

# **TRANSFER PRICING COMPLIANCE**

## **Pitfalls and Best Practices**

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# Agenda

- ☐ Transfer Pricing Certification
- ☐ Transfer Pricing Documentation
- ☐ APA and Safe Harbour Compliances
- ☐ CbCR and Master File
- ☐ Case Studies
- ☐ Penalties and Avoiding Penalties

# Transfer Pricing Certification

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# Form 3CEB

- **We have examined the accounts and records** of <<ABC>> relating to the international transaction (s) and the specified domestic transaction(s) entered into by the assessee during the previous year ending on 31st March, 20XX.
- In our opinion **proper information and documents as are prescribed have been kept by the assessee** in respect of the international transaction(s) and the specified domestic transactions entered into so far as appears from our examination of the records of the assessee.
- The particulars required to be furnished under section 92E are given in the Annexure to this Form. In our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexure are **true and correct**.

# Form 3CEB – Annexure Part A

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- Name of the assessee
- Address
- PAN
- Nature of business activities of the assessee
- Status
- Previous Year Ended
- Assessment Year
- Aggregate value of International Transactions
- Aggregate value of Specified Domestic Transactions

# Form 3CEB – Annexure Part B...

- List of Associated Enterprises
- Transactions in tangible property
  - Raw materials, consumables or supplies
  - Traded / finished goods
  - Any other tangible property
- Transactions in intangible property
- Providing of services
- Lending or borrowing of money
- Guarantee



Quantity



Currency and  
Interest Rate



Currency

# ...Form 3CEB – Annexure Part B

- Purchase, sale, buy-back etc. of securities



Currency

- Mutual agreement or arrangement

- Business restructuring or reorganization



Nature,  
Agreement,  
Terms

- Any other transaction

- Deemed international transaction



Details of Third  
Party!

# ...Form 3CEB – Annexure Part C

- List of AEs (including PAN)
- Inter-Unit transfer by eligible units
- Inter-Unit acquisition by eligible units
- Any business transacted – eligible business
- Any other transaction



Dual Reporting?

The diagram consists of two blue oval callouts. The first callout, labeled 'Dual Reporting?', has two lines pointing to the bullet points 'Inter-Unit transfer by eligible units' and 'Inter-Unit acquisition by eligible units'. The second callout, labeled 'Quantity', has a line pointing to the bullet point 'Any other transaction'.

What to Report Here?

Quantity



# Transfer Pricing Documentation

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# Transfer Pricing Study Report

- Documentation requirements as per Section 92D r.w. Rule 10D
- Full fledged documentation if volume of transactions > 1 Cr.
- Contents of a typical Transfer Pricing Study Report
  - About the taxpayer and group
  - About the industry
  - About the transactions
  - Functional Analysis of the parties
  - Transfer Pricing Methods and their analysis
  - Application of the selected Transfer Pricing Method

**Functional Analysis = Heart of the Transfer Pricing Study**

# Safe Harbours

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# International Transactions

## Form 3CEFA

- Nature of business
- Details of AE
- Whether the AE is from a no tax / low tax jurisdiction?
- Operating margins (operating transactions) / rate (financial transactions)
- Whether transfer price is as per Rules?
- Credit rating details for AE in case of guarantee

# Specified Domestic Transactions

## Form 3CEFB

- Nature of business
- Details of AE
- Electricity companies
  - Order of Appropriate Commission determining the tariff
- Milk Cooperative
  - Details of milk and equivalent products, rates
  - Payment at same rates to all members of cooperative society

# Advance Pricing Agreements

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# Annual Compliance Report – Form 3CEF

- Details of assessee (incl. contact details)
- Details of transactions covered in the APA
  - Agreed vs actual, adjustment required, how is adjustment done in ITR?
- Any changes in business model of the assessee
- Any changes in functional and risk profile of the assessee / AE
- Transfer pricing methodology
  - Agreed vs actual, reason for variation
- Critical assumptions
  - Agreed vs actual, reason for not meeting critical assumptions
- Details of changes in organization structure of the group
- All other terms of APA complied or not

# Country-by-Country Report (CbCR)

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# BEPS Action 13 Documentation

## Country-by-Country Report – Statistics

Tax jurisdiction

Business activity

Number of employees

Assets | Capital

Revenues | Taxes

## Master File – Articulating Global Overview

Group information

Value drivers

Global value chain

Group TP policies

Intangibles

## Local File – Country Specific Information

Details of Transactions

Methods adopted

Comparability analysis

Economic adjustments

Financial information

# Country-by-Country Report (CbCR)

- Applicable to large groups (MNCs with consolidated group turnover of ~INR 5,500 Cr.)
- Provides a financial overview of the group
  - Jurisdiction-wise
  - Entity-wise
- Objective – identify apparent tax-inspired mismatches of economic activity, incomes and taxes within the group
- Data to be used to assess BEPS risks (not only transfer pricing risks!)

