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## Bilateral Meeting IFA

*Italy and France*  
Venice, June 6-7, 2014

## APAs & MAPs in France

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# APAs and MAPs in France

1. A new organization
2. A new policy
3. A flavor of what has been achieved
4. Number of remaining challenges
5. Used TP Methods

## 1- A new organization

- Before the restructuring
  - One team dedicated to MAP
  - One team dedicated to APA
  - Limited resources devoted to these procedures

## 1- A new organization

### *Before*

- Tax Policy Department  
International Unit  
in charge of MAPs
- Tax Audit Department  
International Unit  
in charge of APAs

### *After*

- Legal Department  
Dedicated team  
in charge of APAs & MAPs

## 1- A new organization

- After the restructuring
  - A single team dealing with APA and MAP
  - A significant increase of resources, compared to the past
  - A single window for taxpayers and competent authorities

## 2- A new policy

- To reach new goals...
- ...by new means

## 2- A new policy

- To reach new goals...
  - Reduce the stock of cases
    - Large number of cases
    - Last CA meetings were old
    - Problems to finalize some old cases



## 2- A new policy

- To reach new goals...
  - Shorten the duration of the procedure
    - Average:      22 months for an APA  
                     4 years for a MAP
  - More reactivity
    - to open and work on the case to limit internal process (less control on international discussion)
    - to close and finalize the agreement with other competent authorities

## 2- A new policy

- To reach new goals...
  - Soften contacts with taxpayers
    - Single dedicated person for some countries
    - Better understanding of authorities needs to focus on these aspects when working on cases
    - Shorten time between requests from French CA and period at stake (ex: problems to get information ten years after operations were performed)

## 2- A new policy

- ...by new means
  - Regular exchanges with authorities
    - Close contact with authorities
    - More informal exchanges
      - emails and phone calls
      - dematerialized official papers
      - exchange of draft papers between meetings

## 2- A new policy

- ...by new means
  - Better work with taxpayers
    - Set of questions when needed
    - Meetings
      - when possible on old cases
      - when needed on recent cases
  - Feedback on French positions

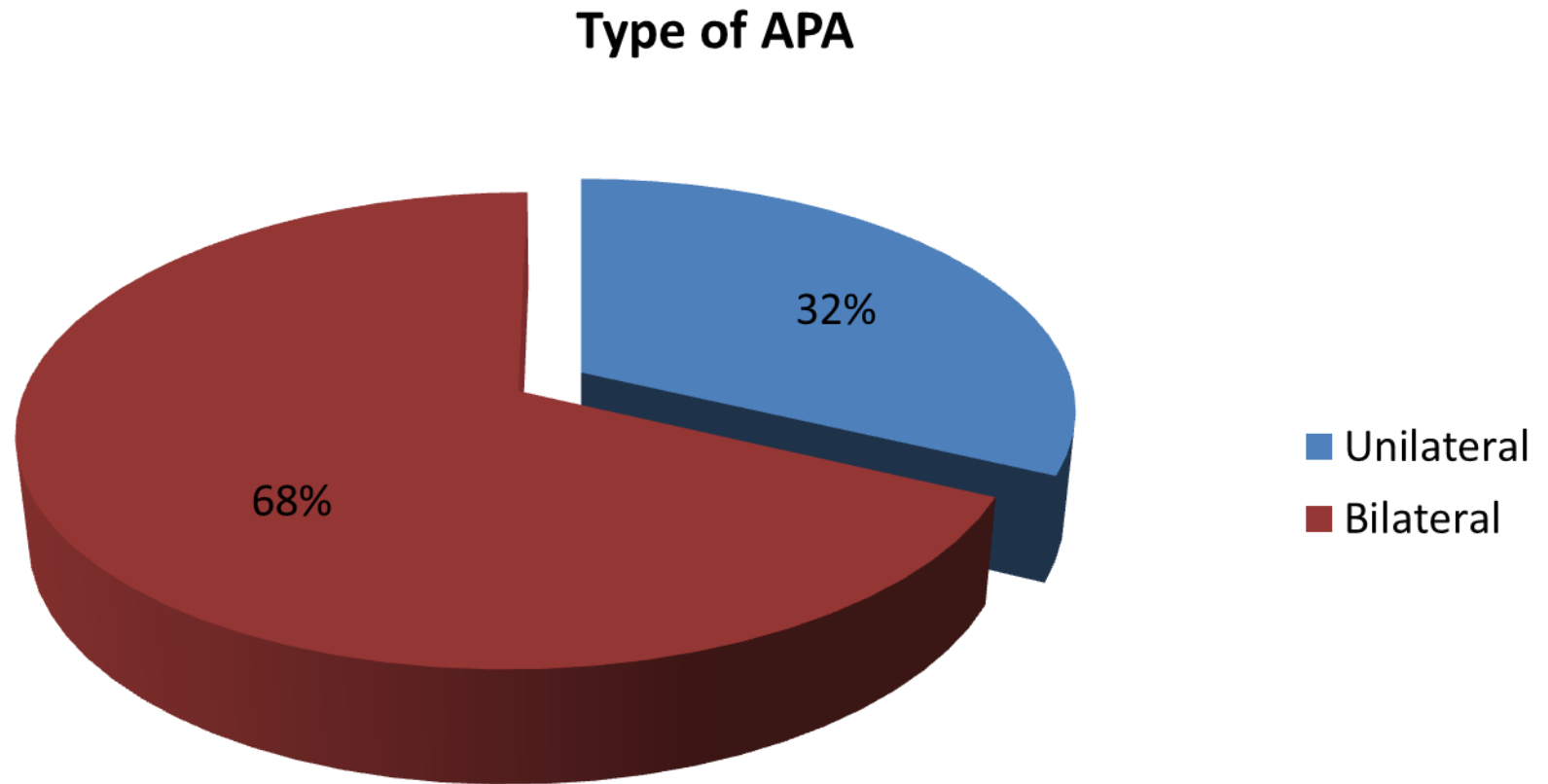
## 2- A new policy

- ...by new means
  - Close contacts with audit services
    - On French adjustments
      - for a quick access on useful details
      - to double check consistency
      - to ask for help on specific sectors
    - On foreign adjustments
      - to collect information about taxpayers
      - to see consequences on French taxpayers
    - To share results of negotiations

