3.1 Neutralize the effect of hybrid mismatch arrangements – Action 2

Tax audits and Beps – Action 2
Hybrid mismatching

2014

- Discussion draft issued on march 19, 2014
- Public consultation on 15 may, 2014
- Final delivery on September 2014
- On track

Tax audits and Beps – Action 2
Hybrid mismatching

2014

- Final goal:
  - **Recommend amendments to:**
    - Domestic law and
    - Treaty provisions
  - **Alignment of domestic law to avoid different tax treatment for the same situation**
  - **Alignment of the treaty provisions to avoid significant mismatching**
  - **No effects on commercial effective transactions**

Tax audits and Beps – Action 2 Hybrid mismatching

2014

- What is tackled?

  - **Arrangements which produce a mismatching in tax outcomes**
    - a double deduction
    - a deductible payment not taxable for the recipient
    - A violation of the symmetric tax treatment

Tax audits and Beps – Action 2
Hybrid mismatching

2014

- The report includes
  - ➢ **Recommendations to change domestic law**
    - Tax treatment of hybrid financial instruments
    - Payments made by hybrid SPV
    - Payments made by mismatch structures

Tax audits and Beps – Action 2
Hybrid mismatching

2014

- The report includes
  - **Limitation of deduction of costs**
  - **Indication of order of primary and secondary rules applicable in the first jurisdiction**

Tax audits and Beps – Action 2
Hybrid mismatching

2014

- Personal comments:
  - **very comprehensive work which tackle complex issues**
  - **Still open the definition of the scope of work**
  - **application to related and not related parties acting in concert**
  - **Potentially disruptive for effective commercial and financial transactions**
  - **Still a lot of work to do**

Tax audits and Beps – Action 2 Hybrid mismatching

2014

- Tax audits
  - **Significant number of financial companies already audited on hybrid instruments**
  - **Mainly recharacterization of dividends**
  - **Tax auditors are significantly ahead looking at substance and not to form.**

3.2 Strengthen CFC rules – Action 3

Tax audits and Beps – Action 3
Strengthen CFC rules

2014

- No discussion draft issued
- Final delivery on September 2015

Tax audits and Beps – Action 3 Strengthen CFC rules

2014

- Key issues:
  - **Creation of affiliated non resident taxpayers and routing income of resident enterprise through the non resident affiliate**
  - **Necessity of anti-deferral rules**
  - **Introduction of domestic rules which will tackle the BEPS in a comprehensive manner**

Tax audits and Beps – Action 3 Strengthen CFC rules

2014

- Personal comments
  - **Coordination between domestic rules and DTT**
  - **Application of CFC rules to affiliated resident in "white list" countries**

Tax audits and Beps – Action 3 Strengthen CFC rules

2014

- Tax audits
  - ➢ **Tax audit on deferral tax scheme in "white list" countries**

Tax audits and Beps

2014

- Final remark on BEPS
  - **Massive work already done**
  - **Positive process to gather consensus**
  - **Position of non participating countries to OECD (mainly Brics)**

Bilateral Meeting IFA
Italy and France

TP Trends and Bilateral APAs

Venice, June 6th 2014

Speaker: Gabriella Cappelleri
Head of International Ruling Office

Chair: Antonella Magliocco

TP Trends in Italy

2014

1. MAPs: general aspects
2. THE APA PROGRAM – INTERNATIONAL TAX RULING
   1. Unilateral APAs
   2. Bilateral and Multilateral APAs
   3. Data and statistics
3. TP documentation requirements
4. The Italian involvement in the BEPS PROJECT

MAP: GENERAL ASPECTS

2014

In the last years there has been a significant increase in the number of double taxation cases arising from transfer pricing adjustments that are brought to the attention of the Italian Competent Authority through mutual agreement procedures (MAPs)

On June 5, 2012 Italian Revenue Agency issued the Circular Letter no. 21/E to provide guidance on the application of MAPs

MAP: GENERAL ASPECTS

2014

The Circular Letter no. 21/E/2012 provides guidelines (circumstances, procedures, terms, etc.) of MAP distinguishing on the basis of its juridical source:

- Double Tax Convention in force between Italy and the Treaty partners (MAP under DTC)
- Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (EU Arbitration Convention)

MAP: GENERAL ASPECTS

2014

Competent authority

- Both in the MAP under DTC and in the EU Arbitration Convention, the Italian competent authority is the **Finance Department of the Ministry of Economy and Finance**.

