



# **International Fiscal Association - India Branch Western Region Chapter**

## **INTERNATIONAL TAX CONFERENCE**

**“INTERNATIONAL TAX - MLI / BEPS UPDATE FROM INDIAN PERSPECTIVE”**

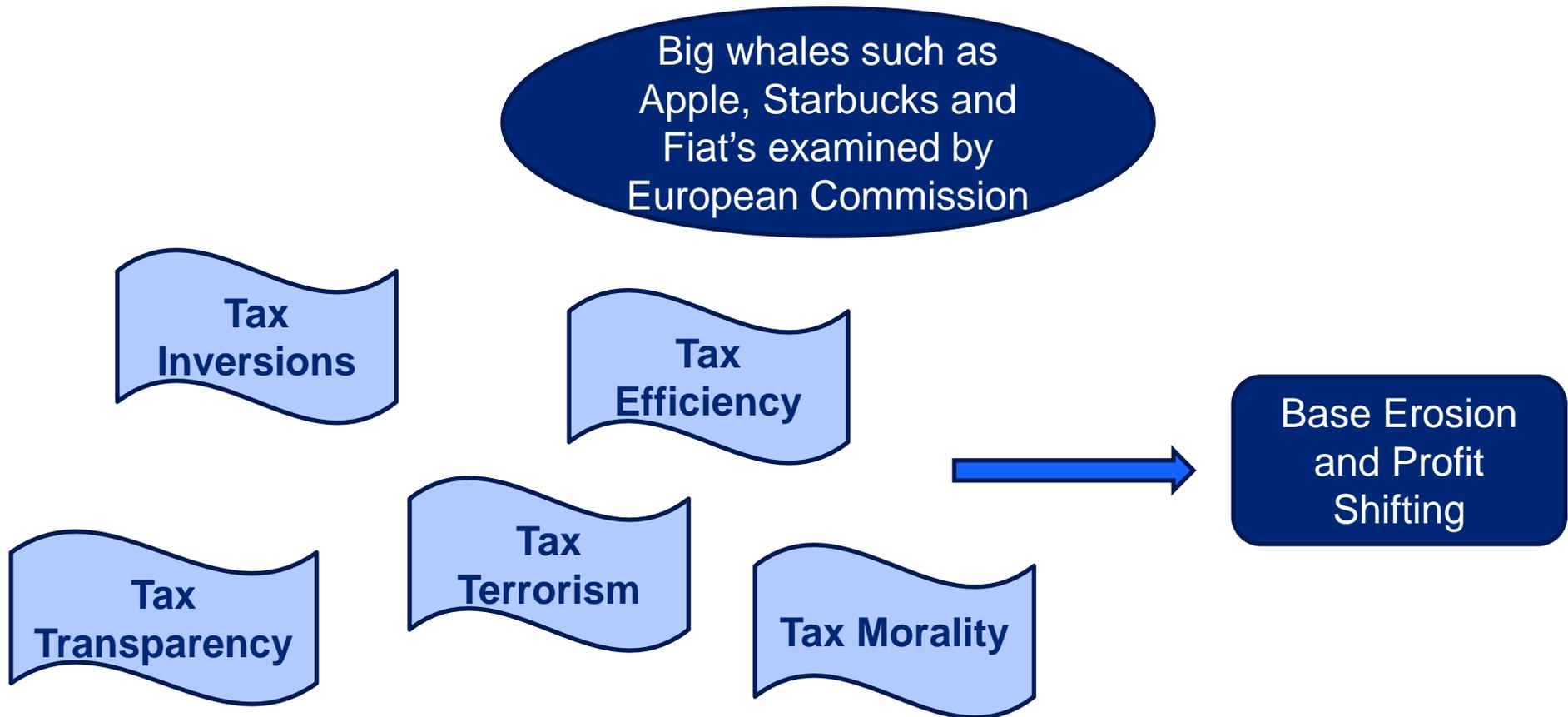
**CA. T.P. Ostwal**

**Friday, March 23, 2018**



# OECD - BEPS

## THE INCEPTION



**Moral Duty to Pay Fair share of Taxes**

## OECD BEPS- AT GLANCE

*“OECD arises because under the existing rules MNEs are often able to artificially separate the allocation of their taxable profits from the jurisdiction in which these profits arise*

*This can result in income going untaxed anywhere, and significantly reduced the corporate income tax paid by MNEs in the jurisdiction where they operate, thus affecting competition, distorting investment decisions and reducing overall trusts in the tax system”*

-OECD Webinar

19 July 2013 - the OECD released an Action Plan on Base Erosion and Profit Shifting (BEPS) which was presented to the meeting of G20 Finance Ministers in Moscow.

*The purpose of the Action Plan is "to prevent double non taxation, as well as cases of no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it"*

*The report indicates that "no or low taxation is not per se a cause for concern, but if becomes so when it is associated with practices that artificially segregate taxable income from the activities that generate it"*

