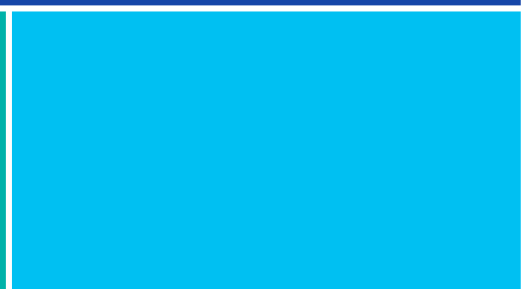
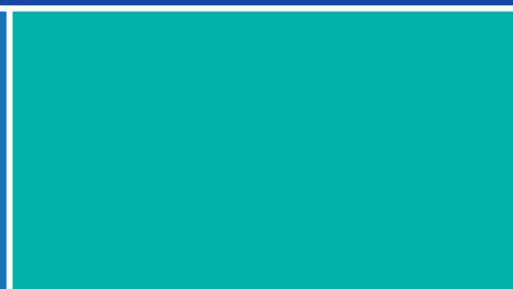
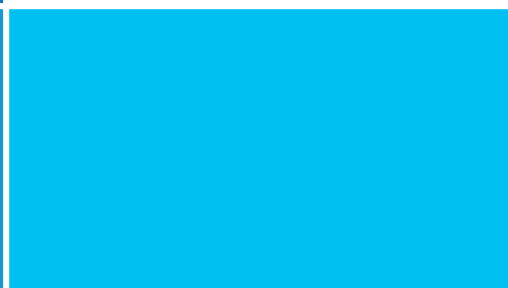


## Decoding Enhanced Transfer Pricing Documentation Requirements in India

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Winner of **India Tax Firm of the Year 2016** at the Asia Tax Awards



# Contents

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- Indian transfer pricing documentation requirements - recent updates
- Impact on Multinational Enterprises
- Strategies to navigate
- Future of transfer pricing landscape



## Recent Updates

# Indian Transfer Pricing Documentation Requirements - Recent Updates

## ▪ Scenario before Finance Act 2016:

- Mandatory maintenance of contemporaneous documentation if total value of related party transactions exceeds INR 10 million (Local File)
- No requirement for Master File and CbCR

## ▪ Scenario post introduction of Finance Act 2016:

- Aligning Indian TP regulations with outcomes of OECD/G20 BEPS Project
- Provides for three-tier transfer pricing documentation structure:
  - 1) Local File
  - 2) Master File
  - 3) Country-by-Country Report
- 6 October 2017: Draft Master File and CbCR rules notified for public comments
- 31 October 2017: Final Master File and CbCR rules notified along with the relevant Forms
- **Applicable from FY 2016-17 (1 April 2016 to 31 March 2017)**
- **Filing of Master File and CbCR for FY 2016-17 by 31 March 2018**

# Indian Transfer Pricing Documentation Requirements - Recent Updates

## ▪ Applicability of Master File:

Particulars	Threshold	Data to be considered for FY 2016-17
Consolidated revenue of International Group	INR 5 billion (USD 77 million)	Accounting Year i.e. FY 2016-17
<b>AND</b>		
Aggregate value of international transaction	INR 500 million (USD 7.7 million)	Accounting Year i.e. FY 2016-17
<b>OR</b>		
Aggregate value of international transaction pertaining to intangible property	INR 100 million (USD 1.5 million)	Accounting Year i.e. FY 2016-17

## ▪ Applicability of CbCR:

Particulars	Threshold	Data to be considered for FY 2016-17
Consolidated revenue of International Group	INR 55 billion (USD 846 million)	Preceding accounting year i.e. FY 2015-16

