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India**India's Profit Shifting Rules May Spur Litigation: Practitioners**

By Siri Bulusu

India's draft rules requiring multinational groups to comply with the OECD's country-by-country reporting and master file reporting procedures will "certainly" lead to an increase in transfer pricing investigations and litigation in the country, according to practitioners.

Major accounting and legal firms are preparing comments and suggestions for the Indian tax authorities in the hopes that the proposed set of company transparency rules, issued Oct. 6, will be adjusted or relaxed.

"The rules as they stand now would 100 percent lead to more investigations, since the whole philosophy of BEPS is to analyze the methodology of multinational groups—all the information will lead to more inquiries, which in turn could lead to more substantial transfer pricing adjustments," Vispi T. Patel, head of Mumbai-based accounting firm Vispi T. Patel & Associates, told Bloomberg BNA Oct. 10.

The Central Board of Direct Taxes is accepting comments on the proposed draft rules until Oct. 16. KPMG India and PwC India have confirmed that they will make recommendations to the CBDT on the proposed reporting rules.

India isn't an official member of the OECD but has adopted many of the proposed steps of the Base Erosion and Profit Shifting Initiative—including signing of the multilateral instrument—to crack down on aggressive tax planning by multinational groups. Action item 13 of the initiative prescribes a template to be used by multinational companies to annually report quantitative information for each jurisdiction in which they do business, through a country-by-country report and a master file report.

The CBDT's country-by-country reporting rules are "onerous" but closely follow the BEPS guidelines, whereas the master file reporting rules go several steps further than the BEPS guidelines, which is causing compliance and confidentiality concerns for multinational groups, according to practitioners.

Low Monetary Threshold

"The biggest issue to my mind, is that the threshold for furnishing the master file is relatively low at [\$76.5 million], which cast a very, very wide net in terms of the companies that will now be required to follow these compliance rules," Kunj Vaidya, leader of transfer pricing for PwC India, told Bloomberg BNA in an Oct. 10 telephone interview.

Vaidya said the OECD doesn't include any monetary threshold, but said other OECD-compliant countries have set the threshold at [\$765 million] and China, the lowest comparable country to India, has a threshold of about \$153 million.

"We're talking about ease of doing business and with this requirement, the compliance burden is too high—especially since many companies would only be required to prepare these files for India," Vaidya said.

The Indian master file reporting rules diverge from the OECD guidelines in several ways, including requiring companies to disclose their top 10 lenders in the master file report. This is a big concern to Vaidya's clients who are worried about confidentiality.

"Clients don't know where the information could end up, and even though tax authorities will assure that the information is kept confidential, I don't blame companies to be skeptical," Vaidya said.

Snapshot

- Country-by-country and master file reporting rules in line with OECD's BEPS initiative
- Practitioners hope tax authorities will adjust company transparency rules
- Comments accepted through Oct. 16

All constituent entities of multinational groups will be required to complete a portion of the master file report so Indian tax authorities can track administrative details such as the multinational group name, number of constituent entities, and addresses.

Vaidya said the additional information is clerical and an administrative burden, since it is unclear why the government wants the information.

Documentation Requirements

Master file documentation is required by the Indian constituent entities of multinational companies if the following conditions are met:

- Consolidated worldwide group revenue in the year ending March 31, 2016, exceeds 5 billion rupees (\$76.6 million); and
- Aggregate value—according to books of accounts—of international transactions during the financial year ending March 31, 2017, exceeds 500 million rupees (\$7.65 million); or
- Purchase, sale, transfer, lease, or use of intangible property exceeds 100 million rupees (\$1.5 million).

Country-by-country reporting is required where the multinational group's total consolidated group revenue exceeds 55 billion rupees (\$841.3 million).

The information supplied in the country-by-country report and master file report will be automatically shared with other countries that have signed the OECD's multilateral competent authority agreement, adding to multinational group concerns of increased transfer pricing litigation.

"More investigations will be opened up, and each country will look at the information with their own interest—which ever tax authority feels aggrieved by the multinational group could raise questions about taxes paid," Nitin Narang, executive director of transfer pricing at Nangia & Co. LLP, told Bloomberg BNA in an Oct. 10 telephone interview.

Narang said the Indian government will have to take stakeholder comments into account, otherwise it will leave companies struggling to comply—first of which is the deadline for reporting.

"We're well into India's holiday season, and so the Nov. 31 deadline for the country-by-country report will be difficult to meet since the deadline for comments is Oct. 16 and final rules may only come out by the end of the month," Narang said.

Narang added that the government is likely to issue frequently asked questions following the release of the final rules to guide taxpayers in their first year of the new reporting rules.

To contact the reporter on this story: Sir Bulusu in New Delhi at correspondents@bna.com

To contact the editor responsible for this story: Penny Sukhraj at psukhraj@bna.com

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