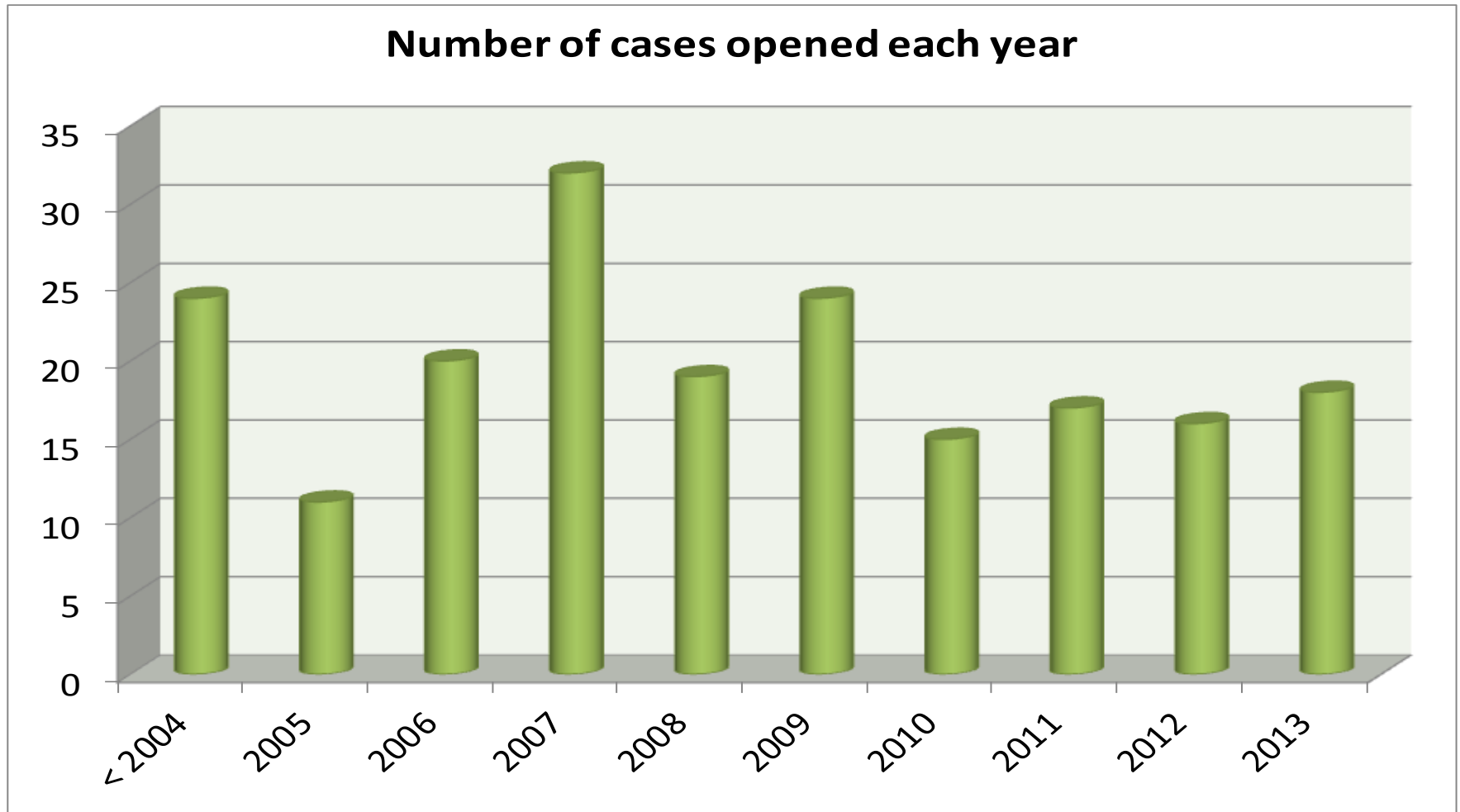
### 3- A flavor of what has been achieved till now

- APA
  - Taxpayers still interested
  - Requests often filed to decrease remuneration allocated to French entities
- MAP
  - More than 15 negotiation meetings with CAs in 7 months
  - A severe cleaning in progress to then be able to focus on important issues