# Indian Transfer Pricing Documentation Requirements - Recent Updates

- **Master File – Forms and timelines :**

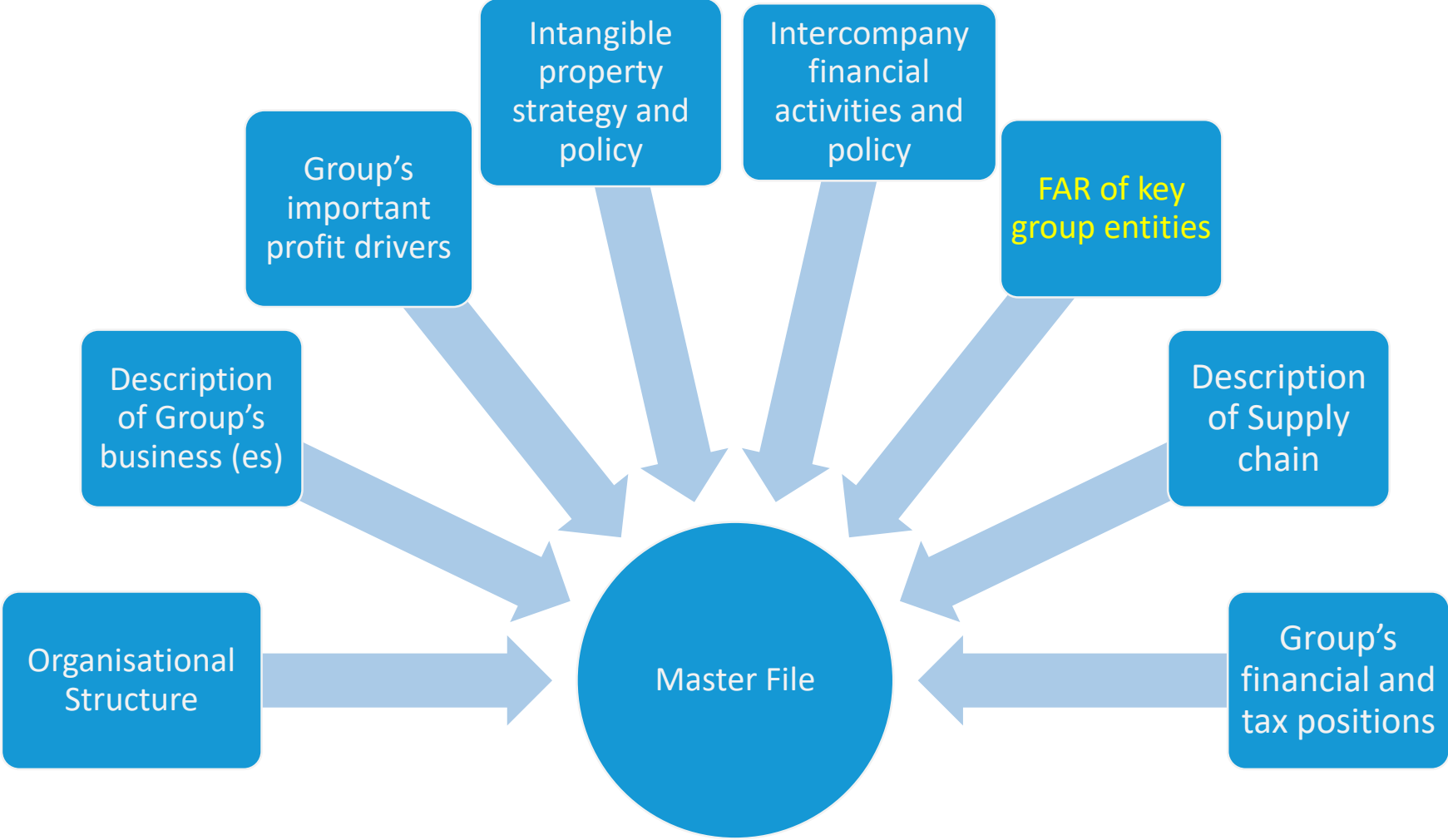
Particulars	Form	Timelines
Single constituent entity of the group in India	Form No. 3CEAA (Part A&B)	For FY 2016-17 – On or before 31 March 2018 For subsequent years, on or before due date for filing of Return of Income i.e. 30 November
Multiple constituent group entities in India	Form No. 3CEAB (Intimation)	30 days prior to the date of filing of Master File i.e. for FY 2016-17 - on or before 1 March 2018

