

DAC6 and mandatory disclosure

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Since 2020 cross-border tax arrangements involving Italy may also have to be reported to the Italian Revenue Agency under the EU directive on mandatory disclosure (DAC6). Italy implemented it by Legislative Decree no. 100 of 30 July 2020, published in the Official Gazette no. 200 of 11 August 2020 and in force since 26 August 2020.¹ The decree requires intermediaries, and in certain cases taxpayers, to report crossborder arrangements that display one of the hallmarks listed in its annex. Examples are the conversion of income into lower-taxed categories, payments to recipients in lowtax jurisdictions and transfers of hard-to-value intangibles. Switzerland is not bound by DAC6 and has no comparable mandatory disclosure regime, so that Swiss advisers are not reporting intermediaries. Where no intermediary in an EU member state is involved, the obligation falls on the Italian taxpayer who uses the arrangement, which can include the Italian group company or the Italian resident shareholder of a Ticino structure.² Failure to report is subject to administrative penalties. The Revenue Agency published its interpretative circular in February 2021.³

For advisers in Lugano, DAC6 means that a restructuring involving an Italian group company and a Ticino company may become visible to the Italian authorities. A transfer of distribution functions to Switzerland, for example, may be reported by an Italian bank, an Italian law firm or the Italian company itself. The practical response is to assume that any significant cross-border arrangement will be known to the Italian authorities and to design it so that it can withstand their scrutiny.

1 Customs value, VAT and the second set of prices

A distribution structure also generates prices that matter for customs and VAT. The price at which a Ticino principal buys goods from an Italian group manufacturer is, in principle, the customs value of the goods when

they are imported into Switzerland for consumption. The price at which the principal sells to an EU distributor is the customs value for import into the Union. Transfer pricing adjustments made after the import can therefore have customs consequences, and EU customs authorities have repeatedly examined whether the declared value of goods imported from Swiss principals reflected the arm's length price.⁴ Since Switzerland abolished its industrial tariffs on 1 January 2024, the Swiss customs value of finished fashion goods no longer affects Swiss duties, but it still determines import VAT on goods sold in Switzerland. The EU customs value remains relevant for duties and VAT on goods entering the Union and for the origin of goods that pass through Swiss warehouses.

2 Reputational risk

The reputational risk of distribution structures is not a legal category, but it has had legal consequences. The Kering case was reported widely in Italy, France and Switzerland. The departures of the fashion groups became a subject of cantonal politics, trade union campaigns and public criticism of tax competition. Investigative journalism on corporate tax structures, the OECD's BEPS project, Pillar Two and the exchange of tax rulings between administrations have made it harder to maintain structures that cannot be explained publicly. For a company in Ticino the most effective protection against reputational risk is substance that can be shown. That means employees with real authority, decisions taken and minuted in Switzerland, remuneration that corresponds to functions and a tax position that the company would be prepared to disclose.⁵

3 Notes

1. DirittoBancario, "DAC6: in Gazzetta Ufficiale il decreto di attuazione", <https://www.dirittobancario.it/art/dac6-gazzetta-ufficiale-il-decreto-di-attuazione>. ↩
2. Legislative Decree no. 100 of 30 July 2020 implementing Council Directive (EU) 2018/822 of 25 May 2018, <https://www.gazzettaufficiale.it/eli/id/2020/08/11/20G00119/sg>, Art. 2(1)(a) and Annex 1 (hallmarks in categories A to E) and Art. 3 (reporting obligation of intermediaries and, where there is no intermediary or the intermediary does not report, of the taxpayer), as explained in Agenzia delle Entrate, Circular no. 2/E of 10 February 2021 (below). ↩
3. Legislative Decree no. 100/2020 (above), Art. 12 (penalties, by reference to Art. 10 of Legislative Decree no. 471/1997); Agenzia delle

Entrate, Circular no. 2/E of 10 February 2021, available at https://www.dirittobancario.it/wp-content/uploads/sites/default/files/allegati/circolare_agenzia_delle_entrato_10_febbraio_2021_n_2.pdf. ↩

4. On the relationship between transfer pricing and customs valuation see Regulation (EU) No 952/2013 (Union Customs Code), Art. 70, and the WCO Guide to Customs Valuation and Transfer Pricing (2018 edition). ↩
5. The assessment of reputational risk is the author's; on Pillar Two see Chapter F.II. ↩

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.

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