

Introduction & Background

The Master File (“MF”) concept was established to help provide tax authorities a comprehensive overview of international organisations, while, at the same time, minimising the administrative burden on business by having a single global standard. Thus, to minimise this administrative burden, Business at OECD (BIAC) believes respective local country implementations of Action 13 should remain consistent with the guidance provided by OECD in the final Action 13 Report. If countries add their own, different requirements to the MF, the benefits of the MF are significantly undermined.

India enacted requirements pursuant to Action 13, requiring most MNEs to e-file a MF by 31 March per the information requested on Form 3CEAA. The focus of this paper is on the Indian MF requirements; however, the requirements outlined by several other jurisdictions (e.g., Russia, China, Korea, and Mexico) have reportedly caused similar concerns among Business at OECD members.

General Comments and Approach

Several Business at OECD members provided feedback of general concern with regards to the India MF requirements. The consensus is that the rules raise significant barriers to compliance, confidentiality issues, and require much more specific and precise information than what was outlined in the Action 13 Report. The general issues with the information requested by the India MF are summarised below:

- Creation of unnecessary and unreasonable administrative burdens;
- Promotion of information imbalance between tax authorities in different jurisdictions;
- Request for disclosure of commercially-sensitive and/or proprietary information;
- Risk of potential release or publication of confidential data unrelated to the business operations of Indian entities, which may raise global governance issues for MNEs;
- Potential confusion on the definition of specific terms that need to be applied across jurisdictions;
- Imposition of non-compliance penalties on Indian subsidiaries for failure to provide information that is not contained in the OECD MF and is typically not available to the Indian subsidiaries or its personnel;
- In the case of loans, divergence and expansion of the traditional TP framework from the concepts of “controlled entities” or “related party” to “unrelated entities;”
- Expansion of the MF requirement to report on operating entities to all controlled entities or related parties;
- Use of arbitrary thresholds (e.g., 10 percent) that can change on a yearly basis and do not necessarily align with the actual key contributors to value creation across an MNE value chain; and
- Practical and legal restraints, specifically requesting the release of data from unrelated parties, which may require the need to obtain consent for release from such parties.

Keeping in mind the issues outlined above, the approach taken by our members can effectively be broken into three separate groups. All of which are intended to comply with the India MF rules, in different ways. The first group of MNEs are reluctant to prepare a MF that does not

provide all the additional information outlined in Form 3CEAA. As such, this group of MNEs are using local accounting firms to assist with filing such information as outlined. However, as outlined in the following section, this process has raised significant practical issues with regards to the ability to actually gather the requested information.

The second group, and from the responses received, potentially the largest group, intends on filing their template MF documentation with an appendix or other document bridging the gap between the template information per Action 13 and the India MF requirements. This additional document would provide some, but not all, of the additional information. This approach is intended to be more practical yet still in accordance with the spirit of the India MF and the Action 13 objectives. For example, one MNE is preparing a supplemental appendix to its global MF that is intended to guide India to the proper section(s) in of the global MF, along with additional data and information where appropriate and legally available to the Indian constituent entity. The appendix will explain how such Indian constituent entity attempted to comply with the India MF requirements, but was limited in its ability to respond per legal and practical constraints. Further, some of the MNEs have informed India that it should go through the exchange of information procedure to ask the tax administration of the parent jurisdiction for the respective information.

The third and final group of MNEs are simply filing their standard, global MF documentation with the Indian authorities, albeit in the data format required in India.

Specific Comments

The outline below provides a summary of certain aspects of the India MF that appear to go beyond what is required by the final Action 13 Report, resulting in significant business concerns on how best to comply.

