GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2

ITALY

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Italy 2011

COMBINED: PHASE 1 + PHASE 2

June 2011
(reflecting the legal and regulatory framework as at March 2011)

Please cite this publication as:
OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Italy 2011: Combined: Phase 1 + Phase 2*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.
http://dx.doi.org/10.1787/9789264115026-en

ISBN 978-92-64-11501-9 (print)
ISBN 978-92-64-11502-6 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency*.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information of Italy. The international standard which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. Italy has a long history of developing its capacity to exchange information for tax purposes in an effective manner. It has an extensive network of 85 bilateral exchange of information (EOI) arrangements contained in its DTCs and covering 91 jurisdictions. Although Italy has not signed any tax information exchange agreements (TIEAs) to date, it has initialled eight such agreements and is currently negotiating EOI mechanisms to the standard with more than 40 jurisdictions. It is noted that the timeframe to bring the treaties signed into force can in some cases take several years. It is nevertheless also noted that the time frame to bring the recent protocols signed with Cyprus[1] and Malta was about one year and Italy will continue its efforts to ensure the ratification of its treaties expeditiously. As a member of the European Union[2]

1. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

   2. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

2. The current EU members are: Austria, Belgium, Bulgaria, Cyprus (see footnote above), the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

(EU), Italy is covered by the provisions of the *EU Council Directive 77/799/EEC of 19 December 1977*[3] concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. Italy is also a party to the *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters*[4] and a signatory of the protocol to this convention.

3. Besides exchange of information on request in the field of direct taxation, representing more than 1 000 requests received over the last three years, Italy is involved, as a member of the European value-added tax (VAT) system, in VAT exchange of information (more than 2 000 incoming requests received a year). Italy also has strong spontaneous and automatic exchange of information programs, under the scope of its double taxation convention (DTCs) but also the EU framework, in particular under the *EU Savings Directive 2003/48/EC*.

4. The Italian tax legislation grants broad powers to revenue authorities to compel the provision of information and these measures can be used for EOI purposes in the same way as for domestic purposes. This information can be accessed by various means; in writing (questionnaires), visits to the premises of businesses, during tax examinations or by testimonies. As regards EOI, the competent authority is the *Dipartimento delle Finanze*, one of the Directorates of the Italian Ministry of Economy and Finance, with two authorised representatives, the *Agenzia delle Entrate* and the *Guardia di Finanza*. These two authorised representatives have strictly the same powers to answer incoming requests.

5. Responses to incoming requests are furnished to requesting parties within 90 days in 15% of cases. It is noted that the Italian authorities should speed up the provision of information and implement, as a routine, the sending of status updates of the requests. Where delays in the provision of information have been mentioned by Italy's partners, these partners have also highlighted the high quality of the responses furnished by Italy's competent authorities. Over the last three years there were only a few instances where Italy was not in position to provide the information requested and this was usually due to missing elements in the requests themselves.

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3. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. It has been amended since that time. A new Mutual Assistance Directive was adopted by the EU Council on 7 December 2010 and will enter into force on 1 January 2013.
4. Jurisdictions covered by the provisions of this convention are: Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Netherlands, Norway, Poland, Sweden, Ukraine, the United Kingdom, and the United States. In addition, Canada, Germany and Spain have signed the Convention and are awaiting ratification.

6. The Italian legal and regulatory framework ensures the availability of ownership information concerning companies and partnerships. This is due to multiple requirements to maintain information imposed on registration authorities (Chambers of Commerce, Prefectures and *Agenzia delle Entrate*), the businesses themselves, and all entities and professions covered by the requirements of the anti money laundering/combating the financing of terrorism (AML/CFT) legislation. Ownership information on trusts and foundations is also available thanks, in particular, to the registration requirements imposed on these entities and arrangements. Similarly, a good framework exists which requires full accounting records, including underlying documentation, to be kept for ten years. Financial institutions are required to maintain records of individual transactions and, under *AML/CFT legislation*, customer identification records are maintained for ten years.

7. Notwithstanding the sometimes slow ratification of international agreements and the need to answer incoming requests for information in 90 days or to provide an update of status as a routine, comments received on the experience of a number of Global Forum members with Italy indicate that Italy is fully committed to the international standards of transparency and exchange of information for tax purposes. Italy is an important partner, actively exchanging information for international tax matters with a very large network of partners.

Introduction

Information and methodology used for the peer review of Italy

8. The assessment of the legal and regulatory framework of Italy and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at March 2011, other information, explanations and materials supplied by Italy during the on-site visit that took place from 3 to 5 November 2010 in Rome, and information supplied by 28 partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the relevant Italian government agencies, including the Ministry of Economy and Finance, the *Agenzia delle Entrate*, the *Guardia di Finanza* (both being authorised competent authorities), registration and anti-money-laundering authorities (see Annex 4).

9. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This combined review assesses Italy's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Italy's legal and regulatory framework that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are also made concerning Italy's practical application of each of the essential elements. As outlined in the *Note on Assessment Criteria*, following a jurisdiction's Phase 2 review, a "rating" will be applied to each of the essential elements to reflect the overall position of a jurisdiction. However

this rating will only be published "at such time as a representative subset of Phase 2 reviews is completed". This report therefore includes recommendations in respect of Italy's legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements (see Summary of Determinations and Factors Underlying Recommendations at the end of this report).

10. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mrs Elizabeth Pinheiro Dias Leite, tax auditor in the Secretariat of Federal Revenue of Brazil; Mr David Smith, Senior Intelligence manager, HMRC, United Kingdom; and Mr Rémi Verneau from the Secretariat to the Global Forum.

Overview of Italy

11. Italy is a country in Southern Europe, extending as a peninsula to the south into the central Mediterranean Sea, northeast of Tunisia. It borders Austria, France, Slovenia and Switzerland to the north and enclaves the Holy See (Vatican City) and San Marino. It covers an area of 301 401 km² and has a total coastline of 7 375 km. On 1 January 2009, Italy had a population of just above 60 million with a population density of 200 persons per km^2. The official language is Italian. The Italian currency is the Euro.

12. The country is divided into 20 administrative regions, five of which have a special autonomous status. Italy is then divided into 110 provinces and 8 094 municipalities.

13. Italy has a diversified industrial economy. Similar to most other advanced worldwide economies, Italy has a small and diminishing primary sector, with services contributing close to two-thirds of gross value added. The Italian economy is driven in large part by the manufacture of high-quality consumer goods produced by small and medium-sized enterprises, many of them family owned. The country's main economic sectors are: tourism, fashion, engineering, chemical, motor vehicles and food.

14. In 2009, the Italian total GDP was USD 2 118 trillion and per capita GDP was USD 35 435.[5] Services accounted for 65% (of which 37.6% were financial, real estate and professional services), industry accounted for 22.5% and agriculture and fishery for 2.5%. According to the IMF, in 2008 Italy was the 7th largest economy in the world and the 4th largest in Europe.

5. International Monetary Fund, World Economic Outlook Database, October 2010, *www.imf.org/external/pubs/ft/weo/2010/02/weodata/index.aspx*, accessed December 2010.

15. By the end of 2009, Italy was the 7th largest goods exporting country in the world and the 8th largest goods importing country. Italy's main trading partners for imports in 2009 were (in order) Germany, France, the People's Republic of China, the Netherlands, and Spain. For exports, its primary partners were Germany, France, the United States, Spain and the United Kingdom.[6]

16. Italy is a founding member of the European Union (EU) and part of the Euro zone. Italy is also a member of the Group of Eight (G8), Group of Twenty (G20), NATO, the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation (WTO), the Council of Europe (CoE) and the United Nations (UN). Italy is founding member of the Financial Action Task Force (FATF) and a member of the Global Forum since its beginning.

Legal system

17. Italy is a republic and has a written Constitution adopted on 27 December 1947 and in force as at 1 January 1948.

18. According to articles 92(2) and 93 of the Constitution of the Italian Republic, the President of the Republic appoints the President of the Council of Ministers and, on his proposal, the Ministers. Before taking office, the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic. The legislative branch consists of a democratically elected bicameral Parliament, divided into the *Senato della Repubblica* (Senate of the Republic – 315 seats and life Senators) and *Camera dei Deputati* (Chamber of Deputies – 630 seats).[7]

19. The Italian legal system is of the civil legal tradition, characterised by a codified legislation. Italy's judiciary is comprised of judges and public prosecutors, all considered magistrates. The Constitution guarantees the independence of magistrates from the executive branch of government by assigning to the *Consiglio Superiore della Magistratura*[8] (CSM – High Council of the Judiciary – an independent self-governing judicial body), in accordance with the regulations of the Judiciary, the exclusive competence to appoint, assign, move, promote and discipline judges and public prosecutors. The judiciary is subdivided geographically on an administrative basis. Prosecutors are responsible for directing the police to conduct investigations.

6. L'Italia nell'economia internazionale – Sintesi del rapporto ICE 200-2010, Istituto Nazionale per il Commercio Estero. Also available on Internet: *www.ice.gov.it/statistiche/rapporto_ICE.htm*.
7. See articles 56, 57 and 59 of the Constitution of the Italian Republic.
8. See article 105 of the Constitution of the Italian Republic.

20. The *Corte Costituzionale* (Constitutional Court) is entrusted with the review of the constitutionality of laws and is composed of 15 judges (one-third appointed by the President, one-third elected by Parliament, one-third elected by the ordinary and administrative Supreme Courts).

21. In tax matters, litigations are dealt with by the provincial tax commissions, and can be appealed before regional tax commissions. Finally, the decisions of the regional tax commissions may be appealed before the Court of Cassation.

22. The Italian legal system envisages a plurality of sources of law, ordered by a hierarchical structure with the Constitution at the top and also with the possibility for specific matters to be governed by unwritten rules (customs), deriving from the behaviour of actors that are both subjectively and objectively qualified. The hierarchy of sources is ordered as follows: the Constitution and constitutional laws, followed by ordinary State laws, regional laws and regulations. Further, supranational laws, *e.g.* the European Union rules, as well as DTCs, override the ordinary State laws.

Taxation system

23. The Italian taxation system is primarily based on the principles set out in the Italian Constitution and in particular its section 53 stating that each citizen must contribute to the public expenses according to his capacity. The legislative power of taxation rests with the State and the 20 administrative regions under Article 117 of the Constitution. The State has the exclusive right to regulate the tax system and lays down the fundamental principles. The Regions participate in the preparation of rules on co-ordination of public finances and the tax system. Lastly, it rests exclusively with the regions to establish and regulate regional and local taxes within the regulatory framework set out by the State.

24. In the Italian tax system, income is subject to two main State taxes – IRPEF (*Imposta sul reddito delle persone fisiche*) and IRES (*Imposta sul reddito delle società*). Individuals, including non-residents, are liable to IRPEF, the Italian personal income tax. IRPEF is assessed on the total net income. Italian residents are taxed on their worldwide income while non-residents are taxed on their Italian income only. The IRPEF's five rates go from 23% to 43%; regional and local surcharge taxes may also apply.

25. All companies and all public or private legal entities, whether or not exclusively or primarily engaged in a commercial activity, are liable for IRES, the Italian tax on corporate income. IRES is assessed on worldwide income, comprising net profits as shown in the profit and loss account, or the statement of the company's income. Profits subject to a withholding tax are not included in the base of assessment. The IRES nominal rate is 27.5%.

26. Moreover, any person or entity – whatever its public or private nature – carrying on a productive activity is subject to IRAP (*Imposta regionale sulle attività produttive*), the Italian regional tax on productive activities. Its base tax rate is fixed by law. Regions may vary the general tax rate up to one percentage point and may also introduce specific deductions and allowances. IRAP is levied in all Italian regions and is paid in the region where the productive activity is located; if the activity is located in more than one region, the tax is paid proportionally on the basis of the workers employed in each region. The IRAP rate is generally set at 3.90%.

27. As a member of the European Union, Italy is a member of the European common VAT system. The normal rate is 20%, the intermediary rate 10% and the reduced rate 4%.

28. In 2008 (latest data available):[9]

VAT total revenue was EUR 160 billion, 10% of the Italian GDP and 24% of total tax revenues;

- IRPEF total revenue was EUR 170 billion, 11% of the Italian GDP and 25% of total tax revenues;
- IRES total revenue was EUR 45 billion, 3% of Italian GDP and 7% of total tax revenues; and
- IRAP total revenue was EUR 36 billion, 2% of Italian GDP and 5% of Italian total tax revenues.

Organisation of revenue authorities

29. Since 2001, in order to separate political and technical management of taxes, technical matters in relation to taxes are managed by four independent agencies. The assessment of direct and indirect taxes is, in Italy, under the responsibility of the *Agenzia delle Entrate* (*AE*). The three other agencies are responsible for customs and excise duties, immovable properties registration and management of State properties. The collection of taxes is performed by Equitalia, a subsidiary of both revenue and customs agencies.

30. The organisation of the *AE* is decentralised with a headquarters located in Rome. Regional directorates are mainly in charge of the audits of large sized businesses and provincial directorates of the audit of small and medium-sized businesses. Local offices, under the supervision of provincial directorates, act as front offices for taxpayers (management of taxpayers, delivery of tax identification numbers, assessment of taxes, and processing of tax adjustments).

9. See "taxes in Europe": *http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm*.

31. A feature of the Italian system is the existence of the fiscal police. While the assessment of taxes is the exclusive competence of the *AE*, the investigation and control of taxes is shared between this agency and the *Guardia di Finanza* (*GDF*). As a fiscal police, the *GDF* is also involved in other areas, for example the fight against money laundering. The *GDF* is headquartered in Rome with an inter-regional level providing services to local units, and a provincial level supervising all local offices. All operational activities are performed by these local units.

32. The organisation of the Italian revenue authorities has an impact on international exchange of information for tax purposes. As the *AE* and *GDF* have the same responsibilities as regards audit of taxpayers and collection of information, they constitute two authorised competent authorities in the field of EOI, both having exactly the same level of responsibilities (see section B.1 of this report for a full description of this organisation).

Overview of the financial sector and relevant professions[10]

33. Italy's financial sector is characterised by a wide range of service providers. In 2003, there were 244 commercial banks (representing 80% of total bank assets), 445 mutual banks (5% of total bank assets), 38 co-operative banks (11% of total bank assets) and 61 branches of foreign banks (4% of total bank assets). There were some 30 500 branches of financial institutions nationwide. The top five banking groups together accounted for 51% of total sector assets and the top three for close to 40%. Banks provide a range of deposit-taking and credit services as well as a broad range of other financial services (i.e. financing, investment, foreign exchange and insurance) either directly, on behalf of third parties, or indirectly through subsidiaries.

34. In 2003, the financial sector also included 132 registered securities firms engaged principally in intermediation (*i.e.* trading for customer accounts, reception of orders) and placement services. Many of them are controlled by insurance groups or individual investors. It also included 153 asset management companies divided almost evenly between those specialising in open-ended funds and those in closed-end and hedge funds. In 2003, the insurance sector consisted of 198 undertakings, of which 79 were life insurance companies and 88 were nonlife insurance companies. In 2003, there were 1 494 financial companies registered pursuant to s.106 of the Banking Law (BL) engaged in financing activities (*i.e.* leasing, factoring and consumer credit, most of which are largely controlled by banks), equity investment, money transmission services (including credit cards), foreign exchange intermediation and securitisation.

10. For more information, see the FATF mutual evaluation report published in 2006, *www.fatf-gafi.org.*

35. Supervision of the financial and insurance sectors is performed by the CONSOB (Supervisory Authority for Italy's Financial Products Market) and ISVAP (Supervisory Authority for the Insurance Sector).

36. There are 162 000 lawyers in Italy of which 95 000 were practising in the year 2006. In addition, there are more than 4 500 notaries in Italy. These are public officials who authenticate transactions and documents which can then serve as proof before the courts. Notaries, in light of their public function of authenticating transactions, are under the supervision of Regional Notaries Councils and the Regional Commissions of Discipline (Co.Re.Di.). In the event of irregularities, a notary is referred to the Co.Re.Di, chaired by a magistrate. Accountants, including chartered accountants, number close to 100 000. External auditing firms are separately registered by CONSOB, the securities regulator. There are 20 registered auditing firms.

Anti-money laundering

37. The Financial Action Task Force (FATF) Mutual Evaluation Report (MER), adopted in 2005, concluded that Italy had a comprehensive and sophisticated anti-money laundering/counter terrorist financing (AML/CFT) system. However, the MER identified some areas of "challenging concern". These concerns were subsequently addressed by new AML/CFT legislation, as assessed by the FATF in February 2009. The legislative core of the updated AML system is *Legislative Decree No 231 of 21 November 2007* (hereinafter the Decree) that implemented in particular *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing* and came into force on 1 January 2008. The Decree was updated by *Legislative Decree No 151 of 25 September 2009* and *Decree-Law No 78 of 31 May 2010* converted into *Law No 122 of 30 July 2010*.

