BEPS Motivated Domestic Measures

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The Chamber of Tax Consultants

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Introduction to BEPS

Why was BEPS introduced?

- Vanishing borders and policy mismatches enables MNEs to shift profits and save themselves from paying taxes
- This results in erosion of tax bases and shifting of profits to tax havens that levy no or low taxes
- To address these challenges, OECD came up with Base Erosion and Profit Sharing Programme (BEPS), formulating 15 point Action plans with an aim to bring transparency in the international tax regime

OECD and BEPS

- The OECD defines BEPS as:-

"Tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations"

- Some popular profit shifting mechanisms are :
  - Hybrid mismatch
  - Special Purpose Vehicle/entity
  - Transfer (Mis)pricing
- The UN estimated that developing countries around the world would lose up to $100 billion in potential tax revenue annually due to tax havens that help MNEs maximise their profits

BEPS and Multi Lateral Instrument (MLI)

- **Action Plan 15** was introduced as a part of the BEPS package to streamline the overall implementation of tax treaty related BEPS measures
- MLIs not only address treaty related BEPS issues, but also provide flexibility, and facilitate speedy action and innovation
- It allows governments to modify existing bilateral treaties efficiently by incorporating certain minimum standards agreed as part of the Final BEPS package
- India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalization of the text of the Multilateral Convention

Overview of Implementation of BEPS and MLI

BEPS Action plan submitted
- July 2013

Ad Hoc Group formed for developing MLI
- February 2015

BEPS Final package of measures released
- October 2015

Text of MLI adopted by Ad Hoc Group
- November 2016

Signing Ceremony in Paris
- June 2017

India’s stand on BEPS

- India identified the various challenges of the global economy and has been an active participant in the implementation of BEPS project along with OECD and other G20 members
- Key domestic measures in accordance with BEPS Action Plans:

Domestic measures in accordance with BEPS Action Plans

Action Plan 4
Section 94B
Limitation on interest deduction in certain cases

Equalisation levy
Addressing the challenges of digital economy

Action Plan 8-10
Various measures to align Transfer pricing and Value creation

Action Plan 13
Robust Transfer Pricing Documentation and CbCR

BEPS Action Plan 4- Limiting Base erosion through interest deduction and other financial payments

- This Action Plan aims to limit base erosion through excessive interest deductions

How does base erosion happen?

Placing higher levels of third party debt in high tax jurisdictions

Using intragroup loans to generate excess interest deduction

Using third party or intragroup financing to fund the generation of tax exempt income

Recommendations as per Action Plan 4

- Action Plan 4 focuses on limiting the deductibility of excessive interest. Following are some of the recommendations made in accordance with international best practices

Fixed Ratio Rule

- Restricts an entity's net interest deduction at a fixed percentage of its EBIDTA

Group Ratio Rule

- Deduction of net interest expense based on the relevant financial ratios of an entity's group globally

A minimum Monetary threshold

Carry forward or back of disallowed Interest

Need for domestic measures consequent to Action Plan 4

- In line with OECD's BEPS report, India too acknowledges the potential revenue loss due to excessive interest deduction
- It has undertaken various steps in implementing Action Plan 4 in order to prevent shifting of profits and protecting India's tax base, by way of introduction of section 94B in the Income-tax Act, 1961 ('the Act') vide Finance Act, 2017
- This section is in conformity with Action Plan 4 and acts as an anti- abusive measure to tackle the issue of thin capitalization

Section 94B - Limitation on interest deduction in certain cases

- Charging excessive interest expense results in lower profits for Associated Enterprises and reduces its tax burden while resulting in base erosion in India
- Section 94B was introduced to curb such practices by providing that interest expense claimed by an entity to its AE shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBIDTA) or interest paid or payable to its AE, whichever is less
- The Fixed Ratio Rule canvassed as best practice approach under BEPS Action Plan 4 finds place in Indian thin capitalization regime
- The introduction of this provision will have major impact on companies, which are capital intensive, namely, infrastructure, real estate, pharmaceuticals, cement, steel, etc.

