TP DOCUMENTATION

Italian TP Documentation

- **TP Documentation** consists of a:
  - **Master File** that contains general information regarding the MNE group;
  - **Country File** that contains specific information regarding the single local enterprise and the application of the relevant transfer prices.

- The **Master File** and the **Country File** must be prepared in **Italian**
  - Only **sub-holding** companies, if they submit a master file regarding the entire group, may prepare their documentation in English. Generally the TP documentation has to be prepared on an annual basis (only SME are free to update the economic analyses included in documentation every three years, if no significant modifications have occurred in the relevant scenario)

Italian TP Documentation

- The TP Documentation is **not compulsory** under Italian law
    - However, if the taxpayer adheres properly to the transfer pricing documentation requirements, it may benefit from **penalty protection** (i.e. penalties not applied, should the relevant tax audit result in a tax adjustments of transfer prices);
- In order to benefit from penalty protection, the taxpayer must communicate to hold the TP documentation upon filing the tax return for the relevant year. Italian Revenue Agency may request during a tax inspection to the taxpayer to disclose the documentation.

Country-by-Country Reporting

- Italy introduced a **country-by-country reporting (CbCr)** obligation in its 2016 budget law in accordance with action point 13 of the OECD BEPS. In particular:

  i. parent companies resident in Italy for tax purposes, required to submit group consolidated financial statements and with consolidated revenues in the previous tax year of at least EUR 750 million; and

  ii. subsidiaries resident in Italy for tax purposes and controlled by a foreign entity resident in a country in which a CbCr obligation has not been implemented or in a country which does not allow an actual exchange of information with Italy;

  will be required to submit an annual report to the IRA indicating revenues, profits before tax, income tax paid and due, and other relevant elements of the effective economic activity performed, for each country in which the group operates.

Country-by-Country Reporting

- An **administrative penalty** ranging from EUR 10,000 and EUR 50,000 applies in the case of omission or incomplete filing of the required report;

- Within 90 days from the entry into force of the Law, the Ministry of Economy and Finance will issue a Ministerial Decree providing for specific implementing rules. But at the moment, no Decree has been published.

Transfer Pricing

ADMINISTRATIVE APPROACHES TO AVOIDING AND RESOLVING TRANSFER PRICING DISPUTES

Transfer Pricing

- **Tools to prevent/takle tax assessments**:
  - **Advance Pricing Agreement**
    - Unilateral
    - Bilateral
  - **Mutual Agreement Procedure**
    - DTC MAP
    - AC MAP

Advance Pricing Agreements (APA)

- **APA definition**:
  - *Arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time (Para. 4.123 TPG);*

- **General remarks**:
  - APA may cover several or all of a taxpayer's international transactions for a given period of time;
  - APA is formally initiated by the taxpayer;
  - It requires negotiations between the taxpayer and one or more tax administrations;
  - The tax administrations should provide confirmation to the associated enterprises that no transfer pricing adjustment will be made as long as the taxpayer follows the terms of the arrangements;
  - There should also be a provision in an APA that provides for possible revision or cancellation of the arrangement for future years when business operations change significantly, or when uncontrolled economic circumstances critically affect the reliability of the methodology in a manner that independent enterprises would consider significant for purposes of their transfer pricing.

Advance Pricing Agreements (APA)

- **Unilateral APA:**
  - Arrangement concluded between the taxpayer and the Tax administration in its jurisdiction without the involvement of other interested tax administration;
  - May affect the tax liability of associated enterprises in other jurisdictions.
- **Bilateral and Multilateral APA:**
  - Arrangements concluded between the taxpayer and the tax administrations of the two (or more) jurisdictions involved by the transactions;
  - Reduce the risk of double taxation;
  - Provide greater certainty to the taxpayers concerned.

Advance Pricing Agreements (APA)

- **Advantages of APA**:

  - It eliminates uncertainty through enhancing the predictability of tax treatment in international transactions;

  - By predicting tax liabilities it provides a favorable tax environment for investments;

  - May prevent costly and time consuming examinations and litigations of major TP issues for taxpayers and tax administration;

  - Bilateral and multilateral APA substantially reduce or eliminate the possibility of juridical or economic double or non-taxation;

Advance Pricing Agreements (APA)

- **Disadvantages related to APA**:
  - Unilateral APAs may not lead to an increased level of certainty for the taxpayer involved and a reduction in economic or juridical double taxation since other tax administrations may disagree with the APA's conclusion;
  - It may allow tax administrations to make a closer study of the transactions at issue than would occur on a TP examination;
  - Possible tax administration misuse of information disclosed in APA procedure;
  - APA procedure may not be available to small taxpayers because of its costs and time required.

Mutual Agreement Procedure (MAP)

- **General remarks**:
  - The mutual agreement procedure is a well-established means through which tax administrations consult to resolve disputes regarding **double taxation**
- **Legal framework:**
  - **Art. 25** of the **OECD MC**;
  - **Convention** on the elimination of double taxation in connection with the adjustment of profits of associated enterprises **90/463/EEC** of 23 July 1990.

