

## Italy

### Summary of key findings

1. Consistent with the agreed methodology, this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Italy's implementation of the Action 13 minimum standard meets all applicable terms of reference. The report, therefore, contains no recommendations.

#### ***Part A: Domestic legal and administrative framework***

2. Italy has legislation in place that imposes and enforces CbC requirements on MNE Groups whose UPE is resident for tax purposes in Italy. The filing obligation for a CbC report in Italy commences in respect of fiscal years commencing on or after 1 January 2016. Italy meets all the terms of reference relating to the domestic legal and administrative framework.<sup>1</sup>

#### ***Part B: Exchange of information framework***

3. Italy is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also a signatory of the CbC MCAA. It has provided its notifications under Section 8 (e) (ii) of this agreement and intends to exchange information with all signatories. It is noted that Italy has signed a bilateral QCAA with the United States. As of 12 January 2018, Italy has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Italy has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.<sup>2</sup>

#### ***Part C: Appropriate use***

4. There are no concerns to be reported for Italy. Italy indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.<sup>3</sup> Italy meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.<sup>4</sup>

## Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Italy has primary and secondary legislation in place<sup>5</sup> which implements the BEPS Action 13 minimum standard for reporting fiscal years beginning on or after 1 January 2016. Guidance has also been published.<sup>6</sup>

### *(a) Parent entity filing obligation*

Summary of terms of reference:<sup>7</sup> Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Italy has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have consolidated group revenue of EUR 750 million or more in the immediately preceding fiscal year, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. No inconsistencies were identified with respect to the parent entity filing obligation.<sup>8</sup>

### *(b) Scope and timing of parent entity filing*

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

9. The first filing obligation for a CbC report in Italy applies in respect of reporting fiscal years commencing on or after 1 January 2016. The CbC report must be filed no later than 12 months after the last day of the reporting fiscal year.<sup>9</sup>

10. No inconsistencies were identified with respect to the scope and timing of parent entity filing.<sup>10</sup>

### *(c) Limitation on local filing obligation*

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than

that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

11. Italy has introduced local filing requirements which apply to reporting fiscal years commencing on or after 1 January 2016.<sup>11</sup>

12. No inconsistencies were identified with respect to the limitation on local filing obligations.

***(d) Limitation on local filing in case of surrogate filing***

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. Italy's local filing requirements will not apply if there is surrogate filing in another jurisdiction.<sup>12</sup>

14. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

***(e) Effective implementation***

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

15. Italy has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place as the Italian legislation requires that any Constituent Entity of an MNE Group that is resident for tax purposes in Italy to notify the Italian tax administration whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the designated Constituent Entity.<sup>13</sup> There are also penalties in place in relation to the filing of a CbC report: where the resident Ultimate Parent Entity or, in case of local filing, the resident Constituent Entity, do not meet their obligation to file a CbC report, an administrative fine will be imposed of between EUR 10 000 and EUR 50 000, depending upon the severity of the non-compliance (CbC report not submitted, partially submitted or submitted with mistakes).

16. With respect to specific processes in place that would allow to take appropriate measures in case Italy is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with

respect to its obligation to file a CbC report, Italy indicates that the Provvedimento (Act/Order) of the Director of the Tax Agency (“PROVVEDIMENTO PROT. 275956 dated 28 November 2017) provides for a follow-up procedure in case a Competent Authority of a receiving jurisdiction communicates any errors detected in a CbC report: upon receipt of such a communication, the *Agenzia delle entrate* shall communicate the error notification to the Reporting Entity. The Reporting Entity shall provide the corrected report within 60 days from receipt of the communication.<sup>14</sup>

### Conclusion

17. In respect of paragraph 8 of the terms of reference (OECD, 2017b), Italy has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in Italy. Italy meets all the terms of reference relating to the domestic legal and administrative framework.

## Part B: The exchange of information framework

18. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

19. Italy has domestic legislation that permits the automatic exchange of CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 17 May 2010, in force on 1 May 2012 and in effect for 2016). Italy is also committed to the exchange of CbC reports within the European Union under EU Council Directive (2016/881/EU)

20. Italy signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 31 March 2017. It intends to have the CbC MCAA in effect with the Competent Authorities of all signatories to the CbC MCAA that provide a notification under Section 8(1)(e) of the same agreement.<sup>15</sup> It is noted that Italy has signed a bilateral QCAA with the United States on 27 September 2017. As of 12 January 2018, Italy has 54 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under the bilateral CAA. Italy has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).<sup>16</sup> Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

### Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time Italy meets the terms of reference regarding the exchange of information framework.

### Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: (a) having in place mechanisms (such as legal or administrative measures) to ensure CbC reports which are received through exchange of information or by way of local filing are only used to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis; and cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; and are not used on their own as conclusive evidence that transfer prices are or are not appropriate; and are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), Italy indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the OECD *Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use. It has also provided extracts of its guidance.

