

Italy approves legislation to implement Mandatory Disclosure Rules

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Executive summary

On 22 July 2020, the Italian Government approved the Legislative Decree (the Italian Legislation) which implements the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). The Italian Legislation will become effective 15 days after the date of publication in the *Official Journal*.

The Italian Legislation is broadly aligned to the requirements of the Directive.

The Italian Legislation also provides for a six-month deferral of the reporting deadlines as approved by the Council of the EU as a consequence of the COVID-19 pandemic.¹

Detailed discussion

Background

The Council of the EU Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation (the Directive or DAC6), entered into force on 25 June 2018.²

The Directive requires intermediaries (including EU-based tax consultants, banks and lawyers) and in some situations, taxpayers, to report certain cross-border arrangements (reportable arrangements) to the relevant EU member state tax authority. This disclosure regime applies to all taxes except value-added tax (VAT), customs duties, excise duties and compulsory social security contributions.³ Cross-border arrangements will be reportable if they contain certain features (known as hallmarks). The hallmarks are likely to be present in a wide range of structures and transactions. For more background, see EY Global Tax Alert, [Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers](#), dated 14 March 2018.

EU Member States were required to adopt and publish national laws to comply with the Directive by 31 December 2019.

Scope of taxes covered

The scope of taxes covered under the Italian Legislation is fully aligned with the Directive and applies to all taxes except VAT, customs duties, excise duties and compulsory social security contributions.

Reportable arrangements

In accordance with the Directive, under the Italian Legislation, an arrangement is reportable if:

- ▶ The arrangement meets the definition of a cross-border arrangement; and
- ▶ The arrangement meets at least one of the hallmarks which are listed in the Annex to the Italian Legislation.

The Italian Legislation defines the term “cross-border arrangement” as any arrangement in the form of an agreement, scheme or plan, whether it is enforceable, concerning Italy and another foreign jurisdiction, irrespective of whether it is a member of the EU.

Furthermore, the definition of reportable arrangements does not include domestic arrangements.

Hallmarks A-E of the Directive

Most elements of the hallmarks included in DAC6 are not expressly defined. The Italian Legislation transposes the DAC6 hallmarks A-E with a description and scope aligned to the Directive.

However, the Italian Legislation delegates to a further Decree (to be published at a later date) the specification of the hallmarks.

Main benefit test (MBT)

The DAC6 provides that the MBT will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement, is the obtaining of a tax advantage.

According to the Italian Legislation, the above-mentioned Decree will also provide the criteria for application of the MBT.

Intermediaries

The Italian legislation defines intermediaries by reference to the same definition of “intermediary” included in the Directive.

As clarified by the explanatory report to the Italian Legislation, the term “intermediary” includes: (i) “promoters” which design, market, organize and make available implementation or manage the implementation of a reportable cross-border arrangement; and (ii) “service providers” which provide aid, assistance or advice in relation to the design, etc. of a reportable cross-border arrangement.

Exemption from reporting

The Directive gives Member States the option to exempt intermediaries from the obligation to report where the reporting obligation would breach legal professional privilege (LPP). If there are no intermediaries which can report, the obligation will shift to the taxpayers.

According to the Italian Legislation, intermediaries are exempted from reporting information received from their clients within the examination of their juridical status or while representing their clients in court or before a judge. In any case, the reporting of information made in accordance with the Italian Legislation and in good faith cannot be claimed to be in breach of any contractual, legal or regulatory non-disclosure obligations and does not expose the reporting intermediary to any liability.

Intermediaries and taxpayers are also exempted from reporting under the Mandatory Disclosure Rules when the information to be reported could result in self-incrimination.

Taxpayers have to report cross-border arrangements where there is no intermediary, the intermediary is exempt owing to LPP (and there are no other intermediaries) or where the intermediary does not provide the taxpayer with proof that the same information has already been reported.

Intermediaries can rely on reporting made by other intermediaries to other EU tax authorities or tax authorities of another country with which Italy has signed an agreement to exchange DAC6 information.

Reporting deadlines

According to the Italian Legislation intermediaries which are promoters have to report a cross-border arrangement within 30 days starting from the day after the arrangement is made available for implementation or is actually implemented.

Intermediaries which are service providers have to report cross-border arrangements within 30 days starting from the day after they provided assistance or advice for the implementation.

With reference to marketable reporting cross-border arrangements, intermediaries, after the filing of the first report, have to file, every three months, a periodical report to update information received after the filing of the first report or after the filing of the last periodical report.

Taxpayers have to report cross-border arrangements within 30 days starting from the day after they receive notification from an exempted intermediary.

However, reporting related to arrangements implemented between 1 July 2020 and 31 December 2020 will be made within 30 days starting from 1 January 2021. In addition, the first periodical report concerning marketable cross-border arrangements by intermediaries has to be filed by 30 April 2021.

Furthermore, the deadline for the reporting of cross-border arrangements implemented during the transitional period (i.e., between 25 June 2018 and 30 June 2020) is 28 February 2021.

Exchange of information

The Italian tax Authorities exchange information received about cross-border arrangements with the tax Authorities of other EU jurisdictions within one month starting from the end of the quarter during which information was received by intermediaries and/or taxpayers.

However, the deadline of the first exchanges between jurisdictions is deferred to 30 April 2021.

Additional obligations

According to the Italian Legislation, the intermediaries and taxpayers are required to conserve the evidence related to the implementation of the cross-border arrangements. In particular, such evidence must be conserved until:

- ▶ The end of the fifth year following the year when the arrangements should be reported
- ▶ The end of the seventh year following the year when the arrangements had to be reported in the case of failure to report

Furthermore, each reporting person receives an arrangement reference number from the Italian tax authorities. The reference number must be shared with other parties involved in such arrangement.

Penalties

In the case of a failure to report, the Italian tax authorities may levy default penalties ranging from €3,000 and €31,500.

Conversely, Italian tax authorities will apply a penalty in the range between €1,000 and €10,500 in the case of incorrect or incomplete reporting.

Next Steps

Determining if there is a reportable cross-border arrangement raises complex technical and procedural issues for taxpayers and intermediaries. Taxpayers and intermediaries who have operations in Italy should review their policies and strategies for logging and reporting tax arrangements so that they are fully prepared for meeting these obligations.

It should also be noted that the Italian Tax Authority will publish official guidance about the IT reporting requirements, and a Decree with additional guidance on the hallmarks and the MBT is also forthcoming.

Endnotes

1. See EY Global Tax Alert, [Council of the EU adopts amendments for deferral of MDR filing deadlines](#), dated 24 June 2020.
2. For background on MDR, see EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
3. DAC6 sets out a minimum standard. Member States can take further measures; for example, (i) introduce reporting obligations for purely domestic arrangements; (ii) extend the scope of taxes covered; (iii) bring forward the start date for reporting.

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