### 3- A flavor of what has been achieved till now



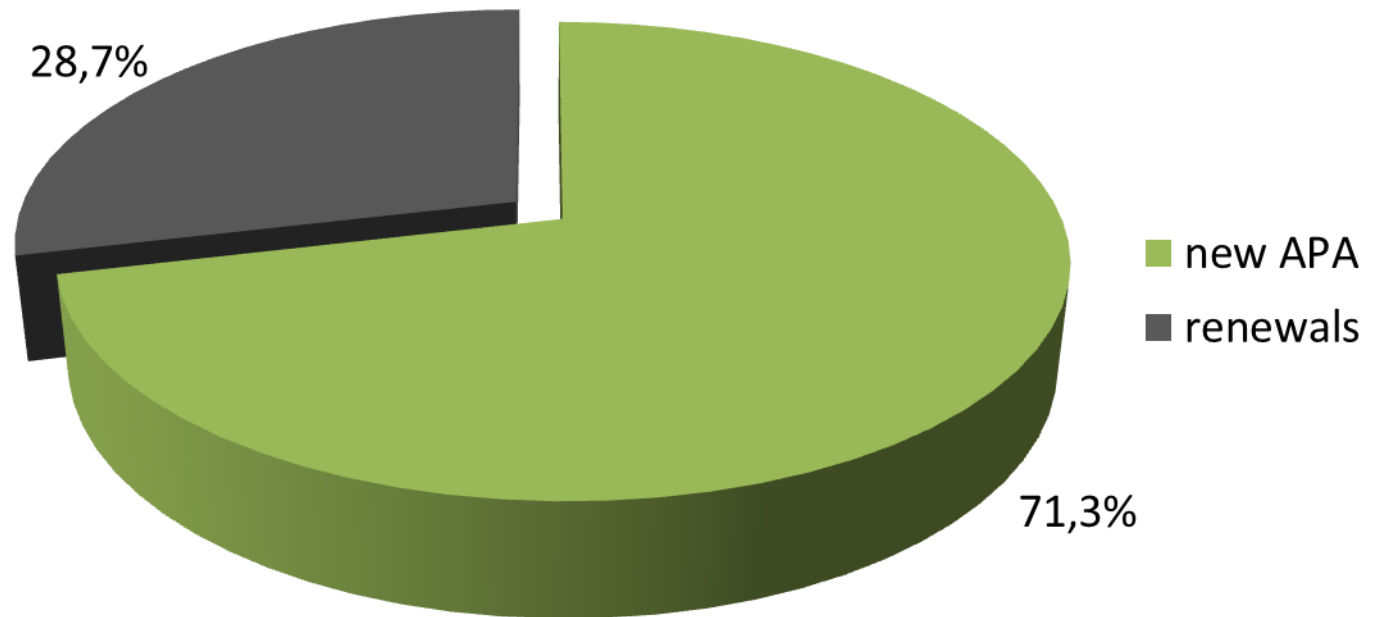
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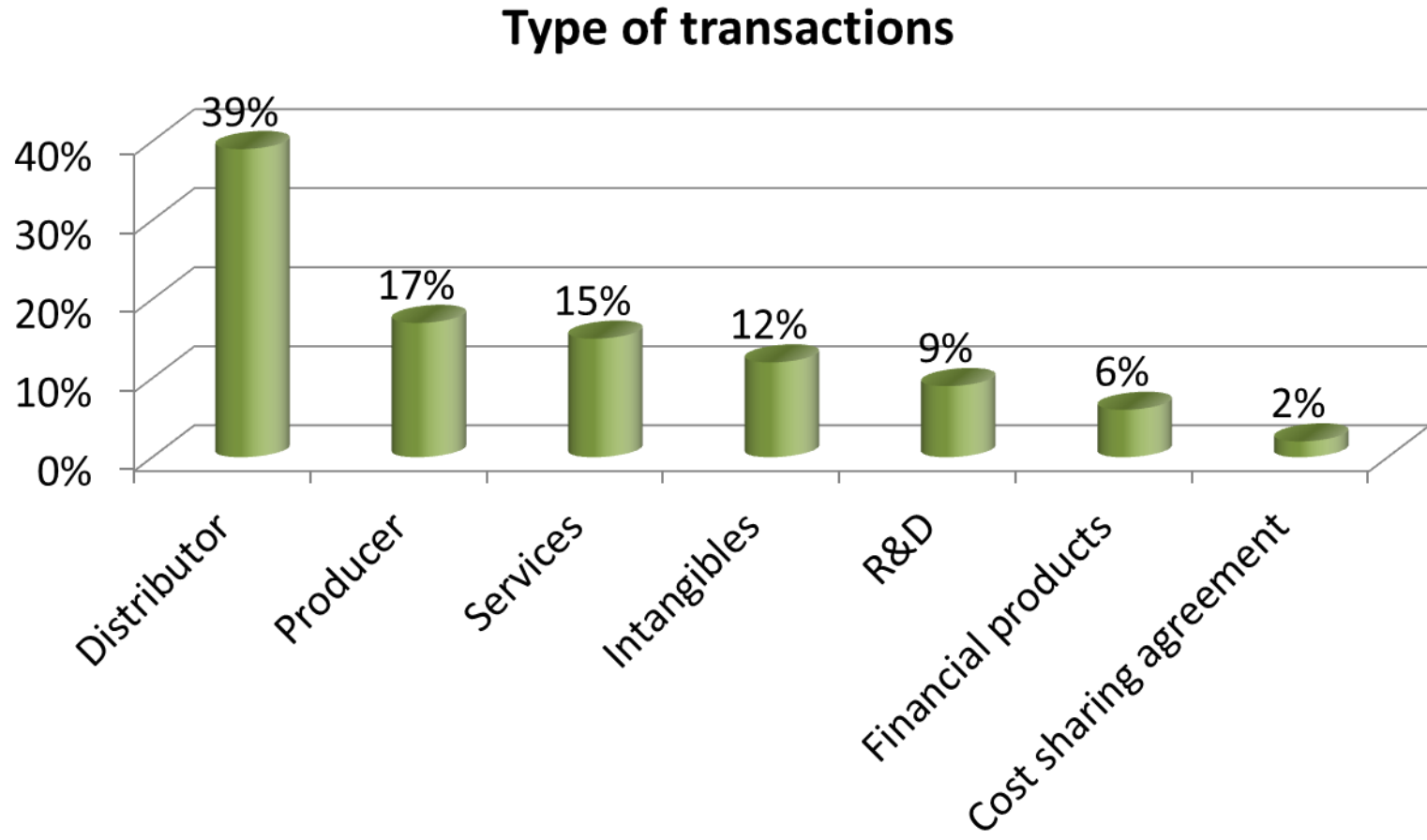