38. The FATF's 2009 follow-up report concluded that the Decree fully addresses the major deficiencies in Italy's AML/CFT system as identified in the 2005 MER and compacts most of the Italian AML/CFT legislative framework into a single piece of legislation. This decree, in particular:

- drew a new AML/CFT institutional layout (Minister of Economy, Financial Security Committee, Supervisory Authorities, FIU, Police forces, *etc.*); in particular, it established the *Unità di Informazione Finanziaria* (UIF) within *Banca d'Italia* as the new Italian Financial Intelligence Unit (FIU);
- amended the AML/CFT supervision system and established that AML/CFT supervision is to be performed by each single supervisory authority by virtue of its own institutional powers (Banca d'Italia, CONSOB, ISVAP); and

- explicitly extended the scope of AML/CFT controls by *GDF*, in collaboration with *Banca d'Italia*, to non-prudentially supervised entities (s.106 of the Banking Law): financial intermediaries, bureaux de change, money remitters and loan and financial brokers. As for designated non-financial businesses and professions (DNFBPs), the Decree provides that the Ministry of Justice, in co-operation with the relevant self-regulatory bodies, supervises and controls the actual application of AML/CFT preventive measures by legal professionals.

Exchange of information for tax purposes

39. As an OECD member and a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), Italy is committed to implementing the international standards of transparency and exchange of information for tax purposes. Italy is a member of the Peer Review Group of the Global Forum.

40. Italy has signed 93 EOI agreements contained in its DTCs, of which 85 are in force. These 85 agreements cover 91 jurisdictions. Italy has also ratified the *European Convention on Mutual Assistance in Criminal Matters* including the fiscal protocol, and is party to a number of bilateral legal assistance arrangements.

41. As a member of the EU, Italy is able to exchange information in tax matters under the EU *Mutual Assistance Directive 77/799/EEC*. Italy is a party to, and has ratified, the *COE/OECD Convention on Mutual Administrative Assistance in Tax Matters* and is in the process of ratifying the protocol of 27 May 2010 amending this convention.

42. Italy is also involved in *Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments* (the EU Savings Directive). To this extent, Italy sends and receives automatically, and on an annual basis, information on interest payments received by natural persons from/to its EU partners (and from all other countries and jurisdictions involved in these exchanges).

Recent developments

43. A new Mutual Assistance Directive was adopted by the European Council on 15 February 2011 and will come into force on 1 January 2013.

Compliance with the Standards

A. Availability of Information

Overview

44. Effective exchange of information requires the availability of reliable information. In particular it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Italy's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

45. A very good legal and regulatory framework is in place in Italy for the maintenance of ownership information. Italy's peers have mentioned that during the course of their exchanges of information with Italy there were no instances where ownership information could not be satisfactorily delivered. This results from the requirements for all companies, partnerships, foundations or even trusts to be registered, to keep ownership information, and to provide this ownership information to revenue authorities. According to the *AML/CFT legislation*, financial institutions and other relevant professions such as notaries or lawyers are required to perform customer due diligence (CDD) and are therefore also required to keep ownership information.

46. The main businesses that can be set up in Italy are SPAs (public limited companies), SAPAs (partnerships limited by shares), SRLs (limited liability companies), SASs (limited partnerships), SNCs (general partnerships) and SSs (simple partnerships). All these legal entities are subject to the same registration requirements by the Chambers of Commerce when created. Information recorded by the registration authorities in the business register is automatically sent to the revenue authorities.

47. Ownership information to be maintained by the Chambers of Commerce in the business register includes the identity of partners in a partnership, shareholders in SPAs and SRLs and general partners in SAPAs. It is mandatory to update partnerships' and SRLs' ownership information in the business register. SPAs and SAPAs, when not listed, must provide an annual document compiling all information on their shareholders. In addition, these two types of companies, whether listed or not, must maintain share registers containing all shareholders' identity information. These registers can be audited by revenue authorities. Finally, these entities must also file annual tax returns including information on the identity of all partners in a partnership, all shareholders in SRLs, and administrators' and representatives' identities in SPAs and SAPAs. These, plus the detailed CDD conducted by financial undertakings under the *AML/CFT legislation*, mean that ownership and identity information is available to the competent authorities for all businesses.

48. As regards trusts, there is a legal requirement for these arrangements to be registered for tax purposes. Under Italian legislation, trusts are also arrangements liable to tax. Trustees are thus required to file annual tax returns on behalf of trusts. In addition, trustees who are Italian residents are subject to general tax principles and can be required by the tax authorities to provide any type of information necessary to identify the settlors or beneficiaries of trusts. Finally foundations, the purpose of which can only be of public utility, are also required to be registered and to provide the names of their founders and of the members of the council to registration authorities. Additionally, foundations must be registered by the revenue authorities and must file an annual tax return when they receive taxable income (usually income from capital) and when they distribute money (the name of all beneficiaries must then be disclosed). As relevant entities and professions are in addition subject to specific CDD requirements, this ensures the availability of ownership information regarding trusts and foundations.

49. The accuracy of the information to be provided or maintained by all relevant entities is ensured through a wide range of sanctions for non compliance with the legal requirements. Fixed fines usually apply in the case of failure to register or to provide annual tax returns. These can be supplemented by proportional fines, in the case of failure to provide annual tax returns when tax is due or in cases where the income is automatically assessed by revenue authorities. Criminal penalties, in particular for the most severe offences or in the case of failure to comply with the *AML/CFT Decree* may also be applied.

50. All entities, in accordance with both the *Civil Code* and tax legislation, must maintain a full range of accounting records, including underlying documentation, for a minimum period of ten years. At the same time, according to the *AML/CFT Decree,* financial institutions are required to maintain records of individual transactions and customer identification for ten years.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Italian registers

51. The business register is maintained in Italy by the Chambers of Commerce (s.2188 of the *Civil Code*). Pursuant to sections 1 and 8 of *Law of 29 December 1993*, this register is managed at the local level in each Provincial Chamber of Commerce. All businesses, whatever their legal forms and their activities, must be so registered. The register is divided into two sections, each one containing the same level of information:

- the ordinary section mainly includes information on companies, including companies incorporated abroad having a branch in Italy, and partnerships running a business; and
- the special section includes information on single agricultural businesses, small traders, and partnerships other than the ones registered in the ordinary section.

52. Although the register is managed at the local level, there is a single register for the whole Italian territory. This means that all entries in the register are available within the Italian territory. This register is open for public inspection and all information can be accessed by the Italian revenue authorities.

53. Besides this register, all information received by the Chambers of Commerce concerning the registration, modification or striking off of companies and partnerships must be sent, on a monthly basis, to the *Anagrafe Tributaria*, according to s.7 of *Presidential Decree 605/1973*. The *Anagrafe Tributaria* is a data warehouse where all information useful for tax purposes is stored. The information maintained in this system is available to the revenue authorities through information technology (IT) tools allowing for the extraction of data.

54. Since 2007, pursuant to s.9 of *Law No 40 of 2 April 2007*, all legal and natural persons required to be registered in the business register must submit a single communication. With this single communication, to be submitted by electronic format since May 2010, businesses are automatically registered by the Chamber of Commerce, the *AE* (delivery of a *codice fiscale* – tax identification number, hereinafter "TIN" – and VAT number), the INPS (social security) and INAIL (workers compensation authority).

55. For public policy and pursuant to s.1 of *Presidential Decree No.361 of 10 February 2000,* foundations must be registered in a specific directory maintained by the Ministry of Interior in each Prefecture.[11] One single register is maintained at the provincial level without any ties between the 110 provincial registers. This information is publicly available for inspections but no data is directly provided to revenue authorities.

56. Finally, and pursuant to *Presidential Decree 605/1973,* all entities and professionals who do not have to be registered by the Chamber of Commerce (importantly including non-commercial professionals, foundations and trusts) must be specifically registered by the *AE*. Following this registration, a TIN is allocated.

Companies (ToR A.1.1)

57. Italian company law provides for four types of companies:

- **Società per Azioni – SPA** (public limited company). The legal provisions governing SPAs are stated in s.2325 *et seq* of the *Civil Code*. The SPA is a company where the responsibility of shareholders is limited to their participation in the capital. Articles of incorporation must take the form of a notarised deed. The minimum amount of capital is EUR 120 000. This type of company can be listed on a stock exchange. In 2008, 39 000 Italian companies took the form of a SPA;[12]

11. A Prefecture is the delegation of the Ministry of Interior in each of the 110 Italian Provinces.
12. Italian National Institute of Statistics, *http://en.istat.it/.*

- **European Companies – SE**. (European companies). These are regulated by *Council Regulation (EEC) No.2157/2001 on Statute for a European Company* which permits the creation and management of companies with a European dimension, free from the territorial application of national company law. Pursuant to Section 10 of the European Regulation, the rules that apply to European companies are the same as those which apply to public limited companies. As of 31 December 2010, 12 SEs were registered in Italy;[13]
- **Società in Accomandita per Azioni – SAPA** (partnership limited by shares). A SAPA is a company under the Italian legislation. This company has at least one partner with unlimited liability with regard to the creditors of the company (general partner) and the other shareholders are not personally liable for the obligations of the company (limited shareholders). Usually, the rules that apply to SPAs also apply to SAPAs, excepted where the contrary is expressly stated in the Code. Specific provisions that apply to SAPAs are contained in sections 2452 to 2461 of the *Civil Code*. This form of company is rarely used: as of 31 December 2010, 174 SAPAs were registered in Italy; and
- **Società a Responsabilità Limitata – SRL** (limited liability company). These are regulated by sections 2462 *et seq* of the *Civil Code*. The Articles of incorporation of a SRL must be in notarised form. The minimum capital of a SRL is EUR 10 000. With 740 000 entities, the SRL is the most common form of company in Italy.

Information held by government authorities

Registration

58. Articles of incorporation of a company must be under a notarised format. Pursuant to sections 2328 and 2463 of the *Civil Code*, these articles of incorporation must contain the name, the date of birth and the domicile of all SPAs' and SRLs' shareholders as well as the number of shares they hold. In the case of a SAPA, the articles of incorporation must indicate the identity of all general partners (s.2455 of the *Civil Code*).

59. Within 20 days of incorporation, the notary having received the articles of incorporation of a SPA, a SAPA or a SRL must send them to registration authorities for registration (s.2330 of the *Civil Code*). The identity of shareholders, their date of birth, the number and identities of directors, the number and identities of auditors as well as the duration of the business must be provided (s.2328).

13. Ministero Sviluppo Economico, *www.sviluppoeconomico.gov.it/.*

60. Registration applications are made directly by notaries after having received the deeds of incorporation. As public officials, it is the duty of notaries to check that all information contained in these deeds, including identity information, is perfectly accurate. To ensure that this requirement is fulfilled, notaries are subject to the supervision of Italian public authorities. In particular, notaries are one of the professions covered by the provisions of the Italian *AML/CFT legislation,* and the public authorities (in this case, the *GDF*) conduct investigations and examinations to determine if these professionals are compliant with their legal obligations. In addition, registration authorities check the completeness and accuracy of the application forms received.

61. Registration authorities have indicated that they usually ensure the registration of an entity within five working days of the receipt of the request. The articles of incorporation are then published in the *bollettino ufficiale delle società per azioni e a responsabilità limitata* (official gazette of public limited companies and limited liability companies).

62. The information maintained in the business register is as follows: form of the entity, date of incorporation, capital, TIN, activity, representatives of the companies and shareholders' identities. From the business register, it is possible to obtain, *inter alia*, the following information: all types of certificates, copies of deeds and accounting information, and list of shareholders.

63. Companies must also report to registration authorities all changes in the company information (s.2196 of the *Civil Code*). Sections 2469 and 2470 specifically indicate that all transfers of shares in SRLs' must take the form of a notarised deeds. It is the responsibility of the notary to send this information to the registration authorities within 30 days of receiving the deed.

64. Section 2435 of the *Civil Code* states in addition that within 30 days of the approval of the annual accounts, all SPAs and SAPAs not listed on a regulated market must provide to the registration authorities a list of all shareholders in the company, limited partners of SAPA included, with the number of shares owned by each of them. As these accounts are provided on an annual basis, the business register has within it an annual update of the information regarding SPAs' and SAPAs' shareholdings.

65. All books and all information is kept by registration authorities for ten years after the company's striking off in the business register (s.2496 of the *Civil Code*) but as a matter of practice, the Italian authorities keep such information for an indefinite period of time.

66. The Italian registration system for companies ensures, therefore, comprehensive information on legal ownership of SRLs. Regarding SPAs and SAPAs, registration authorities have, at least, an annual update of their shareholders. As this information is automatically transmitted to the revenue

authorities on a monthly basis, it ensures these authorities have access to updated information in a timely fashion.

Tax requirements

67. For tax purposes, every company undertaking economic activity must be registered by the *AE* within 30 days of commencement of business or incorporation of the company. Since the implementation of the "single communication" procedure, fully operational since 1 April 2010, there is no longer a specific registration requirement by the *AE* for companies. Chambers of Commerce have become the single points of contact of these entities. As such, Chambers of Commerce are required to send automatically to the *AE* all applications for registration they receive. Once this transmission is received, the *AE* issues a *codice fiscale* and, in conformity with s.35 of *Presidential Decree 633/1972*, a VAT number.

68. When received, the accuracy of the registration forms' contents is checked by the *AE* against the information already available, for example, with regard to the identity of shareholders, to determine if there are discrepancies between the information provided by the Chamber of Commerce and the identity information at the disposal of the *AE*.

69. The information received from the Chambers of Commerce, stored in the *Anagrafe Tributaria*, is extracted and available to revenue authorities' employees via various tools. These IT tools make all ownership information received from registration authorities directly accessible, including for EOI purposes.

70. In addition, all Italian companies are required to file annual tax returns in an electronic format by 30 September each year (ss.1 and 9 of *DPR 600/1973*). In particular, Annex RO to this tax return must contain the identity (name, surname, address and TIN) of all SRLs' shareholders. For SPAs and SAPAs, the identity of all administrators and representatives of these entities must be disclosed in the annual tax return.

71. Considering the automatic transmission of information between registration and revenue authorities,[14] both *AE* and *GDF* have access to complete and up-to-date ownership information for companies. The accuracy of this information is also ensured by the submission by companies of annual tax returns containing the most relevant ownership information.

14. This, for example, ensures receipt of ownership information for public limited companies and partnerships limited by shares even though that information is not required to be submitted in their tax returns.

Information held by other persons

Share registers

72. SPAs and SAPAs are required to keep registers of shareholders, limited partners of SAPA included. This requirement, stated in s.2421 of the Italian *Civil Code*, is also mandatory when these companies are listed on a stock exchange. It does not however exist for SRLs.

73. The information to be contained in this register includes for each shareholder, all identity information (name, surname, address, TIN), the type and number of shares held, as well as the date of their transfer.

74. There is no specific supervision by Italian authorities on the manner in which these share registers are maintained. However, civil and criminal sanctions may be applied in cases where this requirement is not adequately fulfilled (see section A.1.6 of this report below).

75. In addition to the information already present in the business register, the ownership information to be kept by SPAs and SAPAs in their share registers ensures the complete availability of ownership information for these two types of companies. This information is available to revenue authorities as these legal entities must provide these registers to revenue authorities on request.

Legislation on major participations

76. In accordance with the European legislation (*EU Directive 2001/109/EC*), in 2007 Italy enacted *Legislative Decree 195/2007* concerning major shareholdings in companies listed on regulated stock exchanges.

77. According to s.1 of this Decree, amending *Legislative Decree 58/1998*, all natural and legal persons acquiring directly or indirectly more than 2% of the company's shares must inform the company itself and the CONSOB (the financial supervisory authority). In addition, all participations of 10% or more of the capital in any non-listed company, SRLs included, must also be disclosed to the CONSOB.

Foreign companies

78. According to the *Terms of Reference*, where a company or body corporate has a sufficient nexus to another jurisdiction (for example by reason of having its place of effective management or administration there), that other jurisdiction will also have the responsibility of ensuring that ownership information is available.

79. If a foreign company has its head office, its principal activity or establishes a subsidiary in Italy, the statutes of this company must be compatible with the Italian company standards (article 25 of *Law No 218* of 31 May 1995) and it must be registered in the business register (s.2508 of the *Civil Code*).

80. This company, subsidiary or branch must observe the same registration requirements by the Chamber of Commerce as apply to Italian companies. In particular, pursuant to s.2508 of the *Civil Code*, each company having a branch in Italy must apply within 30 days for registration of this branch by the local Chamber of Commerce. In addition to the articles of incorporation of the company, the identity of the company representative in Italy must be provided to registration authorities.

81. Therefore, the Italian registration system is strictly the same one regardless of whether the company is incorporated in Italy or abroad. Branches of foreign companies are not required to provide on an annual basis a list of shareholders to registration authorities.

Ownership information held by nominees and service providers

Anti-money laundering requirements

82. In Italy, anti-money laundering provisions are set out in *Legislative Decree 231/2007* implementing *Directive 2005/06/EC*. Pursuant to its articles 10 to 14, this Decree sets out obligations which apply to *inter alia* the following entities and professionals:

- credit and financial institutions;
- investment companies;
- lawyers, legal advisers, patent lawyers and notaries;
- auditors, chartered accountants, tax advisers and tax agents; and
- trust or company service providers when providing certain services to third parties.[15]

83. Pursuant to articles 15, 16 and 17, these entities and professionals are required to perform customer due diligence (CDD) and therefore identify their customers and clients when:

- establishing a continuous relationship. This must also be done to existing customers on a risk assessment basis (article 22 of the Decree);

15. Amongst others when creating a legal person, acting as director of a legal person, or providing a registered office or a business office to legal persons.

- carrying out occasional transactions amounting to EUR 15 000 or more;
- there is reason to suspect that a transaction may have served or would serve money laundering or terrorist financing regardless any applicable derogation, exemption or threshold; or
- there are doubts about the veracity or adequacy of data identifying the contracting party or beneficial owner.