The circular letter 21/E/2012 illustrates:

- the characteristics of both MAPs and EU Arbitration Convention procedures, and explains their link to domestic procedures, clarifying the conditions for their activation
- the interaction between domestic rules and international procedures

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

As from January 1, 2004 enterprises with international activities can enter into an agreement with the Italian Tax Authorities (International Ruling Office, Italian Revenue Agency) by means of a procedure named

"International Tax Ruling"

- article 8 of Law Decree No. 269 of 30 September 2003, converted into Law No. 326 of 24 November 2003
- Commissioner's Decree July 23, 2004

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

- Italian enterprises eligible to the APA are those, which, alternatively or simultaneously:
  - carry out transactions falling within the scope of TP legislation
  - participate to the capital of non resident companies (or are controlled)
  - pay or receive dividends, interest or royalties to or from non residents entities

- Permanent establishments of non resident enterprises are also eligible to the APA
- non-resident entities interested in operating in Italy

THE APA PROGRAM – INTERNATIONAL TAX RULING

ISSUES COVERED

- Transfer pricing methods
- Attribution of income to permanent establishments
- Tax treatment of cross-border dividends, interest, royalties and other cross-border income item flows
- advance assessment on whether the activities of non-resident entities in Italy give rise to a permanent establishment, under both domestic law and treaty provisions

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

DURATION AND EFFECTS

- **5 fiscal years** validity **starting from the fiscal year in which the agreement is signed**

The validity of the agreements, binding on both parties, has been extended from 3 to 5 fiscal years under article 7 of the Law Decree No. 145/2013 of 23 December 2013

- **No audits nor assessments on issues and FY covered by the international tax ruling**

THE APA PROGRAM – INTERNATIONAL TAX RULING

FEATURES

- The Italian international tax ruling corresponds to an unilateral APA
- Binding for the Italian Tax Authorities but not directly for the administrations of the other countries involved
- Should a foreign Tax Authority assume a different position, it is possible to appeal to:
    - Mutual agreement procedure (art. 25 OECD Model).
    - Arbitration convention, as per European Directive 90/436/CEE

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

FEATURES

Since 2011 the Revenue Agency is authorized to conclude **bilateral and multilateral APAs** based on Article 25, paragraph 3 of the OECD Model tax convention.

Approach consistent with Chapter IV the OECD TP Guidelines and with the European Commission Communication of 26 February 2007 on APA regime.

FEATURES

Bilateral and multilateral APAs ensure:

- no double/multiple taxation on income accrued to associated enterprises from transactions included in the scope of the agreement
- prevention of disputes between tax administrations

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

ORGANIZATION

The Italian international tax ruling operates via 2 branches under the coordination of the Head of the International Ruling Office:

- in Milan for the companies having their tax domicile or their permanent establishment in northern Regions.
- in Rome for the companies having their tax domicile or their permanent establishment in central and southern Regions.

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

ORGANIZATION

International Tax Ruling Office (Milan branch)

International Tax Ruling Office (Rome branch)

