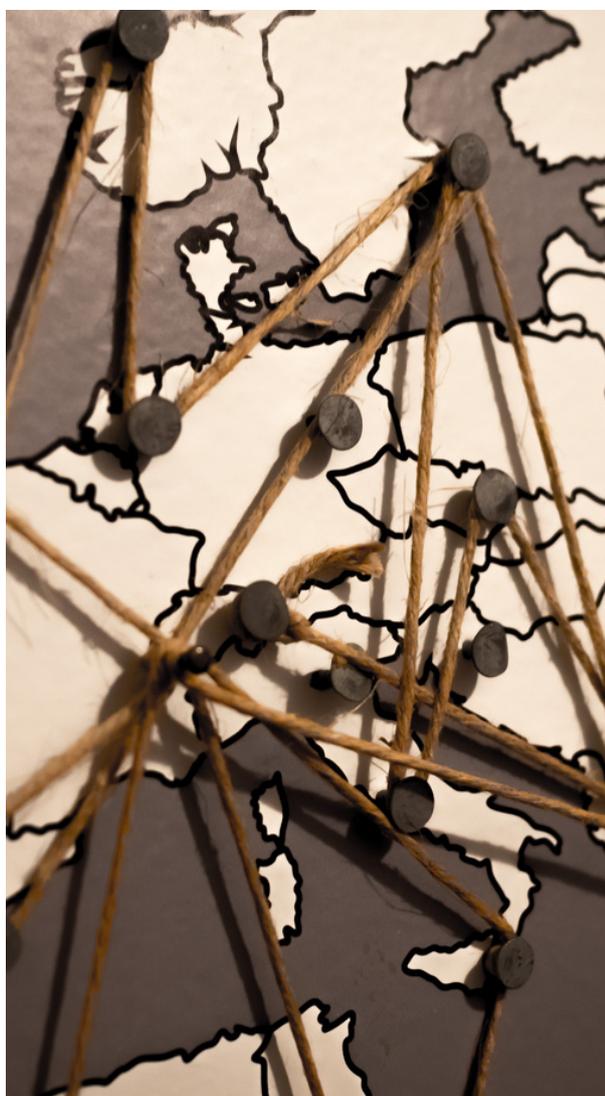


“DAC 6” MANDATORY DISCLOSURE REGIME

Min. Dec. 17 November 2020 – Technical Rules and Procedure on the Mandatory Automatic Exchange of Information on Cross-Border Arrangements



On 17 November 2020, the Minister of the Economy and Finance issued a specific ministerial decree (the “**Decree**”) defining the technical rules and procedure for the mandatory automatic exchange of information on cross-border arrangements reportable to the Italian Revenue Agency.

The Decree was issued under art. 5, para 2 of Leg. Dec. no. 100, dated 30 July 2020, which implemented the DAC6 Directive on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The following paragraphs recap the contents of the Ministerial Decree under review.

14 DECEMBER 2020

REPORTABLE INFORMATION AND REPORTING DEADLINES - ART. 2

In connection with reportable information under Leg. Dec. No. 100 of 30 July 2020, the Decree specified that:

- The **recap of the contents of the cross-border arrangement** is drafted in **Italian** and accompanied by a **short report in English**;
- The **effective date** of the cross-border arrangement is the moment in which the **taxpayer makes the first step** with legal effects or the first financial transaction in the implementation of the arrangement;
- The **value of the cross-border arrangement** to report is:
 - 1.** For **arrangements** which may have the effect of **undermining** the reporting obligation under the laws implementing EU legislation or any equivalent agreements on the **automatic exchange of Financial Account information**, including agreements with third countries, or which takes advantage of the absence of such legislation: the value of financial accounts determined under art. 3, para. 1, of the decree of the Minister of the Economy and Finance dated 28 December 2015;
 - 2.** For arrangements involving a **non-transparent legal or beneficial ownership chain**: the value of financial accounts determined under art. 3, para. 1, of the decree of the Minister of the Economy and Finance dated 28 December 2015, or, for non-financial assets and revenues: the amount of the tax advantage derived from the cross-border arrangement, determined as the difference between taxes payable based on one or more cross-border arrangements and the same taxes that would be payable in the absence of such arrangement(s);
 - 3.** For **generic hallmarks** linked to the main benefit test, **specific hallmarks** linked to the main benefit test, **specific hallmarks related to cross-border transactions** and **specific hallmarks concerning transfer pricing** (as listed in Annex 1, letters A, B, C and E, to Leg. Dec. No. 100 of 30 July 2020): the amount of the tax advantage derived from the cross-border arrangement, determined as the difference between taxes payable based on one or more of cross-border arrangements and the same taxes that would be payable in the absence of such arrangement(s).



