



## Italian tax authorities publish guidance on implementation of CbC reporting rules, delay filing due date

### Global Transfer Pricing Alert 2017-054

Italy's Revenue Agency on November 28 issued an order that provides detailed instructions on the preparation and filing of the country-by-country (CbC) report. Then on December 11, the tax authorities issued a measure extending the due date for filing the CbC report from December 31, 2017, to February 9, 2018.

#### **CbC reporting requirement**

Italy's Budget Law 2016, approved on December 28, 2015, introduced an obligation for ultimate parent companies of multinational groups resident in Italy for tax purposes with consolidated turnover in excess of EUR 750 million to prepare a CbC report through which they must report to the tax authorities certain economic and financial information, broken down for each country in which the group operates.

A decree providing instructions for the implementation of the CbC reporting requirement was published in the Italian official gazette n. 56 on March 8, 2017, providing in part that:

- The CbC report covers fiscal years beginning on or after 1 January 2016, and must be filed within 12 months from the end of the reference year (for example, for entities with calendar-year reporting periods, the deadline for submission for fiscal year 2016 will be 31 December 2017);
- The CbC reporting obligation applies to both Italian tax resident subsidiaries and permanent establishments of foreign entities, part of multinational companies that fall within the scope of the CbC reporting obligation set forth in the aforementioned Law, in the event that the ultimate

parent company required to prepare consolidated financial statements is resident in a state that:

- Has not introduced the obligation to file a CbC report, unless, for the fiscal year beginning in 2016 only:
  - The parent company files the CbC report voluntarily in its state of residence; and
  - The state has introduced, within the terms of presentation of the CbC report in Italy, an obligation to prepare the subject document, even if just for later periods (for example, United States parent entities, where the obligation starts from fiscal years beginning on or after June 30, 2016);
- Does not have an agreement in force with Italy regarding the exchange of information related to CbC reporting; or
- Defaults on its obligation to exchange information regarding CbC reporting, or if the parent company fails to submit the CbC report in its state of residence.
- Alternatively, the CbC report may be prepared by a company other than the parent entity, provided that its state of residence fulfills the above-mentioned requirements and that the Italian entity identified in the tax return the identity and residence of tax jurisdiction of that other company;
- The standard content of the CbC report reproduces the same three sample tables included in the OECD BEPS action 13 final report.

On November 28, 2017, the director of the Italian Revenue Agency issued Order n. 275956 implementing the decree, and providing detailed guidance for the preparation and filing of the CbC report.

### **New guidance**

The order provides that CbC reports must be filed through the Internal Revenue Agency's online transmission system, "Entratel" or "Fisconline," in XML format. The ordinary deadline is 12 months from the end of the reference year, starting from fiscal years beginning on or after January 1, 2017.

On December 11, the tax authorities issued Measure n. 288555 extending the due date for reporting periods starting on or after January 1, 2016, and ending on or before December 31, 2016, from December 31, 2017, to February 9, 2018 -- 60 days following the measure's publication date.

The order clarifies a number of other points:

- **Revenues:** revenues from extraordinary income and capital gains from the sale of assets fall within the definition of "revenue." However, the definition of "revenue" does not include payments received from other entities belonging to the group that are considered dividends in the tax jurisdiction of the paying agent. Intercompany revenues in a specific country must not be eliminated, but considered on an aggregate basis.
- **Sources of data:** the entities in charge of the preparation of the CbC report may opt to use data obtained: (i) in the

process of preparing consolidated financial statements; (ii) from the individual financial statements prepared by the entities that belong to the group; (iii) from their internal accounting; or (iv) from the accounting records kept for regulatory purposes. If it is necessary to use more than one data source, the reasons underlying that choice must be described in Table 3. The order specifies that it is not necessary either to reconcile the reporting data with data reported in the consolidated financial statements, or to make adjustments for differences in accounting standards applied in the different tax jurisdictions. However, taxpayers are obligated to use the same data sources over the years.

- **Income taxes paid:** income taxes paid include those actually paid by the group entity in its tax jurisdiction and in all other tax jurisdictions. Income taxes paid include advance payments, income taxes relating to previous years, also in relation to tax assessments, as well as withholding taxes withheld at source.
- **Income taxes accrued on income:** that is the amount of current taxes accrued on the taxable profit or tax loss for the year to which the income tax statements of all group entities resident for tax purposes in the relevant tax jurisdiction refer, regardless of whether they have been paid or not. Current taxes do not include prepaid or deferred taxes, nor provisions for tax liabilities that are not yet certain as to their amount or existence.
- **Equity and retained earnings regarding permanent establishments:** The order clarifies that the stated equity and retained earnings concepts are generally not relevant for PEs. Indeed, they must be reported by the legal entity to which the PEs ultimately belong (unless, with regard to equity, a specific capital requirement must be met for regulatory purposes in the PE's tax jurisdiction). Other information, such as revenues, tangible assets, number of employees, taxes paid, etc., must be provided with reference to the PEs and excluded from the entities to which the PEs belong.
- **Number of employees:** the number of employees may be:
  - The number of employees at the end of the year;
  - Calculated on the basis of average employment levels for the year; or
  - Calculated on any other meaningful basis.

However, the method of calculating the number of employees must be applied consistently across tax jurisdictions and over the years. Moreover, "external collaborators who participate in the normal operating activities of a group entity" may be counted as employees of the entity.

- **Currency:** the amounts reported are disclosed in the currency used for the:
  - Preparation of the consolidated financial statements; or
  - The financial statement of the entity in charge for filing the CbC reporting.

Paragraph 145 of the Budget Law 2016 provides for the imposition of an administrative penalty between EUR 10,000 and EUR 50,000, if the CbC report is not filed or it is filed with incomplete or incorrect information.

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