# OECD BEPS- ROAD MAP

19<sup>th</sup> July  
2013

OECD released  
Action plan on  
BEPS

16<sup>th</sup>  
September  
2014

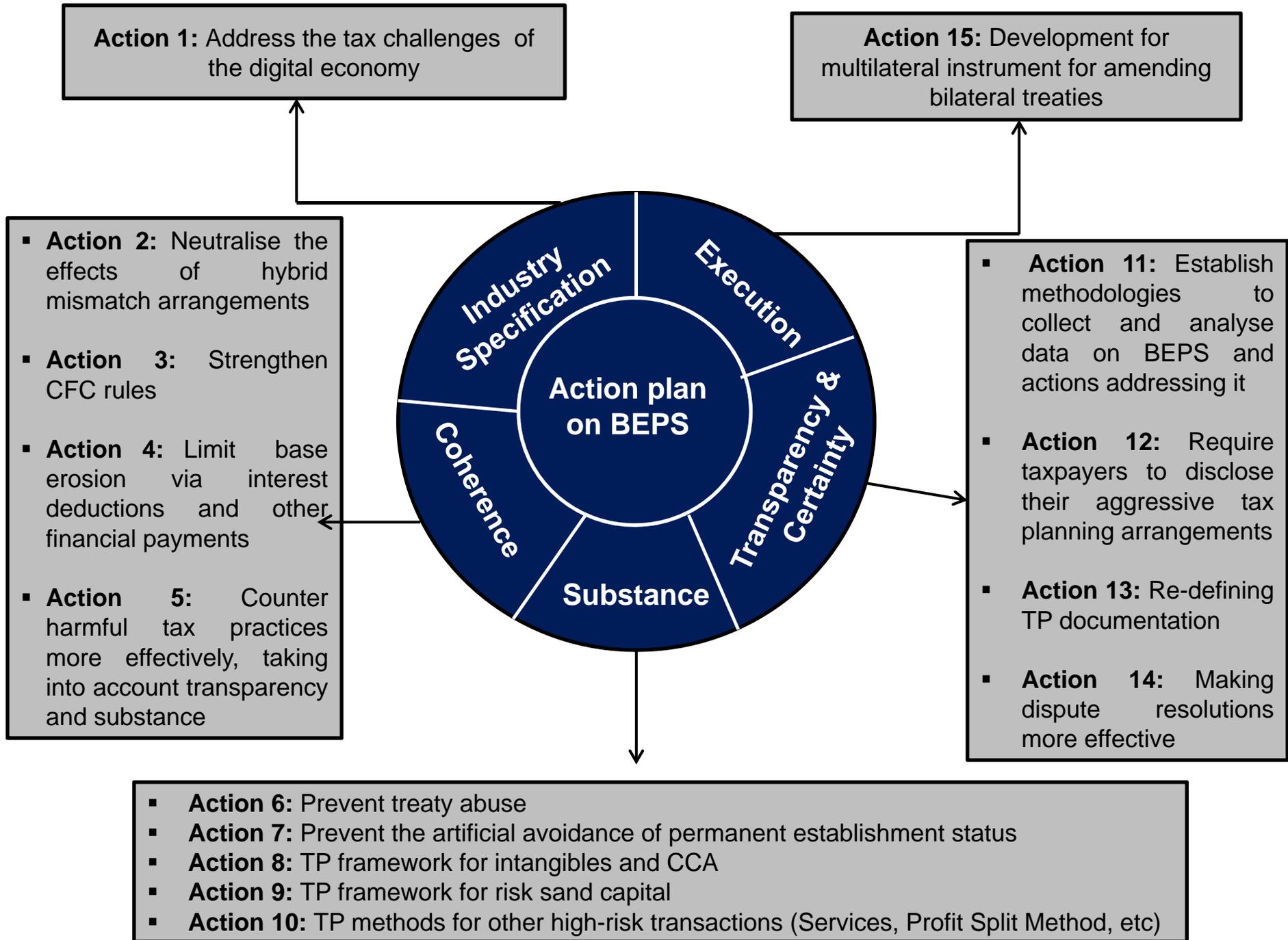
OECD released its  
first set of  
Recommendation for  
7 out of 15 Action  
Points, and also  
released guidance on  
transfer pricing  
documentation and  
CbC reporting

6<sup>th</sup> February  
2015

OECD published  
guidance on the  
implementation of  
CbCR

5<sup>th</sup> October  
2015

OECD released  
the BEPS package  
on Action Plans



## ACTION PLAN 13 INDIA PERSPECTIVE

- India has been highly proactive on BEPS initiatives around TP documentation
- Indian Government has been actively participating in two-way sharing of information with Tax Authorities of other countries
- Indian Transfer pricing documentation and reporting aligned to OECD BEPS AP 13

**Finance  
Act 2016**

Introduction of provisions relating to CbCR & Master File into the Indian TP regulations

**6<sup>th</sup> October  
2017**

Issuance of draft rules in , respect of CbCR and Master File, for public comments and suggestions

**31 October  
2017**

Issuance of final rules in respect of CbCR and Master File

## ACTION PLAN 13 INDIA PERSPECTIVE

- CbCR & Master File documentation requirement Introduced With effect from **Indian financial year 2016-17, i.e. 1<sup>st</sup> April onwards**
- CbCR template is consistent with the OECD provisions
- Master File requirements have; certain additional requirements over and above AP 13 recommendations
- Local file regulation already existing in India have not been modified

# COUNTRY-BY-COUNTRY REPORT (CBCR) INDIA PERSPECTIVE



# MASTER FILE AND COUNTRY BY COUNTRY REPORT ('CBCR') RULES

## Introduction & Background

- ❑ Country-by- country Reporting is a tool intended to allow tax administrations to perform high-level transfer pricing risk assessments
- ❑ The country-by country reporting template will require multinational enterprises (MNE) to provide annually and for each jurisdiction in which they do business, aggregate information relating to the:
  - Global allocation of the MNE's income and taxes paid
  - Certain indicators of the location of economic activity within the MNE group,
  - Information about which entities do business in a particular jurisdiction and the business activities each entity engages in.
- ❑ More than 50 countries have signed the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports(CBC MCAA)

## CONTINUED...

- ❑ In keeping with India's commitment to implement the recommendations of BEPS Action 13 - India introduced the CbCR' by way of section 286 through Finance Act, 2016
- ❑ The Central Board of Direct Taxes ("CBDT") released the draft rules on CbCR and Master File on 6 October 2017 for public comments. The final rules with respect to the same was released on 31 October 2017



**OECD/G20 Base Erosion and Profit Shifting  
Project**

**Transfer Pricing  
Documentation and  
Country-by-Country  
Reporting**

**MASTER FILE**

# Master File Applicability (Rule 10DA)

- Master File is an onerous documentation which Depicts sensitive information and is supposed to provide a bird's eye view of the working of the group
- **Part A-3CEAA of the master file is to be filed by every person being a constituent entity of an International group**
- **Part B-3CEAA Applicability of Master File Requirement in India Rule 10DA**

Consolidated revenue of the international group **during the accounting year** exceeds INR 500 Crore (INR 5 billion)

And

International Transaction of the entity as per the books of accounts exceeds INR 50 Crore (INR 500 million)

OR

Purchase/sale/transfer/ lease or use of intangibles as per the books of accounts exceeds INR 10 Crore (INR 100 million)

# MASTER FILE



Significant amount of information required in relation to each of the above points

# SNAPSHOTS OF DUE DATES FOR FILING OF MASTER FILE

Master File / CbCR	Applicability	Forms to be furnished	Due date for FY 2016-17	Due date for subsequent financial year
Master File (applicable Consolidated revenue of the international group exceeds INR 500 Crore and value of international transaction exceeds INR 50 Crore or value of international transaction involving intangible exceeds INR 10 Crore	Every person, being a constituent entity of an international group	Part A of Form No. 3CEAA	31 March 2018	30 <sup>th</sup> November following fiscal year end in March
	Constituent entity of an international group resident in India and threshold is met	Part B of Form No. 3CEAA	31 March 2018	30 <sup>th</sup> November following fiscal year end in March
	Where there are more than one constituent entity resident in India of an international group, then the constituent entity which has been designated to furnish the master file.	Form No. 3CEAB	1 March 2018	31 <sup>st</sup> October following fiscal year end in March