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

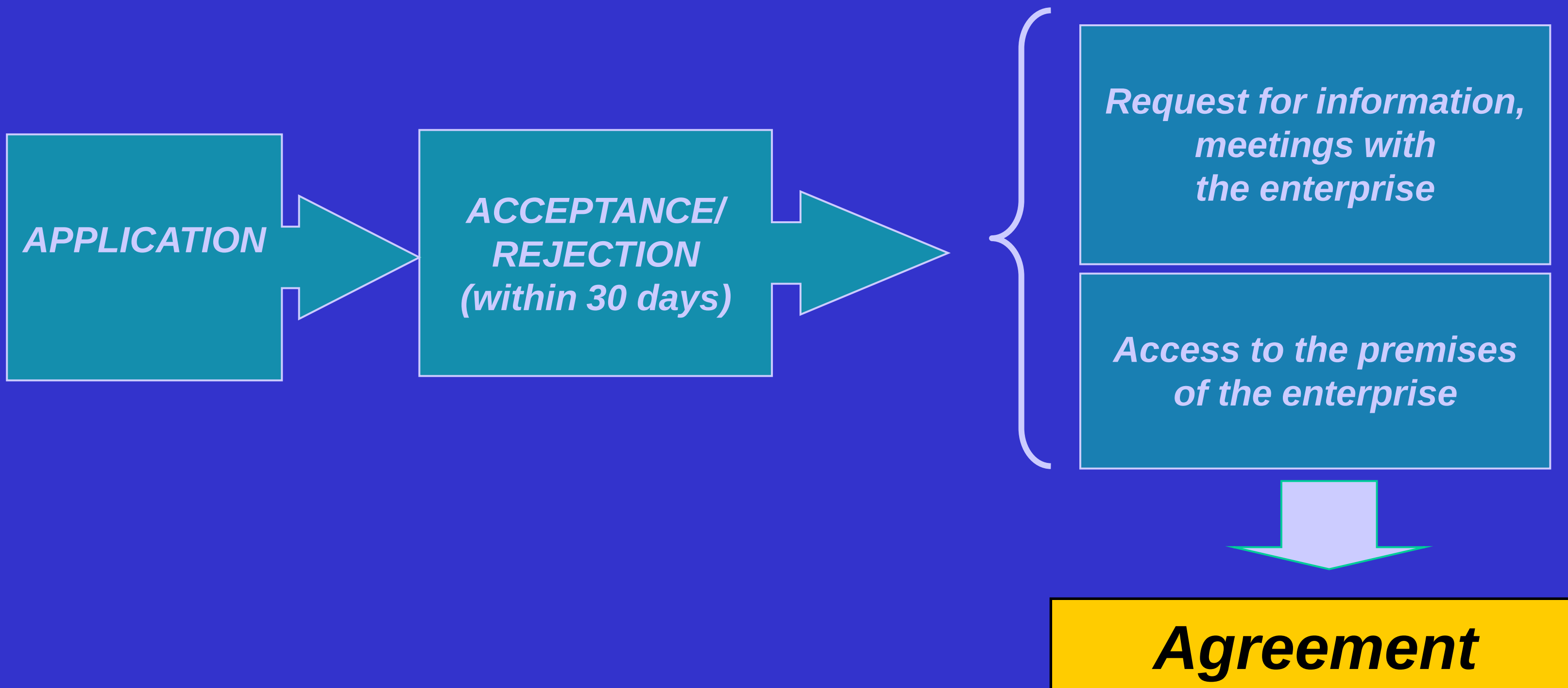
PROCEDURE

- *Acceptance/Rejection*: within 30 days from the submission of the request
- Tax Authorities agree with the enterprise a schedule of several **meetings** and arrange one or more **on-site visits** to the premises of the taxpayer

THE APA PROGRAM – INTERNATIONAL TAX RULING

IFA 2014

PROCEDURE



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THE APA PROGRAM – INTERNATIONAL TAX RULING

IFA 2014

PROCEDURE

In order to check:

- the compliance of the actual conduct of the taxpayer with the terms and conditions of the agreement; or
- changes in the fact and circumstances

The enterprise is required:

- to provide tax authorities with proper documentation; and
- to allow for specific accesses to the premises of the enterprise in order to gather additional information

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

PROCEDURE

- If the terms and conditions of the agreement are not satisfied, the Italian Tax Authorities have the right to convene the enterprise, and if the explanations are not deemed to be satisfactory, the agreement is void (i.e. cancelled)

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

PROCEDURE

- If the conditions or the facts and circumstances to which the agreement refers are modified, the agreement shall be revised; otherwise
- It is deemed void starting from the date when the conditions have changed
- The agreement can be renewed by the Italian enterprise if a renewal request is filed within ninety days prior to the expiration date of the agreement.