84. In addition, professionals (notaries, lawyers, accountants, and service providers) must perform CDD whenever a transaction is of indeterminate or indeterminable amount. For the purposes of CDD, the establishment, management or administration of companies, entities, trusts or similar legal persons are always treated as transactions of indeterminable amount.

85. To perform their CDD, professionals covered by the AML/CFT requirements must identify and verify the identity of customers. For natural persons, this identification is done on the basis of a valid identification document, for legal entities on the basis of an identification document and the power of representation granted to its representatives.

86. In addition, all persons and entities covered by the provisions of the *AML/CFT Decree* must identify all beneficial owners. "Beneficial owner" is defined in article 2 of the annex to the Decree, according to the definition included in the *Third EU Anti-money Laundering Directive*.[16] Such entities must store CDD and accounting material for no less than ten years after the relationship has ceased (article 361(a) of the *AML/CFT Decree*) and if the entity ceased activity or is dissolved, the last acting management must ensure that this information is stored in accordance with the terms of the Decree.

87. To ensure the implementation of this legislation, and besides sanctions (see below section A.1.6), public authorities are in charge of monitoring

16. *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.* With respect to companies that Directive defines "beneficial owner" (s.6) to mean "the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted." It goes on to indicate that "the beneficial owner shall at least include: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet his criterion; (ii) the natural person(s) who otherwise exercises control over the management of a legal entity."

professionals subject to CDD requirements. For instance, in 2009 the *GDF* in its duty as Financial Police conducted 553 inspections leading to 258 criminal and 151 administrative sanctions.

88. In addition, the Financial Intelligence Unit, located since 2007 in the Bank of Italy, receives suspicious activity reports: 33 000 reports were received in 2009, four times the number received 5 years previously.

Nominees

89. Under Article 2435 of the Civil Code, companies not listed on regulated markets must, within 30 days of approval of the budget, deposit for inclusion in the Business Register, the list of members referred to on the date of approval of the budget, also indicating the persons other than shareholders who hold rights to or are the beneficiaries of shares. The list must be accompanied by an analytical indication of entries in the stock ledger as from the date of approval of previous annual accounts.

90. Nominee ownership is also regulated by the *AML/CFT Decree*. According to s.1, any natural or legal persons acting by way of business as nominee shareholder is deemed to be a "trust and company service provider" and must, as a consequence, perform CDD, identifying the person for whose benefit the shares are held. Thus, when someone is acting as a nominee in such conditions, it is possible to obtain the identity of the real holders of the shares.

Conclusion

91. From a legal perspective the Italian registration system is strong and ensures the availability of ownership information regarding all types of domestic companies that can be incorporated in Italy:

- SPAs and SAPAs ownership information must be provided to authorities for registration. For non-listed entities, a list of shareholders must also be furnished to these authorities on an annual basis. In addition, a share register must be kept by these two types of companies. Accompanying requirements – information to be kept by financial intermediaries, to be disclosed according to the legislation on major participations or to be provided to revenue authorities in annual tax returns – impose multiple obligations reinforcing the availability of ownership information to public authorities; and
- SRLs' ownership information is available in the business register where it must be updated in a timely fashion. In addition, this information must also be disclosed to revenue authorities on an annual basis.

92. Foreign companies are subject to the same registration and tax requirements as domestic companies.

93. Considering the registration requirements for companies, the practices of the Italian authorities as well as the comments received from Italy's treaty partners, it is possible to conclude that the Italian registration system for companies is compliant with the standard set out in the *Terms of Reference*.

Bearer shares (ToR A.1.2)

94. Pursuant to s.74 of *Presidential Decree No 600/1973*, all shares of companies based in Italy must be registered. The issuance of bearer shares is therefore strictly forbidden.

Partnerships (ToR A.1.3)

95. Three main forms of partnerships can be set up in Italy:

- **Società in Nome Collettivo – SNC** (general partnership). Governed by sections 2291 to 2312 of the *Civil Code*, a SNC is a partnership where all partners are jointly and severally liable for corporate debts. In Italy, 440 000 partnerships take the form of an SNC;
- **Società in Accomandita Semplice – SAS** (limited partnership). Regulated by sections 2313 to 2324 of the *Civil Code*, a SAS is a partnership composed of two categories of partners: general partners that are jointly and severally liable for the partnership's obligations and limited partners where the liability is limited to funds invested in the partnership. More than 500 000 SAS were registered in Italy as of 31 December 2010; and
- **Società Semplice – SS** (simple partnership). The simple partnership is regulated by sections 2251 to 2290 of the *Civil Code*. A SS is not a legal entity as such and can be defined as a jointly held property. There is no requirement for articles of incorporation to be in a specific form unless immovable or movable property is jointly held by partners in the SS. Partners are jointly and severally liable for the debts of the partnership, unless a different arrangement is stated in the articles of association. A SS cannot be used to pursue a commercial activity. There are 70 000 Società Semplice registered in Italy.

Information held by government authorities

Registration

96. Articles of incorporation of a SNC must include amongst other things the name and the domicile of the SNC's partners (s.2295 of the *Civil Code*). Pursuant to s.2315 of the *Civil Code,* this rule applies to SASs under the same conditions. It means that the identity of both general and limited partners in a SAS must be mentioned in the articles of incorporation.

97. Section 2251 of the *Civil Code* does not provide for any particular format for the articles of incorporation of a Società Semplice nor for mandatory information to be recorded in these articles. However, SSs are in most cases used to own jointly-held property and in such cases the articles of incorporation must be in a notarised format.

98. Section 2296 of the same code requires SNCs and SASs to be registered in the ordinary section of the business register within 30 days of incorporation. The information to be provided to registration authorities is the same as is furnished by companies. It includes the articles of incorporation, the partners' identities, the manager's identities and the duration of the partnership.

99. SSs are registered in the special section of the business register. The information to be provided for registration and maintained by registration authorities is the same as for SNCs and SASs.

100. When the application is received, the registration authorities usually ensure the registration of the entity within five working days.

101. Information maintained in the business register is: form of the entity, date of incorporation, capital, TIN, activity, representatives of the partnership, and partners' identities. From the business register, it is also possible to obtain, *inter alia*, all types of certificates, copies of deeds and accounting information.

102. Any changes in a partnership's articles of association and in particular any changes in the SNC's and SAS's partners' identities must be notified to the registration authorities within 30 days of the changes (s.2300 of the *Civil Code*).

103. Where the articles of incorporation must be under a notarised format, the information, and particularly ownership information, contained in the deed of association, is verified by the notary in charge of drafting the deed. As notaries are subject to CDD requirements, the accuracy of the information contained in these deeds is assured. In addition, consistency checks are also made by registration authorities when the application for registration is received.

104. All books and all information is kept by registration authorities for ten years after the company's striking off from the business register (s.2496

of the *Civil Code*) but as a matter of practice, the Italian authorities maintain such information for an indefinite period of time.

105. It follows from the abovementioned requirements that the information in the articles of incorporation of an SNC, SAS or SS, as well as the information further required to be provided to the registration authorities and kept by these authorities, ensures the availability of identity information on partners in SNCs, SASs and SSs.

Tax requirements

106. In addition to registration requirements, tax requirements represent in Italy another avenue to obtain partnerships' ownership information at least on an annual basis (an annual tax return must be submitted pursuant to s.1 of *DPR 600/1973*) and to access this information, in particular through databases.

107. For tax purposes, each partnership must be registered by the *AE* within 30 days of commencement of business or incorporation of the partnership. Since the implementation of the "single communication", there is no longer a specific registration requirement by the *AE* for partnerships as the Chambers of Commerce have become the single points of contact for these entities. As such, the relevant Chamber of Commerce is required to automatically send all applications received for registration to the *AE*. Once this transmission is received, the *AE* issues a *codice fiscale* and, in conformity with s.35 of *Presidential Decree 633/1972,* a VAT number.

108. The *AE* has indicated that the accuracy of the received application form is checked with the information already available in its hands. For example, with regard to the identity of partners, to determine if there are discrepancies between the information provided by the Chamber of Commerce and the identity information at the disposal of the *AE*.

109. Information received from the Chambers of Commerce, stored in the *Anagrafe Tributaria*, is extracted and available to revenue authorities' employees by way of various IT tools. These IT tools make all ownership information received from registration authorities directly accessible, also for responding to EOI requests. As the ownership information is required to be updated in the business register, it is also updated in a timely fashion in the revenue authorities' databases.

110. In addition, all Italian partnerships are required to file an annual tax return in an electronic format to the revenue authorities by the 30 September of each year (ss.1 and 9 of *DPR 600/1973*). In particular, Annex RK to this tax return must contain the identity of all partners involved in an Italian partnership. The information to be provided mentions the name, surname (or denomination), address and TIN.

111. In addition to registration requirements, tax requirements in Italy represent another opportunity for the tax authorities to gather partnerships' ownership information, at least on an annual basis, and to have access to this information through databases.

Information held by partnerships

112. There is no requirement under Italian legislation for partnerships to maintain a share register. However shares are not freely transferable. Each transfer requires the approval of all partners (see s.2252 of the *Civil Code*), ensuring that the partners' identities are always available from the partnership or, at least, the partnership's manager.

Anti-money laundering legislation

113. Service providers hold the same information on partnerships as they hold with respect to companies in accordance with the *AML/CFT Decree* (see earlier description in section A.1.1). Essentially, a wide range of financial institutions, financial businesses and professionals involved in providing financial services for their clients (notaries included) are obliged to conduct CDD and must therefore know the identities of their clients, including; name, address and ID-number.

Conclusion

114. From a legal perspective, the Italian system ensures through multiple sources of information, and in particular the information maintained by the Chambers of Commerce and the *AE*, the availability of up-to-date information on the ownership of partnerships.

115. Considering the registration requirements for partnerships, the practices of the Italian authorities as well as the comments received from Italy's treaty partners, it may be seen that the Italian registration system for partnerships is compliant with the standard set out in the *Terms of Reference*.

Trusts (ToR A.1.4)

116. Italian legislation does not foresee the possibility to set up a trust under Italian law. However, Italy is a signatory to the *Convention on the Law Applicable to Trusts and on their Recognition* (1 July 1985, The Hague, ratified by *Law 364 of 16 October 1989* which entered into force on 1 January 1992) and therefore recognises trusts formed under foreign laws. In addition,

nothing in Italian law prevents an Italian being a settlor, trustee or beneficiary of a trust created abroad.[17]

117. As a civil law jurisdiction, Italy has public policy rules that cannot be avoided, even when assets are held by trusts. This is particularly the case as regards inheritance rules and legal provisions that apply to real estate (for example: the requirements that transfers are in a notarised format, registration of ownership and transfers in a specific register maintained by the Agency for registration of immovable properties).

Information held by government authorities

Registration requirements

118. Pursuant to Article 73 of the Testo Unico delle Imposte sui Redditi (TUIR),[18] a trust is deemed to be resident of Italy if its registered office is in Italy; its administrative office is Italy; or the main purpose of its business is conducted in Italy. For the application of this provision and according to Circular letter No.48/E of 6 August 2007, in case of lack of other criteria, the residence of the trust coincides with the domicile of the trustee. However, if the trust is in fact administrated in Italy, although the trustee resides in another Country, the trust is considered, for fiscal purposes, as resident in Italy.

119. As a relevant arrangement for tax purposes, a trust must be registered. In accordance with *Ministerial Decree No.539* of 28 December 1987, the registration is to be made in an electronic format to the *AE* by the trust representative. To this extent, a specific form containing all information regarding the identity of the legal representative – the trustee – and the type of activity is to be filed. A TIN is then issued by the revenue authorities and where relevant, a VAT number (for this an additional application form must also be filed).

Tax requirements for income derived from a trust

120. As a taxable entity, a trust is subject to the obligations that apply to corporate income taxpayers, in particular the obligation to file tax returns annually. As a trust representative, a trustee is subject to the tax reporting

17. A bill of law is presently under discussion at the Italian Parliament, concerning the introduction, among the articles of the civil code, of rules regulating the *contratto di fiducia* (fiduciary relationship). In particular, the cited bill of law provides for a transfer of an amount of money, goods and rights, from a settlor to fiduciary, in order to pursue a specific purpose. The asset conferred to the fiduciary is separated from the personal assets of the settlor. The deed must be notarised.

18. The *Testo Unico delle imposte sui redditi* is the Italian legislation providing for the rules for direct taxation.

obligations imposed on trusts and must, in particular, report if the trust administered is transparent, opaque or mixed. In 2007 the *AE* issued specific guidance on the way income derived from a trust has to be taxed in Italy (Circular letter No.48/E of 6 August 2007) and commenting article 73 of the *TUIR*:

- if the trust is transparent, the trustee has to report the identity of the beneficiaries of the trust in the annual tax return (annex PN of the unified tax return model[19]). In addition each beneficiary will declare in his tax return the income derived from the trust (paragraphs 3.1 and 3.2 of the circular letter);
- if the trust is opaque, the trustee must file the income tax return declaring all income derived through the trust, which is chargeable to corporation tax (at a rate of 27.5%). To this extent, Annex RN of the unified tax return model must be filed on an annual basis; and
- if the trust is both opaque and transparent, a portion of income will be taxed within the hands of the beneficiaries and their identity will be disclosed in the trust annual tax return while the other portion of income will be taxed at the 27.5% corporation tax rate directly at the trust level.

Tax requirements for trustees

121. As representatives of trusts, trustees must also be registered and receive a TIN and, where relevant, a VAT number. This obligation comes directly from the obligation for anyone, being individual or professional, to be registered for tax purposes (see *Presidential Decree 605/1973*). As representatives of trusts, trustees must also keep records enabling them to explain the trust situation and to provide information on income received through the trust. This documentation includes the identities of settlors and beneficiaries in a trust and on the assets held through a trust.

Anti-money laundering legislation

122. Notaries, lawyers and advisers (when they carry out transactions involving trusts) and trust service providers are also professionals with reporting obligations under articles 11 and 12 of the *AML/CFT Decree* (see also above, Section A.1.1).

19. In the case of a trust carrying on prevailing commercial activity, the tax return form is the same as submitted by companies, in the other cases, the "non commercial entities return" must be filed.

123. Under the *AML/CFT Decree,* trust service providers are obliged to maintain ownership and identity information regarding their clients and their client's beneficial owners.[20]

Conclusion

124. Considering the registration and tax requirements, the obligations imposed on all trustees according to domestic tax legislation and the *AML/CFT Decree*, it can be concluded that the Italian authorities have taken all reasonable measures to ensure that information is available that identifies the settlor, trustee and beneficiaries of express trusts administered in Italy, or in respect of which a trustee is resident in Italy. In addition, the Italian authorities have indicated that they have never received any request for information regarding a trust administered in Italy or in respect of which the trust is resident in Italy.

Foundations (ToR A.1.5)

125. Under Italian legislation (see s.14 et seq of the Civil Code and Presidential Decree 361/2000) it is possible to set up foundations. These are entities without any commercial purpose but used for holding and allocating an asset for a specific purpose. In Italy, foundations are non-profit organisations meaning that the eventual profits of the entity cannot be distributed. Foundations may only be constituted for public utility and must be recognised in all situations by public authorities. Even though set up for public utility, foundations are allowed, under Italian legislation, to carry on commercial activity, whether mainly or secondary to pursue its purpose.

126. Pursuant to s.1(1) of *DPR 361/2000,* foundations acquire legal personality through the recognition given by the inclusion in the register of legal entities, established in the prefectures. Government authorities monitor the administration of foundations, in particular to ensure that the foundation's

20. *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.* With respect to legal entities such as foundations or legal arrangements such as trusts, that Directive, as implemented in Italy law by *Legislative Decree 231/2007* defines "beneficial owner" to mean "(i) where the future beneficiaries have already been determined, the natural person(s) who are beneficiary of 25% or more of the property of a legal entity; (ii) where the individual that benefit from the legal entity have yet to be determined, the class of persons in whose main interest the entity is set up or operates; (iii) the natural person or persons who exercise control over 25% or more of the property of a legal entity."

running conforms to its articles of incorporation and is in accordance with the public order. In 2005, according to the FATF mutual evaluation report, there were 3 000 foundations in Italy.

Information held by government authorities

127. Articles of incorporation of a foundation must be in a notarised format (s.14 of the *Civil Code*). The deed of association and the statutes must contain the name of the entity, its purpose and therefore the class of persons who will benefit from the foundation, its assets, its main seat and the rules for its management (s.16). When recognised, the foundation can no longer be revoked by its founder (s.15).

128. Under Italian legislation, the foundation's legal personality is granted when the foundation is recognised, meaning registered, by public authorities. Pursuant to s.1 of *DPR 361/2000*, this is done by the Prefecture, which ensures that all requirements to be recognised are met. The foundation must be registered in the register maintained by each Prefecture within 120 days of presentation of the request for recognition (s.1(5)). All changes in a foundation must be approved by government authorities.

Registration by the prefecture

129. For registration by the Prefecture, the application, signed by the founder (s.2 of *DPR 361/2000)*, must contain authentic copies of the deed and articles of incorporation (s.1 of *DPR 361/2000*). In addition, a bank certificate, a projected budget, an auto-certification by the members of the council that there is no incompatibility between their personal situation and this function (see *DPR 445/2000*), and an "anti-mafia" certificate must also be provided. Finally, to ensure the accuracy of the information, and even if the information has already been checked by the notary receiving the deed and articles of incorporation, official identity documents as well as the TIN must be furnished to the Prefecture by each natural person involved in the foundation. This information is kept for an indefinite period of time.