# CONTENTS OF MASTER FILE

Group Overview	Business Overview	Intangibles Property	Financing arrangements	Financial and tax information
Entity List with address	Supply Chain of major sectors (top 5 in revenue + contributing to more than 5% of group revenue)	List of intangibles along with legal owner names	Description about central financing functions	List and description about unilateral APAs signed by the group companies
Ownership Structure	Important service arrangements and TP policy for intra group services	List of entities engaged in intangible property development and management	Details of entities doing central financing and their POEM	List and description about rulings in respect of allocation of income among countries

# CONTENTS OF MASTER FILE

Group Overview	Business Overview	Intangibles Property	Financing arrangements	Financial and tax information
Description of major geographical markets	Capabilities of services providers	Overall strategy for intangible property development and management	Details of top 10 unrelated lenders	
Nature of business/businesses	Description of Functions, Assets and Risks for entities contributing more than 10% of revenue/assets/ profits	Description of important IP transfers	TP Policy for financing arrangements	
Important business restructuring, transactions acquisitions and divestments	Name and Important drivers for business	TP Policy for Intangible property and R&D		

## MASTER FILE CONTENTS –KEY ISSUES/CONSIDERATION

Clause (Rule 10DA)	Contents	Key issues/consideration
a	List of all entities of the international Group	Inclusion of non-operational I investing I financing entities as well
c(i)	The important drivers of profits of such business or businesses	<ul style="list-style-type: none"> <li>• Interpretation of 'important drivers'</li> <li>• Whether qualitative or quantitative or both factors are to be considered</li> </ul>
c(iv)	A list and brief description of important service arrangements made among members of the international group, other than those for research and development services	<ul style="list-style-type: none"> <li>• Criteria for selection of important service arrangements</li> <li>• Requirement to include transfer pricing policies with respect to the service arrangements</li> </ul>
c(v)	Description of the capabilities of the main service providers within the international group	<ul style="list-style-type: none"> <li>• What would constitute the term 'capabilities' other than functions</li> <li>• On what basis would a constituent entity be identified as a main service provider in the Group</li> </ul>

# MASTER FILE CONTENTS –KEY ISSUES/CONSIDERATION

Clause	Contents	Key issues/consideration
c(viii)	Functions, assets and risk analysis of the constituent entities of the international group that contribute at least 10 per cent of the revenues or assets or profit of such group	<ul style="list-style-type: none"> <li>• Interpretation of ‘profits’, ‘assets’ and ‘revenue’</li> <li>• Applicability in case of a loss at an entity level/group level,</li> <li>• Computation and practical challenges for the Indian Company, for collation of such data specifically for Indian Discloser</li> </ul>
D	Description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management	From a group perspective, the outsourced captive service centres in India <i>may</i> also be referred as research & development centres. Accordingly, in case the group Master File has referred the Indian captive entity as an R&D centre, how would one address such situation in the Indian Master File

# MASTER FILE CONTENTS –KEY ISSUES/CONSIDERATION

Clause	Contents	Key issues/consideration
G	List and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements	<ul style="list-style-type: none"> <li>• Group Master File may have "important agreements" including those among major countries. A license agreement by an Indian entity with the group may not find mention in group Master File - Inclusion of the same fro India perspective</li> </ul>
J	Detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders	<ul style="list-style-type: none"> <li>• Interpretation of 'financing arrangements'</li> <li>• Inclusion of finance lease I operating lease</li> <li>• Challenges on identification and characterization of various implicit and explicit financing activities</li> </ul>

# OECD VIS-À-VIS INDIA'S MASTER FILE REQUIREMENTS

Master File Requirement	Summary of OECD BEPS Requirement	Additional requirements as per Indian final rules
Organization structure	Chart illustrating legal and ownership structure and geographical location of operating entities of the Group	Addresses of all operating entities of the Group
Description of International Group's ('Group') business	<ul style="list-style-type: none"> <li>• Description of important value drivers</li> <li>• Description of supply chain</li> <li>• Functional analysis of the principal contributors to value creation</li> </ul>	FAR analysis of entities contributing at least 10% of the Group's revenue, assets and profits
Intangibles	<ul style="list-style-type: none"> <li>• Strategy for ownership, development and exploitation of intangibles</li> <li>• List of important intangibles with ownership</li> <li>• Important agreements and corresponding transfer pricing policies in relation to R&amp;D and intangibles</li> </ul>	<ul style="list-style-type: none"> <li>• Names and addresses of all entities of the Group engaged in development and management of intangibles</li> <li>• Addresses of entities legally owning important intangibles and entities involved in important transfers of interest in intangibles</li> </ul>

# OECD VIS-À-VIS INDIA'S MASTER FILE REQUIREMENTS

Master File Requirement	Summary of OECD BEPS Requirement	Additional requirements as per Indian final rules
Intercompany financial activities	<ul style="list-style-type: none"> <li>• Description of how the Group is financed, including identification of important financing arrangements with unrelated lenders</li> <li>• Identification of entities performing central financing function including their place of operation and effective management</li> </ul>	<ul style="list-style-type: none"> <li>• Names and addresses of top ten unrelated lenders</li> <li>• Names and addresses of entities providing central financing functions including their place of operation and effective management</li> </ul>

