

# NARRATIVE REPORT ON ITALY



## PART 1: NARRATIVE REPORT

Italy is ranked 41<sup>st</sup> on the 2020 Financial Secrecy Index, based on a relatively low secrecy score of 50 combined with a large scale weighting of 1.14 per cent of the global market in offshore financial services.

### International Standards & Cooperation

Italy is an important economic player in Europe, with a GDP of \$2 trillion<sup>1</sup> and the eighth largest economy in the world. It is a founder of the European Union, European Council, North American Treaty Organization, and the Organization for Economic Cooperation and Development. Furthermore, Italy adheres to the Schengen Treaty and takes part in NATO’s nuclear sharing for deterrence.

In the scope of OECD, Italy is one of the addressees of the Common Reporting Standard<sup>2</sup> for the automatic exchange of tax and financial-related pieces of information (including data about fiscal residences) on a global scale.

Italy plays an important part in the international tax system both as EU Member and as a sovereign player that has signed bilateral covenants with several jurisdictions. The most important one is perhaps represented by the agreement between Italy and the US Internal Revenue Agency (the equivalent of the Italian “Agenzia delle Entrate”) on the Foreign Account Tax Compliance Act,<sup>3</sup> signed in January 2014. That compels Italy to inform the US about banking accounts and assets held in the country by Americans.

Italy has also signed bilateral agreements and mutual pacts with typical secrecy jurisdictions, including Liechtenstein (see Law 210/2016)<sup>4</sup> and Monaco (see Law 231/2016).<sup>5</sup>

From an anti-money laundering and counterterrorist-financing (CTF) perspective, Italy is a member of the Financial Action Task Force,<sup>6</sup> an inter-governmental policy-making body whose primary goal is to set standards to combat money laundering and terrorist-financing threats to ensure the financial system’s integrity and fairness. FATF is famous for its 40 Recommendations, dated 2004 and subject to periodic review and implementation, which have been recognized as an international standard to comply with.

In February 2016, FATF published a report on Italian AML and CTF compliance to its standards. The International Monetary Fund, on behalf of FATF, carried out the Italy Mutual Evaluation Report<sup>7</sup> in January 2015. It took into consideration not only the level of compliance with the 40 Recommendations adopted by member states (i.e., technical compliance) but how strong they were.

Technical compliance verification was based on all recommendations and, among these, major importance was given to those referring to legal, regulatory and institutional systems as well as to the procedures and powers which competent authorities have.

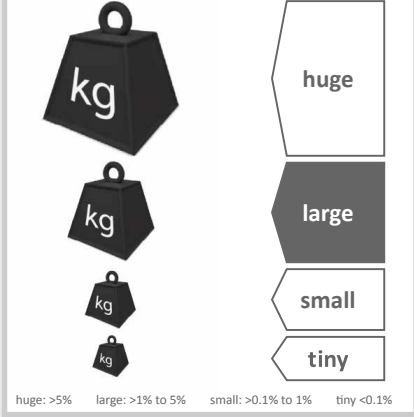
The evaluation about effectiveness aimed to verify how well the country could fight money laundering and terrorist financing, as expected from a robust and healthy system.

**Rank: 41 of 133**

**How Secretive?** **50**



**How big?** **1.14%**



Italy accounts for 1.14 per cent of the global market for offshore financial services. This makes it a large player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.  
 Full data is available here: <http://www.financialsecrecyindex.com/database>.  
 To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrecyindex.com>.  
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The Italy Mutual Evaluation Report 2015 highlights a generally positive outcome, with some grey areas for the country to implement and enhance. The following are the main topics and considerations:

- Italy has an advanced and suitable anti-money laundering and counterterrorist financing system, combined with a well-structured institutional and legal framework. But the country faces a significant money-laundering risk mainly from tax-related crimes, frequently associated with organized crime, corruption and drug trafficking;
- Italian authorities have a good understanding of the risks coming from money-laundering and terrorist-financing threats and, in general, they show proper cooperation and coordination levels;
- Italian police and judiciary authorities have access to and use quality information and they can properly and successfully conduct investigations;
- Terrorist-financing risk in Italy appears to be reasonably low and the country has efficiently put in place several economic sanctions that should be implemented. Italy furthermore mitigates activities connected with weapons of mass destruction. More awareness in the private sector, however, would be desirable;
- Italian financial intermediaries generally have a good understanding of money-laundering risks they are exposed to, and large banks appear to be the only subjects with more intense safeguards in place;
- Information about legal entities' ultimate beneficial ownership are quickly accessible, though crosschecks are needed in order to certify the information. Italian companies are, in some cases, used illicitly by organized crime. Foreign entities working in Italy represent a future challenge;
- Italian finance police (Guardia di Finanza) and local finance authorities should see their tools implemented and strengthened.

## Key Aspects of the Italian Anti-Money Laundering Legislation

### The Risk-Based Approach

The Italian Legislative Decree 90/2017<sup>8</sup> entered into force in July 2017 responding to the 4<sup>th</sup> European

Anti-Money Laundering Directive (AMLD4).

