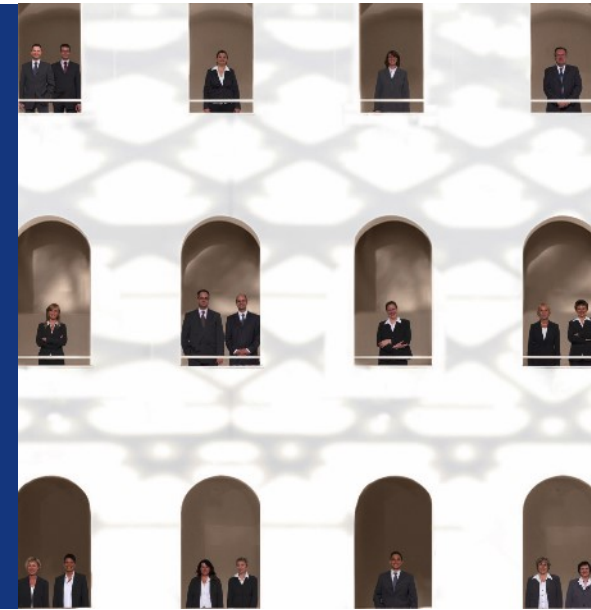


# Kieffer | Stübgen + Partner mbB

Country-by-Country-Reporting  
First Experience

Frankfurt 2020



**KSP**

# General Considerations

## -CBCR-

G 20 + OECD  
BEPS

Package of measures  
against base erosion  
and profit shifting

Action Plan  
13 Chapter V

# General Considerations

## -CBCR-

The result is a new „three-tiered-approach“



# General Considerations

## -CBCR-

CBCR should provide an overview to tax authorities concerning

- MNE's business activities
- Value driver
- Value – added chain
- Location of important assets
- Location of peoples functions
- Tax burden in each jurisdiction etc.



Tax Transparency

# German Rules

CBCR =

A breakdown by tax jurisdiction of the Group's business activities as follows:

- Sales and other income
  - From business with related parties
  - From business with third parties
  - Total sales and other income
- Tax on earning paid and accrued during fiscal year
- Profit or loss before tax on earnings
- Equity (Net Assets)
- Retained earnings
- Number of employees
- Tangible assets

# German Rules

A list of all key business activities allocated to the different jurisdictions :

- Research and Development
- Ownership or management of intellectual property
- Purchasing and procurement
- Processing or production
- Sales, marketing or distribution
- Administration, management or support services
- Providing services to unrelated third parties
- Intra-group financing
- Regulated financial services
- Insurance
- Ownership of shares or other securities of a participatory nature
- Inactivity/Dormant
- Other (Whatever that means?)

# German Rules

Following Multinational Enterprises (MNE) are obligated to file a CBCR:

- Headquarters (HQ) in the territory of Germany
- MNE has to prepare consolidated financial statements
- This consolidated financial statements include at least one foreign subsidiary or foreign permanent establishment
- Consolidated sales in the previous fiscal year is equal to at least 750 Million revenues

# Filing Procedure

## Germany:

### Responsible Department of tax authorities concerning CBCR

CBCR has to be filed online to

German Federal Central Tax office (Bundeszentralamt für Steuern – BZST)

BZST is responsible for exchange of CBCR with other countries

Not: local tax office!

Deadline: Within one year after end of the fiscal year



# Filing Procedure

## France:

- Consolidated Financial Statements turnover EUR 750.000.000 and more
- Fill in Form 2258-SD
- 12 month following the end of the accounting period
- Additional explanations concerning the entities listed in the CBCR:
  - e.g. : intra-EU VAT No.
  - precise address
  - drafted in English language

## USA:

- Ultimate parent entity of a MNE with an annual revenue for the preceding fiscal year of USD 850.000.000 and more
- Reporting Form 8975
- Deadline: CBCR must be filed with the ultimate parent entity's income tax return before the due date, including extensions for filing that person's income tax return

# Filing Procedure

## Italy:

- CBCR has to be submitted online to central Italian tax authorities
- Local tax authorities are not involved
- Deadline: Within 12 month from the end of the reporting period

## China:

A Chinese resident company will be required to file a CBCR with its local competent tax authority at the time it files Annual Related-Party Transaction Reporting Forms by the end of May 31 following the end of the current tax (calendar) year concerned.

