54 countries have implemented the CbC reporting legislation
- More than 22 countries have proposed to implement the CbC reporting legislation
- 65 countries have signed the MCAA for automatic exchange of CbC report

Master File

Master File requirement introduced in India

- Memorandum to Finance Bill introduces concept to maintain Master File
- Rules for maintaining and furnishing Master File to be prescribed
- Penalty for non-furnishing of prescribed information and document is ₹ 500,000
- No threshold prescribed as yet, Master File requirements in India may be independent of CbC reporting requirement

Master file – BEPS Guidance

- Intended to provide an overview of the group's business, nature of operations and TP policies ((with emphasis on intangibles and financing), and global allocation of income and economic activity

- Information requirements

Organizational
chart

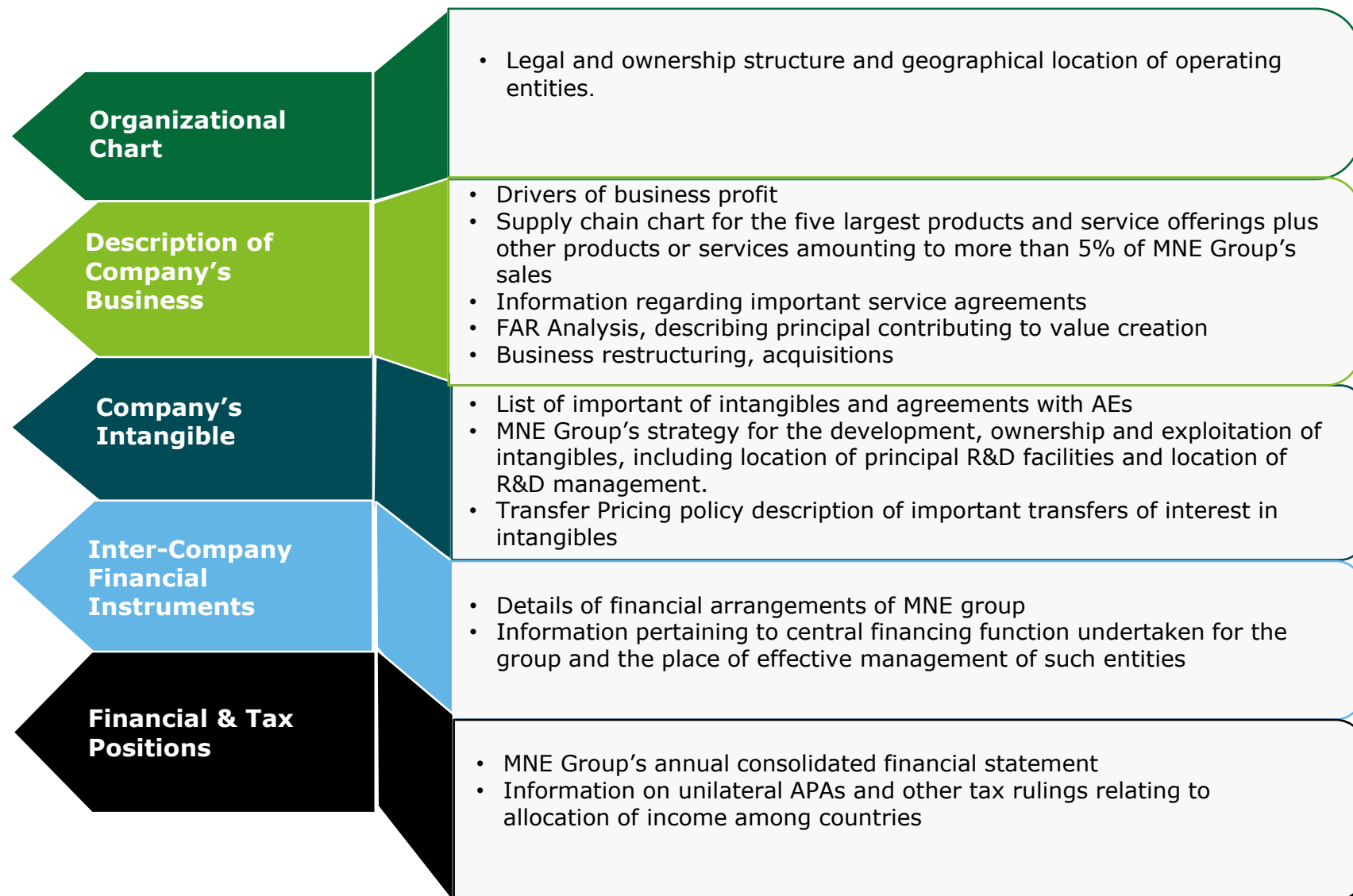
Description of
the company's
business

Company's
intangibles

Intercompany
financial
activities

Financial and
tax position

OECD recommended Master File - Contents



Local File

BEPS Action 13 – Local File

- Currently there has been no change in the existing India local transfer pricing documentation requirements to alignment with BEPS Action 13
- The comparison between the Indian rules (i.e. Rule 10D) and the OECD recommended local file documentation requirement is provided below:

| Indian rules (i.e. Rule 10 (D)) | OECD documentation requirements |
|--|--|
| Ownership structure | Requirements of Master File |
| Profile of MNE group | Requirements of Master File |
| Description of business and industry | Requirements of Master File |
| Details of international transaction | Requirements of Local File |
| Functional, asset and risk analysis | Requirements of Local File |
| Financial estimates | Requirements of Local File |
| Uncontrolled transactions | Requirements of Local File |
| Comparability of uncontrolled transactions with relevant transaction | Requirements of Local File |
| Arms length price | Requirements of Local File |
| Not specified under existing Rule 10D requirement | Requirements of Local File: <ul style="list-style-type: none"> • Local management and organization chart • Copy of existing APAs and other tax rulings which are related to the controlled transactions (but don't involve the local entity) |

Questions & Answers