

INDUSTRY REPRESENTATION dated 24.12.2018

Income-tax (14th Amendment) Rules, 2018

Notification No. 88/2018/ F. No. 370142/17/2018-TPL / GSR 1217(E) dt. 18.12.18 related to CbCR

The aforesaid CBDT notification prescribes a compliance timeline for filing the Country by Country Report ('CbCR') by a constituent entity resident in India, if the parent entity is resident of a country or territory in the following scenarios:

- A. Where the parent entity is not obligated to file the above report;
- B. With which India does not have an agreement providing for exchange of the above report; or
- C. 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.

For the Technology sector, a key impact location is United States which falls under (B) above.¹ India currently is in the process of finalising the agreement for exchange of CbCR with the United States and hence this notification has far reaching implications on US MNCs as the 12 month' time limit from the accounting year of such companies would instantly trigger the requirement to comply with the local filing requirement in India. In the case of Indian entities whose Global Ultimate Parent is in locations falling under (B) and (C) above, the compliance and penalty requirements are:

Financial Year of Indian Taxpayer	Accounting Year of most of the US MNEs	Form to be filed	Due Date
FY 2016-17	1 Jan 2016 to 31 Dec 2016	Form No. 3CEAD	31 Dec 2017
FY 2017-18	1 Jan 2017 to 31 Dec 2017	Form No. 3CEAD	31 Dec 2018

Penalty for CbCR: (Section 271GB)	Delay up to one month	Delay beyond one month	Delay in payment of penalty - after receipt of penalty order
Failure to furnish CbCR by the due date	INR 5,000 per day (approx. USD 70 per day)	INR 15,000 per day (approx. USD 210 per day)	INR 50,000 per day (approx. USD 700 per day)

A. Concern

1. **FY 2016-17:** For Calendar year 2016, the due date (i.e. 31 December 2017) as per the notified rules has already elapsed. The notification, therefore, has the unintended effect of making the Companies non-compliant. This needs to be rectified.

¹ Countries/ territories which fall under (A) include Philippines, Kuwait, and Namibia and those under (B) include the United States, Taiwan, Vietnam, United Arab Emirates, Saudi Arabia, British Virgin Islands, Israel, Thailand, Sri Lanka and Turkey. No country falls under (C).

2. **FY 2017-18:** For Calendar year 2017, the due date is. 31 December 2018. This leaves a very short period to ensure compliance. The inadequacy of the time period in the immediate context is highlighted below:
- i. **Exercise of preparation of CbCR:** India has prescribed a specific format in Form 3CEAD for submission of CbCR under section 286(4) with the Income Tax Authority. The tax authorities have released specific utility for submission of the CbCR information. Thus, the entire CbCR information would need to be populated into the Indian utility taking into consideration the specific characteristics and restrictions of the utility. The entire exercise of preparation of CbCR in the India format and subsequent conversion to xml for submission with the Income Tax Authority for the first time is likely to entail time and effort of the Indian constituent entity. Therefore, it would be difficult and challenging for the Indian constituent entities of a foreign IG to prepare the CbCR in India by the prescribed due date (especially where the due date is 31 December 2018 and the notification was in public domain on Dec. 21, 2018 though dated Dec. 18, 2018 leaving only 10 days to prepare and submit).
 - ii. **Penal consequences:** US Corporations, many of which have a December group year ending (and hence consolidation date of December 31, 2018) are concerned about penal consequences of default that appears imminent owing to the Christmas and New Year holidays during which time offices at the head office and local level are under a mandatory shutdown.
 - iii. **Other difficulties:** There may be multiple level of approvals / internal sensitivities by virtue of which Indian entity may find it extremely difficult to comply.

B. Recommendation

The deadline for local filing may be extended until the US India exchange of CbCR agreement is concluded. This will obviate the necessity for filing of the CbCR by the Indian constituent entities of the US MNE group.

Alternatively, for removal of difficulties in complying, the *sub-rule (4) may be amended to read with addition as underlined below:*

“(4) The period for furnishing of the report under sub-section (4) of section 286 by the constituent entity referred to in that sub-section shall be twelve months from the end of the reporting accounting year:

***Provided** that in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be six months from the end of the month in which said systemic failure has been intimated.*

***Provided further** that the period for furnishing/ submission of the report shall be March 31, 2019 where the abovementioned period of twelve months or six months expires on or before December 31, 2018.*
