

Italy issues rules for implementation of country-by-country reporting

Italy on 8 March published a decree implementing a country-by-country (CbC) reporting requirement in the Official Gazette. The CbC reporting requirement had been introduced in the Budget Law 2016 (also known as the Stability Law) approved on 28 December 2015.

The Stability Law introduced a mandatory reporting requirement for multinational companies into Italian tax legislation, effective 1 January 2016. The 8 March decree was originally scheduled for publication in March 2016.

The CbC reporting requirement, as stated in par. 7 of the decree and paragraph 145, Article 1 of the Stability Law, will be used by the Italian tax authorities to assess the reasonableness of the transfer pricing model, as well as to evaluate other risks concerning the erosion of the taxable base in Italy, and represents an additional instrument to support the tax authorities in their risk assessment activities.

Paragraphs n. 145 and 146 of Art. 1 of the law introduce an obligation for multinationals that exceed certain size thresholds to prepare CbC reports, through which they will report to the tax authorities information for each country in which the group operates.

The CbC reporting obligation was enacted in response to the OECD project to counter the erosion of the tax base and the shifting of profits abroad through elusive practices – the base erosion and profit shifting, or BEPS, project – which consisted of 15 “actions,” including Action 13, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*.

The CbC report must be prepared by parent companies of multinational groups resident within Italy for tax purposes, with a consolidated turnover of over EUR 750 million.

The entity responsible for the preparation of the document is the parent company, specifically the entity with the responsibility to prepare the consolidated financial statement.

Under the decree, 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 will be 31 December 2017 for fiscal year 2016.

Controlled entities resident in Italy for tax purposes that are part of multinational groups subject to the obligation to file the CbC report must notify in their tax return (due nine months from the fiscal year end) the details of the group entity in charge for the preparation of the CbC report, including its tax jurisdiction.

On the basis of the law and of the provisions of Art. 2 of the decree, the CbC report obligation will be extended 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 by the Stability 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, as stated in art. 2 par. 7 of the decree, for the fiscal year beginning in 2016 only:
 - The parent company voluntarily files the CbC report in its state; 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 consolidating entities, where the obligation applies to fiscal years beginning on or after 30 June 2016);
- Does not have in force an agreement with Italy regarding the exchange of information related to CbC reporting; or
 - Defaults on its obligation to exchange information regarding CbC reporting, or in case the parent company fails to submit the CbC report in its state of residence.

Alternatively, the CbC report can be prepared by a company other than the consolidating 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.

As indicated in the annex to the decree, the standard content of the CbC report will reproduce the same three sample tables included in the Action 13 final report.

The Stability Law, at Article 1, paragraph 145, provides for the imposition of an administrative penalty ranging from EUR 10,000 to EUR 50,000, if the CbC report is not filed or is submitted with incomplete or incorrect information.

The decree refers to a yet-to-be-issued specific order of the Revenue Agency that will provide information on how to file the CbC report.

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