The current AML law is addressed to and must be applied by a wide range of so-called obliged subjects, such as financial intermediaries and foreign companies offering products and services in Italy. As prescribed by the new law, among the new addressees there are also gaming/gambling and cash-for-gold businesses, as well as money transfers.

As money laundering and terrorist financing threats constantly change, it was necessary to find a solution that could allow the system to respond in a timely manner to new phenomena. Following this route, the AMLD4 introduced the so-called risk-based approach.

Recognizing that the risk of money laundering and terrorist financing varies, the AMLD4 put the risk-based approach at the centre of the EU's AML/CTF regimes, leaving member states, authorities and financial institutions free to identify and assess risks in order to decide how to best manage it. Legislative Decree 90/2017 put the risk-based approach at the centre of due diligence activities, leaving financial intermediaries to modulate them depending on the risk level detected.

For the foretold reasons, and considering that money laundering and terrorist financing are constantly evolving through different forms and also different markets, another consideration that must be done is about the Joint Guidelines on the Characteristics of a Risk-Based Approach to Anti-Money Laundering and Terrorist Financing Supervision,<sup>9</sup> a document jointly published by the three European Supervisory Authorities in June 2017.

The three European Supervisory Authorities are:

- The European Banking Authority (EBA), the regulatory agency watching over the EU Banks and conducting, for example, stress tests to increase transparency while also identifying weaknesses and vulnerabilities in banks' capital structures;
- The European Security and Markets Authority (ESMA), the financial regulatory agency working on securities legislation and regulation to enhance the functioning of European financial markets. It has the dual objective of strengthening both investor protection and cooperation between national competent authorities.
- The European Insurance and Occupational

Pensions Authority (EIOPA) is the regulatory institution responsible for overseeing the European insurance market.

Following the risk-based approach, this document clearly explains the risk factors to be taken into consideration by the financial addressee operating in the financial industry as well as by authorities and regulators doing due diligence. Based on such considerations, the obliged subjects should assign each client a risk rate, modulating the related detail level and the frequency of checks.

Legislative Decree 90/2017 says that, in identifying risk exposure, subjects have to consider:

- The client's legal form (i.e., natural persons, legal person, trust, charity, foundations, association, etc.);
- The client's core business, assessing whether, and at what scale, that industry could be exposed to criminal infiltrations (e.g., healthcare, waste disposal, renewable energy, gaming and gambling, etc.);
- The client's behaviour, paying attention, for example, to its unwillingness to provide information or to the accuracy of data provided during the identification phase;
- The client's geographical scope, identifying the logic and consistency of the relationship and considering the physical place where the client is located (areas to be regarded as at higher risk due to the presence of criminal infiltration, a shadow economy, etc.);
- The type of relationship in place, focusing the attention on the transactions that may facilitate opacity or that have questionable financial logic (e.g., trusts registered in tax havens or related contracting parties that are domiciled in different countries);
- The ways the transactions are carried out (e.g., illogical and complex transactions);
- The amount, especially if significant and not coherent with the client's economic profile;
- The transactions' frequency and duration (e.g., frequent cash withdrawal or deposit).

New Bank of Italy due diligence provisions to combat money laundering and terrorist financing<sup>10</sup> entered into force in August 2019.

Those provisions made effective:

- The Legislative Decree 231/2007 as modified by the Italian Legislative Decree 90/2017, for the implementation of the AMLD4;
- The Joint Guidelines on the Characteristics of a Risk-Based Approach to Anti-Money Laundering and Terrorist Financing Supervision, published by the three ESAs in June 2017.

The addressees have to comply with it beginning 1 January 2020.

### Due Diligence and Beneficial Ownership

Before entering a relationship, obliged subjects must undertake reasonable actions to satisfactorily complete the Know Your Client (KYC) procedure, screening prospective clients and detecting high-risk indicators. The rationale behind this process is to protect the fairness, correctness and integrity of the financial system and its companies from credit and reputational threats.

Lighter controls can be applied to clients with low-level money laundering indicators while, on the other hand, a strengthened assessment can be applicable to clients with a high level of money laundering risks (e.g. bearer shares, politically exposed persons, etc.) or who are active in particular industries (e.g. defence/dual use, gaming/gambling, arts, gold/metals, etc.).

The amendments introduced by Legislative Decree 90/2017 leave the subjects free to decide whether and when to apply it. In any case, financial institutions need to always identify the ultimate beneficial owner. For both the above-mentioned approaches, however, the law provides a sort of guidance concerning different features to consider in the evaluation process, such as business type, geography, source of wealth or funds, transactions, etc.

Obliged subjects are required to identify the client through a valid identification or business report (if they are companies or other types of entities) and also to verify the accuracy of such pieces of information using independent and reliable sources like vendor applications or public company registers. If the client is a company, it is necessary then to unwrap all its ownership/control structure in order to identify, and subsequently verify, individuals as final UBOs.