Overview of section 94B

Sub-section (1) and (3)	• Applicability of the provision
Sub-section (2)	• Computation of disallowance
Sub-section (4)	• Carry-forward of disallowed amount
Sub-section (5)	• Definitions of terms used

Overview of section 94B…(contd)

- Applicable from AY 2018-19
- Expenditure of Interest or similar nature over INR 1 crore which is allowed as a deduction under *'profits and gains from business and profession'*
- Borrowed by: Indian Company/PE in India of foreign company (LLPs/ Partnerships/ trusts, etc. not covered)
- Borrowed from: AE of Indian company

Interest deduction to be LOWER of:
30% of earnings before interest, taxes, depreciation and amortisation; **OR** Interest paid / payable to AE for the year

Section 94B- Relevant sub-sections

- (1) *Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2)*
- ***Provided*** *that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.*
- *(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.*

Section 94B- Relevant sub-sections

- *(3) Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.*
- *(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2)*
- ***Provided*** *that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.*

Section 94B- Relevant sub-sections…..

- On reading of the provisions of this section, it is clear that all of the following conditions would have to be satisfied in order for the restriction on interest deduction to be applicable :
  - Interest is payable by an Indian company; or by permanent establishment of a foreign company in India
  - Interest is payable to a Non Resident AE or to a third-party lender to whom such Non Resident AE has provided guarantee/ funds
  - Interest incurred towards debt from AEs or above-mentioned lenders is in excess of INR 1 Crore in the particular Previous Year
  - Interest is claimed as deductible expenditure against income taxable under the head "Profits & Gains from Business or Profession"

Are All Third Party Lenders (TPL) Covered?

- A loan may be given by an unrelated entity to an Indian company based on
  i. A guarantee given by a non resident AE of such Indian company to TPL
  ii. Funds provided by such non resident AE to a TPL

- Proviso to section 94B(1) states that in cases where interest is paid to unrelated entities, such debt would be deemed to be issued by an associated enterprise, and therefore 94B would apply

Resident Third Party Lender

Unrelated Third party Lender

Loan

Indian Associated Enterprise

India

Funds provided or

Guarantee given

Non Resident Associated Enterprise

Section 94B(1), however, only covers payments made to **Non Resident lenders**.

Therefore, when a loan given by a resident third party is guaranteed or funds are provided by an associated enterprise , **section 94B would not apply**

Outside India

Disallowance under section 94B

- Section 94B provides for disallowance of *"excessive interest"*
- As per sub-section (2) of the said section,

  "the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less."
- An inconsistency arose between the Finance Act, 2017 and the Memorandum thereof as there was no clarity in the method of determination of the excess interest amount. The Memorandum read as under :

  "interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less"

An illustration

Calculation of excess Interest :

EBIDTA	10,00,000
30% of EBIDTA	3,00,000
Total interest	3,25,000
Interest Paid to AE	2,50,000

Excess interest only in respect of interest payment to AE	
Interest Paid to AE -	2,50,000
30% of EBIDTA -	3,00,000
Excess interest-	NIL

Excess interest calculated with respect to total interest	
Total Interest -	3,25,000
Excess of total interest Over 30% EBIDTA -	25,000
Excess Interest -	25,000

Interplay of 94B with transfer pricing and GAAR

- 94B is in essence a Specific Anti-abuse Rule ("SAAR")
- In addition to above, there also exists other SAARs which limit interest deduction such as:
  - section 14A
  - section 40(a)(i)
- As per current law, interest payments to AEs are also subjected to Arm's Length Test(As per Chapter X)

Transfer pricing and 94B

Particulars	Amount
Total Borrowings	1000
Interest paid to AE @10%	100
Arm's Length Interest as determined by TPO @5%	50
TP Adjustment	50

How should Transfer Pricing adjustment on account of higher interest paid to AE be accounted for while calculating disallowance under section 94B?