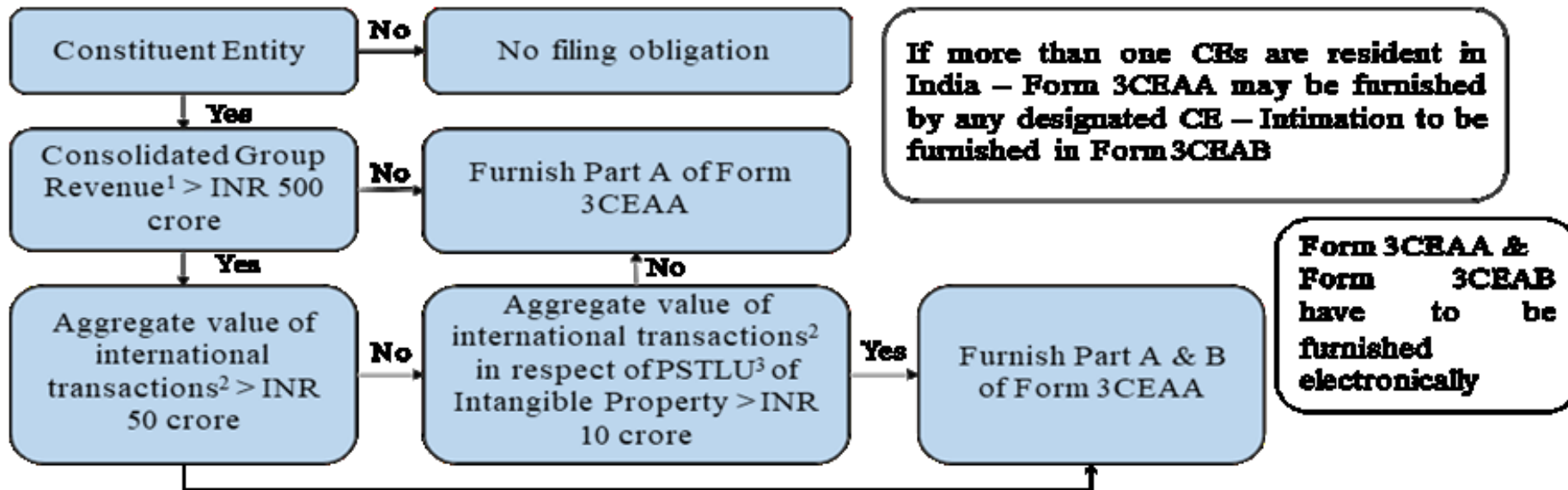
## India:

In India, the tax year is 1st April to 31st March every year, irrespective of the accounting year followed by the taxpayer. CBCR reporting is divided into five different forms which need to be filed. The first two forms are for the Master File and Local File. The other three forms are the CBCR filings.

