

India

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework, as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. India's implementation of the Action 13 minimum standards meets all applicable terms of reference, except that it raises one interpretative and one substantive issue in relation to its domestic legal and administrative framework. The report, therefore, contains two recommendations to address these issues. In addition, it is recommended that India have in place measures to ensure appropriate use.

Part A: Domestic legal and administrative framework

2. India has rules (primary and secondary laws) that impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in India.¹ The first filing obligation for a CbC report in India commences in respect of accounting years beginning on or after 1 April 2016 (financial year 2016/2017). India meets all the terms of reference relating to the domestic legal and administrative framework, with the exception of:

- the annual consolidated threshold calculation rule in respect of MNE Groups whose Ultimate Parent Entity is located in a jurisdiction other than India² which may deviate from the guidance issued by the OECD. Although such deviation may be unintended, a technical reading of the provision could lead to local filing requirements inconsistent with the Action 13 minimum standard,
- the local filing requirements.³

Part B: Exchange of information framework

3. India has a domestic, legal basis for the exchange of information. India is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (the "Convention") (signed on 26 January 2012, in force on 1 June 2012 and in effect for 2016). India has signed the CbC MCAA, and has submitted notifications under section 8 of the CbC MCAA. As of 12 January 2018, India has 50 bilateral relationships activated under the CbC MCAA. India has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.⁴

Part C: Appropriate use

4. In respect of the terms of reference under review,⁵ India notes that measures on appropriate use will be in place before the first exchanges of CbC reports. It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing (a) the parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation of CbC Reporting.

6. India has primary law⁶ and secondary law⁷ in place for implementing the BEPS Action 13 minimum standard, establishing the necessary requirements, including the filing and reporting obligations. No guidance has been issued so far, but India notes that this is under process.

(a) Parent entity filing obligation

Summary of terms of reference:⁸ Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. India has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue,⁹ whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. With respect to the CbC filing requirements, Article 10DB (6) and (7) of the Income-tax Rules, 1962 provide that: “(...) *the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees*” and that “*where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of the exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year*”. While these provisions would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in India, they may be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is an Indian tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.¹⁰ It is thus recommended that India amend or otherwise clarify this rule so that it would apply in a manner consistent with the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent

Entity is located in a jurisdiction other than India, when local filing requirements are applicable.

9. No other inconsistencies were identified with respect to India's domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in India commences in respect of periods commencing on or after 1 April 2016 (financial year 2016/2017). The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.¹¹

11. Form no. 3CEAD of the secondary legislation includes a description of the items to be included in a CbC Report. This explains that "Revenues" (related parties) are "the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with associated enterprises". However, interpretative guidance issued by the OECD¹² explains that "*for the third column of Table 1 of the CbC report, the related parties, which are defined as "associated enterprises" in the Action 13 report, should be interpreted as the Constituent Entities listed in Table 2 of the CbC report*". It is expected that India issue an updated interpretation or clarification of the definitions of "Revenues" within a reasonable timeframe to ensure consistency with OECD guidance, and this will be monitored.

12. No other inconsistencies were identified in respect of the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

13. India has introduced the following conditions for local filing requirements:¹³

"A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said

sub-section, in respect of the international group for a reporting accounting year, if the parent entity is resident of a country or territory,—

with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or

there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity.”

14. Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a) provides that a jurisdiction may require local filing if “the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a Party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a Party by the time for filing the Country-by-Country Report”. This is narrower than the above condition (a) in India’s legislation. Under India’s legislation, local filing may be required in circumstances where there is no current international agreement between India and the residence jurisdiction of the Ultimate Parent Entity. It is recommended that India takes steps to ensure that local filing can only be required in circumstances permitted under the minimum standard and set out in the terms of reference, in particular to prevent local filing in the absence of an international agreement. It is noted that in practice this issue should only arise where local filing is imposed on a Constituent Entity in an MNE Group where the Ultimate Parent Entity is resident in a country with which India does not have an international agreement and the other conditions where local filing is permitted, set out in the terms of reference, are not met. In this context it is further noted that, for fiscal year 2016, India was party to the Convention and also had 114 double tax conventions and tax information exchange agreements, which provide for Automatic Exchange of Information, in force.¹⁴ In addition, India indicates that it is submitting a Unilateral Declaration under Article 28(6) of the Convention so as to minimise the triggering of local filing.¹⁵

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

15. India’s local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹⁶ No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting’s effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

16. India has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place for every Constituent Entity in India.¹⁷ The domestic framework also includes penalties in relation to the filing of a CbC report for failure:¹⁸ (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time.

17. India indicates that they will make use of mechanisms in place for request of information and risk assessment process to take appropriate measures in case India is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reported by a Reporting Entity or that a Reporting Entity is failing to comply with respect to CbC Reporting obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

18. In respect of paragraph 8 of the terms of reference (OECD, 2017a), India has a domestic legal and administrative framework to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in India. India meets all the terms of reference relating to the domestic legal and administrative framework¹⁹ with the exception of (i) the annual consolidated group revenue threshold (paragraph 8 (a) ii. of the terms of reference (OECD, 2017a)) and (ii) the conditions for local filing (paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a)).

Part B: The exchange of information framework

19. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017a).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

20. India has a domestic legal basis for the exchange of information.²⁰ India is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 26 January 2012, in force on 1 June 2012 and in effect for 2016).

21. India has signed the CbC MCAA and has submitted a full set of notifications under section 8 of the CbC MCAA. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. India is expecting to enter into a bilateral CAA with one jurisdiction.²¹ As of 12 January 2018, India has 50 bilateral relationships activated under the CbC MCAA.²² India has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference.