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

BI/MULTILATERAL APA

- Since 2010 the Revenue Agency is authorized to negotiate bilateral and multilateral APAs based on Article 25, paragraph 3 of the OECD Model tax convention.
- The Department of Finance of the Ministry of Economy and Finance designates the International Ruling Office as Competent Authority on a case by case basis.

BI/MULTILATERAL APA

- First contact with the CA involved in order to start the procedure
- all the CA involved should have the same level of information about the case
- Meetings among the CA (with/without the attendance of the taxpayer) in order to discuss the case
- Conclusion of the procedure: signing of the agreement

THE APA PROGRAM – INTERNATIONAL TAX RULING

BI/MULTILATERAL APA - Issue to be solved

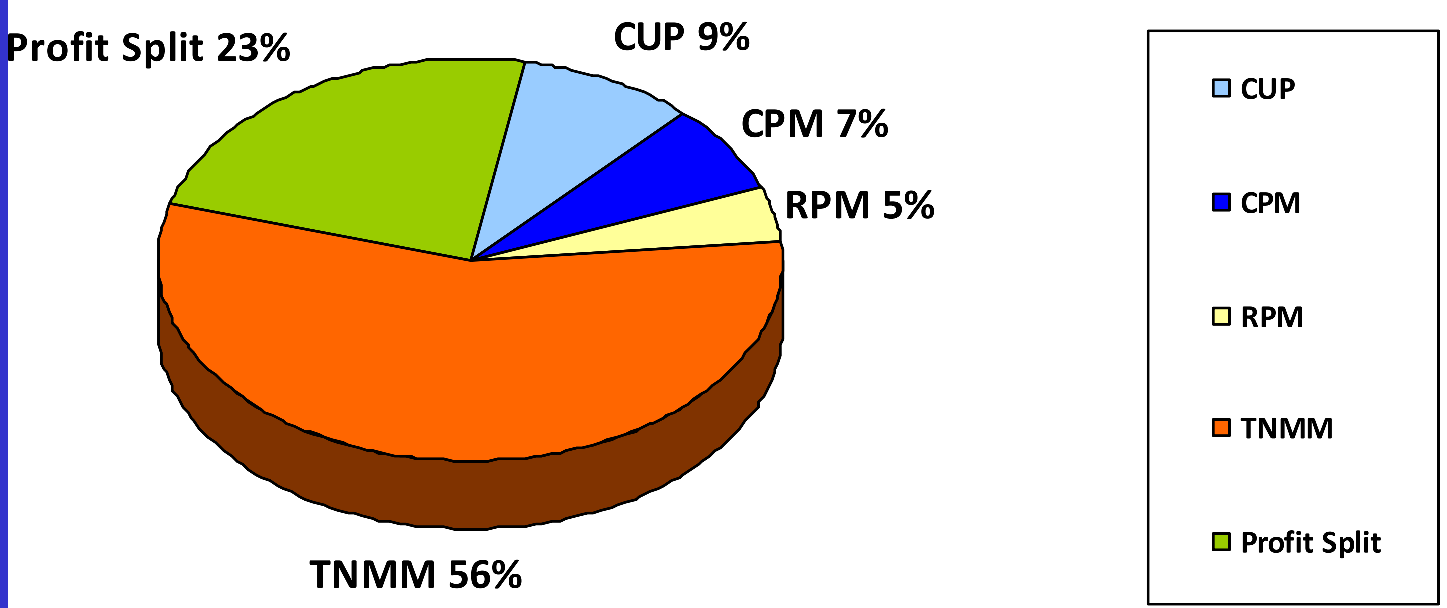
- FY covered by the agreement:

since the year of the submission of the application?

