

Master file ('MF') and Country by Country reporting ('CbCR') compliance – Practical Insight



November 2018

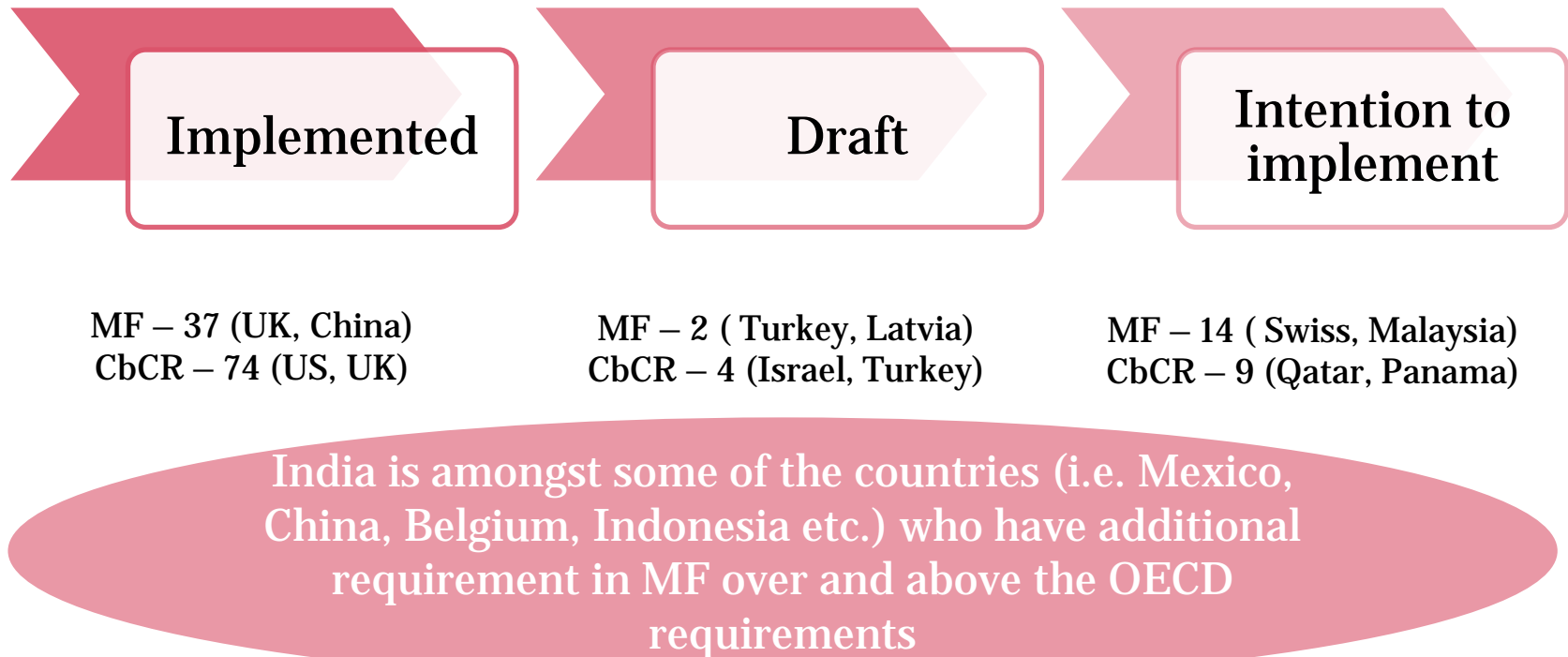
Agenda

1. Country implementation summary
2. Master File
3. Country by Country Reporting



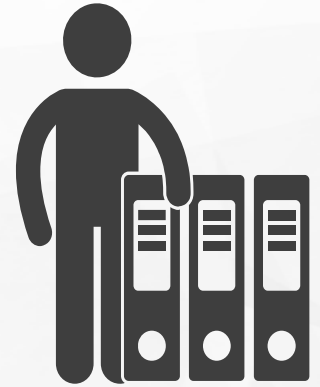
Country implementation summary

The below diagram presents a snapshot of number of countries that have implemented Master File ('MF') and Country by Country Report ('CbCR') requirements or in process to implement the same*



**Updated as on 16 October 2018*

Master File



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MF applicability – India Rules



To whom applicable?