1. All Constituent Entity Details – A list of all entities of the MNE Group, including names and addresses. The OECD template only requires legal ownership details and geographic location (not including the specific address) for operating entities. For many Indian affiliates of MNEs this supplemental information is not available to the local Indian team, making the ability to collect such information impractical or impossible. Alternatively, the information on the Action 13 template can be gathered centrally and disseminated to the respective constituent entities in the MNE Group, avoiding this practical constraint. Also, requiring the address of “all entities” not only implies a duplicative administrative burden as compared to the content of the Country-by-country Report (“CbCR”) (whose features allow the India authorities to locate all operating entities using the Tax ID number), but also significantly increases the taxpayer’s administrative burden per the difference in timing between the filing of the MF and the CbCR. Lastly, the idea of “all entities” goes beyond the concept of “controlled entities” or “related party,” both traditional standards in TP, and therefore raises concerns on the purpose and authority of such level of disclosure requirement.
2. FAR Analysis of Constituent Entities – An Indian constituent entity must provide a functions, assets, and risks (“FAR”) analysis of all entities in the MNE Group that contribute at least 10% of the revenues or assets or profits of the MNE Group. The Action 13 Report requires only a brief written functional analysis describing the principal contributions to value creation by individual entities within the MNE Group. Based on



the various thresholds, this request may require significant resources to perform such an analysis, whilst also going beyond the more “general” spirit of the Action 13 MF parameters. Moreover, the metric used is somewhat arbitrary (as such can change on a yearly basis dependant on geographical markets and market trends) and does not necessarily align with the actual key contributors to value creation across an MNE’s value chain.

3. Details Regarding IP – The details (names *and addresses*) of all entities of the MNE Group engaged in the development and management of intangible property (“IP”) is required by Part B of Form 3CEAA. Further, additional information regarding the IP, including the registration serial number of the IP asset, description of the asset, and the name *and address* of the legal entity that owns the asset is also required. The Action 13 Report requires only the MNE’s strategy for IP ownership, a list of IP ownership, related TP policies, and a general description and location of principal R&D facilities and management. This specific request raises significant confidentiality concerns as such data could provide proprietary information regarding the business of the MNE Group, including operations that may not even be interacting with or related to the Indian business.
4. Geographic Markets for Products/Services – A list and description of the major geographic markets for the products and services offered within the MNE Group. Similar to above, the Action 13 Report requires only the general IP strategy and TP policies, not specific descriptions by market. This provides additional compliance and specificity, which is not in line with the spirit of the “general” information intended to be outlined in the MF per Action 13.
5. Top 10 Unrelated Lenders – A detailed listing of group financing arrangements is requested, including the names and addresses of the top ten unrelated lenders in the WG. The Action 13 Report only requires a general description of group financing activities, including identification of important financing arrangements with unrelated lenders. This information is commercially sensitive and likely not available to the local Indian constituent entity. Further, there are significant practical restraints, including the need to identify such borrowings and then work to obtain consent to disclose from the respective unrelated lenders. This type of sensitive information is typically limited to tax audit investigations and to the lenders that fund the local entities, not a broad ranging general file request from all taxpayers.
6. Data Format / Limitations – the data format is limited to CSV, thus a Microsoft Word version of such data is not accepted. Further, the character limit requires companies to summarize their original MF into one compact version, thus requiring additional work simply to comply with the format, nonetheless the content of the request, making tax compliance even more difficult and costly for taxpayers.

Conclusion

As outlined in detail above, by implementing rules that are not consistent with the Article 13 standard, jurisdictions run the risk of undermining the objectives that were agreed to by consensus during the BEPS Project. As such, some of the data and information outlined above simply is too sensitive to be requested in mass. Alternatively, for other information requested,

the appropriate mechanism for gathering such data should be another filing under Action 13, i.e., the CbCR or the local file. To retain the premise and objectives of the MF and Action 13 more generally, we would recommend that the Indian MF rules are revised to align with the general principles of Action 13.

To this end, some members have already directly communicated the concern with the India MF rules to the OECD. Further, many local companies and advisory firms provided substantive comments during the consultation process to the Indian authorities outlining these potential issues. Business at OECD is assessing the extent to which it will engage with the OECD or India on this matter.