# Filing Procedure

India

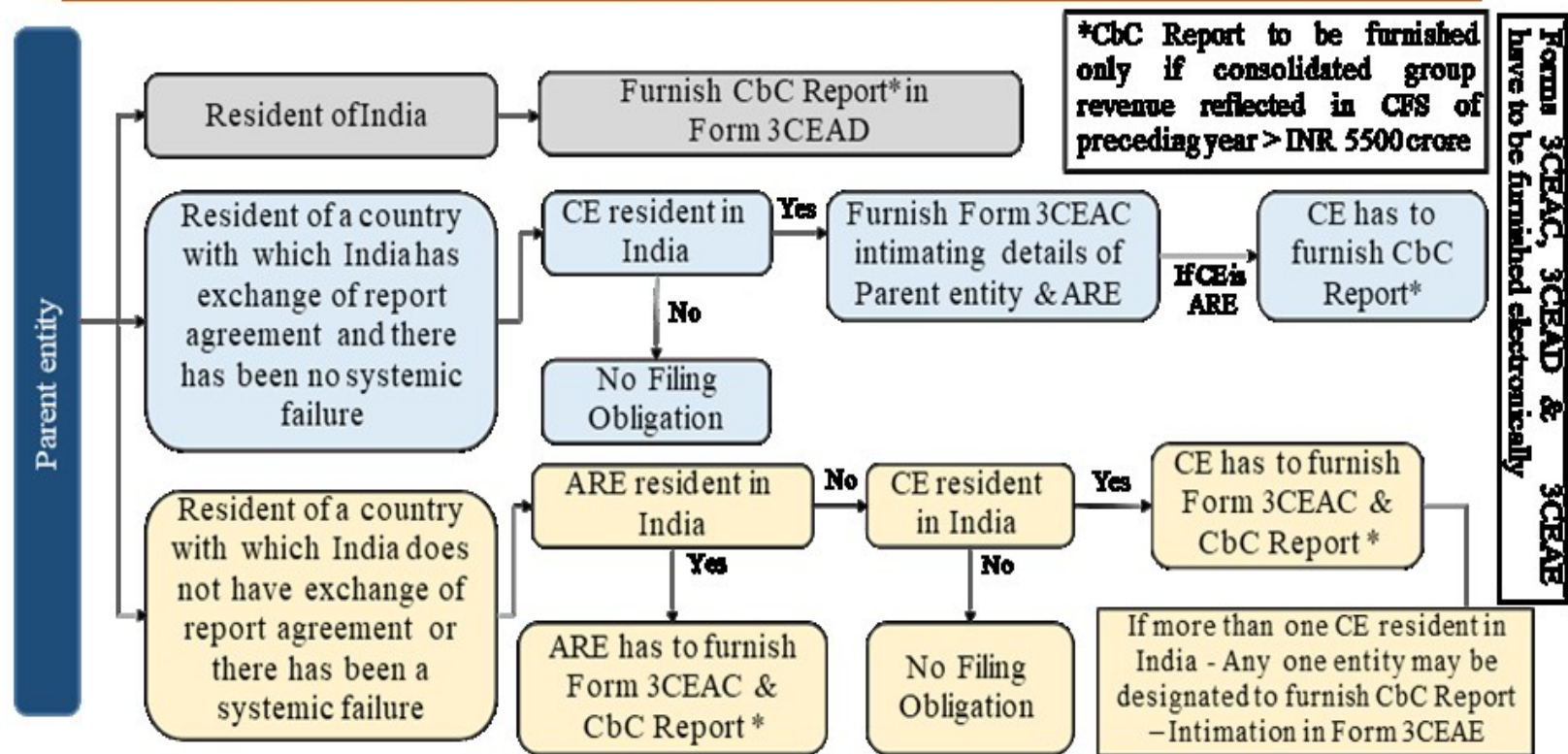
## MASTER FILE FLOWCHART



# Filing Procedure

India

## CbCR FLOWCHART



# Filing Procedure

## India

- Form 3CEAB – on or before 31<sup>st</sup> October every year
- Form 3CEAA – on or before 30<sup>th</sup> November every year
- Form 3CEAC – two months before filing of Form 3CEAD
- Form 3CEAD – within 12 months after the end of the MNE's accounting year
- Form 3CEAE – no deadline specified until now

# Surrogate Filing or Secondary Duties

## Germany:

### Surrogate Filing

MNE with HQ outside of Germany engages a subsidiary or permanent establishment located in Germany to file the CBCR

Deadline: Within one year after the end of the fiscal year

e.g. HQ located in France does not file a CBCR in France, instead HQ engages its German subsidiary to file a CBCR in Germany