How will the CbCR data be used?

# CbCR Compliance Obligations

## Inbound Entities of Foreign Parent

Intimation of Parent  
/Alternate Reporting Entity -  
Form 3CEAC

Due date – 10 months from  
end of Group Accounting  
Year

Designated Reporting Entity  
in case of multiple entities –  
Form 3CEAE

## Outbound Parents / Reporting Entities

Indian Parent / Alternate  
Reporting Entity - Form  
3CEAD

Indian entity having parent in  
non-cooperative jurisdiction  
– Form 3CEAD

Due date – 12 months from  
end of Group Accounting  
Year

# CbCR - Information Template (1)

Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax paid (on cash basis)	Income Tax accrued - reportable accounting year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash & Cash Equivalents
	Related Party	Unrelated Party	Total							

# CbCR - Information Template (2)

Tax Jurisdiction	Main Business Activity(ies)														
Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management and Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other	

# Master File (MF)

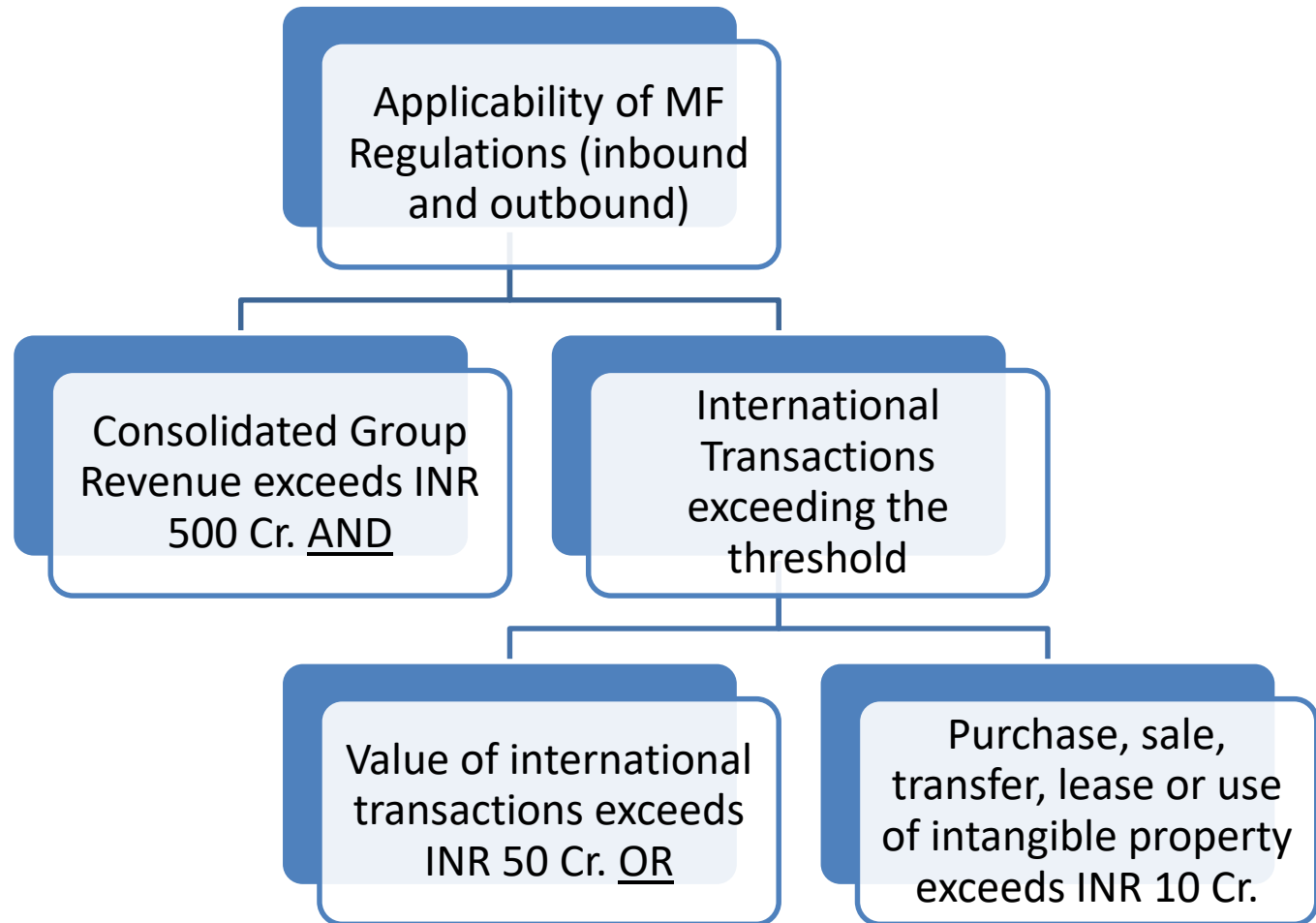
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# Master File (MF)

