Country-by-country reporting under Italian Law

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In line with international developments, the Italian Government has been focusing on fighting tax evasion and avoidance in recent years.

Studies and in-depth analyses on evasion and aggressive avoidance, conducted under the OECD BEPS project, which was delivered in October 2015, have led to the issuing of a series of measures to be implemented by members of the international community.

BEPS studies have shown that transfer pricing is the area where aggressive tax planning schemes can be most easily implemented by multinational companies.

Within a transfer pricing context, action to prevent evasion by artificially moving profits to low-tax jurisdictions has become more prominent through the introduction of additional documentation requirements, namely the master file and local file.

The introduction of the documentation standards provided by Action 13 of the BEPS Action Plan is, according to the OECD, the most appropriate response to tax avoidance within the international transfer pricing framework.

As recommended by the OECD, the Italian tax authorities require that transfer pricing documentation be compiled for the purpose of:

• acquiring any necessary information to make a clear and well-structured transfer pricing risk assessment;

• ensuring that taxpayers duly take into consideration the conditions required by transfer pricing regulations (that is, respect of the arm's-length principle) in determining the prices of intercompany transactions and in indicating the income from these transactions in their tax returns; and

• acquiring any, and all, necessary information to duly carry out the verifications of intercompany transactions.

Many of the measures suggested within the context of the BEPS Project have been implemented in Italy by Legislative Decree No. 147 of September 14 2015, which contained "provisions laying down measures for [the] growth and internationalisation of enterprises". However, the OECD indications on transfer pricing documentation were implemented by Stability Law 2016 (*Legge di Stabilità* 2016), definitively approved by the Senate of the Italian Republic on December 22 2015.

In compliance with OECD guidelines on country-by-country reporting (CbCR), Law No. 208 of

December 28 2015 introduces into the Italian legal system specific reporting obligations for the business sector (in particular, paragraphs 145-147 of Article 1 of the law).

The first specific guidelines regarding CbCR requirements can be found in the OECD document "Discussion Draft on Transfer Pricing Documentation and CbCR" (the Discussion Draft) of January 30 2014.

The Discussion Draft, after further confirming the importance of the master file and the local file, remarks that the documentation on transfer pricing should also include CbCR on information related to the global allocation of profits, to taxes paid, and to specific economic indicators (tangible assets, number of employees, HR costs, among others) in relation to the various countries in which the multinational group operates.

The new Italian legislation states that the reporting obligation applies to the holding companies of the group residing in Italy under the terms of Article 73 of the Italian Income Tax Code (TUIR). These companies are required to draw up consolidated financial statements if the group reports a consolidated result in the previous tax year worth at least €750 million ($850 million) and if the companies are not, in turn, controlled by parties other than individuals.

The same obligation applies also to subsidiaries located in Italy if the parent company is resident in a country "which did not introduce any CbCR obligation or does not have any agreement with Italy which is in force to allow exchange of information related to the CbCR or that has not complied with its obligation to exchange information relating to the CbCR" (paragraph 146).

The amount of revenue and gross income, taxes paid and accrued, as well as other elements that indicate a genuine economic activity are all subject to reporting.

The Italian tax authorities guarantee the confidentiality of information subject to reporting in accordance with the confidentiality obligations set out in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (paragraph 145).

Paragraph 147 puts the Minister of Economy and Finance in charge of making sure parent companies submit specific CbCRs to the tax authorities containing details of their revenues, profits, taxes paid and accrued, and other elements substantiating the existence of genuine economic activity.

This is in line with OECD provisions set forth on the matter, within the context of the BEPS Project.

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