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

Methods applied in the international tax rulings signed (31/12/2013)



THE APA PROGRAM – INTERNATIONAL TAX RULING

IFA 2014

BILATERAL APAs

Country involved	N. of bilateral APAs Update 30/04/2014
FRANCE	2
GERMANY	5
JAPAN	2
NETHERLANDS	2
UNITED KINGDOM	2
SPAIN	2
UNITED STATES	4
SWEDEN	2
SWITZERLAND	5
Total APA	26

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

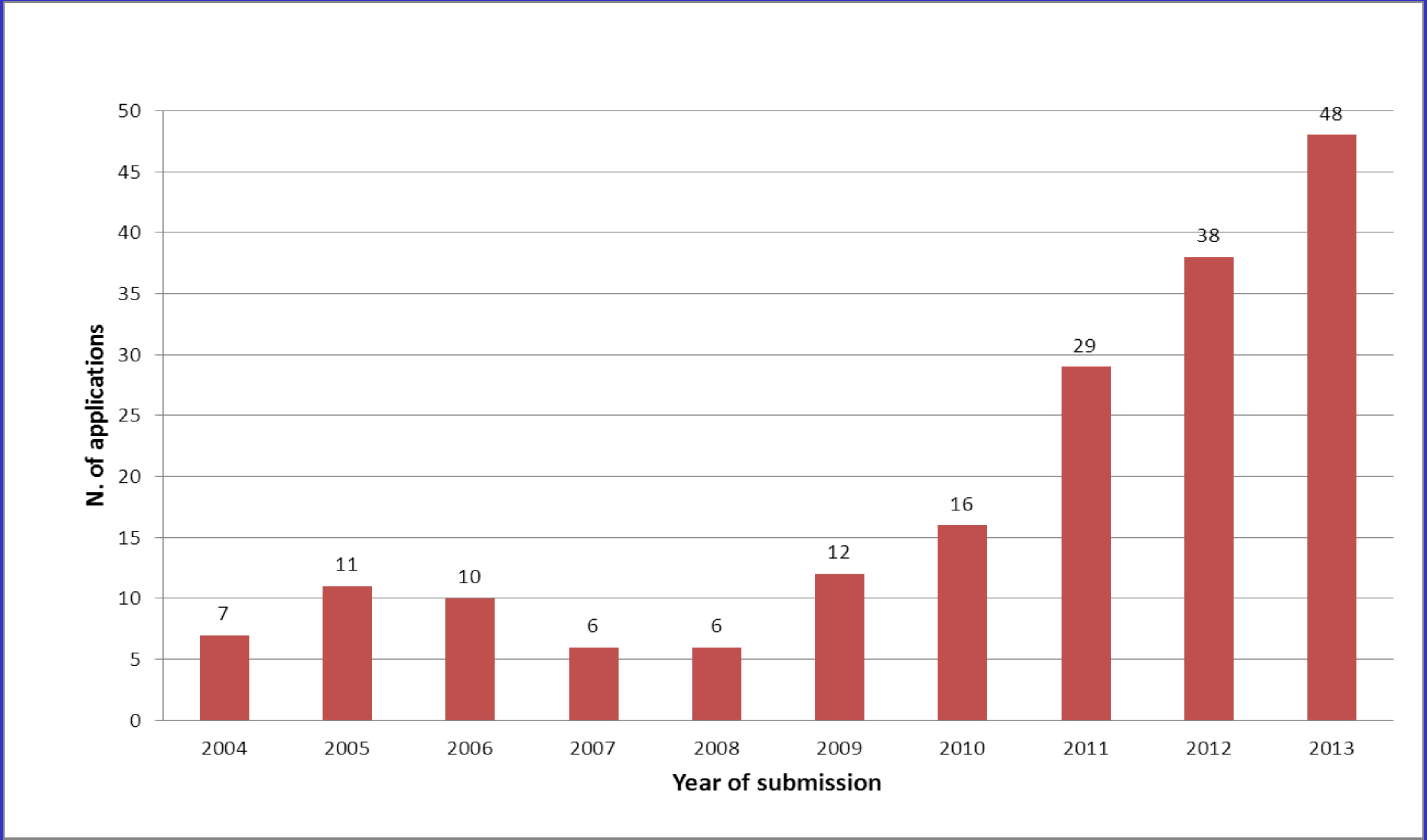
INTERNATIONAL TAX RULING
APPLICATIONS SUBMITTED and AGREEMENTS SIGNED
Update 30/04/2014

