

Italian Voluntary Disclosure:

**General Overview, Key Features,
Practical Cases and Penalties**

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**GENERALE FIDUCIARIA
S.p.A.**

- **Preamble**

- Key Features of the Voluntary Disclosure Procedure
- Calculations
- Example
- Possibility to maintain the assets and activities abroad with a trust company
- Attachments

Preamble

- Law n. 186 of December 15, 2014 on Voluntary Disclosure (the “**VD Law**”);
- Informative memorandum by the Italian Tax Authority (*Agenzia delle Entrate*) in connection with the admission request to the voluntary procedure of January 30, 2015;
- Memorandum by the Italian Tax Authority (*Agenzia delle Entrate*) explaining the VD Law?
- Sanga Emendation preventing the doubling of the RW penalties (the so called “**Sanga Emendation**”, amendment n. 10.166 to Law decree n. C.2803 – “*Milleproroghe*”);
- **Agreement between Italy and Switzerland** signed on February 23, 2015;
- **Agreement between Italy and Liechtenstein** signed on February 26, 2015;
- **Agreement between Italy and Monte Carlo** signed on March 2, 2015;

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Key Features of the Voluntary Disclosure Procedure

- **No anonymity;**
- Voluntary Disclosure is a **one-time only disclosure**, therefore all the assets and activities – held **abroad or in Italy** - not yet declared to the Italian Tax Authority have to be indicated;
- Voluntary Disclosure Procedure does **not** provide for any discount on past unpaid taxes, only the **penalties are decreased;**
- The Voluntary Disclosure Procedure can be started **until the 30.09.2015** for fiscal breaches having been committed up to 30.09.2014;
- Extention of the VD Law duration?
- Exemption from the “**auto money laundering**” crime;

Key Features of the Voluntary Disclosure Procedure

- Eligibility for the Voluntary Disclosure Procedure:
 - general;
 - relationship with “*Scudo Fiscale*”;
 - **preclusion** if the taxpayer has already had formal knowledge of access, inspections, verifications in connection with the breach of fiscal rules for the assets and activities which form the object of the Voluntary Disclosure Procedure. The same applies if the above mentioned formal knowledge has been acquired by jointly and severally liable persons or by subjects having concurred to the crime.;
 - **Interposed subjects / structures** such as:
 - ❖ Anstalt;
 - ❖ Panama Company or similar;
 - ❖ Trust;
 - ❖ BVI;
 - ❖ Insurance policy.

Key Features of the Voluntary Disclosure Procedure

- If the assets and activities object of the Voluntary Disclosure Procedure have not on average exceeded the threshold of Euro 2 million, it is possible to opt for the so called “*forfait method*”; whereas
- in all other cases the calculation of the returns shall be carried out based on the “*analytical method*”;
- **Donation and inheritance taxes** are not covered by the Voluntary Disclosure Procedure, i.e., they have to be calculated and settled in a separate procedure;
- Note: penalties do **not** pass to heirs and successors.

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Voluntary Disclosure – Calculations

Agreement	<ul style="list-style-type: none">•RW Sanction 3% with 25% discount;•Sanctions on returns 100/120% with 25% discount.
Agreement + Repatriation, also juridical	<ul style="list-style-type: none">•RW Sanction 3% with 50% discount;•Sanctions on returns 100/120% with 25% discount.
Agreement + Waiver	<ul style="list-style-type: none">•RW Sanction 3% with 50% discount;•Sanctions on returns 100/120% with 25% discount;•Terms halving

Voluntary Disclosure – Returns penalties reduction

- The situation, starting from 01.01.2015, can be schematized as follows:

	White List	Cooperative Black List	Black List	
Waiver	n/a	yes	no	n/a
Statutory Minimum 2009/2013	133% / 160%	133% / 160%	133% / 160%	266% / 320%
Reduction ex art. 5-quinquies, paragraph 4 last sentence (25% discount)	100% / 120%	100% / 120%	100% / 120%	200% / 240%
Adhesion (reduction to 1/6)	16,6% / 20%	16,6% / 20%	16,6% / 20%	33,3% / 40%
Statutory Minimum 2004/2008	n/a	n/a	133% / 160%	133% / 160%
Reduction ex art. 5-quinquies, paragraph 4 last sentence (25% discount)	n/a	n/a	100% / 120%	100% / 120%
Adhesion (reduction to 1/6)	n/a	n/a	16,6% / 20%	16,6% / 20%




**REPATRIATION AND
WAIVER**

In case of fiscal crimes carried out in the period 2004/2008, the Italian Tax Authority proceeds in any event to the terms doubling irrespective of art. 12 of Law Decree 78/2009.

Voluntary Disclosure – RW form penalties reduction

	White List	Cooperative Black List	Non cooperative Black List
Waiver	n/a	yes	no
Statutory Minimum 2009/2013	3%	3%	6%
Repatriation also juridical	yes	yes	no
	1,5%	1,50%	2,25%
Adhesion (reduction to 1/3)	0,5%	0,5%	0,8%
Material Cumulation (2009/2013)	2,5%	2,5%	3,8%
Statutory Minimum 2004/2008	n/a	n/a	3%
			no
Repatriation also juridical	n/a	n/a	2,25%
			3,75%
Adhesion (reduction to 1/3)	n/a	n/a	0,8%
Material cumulation (2004/2008)	n/a	n/a	3,8%
Material cumulation 2004/2013	2,5%	2,5%	7,5%
			13,8%


**REPATRIATION AND
WAIVER**

White List / Black List with agreement and “transparent” behaviour

- Assuming a stable capital, **without any contributions**, and to exercise the option for the **forfeit returns calculation method**, the percentual cost of the procedure can be quantified as follows:

Black List Country “with agreement and transparent” or White List Country	Inaccurate Declaration	Omitted Declaration
Number of assessable years	4	5
Total return (5% yearly)	20%	25%
Tax (27% average rate)	5,4%	6,8%
Penalties	0,9%	1,1%
Interests (3,5% yearly on tax)	0,5%	0,7%
Total cost	6,8%	8,6%
RW penalty	2,0%	2,5%
TOTAL	8,8%	11,1%

Black List with agreement and “non transparent” behaviour

- Assuming a stable capital, **without any contributions**, and to exercise the option for the **forfeit returns calculation method**, the percentual cost of the procedure can be quantified as follows:

Black List Country “with non transparent agreement”	Inaccurate Declaration	Omitted Declaration
Number of assessable years	8	10
Total return (5% yearly)	40%	50%
Tax (27% average rate)	10,8%	13,5%
Penalties	1,8%	2,3%
Interests (3,5% yearly on tax)	1,7%	2,6%
Total cost	14,3%	18,3%
RW penalty	6,0%	7,5%
TOTAL	20,3%	25,8%

Black List Countries without agreement and “non transparent” behaviour

- Assuming a stable capital, **without any contributions**, and to exercise the option for the **forfeit returns calculation method**, the percentual cost of the procedure can be quantified as follows:

Black List Country without agreement "non trasparente"	Inaccurate Declaration	Omitted Declaration
Number of assessable years	8	10
Total return (5% yearly)	40%	50%
Tax (27% average rate)	10,8%	13,5%
Penalties (from 2008 redoubled)	3,2%	3,6%
Interests (3,5% yearly on tax)	1,7%	2,6%
Total cost for Taxes	15,7%	19,7%
RW penalty	11,5%	14,0%
TOTAL	27,2%	33,7%

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Example: Liechtenstein after the agreement - RW