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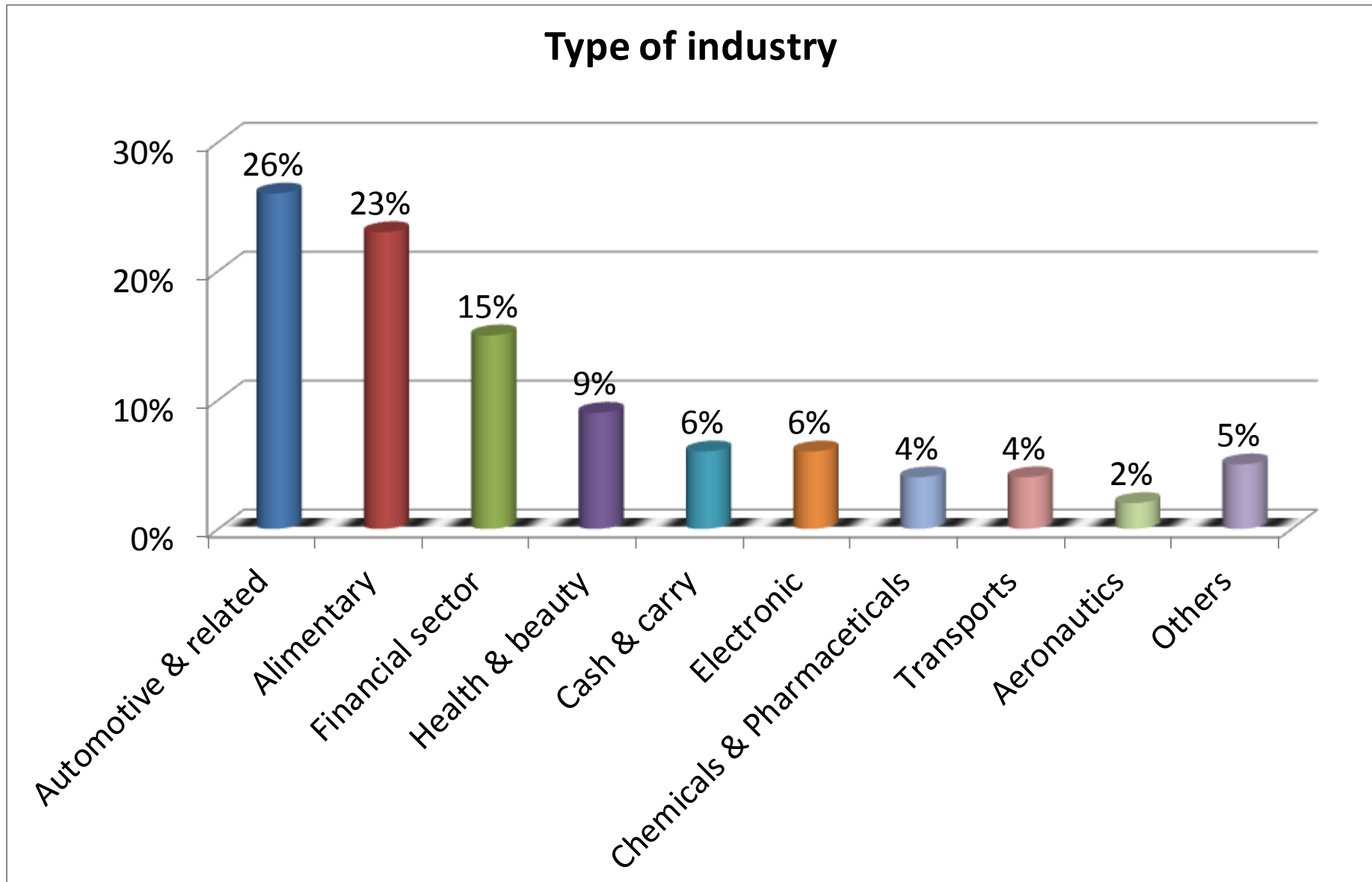
**Number of APA files (total 2000 - 2013)**