The criteria for such determinations are contained in Legislative Decree 90/2017. The beneficial owners are the natural persons to whom the direct or indirect ownership of the entity is attributable.

If the client is a legal person, it is mandatory to investigate the control structure to understand who holds more than 25 per cent of the capital, considered as a fixed percentage for every single layer without dilution, even if owned or controlled through different entities or through fiduciary companies/nominees. This can be defined as the “mathematical method” (in Italian “criterio matematico”) for unwrapping the ownership or control chain.

If unwrapping the ownership structure does not unequivocally identify the natural persons with direct or indirect ownership of the institution, another method can be used (the so-called “control method”, in Italian “criterio del controllo”). In this case, the actual holder coincides with the natural person, or persons, to which, in the last instance, the control of the same is attributable to:

- The control of the majority of the votes that can be exercised at ordinary shareholder meetings;
- The control of sufficient votes to exercise a dominant influence at ordinary shareholder meetings;
- The existence of particular contractual obligations that allow the exercise of a dominant influence.

If the two foretold criteria cannot be met, it is necessary then to apply the third and alternative method, the “administrative method” (in Italian “criterio amministrativo”), for which the final UBOs will be the individuals who, at the very end, have management powers over the entity. That can include directors and administrators.

When the client is an association or foundation, the UBOs are considered to be:

- The founders, if living;
- The beneficiaries;
- The holders of management and administrative powers.

This extensive criterion could find its rationale in a prudential approach, considering potential misuses of these types of entities that benefit from tax advantages.

Unwrapping client ownership structures can also lead to fiduciary companies or nominees<sup>11</sup> — businesses that usually offer fiduciary and custody services to clients and that can create serious

problems from an AML perspective due to the anonymity of such type of services. With such an entity in the ownership structure, it is important to understand if the nominee holds shares on its own or on third parties’ behalf.

If the company itself owns the shares, then it is necessary to use the mathematical method to identify the final UBOs; otherwise the nominee is required to provide a copy of the fiduciary mandate, making a full disclosure of the final beneficiaries. Such communication, strictly private and confidential, must be equipped with copies of valid IDs.

### Considerations on Trusts

Trusts are a legal fiduciary arrangement of the common law legal system, which serve to regulate multiple legal relationships of a patrimonial nature. Trusts were born in medieval England when knights (the settlers of the time) departed for the Holy Land during the Crusades. They generally left their equals or friends (a sort of trustees) in charge to manage and administer their properties (a sort of trust fund) and lands on their behalf and for their heirs (that we may label as beneficiaries), in case they did not return home.

From a regulatory perspective, the Hague Convention on the Law Applicable to Trusts and on their Recognition<sup>12</sup> (Hague Trust Convention) is the multilateral treaty that allow trusts to be recognized. It is dated July 1985 and entered into force in January 1992. In Italy it has been ratified with the Law 364/1989.<sup>13</sup>

The convention harmonizes the definition of a trust and sets conflict rules for resolving problems in the choice of the applicable law. Its main provisions are the following:

- Each party recognises the existence and validity of trusts. The convention, though, only relates to trusts considered as written trust instruments. It would not apply to trusts which arise without a written deed (see art. 3);
- The convention sets out the characteristics of trusts under the convention;
- The convention sets out clear rules for determining the governing law of trusts with a cross border element.

Relating their uses, this being a flexible instrument, there is no unambiguous standard for setting up a trust but instead many possible schemes that can

be used.

The parts involved in such an arrangement are generally the following:

- The settlor/grantor (in Italian, “disponente”), is the one who promotes and establishes the trust. He usually disposes of his assets and/or properties and transfers them in the trust in favour of the designed beneficiaries. The transferred assets do not belong to the settlor anymore but constitute a separate property (trust fund);
- The trustee (or administrator), is bestowed with powers and duties to manage the trust and the assets contained in it. It must administer the trust according to the rules set by the settlor;
- The beneficiary (in Italian as “beneficiario”) is the subject that can effectively benefit from the assets in the trust, maybe through the earning of a permanent income;
- The protector/guardian (in Italian “guardiano”) is the one responsible to make sure that the effective conduct of the trustee is compliant with the purpose of the trust.

In order to avoid eventual conflicts or potential misuses connected with this instrument, for example as a property fictitious interposition, where the trust can be defined as “self-declared” (in Italian “autodichiarato”), namely where a person covers at the same time both the roles of settlor and trustee, such positions and subjects should not coincide. In this regard, the Bank of Italy issued a useful paper, containing indexes for detecting potentially anomalous behaviours connected to the misuse of trusts.<sup>14</sup>

Trusts can be established for different reasons but those reasons must always be considered worthy under the chosen legal system. Among the most common reasons for setting up a trust are:

- Properties and asset protection. Trusts are often used to safeguard real estate properties and to secure them. One of the most appreciated features of this instrument is the assets’ ring fencing, which makes them unavailable to third parties in case of detrimental events like insolvency. Considering this feature, trusts are often used to safeguard and segregate personal assets from company/business assets;
- Privacy reasons. Dispositions envisaged in the trust deed (in Italian “atto costitutivo di trust”)

may be confidential, and that can be a sufficient reason for its setup. Secrecy is commonly related to so-called “opaque trusts” (in Italian “trusts opachi”), where it may represent a way control entities and companies (usually used in wealth planning/engineering operations);