Conclusion

22. Against the backdrop of the still evolving exchange of information framework, at this point in time India meets the terms of reference.

Part C: Appropriate use

23. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

24. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), India indicates that measures are currently being developed to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017b). It notes that such measures will be in place before the first exchanges of CbC reports. It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that India's fiscal year starts on 1 April and first CbC reports will be exchanged in September 2018.

Conclusion

25. In respect of paragraph 12 (a), it is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework - Parent entity filing obligation – annual consolidated group revenue threshold	It is recommended that India amend or otherwise clarify that the annual consolidated group revenue threshold calculation rule applies without prejudice of the OECD guidance on currency fluctuations in respect of an MNE Group whose Ultimate Parent Entity is located in a jurisdiction other than India.
Part A	Domestic legal and administrative framework – Local filing conditions	It is recommended that India take steps to ensure that local filing can only be required in circumstances contained in the terms of reference.
Part B	Exchange of information framework	-
Part C	Appropriate use	It is recommended that India take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

Notes

¹ Paragraph 8 of the terms of reference (OECD, 2017a).

² Paragraph 8 (a) ii. of the terms of reference (OECD, 2017a).

³ Paragraph 8 (c) iv. b) of the terms of reference (OECD, 2017a).

⁴ Paragraph 9 (a) of the terms of reference (OECD, 2017a).

⁵ Paragraph 12 (a) of the terms of reference (OECD, 2017a).

⁶ Primary law consists of Section 286 of the Indian Income-tax Act, 1961: www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx (accessed 23 April 2018).

⁷ The Gazette of India: Extraordinary (31 October 2017) - Part II – Sec. 3(ii).

⁸ The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

⁹ Rule 10DA (1)(ii)(A) of the Income-tax Rules, 1962.

¹⁰ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold of the *Guidance on the Implementation of Country-by-Country Reporting*” (OECD, 2018).

¹¹ Section 286(2) in conjunction with Section 139(1) of the Income-tax Act, 1961. Every “parent entity” or the “alternate reporting entity”, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority on or before the due date specified under sub-section (1) of section 139 of the Income-tax Act, 1961, for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed. This due date is 30 November of the assessment year (the assessment year is the financial year immediately succeeding the relevant reporting financial year). India indicates that the filing date for CbC Reports for financial year 2016/2017 is deferred to 31 March 2018, which is still within 12 months after the end of the period to which the CbC report of the MNE Group relates.

¹² See www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf (OECD, 2018).

¹³ India indicates that for local filing, the filing date for CbC Reports for financial year 2016/2017 is deferred to 31 March 2018.

¹⁴ Inclusive Framework members with which India did not have an international agreement providing for Automatic Exchange of Information in force for fiscal year 2016 include: Andorra*#, Angola#, Barbados*#, Benin#, Brunei Darussalam*#, Burkina Faso*#, Chile*, Congo#, Côte D'Ivoire#, Democratic Republic of Congo#, Djibouti#, Gabon*, Haiti#, Jamaica*#, Liechtenstein*, Monaco*#, Panama*#, Papua New Guinea#, Paraguay#, Peru, Senegal*#, and Sierra Leone#. Jurisdictions marked with an asterisk (*) are signatories to the Convention but it was not in force for fiscal year 2016. Jurisdictions marked with a hash (#) do not yet have final legislation implementing an obligation on resident Ultimate Parent Entities of MNE Groups for the filing of CbC Reports for fiscal years commencing in 2016. As per the terms of reference paragraph 8.(c) iv. a), local filing may be permitted where the jurisdiction of the Ultimate Parent Entity has not implemented CbC requirements.

¹⁵ Paragraph 6 of Article 28 of the Convention reads as follows: “[...] Any two or more Parties may mutually agree that the Convention [...] shall have effect for administrative assistance related to earlier taxable periods or charges to tax.”

¹⁶ Section 286(4) of the Income-Tax Act, 1961.

¹⁷ See Rule 10DB (1) of the Income-tax Rules, 1962: *Penalty for failure to furnish report or for furnishing inaccurate report under section 286.*

271GB. (1) If any reporting entity referred to in section 286, which is required to furnish the report referred to in sub-section (2) of the said section, in respect of a reporting accounting year, fails to do so, the authority prescribed under that section (herein referred to as prescribed authority) may direct that such entity shall pay, by way of penalty, a sum of,—

(a) five thousand rupees for every day for which the failure continues, if the period of failure does not exceed one month; or

(b) fifteen thousand rupees for every day for which the failure continues beyond the period of one month.

(2) Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under sub-section (6) of the said section, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of five thousand rupees for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

(3) If the failure referred to in sub-section (1) or sub-section (2) continues after an order has been served on the entity, directing it to pay the penalty under sub-section (1) or, as the case may be, under sub-section (2), then, notwithstanding anything contained in sub-section (1) or sub-section (2), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of fifty thousand rupees for every day for which such failure continues beginning from the date of service of such order.

(4) Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with sub-section (2) of the said section and where—

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or

(b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

(c) the entity furnishes inaccurate information or document in response to the notice issued under sub-section (6) of section 286, then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of five lakh rupees.

¹⁸ Section 271GB of the Income-tax Act, 1961.

¹⁹ Paragraph 8 of the terms of reference (OECD, 2017a).

²⁰ Section 90(1)(c) of the Income-tax Act, 1961.

²¹ Furthermore, India is in the process of inviting jurisdictions with whom India has entered into a DTAA or TIEA who have not signed the CbC MCAA and the jurisdictions who are signatories of the MAAC but have not signed the CBC MCAA to enter into bilateral CAAs with India.

²² It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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