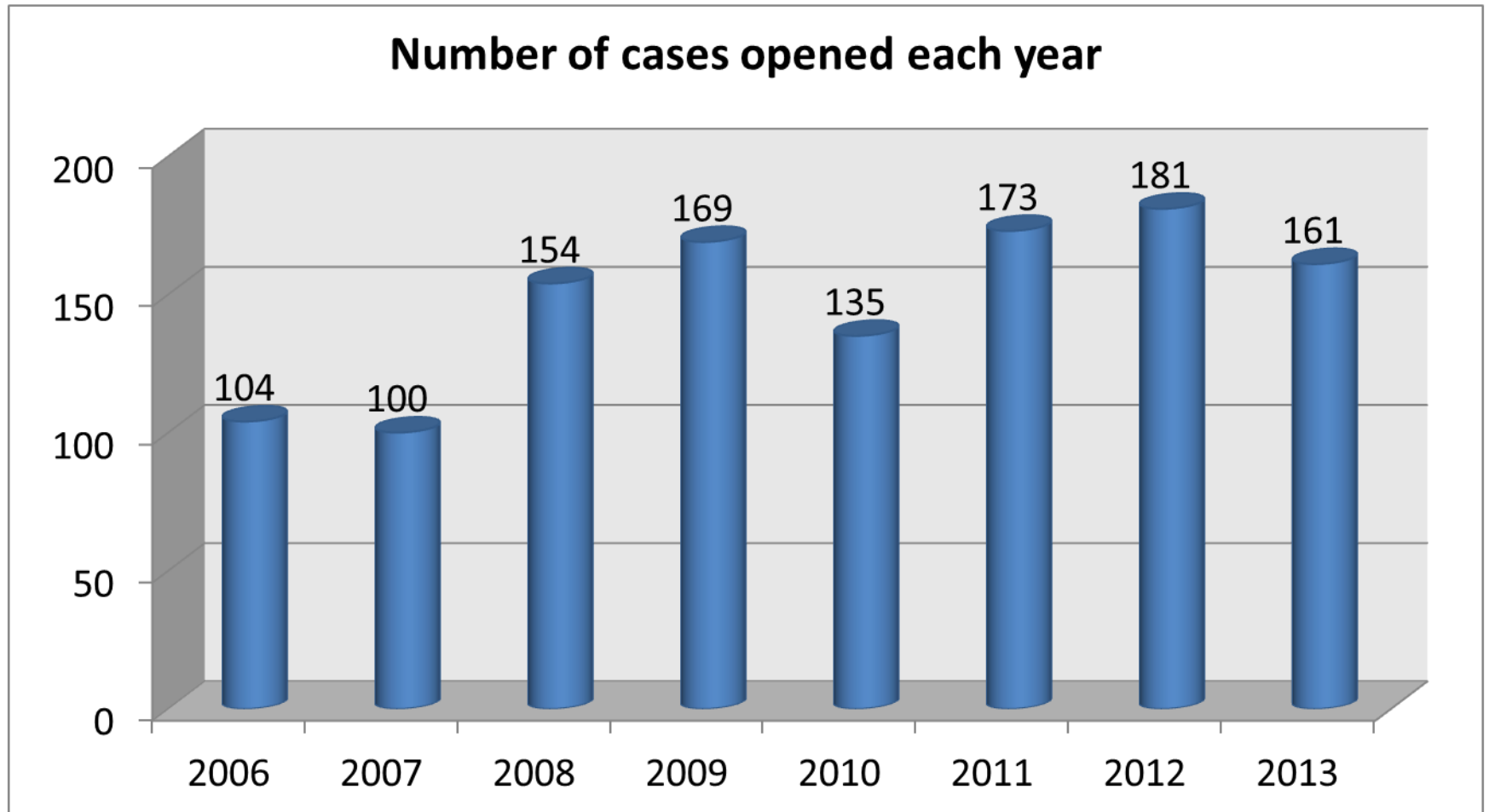
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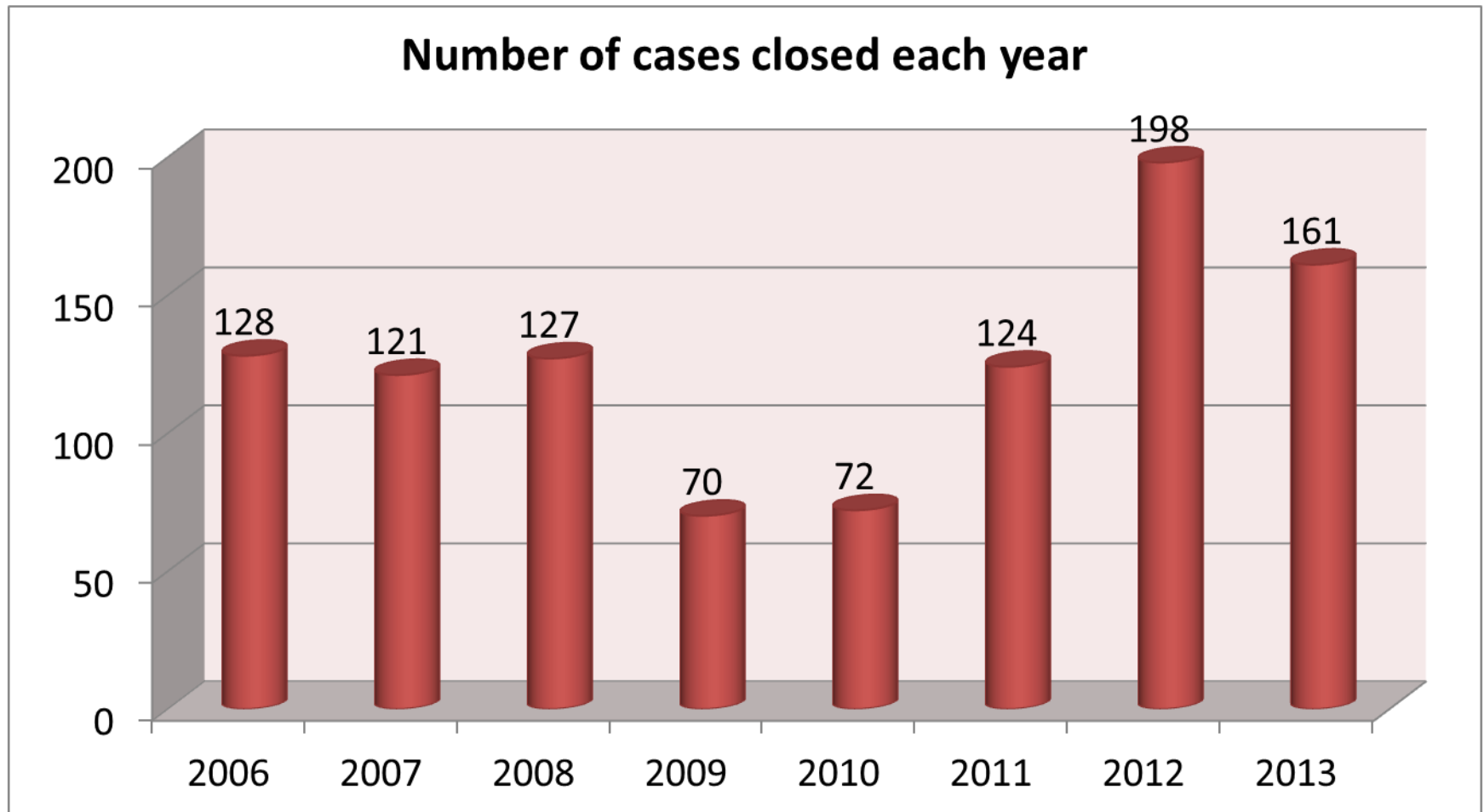
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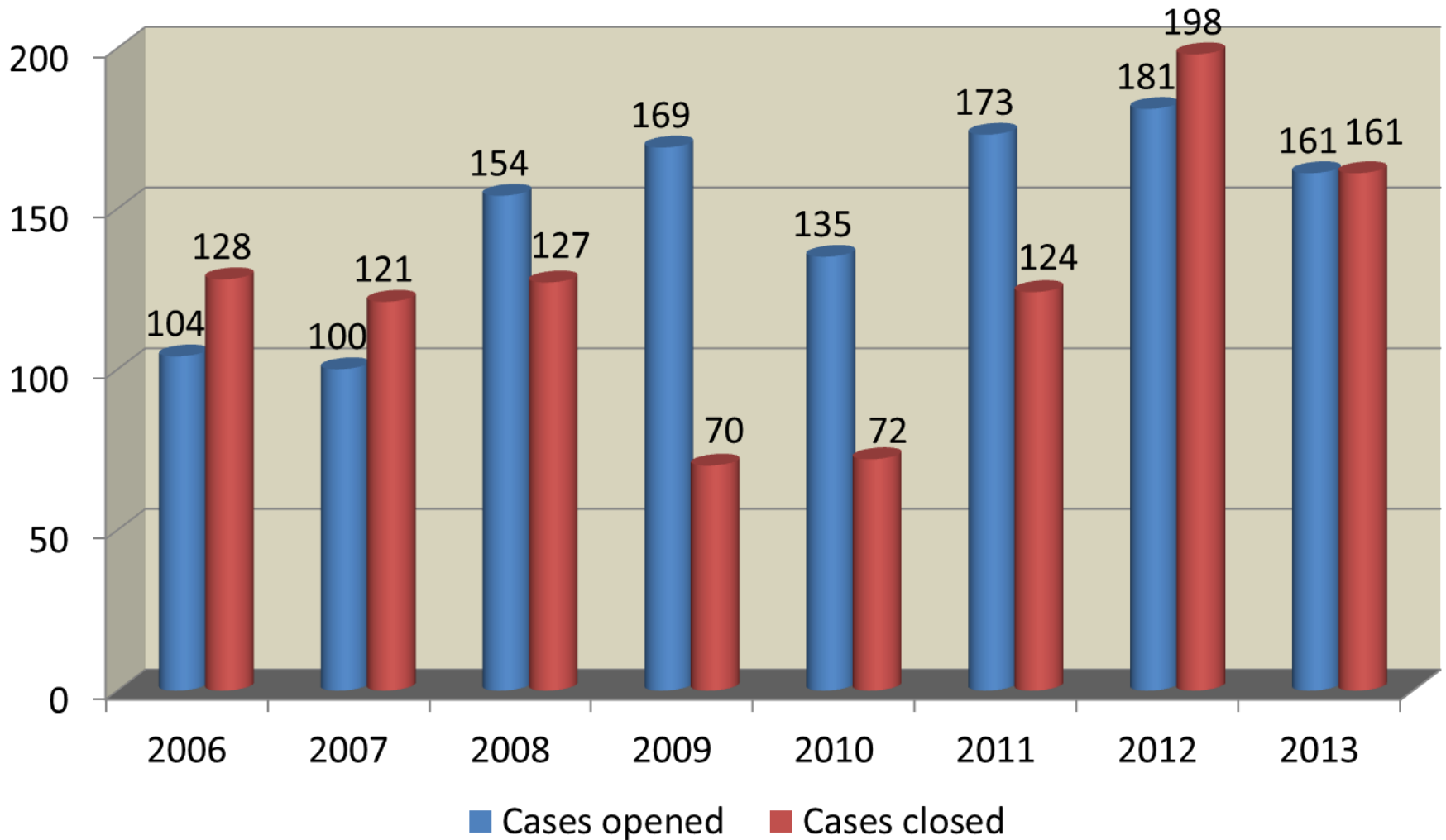
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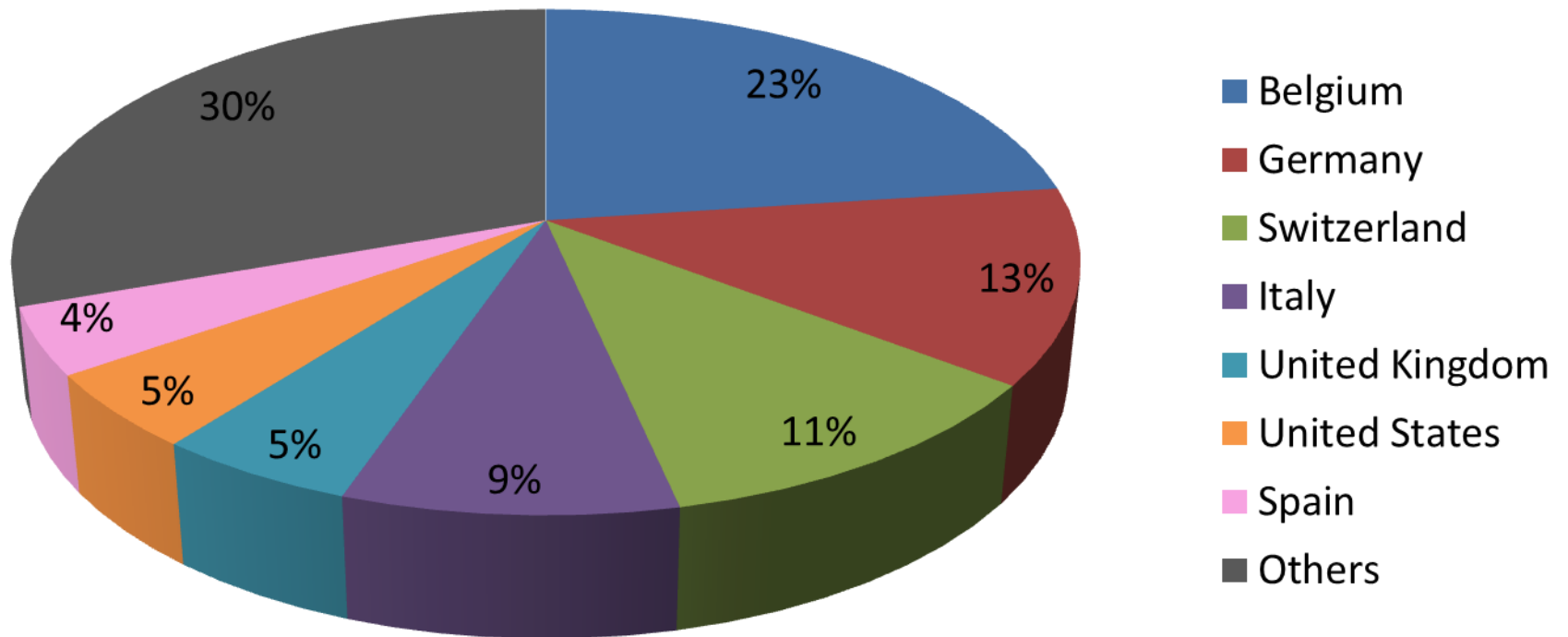