Applications submitted	**199**
Applications admitted	**172**
• ***Unilateral***	***146***
• ***Bilateral***	***26***
International rulings granted	**72**
Applications pending	**100**

THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

N. of applications submitted per year (update 31/12/2013)



THE APA PROGRAM – INTERNATIONAL TAX RULING

2014

Classes of taxpayers by turnover	
Taxpayers' turnover	%
Turnover < 25 Million euros	12,37%
Turnover from 25 to 100 Million euros	21,65%
Turnover > 100 Million euros	65,98%
Total	**100,00%**

The International Standard Ruling Bulletin

The International Standard Ruling Bulletin is released every two years. It illustrates the details of applications submitted to the International Ruling Office.

The purpose of the Bulletin is to briefly illustrate the main characteristics and issues of the procedure and to publish related data and news for information and statistical purposes, albeit in an anonymous form.

The report also provides statistical information relating to the actual Average Time taken to reach the Agreement (about 18 months) and the OECD TP methods applied in the APAs

TP documentation requirements in Italy

Prior to the provision of May, 2010, no domestic legislation provided for documentation requirements for transfer pricing purposes and no administrative fines were applicable to Italian resident enterprises belonging to multinational groups that do not keep transfer pricing documentation.

TP documentation requirements in Italy

2014

- On 31 May 2010, the Italian government issued Law-Decree 78 (article 26) introducing transfer pricing documentation requirements.

- The exact definition of the transfer pricing documentation requirements will be left to a Note by the Commissioner of the Italian Revenue Agency to be enacted within 120 days of the publication of the law n. 122/2010 in the Official Journal (30 July 2010).

- The preamble to Art. 26 of the Decree refers to the OECD Transfer Pricing Guidelines.

TP documentation requirements in Italy

2014

ARTICLE 26

- The provision applies in the event of a tax inspection or audit leading to an income adjustment under Art. 110(7) of the Income Tax Code.

- The new documentation requirements will be applicable starting from the first tax period after the date that the Decree enters into force.

- It will still be possible to mitigate the risk of penalties for earlier tax years open to tax assessment by notifying the tax authorities 90 days in advance of the issuance of the delegated regulations that transfer pricing documentation is available for those years

TP documentation requirements in Italy

ARTICLE 26

PURPOSES OF THE ARTICLE

avoidance of penalties:

transfer pricing documentation will be required to avoid application of penalties (ranging from 100% to 200% of the additional tax due) if there is a misrepresentation in the tax reporting.

TP documentation requirements in Italy

2014

ARTICLE 26

PURPOSES OF THE ARTICLE

Conditions to be satisfied to avoid application of penalties:

- notifying the tax authorities the keeping of the required transfer pricing documentation;
- submitting the documentation to the tax administration at the beginning of a tax auditor or upon specific request.

TP documentation requirements in Italy

2014

The taxpayer should:

prepare and store the transfer pricing documentation suitable for verifying compliance with the arm's length principle;

notify the tax authorities the keeping of the required transfer pricing documentation;

submit the documentation to the tax administration at the beginning of a tax audit or upon specific request.

THE ITALIAN INVOLVEMENT IN THE BEPS PROJECT

2014

Italy is actively contributing to the BEPS project through the participation in all groups in several Working Parties (e.g. Working Party n. 6: Intangibles, Risk recharacterisation and methods, Hard to value intangibles and cost contribution arrangements, Transfer pricing documentation, Country by Country Reporting…) directly involved by the project.

All the actions should be finalized by the end of 2015.