DGTAX FOCUS

COUNTRY BY COUNTRY REPORTING

INTRODUCTION

Starting from the 2016 tax year, Italy has introduced the Country by Country reporting obligation (so-called "CbCR") for Italian companies who belong to multinational groups.

The CbCR can be defined as the multinational groups' tax risk assessment tool through which the tax administrations of the countries in which these groups have a presence obtain a series of information referable to the global allocation of revenues, incomes, and taxes paid, along with indicators related to the location of economic activities within them.

Action # 13 defined within the BEPS package (so-called "Final Report") published by the OECD on October 5, 2015 includes recommendations whose purpose is to encourage the introduction of a common transfer pricing documentation standard ("Master file" and "Local file ") and the Country by Country Reporting obligation, in order to improve and coordinate in a more articulate way the documentation required to multinational companies (MNEs) in the field of transfer pricing, and to proceed with the identification of a minimum set of standardised information with the aim of identifying tax risk avoidance areas.

THE ITALIAN LEGISLATION

The Italian legislation, reflecting the OECD guidelines and the EU directive, establishes that a multinational group that complies with the following requirements:

1. is required to draw up the consolidated financial statements, and
2. has achieved annual consolidated revenues exceeding 750 million euros

is obliged to file with the tax authorities of the parent company's country, separately for each jurisdiction:

a) the identifying data of group companies, as well as the type of activity carried out, and

b) data (in an aggregate form) relating to the economic and asset-related status of all companies belonging to the group, among which:

   a. Income taxes
   b. Equity
   c. Number of employees

SCOPE OF APPLICATION

With the entry into force of law no. 208/2015 ("2016 Stability Law"), the national extension of the CbCR obligation for multinational groups requires the identification of the scope of application of the law.

The parent company ("Ultimate Parenty Entity" or "UPE") has to file the CbCR regarding the perimeter of group companies ("constituent entities") to the tax authority of its country of residence; this information will in turn be automatically exchanged with the other countries' authorities — those countries with which international agreements of information sharing are in force.

The following definitions apply:

ULTIMATE PARENT ENTITY:

i. owns direct or indirect control of one or more group entity ("constituent entities") resident in foreign jurisdictions;

ii. must draw up the consolidated financial statement, applying the principles of their tax residence jurisdiction;

iii. there is no other group entity that holds direct or indirect control of one or more group entitiy that is required to draw up the consolidated financial statement.

CONSTITUENT ENTITY:

i. any group entity included in the relevant perimeter for the purposes of the consolidated financial statements drafting;

ii. any entity excluded from the group's consolidation perimeter solely by virtue of the application of relevance thresholds;

iii. any permanent establishment of a group entity which draws up a financial statements for financial reporting, management purposes, etc.

If the parent company is not obliged to submit the CbCR report in its state of residence, the Ministerial Decree of 23.02.2017 lists the subjects who are required - as a second-tier obligation, and if any exceptions and exemptions apply for the UPE to file - to prepare and send the file:

- Entity belonging to the group different than the parent company (art. 2 co. 2 and 3 of the Ministerial Decree of 23.2.2017);
- Substitute of the parent company (art. 2 co. 6 of the Ministerial Decree of 23.2.2017);
- Designated entity (art.2 co. 4 and 5 of the Ministerial Decree of 23.2.2017).

From an operational point of view, therefore, two new obligations have been introduced for Italian companies:

A. to communicate to the Italian tax authorities the identifying data of the non-resident subject required to fulfill the CbCR in its country. This obligation must be fulfilled by providing the related data in the appropriate section of the annual tax return (Form "REDDITI"), to bi filed with the authorities within the eleventh month from the closing date of the financial year;

B. to submit the CbCR to the Italian tax authorities, if the entity obliged to prepare it is the Italian company belonging to the group - and the deadline for proceeding with this fulfillment is set within 12 months following the closing date of the financial year.

ITALIAN SUBJECTS, NON-UPE, BELONGING TO A MULTINATIONAL GROUP

In the event that the conditions referred to in points 1. and 2. above are fulfilled and unless the following statements are true:

- the parent company is not obliged to file the CbCR in its country;
- there is no specific qualifying agreement for the automatic exchange of information related to the data summarized in the CbCR between Italy and the parent company's country;
- the Italian tax authorities have communicated a misreporting fault in the information exchange for CbCR purposes in the parent company's country;

the obligation to present the CbCR is placed on the UPE, and the Italian entities belonging to a multinational group are only required to report to the tax authorities a minimum set of identification information through the tax return (Form "REDDITI").

ULTIMATE PARENT ENTITY – STRUCTURE OF THE CbCR

If an entity falls within the definition of "ultimate parent entity" and parameters referred to as 1. and 2. in the previous paragraphs are verified, it will be required to submit the complete reporting package. The structure of the CbCR will therefore be pervasive, including the information mentioned in the following three tables.

Table 1 concerns economic and asset-related information, and requires the sharing of the following quantitative data:

- Revenues (with related and non-related parts)
- Profit (loss) income before taxes
- Paid income taxes (based on cash accounting)
- Income taxes accrued - current year
- Capital declared
- Retained earnings
- Number of employees
- Tangible fixed assets other than cash and cash equivalents

The second table requires the mapping of the entities belonging to the group, aggregated by tax jurisdiction, and it concerns the list of activities carried out, detailed according to the following list:

- Research and development
- Ownership or management of intellectual property rights
- Purchases or tenders
- Manufacturing or production
- Sales, marketing or distribution
- Administration, management or assistance services
- Provision of services to unrelated parties
- Internal group financing
- Regulated financial services
- Insurance
- Holding of shares or other capital instruments
- Others

Finally, the third table requires the provision of additional and ancillary information to facilitate the understanding of what is reported within the previous two templates.

FILING TERMS

Non-UPE—Updating of informationa and filing has to be performed on an yearly basis, by filling in a dedicated section of the income tax return, the deadline of which is currently set to the eleventh month after the closing of the fiscal year.

UPE—Filing of the CbCR package to the tax authorities is performed with the standard e-channels of dialogue with the tax authorities, in the ".xml" format.

The ordinary presentation deadline is set at 12 months from the last day of the tax period to be reported.

Tax authorities can report possible errors or anomalies to the transmitting subject via certified e-mail (i.e. "PEC") or by ritual notification and in such cases, filing entities can send corrective reports within the 60 subsequent days.

The party obliged to comply with CbCR obligations can also file correction reports on an autonomous basis.

PENALTIES

In the event of failure to submit the report or the submission of incomplete or untruthful data, penatlties apply— ranging from 10,000 to 50,000 euros; late filing is also fined within the same level range.

Tax authorities have however clarified that the a voluntary correction, pursuant to art. 13 of Legislative Decree 472/97, is applicable in order to remedy potential violations.

FOR MORE INFORMATION PLEASE CONTACT

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