Constituent entities ('CEs') where:

- 1) Revenue threshold – Consolidated Group revenue > than INR 500 crores; **and**
 - 2) Transaction threshold:
 - a) International transactions > INR 50 crores
- OR**
- b) Intangibles related transactions > INR 10 crores

Filing Procedures



By when?

Due date of tax return;
(i.e. 30 November 2018)
for FY 2017-18
- Due date for first year
(FY 2016-17) was 31
March 2018



With whom to be filed?

Director General of
Income-tax (Risk
Assessment) electronically



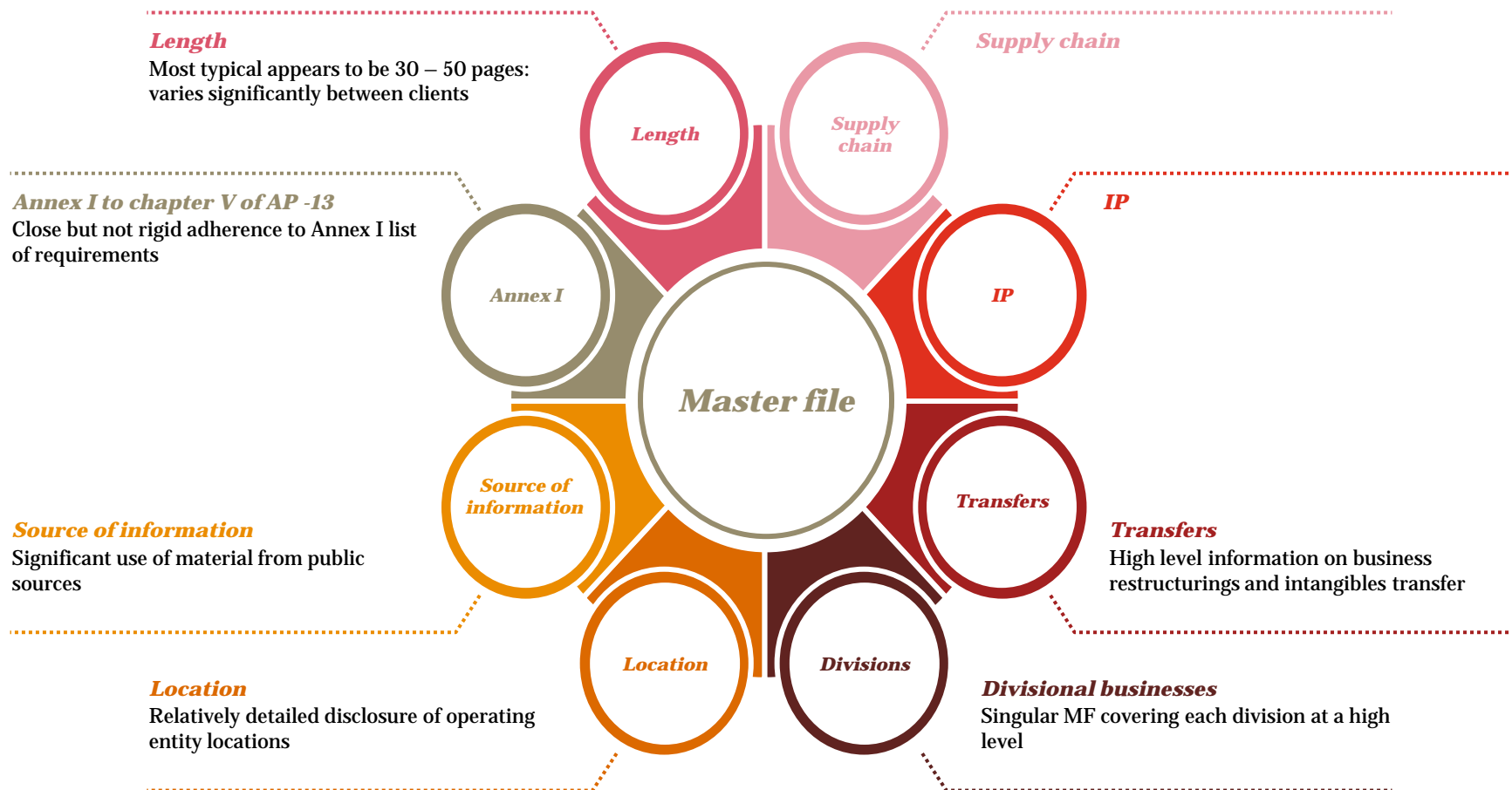
Any prescribed format?