Mutual Agreement Procedure (MAP)

- **Coverage of Art. 25 of the OECD MC**:
  - Instances of **taxation not in accordance with the provisions of the Convention** (Paragraphs 1 and 2 of the Article);
  - **Interpretation or application of the Convention** (Para. 3);
  - **Elimination of double taxation in cases not otherwise provided for in the Convention** (Para. 3);
  - **Economic double taxation** arising from **transfer pricing adjustments** made pursuant to paragraph 1 of Article 9 OECD MC (as explicitly stated by Para.9 of the Commentary on Art. 25 OECD MC).

- **Coverage of the Convention 90/463/EEC** of 23 July 1990**:**
  - Double taxation occurring between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State;
  - Attribution of profits and free capital to a permanent establishment;
  - Applicable only among EU Countries.

Mutual Agreement Procedure (MAP)

- **Commitment to reach an Agreement**:
  - **Art. 25 of the OECD MC:**
    - As to 2008 tax authorities were not obliged to reach an agreement;
    - After the introduction of Para. 5 to art 25 OECD MC, in 2008, should the tax authorities do not reach an agreement within 2 years from the opening of the procedure, the case shall be submitted to arbitration (obligation to reach an agreement);
    - Almost none of the double tax treaties signed by Italy include Para. 5 of Art. 25 OECD MC.
  - **Convention 90/463/EEC** of 23 July 1990**:**
    - Tax authorities are obliged to reach an agreement

Transfer Pricing

OECD/G20 BEPS Project

OECD/G20 BEPS Project

- **BEPS Goals:**
  - Providing comprehensive and coherent solutions to **Base Erosion and Profit Shifting** (BEPS);
  - Securing revenues by realigning taxation with economic activities and value creation;
    - Creation of a single set of consensus-based international tax rules to address BEPS;
    - Protect tax bases while offering increased certainty and predictability to taxpayers;
    - Elimination of double non-taxation;
  - OECD and G20 countries, working together on an equal footing, adopted a 15 **Action Plan** to address BEPS.

OECD/G20 BEPS Project

- **BEPS Framework**:
  - Publication of BEPS Action Plan in July 2013;
  - Three main themes:
    i. Restoring the full effects and benefits of international standards; through realignment of taxation and substance
    ii. Coherence of corporate taxation at the international level;
    iii. Transparency , coupled with certainty and predictability;
  - Two other themes:
    iv. Digital economy;
    v. Swift implementation of measures;
  - Final reports delivered in October 2015.

Action Plan

Action 1 - Addressing the tax challenges of the Digital Economy			
*i) Establishing international coherence of corporate taxation (**Coerenza**)*	*ii) Restoring the full effects and benefits of international standards (**Sostanza**)*		*iii) Ensuring transparency while promoting increased certainty and predictability (**Trasparenza**)*
Action 2 Neutralsing the Effects of Hybrid Mismatch Arrangements	**Action 6** Preventing the granting of Treaty Benefits in Inappropriate circumstances		**Action 11** Measuring and Monitoring BEPS
Action 3 Designing Effective CFC Rules	**Action 7** Preventing the Artificial Avoidance of PE Status		**Action 12** Mandatory Disclosure Rules
Action 4 Limiting Base Erosion involving Interest Deductions and Other Financial Payments	*Assure that transfer pricing outcomes are in line with value creation*	**Action 8** Intangibles	**Action 13** TP Documentation and Country by Country Reporting
Action 5 Countering Harmful Tax Practices more effectively taking into account transparency and substance		**Action 9** Risk and Capital **Action 10** Other high-risks transactions	**Action 14** Making Dispute Resolution Mechanisms more effective
Action 15 - Developing a Multilateral Instrument to Modify Bilateral Tax Treaties			

Action Plan

- **Action 1 -** Addressing the Tax Challenges of the Digital Economy
- **Action 2 -** Neutralising the Effects of Hybrid Mismatch Arrangements
- **Action 3 -** Designing Effective Controlled Foreign Company Rules
- **Action 4 -** Limiting Base Erosion Involving Interest Deductions and Other Financial Payments
- **Action 5 -** Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance
- **Action 6 -** Preventing the Granting of Treaty Benefits in Inappropriate Circumstances
- **Action 7 -** Preventing the Artificial Avoidance of Permanent Establishment Status

Action Plan

- **Actions 8-10** - Aligning Transfer Pricing Outcomes with Value Creation
- **Action 11** - Measuring and Monitoring BEPS
- **Action 12** - Mandatory Disclosure Rules
- **Action 13** - Transfer Pricing Documentation and Country-by-Country Reporting
- **Action 14** - Making Dispute Resolution Mechanisms More Effective
- **Action 15** - Developing a Multilateral Instrument to Modify Bilateral Tax Treaties