

Country-by-country reporting finally arrives in Italy

In February 2017, the Italian Ministry for Finance issued the long-awaited ministerial decree for the implementation of country-by-country reporting (CbCR) in Italy – Ministerial Decree No. 23 of February 23 2017. Antonella Della Rovere and Filipa Correia of Valente Associati GEB Partners discuss the implications.

CbCR is the obligation of multinational enterprises to “provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax, income tax paid and accrued and certain other predefined information”, according to the OECD.

Such obligation had already been introduced in Italy by virtue of the Budget Law for 2016. Amongst others, this law foresaw legislation that would define the details and hence allow implementation of the new obligation. The measures enacted by the Italian legislator follow relevant OECD recommendations, as reflected in the Final Report on Action 13 of the Base Erosion and Profit Shifting (BEPS) Project while also in line with the Directive 2016/881/EU.

To begin with, the new obligations refer exclusively to multinational groups of companies with total annual revenue equal to or exceeding €750 million (\$806 million). The relevant tax year is that preceding the tax year to which CbCR refers. Italian legislation is applicable where either the parent or any of the subsidiaries of such group are tax residents in Italy.

In this scenario, the Italian parent companies have an unconditional obligation to file CbCR with the Italian Revenue Agency (IRA). To the contrary, Italian subsidiaries have such obligation only in case the IRA is unable to obtain CbCR or equivalent report regarding the respective multinational group from another source, e.g. in lack of equivalent obligation of the parent in its residence jurisdiction. To this end, there are several options available to multinational groups to concentrate CbCR obligations to specifically appointed entities and thus ensure compliance while reducing relevant costs. Such appointment shall be relevant where the parent of the group does not need to file CbCR or circumstances might occur that the CbCR might not be effectively communicated to tax authorities of any jurisdiction where the group has business activities.

In any case, the CbCR includes information on (i) amount of revenue, (ii) profit or loss before income tax, (iii) income tax actually paid, (iv) income tax accrued, (v) stated capital, (vi) accumulated earnings, (vii) number of full-time employees, and (viii) net book values of tangible assets. Such data must be reported on an aggregate basis for each tax jurisdiction where the group extends its activities. Furthermore, a list of the entities of the group, including permanent establishments, reported per tax jurisdiction of activity, needs to be provided. Description of the nature of the sole or of the main activity of such entities is required as well.

The first tax year of application of the new regime in Italy is 2016. Taking into account that the deadline for the submission of CbCR is due 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. In this respect, it is noteworthy that the Italian legislator does not distinguish between parent and subsidiary companies as regards first year of application, despite the relevant option in the EU directive.

However, it is duly taken into account that several jurisdictions are planning to enact CbCR or equivalent obligations starting from 2017 or might provide option as to the first year of CbCR. Hence, Italian subsidiaries can be exempted from CbCR filing obligations for the tax year 2016, where the inability of the IRA to obtain CbCR is due to lack of filing obligation of the foreign parent and such lack is to be remedied within 2017. In such case, additional pre-condition for the exemption of the Italian subsidiary is the voluntary submission of CbCR by the foreign parent in its country of residence.

Apart from the core obligation of CbCR filing, the new decree provides for a series of notifications by Italian entities belonging to multinational groups within its scope. Such notifications refer in particular to the designation of subsidiaries to file CbCR on behalf of the group or its EU part. It also includes authorisation to the IRA to specify the form and language to be used for the submission of CbCR.

In accordance with the Budget Law for 2016, non-compliance with the above obligations is subject to administrative sanction amounting to €10,000-50,000. Non-compliance may refer for example to lack of filing of CbCR or provision of incomplete or inaccurate information.

The issuance of the ministerial decree signals the implementation of CbCR in one more country. This is all the more important taking into account the objectives pursued by the introduction of this and equivalent requirements. In fact, as per the Final Report on BEPS Action 13, CbCR has been envisaged as part of the transfer pricing documentation submitted by multinational corporations to fulfill a twofold purpose. On the one hand, it shall put pressure on multinationals to ensure consistency of the positions they adopt in the different jurisdictions where they have business activity. On the other hand, it shall provide tax authorities with sufficient information to better understand the structure and operations of multinationals and better target their audits to the riskiest ones. In this context, the multiplying number of jurisdictions adhering to OECD recommendations expressed within the BEPS Project, instills hope for the outcome of the worldwide struggle to reform the tax system.

Nevertheless, this complete renovation of international taxation should not prejudice taxpayers’ rights. Charging taxpayers with additional obligations should be matched with due respect for and promotion of their rights. The Italian legislator seems to have well understood the importance of such premise, duly including a special provision on data protection both in the authorising budget law and the ministerial decree. Hopefully practice will meet the high standard set.

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