- Safeguarding underage and/or disabled persons. Usually will dispositions reserve to underage or disabled subjects the rights to receive, for a fixed time span, an annuity or to use the assets without being owners (only beneficiaries). This is to safeguard the assets from being squandered.
- Properties and asset protection for inheritances. A trust is usually set up for safeguarding assets during inheritance processes;
- Charity. In different common law legal systems, charities can be constituted as trusts;
- Investments and pension funds;
- Tax advantages. A trust can bring with itself tax avoidance, but if it has been set up for tax evasion, it can be considered unlawful and subject to sanctions or dismissal.

Should any events occur during the trust life (e.g., provision of new assets in the trust fund, change or dismissal of the trustee), the administrator may be required to keep track of such pieces of information in a so-called “memorandum” (in Italian “libro degli eventi”), aimed to make the trust’s history understandable to third parties.

It is easy to understand how such an instrument can be commonly misused.

### Cash-for-Gold Business

In order to monitor and combat criminal threats, including money laundering and the reuse of illicit profits linked or attributable to the trading of gold and/or second-hand goods, it appeared necessary to implement new industry regulations to make it more coherent and to allow the full registration and traceability of related transactions.

Legislative Decree 92/2017 strengthened regulatory safeguards, including for cash-for-gold operators among the subjects obliged to comply with the AML obligations. These subjects have been classified as “other non-financial operators” and a reference has been made regarding the Italian Law 7/2000,<sup>15</sup> relating to the gold market.

A cash-for-gold business is defined as the retail or wholesale trading of valuable goods, carried out as a core or secondary activity. Operators are enrolled in the related cash-for-gold register, maintained by the Agents and Brokers Association or Organismo Agenti e Mediatori.<sup>16</sup>

Enrollment in this register depends on whether the related license has been obtained. However, as the supervision of such subjects remains with the Bank of Italy, on its website it is possible to consult the Register.<sup>17</sup>

Before proceeding to execute a transaction, the obliged subject has to identify the client, according to the Anti-Money Laundering Decree (art.4).

As for the traceability of the transactions (see art. 5), the obliged subject has to:

- Use a single bank account, exclusively dedicated to the business activity;
- Prepare, for each transaction performed, a progressively numbered data sheet containing:
  - The client's identification data and the references of non-cash transactions;
  - A brief description of the product, including its nature and main features;
  - The percentage, observed through an independent and reliable source, of the gold and precious metals contained therein at the time of the transaction;
  - Two digital photos of the precious good acquired from three different perspectives;
  - The date and hour of when the transaction was carried out;
  - The paid amount and the payment method used;
  - Integrative data about:
    - The good's destination (e.g., data about the operator or client the good has been sold to);
    - From whom the good has been purchased from;
    - The foundries or companies the good has been transferred to.

Finally, and importantly, operators are also obliged

to report to the UIF, the Italian Financial Investigation Unit, any suspicious activity, in accordance with art. 25 of the Anti-Money Laundering Decree.

### Politically Exposed Persons

In Italy, unlike jurisdictions like the United Kingdom, politically exposed persons (PEPs) can only be individuals and not entities.

Legislative Decree 231/2007 included a wide range of different roles in this category, like high ranking state officials (e.g. heads of states, prime ministers, ministers and their deputies, members of parliament and political parties' senior representatives), judges and supreme courts justices, as well as their foreign equivalents, central bank senior officers, ambassadors, consuls and high ranking military officials (e.g. generals).

Relatives (e.g. parents, wives and husbands or partners, sons, daughters, etc.) as well as their business associates are also classified as PEPs (more precisely they are classified as RCAs, an acronym that stands for relatives and close associates).

The rationale behind this classification is that the PEP might be aware of privileged information and the related risk is the misuse of such data to gain personal advantages and profits. As prescribed by the law, prior to entering into a relationship with a PEP, a senior officer must give the green light, as this scenario can lead to apply the enhanced due diligence.

Legislative Decree 90/2017 widened the PEP category to include regional council members, European Parliament members and mayors of cities having more than 15,000 citizens.

Legislative Decree 125/2019, implementing EU Directive 2018/843, seems to exclude persons acting on behalf of public administration bodies from being classified as PEPs; in these cases, due diligence activities must be weighted by effective risk.

### Archivio Unico Informatico

Archivio Unico Informatico (AUI), prescribed by the Legislative Decree 231/2007, is a unique feature of the Italian AML legislation. It is a centralized information technology tool set up by and for the supervisory authorities to assure financial intermediaries' due diligence obligations are met.

All monetary transactions of €15,000 or more must

be recorded into this virtual register, whether single or fractioned. It is also compulsory to register all ongoing relationships the intermediaries have in place with clients and all the relevant links (e.g., UBOs, executors, etc.). Ad hoc provisions describe its modus operandi, as well as other collateral obligations.