EBIDTA	200
30% of EBIDTA	60

	Possibility 1	Possibility 2
Lower of: (A)Excess interest over 30% of EBITDA	NIL (50-60)	40 (100-60)
(B) Interest paid to Non-resident AE	100	100
94B disallowance (lower of (A) or (B))	NIL	40
Total Disallowance	50	(50+40) 90

Thin Capitalisation Rules & GAAR

- In order to increase the tax benefit through high interest payments, non residents often enter into arrangements where debt provided to its AE in India is much higher than the AE's capital
- This would mean that, higher the debt, higher is the interest which can be claimed as an expense
- High debt on a base of low equity capital, referred to as thin equity, results in Thin Capitalisation
- Section 94B is not a thin capitalisation rule and does not prescribe any disallowance for high debt-equity ratio

Thin Capitalisation

- What is thin capitalisation?
  - Thin Capitalisation means having highly disproportionate debt capital in comparison to equity capital
  - Companies tend to borrow in high-tax jurisdictions to avail higher tax deductions
  - What is a debt?
    - any loan, financial instrument, finance lease, financial derivative, or an arrangement that gives rise to interest, discounts or other finance charges that are deductible as business expenditures

Thin Capitalisation

- Why debt over equity?
- No stamp duty required for infusion of debt capital, unlike equity capital
- In most countries, dividends are subjected to economic double taxation, whereas interest is not; on the contrary interest is tax-effective
- Easy and tax effective repatriation of borrowed funds as compared to capital infusion
- Debt is more flexible; it can be converted into equity, when required
- Debt can be borrowed in foreign currency to avoid currency fluctuation risk

Thin Capitalisation – Impact analysis

Particulars	Zero Debt	Debt-Equity Ratio of 1:1	Zero Equity
Debt	0	500	1,000
Equity	1,000	500	0
Total Capital	1,000	1,000	1,000
PBIT	200	200	200
Less: Interest (Assumed @10%)	0	-50	-100
PBT	200	150	100
Less: Tax @ 30% (approx) (A)	-60	-45	-30
PAT	140	105	70
Less: DDT @ 20% (approx) (B)	-28	-21	-14
Net profit distributed to equity shareholders	112	84	56
Amount distributed for total capital	112	134	156
Total tax paid (A + B)	88	66	44
Effective rate of tax (Total tax to PBIT)	44%	33%	22%

Section 94B and GAAR

- Section 94B begins with a non-obstante clause which means that it could override other provisions of the Act. Section 95 also begins with a non-obstante clause.
- Which non-obstante clause should prevail?
- The CBDT vide Circular no. 7 of 2017, clarified that that provisions of SAAR and GAAR can co-exist and are applicable, as may be necessary
- Section 94B only restricts high interest payments and does not address thin capitalisation rules
- The Bombay High Court, in the case of *Besix Kier Dabhol SA [(2012) 26 taxmann.com 169 (Bombay)]* had upheld the decision of Mumbai ITAT that, in absence of any thin capitalisation rules in the Act, the tax authorities cannot re-characterize the debt capital as equity capital, and, make the interest non-deductible

Other SAARs

- Similar issues might also arise with respect to other SAARs
- Disallowance under u/s 14A or disallowance due to non-deduction of TDS u/s 40(a)(ia)
- Capitalisation of interest in inventory, particularly in case of real estate companies
- There can be varying views with respect to the order of applicability of all the above SAARs. For e.g., interest deductible under the head "Profits and gains of business or profession" must be computed before applying Section 94B or should Section 94B be applied before deduction under sections 14A or 40(a)(i) or any other SAAR

Limitation on interest deduction (Section 94B)

- Whether LCs, compulsorily convertible debentures which are hybrid instruments should be considered as debt?
- Whether premium on option contracts (financial derivative) would be considered as ‘other finance charges’?
- What is the mode of computation of EBITDA?
  - Earnings as per Accounting Standards?
  - Earnings as per IND-AS?
  - Earnings as per the Act?
  - Earnings as per ICDS?
- Whether borrowing of real funds and availing of guarantee for borrowing could be classified in the same basket?
- Whether interest is to be understood, net of interest income?