130. Although there is no legal timeframe within which these persons must go to the prefecture for registration, the Italian authorities have advised that this has no impact in practice. In order to be recognised and to be able to receive gifts, foundations must be registered by the Prefectures. In addition, if they are not registered, all members of the foundation council are liable for the debts of the foundation. This is sufficient to ensure the registration of foundations in all cases.

131. The information maintained in the register includes, pursuant to sections 3 and 4 of *DPR 361/2000,* the date of the articles of association, the name, the purpose, the total assets, the duration, the registered office, and the surname, name and TIN of the members of the foundation council, indicating which one is the legal representative. Section 4 of the same DPR also requires that all changes concerning the administrators must be provided to the Italian authorities. These changes must also be certified by a notary.

132. To ensure the accuracy of the information maintained in the register, Prefecture registration authorities monitor the registered foundations. This monitoring covers both the activity and economic relationships of the foundation. In their supervision duty, supervisory authorities must also ensure that the purpose of the foundation is met and in particular that all assets held by a foundation were used in compliance with this purpose and to the benefit of the persons or class of persons mentioned in the statutes. For instance, the authorities of the prefecture of Rome perform off-site monitoring of 100 foundations a year on a total of 560 foundations registered in its directory.

133. The monitoring consists of asking the foundation under supervision to provide its budget, balance sheet, activity conducted, any changes in the place of its registered office or in the administrators' identity, amendments of status, and changes in its articles of incorporation, if any. Where no response is received, the police can be asked to visit the foundation's registered office to determine whether or not the foundation still exists.

134. This monitoring enables the registration authorities to verify that all changes have correctly been disclosed and that the activity of the foundation conforms to its status. If in fact the foundation no longer exists, the registration authorities can pronounce its extinction.

Tax requirements

135. Foundations must be specifically registered by the *AE* for tax purposes. The application for registration must be submitted in an electronic format and contain the name of the foundation, its registered place, and the name of its representatives. All information received by the *AE* as the registration authority is stored in the *Anagrafe Tributaria* and is available to tax officials.

136. As legal entities registered for tax purposes and therefore liable to tax on income derived from commercial activity or income on capital, foundations must file an annual tax return ("Corporate unified tax Model" or "Non commercial entities unified tax Model" whether the prevailing activity is commercial or not). These tax returns must contain, *inter alia*, information on the foundation itself (such as its place of management) but also detailed information on its representative(s) as well as the identity of the members of the foundation council.

137. Foundations are also subject to specific tax requirements where money is distributed to beneficiaries. In that case, the foundation must fill out a specific tax return (form No.770) mentioning both relevant identification data relating to the beneficiaries and the related amount of donated money.

Information kept by foundations

138. There is no specific provision in the Italian *Civil Code* or in any other law stating the type of information to be kept by a foundation. However:

- the articles of association and all updates must be under a notarised format and must contain, *inter alia*, the identity of foundation council members; and
- foundations are relevant entities for tax purposes (see above) and revenue authorities are, in that case, in a position to ask a foundation to provide any relevant information and in particular the foundation deed and articles of association.

139. This means that the competent authorities for EOI can require the provision of information either from the notary having drafted the deed of association or from the foundation itself.

Anti-money laundering legislation

140. Notaries, lawyers, accountants (including when they carry out transactions involving foundations) and service providers are also professionals with obligations under sections 11 and 12 of Italy's *AML/CFT Decree* (see also above, Section A.1.1). Under the *AML/CFT Decree,* service providers are obliged to maintain ownership and identity information regarding their clients and their clients' beneficial owners.

Conclusion

141. Considering all requirements imposed on foundations by the Italian legislation it can be concluded that the Italian legal framework ensures the availability of all foundations' relevant ownership information:

- the deed and articles of incorporation, in a notarised format, contain the names of the members of the foundation council and are to be provided for registration;
- the application to the Prefecture for registration is signed by the founder, and there is an obligation to update the information maintained by this authority in the foundation register; and

- tax requirements include the possibility of accessing all information held by a foundation, the provision of the identity of council members on the annual tax return, and the submission of a specific tax return disclosing the identity of all beneficiaries when receiving money.

142. Moreover, it appears from comments received from Italy's treaty partners in international exchange of information in tax matters that there has been no instance where information on foundations has not been provided by Italy when requested.

Enforcement provisions to ensure availability of information (ToR A.1.6)

Registration

143. Pursuant to sections 2194 of the *Civil Code*, anyone failing to apply for registration in the business register is liable to an administrative fine from EUR 10 to 516. These sanctions may also apply to a notary having failed to check all information before transmitting the deed of incorporation or any update to the registration authorities. The Italian authorities have indicated that the way these sanctions are applied depends on the seriousness of the offence. For example, the sanction for delayed registration is lower than the sanction for failure to register. Representatives of the Chambers of Commerce have indicated that these sanctions are indeed applied in practice.

144. Pursuant to s.2621 of the *Civil Code*, administrators and managers of companies that fail to provide information or documentation required under the law or that provide false information or documentation are personally subject to sanctions consisting of imprisonment up to two years and a ban from all administration functions from six months to three years. In addition, and pursuant to s.223 of *Royal Decree 267/1942*, where failing to provide information or documentation required for registration or in addition to the registration (such as the annual accounts of the company) would lead to or ease the bankruptcy of a company, the administrators may be subject to imprisonment from three to ten years.

145. As there is no strict obligation for registration of foundations, there are no specific sanctions for failure to comply with this requirement. However, as explained by the Italian authorities, while as a foundation is not registered it cannot receive any gifts or subsidies and the members of the council are personally liable for any debts of the foundation. From the Italian Prefecture authorities' perspective, these consequences are dissuasive enough to ensure the registration of foundations.

Share registers to be maintained by companies

146. Failure to maintain the share register result in application of administrative and pecuniary sanctions which, according to sections 2630 of Civil Code, go from EUR 206 to 2065. Ultimately, pursuant to s.2622 of the *Civil Code* criminal sanctions may also be applied (six months to three years imprisonment and a ban from all administration functions from six months to three years). Failure by a company administrator to maintain the shares register where such failure would lead to or ease a bankruptcy may be sanctioned by one to five years of imprisonment.

Obligations of financial intermediaries to keep ownership information

147. Financial intermediaries are required to keep information on the identities of shareholders whose shares are kept on financial accounts. Failure to comply with this obligation can be sanctioned by up to two years imprisonment or to banning from all administration functions from six months to three years (s.2621 *et seqq* of the Civil Code).

Information to be furnished to tax authorities

148. Pursuant to s.13 of *DPR 605/1973*, a EUR 103 to EUR 2 065 fine applies if an entity fails to register with the *AE*.

149. Whoever is required to provide tax returns and fails to do so is subject to an administrative sanction of 120% to 240% of the amount of the taxes due or of the amount of tax avoided with a minimum of EUR 258. In a case where no taxes are due, this sanction is from EUR 258 to EUR 2 065 (s.1 of *Legislative Decree 471/1997*).

150. In addition to these administrative sanctions, submission of a fraudulent declaration showing fictitious items of income in the relevant annual tax return for the purpose of evading income taxes is punishable by imprisonment from one year and six months up to six years. With regard to false declarations, imprisonment from one to three years may be imposed in the specific cases of failure to provide a tax return with a tax evaded higher than EUR 77 468, or when the tax evaded is higher than EUR 103 291 (ss.2-5 of *Legislative Decree 74/2000*)

Anti-money laundering legislation

151. Pursuant to article 56 of *legislative Decree 231/2007*, failure to comply with CDD requirements can result in application of administrative sanctions between EUR 10 000 and EUR 200 000.

152. In addition to administrative sanctions, criminal sanctions can also be applied. Pursuant to article 55 of the abovementioned Decree, failure to comply with CDD requirements can result in a fine from EUR 2 600 to EUR 13 000. More serious violations may be sanctioned with imprisonment from 6 to 12 months.

153. The Italian AML authorities reported that for 2009, 2 265 administrative sanctions were imposed for a total amount of EUR 48 million. It has not been possible to obtain more information on criminal sanctions for 2009 as criminal procedures in Italy may be quite lengthy.

Conclusion

154. Each requirement to maintain ownership information is complemented by sanctions, usually administrative sanctions (fines) but for the most severe offences with criminal sanctions (fines and imprisonment). This is particularly the case regarding the *AML/CFT Decree* and the requirements to be registered by the Chambers of Commerce. The enforcement provisions to ensure the availability of ownership information seem to be dissuasive enough to ensure the legal requirements being respected by the persons required to provide the information.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1)

155. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the

entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, *etc*. Accounting records need to be kept for a minimum of five years.

General requirements

156. Section 2214 of the *Civil Code* provides for the obligation of keeping books that, according to the type, size and location of the enterprise, will help to reconstruct the business history. A legal or natural person who pursues a commercial activity must also keep a journal book and an inventory book. According to s.2302, SNCs and SASs are covered by these requirements. Professional trustees are also covered by these obligations.

157. Under Article 2216, the journal book is a chronological and analytical register, in which all transactions relating to the company's or partnership's business are listed on a day-by-day basis. The inventory book is of a periodic/systematic type, which must be filled-in at the beginning of the fiscal period and then every following year indicating the business assets and liabilities. The inventory ends with the balance sheet and income statement, which must prove the profits and losses from the business.

158. Record keeping requirements are also provided for in the tax legislation, both in *DPR 600/1973* (sections 13 to 22) and *DPR 633/1972* (s.39). The requirements that apply to all businesses, including domestic and foreign companies, SNCs and SASs, are the following:

- pursuant to s.13 of *DPR 600/1973*, each business is required to keep accounting records;
- these records must include, *inter alia*, journal books, inventory books, all books prescribed under the VAT legislation (s.39 of *DPR 633/1972*), records for registering property and income elements, amounts of received goods and outgoing merchandise (s.14 of *DPR 600/1973*); and
- an inventory and a balance sheet as well as a register of depreciation of property (ss.15 and 16 of *DPR 600/1973*).

159. Finally, pursuant to s.20 of *DPR 600/1973*, entities conducting only a minor commercial activity but also conducting other activities are required to keep accounting records in the same format as prescribed for purely commercial entities.

160. According to s.22 of *DPR 600/1973*, all accounting records must be in chronological order and must be registered no later than sixty days after the realisation of the events.

Exceptions to general requirements for small businesses

161. Pursuant to s.18 of DPR 600/1973, small businesses whose annual turnover is less than EUR 516 456.90 (when they sell goods) or EUR 309 874.14 (when they furnish services) can keep records in a simplified format. In that case, the taxable income of the entity is determined by adding positive and negative items. There is however no difference as regards the type of documentation to be kept to reflect all transactions and determine the financial position of the entity with accuracy, which may be subject to audit by revenue authorities, and allow financial statements to be prepared.

162. If accounting records are not maintained, a fine from EUR 1 032 to EUR 7 746 may be applied (s.9 of *Legislative Decree 471/1997*). The same sanction applies when the person required to maintaining accounting records refuses to provide them when so requested by the revenue authorities.

Submission of an annual tax return

163. According to Italian legislation (ss.1 and 9 of *DPR 600/1973*), all entities, companies, partnerships, trusts and foundations are required to submit annual tax returns. The return is to be submitted by the entity itself, even when the income is finally taxed in the hands of the partners or beneficiaries (partnerships and trusts, for example).

164. Three types of tax return exist,

- Corporate Unified Tax Model, to be filed by companies and entities carrying on a prevailing commercial activity;
- Non Commercial Entities Unified Tax Model, to be filed by entities that do not carry on a prevailing commercial activity; and
- Partnership Unified Tax Model, to be filed by partnerships.

165. Trusts and foundations carrying on a prevailing commercial activity must file the "corporate and commercial entities unified tax model" or, when not carrying on a prevailing commercial activity, the "corporate and non commercial entities unified tax model".

166. A tax return of a company or partnership must, *inter alia*, include a detailed income statement and a balance sheet. All these returns can be audited by revenue authorities to ensure the accuracy of the information provided.

167. For non-submission of an annual tax return, a EUR 258 to EUR 1 035 sanction may be applied (see *Legislative Decree 471/1997*). In such cases, pursuant to the same Decree, the revenue authorities can also automatically assess the income and charge an additional sanction from 120% to 240% of the taxes calculated by the revenue office. For a false tax return an

administrative sanction of 100% to 200% of the amount of taxes due may be applied. In the case of a false tax credit, the same sanction is applicable. If taxable income is earned abroad, those sanctions are increased by one third. Where an annual tax return does not provide all the information required under the law, a sanction from EUR 258 to EUR 2 065 may be applied.

168. It appears from comments provided by Italy's international partners in tax matters that accounting records are one of the most common categories of information Italy is asked to provide. Whilst on some occasions the provision of the information requested was slow (see section C.5 below), there do not seem to have been any instances where accounting information was not available in Italy.

169. Considering the record keeping requirements provided for by both the *Civil Code* and tax legislation as well as the annual tax returns to be submitted by companies, partnerships, trusts and foundations, as well as comments received from foreign counterparts, accounting records kept by Italian relevant entities correctly explain all transactions, enable the financial position to be determined with reasonable accuracy at any time and allow financial statements to be prepared.

Underlying documentation (ToR A.2.2)

170. Under s.22 of *DPR 600/1973*, details of all sums received, original letters, telegrams and invoices received, and the copies of the letters, telegrams and invoices sent out must be kept by the concerned entity in an orderly way. This requirement applies whatever the turnover of the entity.

171. Moreover, as a member of the EU and therefore part of the EU common VAT system, Italian entities are subject to special requirements for justifying their transactions. It is especially required to preserve all documents tracing the delivery of intra-community goods and provision of services including, amongst other things, the invoices issued and received, purchase or supply of goods, and the contracts under which purchases and sales were made (see to this extent, *Law Decree No.331 of 30 August 1993* transposing the 6th EU VAT Directive and *DPR 633/1972*).

172. It is possible under Italian legislation to keep electronic invoices in a territory other than Italy. However, (pursuant to s.39 of *DPR 633/1972)*, this is subject to the existence of a mutual assistance agreement providing for exchange of information signed by Italy with the jurisdiction in which the invoices are kept. This means that when such underlying information is requested by an Italian treaty partner, the Italian authorities can gain access to it. In addition, Italian entities must allow automatic access to these records for control purposes and must ensure that all documents and data contained in such records must be kept in such a way that they can be printed.

173. Pursuant to Article 9 of *Legislative Decree 471/1997*, the sanction for failure to keep and preserve underlying documents ranges from EUR 1 032 to EUR 7 746. The same sanction applies when the person required to keep and preserve underlying documents does not provide them when so requested by the tax assessment officials. For failure to submit the lists of intra-UE operations a fine ranging from EUR 516 to EUR 1 032 is applicable.

174. Considering the record keeping requirements provided for by the tax legislation as well as comments received from peers showing that Italy is able to provide underlying documentation on request, it would appear that the underlying documentation kept by all relevant Italian entities reflects details of all sums and money received, all sales and purchases and other transactions, as well as their assets and liabilities.

Document retention (ToR A.2.3)

175. The keeping of accounting records is governed by s.2220 of the Civil Code. This requires entities to keep and preserve documents and records for a ten-year period, in order to fully document the firm's history in case any fiscal, corporate or commercial disputes should arise. This requirement concerns all books as well as underlying documentation.

176. In tax matters, the keeping of accounting records and documents is governed by s.22 of *DPR 600/1973*, to which s.39 of *DPR 633/1972* also refers with respect to the retention and preservation of records and documents relevant for VAT purposes. Section 22 of *DPR 600/1973* provides that the mandatory accounting records and related documentation must be retained until completion of the assessment for the corresponding tax period. This period expires on 31 December of the fourth year following the year for which the return is submitted or on 31 December of the fifth year following the year for which the tax return should have been submitted when no tax return has been filed.

177. As well as the sanction for failure to keep and preserve underlying documents, the sanction for failure to keep and preserve books and accounting records ranges from EUR 1 032 to EUR 7 746. That sanction also applies where the taxpayer does not provide them to the tax assessment officials. The sanction doubles where the tax evasion is higher than EUR 51 645 in the fiscal year (see *art. 9 of Legislative Decree 471/1997*).

178. For both civil and tax requirements, the time period during which accounting records must be kept by Italian entities is fully consistent with the *Terms of Reference*. Besides this, there does not appear to have been any instance where Italy's peers had difficulty in obtaining accounting records due to an inadequate document retention period.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3. 1)

179. Legal obligations to keep bank information are contained in the Italian *AML/CFT Decree*.

180. Articles 10 and 11 of this Decree require that financial institutions and a wide range of additional financial businesses and professions have knowledge of their customers. Article 15 of this Decree states that all financial intermediaries and the other persons engaged in financial activities referred to in Article 11 must comply with the CDD obligations in connection with relationships and transactions relating to the performance of their institutional or professional activity, in particular in the following cases:

- when establishing a continuous relationship; this must also be done to existing customers on a risk assessment basis (article 22 of the Decree);
- when carrying out occasional transactions, as instructed by the customer, involving the transmission or transfer of means of payment amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several related operations which appear to be split;
- when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold; and
- when there are doubts about the veracity or adequacy of previously obtained customer identification data.

181. Pursuant to articles 18 and 19 of the same Decree, the identification and verification of the identity of the customer and its beneficial owners, being a natural person, must be carried out in the presence of the customer on the basis of a currently valid identity document before the continuous relationship is established. Where the customer is a company or entity, the actual

existence of the power of representation must be verified and the information necessary to identify and verify the identity of the representatives delegated to sign for the transaction must be obtained.

