



Italy introduces country-by-country reporting requirement

Global Transfer Pricing Alert 2016-008

Italy introduced a country-by-country reporting obligation in its 2016 budget law approved on December 28, 2015 (Law no. 208/2015, published in the Italian Official Gazette on December 30, 2015), effective January 1, 2016.

Paragraphs 145 and 146 of Article 1 of the budget law – also known as the Stability Law -- impose an obligation on multinational enterprises (MNEs) that exceed certain thresholds to prepare a country-by-country report along the lines set forth in the OECD's final report on Action 13 of the BEPS Action Plan, "*Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*." MNEs subject to this obligation must report to the tax authorities financial information for each country in which the group operates.

The goal of the CbC reporting requirement is to make the global allocation of income among businesses (both legal entities and permanent establishments) belonging to an MNE more transparent, and to make the exchange of information among tax authorities easier, to support them in the evaluation of the appropriateness of intercompany transfer prices.

The CbC report should constitute an additional instrument to support the tax authorities in their risk assessment activities, as indicated by paragraph 145 of Article 1 of the Stability Law, as well as the OECD document "*Guidance on the Implementation of Transfer Pricing Documentation and Country by-Country Reporting*."

The report must be prepared by parent companies of multinational groups with a consolidated turnover of over €750 million (in the tax period before the one referred to in the report), and that are the entities ultimately required to prepare group consolidated financial statements and are not controlled by anything other than individuals. The report must be submitted to the tax authorities in the country of residence, and eventually will be shared with the tax authorities of other countries through exchange of information tools.

It must be highlighted that, pursuant to Art.1, paragraph 146, the reporting obligation, as recommended by the OECD and stated in the regulations of other countries (such as Spain), is extended to subsidiaries resident in Italy for fiscal purposes, part of multinational companies that meet the conditions set forth in the law, if 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;
- Does not have an agreement in force with Italy for the exchange of information related to the CbC reporting; or
- Fails to fulfil its obligation to exchange information relating to the CbC report.

The aforementioned rules refer exclusively to subsidiaries, and it is not clear whether the same apply also to Italian permanent establishments of foreign entities, as, for example, provided by the Spanish CbC reporting regulations.

Instructions regarding the timing and procedures for filing the CbC report with the Italian tax authorities will be provided in an implementing decree to be issued by the Ministry of Economy and Finance within 90 days after the date of entry into force of the Law (January 1, 2016), having regard to the relevant OECD guidelines (Action 13 and the document "*Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*").

According to the OECD's recommendations, the first CbC report should cover fiscal years beginning on or after January 1, 2016, and the submission deadline should be either the filing date of the relevant tax return, or within 12 months from the end of the reference year (for companies with calendar year reporting periods, the deadline would be December 31, 2017, for the report relevant to fiscal year 2016).

Content of CbC report

Assuming the standard CbC report is adopted according to OECD Action 13 recommendations, the Italian CbC report would comprise two different sections:

- A first section, containing information on the allocation of the MNE's income and resources by tax jurisdiction, and in particular
 - Total revenues obtained in a given country, segregated by related and third-party revenues
 - Total profits (losses) before income tax of all the entities resident for tax purposes in each tax jurisdiction
 - The group's total current tax expenditures in each country (both in terms of tax accrued and cash taxes paid)
 - Total equity (including the free capital of permanent establishments) of all entities resident for tax purposes in each tax jurisdiction
 - Total accumulated earnings of all entities resident for tax purposes in each tax jurisdiction as of the end of the year
 - Number of employees working in the various countries in which the group operates
 - Net book value of tangible assets (other than cash and cash equivalents) of all entities resident for tax purposes in each tax jurisdiction
- A second section, containing information on the individual group entities (both permanent establishment and subsidiaries) operating in the different countries, including:
 - Tax jurisdiction of residence
 - Tax jurisdiction of the entity at the time of incorporation
 - Type of activities carried out by each group entity

Taxpayers that fail to comply with the CbC reporting requirement (missing or incomplete reporting) will be subject to an administrative penalty between €10,000 and €50,000.

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