

News Analysis: The Italy-Vatican Treaty Relationship

by Piergiorgio Valente

Full Text Published by taxanalysts®

Italy ratified the pending tax information exchange agreement (TIEA) with the Holy See on July 27 after final approval by the Chamber of Deputies and the Senate. (Prior coverage [here](#).) The treaty is particularly significant because it is the first bilateral agreement on information exchange signed by the Vatican State with another country.

New Relations Between Italy and the Vatican State

The TIEA with the Vatican State was signed on April 1, 2015, by Paul Richard Gallagher, secretary of the section for relations with states (of the Roman Curia), and Pier Carlo Padoan, Italy's minister of economy and finance. The agreement was reached after many extensively deliberated reforms begun by the Holy See in 2010, and subsequently, by the bodies and committees of the Holy See vested with specific competencies in economic and financial matters.

The treaty incorporates the most updated and universally acknowledged information exchange provisions at the international level. The rules are set forth in article 26 of the OECD model income tax convention, under which any information exchange -- between tax administrations on matters that are foreseeably relevant -- may neither be restricted nor prevented by norms on banking secrecy.

Once the TIEA becomes effective, it will allow full-fledged compliance, through simplified procedures, with tax requirements related to financial assets held by institutions that carry out financial activities in the Vatican State, and by natural and legal persons that are tax-resident in Italy. The same subjects or entities will have the opportunity to avail themselves of a regularization procedure for the above-mentioned financial activities, with the same effects as established by law for voluntary disclosure. In other words, subjects residing in Italy and holding financial assets in the IOR (the Vatican Bank) will be allowed to repatriate capital to Italy with reduced penalties and without incurring any further criminal consequences.

It should be noted that the TIEA with the Holy See is not based on Italian laws on voluntary disclosure. In fact, the Vatican State, as opposed to Switzerland, Liechtenstein, and Monaco, is not included on any Italian blacklist.

Moreover, the TIEA puts into effect the provision in the Lateran Treaty on the tax exemption of any real estate owned by the Holy See.

Obligations on Information Exchange

Information exchange between Italy and the Holy See is regulated by article 1 of the TIEA, which is based on the OECD standard.

In particular, the competent authorities of the contracting parties will exchange any foreseeably relevant information in order to apply treaty provisions or for the administration or application of internal laws related to taxes of any type or denomination, collected for the contracting parties, insofar as the taxation set forth does not go against the selfsame treaty.

Article 1, paragraph 8 of the TIEA specifically provides that any reference to information that is foreseeably relevant aims to ensure that any tax information exchange may be as extensive as possible, without allowing the contracting parties to engage in a generalized and indiscriminate information research, or to request any information that is irrelevant to the tax matters of a given taxpayer.

Any information received must be kept secret by the receiving country and may be solely conveyed to the people or authorities (including courts and administrative authorities) that are handling a given assessment or tax collection, procedures or proceedings related to those taxes, rulings on appeals submitted with regard to those taxes, or any verification of the activities previously mentioned.

The latter authorities may employ information or data strictly for the relevant purposes and may disclose them only within the context of public court proceedings or a court ruling.

The employment of such information for different purposes may occur:

- if the information may be used for different purposes in accordance with the laws of both contracting parties; or
- if the competent authorities of the requested country have granted due approval.

As far as any restrictions to the exchange of information, the TIEA sets forth that it will not be in any way possible to compel a contracting state to:

- adopt any administrative provisions in derogation of its own legislation and administrative practice, nor that of the other contracting party;
- provide any information that may not be obtained by virtue of one's own legislation or administrative practice, nor that of the other contracting party; or
- provide information that might disclose any commercial, industrial, or professional secret or that might be contrary to public order.

The requested country must use all available powers to obtain the required information, even if the information is not useful for its own tax purposes.

The provision under article 1, paragraph 5, of the TIEA is especially significant because it states that one contracting party may not refuse to convey any information solely because the information is held by a bank, or by any other financial institution or entity that professionally carries out financial activities, by an individual acting in the capacity of agent or trustee, or because the information may refer to rights on risk capital or a given entity's debt.

The requesting party must duly and exhaustively employ all information sources provided by its own internal tax procedures before issuing a request to its counterparty.

To allow the requested country to promptly forward the required information, the request must include:

- the identity of the subject under audit;
- a term of reference related to the request;
- a description of the information required, as well as indications on the form in which the requesting party wishes to receive that information;
- the tax purpose for which such information is being requested; and
- if known, the name and address of the alleged holder of the requested information.

Piergiorgio Valente, chair of the Fiscal Committee of the Confédération Fiscale Européenne, adjunct professor of EU tax law and tax and financial planning at Link Campus University in Rome, and managing partner, Valente Associati GEB Partners