Material cumulation		Capital	Minimum penalties		Statutory Minimums		Minimum Penalties reduced to 50%		Statutory Minimums reduced to 50%	
2004	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2005	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2006	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2007	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2008	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2009	Section II - 3% imposable penalty	1.000.000	3%	30.000	3%	30.000	1,50%	15.000	1,50%	15.000
2010	Section II - 3% imposable penalty	1.000.000	3%	30.000	3%	30.000	1,50%	15.000	1,50%	15.000
2011	Section II - 3% imposable penalty	1.000.000	3%	30.000	3%	30.000	1,50%	15.000	1,50%	15.000
2012	Section II - 3% imposable penalty	1.000.000	3%	30.000	3%	30.000	1,50%	15.000	1,50%	15.000
2013	Section II - 3% imposable penalty	1.000.000	3%	30.000	3%	30.000	1,50%	15.000	1,50%	15.000
Total imposable penalties with material cumulation			150.000				75.000			
			Statutory minimums addition		150.000				75.000	

Example: Liechtenstein after the agreement - RW

Legal Cumulation

Penalty for the most severe penalty		15.000
Increase from 50% to 300% - art. 12, par. 5, Law Decree 472/1997 (more years)	50%	7.500
Basic penalty		22.500
Increase of 20% - art. 12, par. 3, Law Decree 472/1997 (more tributes)	0%	0
Basic penalty		22.500
Increase from 25% to 200% - art. 12, par. 1 and 2, DLgs. 472/1997 (progression)	0%	0
Total penalties determined with legal cumulation		22.500

Imposed penalty (Art. 12, par. 7, Law Decree 472/1997 lower between material and legal cumulation)	22.500
Statutory minimum (addition of the highest minimum penalties for each year)	75.000
Settlement cost of the dispute act (Art. 16 par. 3 Law Decree 472/1997: 1/3 of the highest between the statutory minimum and the imposed sanction)	25.000

Example: Liechtenstein after the agreement – Inaccurate Declaration

	Material cumulation		Average TUR	Returns	Tax (27%)	Minimum sanctions		Statutory minimums		Statutory minimums reduced to 75%	
2006	imposable sanction	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2007	imposable sanction	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2008	imposable sanction	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2009	imposable sanction	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2010	imposable sanction	133%	1,00%	10.000	2.700	133%	3.591	133%	3.591	100%	2.700
2011	imposable sanction	133%	1,21%	12.100	3.267	133%	4.345	133%	4.345	100%	3.267
2012	imposable sanction	133%	0,88%	8.800	2.376	133%	3.160	133%	3.160	100%	2.376
2013	imposable sanction	133%	0,54%	5.400	1.458	133%	1.939	133%	1.939	100%	1.458
Total taxes				36.300	9.801						
Total imposable penalties with material cumulation						13.035		13.035			
						Statutory minimums addition				9.801	

Example: Liechtenstein after the agreement – Inaccurate Declaration

Legal cumulation		
Penalty for the most severe penalty		3.267
Increase from 50% to 300% - art. 12, par. 5, Law Decree 472/1997 (more years)	50%	1.633
Basic penalty		4.900
Increase of 20% - art. 12, par. 3, Law Decree 472/1997 (more tributes)	0%	0
Basic penalty		4.900
Increase from 25% to 200% - art. 12, par. 1 and 2, DLgs. 472/1997 (progression)	0%	0
Total penalties determined with legal cumulation		4.900

Imposed penalty (Art. 12, par. 7, Law Decree 472/1997 lower between material and legal cumulation)	4.900
Statutory minimum (addition of the highest minimum penalties for each year)	9.801
Adhesion cost to the debate invitation (Art. 5 par. 1 Law Decree 218/1997: 1/6 of the highest between the statutory minimum and the imposed sanction)	1.633

SETTLEMENT COST	VD
RW	25.000
RETURNS – PENALTIES	1.633
RETURNS – TAXES	9.801
TOTAL	36.434

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Possibility to maintain the assets and activities abroad with Italian trust company (“Fiduciaria”)