### Secondary Duty:

German Federal Central Tax Office does not receive a CBCR although the MNE is in general obligated to file a CBCR:

Subsidiary located on Germany is legally bounded to file a CBCR of the MNE- as far as possible- (=reduced CBCR): Nobody knows how this works under a practical aspect

Deadline: One month after notification of a non-submission

# Surrogate Filing - Secondary Duties

## France:

CBCR must be subscribed to either by:

- the head company of the group, or
- an entity designated to subscribe the declaration in place of the group head company, so called 'substitute entity'

French law provides that a French company, subsidiary of a foreign group, may be required to fill in the CbCR for the entire group, including the companies it does not control, if its parent company is located in a state that has no similar regulations to France

# Surrogate Filing - Secondary Duties

## Italy:

An Italian Parent company can appoint a subsidiary as Surrogate Parent Entity (SPE) as long as the following conditions are met:

- the jurisdiction of the SPE has implemented CbCR
- the jurisdiction of the SPE has a Qualifying Competent Authority Agreement in place with Italy for filing the CbC report in the Reporting Fiscal Year
- the jurisdiction of the SPE has not notified the Italian Tax Administration of a systemic failure
- the Italian Tax Administration has not notified the local subsidiary of a systemic failure of the SPE's jurisdiction
- the SPE has notified its status to its own tax jurisdiction by the last day of the reporting period
- the Italian entity properly notified the Italian tax administration

Deadline: 12 month from end of the reporting period



## Surrogate Filing – Secondary Duties

An Italian subsidiary of an MNE Group is required to file the CBCR if, among other conditions, the jurisdiction where the parent company is located has incurred a systemic failure to exchange the information contained in the CbCR received by the parent company resident in its jurisdiction.

The deadline is the same as the ordinary filing: within 12 months from the end of the reporting period.

As of today, it is unclear how the secondary duty will apply in Italy from a practical point of view.

# Surrogate Filing – Secondary Duties

## USA:

The US regulations do not permit surrogate parent entity filing in the United States by foreign corporations

The U.S. has not adopted the secondary filing mechanism.

## China:

A Chinese resident company can be engaged by its multinational group enterprise to submit a CBCR. Such a Chinese resident company will be liable to file a CBCR to its local competent tax authority at the time it files Annual Related-Party Transaction Reporting Forms by the end of May 31 following the end of the current tax (calendar) year concerned.

In some circumstance, Chinese tax authorities can request a Chinese subsidiary to submit a CBCR when they perform an anti-avoidance investigation. The Chinese tax rules do not specify the deadline for submitting the CBCR under this circumstance; however, Chinese tax authorities can set a reasonable deadline on a case-by-case basis.

# Surrogate Filing – Secondary Duties

## India:

In India, the MNE can elect the Indian “Constituent Entity” to be classified as the “Alternate Reporting Entity” if the parent of the MNE does not file a CbCR in their respective country or if it wishes that the local entity files the CbCR in India.

The same deadlines apply in this case too.

In India, either the parent of the MNE or the Indian taxpayer is liable to file the CbCR.

India has a tax information exchange agreement with US, under which Indian Constituent Entities of US companies were not liable to file a separate CbCR in India, but due to its delayed execution, these companies were later on asked to file their CbCR in India as well.

Hence if the MNE elects that the parent company is going to be the “Reporting Entity” for India’s CbCR compliance, then the parent company is liable to complete the CbCR filings.

Alternatively the MNE can elect that the “Alternate Reporting Entity” will be the Indian Constituent Entity.

If the MNE files the CbCR in another country, then the reporting entity, in its filings only needs to intimate the country in which the CbCR reporting is completed. The deadlines are the same.