- Wider applicability than CbCR
  - Applicable to groups with consolidated group turnover of INR 500 Cr.
  - Basic intimation applicable to all Indian constituent entities
- Articulation of group's business and key components of business
  - Group level information
  - Service Agreements
  - Business Restructuring
  - Intangibles
  - Financial Arrangements
  - Information about APAs and Rulings

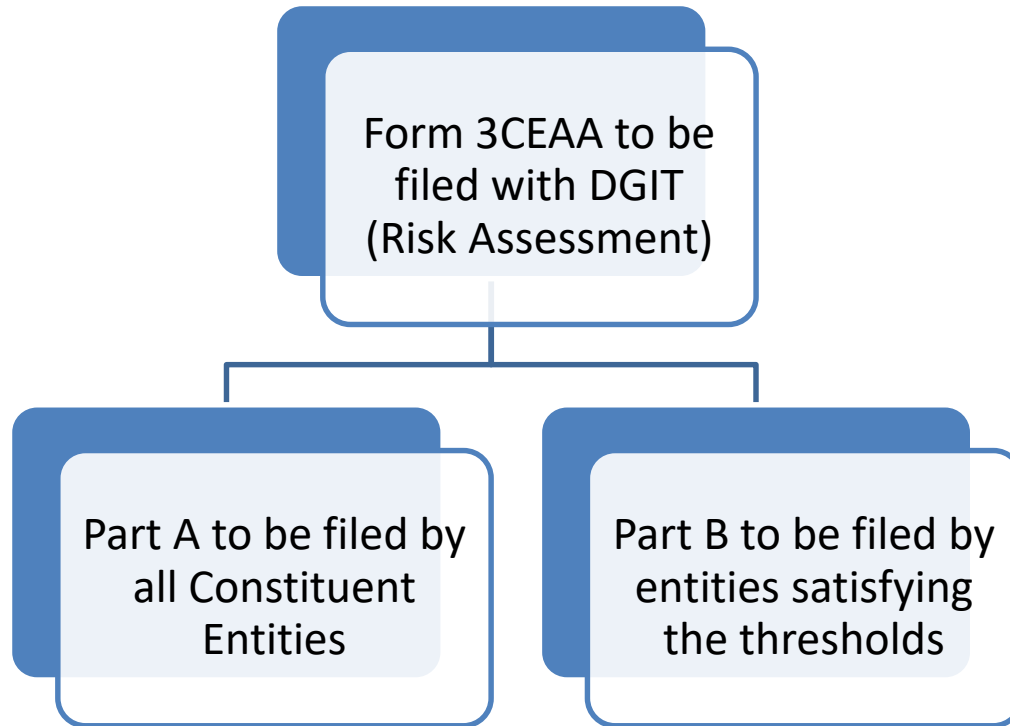
How will the MF data be used?

# MF Applicability





# MF Compliance Obligations



Master file to be filed on or before due date for furnishing income tax return.

Form 3CEAB for Designated Entities 30 days before the due date of Form 3CEAA.