**CBCR**

## COUNTRY-BY-COUNTRY REPORT (RULE 10DB)

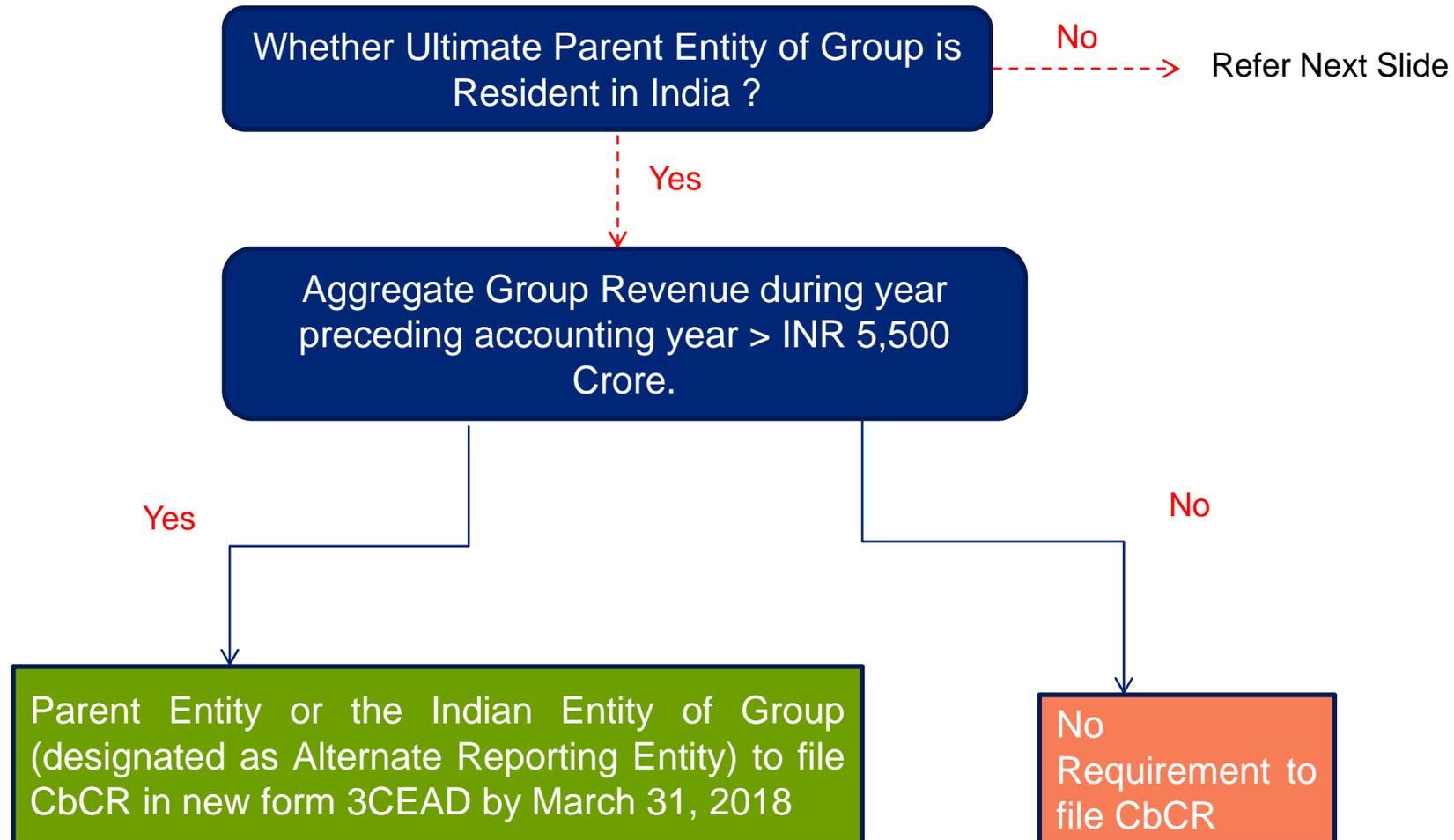
- ❑ CbC report applicable to an international group having total consolidated group revenue of more than INR 5,500crore (approx.\$750mn) **in the accounting year preceding the FY2016-17 i.e. FY 2015-16**
- ❑ Aggregated tax jurisdiction-wise information on global allocation of income ,taxes and indicators of economic activity supports high-level TP risk assessment.



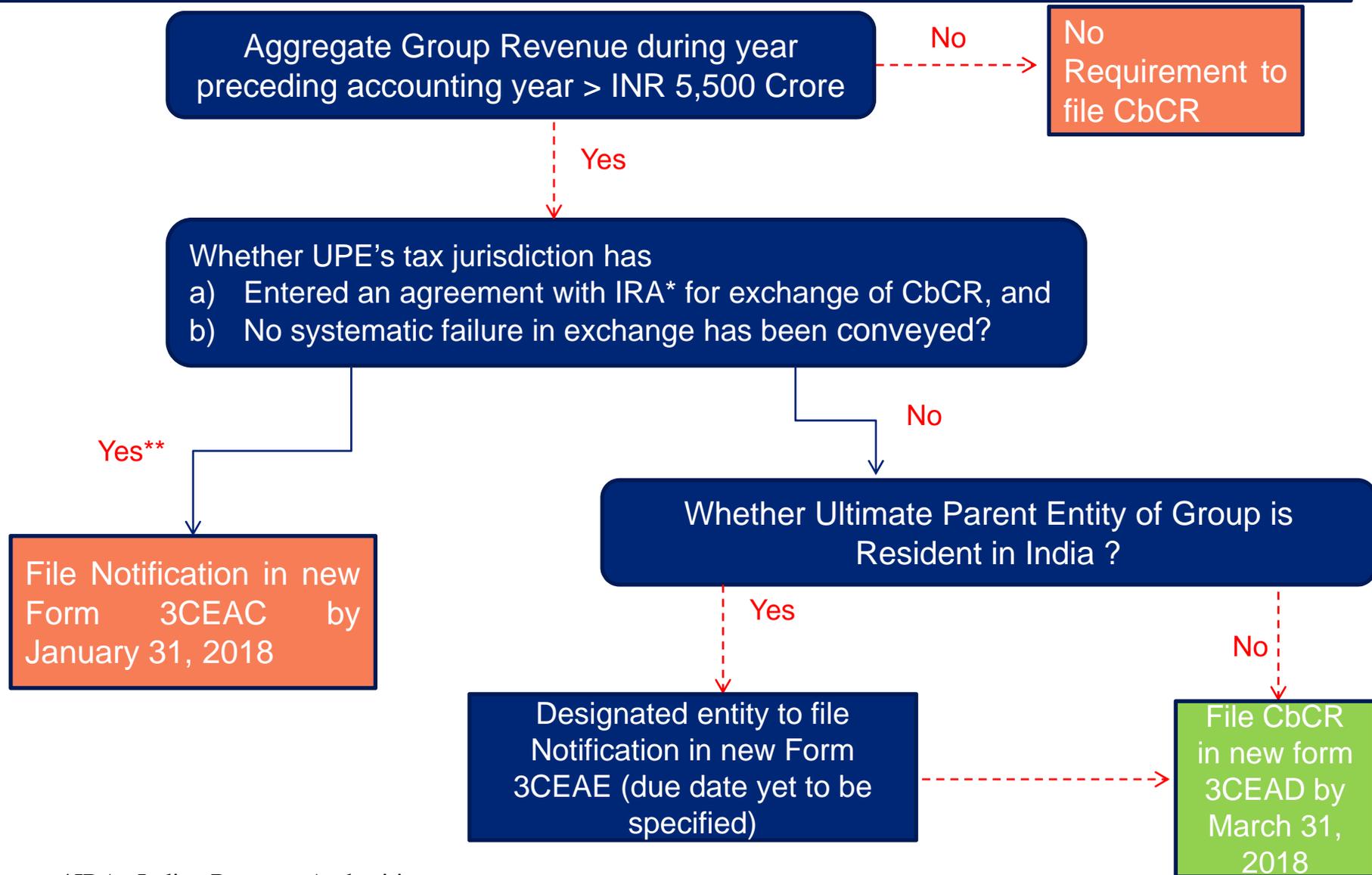
## SNAPSHOTS OF DUE DATES FOR FILING OF CBCR