The Indian laws provide that if there is a systemic failure (in sharing the CbCR filed) by the country where the CbCR is filed by the MNE, then the tax authorities will intimate this to the MNE, and the MNE should file the CbCR all over again in India, within 6 months from such intimation

# Additional Declaration Duties

## Germany:

How could German tax authorities become aware, that the tax payer is member of a MNE which has to file a CBCR somewhere in the world:

German tax law stipulates additional tax declaration duties in the annual tax returns:

Does MNE's consolidated revenue exceed EUR 750 Million ?

If yes:

Is the local subsidiary/permanent establishment engaged to file a CBCR ?

If no:

Name/Designation of the group company which will file the CBCR and  
Country where the CBCR will be filed

# Additional Declaration Duties

## France:

Since 2018, CbCR is exchanged between tax authorities from different countries if a multilateral agreement on the automatic exchange of information and reciprocity exists

Form 2065-SD (tax return on results): complete the identity and location of the company which is in charge to fulfil the CbCR

(CGI – article 46 quater-0 YE annex III)

## Italy:

Information similar to those which have to be declared in Germany must be disclosed in the annual tax return. Due date is earlier than the CBCR (30 September vs. 31 December)

## Additional Declaration Duties:

### China:

Chinese annual corporate income tax return does not include a question of whether the consolidated turnover of the group exceeds the CBCR threshold of CNY 5.5 billion (about EUR 705 million).

Instead, it is the taxpayers' responsibility to determine whether they have met that threshold leading to make a CBCR filing. In addition, the Annual Related-Party Transaction Reporting Forms ask whether a Chinese-resident company is engaged by its multinational group enterprise to submit a CBCR.

### USA:

The CbC report must be filed by the U.S. parent entity of a group that meets the U.S. MNE group definition and that reports consolidated group revenue of at least the USD 850 million revenue threshold. All relevant information related to meeting the requirements for CBCR declaration is reported on the Form 8975, Country-by-Country Report.

# Additional Declaration Duties:

## India:

Every Indian taxpayer which has an international transaction is liable to submit the information in Form 3CEAA stating whether they are part of a MNE.

The specific questions about the criteria for applicability of CbCR are not asked. It is considered to be responsibility of the Indian taxpayer to furnish the information if CbCR applies to it / MNE.

Though there are no specific methods known until now, but the tax information exchange agreements with many countries along with the submissions of the Indian taxpayer giving details of the MNE / Parent entity will give the tax department the relevant information to check compliance.

# Penalties:

Germany: Non-filing: EUR 10.000

## India:

Penalties for not reporting or reporting inaccurate details are as follows:

1. Non-filing of CbCR – Rs. 5,000 per day upto 30 days; Rs. 15,000 per day from 31<sup>st</sup> day onwards; Rs. 50,000 per day for a continuing default after notice is served by tax authorities
2. Not furnishing any further information requested by the tax authorities – Rs. 5,000 per day upto service of penalty order; Rs. 50,000 per day after service of penalty order until the date information is shared
3. Furnishing inaccurate details – Rs. 500,000

## Italy:

Range from EUR 10.000 – 50.000 in the event of

- Failing to submit CBCR
- Providing false or
- Providing incomplete information



# Penalties:

## France:

### Non-Filing CBCR:

Up to EUR 100.000 at most

CGI –article 1729-F

### **Omissions** or **wrong** answers:

penalty of 15 € per omission or wrong answer

Ranking from minimal 60 € to maximum 10 000 €

CGI - article 1729-B

## USA:

Generally speaking, such penalty is \$10,000 per entity with respect to which reporting is missing per Reporting Period.

# Penalties

China:

If tax payer fails to file a CBCR in time: penalty could be up to CNY 10.000 (approx. EUR 1.280)

+

Possible anti-avoidance investigation target

In case that Chinese tax authorities request a CBCR and taxpayer refuses to submit:  
Possible penalty up to CNY 50.000 (approx. EUR 6.400) and assessed tax liability

# Summary

Duties:	Many
Administration Burden:	High
Actual Experience:	Low

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