



LATEST DEVELOPMENTS ON COUNTRY-BY-COUNTRY REPORTING AN UPDATE AS FAR AS ITALY IS CONCERNED

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Introduction

The Decree of the Italian Ministry of Economy and Finance for the implementation of Country-by-Country reporting (hereinafter, “CbCR”) in Italy was issued on 23 February¹ 2017. The latter provided for reporting obligations involving enterprises that meet certain criteria, defining the deadline and the related model to be complied with².

The definition of CbCR terms and standards was expected after the issuance of Law No.208 issued on December 30, 2015 set forth that operational details of the mentioned reporting mechanism had to be determined by the Ministry of Economy and Finance.

However, the Decree represents only the last stage of a longer process started back in 2013 when the OECD launched the BEPS Action Plan, and specifically Action 13. In fact, the Decree introduces into the Italian tax system the minimum standards set under Action 13 as defined by the OECD 2015 Action 13 Report³, and implements the Directive 2016/881/EU regarding mandatory automatic exchange of information. As recommended by the OECD under Action 13, the collection of the reports by the tax authorities should have begun in 2016. In order

to review the implementation of its guidelines and recommendations, the OECD has recently published a detailed paper⁴ that contains the criteria to be followed in assessing such implementation.

In this context, with the aim of increasing transparency on multinational groups even beyond tax-related issues, the European Commission launched in April 2016 its proposal⁵ for a Directive on disclosure of income tax information by certain enterprises and subsidiaries, that will amend the 2013/34/EU Directive. Unlike Action 13 of the BEPS Action Plan, the proposal introduces public disclosure of corporate data, not strictly limited to tax authorities, in order to make citizens aware of the contribution made to the general welfare by such multinational groups. From a business perspective⁶, however, the proposed directive has raised some concerns, mainly on the risk of distorted competition and the different implementation means and procedures of such directive that might take place in Member States.

Reporting Entities and Obligations

The text of the Italian Decree reflects OECD Model legislation related to CbCR as provided by the Country-by-Country Reporting Implementation Package⁷.

1 The official text of D.M. was published on the Italian Official Gazette (“Gazzetta Ufficiale”) No. 56 of 8th March 2017. Cf.: http://www.gazzettaufficiale.it/eli/id/2017/03/08/17A01733/sg;jsessionid=kYvlfghrDMrlhN4oXwpsEQ_.ntc-as5-guri2b

2 For a first review of the Decree, A. Della Rovere and F. Correa, Country-by-Country Reporting Finally Arrives in Italy, TP Week, March 20, 2017. Cf.: [http://www.tpweek.com/Article/3670840/Country-by-Country-Reporting finally arrives in Italy.html?ArticleId=3670840](http://www.tpweek.com/Article/3670840/Country-by-Country-Reporting%20finally%20arrives%20in%20Italy.html?ArticleId=3670840)

3 OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

Cf.: <http://dx.doi.org/10.1787/9789264241480-en>

4 OECD (2017), BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. Cf.: www.oecd.org/tax/beps/beps-action-13-on-country-by-country-reporting-peer-review-documents.pdf

5 The official text of the proposal, COM(2016) 198 final, is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0198>

6 As the public consultation carried out by the European Commission indicated. The main takeaways are described in a report available at: http://ec.europa.eu/finance/company-reporting/docs/country-by-country-reporting/160412-synopsis_en.pdf

7 Annex IV to OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report.

Therefore, it initially offers a list of definitions and the regulation's scope of application.

With the aim of identifying such entities that are required to report, Article 1 specifies that only multinational groups of companies with total annual revenue equal to, or exceeding € 750 million, and either the parent or any of the subsidiaries of the group identifiable as Italian tax residents, must comply with the new regulation.

According to the Decree, the CbCR must be filed with the Italian Revenue Agency (hereinafter the "Agency") by Italian parent companies. However, a reporting obligation may arise also for Italian subsidiaries whenever the Agency is unable to obtain CbCR or any equivalent report regarding the respective multinational group, from either the parent company or other source.

Concerning, instead, the data to be provided by reporting entities, the Decree specifies that CbCR should include information both, of a financial nature (e.g., revenue, profit or loss before income tax, income tax paid and accrued, stated capital, and retained earnings) as well any data/information related to organizational aspects (e.g., jurisdiction of incorporation, activities carried out, and permanent establishments). The said information must be reported on an aggregate basis and reference must be made to each single entity that belongs to the group, filling in the CbCR form that has been published as an annex to the Decree with the function of guiding and supporting the required enterprises in reporting the relevant data. In this regard, more details related not only to the data to be included in the report and its format (e.g., language requirements), but also to the reporting process and the practical implementation of the Decree, will be clearly defined by the Italian Revenue Agency's Director in a specific guideline.

In addition to the CbCR filing, the Decree provides for a series of notifications by Italian entities belonging to multinational groups within its scope. First, the parent companies located in Italy must inform the Agency, within the deadline for filing the tax return, with regard to the fact that the group meets the conditions set by the Decree. Moreover, the Italian subsidiaries of the multinational group must communicate the details referring to the controlling entities required to file CbCR on behalf of the group.

Timing and Deadlines

The new regime is already applicable to the 2016 tax year. Taking into account that the deadline for CbCR submission is twelve (12) months from the last day of the relevant tax year, this, in essence, implies that the first CbCR shall be filed in Italy by the end of 2017.

Data and Confidentiality

Once the reports are filed for the relevant fiscal year and the required data are duly collected, the information exchange will take place within eighteen (18) months starting from the end of the fiscal year. Therefore, considering the above mentioned deadline for filing the report, the information collected will be exchanged by the Agency within six months from filing date.

The exchange of information must take place with a certain degree of confidentiality that should at least correspond to the standard specified by the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters⁸, and which under Article 22 refers to an appropriate level of protection of personal data and to safeguards applicable according to the domestic law of the tax office transmitting the information.

In this regard, it is not clear if the supplementary guidance on the filing process, that the Italian Revenue Agency is expected to publish, will also include confidentiality matters related to exchange of data with other tax agencies. This is a major issue for multinational groups, considering their concern about such extensive sharing of sensitive corporate data between and among several tax offices. In this regard, Article 7 of the Decree sets some restrictions to the use of the collected information. In particular, the data contained in the CbCR filed by taxpayers cannot be used as the base for transfer pricing adjustments. Nevertheless, the same data might be used as a helpful indication for further investigations on pricing agreements or, in case of tax audit, for tax base adjustments. Therefore, the data reported potentially expose enterprises to investigations and assessments, which may lead to different adjustments.

To conclude, the new CbCR regulation poses some challenges for multinational groups:

- significant efforts, in terms of time and resources, required of such multinational groups that fall within the Decree's application scope.
- extent of disclosure under such regulation, where sensitive data about the group's organization and strategy are involved.

Therefore, it is necessary for Tax Authorities not only to establish some clear-cut boundaries to the use of such data by the tax authorities, but also to provide for a set of safeguards to guarantee a sufficient level of confidentiality to the same data while these are processed and shared.

⁸ OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol, OECD Publishing, Paris.

Cf.: <http://dx.doi.org/10.1787/9789264115606-en>