Form No.
3CEAA

- For multiple group entities, one entity to be designated and notified 30 days before the due date of filing the MF (Form 3CEAB)
- Constituent entities not fulfilling the threshold to file certain general information – Form 3CEAA (Part A)
- Penalties prescribed for non-compliance (INR 5 lacs for late/ non-filing)

MF Survey – Experience across the globe

A survey was conducted to gather insights on how MNE approach the new MF requirements. The results of the survey is depicted in the diagram below:



India Experience - MF

Higher appetite for information (OECD + additional information)

- Functions assets and risk ('FAR') analysis of certain constituent entities
- Names and addresses of the top ten unrelated lenders
- Entities engaged in development & management of intangibles
- List of all the entities of the international group with addresses

Approaches used for preparation of MF

- OECD Classic approach – Single detailed MF covering all businesses
- Modular approach – One document giving high level group overview and one document for each business/ division
- Local approach – Concise MF with references to local files wherever necessary details are provided in individual local files

Specific nuances/ issues faced during preparation of MF

- FAR as per OECD requirements vs. India requirements
- TP policies for important services arrangements. Subjectivity in determining importance as per different businesses
- Details of financing arrangement – Level of information? (Interest free loan/ guarantees)
- Intangible - Right balance between protection of trade secret and sufficient compliance

Compliance experience with the filing of Form 3CEAA

- Alignment of the MF prepared by the group with the Form 3CEAA (Character limitations in the Form)
- Use of charts, diagram etc. in the Form was available for limited sections

Practical queries



Whether the groups with diversified business verticals are expected to file the MF for business verticals which are not present in India?



Whether foreign entities having international transactions value exceeding the prescribed thresholds need to file MF in India?

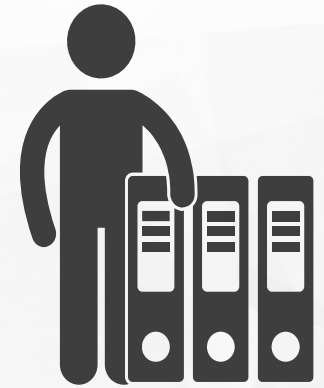


Threshold of value of international transactions – accounting year of ultimate parent entity ('UPE') or financial year? International transaction with the CE or Associated Enterprise ('AE')?



Whether the constituent entities with no international transactions are liable to file Form 3CEAA – Part A ?

Country by Country Report (‘CbCR’)



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CbCR applicability: India Rules

Inbound Resident CE (UPE or Alternate Reporting Entity (ARE) not resident in India)



By when?

Notification to be filed within 10 months from the end of the accounting year of UPE



With whom to be filed?

Director General of Income-tax (Risk Assessment) electronically



Any prescribed format?

Form No. 3CEAC

In following situations Inbound CEs are also liable to file CbCR in India under section 286 (4) :

1. When there is no MCAA between India and jurisdiction of parent entity/ ARE
2. Systematic failure in exchange of CbCR information
3. **When the UPE is not obligated to file CbCR in its jurisdiction**

No deadline has been prescribed yet for case falling u/s 286(4)

Outbound Parent – if consolidated group revenue during last year > 5500 crore



By when?