- At present, the way to obtain an assured discount and **to maintain the assets and activities abroad** is the one of the so called **juridical repatriation** through an Italian **trust company** (“*Fiduciaria Statica*”), whose typical activity consists in the assets administration on behalf of third parties and in paying the taxes on behalf its clients;
- Should the taxpayer intend to transfer the assets and activities to a trust company, it shall be necessary to attach, before the completion of the Voluntary Disclosure Procedure, documents such as:
 - copy of the fiduciary mandate;
 - a letter by the foreign bank confirming the closing of the original account;
 - title transfer accountings;
 - extract of the new account registered in the trust company name;
- It is important to underline that the use of a trust company has effects both on the **penalty discount** and on the **compliance** after the settlement;
- The trust company has **no active role in the Voluntary Disclosure Procedure completion**: the taxpayer shall have to be represented by an advisor for the presentation of the application and shall directly pay the taxes, penalties and interests.

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Black List Countries

Table of the Countries and territories included in the black list (D.M. May 4, 1999 and following modifications)

Alderney	Bermuda	Guernsey	Liechtenstein	Panama	Tonga
Andorra	Brunei	Hong Kong	Macao	French Polynesia	Turks and Caicos
Anguilla	Costa Rica	Man Island	Malaysia	Sark	Tuvalu
Antigua and Barbuda	Dominica	Cayman Island	Maldives	Seychelles	Uruguay
Dutch Antilles	United Arab Emirates	Cook Islands	Mauritius	Singapore	Vanuatu
Aruba	Ecuador	Marshall Islands	Monte Carlo	Saint Kitts and Nevis	Samoa
Bahama	Philippines	British Virgin Islands	Montserrat	Saint Lucia	
Bahrein	Gibraltar	Jersey	Nauru	Saint Vincent	
Barbados	Gibuti	Lebanon	Niue	Switzerland	
Belize	Grenada	Liberia	Oman	Taiwan	

Other Countries and territories included in the black list by D.M. November 21, 2001 and not included in the D.M. May 4, 1999

Angola	Jamaica	Guatemala	Kenia	Kiribati	Herm
US Virgin Islands	New Caledonia	Portorico	Salomon	Saint Helen	

It is not clear when the exit by Luxembourg and San Marino (2014) and of Cyprus, Malta and South Korea (2010) shall be effective

White List Countries permitting ad adequate information exchange

Table of the Countries and territories included in the “white list “ (D.M. September 4, 1996 and following modifications)

Albania	Canada	Estonia	Ireland	Marocco	Czech Republic	Tanzania
Algeria	Cina	Russian Federation	Island	Mauritius	Slovak Republic	Thailand
Argentina	Cyprus	Philippines	Israel	Mexico	Romania	Trinidad and Tobago
Australia	Souty Korea	Finland	Yugoslavia	Norway	Singapour	Tunisia
Austria	Ivory Coast	France	Kazakistan	New Zeland	Slovenia	Turkey
Bangladesh	Croazia	Germany	Kuwait	Dutch Countries	Spain	Ukraine
Belgium	Denmark	Japan	Latvia	Pakistan	Sri lanka	Hungary
Bielorussia	Ecuador	Grece	Lituania	Poland	United States	Venezuela
Brazil	Egypt	India	Luxembourg	Portugal	South Afrika	Vietnam
Bulgaria	United Arab Emirates	Indonesia	Macedonia	United Kingdom	Sweden	Zambia
			Malta			

Table of the other Countries and territories permitting an adequate information exchange based on the Agreements against double taxation currently in force with Italy:

Saudi Arabia	Jordan	San Marino
Armenia	Moldova	Senegal
Azerbaijan	Mozambico	Syria
Ethiopia	Oman	Uganda
Georgia	Quatar	Uzbekistan
Ghana		

The effectiveness of information exchange agreements signed with some tax heavens (currently, Bermuda, Cayman Islands, Cook Islands, Gibraltar, Guernsey, Man Island, Jersey) is not clear in connection with the voluntary disclosure procedure)

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