



Bombay Chartered Accountants' Society

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16th October, 2017

Mr. Sushil Chandra, Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi

Representation in respect of Draft Rules 10DA & 10DB

1. Deferment of the implementation of the Proposed Rules by 1 year

There are many tax jurisdictions (e.g. USA) which are yet to notify regulatory provisions to compile the documents i.e. Master file, Country by Country Report [CbCR] etc., as suggested in the BEPS Action Plan 13.

Suggestion:

In view of this, it would be difficult to obtain required information and documents for the Constituent Entity [CE] resident in India. Therefore, the implementation of the rules 10DA and 10DB should be deferred by at least one year.

Alternatively, CEs resident in India whose parent entity is situated in a jurisdiction where CbCR is presently not applicable, be exempted from the onerous responsibility of compiling and submitting global data pertaining to international group. In such cases, the submission of the report may be restricted to only Indian operations.

2. Applicability of the Rule 10DA and Form 3CEBA (Master File) only to CE Resident in India

Section 286(1) refers to 'every constituent **entity resident in India**', whereas draft rule 10DA (1) refers to 'every person being constituent entity of an international group'. In the draft rule there is no reference to CE resident in India. This is likely to create unwarranted and avoidable confusion and issues.

Suggestion:

It is therefore suggested that it should be clearly provided in Rule 10DA that the provisions relating to Master file are applicable only to resident CE in the scheme of the notification.





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3. Exclusion of the Capital Account Transactions

For the purposes applicability of the Master file, rule 10DA(1)(ii) provides that 'the aggregate value of international transaction' during the reporting year, as per the books of accounts, exceeds fifty crore rupees, or in respect of purchase, sale, transfer, lease or use of intangible property during the reporting year, as per the books of accounts, exceeds ten crore rupees.

For the purpose of calculating the threshold of "aggregate value of international transaction", the notification does not exclude capital account transactions (such as issue of shares, advances, trade receivables, etc.).

It is important to note that Rule 10DA(1)(i) as well as rule 10DB(6), both for the purposes of calculation of threshold limits, consider consolidated group revenue whereas the definition of the 'international transaction' in section 92B includes capital account transaction such as issue of shares, loans, trade receivable etc. The intention of the BEPS Action Plan 13 seems to set the threshold limit based on the **gross revenue i.e. current account transactions only** (i.e. transactions which have impact on statement of profit and loss).

Suggestion:

It is therefore suggested that the Capital Account Transactions should be excluded while calculating the threshold of "aggregate value of international transaction" for the purposes of applicability of master file provisions.

4. Threshold limit on the applicability of the master file provisions

Rule 10DA(1)(i) for the purposes of master file provisions provides a limit of Rs. 500 crores of the consolidated revenue of the international group. For the purposes of country by country reporting, rule 10DB(6) provides threshold of total consolidated group revenue of the international group of Rs. 5,500 crore.





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Suggestion:

Considering the onerous requirement for maintaining master file and other documents, the threshold limit for the first five years should be kept at a higher level i.e. say 50% of the threshold of CbC Reporting amounting to Rs. 2,750 crore. The limit can further be reviewed and reduced, if necessary, based on the experience gained.

Consequently, the threshold prescribed in Rule 10DA(1)(ii) pertaining to the aggregate value of international transactions (other than intangible properties) should be increased to Rs. 500 crore from the proposed limit of Rs. 50 crore. The threshold for transactions pertaining to intangible property should be increased to 100 crore from the proposed limit of Rs. 10 crore.

5. Due date for furnishing CbC Report

The Form 3CEBC requires to compile data from multiple tax jurisdictions in which the CEs of the MNEs are operating. This would require considerable amount of time and efforts.

Suggestion:

Therefore, it is suggested that the due date for furnishing CbC Report (Form 3CEBC) should be extended from 30th November 2017 to 31st March 2018, in line with due date for furnishing Master file.

6. Definition of MNE group

In the Indian Income-tax Act, there is no definition of 'MNE group' as stated in Form 3CEBC and thus, the same needs to be changed in line with the Act i.e. the definition of 'international group' provided in section 286(9).

7. Amendment in the headings of Forms 3CEBB and 3CEBE

The heading in both Forms 3CEBB and 3CEBE states the term "non-resident international group" which words are absent in the Act, and thus, heading in both Forms requires to be amended.



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8. Methodology to be adopted for preserving the sanctity and confidentiality of the information

Both the Master File and CbC Report and the relevant Forms mandates submission of many confidential data, information and documents which, if leaked, can create havoc with the business operations of the relevant international group.

The notification is completely silent on the methodology to be adopted for preserving the sanctity and confidentiality of the information shared by the international group.

Suggestion:

Therefore, it is suggested that in line with best international practices, proper systems and procedures should be adopted by the CBDT and the responsibility for such practices should be properly assigned (including strictest access control with higher authorities with accountability) and penalty be prescribed for non-adherence to the strict protocol of confidentiality.

9. Additional requirements for Master File

Action 13 report of the OECD provides the requirements for Master File. While the Indian Government has largely adopted the format provided by OECD, the draft Indian Rules contain certain additional requirements as mentioned below:

- *List of all the operating entities of the international group along with their addresses*
- This information does not form part of Action 13 report.
- *The functions, assets and risks analysis of the constituent entities of the international group that contribute at least ten per cent of the revenues, assets and profits of the group;* - The Action 13 report requires a brief functional analysis describing the principal contributions to value creation by individual entities within a group.



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- *List of all the entities of the international group engaged in development of intangibles and in management of intangibles along with their addresses. The Action 13 report requires a general description of the location of principal research and development facilities and location of management.*
- *Detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders. Action 13 report requires a general description of the group financing activities.*
- In a number of instances, the draft rules require a “detailed description” instead of a “general description” as mentioned in Action 13 report.

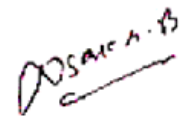
Suggestion:

Most countries have adopted the format as provided by the OECD. It is requested that the format of Master File be in sync with the format as provided by OECD. The additional requirements will create certain inconsistencies for the MNC group since the group will have to prepare different versions of the Master File for different countries.

For Bombay Chartered Accountants' Society,



Narayan Pasari,
President



Mayur Nayak

Chairman, International Taxation Committee