For the purposes of collecting reportable information, **service providers are not requested to adopt additional due diligence requirements** to the ones provided for by laws and regulations in force.

For the purposes of reporting to the Italian Revenue Agency, for **service providers, available information for the intermediary under the client agreement is relevant.**

Where intermediaries are **exempted from reporting obligations**, they are required to inform any other involved intermediary or, if there is no intermediary, the relevant taxpayer, within **30 days** beginning:

- a) on the day after the reportable cross-border arrangement is made available for implementation or on the day on which implementation begins, or beginning
- b) on the day after the one on which intermediaries provided, directly or by means of other persons, aid, assistance or advice for the implementation of the reportable cross-border arrangement.

For the purposes of filing the **report with the Italian Revenue Agency**, taxpayers report information within **30 days** beginning on the day after the day on which the reportable cross-border arrangement is made available to them for implementation or on the day on which implementation begins.

NUMBER OF REFERENCE OF REPORTABLE CROSS-BORDER ARRANGEMENTS - ART.3

The Italian Revenue Agency issues a number of reference when a cross-border arrangement is reported, except in the event that the report already has a number of reference issued by the same Revenue Agency or other Tax Administrations of EU Countries.

The party which is issued the number of reference has to notify it to the other participants in the arrangement of which it has knowledge.

The number of reference has to be indicated by participants in any subsequent report concerning the same arrangement and in the periodic report.

Taxpayers implementing the cross-border arrangement are required to indicate such number of reference in all relevant tax returns for all the tax years in which the cross-border arrangement is used.



KNOWLEDGE STANDARD - ART. 4

In case of **service providers**, to qualify as intermediary, the **knowledge standard** needs to be satisfied and it is determined with reference to:

- a) the **actual knowledge of the cross-border arrangement** which the intermediary has, based on information readily available in consideration of assistance or advice services rendered to the client; and
- b) the **level of expertise required to provide assistance or advice** and the level or experience generally requested to render such services.

In the absence of evidence to the contrary, the knowledge standard is not regarded as met for routine **banking** and **financial** transactions.

APPLICATION OF HALLMARKS - ART.6

Generic hallmarks linked to the main benefit test, specific hallmarks linked to the main benefit test, specific hallmarks related to cross-border transactions and specific hallmarks concerning transfer pricing (as listed in Annex 1, letters A, B, C and E, to Leg. Dec. No. 100 of 30 July 2020) **are relevant only if they are likely to determine a reduction of taxes** to which Directive 2011/16/EU applies (on the administration cooperation in the field of taxation), payable by a taxpayer in a EU Country or in other foreign jurisdictions with which a specific agreement on the exchange of reportable information is in force.



MAIN BENEFIT TEST - ART. 7

Without prejudice to the foregoing (Art. 6) on the application of hallmarks,

- generic hallmarks linked to the main benefit test;
- specific hallmarks linked to the main benefit test;
- arrangements involving deductible cross-border payments made between two or more associated enterprises where, although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero;
- arrangements involving deductible cross-border payments made between two or more associated enterprises where the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
- arrangements involving deductible cross-border payments made between two or more associated enterprises where the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes:

are relevant for the purposes of the reporting obligation if the main benefit test is satisfied.

The main benefit test is **satisfied** when the tax advantage related to taxes to which Directive 2011/16/EU applies, derived from the implementation of one or more cross-border arrangements and which may be achieved by one or more taxpayers, **exceeds 50% of the amount of such tax advantage and of non-tax advantages.**

The **tax advantage** is calculated as the difference of taxes payable based on one or more cross-border arrangements and the same taxes that would be payable in the absence of such mechanisms.

The Decree also includes certain specifications on hallmarks set out in Annex 1 to Leg. Dec, No. 100 of 30 July 2020, and certain examples of cross-border arrangements in Annex A.



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We invite you to speak with your contact professional within the Firm for any further explanation

www.carnelutti.com
+39 02 655851