

**F.No. 500/13/2016-APA-I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
Foreign Tax and Tax Research Division-I  
APA- I Section**

New Delhi, dated 27<sup>th</sup> June, 2018

**Subject – Appropriate Use of Country by Country (CbC) Reports –  
Regarding**

Country by Country (CbC) Reports containing various financial and other information about international groups, i.e., Multinational Enterprises (MNEs), country by country in which they have business operations, would be available to certain authorities working in the field formation of the CBDT. As part of the Base Erosion and Profit Shifting (BEPS) Project of the OECD and G20 countries, India is committed to ensuring appropriate use of the CbC Reports. The following paragraphs contain the background, philosophy, processes and mechanisms of the CbC Reports and regarding their appropriate use. The same need to be referred and adhered to so as to ensure appropriate use of CbC Reports.

**1. Background**

1.1 The emergence of globalisation has provided international groups an opportunity to lessen their tax liabilities by artificially shifting their profits to low/no-tax jurisdictions or by reducing their taxable income using the gaps and mismatches between the tax systems of different jurisdictions. This abuse of legal instruments/arrangements, which has led to tax base erosion and profit shifting, necessitated the governments of various jurisdictions to act together in order to reinstate faith in domestic and international tax systems.

1.2 In order to address the issue of erosion of tax base, shifting of taxable profits and to enhance the coherence in international tax rules, which would safeguard a more transparent tax environment, the OECD, along with G20 Countries, including India, devised a 15-point Action Plan termed as the Base Erosion and Profit Shifting Project (the “**BEPS Project**”).

1.3 The report on Action 13 of the BEPS Project (the “**Action 13 Report**”) contains revised standards for transfer pricing documentation and recommends

a three-tiered standardized approach, which requires the international groups to provide (i) information of their global business operations and transfer pricing policies in a "Master File", (ii) a detailed transfer pricing documentation specific to each country in a "Local File" and (iii) a Country by Country (CbC) Report (the "**CbC Report**").

1.4 The Action 13 Report requires CbC Reporting to be adopted by all participating countries as a "minimum standard" and implemented in a consistent manner with effect from 1<sup>st</sup> January, 2016. In respect of Indian headquartered international groups, accordingly, such reporting is to be implemented with effect from the previous year 2016-17.

1.5 To fulfill this requirement, necessary amendments to the Income-tax Act were carried out through Finance Act, 2016 and a new section (section 286) was inserted in the Income-tax Act, 1961 (the "**Act**") with effect from 1-4-2017 (applicable for previous year 2016-17). Subsequently, amendments have been carried out in the Income-tax Rules, 1962 (the "**Rules**") by inserting new rule (rule 10DB) and new forms 3CEAC, 3CEAD and 3CEAE.

1.6 Form 3CEAC has to be filed by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India, to the Director General of Income-tax (Risk Assessment) (the "**DGRA**") intimating the details of the international group and the CbC reporting entity.

1.7 Form 3CEAD, which relates to CbC Reporting, has to be filed by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, with the DGRA. This form provides for capturing information in the following three parts:

- Part A** : Overview of allocation of income, taxes and business activities of the constituent entities of the international group by tax jurisdiction;
- Part B** : List of all the constituent entities of the international group included in each aggregation along with their main business activities per tax jurisdiction; and
- Part C** : Additional information.

1.8 Form 3CEAE has to be filed with the DGRA as intimation by the entity which has been designated by the international group to furnish the CbC Report where provisions of sub-section (4) of 286 are applicable in its case.

1.9 While the Master file and the local file will be delivered by the international groups directly to local tax administrations, the CbC Report shall be filed in the jurisdiction of tax residence of the ultimate parent entity of the international group. This report will be shared by the parent jurisdiction with all

other jurisdictions where the international group operates, through automatic exchange of information.

1.10 To facilitate the implementation of the exchange of CbC Reports among tax administrations on the basis of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, (the "**Convention**") the Action 13 report specified a Multilateral Competent Authority Agreement for Automatic Exchange of Country-by-Country Reports (the "**CbC MCAA**"). India has signed the CbC MCAA by signing a Declaration agreeing to comply with the provisions of the Agreement, in May 2016.