# Indian Transfer Pricing Documentation Requirements - Recent Updates

- CbCR – Forms and timelines :

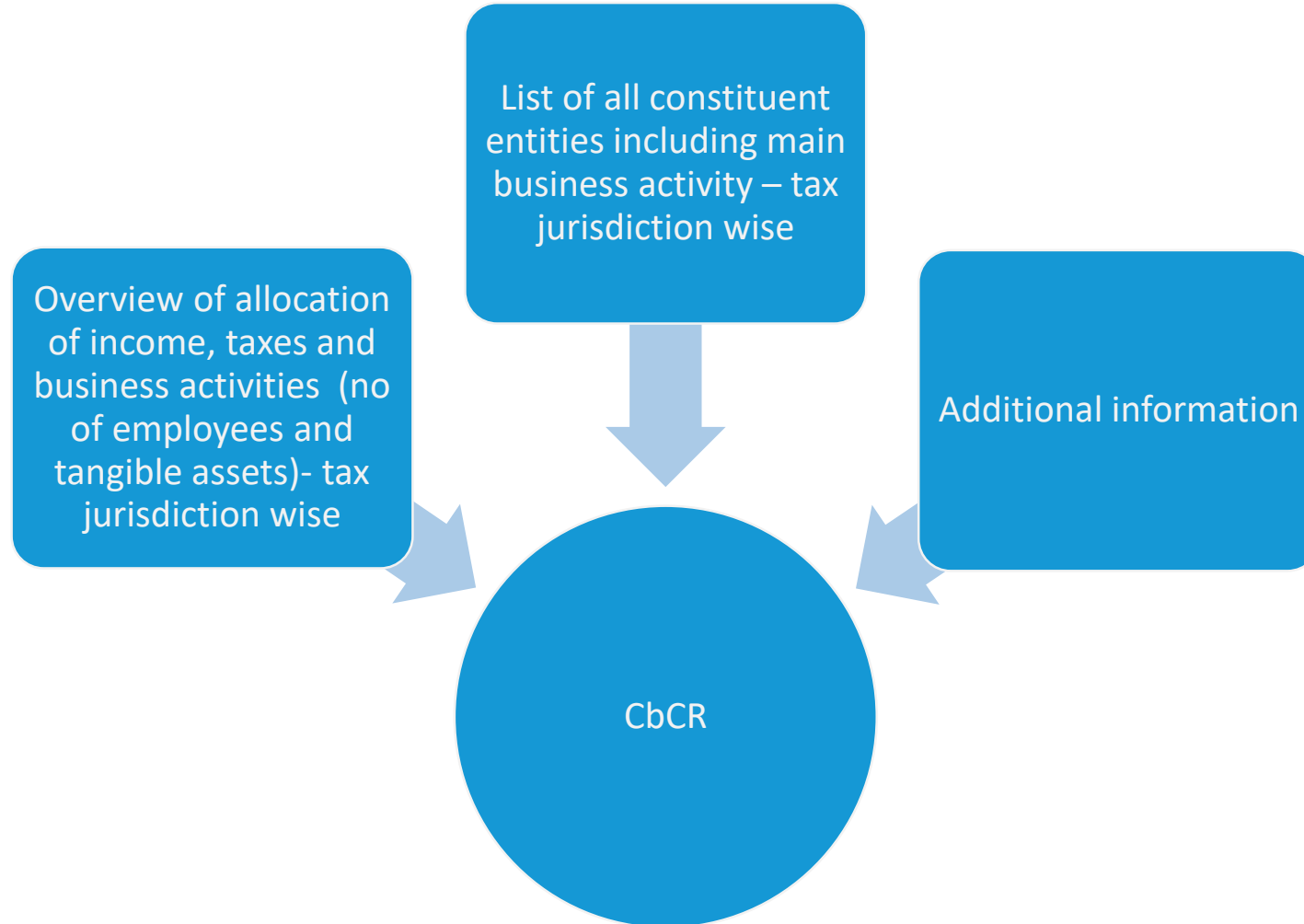
Particulars	Form	Timelines
Intimation of details of parent entity / alternate reporting entity which will file CbCR	Form No. 3CEAC	2 months prior to furnishing CbCR (instead of 60 days as mentioned in draft rules) For FY 2016-17 the due date is 31 January 2018
Filing CbCR - Every parent entity or the alternate reporting entity resident in India	Form No. 3CEAD	For FY 2016-17 – on or before 31 March 2018 For subsequent years, on or before due date for filing of Return of Income i.e. 30 November
Intimation of Multiple constituent group entities in India	Form No. 3CEAE	No timeline mentioned in the rules. It needs to be clarified by the CBDT.