# MF – Information Required

## Group Level Information

- Group entities; business / business lines
- Profit drivers
- Supply chain
- Markets
- Functional analysis of entities contributing > 10% to revenues, assets or profits
- Financial Statements

## Service Agreements

- Description of key service agreements and capabilities of main service providers
- TP policies for allocating costs and determining prices for services

## Business Restructuring

- Description of business restructuring / acquisitions / divestments

## Intangibles

- IP strategy, location & management of R&D facilities
- Important IP and ownership
- Listing & description of key agreements
- Description of group TP policy on R&D and intangibles
- Description of important intangible transfers and consideration

## Financial Arrangements

- Financing arrangements and top lenders
- Central finance entities; place of operation and effective management
- Description of group TP policy

## APAs and Rulings

- Listing & description of APAs and Rulings

# **CbCR and MF Case Studies**

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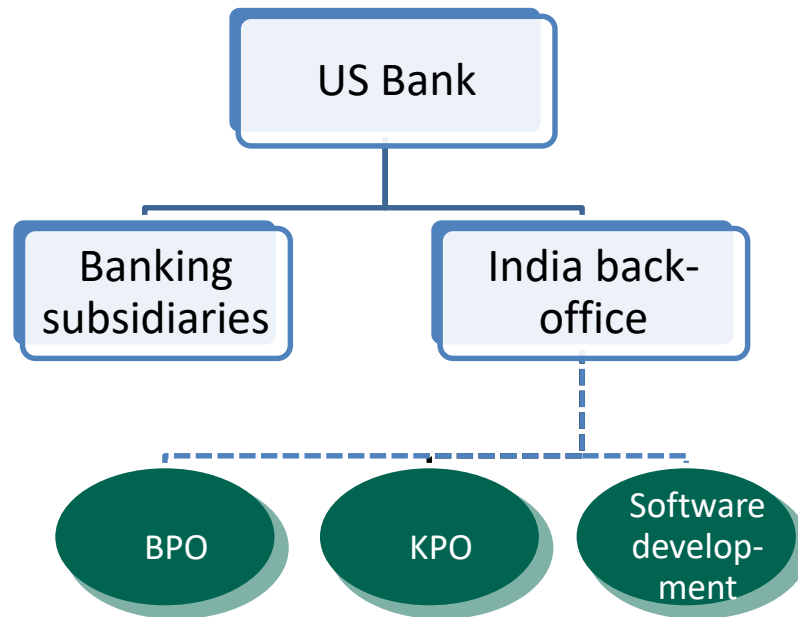
# CbCR – Indian Pharma MNE

Tax Jurisdiction	Name (Main Business)	Revenue	PBT	Head-count
India	ABC HQ	90,000	18,000	2,000
India	ABC R&D	5,000	1,000	500
India	ABC Trading	45,000	2,000	2
USA	ABC Manufacture	43,000	-2,000	1,000
Netherlands	ABC Finance	25,000	20,000	6
Luxemborg	ABC IP Owner	24,000	18,000	1
UAE	ABC Trading	35,000	21,000	2
Australia	ABC Services	10,000	4,000	10
Singapore	ABC e-com	20,000	10,000	0
	<b>Consolidated</b>		<b>50,000</b>	

## Risk assessments

- Vastly different trading returns for India and UAE; different tax rates
- Return on R&D activities
- Return on financing; CFC rules; limit on interest deductions
- Nature of services and margins in Australia?
- Evaluating POEM exposure
- Permanent Establishment Exposure for ABC in Singapore
- Audit triggers in the US?