### 3- A flavor of what has been achieved till now



### 3- A flavor of what has been achieved till now

**Weight by country**



## 4- Number of challenges remain...

- In France
  - An important stock to reverse
    - old cases but new entrants want to be served quickly!
    - many taxpayers want to meet the team to provide detailed explanations
  - Is the resource increase sufficient?
  - Will taxpayers still be patient during the transitional period?



## 4- Number of challenges remain...

- General context
  - Need to be two at least to negotiate!
    - clear priority for France, but is it the same for other partners?
    - will of the new team to progress, but are taxpayers ready to collaborate?
  - What will be the impact of the BEPS works?
    - on future tax audits
    - on possible MAP improvements (on conventions and on practices)

## 5- Methods to be used during MAPs and APAs

- Principles

- France usually refers to OECD TP methods
  - Pledge of France to meet OECD standards
  - Common understanding with main partners
  - Scope broad enough to cover most transactions
  - However, TNMM, with NCP or ROS as PLIs, is often easier to use
- In some cases, specific methods, deviating from classical OECD methods, can be used
  - To ease MAPs negotiation
  - When substantiated by taxpayers in APA request, to fit very specific business or functions

## 5- Methods to be used during MAPs and APAs

- ***“exotic” methods... then careful double-check!***
  - Berry ratio
    - possible in MAP context
    - more difficult under APA procedure
  - Profit split with unusual allocation keys
    - number of products
    - theoretical gross margin
    - cost of goods sold

