

9 January 2019

Global Tax Alert

News from Transfer Pricing

Indian Tax Administration announces due date for secondary filing under Country-by-Country Reporting regulations

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Executive summary

India's *Finance Act, 2018* amended the Indian Country-by-Country (CbC) reporting (CbCR) regulations retroactively from the financial year (FY) starting 1 April 2016. Accordingly, the time limit for furnishing the CbC report was extended to 12 months from the end of the reporting accounting year (i.e., India fiscal year ending 31 March) in respect of: (A) the Indian resident Ultimate Parent Entity (UPE); or (B) the Indian resident Alternate Reporting Entity (ARE)/ Surrogate Parent Entity (SPE). However, in situations where a CbC report filing obligation was applicable to an Indian resident constituent entity (CE) of a foreign headquartered multinational enterprise (MNE) group ("secondary filing" requirement), the amended law provided that the due date would be prescribed by the Indian Tax Administration (ITA) at a later date.

On 18 December 2018, the ITA through a notification, prescribed that the due dates for "secondary filing" would be 12 months from the end of the reporting accounting year of the MNE group. However, for all reporting accounting years up to 28 February 2018, the due date has been extended to 31 March 2019. In the case of systemic failure (where a country not exchanging CbC report with India even though there is an exchange agreement in place), the notification provides that the CbC report should be filed in India within six months from the end of the month in which such systemic failure has been communicated to the CE by the ITA.

It may be noted that India is a signatory to the CbCR Multilateral Competent Authority Agreement (MCAA) and has activated most of the exchange relationships. Further, India has currently not identified any jurisdiction as falling under the category of systemic failure. However, India currently does not have an exchange relationship with jurisdictions including the British Virgin Islands, Israel, Saudi Arabia, Sri Lanka, Taiwan, Thailand, Turkey, the United Arab Emirates, the United States (US), and Vietnam, among others. Hence, UPEs resident in these jurisdictions could potentially have a secondary filing requirement in India, unless the exchange relationship is activated by 31 March 2019. Local filing by a CE in India is not triggered if the UPE has appointed an ARE/SPE which has furnished the report in the country of residence of the ARE/SPE and none of the above conditions apply to the country of residence of the ARE.

The Indian resident CEs who are obligated to undertake “secondary filings” need to review the implications and monitor developments to determine their filing obligations. Specifically, MNE groups that have a UPE resident in the US may need to evaluate whether their Indian resident CEs would have a CbC report filing obligation in India by the prescribed due date depending on the status of Bilateral Competent Authority Agreement (BCAA) for exchange of CbC reports between India and the US.

This Alert provides an overview of the Indian CbCR regulations specifically with respect to the “secondary filings” requirements.

Detailed discussion

Background

Under the amended law (pursuant to the *Finance Act, 2018*), the deadline for furnishing a CbC report by a UPE or an ARE/SPE, resident in India was within 12 months from the end of the reporting accounting year (i.e., 31 March). However, in situations where a CbC report filing obligation was applicable to an Indian resident CE of an MNE group, (whose UPE/ARE is not resident in India), the amended law provided that the due date would be separately prescribed by the ITA. Accordingly, the ITA, through a notification dated 18 December 2018 (issued through circular dated 26 December 2018), has prescribed the due dates for undertaking local filing by such CEs in India.

Taxpayers who are subject to CbCR requirements in India

Under the Indian Income Tax Law (ITL), the CbC report filing requirements would arise in the case of the following entities:

- A. Primary filing requirement - The UPE or the ARE/SPE of an MNE group which is resident in India
- B. Secondary filing requirement - The Indian resident CE of a foreign MNE group and UPE of such MNE group is resident in a country/tax jurisdiction that meets one of the following:
 - (i) The UPE is not obligated to file a CbC report
 - (ii) India does not have an arrangement¹ for the exchange of CbCR
 - (iii) The country/tax jurisdiction is not exchanging information with India even though there is an agreement for exchange and this fact has been communicated to the CE by the Indian Tax Administration

However, the ITL also provides that if an MNE group, has a UPE which is not resident in India, and has designated an alternate entity (i.e., ARE/SPE) for filing its report with the tax jurisdiction in which such ARE/SPE is resident, then the entities of such MNE group operating in India would not be required to furnish a CbC report if the same can be obtained under the agreement of exchange of CbC reports by the ITA pursuant to government-to-government mechanisms under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or Tax Information Exchange Agreements (TIEAs).

Prescribed due date for undertaking “secondary filing” in India by Indian CEs

Under the Indian CbCR regulations, for the cases covered under A above, the due date shall be 12 months from the end of the reporting accounting year of the Indian UPE or ARE/SPE. Accordingly, the due date for filing a CbC report by such entities in India would be determined from a 31 March year ending. Whereas, for the cases covered under *B(i)* or *B(ii)* above, the notification has prescribed the due date to be 12 months from the end of the reporting accounting year of the MNE group. Further, if an Indian CE would be required to file locally due to any systemic failure (cases covered under *B(iii)* above), the notification has provided that the CbC report should be filed in India within six months from the end of the month in which such systemic failure has been communicated to the CE.

