

Criminal assistance between Switzerland and Italy

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

When the Italian authorities investigate a tax crime they can choose between two channels. Administrative assistance is requested by the Agenzia delle Entrate under Art. 27 of the convention. Mutual legal assistance in criminal matters is requested by a public prosecutor under the European Convention on Mutual Assistance in Criminal Matters and its Swiss-Italian supplementary agreement of 1998. Chapter H.IV treats the latter in detail. Under Art. 3 para. 3 of the Federal Act on International Mutual Assistance in Criminal Matters (IMAC), Switzerland grants criminal assistance in fiscal matters only for tax fraud, which Swiss practice defines by the use of false documents or by a fraudulent scheme (*arglistiges Verhalten*).¹ For indirect taxes, the Anti-Fraud Agreement between Switzerland and the European Union of 2004 and the Schengen acquis have widened assistance.² The Italian prosecutor investigating an *omessa dichiarazione* without false documents will therefore usually rely on administrative assistance and on CRS data, while a case of fraudulent invoicing through Ticino companies will be pursued through criminal assistance.

1 DAC6: reportable cross-border arrangements

The last element of the Italian framework is the mandatory disclosure of cross-border tax arrangements under Council Directive (EU) 2018/822 (DAC6). Italy transposed it by Legislative Decree No. 100 of 30 July 2020 and the ministerial decree of 17 November 2020, and the Agenzia delle Entrate issued its interpretation in circular No. 12/E of 13 May 2022.³ Intermediaries who design, market or implement an arrangement that bears one of the hallmarks of the directive must report it within thirty days. Hallmark D.1 concerns arrangements that may undermine the automatic exchange of financial account information, and it is the one most relevant to Swiss structures. Intermediaries need not be resident in Italy, but the reporting duty is excluded when another intermediary, wherever resident,

has already reported the same information in Italy or in another Member State.⁴ If no EU intermediary is involved, for example when a Lugano lawyer alone designs a structure for an Italian client, the duty passes to the Italian taxpayer. Switzerland has not adopted DAC6, but Swiss advisers must reckon with the fact that the Italian client will report the arrangement and their own role in it.

For the practitioner. Criminal tax exposure in a Swiss-Italian case should be tested on both sides: - In Italy: the thresholds of Art. 3 to 5 of Legislative Decree No. 74/2000 for each open year, the offence of Art. 11 for transfers after a tax claim arose, corporate liability under Legislative Decree No. 231/2001 and the changes made by Legislative Decree No. 87/2024. - In Switzerland: whether the conduct, if committed in Switzerland, would be tax fraud (Art. 186 DBG) with taxes evaded above CHF 300,000 per period, making the assets the proceeds of a predicate offence under Art. 305bis para. 1bis and para. 3 SCC. - In both: whether the case is likely to proceed through administrative assistance (Art. 27 of the convention) or criminal assistance (IMAC, limited to tax fraud), and whether a DAC6 report has been or must be filed in Italy.

2 Notes

1. Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (IMAC), SR 351.1, Art. 3 para. 3, <https://www.droit-bilingue.ch/de-fr/3/35/351.1-3-7.html>; Ordinance of 24 February 1982 (IMAO), SR 351.11, Art. 24 (Abgabebetrug), <https://www.droit-bilingue.ch/de-fr/3/35/351.11-24-29.html>. ↩
2. Cooperation Agreement between the Swiss Confederation and the European Community and its Member States to combat fraud and any other illegal activity affecting their financial interests, concluded on 26 October 2004 (Anti-Fraud Agreement), SR 0.351.926.81, applied provisionally since 8 April 2009, <https://www.droit-bilingue.ch/de-fr/0.3/0.35/0.351.926.81-preface-1.html>. ↩
3. Agenzia delle Entrate, circular No. 12/E of 13 May 2022, text via dirittobancario.it, <https://www.dirittobancario.it/wp-content/uploads/2022/05/Circolare-AE-13-maggio-2022-n.-12-DAC-6.pdf>, citing Legislative Decree No. 100 of 30 July 2020 and the ministerial decree of 17 November 2020. ↩

4. Circular No. 12/E (above), on the thirty-day period (Art. 7 para. 1 lit. b), on hallmark D.1 and on Art. 3 para. 3 of Legislative Decree No. 100/2020 (exemption when "another intermediary, wherever resident, has communicated" the information). ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-criminal-assistance-between-switzerland-and-italy