



Execution of the Italy-USA CAA on the Automatic Exchange of Country-by-Country Reports

Tax Alert

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On 27 September 2017 Italy and the USA signed a bilateral competent authority agreement (CAA), providing for the automatic exchange of country-by-country reports (CbC Report/s) between the competent authorities of the two countries, i.e. the Italian Revenue Agency and the IRS⁽¹⁾. This CAA is an important milestone because it satisfies one of the conditions that must be met in order for an Italian subsidiary to be exempted from its obligation to file a local CbC Report when its US parent files a CbC Report for the group in the USA.

Background

As part of the 2016 Budget Law, Italy introduced a country-by-country reporting (CbCR) obligation, in compliance with the OECD BEPS Action 13 recommendations. A Ministerial Decree of 23 February 2017 (the Decree)⁽²⁾ set out the CbCR implementing measures.

Among other things, the Decree clarified that the obligation to file a CbC Report runs from the fiscal year starting on or after 1 January 2016.

In the case of a multinational group where the parent entity is resident in a country that has not introduced the CbCR obligation or has no qualifying agreement with Italy for the exchange of CbC Reports, the Decree provides that the CbC Report must be filed by an Italian subsidiary.

Alternatively, a non-resident entity may file the CbC Report - thus making the Italian subsidiary exempt from filing obligations in Italy - if one of the following applies.

- The group designates one of its EU subsidiaries to file the CbC Report for all the EU entities.
- The group appoints a 'surrogate parent entity' to file the CbC Report in its country of residence for all the group entities. If the surrogate parent is resident outside the EU, it must fulfil certain conditions, e.g. it must be resident in a country with mandatory CbCR rules and a qualifying agreement with Italy on the automatic exchange of CbC Reports.

(1) An announcement of the Italian Ministry of Economy and Finance, published on 3 October, gave public notice that the agreement had come into force on 27 September 2017, the date of signature.

(2) Published in the Official Gazette on 8 March - see our [Tax Alert of 10 March 2017](#).

In addition, according to article 2(7) of the Decree, and with respect to the fiscal year of the Italian subsidiary in progress on 31 December 2016, the voluntary filing of a CbC Report by a non-resident parent entity - resident in a jurisdiction which has not introduced CbCR - is sufficient, provided that the following conditions are met.

- a) The non-resident parent entity files the CbC Report in its own jurisdiction within 12 months of the last day of the reporting year of the multinational group.
- b) The jurisdiction of the parent entity introduces the CbCR obligation by the deadline for the filing of the first CbC Report⁽³⁾ (even if the obligation does not encompass the fiscal year starting on or after 1 January 2016).
- c) By the deadline for the filing of the first CbC Report, a qualifying agreement on the exchange of CbC Reports has come into force between Italy and the jurisdiction of the parent.
- d) The jurisdiction of the parent entity has not notified the Italian Revenue Agency of a systemic failure to comply.
- e) The Italian subsidiary notifies the Italian Revenue Agency of the identity and residence of the entity in charge of filing the CbC Report.

The Italy-USA CAA

This CAA, based on article 26 of the Italy-USA Double Tax Treaty, allows the automatic exchange of CbC Reports between the Italian Revenue Agency and the IRS, within 15 months of the last day of the reporting year. For fiscal year 2016, however, the exchange can occur within 18 months.

According to the IRS regulations, US parent entities of multinational groups must file a CbC Report for the first taxable year of the parent entity that begins on or after 30 June 2016. The CbC Report can also be filed for reporting periods that begin between 1 January and 29 June 2016 (voluntary filing).

As already mentioned, the signing of the CAA is important because it satisfies the condition under c) above and relieves the Italian subsidiary of a US multinational group from filing the CbC Report in Italy for the fiscal year in progress on or after 31 December 2016.

(3) The CbC Report must be filed within 12 months of the end of the reporting year.

If, for instance, an Italian company belongs to a multinational group that is subject to CbCR rules and the parent of the group is resident in the USA, for fiscal year 1 April 2016-31 March 2017 the voluntary filing of the CbC Report with the IRS by the parent entity, by the end of March 2018, is sufficient. Therefore, the Italian entity is released from its obligation to file a CbC Report for the year but must indicate in its tax return - i.e. the *Modello Redditi 2017*, to be submitted by 31 December 2017⁽⁴⁾ - that the US parent is in charge of the CbCR filing.

(4) The income tax return of Italian corporations must be filed by the end of the ninth month of the year following that in which the income accrues. With respect to fiscal year 2016, the deadline was postponed to 31 October 2017 for calendar-year taxpayers. With the annual corporate income tax return, any Italian entity of the group that is not obliged to file a CbC Report must notify the Italian tax authorities of the identity and residence of the group entity designated to file the CbC Report for the group in its own jurisdiction.

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