Master File / CbCR	Applicability	Forms to be furnished	Due date for FY 2016-17	Due date for subsequent financial year
<b>CBCR</b>	Intimation by Every constituent entity resident in India, whose parent is not resident in India	Form No. 3CEAC	30 January 2018	2 months prior to due date for filing Form No. 3CEAD
	CBCR report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India	Form No. 3CEAD	31 March 2018	With in 12 months from end of reporting accounting year
	Intimation on behalf of the international group for the purposes	Form No. 3CEAE	Due date has not yet been prescribed	

# RESPONSIBILITY TO FILE CBCR- INDIAN OUTBOUND GROUP



# RESPONSIBILITY TO FILE CBCR- INDIAN INBOUND GROUP



\*IRA –Indian Revenue Authorities

# SCOPE OF ENTITIES TO BE REPORTED

## GROUP

'Group' means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial statements

### Reporting MNE:

- Ultimate Parent Entity of an MNE group',
- Owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements.
- Usually where group consolidated accounts produced
- An entity which is controlled by any other entity

### Constituent Entity:

- Entity is all types of vehicle on which consolidation applies.
- Any separate business unit of an MNE Group that is included in the Consolidated Financial statements.
- Broadly this should be fully consolidated entities.
- Consider join ventures, associates and all controlling interests.

## SCOPE OF ENTITIES TO BE REPORTED

### **Permanent Establishment**

- Report separately if separate Income statement for regulatory, tax or management reporting purposes,
- Include data in the country of operation,
- Except accumulated , earnings and stated capital (unless regulatory requirement to hold capital)
- Representative and liaison offices

# CONTENTS OF CbCR

- ❑ Contents of Form No.3CEAD i.e. CbCR is aligned with BEPS Action 13 model template. The Contents of the CbCR are divided into three parts i.e. Part A, Part B and Part C

## Part A: Information for each Jurisdiction

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

## Part B: List of all constitute entities of the MNEs for each Jurisdiction

### Main business activity of each of the entity

- Research and development
- Holding or managing IP
- Purchasing or Procurement
- Manufacturing or Production
- Sales, marketing or distribution
- Provision of services to unrelated parties
- Internal Group finance
- Regulated financial Services,
- Insurance
- Holding shares or other equity instrument

## Part C: Additional Information

- Brief information or explanation that is considered necessary or that would facilitate the understanding of the compulsory information provided in Part A and Part B

## CONSEQUENCES OF NON COMPLIANCE

Particulars	Default	Penalty
<b>CbCR</b>		
<b>Non-furnishing of CbCR by the Indian resident parent company or alternate reporting company resident in India</b>	(a) Default not more than one month	INR 5,000 per day
	(b) Default more than one month	INR 15,000 per day for period exceeding 1 month
	(c) Default even after service of order levying penalty under either (a) or (b) above	INR 50,000 per day continuing default beyond the date of service of penalty order
<b>Non-submission of information and documents before prescribed authority within the given time limit</b>	(a) non-submission of information before prescribed authority when called for	INR 5,000 per day
	(b) Default even after service of order levying penalty under (a) above	INR 50,000 per day continuing default beyond the date of service of penalty order

## CONSEQUENCES OF NON COMPLIANCE

Particulars	Default	Penalty
<b>CbCR</b>		
<b>Submission of inaccurate Information in CbCR</b>	(a) Knowledge of inaccuracy at time of furnishing the report but fails to inform the prescribed authority; or	INR 5,00,000
	(b) Inaccuracy discovered after filing and fails to inform and furnish correct report within fifteen days of such discovery; or	
	(c) Furnishing of inaccurate information or document in response to notice issued	
<b>Master File</b>		
<b>Non-furnishing of information and documentation</b>	Failure to furnish the information and document to the prescribed authority	INR 5,00,000

# Issues Addressed by OECD

*Source: guidance on implementation of CBCR dated February, 2018*

## ISSUES RELATING TO THE DEFINITION OF ITEMS REPORTED IN THE TEMPLATE FOR THE CBC REPORT

- *Should extraordinary income and gain from investment activities be included in the column "Revenues" in the CbC report?*

*Yes*

- *When financial statements are used as the source of the data to complete the CbC template, which items shown in the financial statements should be reported as Revenues?*

All revenue, gains, income, or other inflows shown in the financial statement prepared in accordance with the applicable accounting rules relating to profit and loss, such as the income statement or profit and loss statement, should be reported as Revenues in Table 1.

- *Which entities are considered to be related parties for purposes of reporting related party revenues?*

The related parties, which are defined as “associated enterprises” in the Action 13 report, should be interpreted as the Constituent Entities.

## ISSUES RELATING TO THE DEFINITION OF ITEMS REPORTED IN THE TEMPLATE FOR THE CBC REPORT

- *If there is more than one constituent entity in a jurisdiction, should the aggregated data be reported or should the data that is reported for the jurisdiction consist of consolidated data which eliminates intra-jurisdiction transactions between constituent entities in that jurisdiction?*

Data should be reported on an aggregated basis, regardless of whether the transactions occurred cross-border or within the jurisdiction, or between related parties or unrelated parties.

*Where the income tax for a fiscal year has been paid in advance (e.g., preliminary tax assessments based on an estimate of the year's corporate income tax), should the amount reported in the "Income Tax Accrued-Current Year " column be linked to the amount reported in the "Income Tax Paid (on Cash Basis)*

Income Tax Accrued-Current Year is the amount of accrued current tax expense recorded on taxable profits or losses for the Reporting Fiscal Year of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction irrespective of whether or not the tax has been paid (e.g. based on a preliminary tax assessment).

Income Tax Paid (on Cash Basis) is the amount of the taxes actually paid during the Reporting Fiscal Year, which should thus include not only advanced payments fulfilling the relevant fiscal

## ISSUES RELATING TO THE DEFINITION OF ITEMS REPORTED IN THE TEMPLATE FOR THE CBC REPORT

year's tax obligation but also payments fulfilling the previous year(s)' tax obligation (e.g. payment of the unpaid balance of corporate income tax accrued in relation to the previous year(s), including payments related to reassessments of previous years), regardless of whether those taxes have been paid under protest.

