

Country-by-country reporting – obligations of Italian subsidiaries of multinational groups

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[Introduction](#)

[Country-by-country reporting entities](#)

[Exemptions](#)

[Notification](#)

[Contents](#)

Introduction

Country-by-country reporting was developed following the base erosion and profit shifting Action 13 project, whose final report was published by the Organisation for Economic Cooperation and Development (OECD) in October 2015. Country-by-country reporting was subsequently implemented by EU Directive 2016/881/EU, amending EU Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation, through a new Article *8bis*.

In Italy, Articles 1(145) and (146) of Law 208/2015 provide that the parent company of a multinational group resident in Italy (pursuant to Article 73 of the Tax Code) must file a country-by-country report with the tax authorities within the specified time limit.

The secondary legislation enacted by the Ministry of Finance's February 2017 decree-law provides further details on country-by-country reporting requirements and application rules, considering OECD recommendations and EU Directive 2016/881/EU.

Under domestic Italian rules, the annual accounting period beginning on or after January 1 2016 constitutes the first reporting period. Multinational groups that adopt the calendar year for account reporting purposes should therefore file their first country-by-country report for the year ending December 31 2016.

The country-by-country report must be filed within 12 months of the last day of the reporting period (ie, for taxpayers adopting the calendar year approach, the deadline for the first year will be December 31 2017).

In a case of failure to submit a country-by-country report or incomplete data filing in respect thereof, the Italian parent company will be subject to administrative penalties ranging from €10,000 to €50,000.

Country-by-country reporting entities

Under the Ministry of Finance's February 2017 decree-law, country-by-country reporting obligations must be fulfilled by Italian resident entities which are the ultimate parent entity of a multinational group with consolidated revenues at least €750 million.

The ultimate parent entity of a multinational group is that required to prepare consolidated financial statements by the accounting principles applicable in its jurisdiction and is not controlled – directly or indirectly – by another of the multinational group's entities required to file a country-by-country report.

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For country-by-country reporting purposes, the report should include all tax jurisdictions in which the multinational group has a taxable entity, regardless of its size.

The decree-law also provides for a secondary mechanism, whereby Italian entities which are part of a multinational group must file the country-by-country report locally in place of their ultimate parent entity. The following Italian resident entities must file the country-by-country report:

- Italian ultimate parent companies;
- Italian resident entities included in the consolidated financial statements of a multinational group (ie, Italian constituent entities)(1) if:
 - the ultimate non-resident parent entity is not obliged to file the country-by-country report in its state of residence;
 - there is no automatic exchange of information agreement for country-by-country reporting purposes between Italy and the state of residence of the non-resident ultimate parent; or
 - the Italian tax authorities notified the Italian resident entity that there is a systemic failure in a foreign jurisdiction with respect to the exchange of country-by-country reporting with the Italian tax authorities.

Exemptions

Where the conditions set out in the second bullet above apply, an Italian constituent entity of a multinational group which is not the ultimate parent is exempted from filing a country-by-country report if:

- a multinational group with more than one constituent entity in the European Union designates a constituent entity to file the country-by-country report, provided that such entity receives all of the information needed to complete the filing;
- a multinational group appoints a surrogate parent entity to file the country-by-country report in its state of residence, provided that:
 - the surrogate parent entity is not resident in the European Union;
 - none of the conditions under the second bullet above apply in the state of the surrogate parent entity; and
 - notification to the Italian or non-EU tax administration has been made; and
- for the 2016 reportable year only, the ultimate parent entity voluntarily files the country-by-country report with the tax authorities in its state of residence, subject to certain additional conditions (eg, the foreign state should issue country-by-country reporting provisions before the deadline for filing the first report).

The last exemption is relevant for some multinational groups (eg, US or Swiss-parented groups) that have no country-by-country report for the 2016 reportable period, which starts on or after June 30 2016 for the United States and June 30 2018 for Switzerland.

Notification

Within the deadline to file an annual corporate tax return:

- any Italian resident entity that is required to file a country-by-country report as an ultimate parent entity, a designated entity or a surrogate entity must notify the Italian tax authorities; and
- any Italian constituent entity of a multinational group must notify the Italian tax authorities of the identity and tax residence of the reporting entity required to file the country-by-country report.

Contents

In line with the OECD recommendations and EU Directive 2016/881/EU, the country-by-country report will be in the form of a standard template listing:

- the allocation – in each jurisdiction where the multinational group operates – of revenues, profits, taxes and certain other indicators of the locations where the economic activities are performed (eg, capital, accumulated earnings, number of employees and tangible assets); and
- the entities of the multinational group operating in each country (including a separate indication of permanent establishments) and the main activities performed.

The Ministry of Finance's February 2017 decree-law finally provides – in the case of an Italian reporting entity under the secondary mechanism – that the information to complete the country-by-country report should be requested from the ultimate parent entity and the filing will be made according to the information made available. However, the Italian reporting entity will notify the Italian tax authorities in the event that such information is incomplete or unavailable.

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Endnotes

(1) According to Article 1(5) of the decree-law, the following constituent entities must provide a country-by-country report and may also be required to file the report under the secondary mechanism locally:

"(a) a separate business unit of a multinational group that is included in the consolidated financial statements of the multinational group for financial reporting purposes, or would be so included if the equity interest in such business unit were traded in regulated markets; (b) a business unit that is excluded from the consolidated financial statements of a multinational group solely on size or materiality grounds (c) a permanent establishment of a separate business unit of the multinational group included in (a) or (b) that is required prepare a separate financial statement for such permanent establishment for financial reporting, or for regulatory, tax or internal control purposes." (Translation based upon OECD Model Legislation and EU Directive 2016/881/EU.)

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