Action Plan 4 and Section 94B –A comparative analysis

	Action Plan 4	Section 94B
Interest Capping	Earnings based and Asset Based Approach	Earnings based approach
Earnings based approach	EBIDTA; EBIT or adjusted EBIDTA for capping interest in the range of 10%-30%	Interest capping to be restricted to 30% of EBIDTA
Group Ratio Rule	Entity's net interest allowed up to a fixed % of group EBIDTA	Not applicable
Third Party Lenders	Concept of deemed AE not specifically covered	Deemed AE covered based on guarantee/ money deposited by borrower's AE with the lender
Minimum threshold for applicability	No amount specified	Interest payments must exceed INR 1 crore
Carry forward of disallowed interest	Carry forward/carry back of excessive interest recommended, subject to certain conditions	Carry forward allowed for 8 years
Gross vs Net interest	Recommended approach is to apply the limitation rules to net interest expense	No provision in section 94B to include net interest (interest expense reduced by interest income)

BEPS Action Plan 13 and Section 286 – Country-by-Country Reporting

Action Plan 13: Transfer Pricing Documentation and Country-by-Country Reporting

- Action plan 13 provides guidance on Transfer Pricing documentation and CbC reporting
- The Final Report on the BEPS Action Plan 13 published by the OECD in October 2015 had introduced Country-by-Country Report (CbCR), as part of the three-tiered approach to transfer pricing documentation
- The three-tiered standardised approach to transfer pricing documentation is represented by Master File, Local File and CbC
- The Action Plan 13 provides a CbCR template for MNEs to report annually, and for each tax jurisdiction in which they do business, the information set out therein

CbCR in India

- India implemented the requirements set out under BEPS Action Plan 13, in section 286 of the Act vide Finance Act, 2016
- The objective of CbCR is to provide tax administrations with the information necessary to conduct a high-level and informed risk assessment analysis of the transfer pricing policies followed by MNEs

Country-by-Country Report (Rule 10DB)

- CbC report is applicable to an international group having total consolidated group revenue of more than INR 5,500 crore (approx. $ 750mn) in the reporting accounting year preceding the financial year
  - For e.g., for FY 2018-19- the consolidated group revenue threshold should be tested for accounting year 2017-18
- Every parent entity or an alternate reporting entity, resident in India, would need to furnish CbC reporting prescribed under Form No. 3CEAD.
- Intimation under Form no. 3CEAC has to be filed by every constituent entity resident in India, of an international group, the parent entity of which is not resident in India

Manner and due date of filing of CbCR

Category of entity	Filing requirements	Due date of filing CbCR
Ultimate Parent entity or alternate reporting entity, resident in India (Section 286(2))	Form 3CEAD for every Reporting Accounting Years	Within 12 months from the end of Reporting Accounting Year
Constituent entity resident in India (whose parent entity is not resident in India (Section 286(1))	Intimation in Form No.3CEAC	2 months prior to due date for filingForm No. 3CEAD
In case of a systemic failure in a country, even though there is an agreement for exchange and this fact has been communicated to the Constituent Entity by the prescribed Authorities (Section 286 (4)(b)	Form 3CEAD for every Reporting Accounting Years	Six months from the end of the month in which such systemic failure has been communicated to the Constituent Entity by the Prescribed authorities

Filing CbCR in India

Section 286(4) of the Act requires constituent entities resident in India to file CbCR in India in the following situations:

- Where the parent entity is ‘not obligated’ to file CbCR in its home country *(a)*
- Where India does not have an agreement for exchange of CbCR with the jurisdiction in which the Ultimate Parent Entity or Alternate Reporting Entity is resident *(aa)*
- Where there has been a systemic failure in a country and this is intimated by the prescribed authority to the constituent entity *(b)*

Extension of deadlines

- The CBDT, vide Notification No. 88/2018 dated 18 December 2018 prescribed timelines with respect to entities covered under section 286(4), providing that the period shall be twelve months from the end of the reporting accounting year
- **Implication** : For an entity having reporting accounting year ending 31 Dec 2017, due date for filing of CbCR would be 31 Dec,2018 i.e. giving only 13 days to such entities.
- To remove such hardships, the CBDT, vide circular dated 26 December 2018 extended such due date to 31 March 2019 for all reporting accounting years ending up to 28 February 2018

Penalties

Non-filing of CbC report by Indian resident parent company or alternate resident company	• INR 5,000 per day up to one month • INR 15,000 per day beyond one month • INR 50,000 per day for continuing default after service of notice
Not furnishing the information called for by the ITA within the given time limit	• INR 5,000 per day up to service of penalty order • INR 50,000 per day for default beyond date of service of penalty order
Furnishing inaccurate details or non-filing of corrected report within 15 days	INR 500,000

CbC Report (contd..)