## 5- Methods to be used during MAPs and APAs

- Classical basis including specificities to embed automatic corrections in an APA
  - not to take into account the profit reduction of the region market
  - to look at severe market evolutions, based on market shares, turnover collapse, general decrease of activities...
- Need for a double-check... using classical methods
  - profit split
  - net margin

One single window

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# **Bilateral Meeting IFA** ***Italy and France***

## ***Italian Financial Transaction Tax***

**Venice, June 6, 2014**

**Speaker: *Paola Monica Giachetto***  
***(Italian Banking Association)***

**Chair: *Antonella Magliocco***



# The introduction of the FTT in Italy

## Background

The financial crisis and the political debate on the taxation of the financial sector:

- ❑ the desire to recoup revenues lost due to the crisis
- ❑ the general idea that banks are under taxed (VAT exemption for financial services)
- ❑ the assumption that it is necessary to limit activities with excessive risk



... large public support for a “Tobin tax”

# The introduction of the FTT in Italy

## Background



- ❖ 2010-2011 the case for some form of international levy on the banking system was explored by the International Monetary Fund and discussed by the G20 Nations
- ❖ September 2011 the European Commission published a first proposal for an EU-wide tax on financial transactions



End 2012: stability law for 2013

In this contest, following the example of France, Italy decided to push ahead with its own domestic FTT

*Experience from the past: tax on stock exchange contracts, repealed as from 31 December 2007*

- 1. Scope: taxable instruments**
- 2. Taxable transactions**
- 3. Taxpayers**
- 4. Exemptions**
- 5. Collection**
- 6. Other remarks/specific issues**

# THE YEAR SINCE THE ITALIAN FTT WAS INTRODUCED



**Approval of the law: end of 2012**

- ❖ **Implementation date for shares (equity): 1<sup>st</sup> March 2013  
(HFT on equity included)**
- ❖ **Implementation date for derivatives: 1<sup>st</sup> September 2013  
[postponed: the original implementation date was 1<sup>st</sup> July 2013]  
(HFT on derivatives included)**

# SCOPE : TAXABLE INSTRUMENTS

1. **Shares**, participating financial instruments and other instruments representing these instruments (e.g. ADRs) issued by Italian resident companies. Exemption for listed shares in Italian resident companies whose average market capitalization of less than EUR 500 million in the month of November for the year preceding the transfer of ownership

3. **High Frequency Trading**, as generated by a computer algorithm that automatically determines the decisions related to the relevant orders or metrics, where the ratio of orders amended or cancelled, in a time frame shorter than half a second exceeds 60% of total orders entered. The tax applies on HFT of eligible financial instruments (equity or derivatives, as described above)

2. **Derivatives**, whether cash or physically settled, securitized or not, whose underlying are in-scope Italian shares or where the derivative is by reference to the value of in-scope Italian shares, including options, warrants, covered warrants, certificates. Physical transfer of the relevant in-scope underlying securities are also taxed separately. The tax on derivatives applies provided that the underlying or reference value consists for more than 50 percent of the market value of the “equity” instruments (prevalence criterion). Where the underlying or reference value are represented by measurements on shares or indices, the prevalence criterion is carried out on the shares or indices which the measurements refer to

# TAXABLE TRANSACTIONS


- ❖ **Tax on shares** and other equity such as instruments applies on purchases (transfers of ownership of the securities). The tax applies on the basis of **the net balance** of the transactions regulated daily, calculated for each liable person with reference to the number of securities traded on the same day and relating to the same financial instrument
- ❖ **Derivatives** are subject to tax at the time of their conclusion (subscription, negotiation or modification of the contract, transfer of ownership of transferable securities)
- ❖ **High Frequency Trading** The tax is calculated on a daily basis and is payable where - in a single trading day – the ratio between the sum of cancelled orders and modified orders, and the sum of entered orders and modified orders exceeds 60 per cent, with reference to the single financial instruments. For this purpose, only the orders cancelled or modified within half a second are taken into consideration. The tax is applied, for each trading day, on the value of the cancelled and modified orders exceeding the 60 per cent threshold

# TAXPAYERS

- ❖ **Tax on shares:** by the person to which the ownership of shares, participating financial instruments and securities representing equity investment is transferred, regardless of his place of residence and the place where the contract is concluded (tax borne by the buyer)
- ❖ **Tax on derivatives:** for the amount set into the [the Table 3 attached to] Law [No 228 of 2012] - by both counterparties of the transactions regardless of their place of residence and the place where the transactions have been concluded (each counterpart pays the amount resulting from Table 3)
- ❖ **High Frequency Trading:** by the persons that, by means of the algorithms provided in Article 12, enter purchase and sale orders and the related modifications and cancellations

# EXEMPTIONS (SPECIAL RULES OR EXEMPTIONS UNDER LEGISLATION)

The main exemptions/exclusions are:

- ✓ Inheritance
  - ✓ Donations
  - ✓ Share issuance or cancellation
  - ✓ Bonds converted into new shares
  - ✓ New shares subscribed out of a rights issue
  - ✓ Delivery of new shares as part of a derivative contract
  - ✓ ADR/GDR issued on newly issued shares
- 
- ✓ Lending and Borrowing
  - ✓ REPO contract defined as “buy-sell back” or “sell-buy back”
  - ✓ Securities pledged as collateral even in the case of full title transfer except cases where the guarantee is enforced
  - ✓ Transfer of ownership following a restructuring transaction
  - ✓ Intra-group transactions

# EXEMPTIONS (SPECIAL RULES OR EXEMPTIONS UNDER LEGISLATION

Other exemptions: transactions having as their counterpart:


- the European Union or the European institutions, the European Atomic Energy Community;
- the bodies covered by the Protocol on the Privileges and Immunities of the European Union or the European Central Bank and the European Investment Bank
- the central banks of the Member States of the European Union and the central banks and organizations managing also the official reserves of other States
- bodies or international organizations established in accordance with international agreements enforced in Italy



The transactions above are fully exempts (both counterparts)

The following transactions are exempt only with respect to a single party to the transaction (so that the counterpart is liable to payment of the tax):

