Voluntary disclosure of assets held abroad by Italian residents
Stressed public finances in the wake of the financial crisis have led to a concerted action by the G20 countries and the Organization for Economic Co-operation and Development (OECD) to combat tax evasion.

As a result of such international pressure, most financial centers have agreed to comply with the OECD standards on transparency and exchange of information for tax purposes. Since 2008, more than 1,100 bilateral tax agreements in compliance with the new OECD standards have been concluded.

Switzerland, besides having adhered to the OECD convention on mutual assistance for tax purposes, has also entered into specific bilateral agreements based on the automatic exchange of information (tax information exchange agreements or TIEAs). In this context, and in line with its intention to endorse the OECD Common Reporting Standard the regularization of the past has become a cornerstone of these tax transparency efforts. What we see and hear in the market is that Swiss banks will avoid accepting undeclared assets from clients and proactively support clients when there is an opportunity to participate in voluntary disclosure programs. A number of countries have offered, are in the midst of, or have announced, voluntary disclosure programs (VDPs) in recent years (refer to figure 1). Due to the assumed size of undisclosed assets deposited in Switzerland by Italian residents, the Italian VDP was the last important puzzle piece.

In this brochure, we explain how the Italian VDP works. Hence, what options bank clients and banks have to regularize undeclared assets.

Please contact us if you have any questions on voluntary disclosure.
Against the backdrop of regulatory activity and in response to the measures adopted by other countries, such as the US, Germany, the UK and France, the Italian government has acknowledged the need for voluntary disclosure regulation (VDR), providing Italian residents with an opportunity to disclose undeclared assets held abroad.

After Law Decree No. 4/2014 (which provided the first version of the voluntary disclosure for assets illegally held abroad) failed to get converted into law, the Italian Parliament passed Law No. 186/2014 on the 15 December 2014. This law introduces a revised version of the VDR, which largely endorses the general requests for simplification demanded by banks and tax practitioners. In particular, the new VDR allows the regularization of violations committed in Italy by both individuals and corporations, and also introduces the option to determine the taxable income for voluntary disclosure purposes on a forfeit basis and to subject it to a fixed tax rate of 27%.

The Italian VDR and the criminal offense of “self-money laundering”, also introduced by Law No. 186/2014, are part of the broader strategy that the Italian government is implementing to crack down on tax evasion. They are intended to prompt the introduction of new bilateral agreements that will make it impossible for Italian residents to maintain their anonymity.

The new VDP is available to Italian taxpayers who are subject to “tax monitoring” (monitoraggio fiscale), i.e., individuals, non-commercial entities and sole-proprietorship entities, for the purpose of remedying violations of the reporting requirements in Section RW of the Italian individual income tax return (where the taxpayer is required to report assets held and activities performed in a foreign country). The new VDP is also available to Italian limited companies and corporations that wish to rectify tax violations committed in Italy.

Overall, voluntary disclosure is possible for any asset that has not been duly reported to the Italian tax authorities (e.g., for individuals, assets that should have been (but were not) declared in Section RW of the income tax return). Relevant assets include bank accounts and securities such as shares, bonds, units in collective investment vehicles and derivatives, insurance policies, real estate, yachts, works of art or precious metals and stones.

The procedure invites not only the legal owner of the foreign assets, but also any other individual who might be considered a beneficial owner, or who had access and could have used or benefited from the foreign assets (e.g., the second account holder in a joint bank account). The new VDP is only applicable if, at the time of filing, the taxpayer is not formally aware of an imminent tax audit by the Italian tax authorities.

The VDP is initiated when the taxpayer files a request form in which, besides personal data, the balance value of assets held abroad and of the taxes due on the corresponding income upon disclosure should be reported. The request form has to be filed with the Italian tax authorities using an electronic data transmission channel (invio telematico).

Calculation of the voluntarily disclosed taxable income

Unlike the “tax shields” Italy has enacted in the past, the new VDR does not allow the taxpayer to remain anonymous.

Those who decide to voluntarily disclose their assets will have to follow two initial steps. Firstly, they will have to reveal their identity to the Italian tax authorities. Then, they will have to provide them with all the documentation needed to reconstruct the history and movements of their assets held abroad during the last 5 to 10 years. Table 1 on page 7 shows which tax periods apply.

In certain cases, taxpayers can opt to benefit from a fixed rate. Specifically, if the annual average value of the relevant assets does not exceed EUR 2 million, the corresponding taxable income for voluntary disclosure purposes is calculated at 5% of the value of the assets at the end of each year and subject to a fixed tax rate of 27%.

Self-money laundering

Law No. 186/2014 also introduced the crime of “self-money laundering” to the Italian Criminal Procedure Code. Accordingly, persons found guilty of committing, or being party to, a criminal violation and further laundering (i.e., investing, transferring, exchanging or using), funds earned from such illicit activities in an attempt to hinder the ability to trace the source of the of funds can face prison sentences ranging from two to eight years and fines between EUR 5,000 and EUR 25,000. The same applies to persons who aid others in laundering profits gained from illicit activities.

