Italy's Anti-BEPS Struggles

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The OECD-recommended measures to counter tax evasion have been integrated in the language routinely used by tax advisers, businessmen and by other interested parties as well. Without implementation however, it would be much ado about nothing.

What truly matters, in practical terms, is whether individual, sovereign States intend to actually adopt the OECD's proposals, and which measures they would be effectively willing to implement against tax evasion, at the national legal system and tax treaty levels. This is the sole way to effectively pursue the primary purpose of the BEPS Project, i.e., the mitigation of States' tax revenue losses and the restoration of taxpayers' confidence in the international tax system.

The Italian Draft Budgetary Plan for 2017 – a cause of particular tension in the European Commission – proudly affirms that the Italian Tax Administration's focus is on "*carrying out activities directed to prevent and fight tax evasion, while incentivising voluntary compliance.*"
Reference is made to a series of legislative initiatives inaugurated with a 2014 law enabling a tax reform aimed at three specific objectives:

(i) streamline the tax system;

(ii) foster economic development through reduction of taxes on productive factors and activities; and

(iii) intensify the struggle against tax evasion.

Indeed, Italy's endeavors and the outstanding results achieved to date with respect to implementation of anti-BEPS measures, in line with OECD proposals, or, at times even ahead of them, are surely to be commended.

The introduction of country-by-country reporting (CbCR), in line with the respective OECD proposals, has been one of the most important steps. Starting from tax year 2016, Italian parent companies of multinational groups (MNEs) with consolidated group revenue equal to or above €750 million ($797 million) must file in Italy an annual report including information on revenue, profit before tax, income tax paid and accrued.

A similar obligation is imposed on Italian subsidiaries of foreign groups with the above characteristics, given that Italian authorities could not obtain a CbCR for the respective group otherwise. Any non-compliance is subject to monetary sanctions of €10,000 – €50,000. Italian authorities, for their part, have to safeguard the confidentiality of the information notified through CbCR.

Taking into account that CbCR is subject to an exchange among jurisdictions where the MNE has business activities, this legislation serves a two-fold purpose:

(i) MNEs are strongly encouraged to ensure consistency of the data they provide; and

(ii) tax administrations can better assess any existing transfer pricing risks, in view of their being acquainted with information regarding MNEs' global activities.

Other remarkable legislative measures in the anti-BEPS context and in accordance with OECD recommendations concern:

(i) the automatic exchange of advance rulings for companies with international activities; and

(ii) the conditions of the retrospective effect thereof.

In particular, Italian tax authorities issuing a tax ruling - i.e., an advance agreement regarding the taxation of an international commercial transaction - must provide a copy thereof to the countries of residence of the relevant parties involved. Tax evasion is thus countered by ensuring that all countries concerned are fully aware of the effective taxation of the relevant transaction in each one of them and can effectively protect their taxable bases.

Furthermore, it is provided that tax rulings issued after the successful conclusion of a mutual agreement procedure, initiated under a double tax treaty, may have retrospective effect, up to the time of submission of the respective application. This provision is indicative of the acknowledged importance of effective tax dispute resolution procedures for the establishment of a fairer tax system.

Voluntary compliance

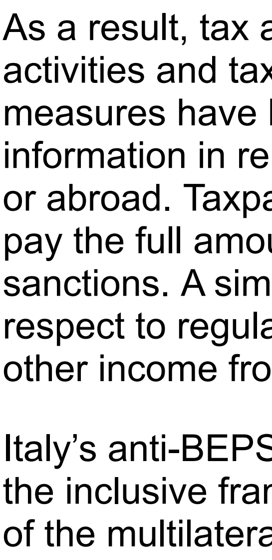
Italy has opted also for measures encouraging voluntary compliance. As confirmed by the OECD in the preface of its report on cooperative compliance, released in 2013, the construction of a taxpayer–tax administration relationship based on the principles of trust, transparency and cooperation is fundamental in the fight against BEPS. Such an enhanced relationship shall enable a far-reaching exchange of information as well as a constructive dialogue between and/or among the parties. Participation in the Italian cooperative compliance regime is voluntary and is rewarded, among other things, through the opportunity of (i) checking tax returns, prior to filing, (ii) obtaining shorter procedures in order to acquire clarifications on the application of the tax legislation to given facts, (iii) being granted reduced sanctions.

Large business taxpayers wishing to participate therein must implement a tax risk management system and comply with certain related obligations, i.e., notification of information on potential fiscal risks or prompt response to tax authorities' requests.

As a result, tax authorities benefit from a thorough overview of taxpayers' activities and tax disputes are reduced. In the same direction, some measures have been adopted regarding voluntary disclosure of financial information in relation to undeclared taxable revenue or income held in Italy or abroad. Taxpayers regularising their income according to the above must pay the full amount of applicable tax, but will be able to enjoy reduced sanctions. A similar regime has been implemented and enforced with respect to regularisation by Italian taxpayers of income from capital and other income from financial activities rendered in the Vatican City State.

Italy's anti-BEPS attitude is equally strong at the tax-treaty level. It is one of the inclusive framework Members, actively participating in the preparation of the multilateral instrument designed to streamline amendment procedures to the existing tax-treaties network, in order to close such loopholes that are (still) allowing tax avoidance.

Italy has signed the Multilateral Competent Authority Agreement on automatic exchange of financial account information, expected to enter into effect as of September 2017. It has also, among others things, signed (i) the Foreign Account Tax Compliance Act (FATCA) with the US, and (ii) an agreement with Switzerland ending banking secrecy, enabling thus exchange of tax information.



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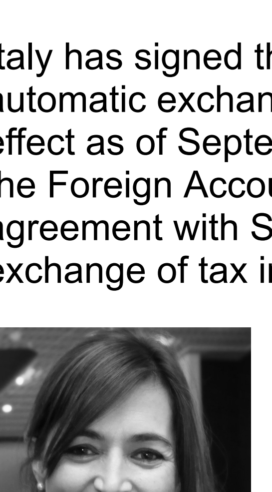

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