

**Ref No. 07/10/17-18**

**Date: 16<sup>th</sup> October 2017**

**Kind Attn:**

**Director (Tax Policy & Legislation)-I  
Central Board of Direct Taxes.**

By email

**Subject: Comments to the ‘Framing of rules in respect of Country-by-Country reporting and furnishing of Master File’.**

**Ref: Draft notification for the insertion of Rules 10DA and 10DB and Form Nos. 3CEBA to 3CEBE issued on 6<sup>th</sup> October 2017 vide F.No. 370142/25/2017-TPL.**

**Dear Sir,**

We are grateful for the opportunity to comment and provide suggestions on the ‘Framing of rules in respect of Country-by-Country reporting and furnishing of Master File’.

The proposed rules which have been drafted for introduction of legislation in respect of Country-by-Country reporting and furnishing of Master File achieve the intended purpose of aligning India’s legislation with the outcome of BEPS Action 13<sup>1</sup>. On an analysis of the proposed rules, however, there are some concerns - as listed in the following paragraphs - which we request you to address:

**1. Rule 10DA(1):**

- 1.1. Rule 10DA(1) prescribes certain numeric thresholds for attracting obligations relating to maintenance and reporting of documentation for Master File. However, in its draft form, Rule 10DA(1) prescribes such threshold in Indian rupees and does not contain any guidance relating to adoption of a rate of exchange for conversion into rupees of figures reported under consolidated financial statement of the international group in corresponding foreign currency<sup>2</sup>.
- 1.2. It may therefore be requested that appropriate guidance for adoption of a rate of exchange may be incorporated under Rule 10DA.

**2. Rule 10DA(3)(i) vs. Rule 10DA(4):**

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<sup>1</sup> OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<sup>2</sup> Where the parent entity is not a resident of India.

2.1. There is an apparent contradiction between Rule 10DA(3)(i) and Rule 10DA(4). Draft Rule 10DA(3) and Rule 10DA(4) are reproduced herein below for ease of reference.

**Rule 10DA (3):**

*Information,*

(i) in *Part A* of Form No. 3CEBA shall be furnished by *every* person, being a constituent entity of an international group;

(ii) in *Part B* of Form No. 3CEBA shall be furnished by the *person referred to in sub-rule(1)*.

**Rule 10DA (4):**

*Where there are more than one constituent entities of an international group, resident in India, then the report referred to in sub-rule (2) may be furnished by that constituent entity if it has been designated by the international group to furnish the said report and the same has been notified by the international group or the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEBE.*

*(emphasis supplied)*

2.2. Rule 10DA(3)(i) requires *every person, being a constituent entity of an international group*, to electronically file Part A of Form No. 3CEBA. Whereas Rule 10DA(4) allows *one such Indian resident constituent entity* to be designated by the international group to file Form No. 3CEBA (including Part A) where there are more than one constituent entities resident in India.

2.3. Such anomaly can be corrected by adopting any of the following two approaches:

***2.3.1. Rationalizing the text of Rule 10DA(3)(i):***

2.3.1.1. Suggestion: If the sincere aim of introducing numeric thresholds under Rule 10DA(1) is to provide relief to small MNE groups from the maintenance and reporting obligations for documentation relating to Master File, then such aim could be achieved by deleting the adjective '*every*' from the text of Rule 10DA(3)(i).

2.3.1.2. Consequence: Only when the threshold provided under Rule 10DA(1) is crossed, the designated constituent entity forming part of international group would be required to report the Master File elements of transfer pricing documentation in Form No. 3CEBA. Such constituent entity would be required to report the information under Part A along with Part B of Form No. 3CEBA. As a result, small MNE groups would be outside the purview of documentation requirements relating to Master File altogether (including reporting obligations under Part A of Form No. 3CEBA) and simultaneously, in the event when reporting is required under Form No. 3CEBA on account of crossing the

threshold, Part A of Form 3CEBA would capture information on details pertaining to all other constituent entities of the international group operating in India.

### **2.3.2. Rationalizing the text of Rule 10DA(4):**

- 2.3.2.1. Suggestion: If it is considered that the reporting obligation under Part A of Form No. 3CEBA by each constituent entity in India is essential to collate information on details pertaining to all constituent entities of the international group operating in India and that such obligation is not onerous, then **reference to Form No. 3CEBA in Rule 10DA(4) should be restricted to only Part B thereunder**. The phrase ‘report referred to in sub-rule (2)’ may be replaced by the phrase ‘the information in Part B of Form No. 3CEBA to be furnished by the person referred to in sub-rule (1)’.
- 2.3.2.2. Consequence: Only when the threshold provided under Rule 10DA(1) is crossed by one or more constituent entities, Part B of Form No. 3CEBA would be required to be filed by the designated constituent entity. Additionally, obligation to file Part A of Form No. 3CEBA would continue for each constituent entity of the international group (including the designated constituent entity).

### **3. Form No. 3CEBA:**

- 3.1. Serial number 5 to Part A of Form No. 3CEBA requires a constituent entity to furnish address of its international group. Although the international group may have an identifiable name as required to be furnished under serial number 4 to Part A of Form No. 3CEBA, its address may relate to addresses of any of its constituent entities.
- 3.2. It may therefore be suggested that reference to the address of the international group under serial number 5 to Part A of Form No. 3CEBA may be modified to refer to the address of the parent entity of the international group.

### **4. Form No. 3CEBE:**

- 4.1. The title of Form No. 3CEBE qualifies the international group to be non-resident. Such qualification is unwarranted particularly when Rule 10DA(4) itself does not contain any such reference. Further, the intention of Rule 10DA(4) is to avoid duplication of reporting obligations for Master File elements of transfer pricing documentation and such intention may be defeated if such qualification is allowed to be sustained.
- 4.2. The concern arising from the words ‘non-resident’ before the words ‘international group’ can be explained with the help of an example. Say, a resident international group ‘XYZ’

consists of the parent entity in India (A Ltd.) along with one two Indian subsidiaries (B Ltd. & C Pvt. Ltd) and two foreign subsidiaries (P Inc. & Q GmbH). The consolidated revenue of the international group exceeds Rs. 500 crore during accounting year 2015-16. Further, the aggregate value of international transactions by A Ltd. and B Ltd. during accounting year 2016-17 exceeds Rs. 50 crore respectively. Under these circumstances, the resident international group would be deprived of the exercise of option given under Rule 10DA(4) to designate one constituent entity (either of A Ltd. or B Ltd or C Pvt. Ltd.) for furnishing information under Form No. 3CEBA and consequently, both A Ltd. and B Ltd. would be required to report information under Part B of Form No. 3CEBA to comply with reporting obligations stipulated under Rule 10DA(3). Needless to mention that all three Indian entities – A Ltd., B Ltd. and C Pvt. Ltd. would be obliged to furnish information under Part A of Form No. 3CEBA. This would amount to avoidable duplication of reporting obligations.

4.3. It may therefore be suggested that the words ‘non-resident’ should be deleted from the title of Form No. 3CEBE and the form may be amended accordingly.

We sincerely hope that the above comments may be useful to the CBDT in framing of rules in respect of Country-by-Country reporting and furnishing of Master File.

**Yours sincerely,**

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