ITALY

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Italy issues changes to the operation of country-by-country reporting

Antonella Della Rovere and Sara Parillo of Valente Associati GEB Partners/Crowe Valente outline how the latest Ministerial Decree improves and streamlines the current country-by-country reporting process for Italian entities.

The Ministry of Economy and Finance has produced some amendments regarding the use of the data and information contained in country-by-country reporting (CbCR) with the Ministerial Decree no. 194 of August 8 2019 (hereinafter, the Decree).

Pursuant to Article 4 of the Decree of February 23 2017, the information contained in CbCR concerns consolidated data relating to all the companies of the group analysed regarding revenues, profits, taxes, etc., as well as the definition of all the activities and functions carried out by the group's entities.

As such, Article 7 of the Decree provides the possibility for tax authorities to transfer, if requested, data relating to CbCR to the Department of Finance of the Ministry of Economy and Finance, which shall use them exclusively for economic and statistical analysis, as well as for other related institutional purposes. Thus, the Department of Finance will also have access to all the information and data contained in the above-mentioned documentation.

Notwithstanding the above, it is important to point out that it is forbidden for any transfer pricing adjustment to be based on information contained in the CbCR or to be exchanged between the competent authorities in each member state of the European Union and any other jurisdiction with which an agreement is concluded. The use of the latter information, in accordance with the aforementioned Decree and with the provisions of the OECD should be limited to the activities listed below:

- Monitoring and risk assessment related to existing transfer pricing agreements;
- Risk forecasting (in addition to those referred to in the previous point, which may be related to tax base erosion); and
- Preparation of economic and statistical analysis which reveal anomalies present in different jurisdictions for companies operating in the same field and belonging to the same multinational group.

Although the data and information contained in CbCR may not be used as sufficient evidence to carry out transfer pricing surveys by the tax authorities, it can be utilised as an important starting point to determine potential areas of risk for further verification and control.

This information can therefore influence tax audits, determine their approach and risk, which could lead to premature conclusions in the absence of the carrying out of a more detailed investigation, aimed at clarifying the critical aspects and at evaluating the existence of possible tax risks.

Moreover, it is important to underline that the data contained in the CbCR is consolidated and may not be significant for the purposes of tax audits concerning a specific company of the multinational group. This data provide indicators that are not very representative of the real tax structure of the individual entity, because they have clear limits due, in part, to the lack of homogeneity of the sources from which the information used derives.

Furthermore, should the CbCR include a higher level of content, by providing further detailed information related to each single entity belonging to the multinational group, it could be used as another tool in an audit by tax authorities to conduct further analysis on the single entities' tax structure.

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