



Italy

DAC 6 Domestic Implementation

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General information

Territory	Italy
Tax authority	Agenzie delle entrate
Status of legislation	Implemented (Legislative decree 30 July 2020, no. 100 and Ministerial Decree 17 November 2020).
Taxes covered	Income tax (IRES, IRPEF), regional tax (IRAP), local and additional tax, real estate transfer tax, registration tax, inheritance and gift tax and miscellaneous duties.
Taxes excluded	VAT, custom duties, excise duties, social security contribution.
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	<p>Any person who implements a reportable cross-border arrangement or to whom a reportable cross-border arrangement is made available for implementation.</p> <p>In order to be subject to reporting obligations, a relevant taxpayer shall meet at least one of the following additional conditions:</p> <ul style="list-style-type: none">• Be resident for tax purposes in Italy• Have a permanent establishment in Italy which is related with the reportable arrangement• Receive income or generates pro its produced in Italy• Carry on an activity in Italy.
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Associated enterprise

A person, carrying out business activity, who is related to another person in at least one of the following ways:

- A person participates in the management of another person by being in a position to exercise a significant influence over the other person
- A person participates in the control of another person through a holding that exceeds 25% of the voting rights. A person holding more than 50% of the voting rights shall be deemed to hold 100%
- A person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25% of the capital
- A person is entitled to 25% or more of the profits of another person.

An individual, their spouse and their third degree relatives shall be treated as a single person.

If more than one person participates, as referred to in points (a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.

If the same persons participate, as referred to in points (a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.

A person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

In indirect participations, the fulfilment of requirements under point (c) shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50% of the voting rights shall be deemed to hold 100%.

Marketable arrangement

An arrangement that can be made available to several taxpayers without a need to be substantially customised.

Cross-border arrangement

An arrangement (“scheme, agreement or project”) concerning Italy and one or more than one foreign State where at least one of the following conditions is met:

- Not all of the participants in the arrangement are resident for tax purposes in Italy
 - One or more of the participants in the arrangement is simultaneously resident for tax purposes in Italy and in one or more than one other jurisdiction
 - One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment
 - One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or having a permanent establishment situated in that jurisdiction
 - Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.
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Intermediary

Any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, assistance or advice with respect to designing, marketing, making available for implementation a reportable cross-border arrangement.

To be subject to reporting obligations, an intermediary shall meet at least one of the following additional conditions:

- Be resident for tax purposes in Italy
- Have a permanent establishment in Italy through which the services with respect to the arrangement are provided
- Be incorporated in, or governed by the laws of, Italy
- Be registered with a professional association related to legal, taxation or consultancy services in Italy.

Tax advantage

One of the main advantages which is reasonably expected from the cross-border arrangement, taking into account the facts and circumstances (the main benefit test is satisfied when such tax advantage exceeds 50% of the overall advantages, ie tax and extra-tax advantages).

The tax advantage is calculated as the difference between the taxes to be paid on the basis of one or more cross-border arrangements and the taxes that would be due in the absence of such arrangements.

Made available for implementation

Currently no guidance has been given by the Italian authorities on this point.

Hallmark

A characteristic or feature, as listed in the Annex enclosed to the Legislative decree 30 July 2020, no. 100 (mirroring the list of the Directive), of a cross-border arrangement that presents an indication of a potential risk of tax avoidance.

Examples concerning Hallmark D are included in the Ministerial Decree Ministerial Decree 17 November 2020. Additional examples (concerning also all the other Hallmarks) are included in a Draft circular letter released (for public comments) by the Italian tax authority.

3**Additional hallmarks****Additional hallmarks**

None

4**Operation of legal professional privilege (LPP)****Operation of legal professional privilege (LPP)**

When the intermediary is bound by LPP (ie in case of assessment of the legal position of the client or assistance in legal proceedings), they are required to notify any and all other intermediaries in writing that the reporting obligation automatically rests with them. If there are no other intermediaries, they should notify the relevant taxpayer in writing that the reporting obligation rests with the taxpayer.

