

CBDT issues instructions on Appropriate Use of Country-by-Country Report ('CbCR')

In line with its commitment to implement to the recommendations of OECD's Base-erosion and Profit shifting ('BEPS') Project, the Indian Government endorsed the **'three-tiered' documentation structure** (viz. Local File, Master File and Country-by-Country report), through a formal notification in Finance Act 2016.

To facilitate automatic exchange of CbC report, India signed a Multilateral Competent Authority Agreement for Automatic Exchange of CbC Reports ('CbC MCAA'). Pursuant to the CbC MCAA, the Indian tax authorities will now have access to the CbC reports relating to MNE groups who have constituent entities in India. Since CbC report contained sensitive and vital information about the MNE group, the concerns surrounding confidentiality and appropriate use of CbCR data, besides leakage of any information to competitors, apprehended the taxpayers.

Addressing this concern, the Central Board of Direct Taxes ('CBDT') has recently issued Instruction No. 2/ 2018, providing a much needed clarity on various issues such as restricted access of CbCR to specified authorities, the manner of using information in CbCR, conditions concerning confidentiality and measures to prevent the abuse of CbCR data.

Some of the key takeaways from the instruction are as below:

1. The jurisdictional Tax Officer will have access to all the CbCR information related to a taxpayer, once selected under scrutiny (tax audit)
2. The CbCR information can be used by the tax officer for following purpose:
 - Identifying High level TP risk assessment.
 - Assessment of other BEPS related risks
 - Economic and statistical purposes
 - Planning tax audit
 - Making further enquiries into MNE group's transfer pricing arrangements and tax matters in the course of audit
3. The information contained in CbCR shall not be used as the only material to propose TP adjustment in course of audit
4. The CbCR will not be a substitute for a detailed transfer pricing analysis resulting in determination of arm's length price of any international transaction.

The above clarification is indeed a welcome step and provides some sense of relief to the MNE groups, which have filed CbCR. However, it would still remain to be seen how these instructions/ procedures are implemented and followed on ground by the tax authorities, as any inappropriate and unrestrained use of this information would lead to opening of new issues and new intensity of litigation pertaining to TP and other BEPS areas in the future.