A fractioned operation is an amount equal to or greater than €15,000 carried out in different moments but still in a defined time span, generally considered to be seven days.

Legislative Decree 90/2017 abolished AUI registration and, as a replacement, introduced new obligations regarding data conservation and reporting to the financial investigation unit, but the authority must issue implementing acts.

Archivio Unico Informativo is a very useful tool as it contains large amounts of data available upon request to third parties like magistrates, regulators, and the Bank of Italy.

### Gianos, the Risk Rating Engine

GIANOS, which stands for Generatore di Indici di ANomalia per Operazioni Sospette, is an Italian digital procedure commonly used by financial intermediaries to alert authorities to potentially suspicious operations. It is based on analysis of AUI registrations but is neither compulsory for financial institutions nor exhaustive. It was created by a working group of legal, IT and statistical experts under the supervision of the Italian Banking Association (in Italian, "Associazione Bancaria Italiana").

Several modules, such as Inattesi, GPR and know-your-client, compose GIANOS.

Inattesi analyses transactions that might not be consistent with the client's business and economic profile.

GPR, which stands for "Gestione del Profilo di Rischio," can set up clients' risk profiles, taking into consideration current operations, past anomalies, ID information, relationship with the financial intermediary, etc. It is also possible to modify different parameters, tailoring the criteria for any need. This allows the monitoring of an AML risk rating over time, as it can change.

Finally, the KYC allows the operator to manage clients' pieces of information gathered thanks to the client due diligence form (in Italian "modulo di

adeguata verifica").

In order to be fully suitable and compliant with the new EU AML Directive, a new version of GIANOS is currently being implemented.

### Financial Intelligence Unit

AMLD3 compelled member states to equip themselves with a Financial Intelligence Unit (FIU), a fully independent agency bestowed with all the necessary power — administrative and operative — for combating money laundering and terrorist financing threats. Under Legislative Decree 231/2007, issued to be compliant with the European Act, the Bank of Italy in 2008 set up the Unità di Informazione Finanziaria.

In compliance with its functions, the Italian FIU is in charge of analysing suspicious activity reports sent by financial intermediaries. The Italian FIU can gather all relevant pieces of information and share data with judicial authorities.

The Italian FIU actively collaborates and shares information with the other European FIUs.

Under the 5<sup>th</sup> European Anti-Money Laundering Directive, the cooperation between national and supranational authorities has been strengthened. The important role of the FIUs has been more developed than before as major importance is given to cross-border operations. Member states' authorities, as well as obliged subjects, will have to provide FIUs unlimited access to judicial and investigative data.

### The 5<sup>th</sup> European Anti-Money Laundering Directive

In any case, while member states are still applying rules related to the AMLD4, the Directive (EU) 2018/843<sup>18</sup> (5<sup>th</sup> European Anti-Money Laundering Directive), is aimed at further enhancing the anti-money laundering and counterterrorist financing fights. The new directive entered into force in July 2018 and has to be transposed into law by January 2020.

The Italian Ministry of Economics and Finance (MEF) issued a Draft of Legislative Decree of implementation of the Directive (EU) 2018/843. The Legislative Decree 125/2019, which was open for public comments with a deadline scheduled for April 2019, has been published on the Italian Official Journal in October 2019.

In particular, the AMLD5:

- Extends the scope to virtual currency platforms and wallet providers, tax-related services and traders of arts and antiques;
- Grants the general public access to the beneficial ownership information of EU-based companies;
- Makes an obligation to consult the beneficial ownership register when performing AML Due Diligence;
- Obliges member states to create a list of national public offices and functions that qualify people as PEPs;
- Introduces strict enhanced due diligence measures for financial flows from high risk third countries;
- Ends the anonymity of bank and savings accounts, as well as safe deposit boxes, and creates central access mechanisms to bank account and safe-deposit-box-holder information throughout the EU;
- Makes information on real estate holders centrally available to public authorities;
- Lowers thresholds for identifying the purchasers of prepaid cards and for the use of e-money;
- Further enhances the powers of the FIUs and facilitates cooperation and information exchange among authorities.

## Key Aspects of Corporate Transparency Regulation

### The Information Providers

From an AML perspective, it is possible to run a search of the public company register for a fee. Upon payment information providers like Cerved Information Solutions SpA or CRIF SpA<sup>19</sup>, it is possible to consult several reports containing companies-related economic and financial data. Unlike other jurisdictions, the data contained is trustworthy and verified. While it may not not always be up-to-date, it can be considered a “independent and reliable source.”

Such data-storing third parties manage pieces of information retrieved from the Italian chambers of commerce and, taking advantages of this public data, create useful and detailed reports aimed at verifying information like companies’ reliability, solvency and economic/financial frameworks, in order also to

assess the related credit risk exposure.

Other pieces of information available include balance sheets, number of employees, foundation dates, emails and telephone numbers, assets and eventual legal actions or adverse events (seizures, protests and/or requisitions).

