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Implementation of pillar two transitional safe harbours in Italy

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Federico Vincenti and Carola Valente of Valente Associati GEB Partners/Crowe Valente provide a guide to Italy's transitional country-by-country reporting safe harbours for groups within the scope of the pillar two global minimum tax requirements

On December 27 2023, the Italian government enacted Legislative Decree No. 209, with the aim of reforming certain provisions of the Italian international tax law framework to better align it with international best practices.

The decree also contains rules for the implementation of [Council Directive \(EU\) 2022/2523](#), which introduces the pillar two rules.

On May 20 2024, the Italian Ministry of Economy and Finance issued a decree implementing transitional country-by-country reporting safe harbours for groups subject to the pillar two global minimum tax requirements.

The decree provides significant simplifications for calculating the additional tax owed by multinational or domestic groups to mitigate the administrative and compliance burden of the global minimum tax. These simplifications primarily involve using accounting data from the country-by-country reports (CbCRs) instead of the data resulting from the application of the GloBE rules to determine the relevant income and relevant taxes.

The 'transitional period', in accordance with OECD rules, includes tax periods that begin on or before December 31 2026, and does not include any tax period that ends after June 30 2028. In practice, for entities with a tax period coinciding with the calendar year, this corresponds to the years 2024–26 for the income inclusion rule and the years 2025–2026 for the undertaxed payments rule.

Simplified tax calculation rules and the transitional safe harbour

The simplified rules can be applied if at least one of the following tests is passed:

- The de minimis test – this criterion is satisfied if the multinational or domestic group, as a whole, has total revenues of less than €10 million and a profit before taxes of less than €1 million, or a loss before taxes;
- The simplified effective tax rate test – this is satisfied if the multinational or domestic group has an effective group tax rate (calculated as the ratio of simplified relevant taxes to profit before taxes) that is at least equal to the so-called transitional tax rate (15% for tax periods beginning in 2023 or 2024, 16% for tax periods beginning in 2025, and 17% for tax periods beginning in 2026); and/or
- The routine profit test – this is satisfied if the group's profit before taxes does not exceed the amount of the substance base income exclusion for enterprises located in a specific country.

Under the simplified rules, if at least one of the above-mentioned tests is passed in a given jurisdiction, the latter will be considered a low-risk jurisdiction and the group's top-up tax will be equal to zero.

The option for the transitional safe harbour, according to Article 6 of the implementing decree, is exercised in the so-called relevant communication and is effective for one year, unless renewed, with reference to the country for which it was exercised.

The CbCR must be prepared using 'qualified financial statements', which include:

- The financial statements used by the parent company to prepare the consolidated financial statements;
- Individual financial statements prepared in accordance with, or authorised by, accounting principles; or
- For companies not consolidated line by line, the financial statements of the companies used for the CbCR.

For multinational groups not required to prepare a CbCR (for example, domestic groups that are subject to the global minimum tax rules), it is necessary to refer to the data contained in the qualified financial statements that would have been reported in the CbCR if the group had been required to prepare it.

The decree also introduces anti-avoidance rules aimed at stopping a multinational group from meeting one of the above-mentioned tests by exploiting hybrid arbitrage arrangements.

Within 36 months from the date on which the option was exercised, the tax authorities may serve an information request on the correct application of the provisions of the decree on the reporting enterprise or the designated local enterprise, or jointly controlled enterprises and entities located in Italy whose tax liability is assumed to be zero as a result of the simplified rules.

The entities must provide the necessary information within the six-month period from the notification of the request. If the entities fail to provide the required information within the time limit or the information provided shows the commission of a significant error, the simplified transitional arrangements under this decree shall not apply.

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