Tougher penalties apply to persons who take part in money laundering schemes while performing a banking, financial or professional activity.
Only violations committed prior to 30 September 2014 fall within the scope of the VDP. Voluntary disclosure must encompass all tax periods for which the tax return is still open to assessment. The statute of limitation varies depending upon the country where the assets are held (refer to Table 1 on page 7), as well as upon the pertinent tax evasion thresholds.

**Taxpayers who opt for the VDP will have to disclose:**

a. For investments and financial assets held in a white listed country as well as in Switzerland, Liechtenstein and Monaco:
   i. The value of the investments and financial assets held between 2004 and 2013, if no or an untrue Section RW of the Italian tax return has been filed
   ii. The value of the investments and financial assets held between 2009 and 2013, if no or an untrue Section RW of the Italian tax return has been filed
   iii. The income earned from investments and financial assets held between 2009 and 2013, if no Italian tax return has been filed
   iv. The income earned from investments and financial assets held between 2010 and 2013, if an untrue Italian tax return has been filed

b. For investments and financial assets held in a black listed country:
   i. The income earned from investments and financial assets held between 2004 and 2013, if no Italian tax return has been filed
   ii. The income earned from investments and financial assets held between 2006 and 2013, if an untrue Italian tax return has been filed

However, if among other formal requirements:

1. The black listed country where the assets are held enters into an exchange of information agreement with Italy within 60 days as of the enactment of the new VDR, i.e., by 2 March 2015.
2. The taxpayer gives written authorization to the financial intermediary (either in the black listed country or in the EU or European Economic Area (EEA) member country to which the assets subject to the VDP have been transferred) to forward the information to the requesting Italian tax authorities.

On 23 February 2015, Italy and Switzerland signed a protocol of amendments to the Italian-Swiss double taxation agreement (DTA). In addition, a road map has been published together with the protocol of amendments to the DTA. This road map allows Italian taxpayers with bank accounts in Switzerland to benefit from the VDP under the same conditions taxpayers with accounts in countries that are not on an Italian black list and therefore, to receive reduced penalties (please refer to Tables 3 and 4 on page 10). Moreover, financial intermediaries and their employees will not be responsible for the tax violations committed by their clients.
Voluntary disclosure will be allowed up to 30 September 2015 and only one filing is permitted. The request to participate in the voluntary disclosure must be submitted electronically (invio telematico) to the Italian tax authorities, and it is irrevocable.

Once the Italian tax authorities have received the request from the taxpayer, they will issue: (i) an invitation to a consultation (invito contraddittorio) together with the calculation of the income taxes due and corresponding penalties; (ii) the assessment of the penalties for failure to file untrue Section RW of the Italian tax return.

The procedure will conclude upon payment of the amounts due, either as a lump-sum payment or in three monthly instalments. In the latter case, if the taxpayer misses one of the instalments, the effect of the VDR will cease. Offsetting against tax credits is not allowed.

Within 30 days from the payment of the amounts due, the Italian tax authorities will notify the office of the public prosecutor of the conclusion of the voluntary disclosure procedure, thereby precluding the indictment of the taxpayer for violations and crimes covered by the VDR.

On 30 January 2015 the director of the Italian Revenue Agency issued the guidelines to follow when applying for the voluntary disclosure. On 13 March 2015 the Italian Revenue Agency issued Circular No. 10/E which provides further instructions and clarifications on the procedure.

The Italian voluntary disclosure results in a reduction of administrative and criminal penalties.

1. Criminal penalties
Taxpayers who opt for the VDP:
- May benefit from a reduction in the criminal penalty applicable for fraudulent (i.e. voluntarily based on false accounting data or documents) tax return
- Are immune from criminal penalties connected with:
  - Incomplete tax return (i.e. when income and costs are reported for a lower and higher value respectively)
  - Omitted tax return
  - The newly introduced “self-money laundering” crime of earnings out of the above-mentioned criminal offenses

2. Administrative penalties
2.1. Failure to file or untrue Section RW
Under the VDP, the administrative penalties applicable to taxpayers for the breach of the “tax monitoring regime” may be reduced by (see Table 2 on page 9):
- Up to 50% of the minimum penalty for tax breaches may be reduced if the investments or financial assets are:
  a) Held in an EU or EEA member country included in the white list
  b) Held by a “transparent taxpayer” i.e., held in a black listed country:
    i) Further to initiating the voluntary disclosure process, the assets are transferred to Italy or to another white listed EU country
    Or
    ii) The assets remain in the black listed country but the taxpayer authorizes the foreign bank or intermediary to hand over any relevant information on the foreign-held assets to the Italian tax authorities
- Up to 25% of the minimum penalty if investments or financial assets are held in a black list country and the taxpayer did not fulfill either of the conditions outlined in b) i) and b) ii) above.

The above penalties may be further reduced to one-third if the taxpayer agrees to pay without challenging the calculations.