- transactions effected during market making activities
- transactions effected in the course of liquidity assistance activities



In addition,  
also pension funds are exempt from the tax



# The market makers exemption

Article 16(3)(a) of the Treasury Decree sets out the Italian FTT exemption for market makers

The tax does not apply to transactions in chargeable equities and chargeable derivatives executed in the context of “market making activities”, **as defined in article 2(1)(k) of Regulation 236/2012 of 14 March 2012 of the European Parliament and of the Council on short selling** and certain aspects of credit default swaps (the Short-Selling Regulation) and in **document ESMA/2013/158** «Guidelines on the exemption of market-making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of Credit Default Swap” of 1 February 2013 (the Final ESMA Guidelines)»

For countries not covered by Regulation 236/2012, market makers will have to provide Consob (the Italian financial market regulator) with a **specific** request. This request would allow them to be recognized as an exempt market maker

Consob has issued an exemption procedure available on their website

## **a. Who collects the tax**

Intermediaries (Italian resident and non-Italian resident): banks, trusts and investment companies involved in the execution of the transactions, as well as the notaries involved in the drawing up or authentication of deeds concerning the above-mentioned transactions. In the other cases the tax shall be paid by the taxpayer

Where multiple intermediaries are involved in executing the transaction (chain of intermediaries), the tax is paid by the intermediary directly receiving the purchase order from the purchaser or final counterpart

## **b. Timing of declaration**

An annual report is due by 31st March of the following year

## **c. Timing of payment**

The tax is due on the 16th of the month following the transfer of ownership (but the first payment date was postponed to 16<sup>th</sup> October 2013 for the period from March to September 2013)

## **d. role and control by the tax authority**

According to the Guidelines for Payment and reporting published by the Italian Tax Authority (Measure of the Commissioner of Italy Revenue Agency of 18th July 2013) the control is based on the introduction of a special register of transactions

# COLLECTION

**Banks and other intermediaries responsible for tax payment are required to maintain a dedicated electronic register of the transactions for cash equities, equities derivatives and HFT**

- records have to be kept in chronological order
- must be made available for inspection to the ITA and maintained until expiration of the terms defined by the Decree n. 633/1972 Art. 39 (presently set to five years).
- transactions have to be recorded prior to the monthly payment
- the register format is provided in the guidelines
- specific exempt or excluded transactions have to be included (examples: Repo and securities lending; Intercompany transactions; Transactions for which the intermediary acts as riskless principal; Transactions involving sovereign entities; Transactions executed by market makers, etc.)

Asset Managers, Portfolio Managers, Fiduciary and Trust companies and Public Notaries where they are responsible for the payment of the tax must file and make available the documentation related to the transaction and will create a daily register in chronological order. Alternatively they may maintain the Register as per the specifications of the Provision. Private individual taxpayers shall keep evidence of the transaction (e.g. banking statements)

# The role of «Monte Titoli»

- The Ministry Decree of 22 February 2013, art. 19 comma 5, states that accountable parties can appoint Monte Titoli, in its role of Central Securities Depositary according to Art. 80 of the TUF, in order to submit reports and tax payments to the Italian Tax Agency



Therefore, the following accountable parties may sign a special contract with MT:

- Entities directly responsible to declare and pay taxes
- Permanent establishments of non-resident entities responsible for tax payments
- Tax representative of non-resident intermediaries

The service offered by MT includes:

- 1) upload of declarations
- 2) payment advices
- 3) cash settlement in favor of the Tax Agency
- 4) reporting of the amount to be paid on a monthly basis to the Tax Agency
- 5) annual declaration, to report the tax amount paid in a year

# OTHER REMARKS/SPECIFIC ISSUES

## Rate(s)

### 1) Shares

- 0.1% (0.12% in 2013) on transactions taking place on regulated markets and on multilateral trading systems;
- 0.2% (0.22% in 2013) of the value of the transaction otherwise (over the counter)

### 2) Derivatives

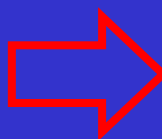
*The tax is a fixed amount determined by taking into account the type of instrument and the value of the contract, as per the below table*

### 3) High frequency trading

The rate of 0.02% is applied on the value of the cancelled or modified orders exceeding for each trading day 60% of the submitted orders

Financial instrument	Notional Value of the contract (in thousands of Euro)							
	0-2.5	2.5-5	5-10	10-50	50-100	100-500	500-1000	Higher than 1000
- Futures, certificates, covered warrants and options on yield, index or measures relating to shares	0.01875	0.0375	0.075	0.375	0.75	3.75	7.5	15
- Futures, certificates, warrants, covered warrants and options on shares	0.125	0.25	0.5	2.5	5	25	50	100
- Swaps on shares and related yield, index or measures - Forward contracts on shares and related yield, index or measures - Financial contracts for differences on shares and related yield, index or measures - Any other securities which provides for cash settlement determined in connection with shares and related yield, index or measures - Combinations of the contracts and securities above	0.25	0.5	1	5	10	50	100	200

## Other remarks



More specific and complex rules are provided for the application of the tax when non-Italian intermediaries are involved in the transaction

# REVENUE IMPACT

The original estimate made by the Government one year ago calculated an expected annual revenue of about € 1 billion

The latest information bulletin of the Italian revenue goes back to December 2013 : "The revenue recorded in the State Budget of the tax on financial transactions **in 2013** amounted to 260 million euro. This amount does not include the revenue for financial transactions that took place in the month of December



# THE EU PROJECT



## 1. The original proposal of 28 September 2011

In September 2011, the European Commission proposed a harmonized broad base Financial Transaction Tax

The proposal took a "triple A" approach, i.e. the tax should apply to **ALL** markets, **ALL** instruments (shares, bonds, derivatives etc.) and **ALL** actors, for the entire European Union

*By mid-2012, EU Finance Ministers decided at ECOFIN that they could not reach unanimous agreement on the proposal for an EU-wide FTT in the foreseeable future*

## 2. The proposal of 14 February 2013

On 14 February 2013, the European Commission tabled a proposal for a Council Directive implementing enhanced cooperation. As requested by the eleven Member States involved, this proposal mirrors the scope and objectives of the original FTT proposal, while also strengthening the anti-relocation and anti-abuse rules