The Italian law, however, also provide that communications made in good faith do not imply any kind of liability for the intermediary.

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Reporting deadline

Intermediaries

Within 30 days beginning:

- On the day after the reportable cross-border arrangement is made available for implementation or the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first
- On the day after they (ie the intermediaries concerned) have provided, directly or by means of other persons, assistance, or advice for implementing a reportable cross-border arrangement.

Reportable arrangements for which the event triggering the reporting obligation occurred between 1 July 2020 and 31 December 2020 (included), need to be reported by 30 January 2021.

Reportable arrangements for which first implementation step took place between 25 June 2018 and 30 June 2020 (included) need to be reported by 28 February 2021.

For marketable arrangements, the intermediary is required to file a periodic report with all new reportable cross-border arrangements every 3 months. The first periodic report need to be filed by 30 April 2021.

Users (where LPP applies)

As a general rule, within 30 days beginning on the day after the reportable cross-border arrangement is made available for implementation or the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Reportable arrangements for which the event triggering the reporting obligation occurred between 1 July 2020 and 31 December 2020 (included), need to be reported by 30 January 2021.

Reportable arrangements for which first implementation step took place between 25 June 2018 and 30 June 2020 (included) need to be reported by 28 February 2021.

In case the intermediary is bound by LPP, user should report within 30 days beginning from the receipt of notification by the intermediary.

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Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report if it is within their knowledge that they are an intermediary relating to a reportable cross-border arrangement.

Obligation to inform user what data was communicated

No

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

- The Member State where the intermediary is resident for tax purposes
- The Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided
- The Member State which the intermediary is incorporated in or governed by the laws of
- The Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

Where there is a multiple reporting obligation, the intermediary shall be exempt from filing the information if it has proof that the same information has been filed in another Member State.

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof that the same information has been filed in another Member State.

The intermediary shall also be exempt from filing the information if they are bound by legal professional privilege (see above) and has notified the other intermediaries or in absence thereof, the relevant taxpayer.

The intermediary is exempted from reporting filing the information also in case where this could imply the risk of self-incrimination.

What will the tax authorities provide for the notification received

The Italian tax authority will certify the communication by means of a receipt with the identification data of the file, including the Identification Number (“Numero di riferimento”).

In case of rejection of the file, the reason for the rejection will be also included.

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Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- no intermediary was involved in the design, marketing, organising or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- he has been notified by the intermediary that the intermediary is exempt from filing the information (eg because bound by legal professional privilege).

Priority of reporting where multiple taxpayers are involved

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- The Member State where the relevant taxpayer is resident for tax purposes
- The Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement
- The Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State
- The Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

Where there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof that the same information has been filed in another Member State.

Circumstances under which taxpayer not required to report

In case of multiple reporting obligations, the relevant taxpayer shall be exempt from filing if it has proof that the same information has been filed in another Member State.

The relevant taxpayer is exempted from reporting filing the information also in case where this could imply the risk of self-incrimination.

Proof that reporting obligation is satisfied by other taxpayer

Evidence of the fact that the concerned Tax authority received the communication and content of the communication.

8 Reporting principles applicable to all

Language

Italian. A brief summary of the reportable cross-border arrangement has to be provided also in English.

9 Penalties

Circumstances in which penalties may apply

Incomplete, incorrect, or non-filing.

