

**Master in International Taxation**

(University of Hamburg)

**Master in Pianificazione Tributaria Internazionale**

(Università di Roma Sapienza)

**Corso Superiore di Polizia Tributaria**

(Guardia di Finanza)

**2<sup>nd</sup> Joint Seminar**

**Tax Havens in the Age of Global Standards:  
a Comparative Analysis between Germany and Italy  
(University of Hamburg, 4<sup>th</sup> March 2011)**

*1. Anti-Avoidance rules - General Aspects*

Dott.ssa Paola Batalocco



- Aim at preventing taxpayers from realizing tax avoidance practices
- Many of those regulate problems and cases caused by relationships between resident companies or individuals and companies resident in the so called *tax havens*
- Coordinated approach vs unilateral measures



# Black list and White list

*Jurisdictional approach*

*or*

*Transactional approach*

?



- Regulation of the regime of income produced by a controlled foreign company, localized in a State endowed with a privileged tax regime.
- The scope is to attract in Italy the taxation of Italian residents' income, produced through the participation in a company resident in a tax haven



## Cost deductibility limitations

- Art. 110, par. 10 ITA does not allow the deduction of expenses and other negative elements, arising from transactions realized between resident companies and companies resident in States (not belonging to E.U.) endowed with a privileged tax regime.
- Par. 11 of art. 110, states that the par. 10 does not apply when the Italian company supply the evidence that the foreign enterprises carry out mostly an effective industrial or commercial activity or that the set transactions answer to an effective business interest and they have had a concrete.



## Participation exemption regime on dividends

- The Italian tax reform, provided by Legislative Decree n. 344/2003 has extended the exemption regime on dividends and capital gains also to resident shareholders of foreign companies, situated in a tax haven, under condition that the resident shareholder, through the ruling procedure under art. 167 ITC, demonstrates that his shareholdings had not had the effect of localizing the incomes in the tax haven.
- This legislative provision stresses the necessity that incomes, wherever it is the source place, are taxed.