182. The Decree also requires that undertakings and persons covered by the AML/CFT obligations store identity information for no less than ten years after the customer relationship has ceased (article 36 para.1(a) of the *AML/CFT Decree*). In the case of transactions, continuous relationships and professional services, these persons must keep the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings, for a period of ten years following the carrying-out of the transaction or the end of the continuous relationship or professional service (Article 36 para.1(b)).

183. For the purposes of compliance with the registration requirements, financial intermediaries must, pursuant to the *AML/CFT Decree,* create a single electronic archive, the purpose of which is to ensure the completeness of the data, their retention according to uniform criteria, and maintenance of the chronological order of the data. The creation of a single electronic archive is mandatory (Article 37 of the *AML/CFT Decree*)

184. Finally, Article 3 of the *EU Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments* requires that financial institutions which pay interest to their customers hold information on account holders that are not resident in Italy but are resident in other EU Member States, or jurisdictions not being EU members but involved in the automatic exchange of information organised by this Directive.

185. As stated above in section A.1.6 of this report, sanctions for case of non compliance with these requirements are stated in Article 55 and 56 of the *AML/CFT Decree.* Both criminal and administrative sanctions may be applied.

186. Regarding the availability of bank information, there is a dedicated section of the *Anagrafe Tributaria*, where some bank information is directly available to revenue authorities. Pursuant to Article 7, para.6 of *DPR 605/73*, banks and financial institutions are indeed required to provide to the *Anagrafe Tributaria* details of the existence and type of financial relationships with their customers. Pursuant to Article 7, para.11 of the same Presidential Decree, this information can be accessed by revenue authorities when gathering information (see section B below).

187. From Italy's partners' comments, there does not seem to have been any situation where Italy was not in a position to provide the bank information requested because it was not available.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

B. Access to Information

Overview

188. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions, information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Italy's legal and regulatory framework gives the authorities access powers that cover all relevant people and information, and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

189. The structure of the Italian revenue authorities is to have on one hand an agency fully dedicated to the assessment and control of taxes, the *Agenzia delle Entrate (AE)*, while on the other hand the Fiscal Police, the *Guardia di Finanza (GDF)*, also has responsibilities as regards audits and control of taxes. This organisation means that there are, in Italy, two authorised competent authorities with the same responsibilities in the field of EOI. It appears that the way these two Italian authorities are organised and work together, as well as the supervision performed by the *Dipartimento delle Finanze*, ensures a constant high level of quality in the responses provided by Italy to its foreign counterparts.

190. The Italian revenue authorities have significant information resources, including information transmitted by the Chambers of Commerce, annual information submitted by taxpayers on their tax returns, and information received through automatic reporting. In particular, some bank information is already in the hands of the tax authorities thanks to the automatic provision of data by banks and financial institutions. As a result, the simplest EOI requests are responded to directly by the competent authorities without recourse to the local authorities' powers to obtain information.

191. Italian revenue authorities also have broad powers to obtain bank, ownership, identity, and accounting information and have measures to compel the production of such information. This information can be accessed by various means: in writing (questionnaires), visits to business premises, during tax examinations or by testimonies. The ability of Italy's tax authorities to obtain information for international exchange of information purposes is derived from its general access powers under *DPR 600/1973* and *DPR 633/1972,* coupled with the authority provided by the relevant exchange of information agreements.

192. There are no statutory bank or professional secrecy provisions in place that restrict effective exchange of information. On the contrary, tax authorities have powers that override provisions in any other piece of legislation. Application of rights and safeguards (*e.g.* notification and appeal rights) in Italy do not restrict the scope of information that the tax authorities can obtain.

193. Italy's institutional framework supports effective access to and provision of information requested by competent authorities of other countries. Over the last three years there is no indication of cases where Italy was not in position to provide information upon request.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

The Italian competent authority

194. The *Dipartimento delle Finanze* (*DF*), a Directorate of the Italian Ministry of Economy and Finance is the competent authority for exchange of information for Italy. The *DF* also acts as competent authority for EOI in the field of VAT, collection of taxes and excises. The *AE* and the *GDF*, as revenue operative services, are two authorised competent authorities. In practice, it means that both the *AE* and the *GDF* are allowed to directly send their outgoing requests to counterparts and receive incoming requests from requesting jurisdictions, all of this under the supervision of the *DF*.

195. The *AE* and the *GDF* share responsibilities in compliance functions. It means that a request can be received by one agency whilst the person who is the subject of the request is under examination by the other agency.[21] This

21. In this report, to ease the reading, both *AE* and *GDF* will be considered as agencies, even though it is not the case for the *GDF* from a legal perspective.

situation is resolved by the common IT tools both *AE* and *GDF* use for the management of taxpayers and tax audits. In practice, each time a request for information is received by one agency, research is conducted using these IT tools (in particular in the database dedicated to tax audit "MUV") to discover whether or not the person being requested to provide information is already under examination by the other organisation. If the answer is positive, the request is directly transmitted to the other agency for collection of the information. The requesting jurisdiction is also informed of the transmission of the request. The response will be furnished directly by the agency which gathered the information.

196. Further, where a request is transmitted to the local authorities for research and action, new checks are performed by both regional and provincial authorities to double check that the subject of the request is not under examination by the other tax agency.

197. As there are two authorised competent authorities in Italy, there is the potential for confusion for some requesting jurisdictions in choosing which agency is the most relevant to handle their requests. However, these two agencies have the same powers regarding the gathering of information and, according to inputs received from peers, there do not appear to have been any instances where these shared responsibilities have led to difficulties for requesting jurisdictions, either in determining to which agency to send the request or in receiving an answer. Thus, it can be concluded that having two authorised competent authorities does not have any negative impact on the Italian authorities' ability to answer the requests received from their treaty partners in a timely fashion.

198. Each of the two authorised competent authorities has an international co-operation office dealing specifically with exchange of information. These offices are clearly identified to foreign administrations thanks to the information provided via the EU information sharing network (CIRCA) and the OECD information exchange system. If a request is not directly sent to the *GDF* or the *AE,* but to the *DF*, then the *DF* decides which agency should process the request. Usually the allocation is done by the *DF* on an alternating basis.

199. The unit dealing with EOI in the *AE* is staffed with eight officials responsible for processing the cases. In the *GDF*, 18 people work in the taxation unit of the international co-operation directorate. Neither of these two entities directly collects the information required to respond to international EOI requests. Requests are answered directly where the information is already available in databases, otherwise the gathering of information is carried out by local authorities.

200. The way these requests are handled in practice is described in section C.5 of this report.

Powers to collect information

201. Powers to collect information are granted to revenue authorities[22] by s.32 of *DPR 600/1973*. Pursuant to this section, the *AE* and the *GDF* have the following powers available to perform their duties:

- to ask taxpayers to appear in person or through representatives and to provide any relevant information for the purpose of their own tax assessments (para.2);
- to ask taxpayers to produce or transmit any relevant deeds and documents for the purpose of their own tax assessments (para.3);
- to send questionnaires to taxpayers concerning any relevant information for the purpose of their own tax assessments as well as the assessments of other taxpayers with whom they maintain relations (para.4);
- to request all bodies and governmental departments, non-commercial public bodies, insurance companies and institutions, companies and organisations engaged in the collection of credits and in payments on behalf of third parties to communicate any information relating to a specific person or a group of persons (para.5);
- to request, after agreement of the *AE* and *GDF* highest authorities (the Director of the Central Directorate for Assessment, or, as the case may be, the Regional Director, as to AE, and the Regional Commander as to GDF), banks and financial institutions and intermediaries to provide any information on the relations maintained with their clients (para.7);
- to request any person required to keep accounting records to provide any relevant information necessary for assessment purposes (para.8); and
- to ask any other person to produce and transmit any relevant deeds and documents relating to specific relationships maintained with a taxpayer (para.8-bis).

202. The term "taxpayer" must be understood in a very broad sense as anyone who is subject to tax in Italy. To this end, Section 2 of the *TUIR*[23] provides that natural persons, whether resident in Italy or not, are subject to personal income tax. As far as corporate income tax is concerned, s.73 of *TUIR*

22. Revenue authorities must be understood as Agenzia delle Entrate plus Guardia di Finanza
23. The "*Testo Unico delle Imposte sui Redditi*" is the Italian legislation providing for the rules for direct taxation.

mentions that all companies and entities of every kind, being legal entities or not, resident of Italy or not, are subject to tax in Italy. Considering this, the provisions of *DPR 600/1973* enable the Italian authorities to access all type of information.

Information gathering in practice

203. The collection of information can be done by written means (with questionnaires) or directly at the premises of the person in possession of the information, if these are business premises. Where business premises serve also as a dwelling, authorisation of a judge is required (Article 52, para.1 of *DPR 633/1972*). Moreover, other types of premises (*e.g.* non-commercial premises) can be accessed upon authorisation of a judge where there is serious evidence of violation of tax law (Article 52, para.2 of *DPR 633/1972*). Documents and records can be seized if it is not possible to copy them or reproduce their content in the report drafted by the auditors, or if the taxpayer refuses to sign the report or disputes its content (Article 52, para.7 of *DPR 633/1972*). Finally, according to Articles 253 through 256 of the Code of Criminal Procedure, seizure of documentation may be ordered by the judge where applicable.

204. When the information is requested in writing, a minimum period of 15 days (or 30 days in the case of bank information) must be granted by the official in charge of the case to persons required or asked to provide information. The Italian legislation does not set out any maximum period to answer these requests. In practice:

- usually, in a first approach, the provision of information is requested in writing because it is easier and more appropriate in the case of a limited amount of information; and
- it is rare to grant to taxpayers more than 15 days (or 30 days in the case of bank information) to answer the request, because the timeframe granted to tax officials to perform tax audits is fixed by the Italian law to 30 working days (6 weeks). It is therefore usual for tax officials to give to taxpayers the minimum timeframe stated by the Italian legislation to answer a request for information.

205. Section 33 of *DPR 600/1973* together with s.52 of *DPR 633/1972*, allows revenue authorities' officials to access businesses premises to inspect, verify, and search for any documents needed for the assessment of taxes. Revenue authorities' officials can also access administrative agencies and banks' premises to exercise the powers granted by s.32 of *DPR 600/1973*.

206. The Italian authorities have indicated that in some situations the gathering of information at the premises of a business is the most efficient way to access the information, in particular because there is no need to inform the

taxpayer beforehand. Unexpected visits and the possibility of taking all documents deemed as relevant lead in many cases to better results. However these procedures can equally take longer than a written request to the taxpayer.

207. Sometimes, considering the information provided by the requesting jurisdiction, a full examination of the business records or the taxpayer's situation may be necessary. In that case, the gathering of information is performed during the course of a tax audit. The situation is the same when the person who is the subject of the EOI request is already under a full examination by Italian revenue authorities.

208. As previously noted, there are specific seizure powers provided for by Article 52, para.6 of *DPR 633/1972* and, for criminal matters, by Article 253 *et seq* of the Code of Criminal Procedure. These powers are nevertheless not really relevant for EOI purposes as *DPR 600/1973* and *DPR 633/1972* already enable tax authorities to access business premises to verify and search for any documents needed for the assessment of taxes. In addition, the exercise of specific seizure powers provided for by Articles 253–256 of Criminal Procedure Code requires an authorisation from a judge. If at the time the request is received a search and seizure procedure has already been performed according to the said articles of the Criminal Procedure Code, all information collected during this procedure can be used for EOI purposes and may be provided to the requesting authority upon authorisation of the judge.

Ownership and identity information/Accounting records (ToR B.1.1 & B.1.2)

209. It is firstly important to note that the Italian revenue authorities, considering the streams of information they receive through the *Anagrafe Tributaria*,[24] already have in their hands a great deal of information. In particular, all ownership and accounting information received by the Chambers of Commerce is automatically transmitted to the revenue authorities. In addition, IT tools at the disposal of the revenue authorities contain information on real estate ownership and transactions (received from the immovable properties registration authorities), vehicles, information provided by third parties such as the amount of dividends or interest received on an annual basis, and all relationships with third parties (shareholdings or representative functions, for instance).

210. Secondly, all tax returns submitted by taxpayers, whether legal or natural persons, can be accessed instantaneously, as well as all information on the tax situations of such taxpayers (such as pending litigation, audits pending and

24. The *Anagrafe Tributaria* is the data warehouse where all information useful for tax purposes is stored.

conducted, and recovery of taxes). Thanks, in particular, to the tax obligations imposed on all taxpayers (individuals, companies, partnerships and any other relevant entities), revenue authorities have a good source of relevant information that can easily be exchanged with international counterparts. This can be done, for instance, when the incoming request concerns limited information such as ownership information already present in the system, the provision of tax returns or limited accounting information (turnover, expenses, movable and immovable property held or depreciation of property).

Access to ownership information

211. When ownership and identity information is not stored in a database available to the revenue authorities, the requested information can be requested from:

- administrative authorities – Chambers of Commerce or Prefecture (s.32(5) of *DPR 600/1973)*;
- notaries, required pursuant to s.32(6) of *DPR 600/1973* to provide on request any deeds and registers they possess; and
- legal entities – companies, partnerships or foundations. Paragraph 8 of the same section of the DPR requires any person subject to accounting record keeping requirements to provide any relevant information, including ownership and accounting information.

212. It is therefore possible to conclude that the Italian tax authorities, acting as competent authority in the field of EOI, have all the powers they need to access all ownership information from all persons required under Italian legislation to maintain such information.

Access to accounting information

213. As regards access to accounting records, in addition to the above stated requirements regarding the provision of annual tax returns to revenue authorities and annual accounts to the Chambers of Commerce, s.32(3) of *DPR 600/1973* enables the revenue authorities to ask a taxpayer to produce or transmit any document relevant for the purpose of its own tax assessment. In addition, paragraph 8 of the same section states that all entities required to keep accounting records according to the Italian legislation, must provide these records on request to the revenue authorities.

214. In the case of very detailed accounting information, it is possible for the Italian revenue authorities to access the taxpayer's business premises to take all relevant records. This procedure is likely to take longer but also produces more comprehensive and better results.

215. Italy's international counterparts in international tax matters have noted that in some cases the provision of accounting information has been slow. In such cases the delayed responses seem to be the result of using the access powers to business premises to collect this information instead of requesting the information in writing (see also section C.5.2).

Bank information (ToR B.1.1)

216. Banks and financial institutions and intermediaries are, pursuant to s.7 of *DPR 605/1973*, required to keep identification data, including the TINs, on all persons they have a relationship with and to communicate this information to the *Anagrafe Tributaria* where it becomes available to revenue authorities.

217. The *Anagrafe Tributaria* does not allow revenue authorities to directly obtain account numbers or to access bank statements. However, it is possible, to determine for all persons holding a bank account in Italy, the number of financial relationships they have and the address of the relevant financial institutions. This information can be accessed using the TIN or the personal data of that person. A requesting jurisdiction wishing to know if a taxpayer holds bank accounts in Italy can therefore obtain an answer directly from the revenue authorities. In the same way, a request for bank information sent to the Italian authorities without stating the bank account number can still be processed as the information on the bank where the account is held is contained in the system.

218. Where more detailed information is requested, powers to collect bank information on a case by case basis are foreseen by s.32(7) of *DPR 600/1973*. The Italian revenue authorities have general access to information held by banks and financial intermediaries. Requests for bank information are made electronically and include mention of the TIN of the account holder. Financial institutions are given at least 30 days to answer these requests. When a treaty partner wants to obtain bank information, the same rules apply: the request must be sent by the Italian authorities to the financial institution electronically, TIN included. If the requesting party is able to note the relevant TIN/TINs in the request sent to the *AE* or the *GDF*, this will ensure quicker provision of the answer by the Italian authorities.

219. When no TIN is provided in the initial request, the revenue authorities are nevertheless able to access the information. However, this cannot be done electronically. In such cases, the revenue authorities ask for information by mail and, if not satisfied, directly go to the premises of the financial institution to collect the information. This possibility is clearly envisaged by s.33 of *DPR 600/1973* but it leads to delay the provision of information. However it must be noted that since spring 2010, pursuant to *Decree-Law 78/2010,* each natural or

legal person wishing to open a bank account in Italy, even when living abroad, is required to have a TIN. This new requirement that all holders of accounts have unique identifiers is likely to speed up the provision of bank information in future even though it applies only to the opening of new bank accounts.

220. Considering the sophisticated tools in place to gather bank information, and given that the inputs received from Italy's international partners in tax matters do not mention any specific difficulties, requirements or delays in obtaining bank information from the Italian revenue authorities, it can be concluded that the Italian system satisfactorily ensures the collection of this information.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

221. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. Italy has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to Italy's revenue authorities under *DPR 600/1973* can be used to respond to international requests for information regardless of whether or not Italy needs the information for its own domestic tax purposes.

Compulsory powers (ToR B.1.4)

222. The powers to gather information granted by *DPR 600/1973* are further reinforced by specific sanctions. For example:

- the sanction for failure to provide any tax return ranges from EUR 258 to EUR 2 065 pursuant to *Legislative Decree 471/1997*; and
- the sanction for failure to provide information to the *Anagrafe Tributaria* amounts from EUR 103 to EUR 2 065 (*DPR 605/1973*).