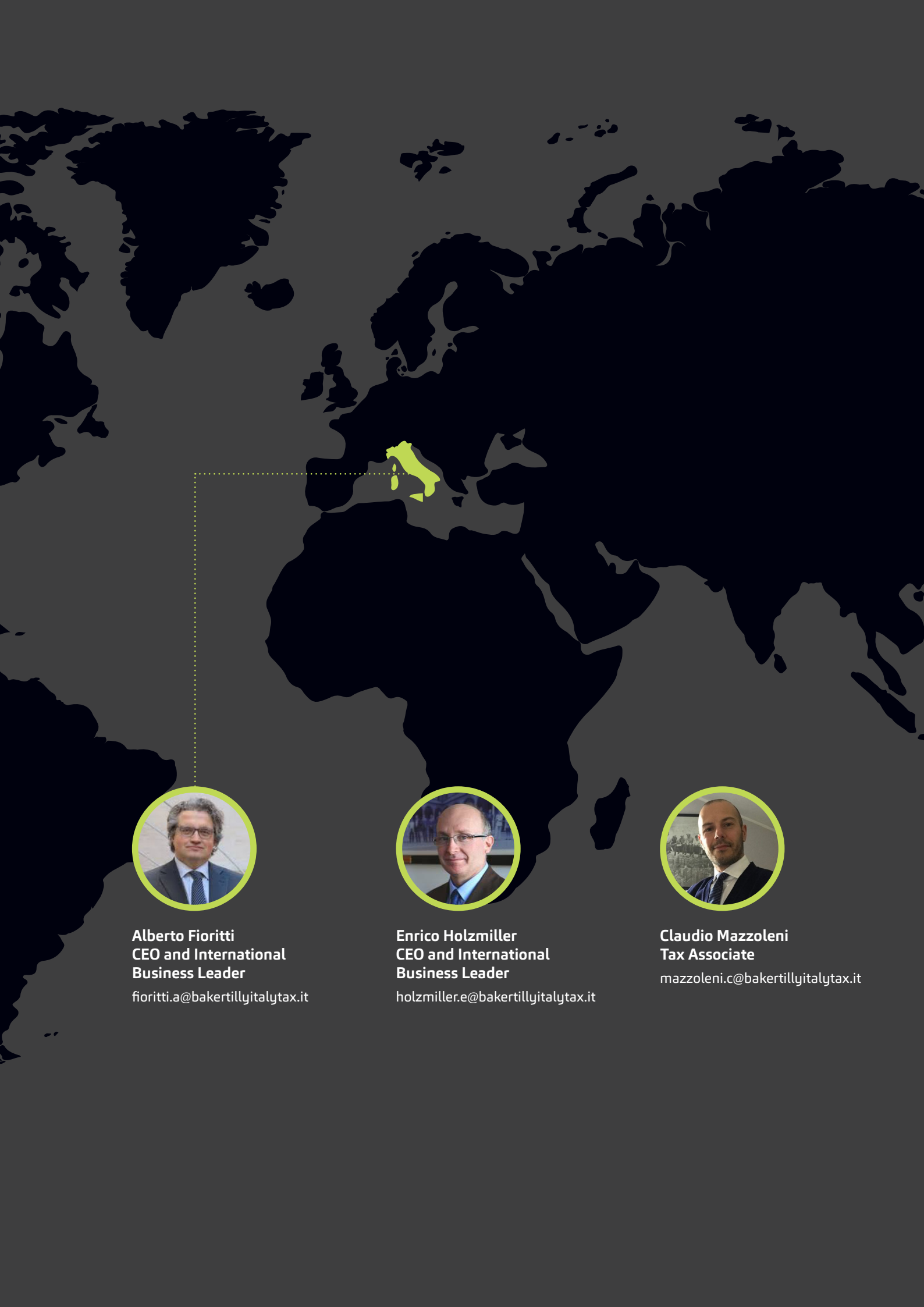
Amount

In case of a failure to report penalties ranging from EUR 3,000 to EUR 31,500.
In case of incorrect or incomplete reporting penalty ranging from EUR 1,000 to EUR 10,500.

10 Country specifics

Country specifics / deviation from EU directive

None



Alberto Fioritti
CEO and International
Business Leader

fioritti.a@bakertillyitalytax.it



Enrico Holzmilller
CEO and International
Business Leader

holzmilller.e@bakertillyitalytax.it



Claudio Mazzoleni
Tax Associate

mazzoleni.c@bakertillyitalytax.it