Establishing substance/ Confidentiality

Risk and readiness assessment

Defend the overall design of the group

CBC report will enable the tax authorities to compare the revenue/ income accruing in a tax jurisdiction vis-à-vis, the tangible and intangible assets situated in the tax jurisdiction, the number of employees, the income tax actually paid on the earnings in that jurisdiction

Identify the availability of data and potential weaknesses in the tax structures or in control over certain (business) processes

The methodology of doing business, the structuring of the operations, the housing of assets and income in various entities and having robust documentation to demonstrate control manifest in each legal entity

CbC Report (contd..)

Identification of resources	Planned policy	Preparedness
Undertake the exercise of documentation	Exchange of requisite information and to facilitate the co-ordination of the same between all the legal entities and the reporting entity	The tax, finance and IT departments are in a state of preparedness for CBC reporting.

CbCR- Appropriate use and confidentiality

- Major concerns regarding confidentiality and appropriate use of CBCR
- The CBDT vide instruction No 02/2018, provided guidance on appropriate use and confidentiality of CbC reports
- This instruction is consistent with the OECD guidelines on appropriate use of information in CbCR. Following are some of the key points :

1. Access to CbC Reports
2. Appropriate use
3. Inappropriate Use
4. Confidentiality

Appropriate and Inappropriate use of CbCR

Appropriate use of CbCR	**Inappropriate use of CbCR**
• High Level Transfer Pricing Risk Assessment • Assessment of other BEPS related risk • Economical and statistical analysis	• Information used as a substitute for detailed TP analysis • Information is the only evidence to propose a TP adjustment

CbCR- Appropriate use (contd..)

- For high-level transfer pricing risk assessment purposes, the CbC report may be useful. Tax administrations may also use it to evaluate other BEPS related risks and for economic and statistical analysis

- The information in the CbC report on its own does not constitute conclusive evidence that transfer prices are not appropriate

- The information in the CbC report may be used as a basis for making further enquiries into the MNE's tax structure and allied matters.

- However, it should not be used by tax authorities to propose transfer pricing adjustments based on a global formulary apportionment of income

Implementation of Action Plan 4 and Action plan 13
Global Trends

Global outlook on BEPS

- The OECD/G20 Inclusive Framework grew from 82 members at the inaugural meeting of the OECD/G20 Inclusive Framework in July 2016, to 129 members and 14 observers, including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions in 2018
- As on July 2019, Eswatini joined the BEPS Inclusive Framework, bringing the total number of jurisdictions to 132
- As of 2019, OECD has undertaken a project (commonly termed as BEPS 2.0) to address the tax challenges of a digitized economy. The proposed changes could have significant impact on MNEs affecting their tax structure and global exchange of information

