



Implementation decree of Italian CbCR rules published

Highlights

- Application of CbCR rules as from first reportable period ending on or after 31 December 2016
- Obligations for Italian parents and Italian subs of MNE groups with parents in non-complying States
- Exemption for 2016 for Italian subs with parents in non-complying States in case of voluntary filing by the foreign parent
- CbCR to be used by tax authorities as an indicator to start further enquiries on transfer pricing

On 8 March 2017, the decree of the Italian Ministry of Finance that implements the country-by-country reporting (“CbCR”) obligations (“Decree”) was published in the Official Gazette. The Decree provides detailed rules to implement and make effective the provisions on CbCR enacted by Law No. 208 of 28 December 2015 (Finance Act 2016) in compliance with the indications contained in the EU Directives and OECD deliverables on CbCR. The first reportable period is the annual accounting period that begins in 2016 and therefore 1 January-31 December 2016 for groups following the calendar year for accounting reporting.

1. The entities obliged to file CbCR

Under the Decree, CbCR obligations may only apply to Italian resident companies that belong to multinational groups that have consolidated revenues not lower than EUR 750 million (or a corresponding amount in the local foreign currency).

A multinational group (“MNE Group”) is defined as a plurality (group) of enterprises, resident in different jurisdictions (or having permanent establishments in different jurisdictions), that are related through ownership/control and obliged to draft consolidated financial statements according to domestic accounting principles (or that would be obliged if the

shares of any of the enterprises were traded on a regulated market).

For CbCR purposes, the parent company of an MNE Group (“Parent”) is the company that is obliged to draft consolidated financial statements according to its accounting principles and is not controlled, whether directly or indirectly, by other enterprises of the MNE Group.

The following entities are obliged to file CbCR under the Decree:

- a. Italian resident Parents;
- b. Italian resident subsidiaries of an MNE Group (“Subsidiaries”) if:
 - the non-resident Parent is not obliged to file CbCR in its State of residence; or
 - there is no qualifying automatic exchange of information (“AEOI”) agreement for CbCR purposes between Italy and the State of residence of the non-resident Parent; or
 - the Italian tax authorities notified the Italian resident Subsidiary that the State of residence of the parent company suspended the AEOI or repeatedly omitted to transmit the CbCR files to the Italian tax authorities.

2. Cases of exemption from CbCR for Italian Subsidiaries

Even if one of the conditions described under letter (b) of paragraph 1 is met, an Italian Subsidiary is in any case exempted from filing CbCR in the following circumstances:

- i. the MNE Group has more than one Subsidiary in the EU and designates another Subsidiary to file CbCR, provided that such Subsidiary receives all the information needed to prepare the filing; or
- ii. the MNE Group voluntarily appoints a surrogate Parent to file CbCR in its State of residence, provided that if the surrogate Parent is resident outside the EU additional requirements must be met (e.g. it must be resident in a State with mandatory CbCR rules and with a qualifying AEOI agreement with Italy); or
- iii. the Parent voluntarily files CbCR with the tax authorities of its State of residence, subject to certain additional conditions (e.g. the foreign State should enact CbCR legislation by the deadline for filing the first CbCR under the Decree).

Exemption under (iii) – which, for example, is key for MNE Groups with a U.S. Parent, considering that the first reportable period for CbCR in the U.S. for calendar year companies should be 2017 – is only available for the reportable period that is current on 31 December 2016.

3. Communication duties

Within the deadline to file the annual corporate tax return:

- the Italian resident entity that is obliged to file CbCR must notify the Italian tax authorities that it has such obligation; and
- any other Italian resident entity of the MNE Group must indicate to the Italian tax authorities which entity of the MNE Group will file CbCR and the tax residence thereof.

The CbCR must be filed within 12 months of the last day of the reportable period (i.e. for calendar year taxpayers the deadline is 31 December 2017). Within 3 months (6 months for the first filing) from such deadline the Italian tax authorities will transmit the file to all EU States and to the other States having a qualifying AEOI agreement in force with Italy.

4. Contents of the CbCR filing

In line with OECD and EU recommendations, the CbCR will be in the form of charts (i) reporting consolidated data of all entities belonging to the MNE Group (revenues, pre-tax results, income taxes paid and accrued, stated capital, accumulated earnings, number of employees and tangible assets) and (ii) identifying each single entity of the MNE Group (inclusive of a separate indication of permanent establishments) with a description of its activity. If an Italian Subsidiary is obliged to file CbCR and it does not receive information from its Parent to prepare CbCR, it will prepare the CbCR based on the available information but will inform the Italian tax authorities that the Parent did not provide other information.

5. Possible utilization of CbCR data by the Italian tax authorities

The Decree explicitly provides that:

- the Italian tax authorities may use the CbCR information to assess any transfer pricing risk or other base erosion or profit shifting risks and for statistical analyses; and
- no transfer pricing adjustments can be grounded on the information acquired through the CbCR, but such information can be the basis for further analysis in APA discussions or in tax audits which may then entail a transfer pricing adjustment.

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