1.11 As per the CbC MCAA, India will exchange CbC Reports filed by a parent entity of an international group resident in India for the previous years starting from 2016-17 and will receive CbC Reports relating to international groups who have constituent entities resident in India.

1.12 Where countries have either not signed and/or ratified the Convention or having done so they have not signed the CbC MCAA, India would endeavour to enter into Bilateral Competent Authority Agreements for Automatic Exchange of CbC Reports ("CbC BCAA") with such countries on the basis of its Double Taxation Avoidance Agreements (DTAAs) or on the basis of its Tax Information Exchange Agreements (TIEAs), respectively.

1.13 In accordance with such BCAAs, India will exchange CbC Reports filed by a parent entity of an international group resident in India for the previous years starting from 2016-17 and will receive CbC Reports relating to international groups who have constituent entities resident in India.

## **2. Access to the CbC Reports:**

2.1 All the CbC Reports filed in India as well as exchanged by other jurisdictions shall be primarily accessed by the Competent Authority of India (Joint Secretary, FT & TR-I and Joint Secretary, FT & TR-II in CBDT) and DGRA in accordance with the provisions of the treaties and the Act, respectively.

2.2 Once the case of a constituent entity has been selected for scrutiny based on Risk Assessment, the jurisdictional Transfer Pricing Officer (the "**TPO**") will have access to the information relating to that constituent entity. The standard operating procedure for the TPO will be formulated by the Centralised Risk Assessment Unit (the "**CRAU**") set up in the office of DGRA.

## **3. Appropriate Use of CbC Reports**

3.1 The information obtained through CbC Reports shall be appropriately used by the TPOs during Transfer Pricing audit. The information shall be used for the following purposes:

- a) High level transfer pricing risk assessment;
- b) Assessment of other BEPS related risks; and
- c) Economic and statistical analysis.

3.2 Further, the information may also be used:

- a) for planning a tax audit; and
- b) as the basis for making further enquiries, into the group's transfer pricing arrangements and tax matters, in the course of an audit.

### 3.3 High Level Transfer Pricing Risk Assessment

3.3.1 The evaluation of CbC Reports by the CRAU may provide perspectives of potential risks on the transfer pricing arrangements between the Indian taxpayer with its Associated Enterprises, which may necessitate further examination by the TPO. For that purpose, a tax audit may be planned through selection of the case of the Indian taxpayer for scrutiny for the relevant assessment year. Using the information as a basis, the TPO shall make further enquiries on the transfer pricing arrangements in the course of the audit. There is no restriction that these enquiries must relate only to the potential risks identified by the CRAU.

3.3.2 Further, the information contained in CbC Reports may also be used as a basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit.

3.3.3 The information contained in CbC Reports shall not be used as the only material to propose transfer pricing adjustments. Transfer pricing adjustments shall be made in accordance with the provisions of the Act and the Rules.

### 3.4 Assessment of other BEPS related risks

3.4.1 BEPS is an unethical practice of international groups aiming to shift their profits arising in one jurisdiction to another jurisdiction for a favourable tax treatment in such other jurisdiction. This favourable tax treatment could result in no taxation or low taxation of such shifted profits due to a slew of methods or practices, such as, using low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, derivatives to avoid withholding taxes, resorting to profit shifting using the contractual allocation of risk, pricing of intangibles, interest deductions, etc.

3.4.2 CbC Reports may be used to identify indicators of possible tax risks unrelated to transfer pricing, which will lead to examination of such risks through further enquiries during assessment and for closer analysis to arrive at a conclusion on potential tax base erosion and profit shifting.



3.4.3 However, the information gathered from CbC Reports cannot constitute conclusive evidence that an international group is engaged in other forms of BEPS.

### 3.5 Economic and statistical analysis

3.5.1 The information obtained from CbC Reports may be used for economic and statistical analysis for the purpose of better understanding of the use of CbC Reports and to identify the features, benefits and risks of the CbC Reports and tax systems.