A very important point to outline is that, for companies only, such reports also highlight the immediate UBOs/shareholders with their relevant share percentages. When the immediate identified shareholder is another Italian company, one can continue download the next extract until one determines the final UBO. No matter what vendor you have a membership with, all registers have a national range so in the case of foreign entities, it is necessary to rely on non-Italian company registers.

Legislative Decree 90/2017 obligated a special section for trusts and related subjects, and the measure is still being studied.

Reports can be downloaded not only for legal entities, but also for individuals. For individuals it is also possible to retrieve the information related to the number and types of offices held in other companies.

## Key Aspects of the Italian Tax Legislation

### Overview of the Italian Tax Legislation

Although Italy faces significant money laundering risk, mainly coming from tax-related crimes associated with organized crime, corruption and drug trafficking, it has robust tax laws. Those are strengthened by the guidelines the Internal Revenue Agency issues on certain topics.

The term “tax evasion” refers to all those cases in which misconducts are put in place by taxpayers with the goal to eliminate or reduce the tax levy. Not all the abuses have the same weight; in fact, people are punishable by law, in specific cases, if certain thresholds are exceeded.

In some cases the above-mentioned behaviour may constitute a tax crime. The anti-tax evasion regulatory framework is mainly based on the following:

- a) Penal Code (in Italian “Codice Penale”), Legislative Decree 70/2000 and Legislative Decree 185/2015 on Tax Offences and Administrative Sanctions.

Tax evasion can be considered a criminal act,



according to Legislative Decree 74/2000,<sup>20</sup> which deems the following criminal acts:

- Fraudulent misrepresentation (in Italian “dichiarazione fraudolenta”). This is falsification of an income tax return (in Italian “dichiarazione dei redditi”). It is a crime if:
  - The unpaid tax is greater than €30,000;
  - The unpaid amount is greater than the 5 per cent of the tax return;
  - The unpaid amount is greater than €1.5 million;
  - Credits and fake withholdings are greater than the 5 per cent of the levy;
  - Credits and fake withholdings are greater than €30,000;

In these cases, the sanction is imprisonment for up to six years.

- False tax declaration (in Italian “dichiarazione infedele”). This is not considered a crime, unless:
  - The tax evasion involves an amount of more than €150,000;
  - The undeclared incomes are more than 10 per cent out of the total, or are €3 million.

The related sanction is imprisonment for up to three years.

- Tax declaration failure (in Italian “dichiarazione omessa”). This scenario is triggered only if the income tax return, the VAT declaration (in Italian “dichiarazione dell’IVA”) and Form 770 are not disclosed within 90 days after the deadline. It is considered a crime if the unpaid tax is greater than €50,000. The related sanction is imprisonment for up to three years.
- VAT declaration failure (in Italian “omesso versamento dell’IVA”). If VAT declaration fails to be disclosed, it is a crime only if the amount is greater than €250,000.
- False invoicing (in Italian, “falsa fatturazione”). If false invoices are issued, namely related to unreal operations to facilitate the evasion, this is always a crime, regardless of the amount. The sanction in this case is imprisonment for up to 6 years.
- Concealment and destruction of accounting

documents (in Italian “Occultamento e distruzione di documenti contabili”). This is always considered a crime and the related sanction is imprisonment for up to 6 years.

- b) Fiscal monitoring law (in Italian “legge sul monitoraggio fiscale”).

The fiscal monitoring Law constitutes an obligation for all taxpayers fiscally resident in Italy. It has been introduced into the legal framework with Legislative Decree 167/1990, transposed into Law 227/1990.

Its primarily goal is to limit financial movements among different jurisdictions, as these can hide illicit operations. In order to prevent and avoid crimes, EU member states have adopted common legislation for monitoring cross border operations (assets held abroad by EU residents). Taxpayers resident in Italy have to declare their assets held abroad that may produce revenues subject to taxation in Italy.

From a fiscal perspective, such an obligation has great importance, since in this way the Internal Revenue Agency is able to acquire and manage large amounts of useful data to carry out its inspections.

The following are subject obliged to respect the fiscal monitoring law:

- Natural persons, also having a VAT Number;
- Non-commercial entities;
- Sole proprietorships;
- Entities equivalent to sole proprietorships.

Furthermore, there is also a legal assumption of residency in Italy for all persons who have moved to offshore financial centres, the so-called blacklist countries.

- c) Legislative Decree 124/2019 (Fiscal Decree).

In October 2019, Legislative Decree 124/2019<sup>21</sup> (Fiscal Decree), was published in the Official Journal. It introduces fraudulent misrepresentation (tax-related crimes) onto the list of predicate offences related to Legislative Decree 231/2001<sup>22</sup>, concerning companies’ administrative responsibilities.

- d) Legislative Decree 90/2017 on AML/CTF and subsequent integrations.

It focuses mainly on money laundering and terrorist financing threats, offences that are often linked to tax evasion, as it can be a related predicate offence (in Italian as “reato presupposto”).