The amount of Income Tax Accrued-Current Year and Income Tax Paid (on Cash Basis) should be reported independently.

- *Where taxes have been paid and subsequently refunded, how should the tax refund be reported for the purposes of Table 1?*

In general, a refund of income tax should be reported in Income Tax Paid (on Cash Basis) in the reporting fiscal year in which the refund is received.

*When financial statements that were prepared using fair value accounting are used as the source of data, can the amounts reported as revenue and profits in those financial statements be reported as Revenue and Profits in the CbC report without further adjustments?*

Yes, The amount of revenues and profits determined in accordance with fair value accounting and reported in financial statements may be reported in the CbC report without further adjustment.

## ISSUES RELATING TO THE DEFINITION OF ITEMS REPORTED IN THE TEMPLATE FOR THE CBC REPORT

- *If a constituent entity reports a negative figure for accumulated earnings in its financial statements, should the negative figure be reported in the column "accumulated earnings"? If there are two or more constituent entities in a jurisdiction, should the negative figure reported by a constituent entity be netted with the earnings from the other constituent entity (entities) per jurisdiction 1?*

The negative figure for accumulated earnings should be reported in without modification.

Where there are two or more constituent entities in the same jurisdiction, the negative figures for accumulated earnings, if there are any, should be netted with the positive figures for accumulated earnings. Where this is the case, taxpayers should provide the following statement in : "Accumulated earnings include negative figures for jurisdiction.

## ISSUES RELATING TO THE ENTITIES TO BE REPORTED IN THE CbCR REPORT

- *Application of CbC reporting to investment funds*

As stated the Action 13 Report, there is no general exemption for investment funds. Therefore the governing principle to determine an MNE Group is to follow the accounting consolidation rules

- *Application of CbC reporting to partnerships*

The governing principle to determine an MNE Group is to follow the accounting consolidation rules. If the accounting consolidation rules apply to a partnership, then that partnership may be a Constituent Entity of an MNE group subject to CbC reporting.

- *Treatment of major shareholdings*

*Where there are minority interests held by unrelated parties in a Constituent Entity, should the previous year's consolidated group revenue include 100 percent of the Constituent Entity's revenue for the purpose of applying the 750 million Euro threshold (or near equivalent amount in local currency as of January 2015) to identify an Excluded MNE Group, or should the revenue be prorated? Further, should the entity's financial data that is included in the CbC report represent the full 100 percent or should it be pro-rated?*

## ISSUES RELATING TO THE ENTITIES TO BE REPORTED IN THE CbCR REPORT

Under the condition that accounting rules in the jurisdiction of the Ultimate Parent Entity require a Constituent Entity, the minority interests of which are held by unrelated parties, to be fully consolidated, 100 percent of the entity's revenue should be included for the purpose of applying the 750 million Euro threshold (or near equivalent amount in local currency as of January 2015). In such a case, the entity's financial data that is included in the CbC report should represent the full 100 percent amount and should not be pro-rated. In contrast, if the accounting rules require proportionate consolidation in the presence of minority interests, then the jurisdiction may allow the entity's revenue to be pro-rated for the purpose of applying the 750 million Euro threshold and may also allow its financial data that is included in the CbC report to be pro-rated.

- ***Treatment of an entity owned and/or operated by more than one unrelated MNE Groups***

*Where an entity owned and/or operated by more than one unrelated MNE Groups (e.g. a joint venture entity) is consolidated in the consolidated financial statements of one or more of these MNE Groups, including under a pro rata consolidation rule, is such an entity considered a Constituent Entity of those unrelated MNE Groups*

The treatment of an entity for CbC reporting purposes should follow the accounting treatment. In the case of an entity which is owned and/or operated by more than one unrelated MNE Groups, the treatment of the entity for CbC reporting purposes should be

## ISSUES RELATING TO THE ENTITIES TO BE REPORTED IN THE CBCR REPORT

determined under the accounting rules applicable to each of the unrelated MNE Groups separately. If the applicable accounting rules require an entity to be consolidated into the consolidated financial statements of an MNE Group, the entity would be considered as a Constituent Entity of that group. Accordingly, the financial data of such an entity should be reported in the CbC report of the MNE Group

### *Deemed listing provision*

- *What is the purpose of the deemed listing provision in the definition of the term "Group"*

The deemed listing provision in the definition of the term "Group" is only relevant where an enterprise would otherwise be the Ultimate Parent Entity (UPE), but it is not required to prepare Consolidated Financial Statements in the jurisdiction where it is a resident for tax purposes. In this case, the Group includes all entities that would be included in the Consolidated Financial Statements that the relevant enterprise would be required to prepare if it was listed on a public securities exchange

## ISSUES RELATING TO THE FILING OBLIGATION FOR THE CBC REPORT

- *Impact of currency fluctuations on agreed EUR 750 million filing threshold*

There is no requirement for a jurisdiction using a threshold denominated other than in euros to periodically revise this in order to reflect currency fluctuations.

- *For the purpose of determining whether an MNE Group is an Excluded MNE Group, are extraordinary income and gains from investment activities included in total consolidated group revenue?*

A jurisdiction where the Ultimate Parent Entity resides is allowed to require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue if those items are presented in the consolidated financial statements under applicable accounting rules.

*To calculate total consolidated group revenue under Article 1.3 of the Model Legislation, can an MNE Group which does not have equity interests traded on a public securities exchange use consolidated financial statements based on accounting principles/standards different from those that are used to determine the existence of and membership of a group under Article 1.1 of the Model Legislation?*

The MNE group is required to calculate total consolidated revenue based on accounting standards to be used for identifying a group

## ISSUES RELATING TO THE FILING OBLIGATION FOR THE CbC REPORT

- *Is transitional relief available for MNE Groups with a short accounting period that starts on or after 1 January 2016 and that ends before 31 December 2016?*

As a transitional measure, jurisdictions may allow the Reporting Entity of an MNE Group with a short accounting period beginning on or after 1 January 2016 and ending before 31 December 2016 to file the required CbC report in accordance with the same timelines as for MNE Groups with a fiscal year ending on 31 December 2016. The date by which the CbC report is to be exchanged would be similarly extended. This transitional relief would not frustrate the policy intention of the Action 13 minimum standard.