223. As stated above, pursuant to s.32 of *DPR 600/1973,* under the invitation or request of the revenue authorities, a taxpayer or a third party must provide the information requested. If a taxpayer fails to comply with this obligation:

- any information not provided within the time limit will not be taken into account for the taxpayer's personal assessment (where the request for information is tied to an examination procedure);
- pursuant to s.11 of *Legislative Decree 471/1997* a range of sanctions from EUR 258 to EUR 2 065 are applicable. This fine can reach EUR 20 000 where information is not provided by a financial institution;

- criminal sanctions may also apply, pursuant to *Decree 74/2000*. For instance, failure to provide accounting information can be sanctioned by six months to five years imprisonment; and
- finally, and as a last resort, it is also possible to ask a judge to compel the provision of information, for instance by authorising a seizure procedure. However, there must be strong grounds for this and the procedure is rarely used.

224. Pursuant to s.32(2) of *DPR 600/1973*, the taxpayer may be requested to provide the information by testimonies. If (s)he refuses to do so, the sanctions of *Legislative Decree 471/1997* may be applied. In such a case, the revenue authorities will explore other ways of answering the request for information, either by using a questionnaire or by going to the premises of the business in possession of the information. As these two methods of obtaining information are covered by sanctions, the provision of information should be secured.

225. Italian revenue authorities are not in a position to indicate how many sanctions have been applied in the past. It must nevertheless be noted that in many situations in Italy, the information can be requested:

- using various methods: including testimonies, questionnaires and searches for documents; and
- from several persons: the taxpayer, revenue authorities, government authorities, and any third parties.

226. These multiple avenues ensure that in all cases someone in possession of the information in Italy will be in a position to provide the requested information.

227. Over the las three years, there is no indication of cases where Italy was not in position to provide information upon request, indicating that the sanctions foreseen by the Italian legal framework for failure to comply with these requirements are adequate.

Secrecy provisions (ToR B.1.5)

228. There are no secrecy provisions regarding ownership, identity or accounting information which limit the competent authority's ability to respond to an international EOI request. Access to the full range of information can be gained for the purposes of EOI requests as described above. As a result, the Italian competent authorities have never declined to provide information requested due to secrecy provisions

229. As regards bank secrecy, whilst the Italian constitution encourages the protection of individuals and the right to confidentiality, there is no

provision in Italian legislation providing for bank secrecy. Bank confidentiality is a contractual obligation between banks and their clients that can be overridden, in particular for tax purposes.

230. The communication between a client and an attorney is only privileged to the extent that the attorney acts in his or her professional capacity as attorney. Where an attorney acts in any other capacity, the attorney client privilege does not apply. In this case, exchange of information resulting from and relating to any such communications cannot be declined because of the attorney-client privilege. The situation is the same for accountants/auditors.

231. There is no other professional secrecy that can be invoked when information is requested for tax purposes by revenue authorities. Article 103 Code of Criminal Procedure, which is referred to in Article 52 of DPR. 633/1972 states that for tax purposes professional secrecy rules, applies only if and to the extent that the professional concerned acts as defending in a criminal procedure case.

232. Finally, according to Italy's partners, there does not seem to have been any case where a request for information was not answered due to secrecy provisions.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

233. Under Italian tax legislation, and according to *Law No.212 of 27 July 2000*, provisions have been enacted regarding the rights of the taxpayer. Under this legislation the revenue authorities, when gathering information to respond to an EOI request, must indicate in the questionnaire sent to the Italian person requested to provide the information the reasons why the information is requested and the fact that the information provided will be sent to foreign tax authorities.

234. However, this cannot be seen as a notification as the person required to provide information:

- cannot decline the provision of information because the information is required for EOI purposes; and
- cannot appeal the provision of information.

235. It is not mandatory to inform the person required to provide the information before the collection of that information. In urgent cases, the information can, for instance, be collected directly in the business premises without prior information of the taxpayer.

236. The explanation given to the person required to provide the information has no impact on the provision of information in a timely fashion and cannot delay its provision. This can also be concluded from the inputs received from Italy's partners that do not refer to delays in the provision of Italian answers due to the requirements of this legislation.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C. Exchanging Information

Overview

237. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. A jurisdiction's practical capacity to effectively exchange information upon request relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses Italy's network of international agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

238. The *DF* is the competent authority for negotiation and interpretation of double taxation conventions (DTCs) and tax information exchange agreements (TIEAs). Unit IV of the International Directorate of the *DF* is fully dedicated to the negotiations of treaties, both DTCs and TIEAs. The *DF* also plays a role of general co-ordination of administrative co-operation in the field of direct taxation, VAT, recovery of taxes and other indirect taxes (unit VI). It represents Italy in the EU, OECD and Global Forum as regards international co-operation, exchange of information or fight against tax evasion.

239. Italy is able to exchange information under bilateral treaties and also with other European Union (EU) member States[25] under the *EU Council Directive 77/799/EEC* of 19 December 1977[26] concerning mutual assistance by the competent authorities of the Member States in the field of direct

25. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus (see footnote 1), the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

26. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. A new *EU Mutual Assistance Directive* has been adopted on 7 December 2010 and will enter into force on 1 January 2013.

taxation and taxation of insurance premiums. Italy is also a signatory to the *COE/OECD Convention on Mutual Administrative Assistance in Tax Matters*, which is currently in force with respect to 14 jurisdictions.[27] This convention provides for all possible forms of administrative co-operation between States in the assessment and collection of taxes. Italy is also a signatory of the protocol to this convention. When this protocol and the updated convention enter into force, the *COE/OECD Convention on Mutual Administrative Assistance in Tax Matters* will provide for international exchange of information in tax matters to the international standard.

240. Italy's bilateral information exchange agreements cover 91 jurisdictions including its major trading partners, 44 Global Forum members, all EU and OECD member jurisdictions (with the exception of Chile). To date, Italy has not signed any TIEAs but has entered into TIEAs negotiations and initialled agreements with eight jurisdictions. It is noted than the timeframe to bring the treaties signed into force can in some cases take several years. It is nevertheless also noted that the timeframe to bring the protocols recently signed with Cyprus[28] and Malta into force was about one year and Italy will continue its efforts to ensure the ratification of its treaties expeditiously.

241. Six of the 85 treaties in force[29] do not allow for EOI in accordance with the international standards, while 14[30] others containsome limitations

27. Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Netherlands, Norway, Poland, Sweden, Ukraine, the United Kingdom, and the United States. In addition, Canada, Germany and Spain have signed the Convention and are awaiting ratification.

28. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

    2. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

29. Austria, Belgium, Brazil, Luxemburg, Malaysia, and Switzerland.

30. Ireland, Ivory Coast, Japan, Kuwait, Morocco, Portugal, Singapore, Tanzania, Thailand, Trinidad & Tobago, United Kingdom, former USSR, former Union of Soviet Socialist Republics (USSR) (which remains in force with respect to Azerbaijan, Kyrgyzstan, Tajikistan and Turkmenistan), former Yugoslavia (which remains in force with respect to Bosnia-Herzegovina, Montenegro and Serbia), and Zambia.

regarding persons covered by the agreement. However, all partners of relevance, in particular those with which Italy has the closest relationships, are covered by an agreement – see Annex 2.

242. Whilst this report is focused on the terms of its EOI agreements and practices concerning the exchange of information on request, Italy is also involved in spontaneous and automatic exchange of information on direct taxation as well as in the field of VAT. In addition, Italy exchanges a large amount of data on an annual basis under the scope of the *EU Savings Directive 2003/48/EC*.[31] The Italian approach in these areas is relevant as it shows the importance that Italy places on EOI.

243. Regarding the effectiveness of exchange of information, Italy's competent authorities may benefit from being more resourced, in particular the *AE*. The competent authorities' staff are highly skilled and committed to exchanging information. While all international counterparts exchanging information with the Italian authorities have commented positively on the quality of the relationship with their Italian counterpart, some concerns remain regarding the ability of Italy to provide information in a timely manner. This may be partly a consequence of the high volume of EOI work in which Italy is involved but also the need for translation of all requests and responses received. Closer monitoring of the requests sent to local authorities for gathering of information could be a means to ensure faster responses.

244. As a consequence, of the incoming requests received by Italy over the last three years, 15% were answered within three months. Therefore, Italy should try to improve its processes to ensure that the information is provided in 90 days in a higher proportion of cases and that status updates are provided to its partners as a routine for those requests which are not answered within 90 days.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

245. Currently, Italy can exchange information on request under various tools: its 85 bilateral DTCs covering 91 jurisdictions,[32] the *EU Mutual Assistance*

31. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

32. The treaty signed with the former Czechoslovakia remains in force with respect to both the Czech and the Slovak Republics, the treaty with the former Yugoslavia remains in force with respect to Bosnia-Herzegovina, Montenegro

Directive and the *OECD/COE Convention*. In addition to EOI on request in the field of direct taxation, Italy is also involved in other EOI programs.

Other forms of exchange of information

VAT exchange

246. As a member of the European Union, Italy is involved in the European common VAT system and as a consequence in the VAT exchange of information that takes place under *EU Regulation (EC) 1798/2003*.[33] During 2007-2009, between 2 100 and 2 500 requests were received on an annual basis in the field of VAT by the Italian revenue authorities (while an average of 3 000 were sent out each year).

Spontaneous exchange

247. Under the EU legal and regulatory framework,[34] as well as under its DTCs, Italy exchanges information spontaneously. During 2007-2009, Italy spontaneously sent VAT information to its EU partners between 100 and 200 times. No figures were provided by Italy for direction taxation but Italy currently exchanges spontaneous information with more than 30 jurisdictions. Italian competent authorities also receive a lot of spontaneous information from EOI partners (more than 500 times each year for VAT matters for example).

Automatic exchange

248. Italy is involved in exchanging information automatically. These exchanges are wholly the responsibility of the *AE*. They take place under the scope of the *EU Savings Directive 48/2003/EC* under which EU members (with the exception of Austria, Luxemburg, and, until 2009, Belgium) as well as other jurisdictions that are party to agreements[35] exchange data on an annual basis concerning the interest payments received from Italian paying agents by individuals located abroad on an annual basis. Automatic exchanges also take place under the DTCs signed by Italy or the *EU Mutual Assistance Directive* on a reciprocal basis. In 2010, Italy sent data to 21 countries.

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and Serbia and the treaty with the former USSR which remains in force with respect to Azerbaijan, Kyrgyzstan, Tajikistan and Turkmenistan.

33. A new regulation *(EC) 904/2010* was adopted by the European Council on 14 October 2010 and will enter into force on 1 January 2012.
34. EU *Mutual Assistance Directive 77/799/ EEC* and *Regulation (EC) 1798/2003*.
35. Anguilla, Aruba, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Montserrat, the Netherlands Antilles, and Turks and Caicos.

Foreseeably relevant standard (ToR C.1.1)

249. The international standard for exchange of information envisages information exchange on request to the widest possible extent. Nevertheless it does not allow "fishing expeditions," *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD *Model Taxation Convention* set out below:

> *The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.*

250. Of the 85 treaties signed by Italy that are in force, the two signed with Cyprus[36] and Malta include the wording "foreseeably relevant". However, of these 85 treaties, 80 refer to the exchange of information where it is "necessary", referring to both application of the treaty and domestic laws. The phrase "as is necessary" is recognised in the commentary to Article 26 of the OECD *Model Taxation Convention* to allow for the same scope of exchange as does the term "foreseeably relevant".

251. The three remaining treaties in force are not to the standard. The treaties with Brazil, Malaysia and Switzerland only refer to "such information as is necessary for the carrying out of this Convention".

In respect of all persons (ToR C.1.2)

252. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information with respect to all persons.

253. Fifteen of Italy's DTCs limit the application of the treaty to residents of the contracting parties: Brazil, Ireland, Ivory Coast, Japan, Kuwait, Malaysia, Morocco, Portugal, Singapore, Switzerland, Tanzania, Thailand, Trinidad &

36. See footnotes 1 and 32.

Tobago, United Kingdom, former USSR, former Yugoslavia, and Zambia. These treaties cover 22 jurisdictions. With Ireland, Portugal, and the UK, Italy can exchange information under the term of the *EU Mutual Assistance Directive* which allows for exchange of information with respect to all persons. Exchange of information with respect to all persons will also be allowed with Azerbaijan when the *OECD/COE Convention* enters into force.

Obligation to exchange all types of information (ToR C.1.3)

254. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, and nominees or persons acting in an agency or a fiduciary capacity. Both the OECD *Model Taxation Convention* and the OECD *Model TIEA*, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

255. Apart from the recently treaties signed with Malta and Cyprus,[37] none of Italy's 85 DTCs in force includes the wording of Article 26(5) of the OECD *Model Tax Convention*. The Italian authorities have indicated that their DTC policy is to include the full text of Article 26 of the *OECD Model Tax Convention* in all new treaties negotiated, whether the purpose of the negotiations would be purely EOI or not. Thus, the most recent treaties signed but not yet in force with Libya and Panama as well as the Protocols to the treaties signed and not yet in force with Mauritius and Russia contain provisions the wording of which is consistent with Article 26(5) of the *Model Tax Convention*.

256. Regarding TIEAs, Italy is currently negotiating with several jurisdictions (see C.2 below), but has not signed any so far. That said, it is also Italy's policy to conclude TIEAs that are fully consistent with all requirements set forth in the OECD *Model TIEA* and therefore containing provisions allowing for the exchange of information held by banks, nominees and any other person acting in an agency or a fiduciary capacity.

257. Even in those cases where the Italian treaties currently in force do not contain specific provisions regarding the exchange of bank information, there are no restrictions in the Italian legislation as regards the access of the revenue authorities to information held by banks. Therefore, insofar as neither Italy nor its partners suffer from limitations in accessing bank information, the absence of provisions in line with Article 26(5) of the OECD *Model Tax Convention* does not result in an agreement falling below the international standard.

37. See footnotes 1 and 32.

258. For some of Italy's partners which have domestic restrictions on access to bank information – Austria, Belgium, Luxemburg or Switzerland for example – the absence of provisions corresponding to Article 26(5) means that the exchange of all types of information is not possible. It is, in particular, of high importance for the Italian authorities to update the treaties with Austria, Belgium Luxemburg and Switzerland and to bring them to the standard by incorporating a wording consistent with Article 26(5) of the *OECD Model Tax Convention*. Italian authorities have advised the assessment team that negotiations to bring the existing DTCs to the standard are nearing finalisation with Belgium, Austria, and Luxemburg.

Absence of domestic tax interest (ToR C.1.4)

259. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

260. Most of Italy's 85 DTCs which are in force do not include the wording of Article 26(4) of the OECD *Model Tax Convention*. However, the Italian authorities have indicated that their current DTC policy is to include the full text of Article 26 of the OECD *Model Convention* in all new treaties negotiated as well as in all revisions of existing DTCs. The most recent treaties with Cyprus[38] and Malta contain provisions the wording of which is consistent with Article 26(4) of the *Model Tax Convention*. This is also the case for the treaties signed but not yet in force with Libya and Panama, as well as for the protocols to the treaties signed and not yet in force with Mauritius and Russia.

261. As stated above in Section B.1. of this report, there is no domestic tax interest requirement in Italy and the Italian authorities can access all types of information whether this information is needed for domestic or exchange of information purposes. Italy is able to exchange information, including in cases where the information is not publicly available or where it is not already in possession of the government authorities.

262. In addition, a domestic tax interest may exist in some of Italy's treaty partners. In such cases the absence of a specific provision requiring exchange of information unlimited by domestic tax interest is a limitation to a full exchange of information. It is therefore important in such cases for Italy to update these treaties.

38. See footnotes 1 and 32.

Absence of dual criminality principles (ToR C.1.5)

263. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

264. None of Italy's DTCs specifically includes a dual criminality principle to restrict exchange of information. Italy does not have any domestic legislation resulting in such a principle.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

265. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

266. Italy is able to exchange information in both civil and criminal matters. When a matter is under criminal investigation abroad and if Italy is required to provide information linked to this case, such information can be furnished by the Italian competent authorities.

Provide information in specific form requested (ToR C.1.7)

267. According to the *Terms of Reference*, exchange of information mechanisms should allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practices.

268. There is no restriction in the exchange of information provisions in Italy's DTCs that would prevent Italy from providing information in a specific form, as long as this is consistent with its own administrative practices.

269. Considering the broad information gathering powers granted by the Italian legislation (see in particular s.32 of *DPR 600/1973*) Italy can exchange information under several formats. Italian authorities can in particular provide original documents or receive testimonies.

270. The Italian authorities have confirmed that they are ready to provide information in the specific form requested to the extent permitted under Italian law and practices. Moreover, according to the comments received from Italy's international counterparts in tax matters, there do not seem to

have been any instances where Italy was not in position to provide the information in the specific form requested or under an alternative format.

In force (ToR C.1.8)

271. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

272. Italy has a large treaty network of 85 DTCs allowing for exchange of information with 91 jurisdictions. Fifteen DTCs and protocols amending DTCs have been signed by Italy but are not yet in force.[39] A number of these new treaties and protocols are currently under examination by the Italian Parliament.

273. When looking to the Italian treaty network, it can be seen that the time gap between the signature of an EOI arrangement and its entry into force can be quite long. The Italian authorities have indicated that the ratification of treaties usually takes more than two years. This situation is because of several factors:

- the ratification process is mainly conducted under the aegis of the Ministry of Foreign Affairs;
- treaties must be adopted in plenary by both Chambers of the Parliament;
- Italy's interest in concluding a new treaty must be advocated during discussions in Parliament; and
- an evaluation of the costs of the treaty under discussion must be provided. In case the treaty leads to revenue losses, an *ad hoc* budgetary provision is required in the ratification Act

274. However, for the most recent protocols signed with Malta and Cyprus[40] and ratified by Italy in May 2010, the timeframe to bring these treaties into force was shortened to one year. In the future, Italy will continue its efforts to bring its treaty into force expeditiously.