# Master file – Key contents





# CbCR – Key contents



# CbCR and Master file requirements – Global trend

- India joins other countries that have already implemented the CbCR and Master File in their local tax regulations
- Latest status:

	Countries Implemented	Draft Stage	Intentions to implement
CbCR	57	6	15
Master File	27	5	19

- Major countries already implemented master file requirements are:
  - Australia
  - China
  - Germany
  - Japan
  - Netherlands
  - Spain
- USA has not implemented Master file requirements and also not signed multilateral agreement for automatic exchange of CbCR
  - It will complicate the compliance requirements



# Impact on Multinational Enterprises

# Possible Impact on Multinational Enterprises

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- Entire global scope is present before the local tax authority – would lead to more questions and detailed enquiries at the time of audit
- Migrating from old TP requirements (country specific documentation) to new requirements could be daunting – initial years are crucial
- In cases where Master File has been prepared for other jurisdiction, aligning the same with India requirements
- Uncertainties over tax authorities' approach on rise
- Increased disclosure will have impact on other tax areas – treaty benefits, PE profit attributions, anti-abuse provisions
- Countries where on ground quantum are huge (market size, human resources, customer/vendor base) would gain more force

# Possible Impact on Multinational Enterprises

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- **Combined Contents of Master File and CbCR having far reaching implications:**
  - Group's important profit drivers
  - Supply chain description
  - Business activities of every group entity (tax jurisdiction wise)
  - Economic indicators across the group (tax jurisdiction wise) – no. of employees, tangible assets
  - Strategy and policy of the group for intangible property
  - Inter-company financial activities and policy
  - Group entities providing central financing functions including their place of operation and effective management
  - Major geographical market
  - FAR of constituent entities contributing at least 10% of the revenues or assets or profits of group

**Sum of the parts is more powerful than individual parts**

# Possible Impact on Multinational Enterprises

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- **Positives:**

- Opportunity to streamline TP policies, processes, and documentation
- Opportunity for tax optimization, if there are present leakages
- Bringing in efficiency – avoiding duplications, efficient benchmarking and updations
- Help in explaining the group TP story to aggressive tax jurisdictions
- Inputs for business strategic decision making

**Approaching the reality – there are positives also**

# Possible Impact on Multinational Enterprises

## Potential questions from Revenue authorities after perusing Master File / CbCR:

- Examples for **Inbound** arrangements:

Scenario	Potential Questions
<p><b>Payment of royalty by Indian subsidiary</b></p>	<ul style="list-style-type: none"> <li>❖ Whether entity charging royalty is actually carrying out any economic activity [Development, Enhancement, Maintenance, Protection, Exploitation (DEMPE) functions]?</li> <li>❖ Whether Indian entity received any economic benefit from availing the brand/technology</li> </ul>
<p><b>Contract R&amp;D/captive services rendered by Indian subsidiary</b></p>	<ul style="list-style-type: none"> <li>❖ More enquiries on following aspects:               <ul style="list-style-type: none"> <li>- Department wise bifurcation of employees</li> <li>- Qualification of employees</li> <li>- Services defined under inter-company agreement</li> <li>- Role played by Indian entity in entire value chain</li> </ul> </li> <li>❖ Whether remuneration for the Indian entity matches with the FAR contribution it makes? Profit split more suitable?</li> </ul>

