



EU DAC6 Mandatory Disclosure Regime Update Implementation in Italy

Giampiero Guarnerio

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Timing

Adoption Decree n°100 dated 30th July 2020; implementation decree dated 17th November 2020

- Retrospective report of all arrangements, where the first step of the implementation was made before 30th June 2020: **28/02/2021**
- Retrospective report of all arrangements, where the first step of the implementation was made after 30th June 2020: 30 days starting from 1st January 2021
- Current report timing: within 30 days from the first step of the implementation

Who is obliged to report?

- Intermediaries are obliged to report
- Taxpayer are obliged only if there are no intermediaries or if intermediaries did not comply with
- **Legal privilege exists for lawyers and accountants but it is ignored.**

Exemption to report for intermediaries:

- If they can prove that the arrangement is reported by other intermediary elsewhere in Europe or in other jurisdictions having a disclosure agreement with Italy
- If information are received for a legal examination of his position, or in the course of an assistance for a legal proceeding (there included the evaluation process to avoid it)
- If the information could disclose a personal criminal liability

Being the case, the intermediary has to inform the taxpayer and any other intermediary that the reporting obligation is transferred to them.

Similar exemptions exists for taxpayers.

How long documents must be retained?

Intermediaries and taxpayers have to retain documents and information used for the arrangements:

- Until the 31st December of the fifth following year when arrangements are reported
- Until the 31st December of the seventh following year when arrangements are not reported

Penalties

Intermediaries and taxpayers are subject to the following penalties:

- From € 3.000 to € 31.500 in case of missed reporting
- From € 1.000 to € 10.500 if reporting is misleading or incomplete

In case the penalty is not contested, and paid upon request, penalty is reduced by 2/3.

Other information

- Service provider is not required to collect further information other than those otherwise provided by law (i.e. money laundry rules). By Service provider we ref. to art. 1 par. 21 second period of DAC 6 Directive – i.e. an intermediary that *“knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement”*, not an intermediary *“that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement”*
- Service provider may rely only on the relevant information that are “promptly available” to him.
- Tax advantage is relevant if it is more than 50% of all advantages obtained with the arrangement
- Tax advantage is equal to the difference between taxes that are due before and after the implementation of the arrangement

Other information

- An arrangement is not reportable if it is intended to benefit a specific favorable tax regime set by the Italian state under the conditions provided by law
- For the reporting purposes a company or entity which is fiscally transparent according to Italian law (partnerships or companies opting for a transparent regime) is not considered to be a person “non paying taxes”. This applies also to companies or partnerships resident abroad to whom similar regimes apply