In effect (ToR C.1.9)

275. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

39. Azerbaijan, Belgium, Canada, Congo, Cuba, Gabon, India, Iran, Kenya, Lebanon, Libya, Moldova, Mongolia, Qatar and the Russian Federation.
40. See footnotes 1 and 32.

Given the Italian legal and regulatory framework as regards availability and access to information, Italy already has adequate domestic measures to give effect to its exchange of information arrangements.

276. According to the Italian hierarchy of legal norms, international agreements override the provisions of the domestic legislation and have direct effect. Once the Parliament has approved the treaty, through a ratification law, the treaty partner will be informed of the completion of the Italian procedures in accordance with the entry into force of the treaty. Usually, such notice is given through diplomatic channels.

277. Once a treaty has been ratified, Italy gives effect to it by using its domestic legislation and in particular, as regards EOI, its domestic information gathering powers.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The ratification of EOI arrangements can take several years and is delayed on some occasions.	Italy should continue its efforts to ensure the ratification of all EOI arrangements signed with counterparts expeditiously.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

278. The international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

279. To date, Italy has signed 85 agreements with countries all over the world of which 79 are to the standard. For the few treaties not to the standard, the Italian

authorities have advised the assessment team that exchange of information to the standard could take place upon condition of reciprocity. Italy has not signed any TIEAs. Finally, Italy, as a member of the European Union, is involved in the exchange of information provided for by the *EU Mutual Assistance Directive*. Even though this last EOI arrangement does not meet, *per se*, the international standard,[41] nothing in this arrangement prevents two jurisdictions, willing to do so, to exchange all types of information, bank information included, without any reference to a domestic tax interest. In addition, Italy is party to the *COE/OECD Convention* and in the process of ratifying the protocol to this convention.

280. The Italian treaty network to the standard covers to date:

- 27 OECD members;[42]
- 23 of its EU partners;[43]
- all G20 members but Brazil;
- 44 of the Global Forum member jurisdictions;[44]
- all its main economic partners; and
- its neighbour countries but three (Austria, San Marino and Switzerland).

281. In Italy, treaty negotiations (both DTCs and TIEAs) are the responsibility of the *DF*. A unit, staffed with eight officials, is specifically dedicated to this work. Italy endorsed in 2004 the latest version of Article 26 of the OECD *Model Tax Convention*. Since then, Italy only negotiates DTCs including EOI provisions incorporating the wording of paragraphs 4 and 5 of Article 26.

282. Unless there is demand from the Italian business community, and considering the fact that all its main partners are covered, Italy does not have any need to expand its DTC network. It does however do so in some cases if requested by another country. New treaties were signed with Libya in 2009 and Panama in 2010, and a protocol amending the DTC with Mauritius was signed in 2010. Negotiations are underway with Hong-Kong, China. Priority is being given to the renovation of the current DTC network, in particular to bring treaties to the standard. This is currently the case for instance for the agreements with Austria,

41. A new EU Mutual Assistance Directive was adopted by the EU council on 7 December 2010 and will provide for exchange of information to the standard from 1 January 2013.
42. Of the OECD members, only Chile is not currently covered by a DTC. Austria, Belgium, Luxemburg, and Switzerland are covered by treaties not to the standard.
43. All EU partners are covered by a DTC. However, DTCs with Austria, Belgium, and Luxemburg are not to the standard.
44. Six other jurisdictions are covered by a DTC not to the standard: Austria, Belgium, Brazil, Luxemburg, Malaysia, and Switzerland.

Belgium, Luxemburg, and Singapore. Italy has initialled a protocol amending the existing treaty with Belgium, is close to initialling a protocol amending its treaties with Luxemburg and Austria, and a draft with Singapore is under examination.

283. For other European Union members, and considering the recent adoption of the new *EU Mutual Assistance Directive*, the update of treaties is not seen as a priority because from 1 January 2013 this new European environment will provide for EOI to the international standard.

284. Italy prefers the conclusion of a TIEA where there are no significant economic relationships or where there is no risk of double taxation. Therefore, although Italy has never refused to enter into negotiations with a counterpart, it has on occasion in response to jurisdictions proposing to conclude a DTC proposed instead to negotiate a TIEA. To date, Italy has not signed any TIEAs. Two TIEAs are close to being signed and eight have been initialled. Italy is also negotiating TIEAs with about 20 jurisdictions. None of the TIEAs signed by Italy depart from the OECD *Model TIEA*, with the exception of specific wording requested by common law jurisdictions regarding "legal privilege".

285. As regards the relationships with San Marino, a DTC was signed with this jurisdiction in 2002. This agreement is however not to the standard and is not going to be ratified. Italy has indicated that it is still willing to sign a DTC with San Marino, in view of the economic relationships between the two countries, but is unable to proceed until San Marino has sufficiently strengthened its domestic legislation. In December 2010, Italy indicated its willingness to examine the legislative changes made by San Marino during November 2010 in the expectation that this negotiation can move forward.

286. With regard to Monaco, Italy confirmed to the assessment team that it is also willing to negotiate an agreement with this jurisdiction. Considering the absence of taxation in Monaco, Italy is of the opinion that a TIEA would be more appropriate while Monaco wants to conclude a DTC. However, and despite these contradictory positions, Monaco and Italy met in September 2010. Italy has indicated that only political rather than technical discussions took place during that meeting. In November 2010, Italy reaffirmed to Monaco its availability to continue negotiations, without receiving any reply.

287. Five jurisdictions have provided specific comments related to establishing EOI agreements with Italy and the assessment team has obtained answers from the Italian authorities:

- Bahrain has requested Italy to complete the DTC negotiations which stopped in 2003. However, Italy would prefer to establish a TIEA with specific provisions providing for the elimination of any double taxation;

- Brunei has indicated that it has not received any response from the Italian authorities regarding its request to establish a DTC. Italy answered that in its response to Brunei it was clarified that Italy is ready to negotiate a TIEA with Brunei with specific provisions providing for the elimination of any double taxation;
- the process of signing the TIEA initialled with Guernsey has now been started and further internal consultation is underway;
- regarding the difficulty in approaching the Italian authorities raised by the Isle of Man, Italy has replied that a response was provided to this jurisdiction in July 2010 and that further consultation has taken place and is ongoing; and
- Jersey mentioned the delay in signing the TIEA initialled with Italy in May 2009. The Italian authorities have replied that the request from Jersey for a "political declaration" issued by Italy at the time of the signature required further internal co-ordination and Jersey was advised of this in late 2010. On 25 January 2011, Jersey informed Italy of the possibility of renouncing to this political declaration.

288. The Italian network of treaties to the standard currently allows exchange of information to take place with Italy's main diplomatic, economic and financial partners. In addition, there are no cases where Italy has refused to enter into negotiations or to conclude an EOI arrangement. While having a heavy negotiation program, Italy will in the future continue to monitor its request for negotiations.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Italy should continue to develop its EOI network to the standard with all relevant partners.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1)

289. Governments would not engage in information exchange without the assurance that the information provided is only used for the purposes permitted under the exchange mechanism and that its confidentiality is preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

290. All DTCs and TIEAs signed by Italy have secrecy provisions ensuring that all information received will be kept secret. These secrecy provisions are based on the EOI provisions contained in Article 26(2) of the *OECD Model Tax Convention*. The *Council Directive 77/799/EEC*, and the *COE/OECD Convention* also contain safeguards corresponding to those in Article 26(2) of the *OECD Model Tax Convention,* restricting the disclosure of information by the competent authority of the receiving state. Italy's 1985 DTC with the (former) Union of Soviet Socialist Republics, which still applies with respect to Azerbaijan, Kyrgyzstan, Tajikistan and Turkmenistan, contains no provisions to ensure the confidentiality of information received. It is recommended that Italy continues ensuring that appropriate confidentiality of information is maintained in exchanges of information with Azerbaijan, Kyrgyzstan, Tajikistan and Turkmenistan.

291. The Italian revenue authorities' officials are also bound by domestic secrecy provisions. Pursuant to Article 68 of *DPR 600/1973*, unless disclosure is based on a court order or provided for by law, sharing any information or communication about a tax case with persons outside the respective administrations is forbidden. The exchange of information with the competent authorities of foreign States in accordance with DTCs in force is not considered to be a violation of the secrecy requirement because in the Italian legal system a DTC overrides domestic provisions. Further, under s.31-bis(5) of *DPR 600*, the communication of information in response to a request made by another competent authority under the EU *Mutual Assistance Directive* is not considered as a violation of confidentiality. The *GDF*, as the financial police, is also covered by even stronger secrecy rules when it acts as Judicial Police during a criminal investigation in order to prevent the early disclosure of facts that could adversely affect the proper prosecution of the investigation (see art.329 of the Italian Criminal Procedure Code).

292. In practice, to ensure the confidentiality of all information received from treaty partners, neither the *AE*, nor the *GDF* directly pass on information received to the local authorities. All requests received, unless received in Italian, are translated into Italian at the national level and only the information needed by local authorities to collect the information is transmitted. This procedure helps prevent the disclosure of information.

293. All incoming requests and all information received by both delegated authorities are saved in secure IT systems to which only authorised staff in the tax administration have access. All use of the system is logged so it is possible to know what information has been consulted. All information is exchanged either by post, by encrypted e-mail, encrypted compact discs, or by CCN mail (the secure mail system used by EU member States).

294. Italian authorities are not able to indicate the number of cases in recent years where sanctions for breach of confidentiality have been applied. Nevertheless, information provided by foreign competent authorities indicates that there have been no instances where the confidentiality of information received by Italy has been made public, other than in accordance with the terms under which it was provided to Italy.

All other information exchanged (ToR C.3.2)

295. The confidentiality provisions in Italy's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. The rules and practices that apply are therefore the same as those described above.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

296. Each of Italy's exchange of information agreements ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

297. Section 12 of *Law No 212/2000* provides for the rights and safeguards of taxpayers (*e.g.* times when taxpayers' premises may be entered, providing the taxpayer with information regarding the rationale of the audit and his rights and obligations in connection with it), but this "charter" should in no way hamper the acquisition of the information required.

298. All of Italy's EOI agreements allow the Italian competent authorities to decline to exchange information where the information is covered by attorney-client privilege. Attorney-client privilege only applies to communications between a client and an attorney to the extent that the attorney acts in his or her professional capacity as an attorney.

299. Italy can decline to exchange information where the information contains a trade, business industrial, commercial or professional secret; or where disclosure would be contrary to public policy (*ordre public)* and this is in accordance with the international standards. Information received from foreign competent authorities indicates that there have been no instances where Italy's EOI practices have not respected the rights and safeguards of taxpayers and third parties.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

300. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

301. In the last three years (2007-2009) Italy received a total of 1 014 requests for information (628 were received by the *AE* and 386 by the *GDF*). According to the available figures, in the last three years, Italy was engaged in a significant EOI relationship with about 45 partners of which the most significant, considering the quality of information exchanged, are France, Germany, and the United Kingdom, and in terms of the number of requests received, France, Kazakhstan, Greece, Ukraine, and Poland.

302. For these years, the percentage of requests where Italy answered counterparts within 90 days, 180 days, one year, or more than one year, were:

Year	Information provided within 90 days	Information provided within 180 days	Information provided within 1 year	Information provided in more than 1 year
2007	10.5%	23.2%	34.8%	31.5%
2008	20.3%	28.9%	30.2%	20.6%
2009	14.8%	23.9%	28.6%	32.7%

303. In addition, the Italian revenue authorities have indicated that 15% of cases were still pending. This includes the requests for which researches are still ongoing and where a partial response has already been provided but not a final answer.

304. On average, the Italian authorities fully answered incoming requests within 90 days in 15% of cases. Approximately 25% of requests are finally responded to in between 90 and 180 days and 30% between 6 months and one year. Finally, 30% of the requests received by the Italy were fully answered after more than one year.

305. Italian authorities gave several reasons to explain this situation:

- increase in the number of requests received during the last three years (for the *AE*, 112 requests were received in 2007, 244 in 2008 and 272 in 2009);
- lack of staff at the central level to process the requests (although the *AE* indicated that its staff complement is going to be reinforced in January 2011);
- translation issues: for instance, on the *AE* side, there is no translation division and the translation of all requests is carried out by the unit staff. This doubles the time needed to process the requests before they are sent to local authorities; and
- increased complexity of requests. Some cases, in particular when tied to accounting records, require in depth research that could not be performed within 90 days.

306. However, it also appears that a closer monitoring of the requests sent to local authorities for the gathering of information and the sending of periodic reminders may also help to speed up the provision of the requested information and could be introduced as a routine process to ensure quicker responses. To this end, the Italian authorities could also use all IT tools available to monitor the requests passed on to local authorities and send automatic reminders when it appears that requests are not going to be answered within 90 days.

307. In most cases the Italian revenue authorities do not send a status update to the requesting jurisdictions when the 90 day deadline is reached. This was also confirmed by Italy's foreign counterparts in their peer inputs. Information on progress of the matter is however usually furnished when the requesting jurisdiction sends a reminder to the Italian authorities. It is therefore recommended that the Italian authorities establish a routine process to update requesting authorities on the progress of their requests where the response takes more than 90 days.

Organisational process and resources (ToR C.5.2)

Organisational process

308. As mentioned in section C.5.1 above, 1 014 requests for information were received by Italy during the years 2007-2009. This number corresponds to the number of persons concerned in Italy by the relevant requests.

309. Regardless of whether the request is received by the *AE* or the *GDF*, the method of processing of the request is the same. First of all, each case is allocated to a specific official who will be in charge of the case until the final

answer is provided to the requesting party. The request is checked to ensure that it complies with the requirements of the applicable treaty. Research using IT tools is conducted to see if the person identified by the request is already subject to an EOI matter or to an audit performed by the other authorised competent authority.

310. The official in charge of the case then checks the completeness of the request, in particular that all identification information is available and that the context of the request is clear enough to permit its processing by local authorities. If some identification elements are missing, the Italian authorities first try to find them, using in particular the information available in the *Anagrafe Tributaria*. In some cases, even if there are missing elements, the Italian authorities try nevertheless to answer the request from the information provided by the requesting jurisdiction. A response seeking further details is sent to the requesting authorities only in the few cases where missing details are not found and without which the request cannot be processed.

311. At this early stage, requests are declined in the very few instances where the exchange of information is not covered by the provisions of the instrument under which the information is requested or where the request would not meet the standard (for example a speculative request where the need for the requesting party to get the information is not clearly defined). Italy mentioned that it has not declined to provide any information requested on any occasions in the last three years.

312. Once these checks are completed and any additional information obtained, the request is registered in a database dedicated to EOI. Both the *AE* and the *GDF* have dedicated software where all information tied to the request is stored and where it is possible to manage and monitor the exchanges. These preliminary processes can take from three days to two weeks.

313. The official in charge of processing the request then decides whether it is going to be processed at the national level or, as in most cases, by local authorities. Indeed, as described above in section B.1, a lot of information is available through the IT tools at the disposal of the revenue authorities, including officials working at the national level (in particular, tax returns, income received, ownership information, and property information). However, Italy has indicated that most requests received require the provision of detailed accounting or bank information which can only be obtained from the Italian persons subject to the request.

314. Where the information is already available to the revenue authorities at the central level, a direct answer can be provided by the official in charge of the case. When the case has to be sent to local authorities, a translation into Italian is required. This is usually the case, as only a small number of requests are received in Italian. Even requests received in English are translated into Italian. This translation is made by the official in charge of the cases (*AE*) or by a translation division (*GDF*). The Italian authorities have indicated that translating a document can take up to two weeks.

315. For confidentiality reasons, the requests passed on to local authorities:

- contain only the information needed to answer the request. The original version of the request is never enclosed with this transmission; and
- is usually sent in electronic format either directly generated by the system where this request was registered (*GDF*) or by encrypted secure e-mail (*AE*).

316. In the case of the *GDF*, as the transmission is directly done through the system, the request goes directly from the headquarters in Rome to the local office territorially competent for the Italian person subject to the request. For the *AE*, the request is first sent to the regional authorities, then to the provincial authorities, and finally to the relevant local office. When the request concerns a large number of taxpayers, it is directly processed at the regional level. This is also the case when an examination of the taxpayer involved in the request is already underway at this level or at the provincial level. In all other cases, the local office is in charge of the information gathering.

317. Considering the powers to gather information granted by *DPR 600/1973*, the Italian authorities have several tools to collect the information. Testimony is used only in cases where the requesting party asks for the provision of information under this format. Depending of the type of information requested, the gathering of information by written means or by an audit in the field is usually preferred. For example, the Italian authorities mentioned in their answer to the phase 2 questionnaire and also during the onsite visit that a control on the spot would be the preferred method to collect accounting records. Indeed, this is the easiest way to ensure that all information requested is going to be furnished by the person covered by the request. Conversely, the Italian legislation foresees the collection of bank information by written procedure, with the exception of cases where no tax identification number has been provided by the requesting jurisdiction (see above section B.1).

318. As regards timeframes for collection of information, it is the Italian central authorities' policy not to indicate a deadline for regional or local authorities to provide an answer. Considering the various administrative levels involved in answering requests (possibly the regional, provincial and

local levels), this lack of guidance is likely to delay the provision of answers of requested information.