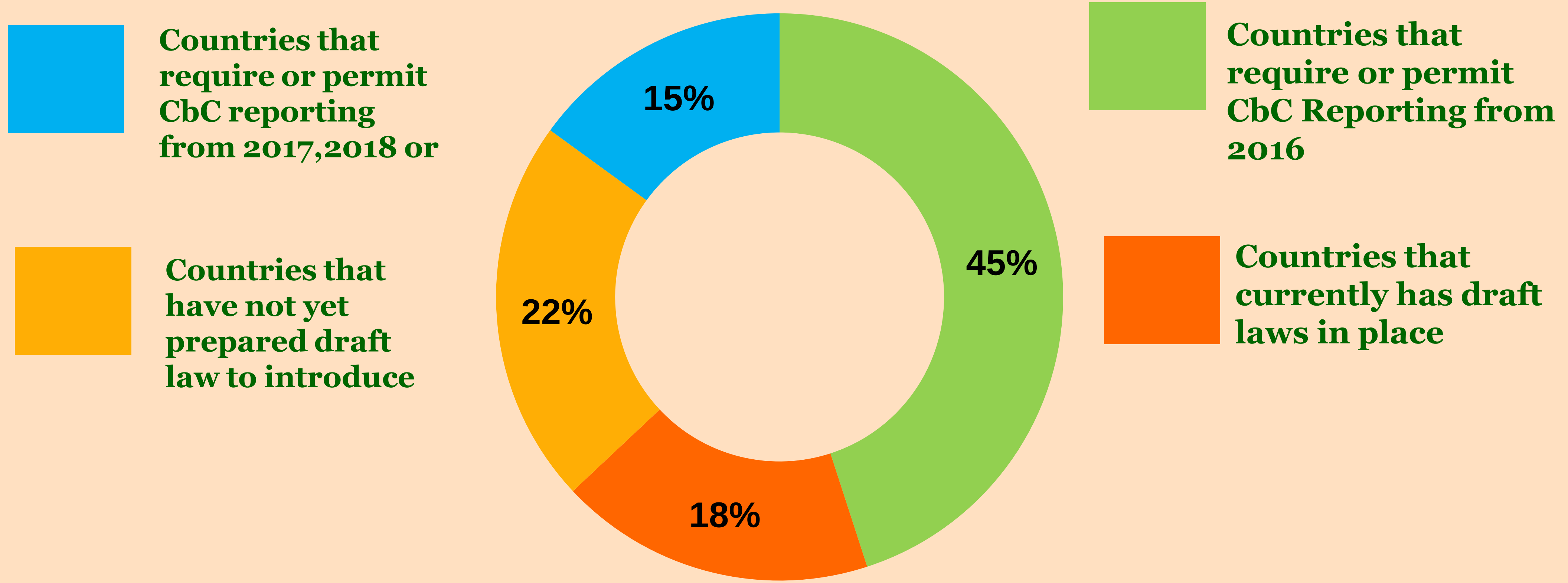
Latest updates on implementation of Action Plan 4 across the globe

- On 1 June 2017, the Iceland amended its interest limitation rules with effect from 1 January 2018
- Argentina introduced a comprehensive tax reform that establishes a new EBITDA rules effective from 1 January 2018
- Norway amended the interest expense limitation rules in its Fiscal Budget,2018
- On 28 June 2019, Malaysia issued rules limiting interest deductions on certain cross border financial assistance limiting deductions to 20% of EBIDTA

Latest updates on implementation of Action Plan 13 across the globe

- A Bilateral Competent Authority Arrangement (BCAA)along with a Bilateral Inter-Governmental Agreement (BIGA) was signed between India and the USA for exchange of CbCR on 27 March, 2019
- Poland has introduced new measures pertaining to country-by-country reporting, exchange of information in May 2019
- In June 2019, Panama established a regulatory framework for country-by-country (CbC) reporting
- In July, 2019, The United Arab Emirates (UAE) has introduced country-by-country (CbC) reporting requirements

Implementation of CbCR across countries by percentage



Source : OECD's inclusive framework on BEPS progress report July 2018-May 2019

Country wise implementation of Action plan 13

Total Number of countries who have implemented CbCR – 80
Total number of countries who have signed the MCAA -82

- Andorra
- Anguilla
- Argentina
- Australia
- Austria
- The Bahamas
- Belgium
- Belize
- Bermuda
- Brazil
- British Virgin Islands
- Bulgaria
- Canada
- Cayman Islands
- Chile
- China (People's Republic of)
- Colombia
- Costa Rica
- Croatia
- Curacao
- Cyprus.
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Gabon
- Georgia
- Germany
- Greece
- Guernsey
- Haiti
- Hong Kong,
- China
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- Iceland
- India
- Indonesia
- Ireland
- Isle of Man
- Israel
- Italy
- Japan
- Jersey
- Kazakhstan
- Korea
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Monaco
- Morocco
- Netherlands
- New Zealand
- Nigeria
- Norway
- Pakistan
- Panama Peru
- Poland
- Portugal
- Qatar Romania
- Russian
- Federation
- San Marino
- Saudi Arabia
- Senegal
- Seychelles
- Singapore
- Slovak Republic
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turks and Caicos Islands
- United Arab Emirates
- United Kingdom
- Uruguay

