Joint Seminar 2014 – Hamburg, 14-15 March 2014

BASE EROSION AND PROFIT SHIFTING
A comparison betwee Italy and Germany

IMPLEMENTING TRANSPARENCY IN TAX INFORMATION:
THE ITALIAN LAW ON VOLUNTARY DISCLOSURE

SAPIENZA
UNIVERSITÀ DI ROMA

Pietro SELICATO
Pietro.Selicato@uniroma1.it

Summary

- Prologue
- Transparency as a key factor in international taxation
- Transparency inside OECD Report and Action plan on BEPS
- OECD principles on Voluntary Compliance programmes
- An overview of Voluntary Disclosure rules in other countries
- Law Decree no. 4/2014: main features
- Law Decree no. 4/2014: critical issues

Prologue

- Italian assets abroad have been estimated in 200 bln/euro
- Law-decree 29-1-2014 no. 4: voluntary disclosure of capitals illegally held abroad (VD)
- No tax cuts, only reduction of administrative penalties was provided
- Amnesty for tax crimes

BUT

- Law-decree no. 4/2014 has been not approved
- VD measures will be included in a project of law to be presented by the Parliament majority
- Governments objectives: reduce costs and simplify the procedure to favor compliance (and get a significant revenue)
- Transparency and cooperative compliance is still an issue

Transparency as a key factor in int.l taxation

- It is a long time that tax cooperation has become central in international policies
- FATF standards 2012: tax crimes are included in money laundering
- Exchange of information is the main tool of tax cooperation

BUT

- Bank secrecy prevents exchange of information to be effective, helping taxpayers in carrying out behaviors aimed at hiding tax base
- A large number of States in the world still maintains bank secrecy
- Switzerland is still playing an extremely important role in EU capital investments market: how long Swiss bank secrecy will remain? (agreement SW-IT on exchange of info has not yet been signed)
- FATCA agreements increase transparency

Transparency as a key factor in int.l taxation

- International organizations addressed bank secrecy several times:
  - **G-20 2 April 2009 (London):** lack of transparency and failure to exchange of information should be vigorously addressed through a system of global rules recognized at the global level
  - **G-8 1 July 2009 (L'Aquila):** special attention must be given to use of tax havens and International tax cooperation through a set of global legal standard to be implemented as soon as possible
  - **G-20 19 April 2013:** Automatic exchange of info has been endorsed as the expected new standard.
  - **OECD 17 January 2014:** Global standard for automatic exchange of financial account information (FATCA requirements)
  - **Extension of authomatic exchange of info at**: dividens, capital gains and any other incime

- Directive no. 16/2011/UE (art. 18) overcomes bank secrecy does not abolish bank secrecy within the Member States for their relationships with their own taxpayers, but only tackles bank secrecy and abolishes it between Member States,

Transparency inside BEPS OECD Reports

- Tackling Aggressive Tax Planning through Improved Transparency and Disclosure (OECD, 2011)
- Cooperative compliance programmes: “exchange of transparency for certainty”
- Exchange of information in tax matters: inclusion of all jurisdictions in the expanding network of international co-operation

Other Countries

Offshore Voluntary Disclosure Program (USA):

- Permanent
- All taxes on investments abroad (income presumption 2%)
- Spontaneous and transparent

New Disclosure Opportunity (UK):

- Temporary
- No tax fraud and carrousel fraud covered
- All incomes, also domestic (10 or 20% penalty)
- Spontaneous and transparent

Other Countries

Régularisatione des avoirs à l'etranger (France):

•Temporary

•No illegal activities included

•Amnesty for tax crimes

•No reductions of taxes

•Spontaneous and transparent

Tax Amnesty Disclosure (Germany):

•Temporary

•Lump sum tax 25 or 35%

•No tax fraud and carrousel fraud covered

•Spontaneous and transparent

OECD principles on Voluntary Compliance

OECD Report (2010): Offshore Voluntary Disclosure. Comparative Analysis, Guidance and Policy Advice

- Voluntary Compliance (VC) programmes provide an **opportunity to facilitate compliance** in a timely and cost effective manner
- VC measures walk a fine line between providing **sufficient incentives** for those engaged in noncompliance to come forward and **not rewarding or encouraging** such conduct
- VC can maximize the benefits of improvements in transparency and exchange of information

Co-operative compliance is spreading in several EU Member States (OECD Study 2008): **favors confrontation**, and it is anchored more on **mutual trust** than on **enforceable obligations**

Law Decree no. 4/2014: critical issues

- Amnesty for criminal sanctions other than tax crimes
  (e.g. banks, professionals etc. for money laundering)
- Exclude taxation for small capitals
  (concept of small capital)
- Taxation of Income or taxation of Capital?
  (age of illicit transfers)
- Analysis vs. lump sum
  (simplification helps effectiveness)
- Temporary vs. Permanent regime
  (can compliance be conditioned by a deadline?)

Law Decree no. 4/2014: critical issues

IT-Swiss Forum 30-1-2014: how to get a VD "made in Italy and powered in Switzerland" (Swiss banks finance IT enterprises)

Unilateral approach not accepted by Switzerland

Agreement to be concluded within May 2014:

- **Swiss commitment:**
  (1) accept VD if all claims will be closed;
  (2) accept in the future only tax compliant capitals.
- **Italian committment:**
  (1) cancel SW by black list;
  (2) admit SW in the Italian financial market (at now no Swiss banks are asked to finance IT business: why??)
- **Remaining capitals:** parallel agreement regarding non discloses capitals. Intergovernment compulsory disclosure?

THANK YOU!