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We have taken the greatest care in preparing the information contained herein, considering the need to make it as concise and timely as possible. However if you intend to use the information in making business decisions or in applying the relevant legal regulations, you are welcome to contact us for a more thorough examination of any specific matters.

Subject: Country-by-country reporting implementation

Art. 1, paragraphs 145-146 of 2016 Budget Law, in line with Action 13 of the Base Erosion and Profit Shifting (BEPS) Project of the Organization for Economic Co-operation and Development (OECD) and with directive 2016/881/EU regarding the exchange of information, introduced into Italian Law the fiscal Country by Country Reporting ("CbCR").

In this context, the Italian Ministry of Economy and Finance released a decree (hereinafter the "Decree"), published in the Official Gazette of March 8, 2017, aimed at clarifying "Terms, elements and conditions" for the transmission of the CbCR to the Italian Tax Authorities.

1. The entities obliged to file CbCR

According to the Decree, in line with the provisions of the directive, CbCR obligations may only apply to Italian resident companies that belong to Multinational Enterprises (MNE) Group with consolidated revenues of Euro 750 million or more. The following entities are obliged to file CbCR:

- the Ultimate Parent Entity (as defined in OECD Action 13) of an MNE Group with consolidated revenue of Euro 750 million or more that is resident in Italy for tax purposes;
- an Italian entity required to make a local or secondary filing as a Constituent Entity because the jurisdiction of its Ultimate Parent Entity does not require CbCR or does not have an appropriate competent authority agreement with Italy to permit information exchange or where such exchange has been suspended or suffers from systemic failure;
- a "Surrogate Parent Entity", i.e. an entity other than the Ultimate Parent Entity that will file the CbCR in its jurisdiction of tax residence as the sole substitute of the Ultimate Parent Entity and on behalf of the entire MNE Group;

- an EU Designated Entity (resident in Italy) appointed to file the CbCR in its tax jurisdiction in order to satisfy the requirement for secondary filing on behalf of all EU entities.

2. Information to be reported in the CbCR

In line with OECD and EU recommendations, the CbCR of an MNE Group:

- a) contains aggregate information on the revenue, profit (loss) before income tax, income tax payments, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents, for each jurisdiction in which the MNE Group operates;
- b) identifies each Constituent Entity of the MNE Group (including their permanent establishments) and gives details of their jurisdiction (tax or legal residence), legal form and business activities.

3. Communication duties

The Decree confirmed that CbCR will apply in Italy to fiscal period from January 1, 2016. Within the deadline to file the annual corporate income tax return:

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

The aforesaid obligations shall be fulfilled by completing a specific section of the corporate income tax return.

The CbCR must be filed within 12 months of the last day of the relevant 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 automatic exchange of information agreement in force with Italy.

4. Use of the information

The Decree clarifies that the CbCR may be used by the Italian Tax Authorities for transfer pricing or other BEPS-related risk assessments and as a basis for making further audit enquiries.

However, 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 (Advance Pricing Agreement) discussions or in tax audits which may then entail a transfer pricing adjustment.

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