- *When the preceding fiscal year of an Ultimate Parent Entity was shorter than 12 months, how should it be determined whether the Group is or is not an Excluded MNE Group?*

The following approaches may be used:

1. Use the actual total consolidated group revenue obtained by the Group for the short accounting period;
2. Adjust the total consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12 month accounting period; or
3. Calculate the pro rata share of the 750 million Euro threshold that would correspond to the short accounting period.

# Possible Impact on MNEs

## EXAMPLES OF INBOUND ARRANGEMENT

Scenario	Potential Question
Payment of royalty by Indian subsidiary	<ul style="list-style-type: none"> <li>• Whether entity charging royalty is actually carrying out any economic activity [Development, Enhancement, Maintenance, Protection, Exploitation (DEMPE) functions]?</li> <li>• Whether Indian entity received any economic benefit from availing the brand/technology</li> </ul>
Contract R&D/captive services rendered by Indian subsidiary	<ul style="list-style-type: none"> <li>• More enquiries on following aspects:               <ul style="list-style-type: none"> <li>• Department wise bifurcation of employees</li> <li>• Qualification of employees</li> <li>• Services defined under inter-company agreement</li> <li>• Role played by Indian entity in entire value chain</li> </ul> </li> <li>• Whether remuneration for the Indian entity matches with the FAR contribution it makes? Profit split more suitable?</li> </ul>

## EXAMPLES OF OUTBOUND ARRANGEMENT

Scenario	Potential Question
Foreign entity operating as a distributor in global market	<ul style="list-style-type: none"><li>• Remuneration for the distributor vis-à-vis FAR profile, the value contribution, etc</li></ul>
Granting of loan	<ul style="list-style-type: none"><li>• Economic rational for granting interest free loans?</li><li>• Whether favourable borrowing options were available to overseas entity?</li></ul>
Intangibles registered outside India	<ul style="list-style-type: none"><li>• Bifurcation of intangibles related activities (DEMPE)</li><li>• Where does the intangibles actually get created?</li><li>• Group's intangibles strategy</li></ul>

# **Future of Transfer Pricing Landscape**

## WAY FORWARD..

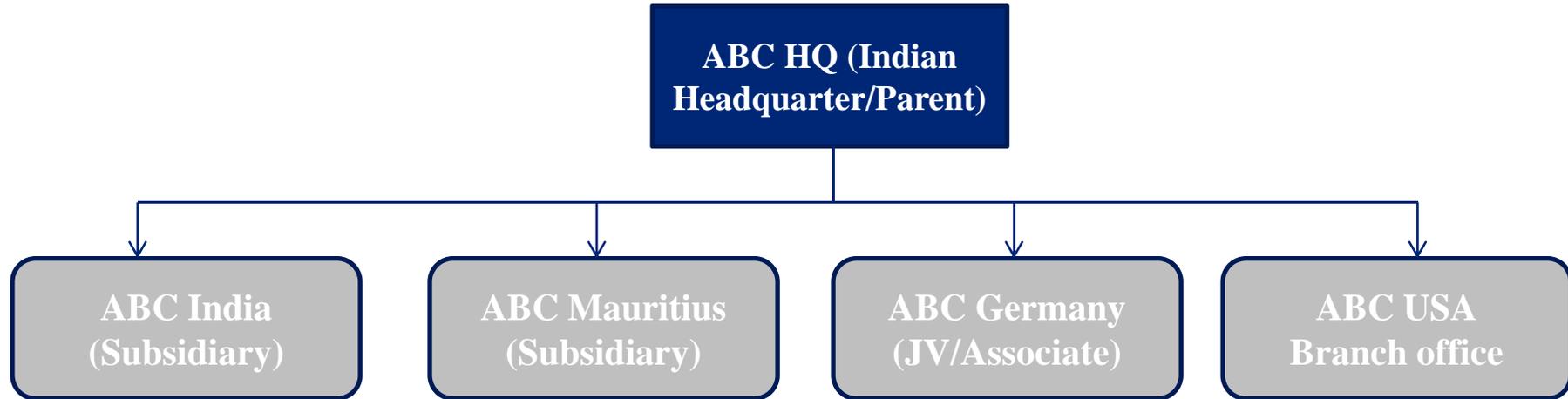
- Evolve around value creation
- Revenue authorities to focus on economic characterization, appropriateness of methods – application of Profit Split Method in more cases
- Collating information through exchange of information
- Conducting functional interviews with operation / business team
- DEMPE functions would be housed in multiple locations which would result in Cost Contribution Arrangements / Cost Sharing Arrangements being more commonly used
- Revenue authorities may conduct audit for block of years
- More Mutual Agreement Procedure (MAP) / Bilateral Advance Pricing Agreements (BAPA)
- Emphasis on establishing fundamentals of TP instead of legal arguments
- Use of subject matter expert witnesses during audit
- Coordinated audit by representatives from two or more jurisdictions

## WAY FORWARD..

- Use of Data Analytics for transfer pricing risk detection
- Use of technology for collation of data
- Tax and business / operations team should work in sync
- Not to treat transfer pricing as year end compliance exercise
- Having substance based transfer pricing policy
- Reviewing inter-company transfer pricing policy on regular intervals
- Evaluating option of APA
- Seeking timely advice of transfer pricing experts

# CASE STUDIES

# CASE STUDY 1



<b>Facts and Figures INR in Crore</b>	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>	<b>Scenario 4</b>
Consolidated group revenue for year ending 31 <sup>st</sup> March 2016	5450	3550	400	5450
Consolidated group revenue for year ending 31 March 2017	5950	3950	525	5950
Aggregate value of all international Transactions in ABC HQ India/ ABC India	80	60	25	45
Aggregate value of intangible related international transactions I ABC India	15	7	22	Nil

# CASE STUDY 1 ANALYSIS

Facts and Figures INR Crores	Scenario 1		Scenario 2		Scenario 3		Scenario 4	
	ABC HQ	ABC India						
<b>CBCR</b>								
Applicability upon satisfaction of threshold								
Filing of Form 3CEAD-CbCR	✓	×	×	×	×	×	✓	×
Filing of Form 3CEAC-Intimation	×	×	×	×	×	×	×	×
Master File								
Applicability upon satisfaction of threshold								
Filing of Form 3CEAA {Part AJ-MF	✓	✓	✓	✓	✓	✓	✓	✓
Filing of Form 3CEAA (Part 8) - MF'	✓	✓	✓	✓	×	×	×	×
Filing of Form 3CEAB - Intimation (Refer note 1)	×	✓	×	✓	×	×	×	×