### Tax Amnesties: Scudo Fiscale and Voluntary Disclosure

The Italian judicial system is commonly recognized as one of the most disorganized and slowest in Europe and tax-related proceedings are no exception. In a country where tax evasion is widespread, different governments have attempted to put in place remedial counter-actions.

In 2009, under the fourth Berlusconi Government, Legislative Decree 194/2009, alternatively known as “Mille Proroghe”, was approved, allowing taxpayers to take advantages of the so-called Scudo Fiscale Ter (Third Tax Amnesty, as two similar versions were issued in 2001 and 2002), for all assets irregularly held abroad. In exchange for a one-time flat tax, comprehensive of fines but still lower than the ordinary tax rate, the law inhibited criminal prosecution and tax assessment by the Italian Internal Revenue Agency. This measure also abolished the punishment for some related crimes like fraudulent tax declarations, fraudulent statements using false invoices, false accounting, document-concealing or destruction, etc. This measure also referred to foreign holding companies, mostly based in tax havens.

At the time, the Italian government estimated additional revenues of €3 billion. In February 2010, as per the valuations done by the government, €80 billion was regularized: About €60 billion came back from Switzerland, approximately €4 billion from Luxembourg and Monaco and the remaining part from the rest of the world.

From 2014 onwards, Italy had a revival of such measures as the Italian Law 186/2014, entered into force from January of that year, launched the so-called voluntary disclosure<sup>23</sup> (in Italian “collaborazione volontaria”), set up for the regularization of amounts illegally held outside Italy. This money laundering and tax evasion/avoidance counter-action was not available to taxpayers who already had inspections or legal actions in place. People willing to fix their tax profile could self-report their violations to the authorities, starting the regularization process (in Italian “procedura di collaborazione volontaria”).

According to a public statement issued by the Internal Revenue Agency in December 2015, the revenues from the regularization process were estimated to be €3.8 billion coming from the following tax havens: Switzerland (69.6 per cent), Monaco (7.7 per cent), Bahamas (3.7 per cent), Singapore (2.3 per cent), Luxembourg (2.2 per cent)

and San Marino (1.9 per cent).<sup>24</sup>

An additional disclosure facility, the second version of the voluntary disclosure (collaborazione volontaria bis) was launched in February 2017.

Italy is No. 30 on Tax Justice Network’s 2019 Corporate Tax Haven Index with a score of 51 out of 100. In July 2019 after the Paradise Papers leaks to the International Consortium of Investigative Journalists, the European Commission said it would refer Italy to the Court of Justice for what it called illegal tax breaks for yachts.<sup>25</sup> Europe also launched a probe into Italy’s tax policies relating to ports.<sup>26</sup>

*With thanks to Nicolò Perazzini, AML Specialist*

## Endnotes

- 1 <https://www.statista.com/statistics/263577/gross-domestic-product-gdp-in-italy/>; 04.02.2020.
- 2 CRS details on the OECD Official Website: <https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>; 04.02.2020.
- 3 Details about FATCA on the US IRS Official Website here: <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>; 04.02.2020.
- 4 The law, available for consultation in Italian, can be found on the Government Official Journal Website at the link here: [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-11-22&atto.codiceRedazionale=16G00223&elenco30giorni=false](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-11-22&atto.codiceRedazionale=16G00223&elenco30giorni=false); 04.02.2020.
- 5 The law, available for consultation in Italian, can be found on the Government Official Journal Website at the link here: [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-12-21&atto.codiceRedazionale=16G00246&elenco30giorni=true](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-12-21&atto.codiceRedazionale=16G00246&elenco30giorni=true); 04.02.2020.
- 6 More details about FATF can be found on its Official Website here: <https://www.fatf-gafi.org/>; 04.02.2020.
- 7 The Italy Mutual Evaluation Report, dated 2015, can be consulted on FATF Official Website here: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf>; 04.02.2020.
- 8 Italian Legislative Decree 90/2017, available for consultation in Italian, can be found on the Government Official Journal Website at the link here <https://www.gazzettaufficiale.it/eli/gu/2017/06/19/140/so/28/sg/pdf>; 04.02.2020.
- 9 The ESAs' document can be consulted, in different languages, on its Official Website at the following link: <https://esas-joint-committee.europa.eu/Pages/Guidelines/Joint-Guidelines-on-the-Characteristics-of-a-Risk-based-Approach-to-Anti-money-Laundering-and-Terrorist-Financing-Supervi.aspx>; 04.02.2020.
- 10 The Bank of Italy Provisions concerning Due Diligence to combat money laundering and terrorist financing <https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/disposizioni/provv-110413/index.html>; 04.02.2020.
- 11 Under Italian law, nominees can be under supervision of Bank of Italy or not. Is possible however to run a search on the regulator's following official website <https://www.bancaditalia.it/compiti/vigilanza/albi-elenchi/>; 04.02.2020 under the Section "Albi ed Elenchi di Vigilanza".
- 12 The Hague Trust Convention in Italian: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=59>; 04.02.2020.
- 13 Italian Law 364/1989 can be consulted here: [https://www.tuttocamere.it/files/dirsoc/1989\\_364.pdf](https://www.tuttocamere.it/files/dirsoc/1989_364.pdf); 04.02.2020.
- 14 <https://uif.bancaditalia.it/normativa/norm-indicatori-anomalia/comunicato-02122013.pdf>; 04.02.2020.
- 15 The Italian Law 7/2000 about the Gold Market can be consulted, in Italian, on the Official Journal Website at the link here: <https://gazzettaufficiale.it/eli/id/2000/01/21/000G0033/sg>; 04.02.2020.
- 16 More details about OAM can be found here: <https://www.organismo-am.it/>; 04.02.2020.
- 17 <https://bancaditalia.it/compiti/vigilanza/intermediari/op-oro/index.html>; 04.02.2020.
- 18 Copy of the 5th European Anti-Money Laundering Directive, in different languages, is available for free consultation on the EUR-LEX official website here <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A32018L0843>; 04.02.2020.
- 19 More details about Cerved and CRIF can be found in their official websites, in English, at the following links: <https://www.cerved.com/en> and <https://www.crif.com/>; 04.02.2020.
- 20 Legislative Decree 74/2000 is available for consultation, in Italian, on the Official Journal website at the following link here: <https://www.gazzettaufficiale.it/eli/id/2000/03/31/000G0112/>