Source: https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf

Peer Review of Action Plan 13- Phase 2

- Action Plan 13 is one of the four minimum standards under the BEPS inclusive framework, which means that all members of this framework commit to implement and participate in the peer review of Action Plan 13 on an equal footing
- Peer reviews of the BEPS minimum standards are an essential tool to ensure the effective implementation of the BEPS package. First results were available for Action 13 in 2018
- **Key findings:**
  - India's implementation of Action Plan 13 meets all applicable terms of reference
- **Recommendations/exceptions:**
  - Clarify or amend the annual consolidated group revenue threshold calculation in a manner consistent with OECD's guidance
  - Take steps to ensure that local filing is only required in circumstances contained in Terms of Reference

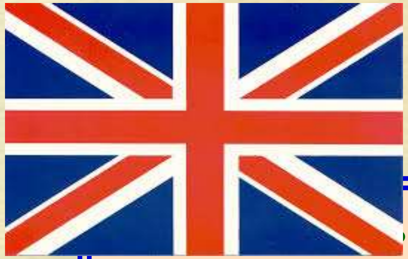
Country-Wise implementation of Action Plan 4 and Action plan 13

Action Plan 4:

- The Tax Legislation limits net interest expense(including third party lenders) to 30% of EBIDTA
- Proposed transition to Earnings before interest and tax by 2022

Action Plan 13

- Final regulations pertaining to CbCR were issued on June 29,2016 and were made applicable for years beginning on or after June 30,2016
- CbCR applies to Multinational companies with a US parent if consolidated revenue exceeds $850 million



Action Plan 4 :

- UK has restricted interest deductibility effective from April 1,2017
- When a de minis threshold of 2 million is exceeded, deductions for net interest expense for the UK entity will be restricted

Action Plan 13 :

- CbCR applies to multinational companies with a UK parent if consolidated revenue exceeds EUR 750 million
- UK subsidiaries of foreign parent will be required to file a CbCR in UK if parent entity is not required to file in its own territory

Action plan 4

- Deduction of Interest expense exceeding interest income (net interest expense) are up to 30% of EBIDTA already existed prior to Action Plan 4
- Additionally, it must also implement EU-Anti Tax Avoidance Directive

Action Plan 13

- Germany was one of the countries that signed the Multilateral Competent Authority Agreement for automatic exchange of CbCR
- CbCR has been implemented in Sec 138a of the General Tax code in line with the OECD Action Plan 13

Action plan 4

- The French Tax Code already includes various deduction limitation rules enacted in 2014
- The deduction of interest is allowed, provided the lender is subject to tax on profits on the interest received amounting to at least 25% of the tax, determined in the French Tax Rules

Action Plan 13

- CbCR and automatic information exchange between states were introduced in the Finance Bill,2016
- It is completely in line with BEPS Action plan 13. CbC report has been introduced for companies whose consolidated turnover exceeds EUR 750 million

Action plan 4

- China uses thin capitalisation and transfer pricing rules to limit interest deductions
- A special issue file is required for taxpayers as per Public notice 42

Action Plan 13

- China has adopted the threefold approach consisting of a Master File, Local File and CbCR
- CbCR will apply if the chinese parent entity's consolidated revenue in the previous fiscal year exceeds RMB 5.5 Billion

Action Plan 4

- The Singapore tax authority has issued guidelines setting out how arm's length interest is to be determined

Action Plan 13

- Singapore has implemented CbCR Rules FY2017 in cases where consolidated group revenue is at least S$1,125 million
- The CbCR must be filed with the IRAS within 12 months from the last day of the financial year

Action Plan 4

- Australia uses thin capitalisation rules, based on debt-to-asset ratios

Action Plan 13

- Australia has signed the Multilateral Competent Authority Arrangement for automatic exchange of CbCR
- Laws related to CbCR has been enacted in line with the OECD approach

Thank You

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