CbCR to be filed within 12 months from the end of the accounting year of UPE



With whom to be filed?

Director General of Income-tax (Risk Assessment) electronically



Any prescribed format?

Form No. 3CEAD

- *Penalties prescribed for non-compliance*

India Experience - CbCR

In line with the OECD requirements

- Applicability of CbCR and threshold is in line with the OECD requirements
- Information required in CbCR (form 3CEAD) is in line with the OECD requirements

Approaches used for preparation of CbCR

- Collation of data and preparation of Form 3CEAD by the client and consultant to assist in interpretation of the certain terms like revenue, stated capital etc. No FAQ issued by CBDT yet
- Dry run of CbCR and interpretation of the results

Specific nuances/ issues faced during preparation and filing of Form 3CEAD

- Different ERPs used by different subsidiaries led to inconsistent data
- Decentralization of data in different countries with different stakeholders
- Collection of required data for branch is not readily available

Appropriate use of CbCR data by the revenue authorities

- Restricted access to CbCR
- Use of CbCR for high level TP risk assessment, other BEPS related risk and tax audit planning
- Confidentiality – a legal and international obligation

Practical queries



Restructuring, mergers and acquisition – Determination of reporting requirement



Penalty implications in case where parent entity resident in India has appointed an Alternate Reporting Entity to undertake CbCR compliances



What if the preceding accounting year of the parent entity is shorter than 12 months? Whether threshold applies proportionately?



Whether a Group operating only through Permanent Establishments ('PEs') are required to file CbCR



Reporting of information relating to a PE – with the jurisdiction of the headoffice or with the jurisdiction of physical presence of that PE

Where are we headed?

- Significant use of data analytics
- Joint transfer pricing audits
- Increasing disputes with accessibility to more qualitative information
- Value chain analysis critical
- Profit Split Method to start getting more attention



Snapshot of relevant timelines for FY 2017-18

Who	What	By When
MF		
Any CE having international transaction - irrespective of whether threshold is met or not)	General information - Part A of Form 3CEAA	31 November 2018
CE passing the threshold	MF Part B of Form 3CEAA	31 November 2018
Designated entity, in case of multiple CEs, resident in India	Part A and Part B of Form 3CEAA	30 November 2018
	Notification - Form 3CEAB	31 October 2018
CbCR		
CE resident in India, whose parent is a non resident	Notification Form 3CEAC	31 October 2018 (assuming parent's year end is December)
Where UPE is in India	CbCR filing – Form 3CEAD	31 March 2019 (12 months from the end of reporting accounting year)

Thank You

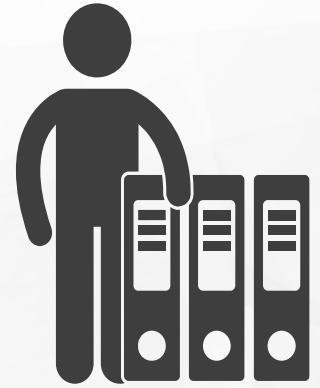
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Annexures



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Requirement for Inbound entities to file CbCR in India

No CbCR requirement (UAE)

A UAE based Group having turnover 10,000 crores has a subsidiary in India whose turnover is less than 50 crores.

Technically, Indian CE is required to file CbCR but Group has not prepared any CbCR in the absence of any such requirement in parent company's jurisdiction.

Higher threshold for CbCR (Japan)

A Japan based Group whose turnover is INR 5700 crore may not be required to file CbCR in Japan as threshold in Japan is JPY 100 billion (Approx. 6500 crores)

Whether Indian CE is required to file CbCR in India?

CbCR applicability on a later date (Switzerland)

CbCR filing requirements in Switzerland triggers from FY 2017-18. A Switzerland based Group has voluntarily filed CbCR in its jurisdiction for the year relevant to FY 2016-17.

Since, the Group was not ***obligated*** to file CbCR, whether Indian subsidiary is required to file CbCR in India u/s 286 (4) for FY 2016-17

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