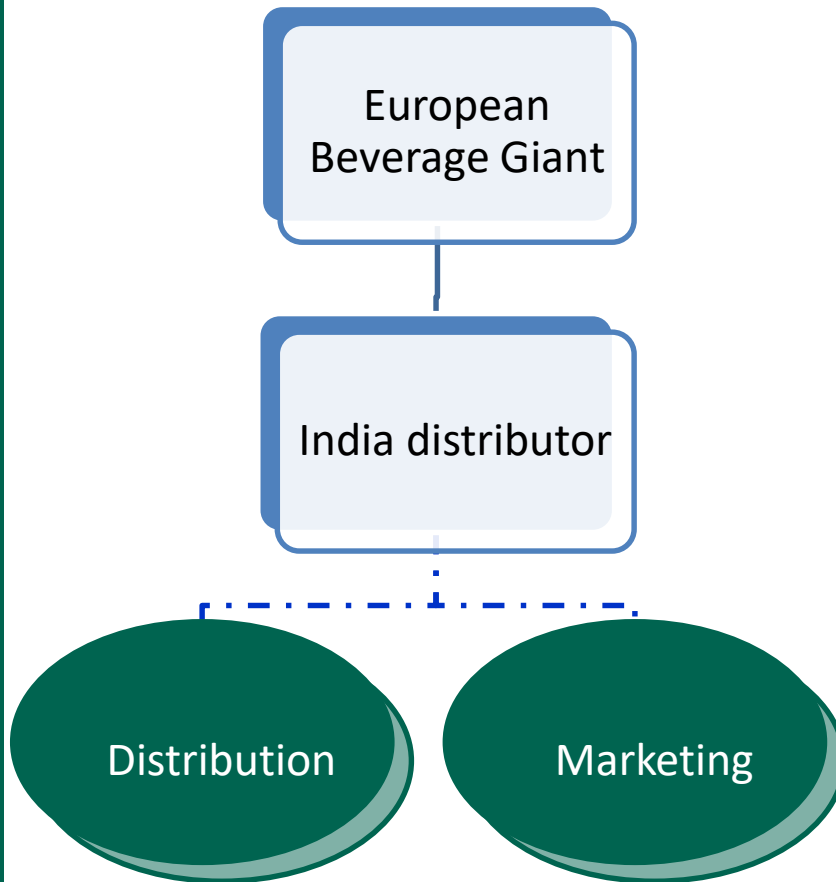
# MF – Large US Bank



- Master File of US Bank (value drivers):
  - Financial strength
  - Brand name
  - Diversified business
  - Human intangibles
  - Proprietary software
  - Innovation and process improvement
- Characterisation of India back-office in TP study?

Consistency is the key!

# MF – European Beverage Giant



- Master File of European Beverage Giant (value drivers):
  - Product formula
  - Brand name
  - Proven marketing concepts
  - Local implementation of marketing concepts
  - Distribution network
- Characterisation of Indian distributor in TP study?

Consistency is the key!

# Closing Remarks!

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# Transfer Pricing Penalties

Default	Penalty
Failure to furnish Form 3CEB	INR 100,000
Failure to keep and maintain Transfer Pricing Documentation	2% of transaction value
Failure to report transactions required to be reported	2% of transaction value
Maintaining / furnishing incorrect information / document	2% of transaction value
Failure to furnish information / document called for by AO / TPO / CIT(A)	2% of transaction value
Adjustment based on under-reported income (insufficient documentation / disclosure)	50% of additional tax
Failure to report transactions required to be reported	200% of additional tax



# Additional CbCR and MF Penalties

Default	Period of default	Penalty (INR)
Non-furnishing of CbCR	upto 1 month	5,000 per day
Non-furnishing of CbCR	beyond 1 month	15,000 per day
Non-furnishing of CbCR	after imposing above penalties	50,000 per day
Non-submission of information / documents called for in relation to CbCR	upto imposition of penalty	5,000 per day
Non-submission of information / documents called for in relation to CbCR	after imposing above penalty	50,000 per day
Furnishing inaccurate information / document in CbCR / in relation to CbCR		5,00,000
Failure to furnish Master File		5,00,000

# FAQs on Compliances

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- Does transfer pricing apply to transactions between Branch and Head Office?
- Does transfer pricing apply to foreign companies?
- Does transfer pricing apply to individual taxpayers?
- Taxpayer has only made investments and not entered into other transactions. Does transfer pricing apply?
- Does transfer pricing apply to dividends?
- Does transfer pricing apply to payment to non-resident Directors?
- How does transfer pricing apply if the parties are Associated Enterprises for part of the year?

# Some Best Practices

- Accountant vis-à-vis Transfer Pricing?
- Communication with outgoing auditor
- Ledger Scrutiny
- Management Representation Letter
- Involvement of right personnel of the taxpayer
- Whenever in doubt, write a Note!
- Timing of transfer pricing documentation?
- Documentation for 'soft' transactions
- Documentation for losses
- Documentation for market trends
- Documentation for spot pricing of commodities

# QUESTIONS?

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