24. There are no concerns to be reported for Italy in respect of the aspects of appropriate use covered by this annual peer review process.

### Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for Italy. Italy thus meets these terms of reference.

## Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved			Recommendation for improvement
Part A	Domestic legal and administrative framework	-	
Part B	Exchange of information framework	-	
Part C	Appropriate use	-	

### Notes

<sup>1</sup> Paragraph 8 of the terms of reference (OECD, 2017b).

<sup>2</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017b).

<sup>3</sup> These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

<sup>4</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017b).

<sup>5</sup> Primary law consists of Article 1, paragraph 145, in Law no. 208, 28 December 2015: [www.gazzettaufficiale.it](http://www.gazzettaufficiale.it) (accessed 20 April 2018). Secondary law consists of *Ministerial Decree 23 February 2017, published in the Gazzetta Ufficiale of 8.3.2017*: [www.gazzettaufficiale.it](http://www.gazzettaufficiale.it) (accessed 20 April 2018).

<sup>6</sup> A Provvedimento (Act/Order) of the Director of the Tax Agency (“PROVVEDIMENTO PROT. 275956”), containing the detailed arrangements for the submission of CbC reports and provisions on appropriate use, has been published on 28 November 2017: [www.agenziaentrate.gov.it](http://www.agenziaentrate.gov.it) (accessed 20 April 2018).

<sup>7</sup> The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

<sup>8</sup> With respect to the definition of an “Excluded MNE Group” (see Article 1 (4) of the ministerial decree), the provisions of the CbC Decree state that this refers to a Group having total consolidated group revenue of less than EUR 750 000 000 “*or an amount in local currency approximately equivalent to EUR 750,000,000 as of January 2015*” during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements. Italy’s published guidance (“PROVVEDIMENTO PROT. 275956” published on 28 November 2017) states that “*in the cases where the jurisdiction of the non-resident Ultimate Parent Entity of a MNE Group, for the purposes of exemption from reporting obligation, has established a revenue threshold, in local currency, approximately equivalent to EUR 750 million, at the exchange rate in January 2015, the aforesaid threshold is also valid for the purposes of the reporting obligations provided for in Article 2, paragraph 2, of the Decree [i.e. local filing requirement] for resident Constituent Entities of the same MNE Group*”.

<sup>9</sup> The Provvedimento (Act/Order) of the Director of the Tax Agency (“PROVVEDIMENTO PROT. 275956 dated 28 November 2017”), above mentioned in footnote no.5 and containing the detailed arrangements for the submission of CbC reports, includes specific instructions on the meaning of the items contained in the three CbCR Tables provided for in the 23 February 2017 Ministerial Decree.

<sup>10</sup> It is noted that paragraph 3.2.g) of the Provvedimento (Act/Order) of the Director of the Tax Agency (“PROVVEDIMENTO PROT. 275956” dated 28 November 2017, relating to the definition of accumulated earnings provides that “Accumulated earnings relating to the permanent establishment shall be included in those of the entity of which it is a permanent establishment and shall be reported in the additional information in Table 3 annexed to the Decree”.

<sup>11</sup> It is noted that the Italian rules provide that the Constituent Entity resident in Italy shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report. If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the tax administration that the Ultimate Parent Entity has refused to make the necessary information available. In addition, in accordance with the provisions of European Union (EU) Council Directive 2016/881/EU (Annex III, Section II), where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the EU, the MNE Group may designate one of such Constituent Entities to file the CbC report conforming to the requirements that would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the EU. Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

<sup>12</sup> These provisions also extend to cases where an MNE Group has filed a CbC report under a voluntary parent surrogate filing mechanism. See Article 2 (6) and (7) of the ministerial decree.

<sup>13</sup> This should be no later than the last day due for the submission of the tax return concerning the Reporting Fiscal Year. Legislation also requires that where a Constituent Entity of an MNE Group, that is resident for tax purposes in Italy, is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the designated Constituent Entity, it shall notify the tax administration within the same tax return deadline of the identity and tax residence of the Reporting Entity.

<sup>14</sup> See paragraphs 10.1, 10.2 and 10.3 of the Provvedimento (Act/Order) of the Director of the Tax Agency (“PROVVEDIMENTO PROT. 275956 dated 28 November 2017”).

<sup>15</sup> Italy’s legislation assimilates the EU Council Directive (2016/881/EU) to the presence of a Qualifying Competent Authority Agreement with respect to EU Member States: see Article 1 (13) of the ministerial decree.

<sup>16</sup> It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this is because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or have not listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA. It is also noted that Italy has submitted a unilateral declaration on the effective date for exchanges of information, to enable exchanges of CbC reports relating to the fiscal year 2016 with jurisdictions which do not have the Convention in force for such fiscal year and have provided the same unilateral declaration (this unilateral declaration aligns the effective date of the Convention with first intended exchanges of CbC Reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention).



## References

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