While Austria is on Italy’s white list, Switzerland is still on the black list. With the enforcement of the aforementioned protocol of amendment to the Italian-Swiss DTA, taxpayers with assets in Switzerland may benefit from the same minimum administrative penalties applicable to taxpayers with assets held in white listed countries, as well as from the reduction of up to 50% available under the VDP.
The voluntary disclosure of assets held abroad by Italian residents

The voluntary disclosure procedure has some gray areas that need to be carefully evaluated in order to make informed decisions. In particular, one needs to remember that the VDP procedure only exempts the individual taxpayer from civil or criminal prosecution. The effects of VDP do not extend automatically to other persons such as children or spouses. Any of these persons wishing to be exempted from civil or criminal prosecution is therefore required to apply individually for the VDP.

In this scenario, the presence of a tax professional capable of correctly evaluating the documentation to be sent to the tax authorities and the taxes due is advisable in order to complete the voluntary disclosure procedure successfully.

For Italian taxpayers, the new VDP represents the last chance to clear their position with the Italian tax authorities. As from 2018, Switzerland will implement the automatic exchange of information and will provide the Italian tax authorities with the names of account holders. Until the automated exchange of information between Italy and Switzerland is implemented, they may use all means at their disposal, including group requests under the DTA going back to the date of the signing of the amending protocol of 23 February 2015.

**2.2. Breach Italian tax laws regarding failure to file and untrue tax return**

Italian taxpayers who opt for VDP may benefit from a reduction of 75% of the minimum administrative penalties applicable for untrue tax returns or failure to file a tax return. A further reduction to one-sixth will apply if the taxpayer agrees to pay without challenging the calculations.

**Costs**

The cost of the VDP in terms of interest and penalties may vary significantly and depends on different factors such as, for example: whether the assets held abroad have been originally taxed or not; for how many years the tax monitoring regulations have been breached; the number of years open to assessment, which depends on the country where the assets are held.

As a consequence, a cost estimate for the entire procedure, including taxes, interest, penalties and fees, is one of the very first work steps.

**Risks**

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EY’s approach to voluntary disclosure

To help our clients, EY has put together a highly skilled and dedicated team comprising of tax and legal professionals with vast experience in the banking and financial services industries.

With its extensive global network and unique organizational structure, EY can not only draw upon an exceptionally large number of skilled professionals with valuable experience acquired in voluntary disclosure procedures in Italy and in other countries, but we also have the capability to operate in many countries simultaneously.

a) How EY supports individual taxpayers

- **Meet the client**
  A selected team of tax and legal professionals meets the Italian taxpayer to explain in more detail how the VDP works, and initiate an examination of the foreign financial investments and assets that can be included in the VDP.

- **Estimate the procedure’s cost**
  Based upon the information provided by the bank or the client in the first phase, EY will provide a cost estimate for the entire procedure, i.e., including taxes, penalties, interest and professional fees.

- **Assist with the VDP**
  Based upon the documents and information collected, EY draws up the voluntary disclosure document for the client’s review and, once agreed, submits it to the tax authorities. The EY team will then meet with the tax authorities as it is necessary to establish in practical terms the amounts to be paid and the closure of the procedure.

- **Close**
  The EY team agrees the final tax assessment and penalty notifications with the tax authorities, and advises the client of the taxes, penalties and interest due. The team then prepares the necessary payment forms.

b) How EY can support Swiss banks

VDP such as the one in Italy are challenging for banks. When and how to inform the relationship managers, educate them and communicate what is expected from them is just the initial step. Drafting of client information letters, exchange of the necessary documentation, defining the bank-internal process, preparing reminders and potential termination letters etc., are all part of the procedure. What tax evidence will you accept from clients and how will this information be received are just two of the questions among many to which the banks need an answer.

With our vast experience from other VDP, we can help banks to oversee, define and streamline this process and support them in each step as required.

In addition, EY can provide Italian tax experts in voluntary disclosures and attend meetings with your clients or your sales force. Initial advice is provided by a selected team at any place in Switzerland, Liechtenstein, Italy or elsewhere and often free of charge. Also, EY can receive bank documents (through an encoded and secure data transfer) and check for completeness and suitability for voluntary disclosure purposes. Finally, EY can provide banks with tax advisor confirmation for all completed cases for your overarching regularization projects and client documentation.

Having one single service provider with a tried and tested approach and the relevant experience from other VDP will help to make this exercise successful for you and your clients.
Your contacts

Switzerland

Our Italian voluntary disclosure team (comprising experienced Italian and Swiss lawyers and tax specialists) advises Italian private clients in Switzerland at their request or upon instruction from their banks. In addition to our offices in Zurich and Lugano, we have 10 other EY offices across Switzerland and in Liechtenstein.

Italy

In Italy, we have lawyers and tax advisors who specialize in advising on voluntary disclosures at our offices in Milan and Rome.

International

The specialists in our international network provide support in dealing with complex foreign matters (e.g., Austria, Luxembourg, United States).

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About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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