sg; 04.02.2020.

21 <https://www.gazzettaufficiale.it/eli/id/2019/10/26/19G00134/sg>; 04.02.2020.

22 <https://www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sg>; 04.02.2020.

23 The definition as well as the terms and conditions to apply for the Voluntary Disclosure process, in Italian, is available for free consultation on the Internal Revenue Agency (Agenzia delle Entrate) official website at the following link: <http://www.agenziaentrate.gov.it/wps/content/Nsilib/Nsi/Schede/Istanze/Collaborazione+volontaria+%28voluntary+disclosure%29/Collaborazione+volontaria+infogen/?page=istanzecomunicazioniccitt>; 04.02.2020.

24 The public statement is available to public for free consultation, in Italian, at the following link here: <http://www.agenziaentrate.gov.it/wps/content/Nsilib/Nsi/Schede/Istanze/Collaborazione+volontaria+%28voluntary+disclosure%29/Statistiche+Collaborazione+volontaria/?page=istanzecomunicazioniccitt>; 04.02.2020.

25 [https://ec.europa.eu/commission/press-corner/detail/en/IP\\_19\\_4265](https://ec.europa.eu/commission/press-corner/detail/en/IP_19_4265); 04.02.2020.

26 [https://ec.europa.eu/commission/press-corner/detail/en/ip\\_19\\_6292](https://ec.europa.eu/commission/press-corner/detail/en/ip_19_6292); 04.02.2020.

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 27 1. Banking Secrecy
- 50 2. Trust and Foundations Register
- 65 3. Recorded Company Ownership
- 50 4. Other Wealth Ownership
- 95 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 90 6. Public Company Ownership
- 50 7. Public Company Accounts
- 50 8. Country-by-Country Reporting
- 88 9. Corporate Tax Disclosure
- 75 10. Legal Entity Identifier

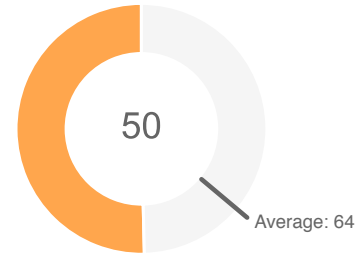
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 53 11. Tax Administration Capacity
- 75 12. Consistent Personal Income Tax
- 50 13. Avoids Promoting Tax Evasion
- 75 14. Tax Court Secrecy
- 50 15. Harmful Structures
- 30 16. Public Statistics

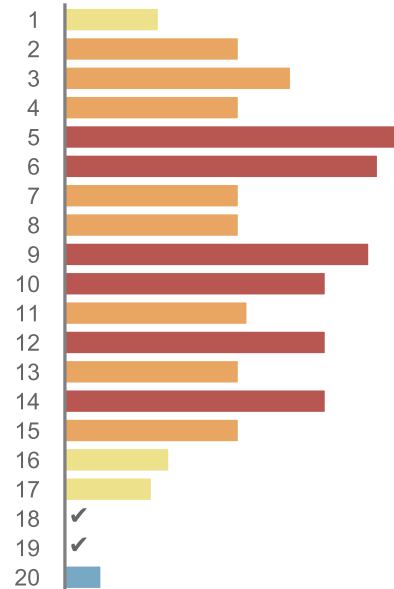
INTERNATIONAL STANDARDS AND COOPERATION

- 25 17. Anti-Money Laundering
- 0 18. Automatic Information Exchange
- 0 19. Bilateral Treaties
- 11 20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click [here](#) to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: <http://www.financialsecrityindex.com/database>.

To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrityindex.com>.