319. As stated above, where the information is requested by written means, the Italian legislation grants a minimum of 15 working days to the person subject to the request to provide an answer. However, there is no ceiling in the Italian legislation as regards the maximum number of days a person may have to provide a response. The Italian authorities nevertheless indicated the time taken to respond limit rarely exceeds the 15 day minimum.

320. Both revenue authorities have said that the quality of the answer is, in their opinion, the most important consideration. Therefore the provision of a complete and accurate answer is always preferred even if it leads to a delayed reply. The Italian authorities have also mentioned than during the last three years, out of the more than 1 000 requests received and processed, only one response was perceived as incomplete by the requesting jurisdiction and led to a supplementary request for information.

321. When responses are received by the competent authorities from the local services, the official in charge of the case checks the completeness of the information provided against the information requested by the treaty partner. Where information is missing or the response provided does not fully answer the request, additional information will be requested from the local offices. Information already provided will be prepared as a partial response.

322. Finally, the response is translated, usually into English, and sent out to the requesting jurisdiction.

Resources

323. The unit dealing with EOI in the AE is staffed with eight officials responsible for processing the cases. In the GDF, 18 people work in the taxation unit of the international cooperation directorate. While the GDF EOI unit seems to be adequately staffed to perform its duties, the AE mentioned that the team reinforcement, foreseen for early 2011, is a welcomed development.

324. There is within the *GDF* a network of liaison officers located abroad and attached to the main international organisations (such as the OECD or the EU) and bodies similar to the *GDF*, and 12 tax attachés located in the main Italian embassies. Although members of the *GDF*, tax attachés perform representative tasks for all Italian tax authorities. These liaison officers and tax attachés develop relationships with foreign tax authorities and work to speed up the provision of missing information when a request is incomplete.

325. Since the beginning of 2010, the *AE* has also set up a network of contact points for international matters at the Italian regional level. These people are highly skilled in international tax matters and in particular are trained in

EOI. Amongst other things, the purpose of this network is to directly answer the questions of local offices when they relate to EOI. Even though it is relatively new, and with results not yet available, the *AE* sees this network as a good way to improve practices.

326. Guidance is also issued by the *AE* and the *GDF*. For the *AE*, there is no specific handbook for officials responsible for gathering information at the local level to explain how this information should be collected. However, recommendations are provided by the *AE* headquarters to encourage and improve the involvement of tax officials in the field of EOI, in particular as regards spontaneous exchanges. In 2008 the *GDF* published an EOI guide which is available to local units. This handbook contains all legal provisions[45] under which EOI can take place as well as the forms[46] to be used for these exchanges. In addition, both the *AE* and the *GDF* are involved in the European Fiscalis program, the purpose of which is, through various tools such as exchange of officials or seminars, to ensure continuous improvements to administrative procedures and practices to the benefit of administrations and business within the EU and ensuring the exchange of information between national administrations.

327. All newcomers working in the EOI Units of the *AE* and the *GDF* are selected on the basis of their knowledge and their language skills. While *AE* officials are trained "on-the-job" by a mentor and evaluated after a three to four month probationary period, a specific training program is provided to *GDF* international co-operation unit newcomers.

328. In 2009 the *AE* organised a three day training session dedicated to international co-operation. The purpose of this program was to improve the quality of EOI requests and answers made by local officials, as well as training international tax experts at the regional level in order to enable them to cascade training to people within the regions. Within the *GDF*, ongoing training cycles are dedicated to international co-operation. All officials of both bodies also receive an initial training when joining their administration. This initial training also contains sessions dedicated to international co-operation.

45. Details on the content of Article 26 of the *OECE Model Tax Convention*, the *Mutual Assistance Directive* 77/799/EEC or the *COE/OECD Convention* are for example provided in this handbook.

46. At the EU level, VAT exchanges take place on common forms (SCAC 2004) and common forms can also be used in the field of direct taxation even though their use is still not mandatory.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

329. There is no evidence that restrictive conditions are placed on Italy's information exchange practices, either in its legislation or in practice, which would limit the exchange of information other than as provided for in Article 26 of the *OECD Model Tax Convention*. Indeed, the competent authorities participate in a number of forms of exchange of information with Italy's partners.

Determination and factors underlying recommendations

Phase 1 Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Phase 2 Rating	
To be finalised as soon as a representative subset of Phase 2 reviews is completed.	
Factors underlying recommendations	**Recommendations**
Italy's revenue authorities answer incoming requests within 90 days in 15% of the cases.	It is recommended that the Italian revenue authorities monitor more closely the requests sent to local authorities to obtain requested information. It is also recommended that they implement, as a routine, the provision of status updates to requesting jurisdictions when responses in 90 days are not possible.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (*ToR A.1*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (*ToR A.2*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
Banking information should be available for all account-holders (*ToR A.3*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (*ToR B.1*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (*ToR B.2*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
Exchange of information mechanisms should allow for effective exchange of information (*ToR C.1*)		
The element is in place.	The ratification of EOI arrangements can take several years and is delayed in some occasions.	Italy should continue its efforts to ensure the ratification of all EOI arrangements signed with counterparts expeditiously
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (*ToR C.2*)		
The element is in place.		Italy should continue to develop its EOI network to the standard with all relevant partners.
To be finalised as soon as a representative subset of Phase 2 reviews is completed		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (*ToR C.3*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (*ToR C.4*)		
The element is in place.		
To be finalised as soon as a representative subset of Phase 2 reviews is completed		
The jurisdiction should provide information under its network of agreements in a timely manner (*ToR C.5*)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review		
To be finalised as soon as a representative subset of Phase 2 reviews is completed	Italy's revenue authorities answer incoming requests within 90 days in 15% of the cases.	It is recommended that the Italian revenue authorities monitor more closely the requests sent to local authorities to obtain requested information. It is also recommended that they implement, as a routine, the provision of status updates to requesting jurisdictions when responses in 90 days are not possible.

Annex 1: Jurisdiction's Response to the Review Report*

Considering the conclusions and recommendations of the Peer Review Report, Italy will make further effort to develop its EOI network to the standard with all relevant partners. This will be attained through an evaluation of the willingness of our counterparts to sign agreements in full accordance with the OECD standard model, and of their capacity to secure effective exchange of information with treaty partners.

* This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of all Exchange-of-Information Mechanisms in Force

Multilateral agreements

Italy is a party to the:

- *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters,* which is currently in force with respect to 14 jurisdictions: Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Kingdom of the Netherlands, Norway, Poland, Sweden, the Ukraine, the United Kingdom and the United States.[47]
- *EU Council Directive 77/799/EEC* of 19 December 1977 (as amended) concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.
- *EU Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

47. Canada, Germany and Spain have signed the Convention and are awaiting ratification.

Bilateral agreements

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
1	Albania	DTC	12.12.94	21.12.99
2	Algeria	DTC	03.02.91	30.06.95
3	Argentina	DTC	15.11.79	15.12.83
4	Armenia	DTC	14.06.02	05.05.08
5	Australia	DTC	14.12.82	05.11.85
6	Austria	DTC	29.06.81	06.04.85
7	Azerbaijan	DTC	26.02.85	30.07.89
8	Bangladesh	DTC	20.03.90	07.07.96
9	Belarus	DTC	11.08.05	30.11.09
10	Belgium	DTC	29.04.83	29.07.89
11	Bosnia and Herzegovina	DTC	24.02.82	03.07.85
12	Brazil	DTC	03.10.78	24.04.81
13	Bulgaria	DTC	21.09.88	10.06.91
14	Canada	DTC	17.11.77	24.12.80
15	China	DTC	31.10.86	13.12.90
16	Croatia	DTC	29.10.99	15.09.09
17	Cyprus[48, 49]	DTC	24.04.74	09.06.83
18	Czech Republic	DTC	05.05.81	26.06.84
19	Denmark	DTC	05.05.99	27.01.03
20	Ecuador	DTC	23.05.84	01.02.90
21	Egypt	DTC	07.05.79	28.04.82
22	Estonia	DTC	20.03.97	22.02.00

48. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRN C). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

49. Note by all the European Union Member States of the OE CD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
23	Ethiopia	DTC	08.04.97	09.08.05
24	Finland	DTC	12.06.81	23.10.83
25	France	DTC	05.10.89	01.05.92
26	Georgia	DTC	31.10.00	19.02.04
27	Germany	DTC	18.10.89	26.12.92
28	Ghana	DTC	19.02.04	05.07.06
29	Greece	DTC	03.09.87	20.09.91
30	Hungary	DTC	16.05.77	01.12.80
31	Iceland	DTC	10.09.02	14.10.08
32	India	DTC	19.02.93	23.11.95
33	Indonesia	DTC	18.02.90	02.09.95
34	Ireland	DTC	11.06.71	14.02.75
35	Israel	DTC	08.09.95	06.08.98
36	Ivory Coast	DTC	30.07.82	15.05.87
37	Japan	DTC	20.03.69	17.03.73
38	Jordan	DTC	16.03.04	10.05.10
39	Kazakhstan	DTC	22.09.94	26.02.97
40	**Kirghizstan**	DTC	26.02.85	30.07.89
41	Korea (South)	DTC	10.01.89	14.07.92
42	Kuwait	DTC	17.12.87	11.01.93
43	Latvia	DTC	21.05.97	16.06.08
44	Lithuania	DTC	04.04.96	03.06.99
45	Luxembourg	DTC	03.06.81	04.02.83
46	Macedonia	DTC	20.12.96	08.06.00
47	Malaysia	DTC	28.01.84	18.04.86
48	Malta	DTC	16.07.81	08.05.85
49	Mauritius	DTC	09.03.90	28.04.95
50	Mexico	DTC	08.07.91	12.03.95
51	Montenegro	DTC	24.02.82	03.07.85
52	Morocco	DTC	07.06.72	10.03.83
53	Mozambique	DTC	14.12.98	06.08.04
54	Netherlands	DTC	08.05.90	03.10.93

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
55	New Zealand	DTC	06.12.79	23.03.83
56	Norway	DTC	17.06.85	25.05.87
57	Oman	DTC	06.05.98	22.10.02
58	Pakistan	DTC	22.06.84	27.02.92
59	Philippines	DTC	05.12.80	15.06.90
60	Poland	DTC	21.06.85	26.09.89
61	Portugal	DTC	14.05.80	15.01.83
62	Romania	DTC	14.01.77	06.02.79
63	Russian Federation	DTC	09.04.96	30.11.98
64	Saudi Arabia	DTC	13.01.07	01.12.09
65	Senegal	DTC	20.07.98	24.10.01
66	Serbia	DTC	24.02.82	03.07.85
67	Singapore	DTC	29.01.77	12.01.79
68	Slovak Republic	DTC	05.05.81	26.06.84
69	Slovenia	DTC	11.09.01	12.01.10
70	South Africa	DTC	16.11.95	02.03.99
71	Spain	DTC	08.09.77	24.11.80
72	Sri Lanka	DTC	28.03.84	09.05.91
73	Sweden	DTC	06.03.80	05.07.83
74	Switzerland	DTC	09.03.76	27.03.79
75	Syria	DTC	23.11.00	15.01.07
76	Tajikistan	DTC	26.02.85	30.07.89
77	Tanzania	DTC	07.03.73	06.05.83
78	Thailand	DTC	22.12.77	31.05.80
79	Trinidad and Tobago	DTC	26.03.71	19.04.74
80	Tunisia	DTC	16.05.79	17.09.81
81	Turkey	DTC	27.07.90	01.12.93
82	Turkmenistan	DTC	26.02.85	30.07.89
86	Uganda	DTC	06.10.00	18.11.05
84	Ukraine	DTC	26.02.97	25.02.03
85	United Arab Emirates	DTC	22.01.95	05.11.97
86	United Kingdom	DTC	21.10.88	31.12.90

	Jurisdiction	Type of EoI arrangement	Date signed	Date in force
87	United States	DTC	25.08.99	16.12.09
88	Uzbekistan	DTC	21.11.00	26.05.04
89	Venezuela	DTC	05.06.90	14.09.93
90	Vietnam	DTC	26.11.96	22.02.99
91	Zambia	DTC	27.10.72	30.03.90

Annex 3: List of all Laws, Regulations and Other Material Received

Constitution of the Italian Republic

Italian Civil Code – Excerpts

Italian Code of Criminal Procedure – Excerpts

Tax Laws

Presidential Decree No 633 of 26 October 1972

Presidential Decree No 600 of 29 September 1973

Presidential Decree No 605 of 29 September 1973

Presidential Decree No 917 of 22 December 1986

Legislative Decree No 545 of 31 December 1992

Legislative Decree No 546 of 31 December 1992

Law Decree No 331 of 30 August 1993:

Law Decree No 41 of 23 February 1995, turned into Law No. 85 of 22 March 1995

Legislative Decree No 471 of 18 December 1997

Legislative Decree No 74 of 10 March 2000;

Law No 212 of 27 July 2000

Legislative Decree No 68 of 19 March 2001

Law No 311 of 30 December 2004

Law Decree No 40 of 25 March 2010

Taxation Regulations and Circular

Regulation of 22 December 2005 (Revenue Agency)

Regulation of 12 November 2007 (Revenue Agency)

Circular Letter No. 22 of 06 June 1981 (Ministry of Finance – Direct Taxes)

Circular Letter No 33 of 18 April 2002 (Revenue Agency)

Circular Letter No 83 of 15 November 2002 (Revenue Agency)

Circular Letter No 48 E of 6 August 2007 (Revenue Agency)

Circular Letter No 6 of 25 January 2008 (Revenue Agency)

Circular Letter No 7 of 4 February 2008 (Guardia di Finanza)

Circular Letter No13 of 9 April 2009 (Revenue Agency)

Circular Letter No 20 of 16 April 2010 (Revenue Agency)

Letter No 9624 of 4 February 2008 (Revenue Agency)

Circular letter No 61 of 27 December 2010 (Revenue Agency)

Anti-money laundering laws

Legislative Decree No 231 of 21 November 2007

Legislative Decree No 151 of 25 September 2009

Law Decree No 78 of 31 may 2010 converted into Law No 122 of 30 July 2010

Commercial laws

Law No 1966 of 23 November 1939

Decree of the Minister of Industry, Commerce and Handicraft of 9 March 1982, concerning "Procedures and content of the notifications to the register of companies held by the Chambers of Commerce, Industry, Crafts and Agriculture"

Law No 580 of 29 December 1993

Presidential Decree No 581 of 7 December 1995

Presidential Decree No 361 of 10 February 2000

Law No 40 of 2 April 2007

Financial laws

Law Decree No 167 of 28 June 1990;

Legislative Decree No 385 of 1° September 1993;

Ministerial Decree of 16 January 1995;

Legislative Decree No 58 of 24 February 1998:

Legislative Decree No 195 of 19 November 2008: Article 3;

Other laws

Law No 89 of 16 February 1913

Law No 364 of 16 October 1989;

Legislative Decree No 460 of 4 December 1997

Law No 73 of 22 May 2010;

Annex to Law No 73 of 22 May 2010;

EOI material

All EOI provisions contained in DTCs signed by Italy

Annex 4: People Interviewed During On-Site Visit

Ministry of Economy and Finance

- Cabinet of the Ministry – Legislative Office for Finances

  Deputy Head of Office

- Department of Finance

  - *International Relations Directorate*

  Director

  Head of International Treaties Unit

  Head of Administrative Cooperation Unit

  Officials of Administrative Cooperation Unit

  - *Tax Legislation Directorate*

  Head of Assessment, Collection and Sanctions Unit

  Officials of Assessment, Collection and Sanctions Unit

  Officials of Direct Taxation of Legal Persons

- Treasury Department

  - Financial crime prevention directorate

  Head of International Unit

  Officials of the International Unit

Ministry of economic development

Head of Register of Companies Unit

FIU – Financial Intelligence Unit

Deputy Head of FIU

Head of Suspicious Transactions Directorate I

Anti-Money Laundering Expert

Prefecture of Rome

Vice-Prefect – Responsible for Legal Person Register held by Prefecture of Rome

Agenzia delle entrate – Revenue Agency

- Central Directorate for tax regulation

  Head of International Taxation and Tax Concession Division

  Head and officials of Direct Taxes Unit

  Head and officials of Compliance and Sanctions Unit

  Head and officials of Capital Income Unit and others

  Head of Non-commercial Entities and Non-profit Organizations Unit

- Central Directorate for assessment

  Head of International Division

  Head and officials of Exchange of Information Office

  Head of Operational Cooperation Unit

  Head and officials of Data base and Analysis Tools Unit

  Head of Individuals Unit

- Central Directorate for tax service to taxpayers

  Official of Personal Data Files Office

  Official of Forms Bodies Unit

Guardia di Finanza – Financial and economic police

- 2nd Department: International Cooperation – Public Finance Office

  Head of 2nd Department

  Head of International Cooperation – Public Finance Office

  Head of Taxation Unit

  Head of 2nd Squad of Tax Unit

  Officials of the above-mentioned Units

- 3rd Department:

  Economy Safeguard Office

  Head of Capital's Market Section

  Revenue Safeguard Office

  Head of Income Tax Section

- 6th Department: Legislation Office

  Head of Legislative Studies Section

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(23 2011 30 1 P) ISBN 978-92-64-11501-9 – No. 58183 2011

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2

ITALY

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Italy 2011: Combined: Phase 1 + Phase 2*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.
http://dx.doi.org/10.1787/9789264115026-en

OECD*publishing*
www.oecd.org/publishing

ISBN 978-92-64-11501-9
23 2011 30 1 P