# Possible Impact on Multinational Enterprises

## Potential questions from Revenue authorities after perusing Master File / CbCR:

- Examples for **Outbound** arrangements:

Scenario	Potential Questions
Foreign entity operating as a distributor in global market	<ul style="list-style-type: none"><li>❖ Remuneration for the distributor vis-à-vis FAR profile, the value contribution, etc</li></ul>
Granting of loan	<ul style="list-style-type: none"><li>❖ Economic rational for granting interest free loans?</li><li>❖ Whether favourable borrowing options were available to overseas entity?</li></ul>
Intangibles registered outside India	<ul style="list-style-type: none"><li>❖ Bifurcation of intangibles related activities (DEMPE)</li><li>❖ Where does the intangibles actually get created?</li><li>❖ Group's intangibles strategy</li></ul>





# Strategies to Navigate

# Strategies to Navigate

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- **Strategies for initial preparedness:**

- Prepare group's global map and plot the TP legal requirements in each individual country
- Determine applicability of CbCR and master file for every group entity
- Define roles and responsibilities within the group to comply with country specific and group level requirements
- Perform skill gap analysis – In-house capabilities and TP specialist help
- Evaluate the preparedness of data collation systems in the group
- Define a system for real time/periodic monitoring of data
- Prepare a calendar for compliances, TP benchmarking searches, and updates

# Strategies to Navigate

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- **Strategies to mitigate the risk and being future ready:**

- Appropriate interpretation of group wide data collated
- Perform what-if analysis for the potential questions/inquiries from the tax authorities
- Make appropriate changes in the TP policy, where required
- Define a system to gather real time evidences that will support the policy - developing justifications
- Design a system of regular communication between tax teams and business strategy/operations team
- Systems in place to track additional information i.e. addition of new entity in the group, supply chain changes, etc.
- Give a harmonized picture between:
  - CbCR, Master file, and local files
  - Year-on-Year disclosures in the TP documentation
- Aim for a fine balance between:
  - Protect trade secrets and provide sufficient information
  - Standardization and customization



# Future of Transfer Pricing Landscape

# Future of Transfer Pricing Landscape

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- Evolve around value creation
- Revenue authorities to focus on economic characterization, appropriateness of methods – application of Profit Split Method in more cases
- Collating information through exchange of information
- Conducting functional interviews with operation / business team
- DEMPE functions would be housed in multiple locations which would result in Cost Contribution Arrangements / Cost Sharing Arrangements being more commonly used
- Revenue authorities may conduct audit for block of years
- More Mutual Agreement Procedure (MAP) / Bilateral Advance Pricing Agreements (BAPA)
- Emphasis on establishing fundamentals of TP instead of legal arguments
- Use of subject matter expert witnesses during audit
- Coordinated audit by representatives from two or more jurisdictions
- Use of Data Analytics for transfer pricing risk detection

# Preparing for Future Transfer Pricing

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- Use of technology for collation of data
- Tax and business / operations team should work in sync
- Not to treat transfer pricing as year end compliance exercise
- Having substance based transfer pricing policy
- Reviewing inter-company transfer pricing policy on regular intervals
- Evaluating option of APA
- Seeking timely advice of transfer pricing experts

**TP documentation is no more a standard data driven exercise. It is designing and telling a Story**



# SKP Today

# Our Story



**PROFESSIONAL  
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**50+  
YEARS  
OF  
ESTABLISHMENT**



**1000+ PEOPLE  
25 PARTNERS**



**1200+  
CLIENTS ACROSS  
45+ COUNTRIES**



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ACCOUNTING  
NETWORK  
IN THE WORLD**



**PARTNER-LED  
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