3.5.2 Using the information for such economic and statistical analysis shall be consistent with the provisions of the tax treaties.

### **3.6 The use of information contained in CbC Reports shall be considered as inappropriate under the following circumstances:**

- If the information is used as a substitute for a detailed transfer pricing analysis of international transactions and determination of Arm's Length Price based on a detailed functional and comparability analysis; and
- If the information is used as the only material to propose a transfer pricing adjustment.

## **4. Confidentiality of the CbC Report**

4.1 Maintaining the confidentiality of information received under the provisions of tax treaties is a legal requirement under the said tax treaties. Maintaining confidentiality is also an international obligation and any breach may seriously impact our ability to receive information in other cases.

4.2 All CbC Reports received from the other jurisdictions through exchange of information are subject to the requirements of confidentiality under the tax treaties with the respective jurisdictions.

4.3 All CbC Reports filed with the DGRA either by a reporting/alternate reporting entity under 286(2) of the Act or by a constituent entity under 286(4) of the Act are subject to the requirements of confidentiality under the provisions of the Act.

4.4 The CCIT/DGIT concerned must sensitize the officers in their region on the requirements of maintaining confidentiality. Detailed guidelines on maintaining confidentiality provided in Chapter-VII of Manual on Exchange of Information should be strictly followed by all the officers who handle the information contained in CbC Reports exchanged under the tax treaties.

## **5. Monitoring, Control and Review**

5.1 The use of information by the TPO in transfer pricing audits shall be monitored by the jurisdictional CIT (Transfer Pricing) and breach of appropriate use, if any, may be brought to the notice of the Competent Authority of India through proper channel.

5.2 The Competent Authority of India is committed to disclose such breaches of appropriate use to the Coordinating Body Secretariat of the OECD.

5.3 Concerns raised by the taxpayers on breach of appropriate use shall be reported to the jurisdictional CIT (Transfer Pricing) by the respective TPOs and in case of the issue not being resolved by the CIT, the same shall be brought to the notice of the Competent Authority of India immediately.

5.4 In case of adjustments made to the income of a taxpayer based on inappropriate use of information contained in the CbC Reports, the Competent Authority is committed to promptly concede such adjustments in competent authority proceedings (Mutual Agreement Procedure – MAP).

5.5 The appropriate use of the CbC Reports, or otherwise, would be reviewed regularly by the Board through the Competent Authority of India. Accordingly, the Principal CCIT (International Taxation & Transfer Pricing) shall submit a quarterly report to the Board (through the Competent Authority of India, i.e., the Joint Secretary, FT & TR-I, CBDT) in the format attached as an annexure. The quarterly report would be a consolidated report of all the quarterly reports prepared and submitted to the Principal CCIT (International Taxation & Transfer Pricing) by all the CsIT (Transfer Pricing) in the country. The quarterly report should reach the Board within 30 days from the end of each quarter. This review shall commence from the quarter beginning on 1<sup>st</sup> January, 2019 and ending on 31<sup>st</sup> March, 2019. Thus, the first report would be due in the Board by 30<sup>th</sup> April, 2019. Thereafter, the reports have to be submitted for every succeeding quarter.

6. This issues under Section 119 of the Income-tax Act, 1961 with immediate effect subject to the specific timeline mentioned in paragraph 5.5 in respect of review of appropriate use of the CbC Reports.

  
[Sobhan Kar] 27/6/18

Director (APA), CBDT, Government of India

To,

Pr. CCsIT/Pr. DsGIT/CCsIT/DsGIT, with a request to circulate among all Officers in their Region.

Copy to:

(a) Chairman, Members and all other Officers of the Central Board of Direct Taxes.

(b) ITCC Section of CBDT.

(c) Database Cell for uploading on "www.irsofficersonline.gov.in".

 27/6/18

[Sobhan Kar]

Director (APA), CBDT, Government of India

## ANNEXURE

## Quarterly Report of Review of Appropriate Use of Country-by-Country Reports (CbCRs)

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