## CASE STUDY 1 POINTS FOR CONSIDERATION

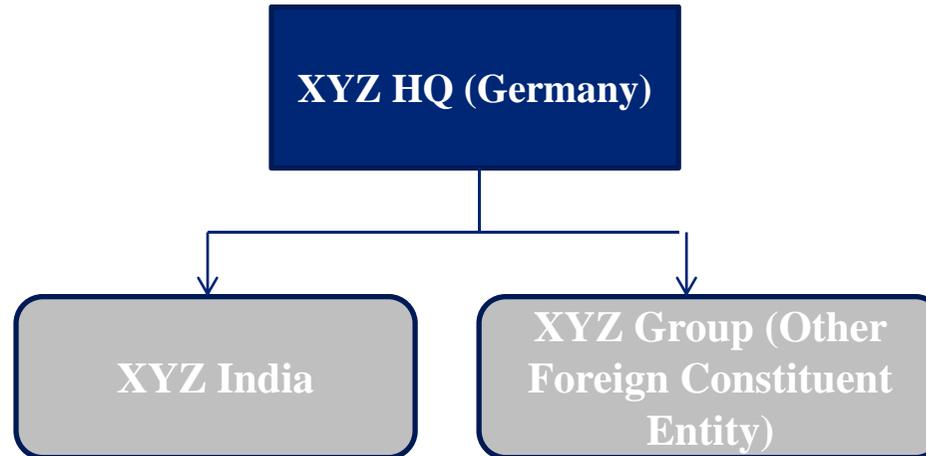
- Note1: It is assumed that ABC HQ is designated to undertake compliances relating to Master File. In case of non-existence of ABC India, no intimation under Form 3CEAB would be required by ABC HQ
- For the above, it is assumed that ABC HQ is designated to undertake compliances relating to Master File
- ABC HQ India may be required to maintain Master File, even in case of non-satisfaction of prescribed threshold as per Indian regulations, to enable compliance by its overseas group entities in their home jurisdiction
- For the purposes of CbCR, if an entity is consolidated on a line-by-line basis into the consolidated financial statements of the parent entity, then such entity shall be considered as a constituent entity and aggregated for preparation of CbCR

## CASE STUDY 1 POINTS FOR CONSIDERATION

### **Challenges faced by an Indian headquartered group:**

- Different year-endings of Indian parent company vis-a-vis overseas subsidiary companies Determination of reporting accounting year
- Use of statutory or management accounts of overseas subsidiary companies
- Different accounting standards followed by overseas subsidiary companies and Indian parent company Reconciliation of data of overseas subsidiary companies with consolidated financials of Indian parent company
- Different currencies of reporting of overseas subsidiary companies and India parent company

## CASE STUDY 2



Facts and Figures INR Crores	Scenario 1	Scenario 2	Scenario 3
Nature of holding in XYZ India	Subsidiary	JV	Branch office
Consolidated group revenue for year ending 31 March 2016	5250	5250	5250
Consolidated group revenue for year ending 31 March 2017	5950	5950	5950
Aggregate value of all international Transactions in ABC HQ India/ ABC India	80	80	80
Aggregate value of intangible related international transactions I ABC India	15	15	15

## CASE STUDY 2 ANALYSIS

Facts and Figures INR Crores CBCR	Scenario 1	Scenario 2	Scenario 3
	ABC HQ ABC India	ABC HQ ABC India	ABC HQ ABC India
Applicability upon satisfaction of threshold			
Filing of Form 3CEAD-CbCR	x	x	x
Filing of Form 3CEAC-Intimation	✓	✓	x
Master File			
Applicability upon satisfaction of threshold			
Filing of Form 3CEAA {Part AJ-MF	✓	✓	✓
Filing of Form 3CEAA (Part 8) – MF	✓	✓	✓
Filing of Form 3CEAB - Intimation (Refer note 1)	x	x	x

## CASE STUDY 2 POINTS FOR CONSIDERATION

### Note 1:

- In case of an Indian joint venture, CbCR and Master File compliances are to be undertaken, as a part of that international group, with whom the said entity is consolidated
- It is possible that a joint venture is consolidated in two international groups – clarification may be expected from the Government, for the compliances applicable in such cases, including clarification as to which JV partner's Master File should the JV operations be covered

### Note 2:

- In case of branch office of a foreign entity, the provisions of CbCR would not be applicable, as the same only applies to constituent entity resident in India

### Note 3:

- In case of more than one Indian constituent entity, every such entity is required to file the intimation

## CASE STUDY 2 POINTS FOR CONSIDERATION

Note 4:

- There is at present some ambiguity on the specific compliance obligations for a branch office of foreign company (being a non-resident), and clarification is expected on the same However, as the provision states, a master file may be required to be filed

Note 5:

- In case of more than one Indian constituent entity, an intimation may be required to be filed by one designated entity, that would undertake Master File compliances in India

# Exchange of Information Mechanism

## EXCHANGE OF INFORMATION & MCAA

- To facilitate the implementation of the CbCR standard, the BEPS AP 13 report includes a CbCR Implementation Package
- The same includes following 3 model Competent Authority Agreements that could be used to facilitate exchange of CbCR:
  - Multilateral Convention on Administrative Assistance (MCAA) in Tax Matters;
  - Bilateral Tax Convention; and
  - Tax Information Exchange Agreements (TIEAs).
- Purpose of MCAA - to set forth rules and procedures as may be necessary for Competent Authorities of jurisdictions implementing BEPS AP 13 to automatically exchange CbCR
- The automatic exchange of CbCR is set to start in June 2018
- There are over 1400 automatic exchange relationships in place among jurisdictions committed to exchanging CbCR as of mid-2018

## EXCHANGE OF INFORMATION & MCAA

- Most of the signatories to the MCAA have adopted or indicated an intent to adopt CbCR, but some signatories have not. However, signing the MCAA indicates a general intent to adopt CbCR
- The following slide presents a list of the countries that are signatories to the MCAA, while the countries marked in green are those which have activated CbCR exchange with India
- In case of the Signed US Competent Authority Agreements on the Exchange of CbCR, India is currently in negotiation

# THANK YOU

## **T. P. Ostwal & Associates LLP** **Chartered Accountants**

Suite#1306-1307, 13<sup>th</sup> Floor, Lodha Supremus,  
Senapati Bapat Marg, Lower Parel, Mumbai – 400013

**Tel No.:** +91 22 4945 4006  
**Email:** [siddharth@tpostwal.in](mailto:siddharth@tpostwal.in)

**Mobile:** +91 90960 39986  
**Website:** [www.tpostwal.in](http://www.tpostwal.in)

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