However, given that the notification was issued towards the end of the deadline, it posed some practical challenges/issues and also, had unintended consequences specifically for UPEs following a “calendar year” as the reporting year or where the reporting year ended prior to December. Therefore, following the representations from various industry stakeholders, on 26 December 2018, the ITA, through a circular, has extended the due date for undertaking the “secondary filing” of CbC reports by Indian resident CEs who fall under *B(i)* or *B(ii)* above in respect of all reporting accounting years up to 28 February 2018. There is no change in the due date for Indian CEs who fall under *B(iii)* above. The details of which are provided below.

Circumstances in which Indian CE would be required to undertake “secondary filings”		Prescribed due date	
B. (i)	The UPE of the foreign MNE group is not obligated to file a CbC report in the home jurisdiction. <i>Some countries/territories which fall under this include Kuwait, Namibia, and Philippines, among others.</i>	In respect of all reporting accounting years up to 28 February 2018	31 March 2019
		All reporting accounting years ending on or after 1 March 2018	12 months from the end of the reporting accounting year of such MNE group.
B. (ii)	The UPE of foreign MNE group is resident in a country/tax jurisdiction with which India does not have an arrangement for exchange of CbCR <i>Some countries/ territories which fall under this include the British Virgin Islands, Israel, Saudi Arabia, Sri Lanka, Taiwan, Thailand, Turkey, United Arab Emirates, US, and Vietnam, among others.</i>	In respect of all reporting accounting years up to 28 February 2018	31 March 2019
		All reporting accounting years ending on or after 1 March 2018	12 months from the end of the reporting accounting year of such MNE group.
B. (iii)	The UPE of the foreign MNE group is resident in a country/tax jurisdiction that is not exchanging information with India even though there is an agreement (“systemic failure”) and this fact has been communicated to the CE by the Indian Tax Administration	Six months from the end of the month in which such systemic failure has been communicated to the CE by the ITA	

Accordingly, for example, if the reporting accounting year of the MNE group ends on 30 September 2017 or 31 December 2017, the due date for undertaking local filing would be 31 March 2019 assuming the above conditions under either *B(i)* or *B(ii)* are met. However, it may be noted that if the accounting year followed by a foreign MNE group ends any time after 28 February 2018 but before 31 March 2018 (for example, the last Friday of every March), then the time limit for “secondary filing” under *B(i)* or *B(ii)* shall be computed based on the MNE group reporting accounting year ending. For such cases, the extension up to 31 March 2019 would not be applicable. For example, if a foreign MNE group’s reporting accounting year ends on last Friday of March (i.e., 30 March 2018), then the due date for undertaking local filing would be 30 March 2019 for cases covered under *B(i)* or *B(ii)* above.

CbC report filing requirements

According to the Indian CbCR regulations, those Indian CEs satisfying the conditions for “secondary filings” should furnish the CbC report to the Director General of Income Tax (Risk Assessment) for every reporting accounting year. Such filing needs to be done in Form 3CEAD by the due date as prescribed above. In the case where there are more than one CEs of an MNE group resident in India, then Form 3CEAD may be furnished by a designated CE by filing a separate notification in relation to such designation by the MNE group to furnish the said report with Director General of Income Tax (Risk Assessment) in Form 3CEAE.

Filing of the CbC report in Form 3CEAD and notification in Form 3CEAE would be done electronically. These Forms should be verified and signed by the person who is competent to verify the income tax return of the CE under the ITL.

Monetary penalty for non-compliance

Under the ITL, monetary penalties are applicable if the reporting entity fails to furnish or furnishes an inaccurate CbC report within the due date unless the taxpayer is able demonstrate “reasonable cause” for such non-compliance. The prescribed sum of penalties are as follows:

Event	Penalty
Non-filing of CbC report by Indian resident parent company or alternate resident company	<ul style="list-style-type: none"> ▶ INR5,000 (approx. US\$70) per day up to one month ▶ INR15,000 (approx. US\$210) per day beyond one month ▶ INR50,000 (approx. US\$710) per day for continuing default after service of notice
Not furnishing the information called for by the ITA within the given time limit	<ul style="list-style-type: none"> ▶ INR5,000 (approx. US\$70) per day up to service of penalty order ▶ INR50,000 (approx. US\$710) per day for default beyond date of service of penalty order
Furnishing inaccurate details or non-filing of corrected report within 15 days	▶ NR500,000 (approx. US\$7,140)

Implications

Indian resident CEs who have their UPE resident in jurisdictions falling under *B(i)* or *B(ii)* would be impacted and would need to review the implications. It may be noted that since the *Finance Act, 2018* amended the CbCR due dates retrospectively from 1 April 2016, the notification would have implications for financial years [viz. relevant reporting accounting years of the MNE group] which have already passed. The Indian CEs who are impacted may need to consider whether their first CbCR obligation in India is required only for reporting accounting periods starting on or after 1 April 2016 i.e., the effective date of the CbCR provisions in India.

While there is an extended time line for making “secondary filings” in India for such Indian resident CEs meeting the prescribed conditions, the MNE groups that have a UPE resident in the US would specifically need to monitor the developments around the India-US BCAA (which is currently under negotiation) to see as to whether there would be any requirement to undertake “secondary filing” by their Indian CEs on or before 31 March 2019 or not.

Endnote

1. Competent authority agreement for exchange of CbC reports based on existing international agreements such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties and Tax Information Exchange Agreements.

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EYG no. 012732-18Gbl

1508-1600216 NY
ED None

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