

CbCR obligations for Italian entity members of US groups

Concerns have arisen over a temporary misalignment between the US country-by-country reporting regime and Italian legislation. Antonella Della Rovere and Federico Vincenti of Valente Associati GEB Partners explain.

An agreement for the automatic exchange of country-by-country reports (CbCR) between Italy and the US (Agreement) came into effect on September 27 2017, as announced by the Italian minister for economy and finance.

The above agreement derives its legal basis from Art. 26 of the Convention for the Avoidance of Double Taxation in effect between the US and Italy. Pursuant to the Final Report on Action 13 of the Base Erosion and Profit Shifting (BEPS) project, there may be three potential legal bases for this type of agreement:

1. Provision for exchange of information in Agreement for the Avoidance of Double Taxation, based on Art. 26 of the OECD Model Convention;
2. The Convention on Mutual Administrative Assistance in Tax Matters; or
3. A tax information exchange agreement (known as TIEA) permitting automatic exchange.

The Agreement enables exchange of the information contained in the CbCR, which must take place within 15 months from the last day of the tax year of the group, to which the CbCR refers. Nevertheless, the above deadline shall be 18 months for the first CbCR exchange, i.e. in regard to the CbCR for the tax year starting January 1 2016 or later. Such provisions are fully aligned with the OECD recommendations in the Handbook for Effective Implementation of CbCR.

In Italy, CbCR filing is regulated in Budget Law 2016 and the Ministerial Decree of February 23 2017. Relevant obligations apply to Italian entity members of multinational groups whose consolidated revenue exceeds €750 million (\$886 million) in the tax year preceding CbCR, should that start on January 1 2016 or later. Such entities must communicate to the Italian Revenue Agency (Agenzia delle Entrate) (IRA) the following information in their tax report:

- CbCR status;
- Data of the ultimate parent of the group as well as of any other entity charged with filing CbCR at group level (surrogate parent).

However the Italian entity must communicate to IRA the CbCR for the whole group within 12 months from the end of the group tax year, where the following conditions are fulfilled:

- The ultimate parent of the group has no obligation to file CbCR due to lack of relevant legislation in its jurisdiction of tax residence,
- There is no agreement for the automatic exchange of CbCR between Italy and the jurisdiction of residence of such ultimate parent of the group.

To comply with the above obligation, the Italian entity shall need to request all relevant data from the ultimate parent of the group.

With respect to the US, the Internal Revenue Service (IRS) has clarified that national regulations on CbCR shall apply to US parent companies for tax years starting on June 30 2016 or later (Revenue Procedure 2017-23). It follows that there is no respective obligation for US parent companies regarding the tax years starting between January 1 2016 and June 29 2016, implying a mismatch between US and Italian legislation on the matter.

The US accepts CbCR, which shall be transmitted to the national authorities of jurisdictions, where members of the respective group reside, provided that there is a relevant agreement in effect, as is the case with Italy, since September 27 2017.

From the above arises that the new Agreement between Italy and the US specifies the requirements to be fulfilled for Italian entities to comply with their CbCR obligations. It also appeases concerns related to the specificities of the relevant US regime, in particular its temporary disalignment with the corresponding Italian legislation. In fact, the Italian Ministerial Decree of February 23 2017 includes a special provision for tax year 2016. CbCR voluntary filing by the ultimate parent of the group may free the Italian entity from the aforementioned obligation (to file CbCR for the whole group), on certain conditions, e.g. conclusion of agreement for the exchange of CbCR information between Italy and the residence jurisdiction of the ultimate parent.



Antonella Della Rovere
Partner, Valente Associati GEB Partners
a.dellarovere
@gebnetwork.it



Federico Vincenti
Tax manager, Valente Associati GEB Partners
f.vincenti
@gebnetwork.it