



SAPIENZA
UNIVERSITÀ DI ROMA



Universität Hamburg

DER FORSCHUNG | DER LEHRE | DER BILDUNG



5th Joint Seminar

Base erosion and profit shifting – BEPS

A comparison between Italy and Germany

13th -15th March 2014

DISCUSSION OF TAX PLANNING SCHEMES: THE “ALFA-BETA CASE”

By Lt. Col. Paolo Consiglio



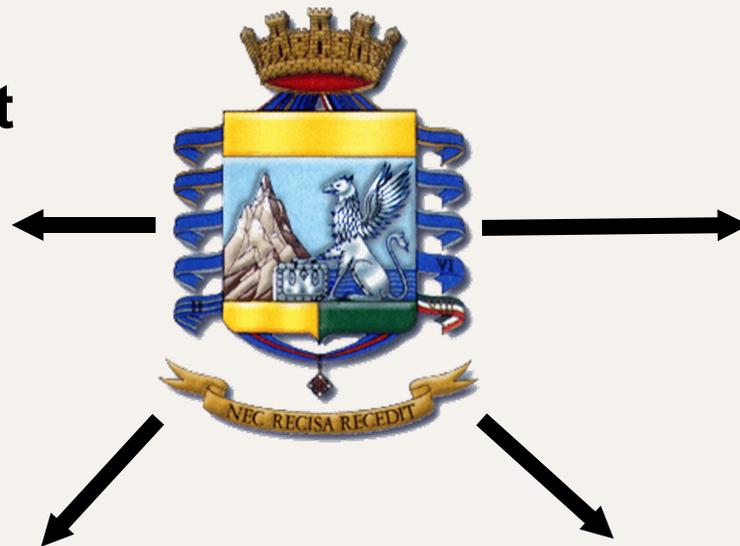
ACTIONS NO. 2/3 BEPS

Action	Description	Expected output	Deadline
2 – Neutralise the effects of hybrid mismatch arrangements	<i>Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on co-ordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be co-ordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.</i>	Changes to the Model Tax Convention	September 2014
		Recommendations regarding the design of domestic rules	September 2014
3 – Strengthen CFC rules	<i>Develop recommendations regarding the design of controlled foreign company rules. This work will be co-ordinated with other work as necessary.</i>	Recommendations regarding the design of domestic rules	September 2015



WHAT IS THE «GUARDIA DI FINANZA»?

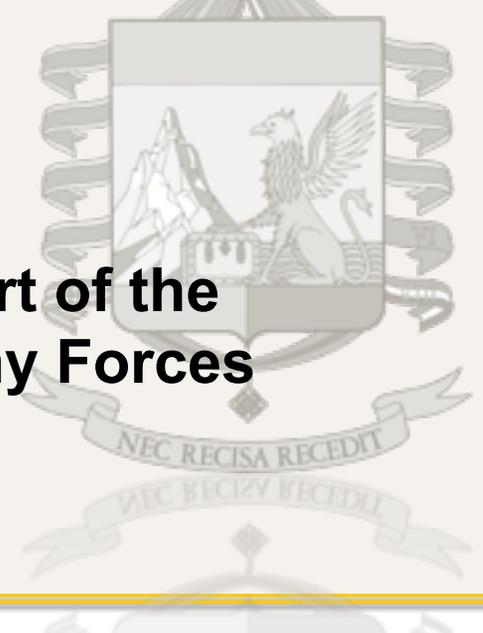
Under the direct
authority of the
Minister of
Economy and
Finance



Special
Police Corps

Military structure

Part of the
Army Forces





MISSIONS OF THE GUARDIA DI FINANZA



Public Finance

Economy

Incomes

Expenditures

Defence

Security



Market of goods and services



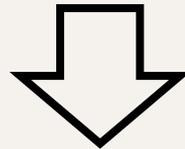
Market of capitals





«FICTITIOUS INTERPOSITION RULE»

art. 37, par. 3, presidential decree no. 600 of 1973



Tax authorities are empowered to attribute to a taxpayer income which appears to belong to other persons when it is proved (even through presumptions) that the former is the effective owner of such income by means of third parties

The burden of the proof is on the Tax Authority, who has to demonstrate that the “interponent” is the real owner of the taxable income (also through “simple presumptions”, *i.e.* presumptions characterized by seriousness, precision and consistency)





CASE LAWS



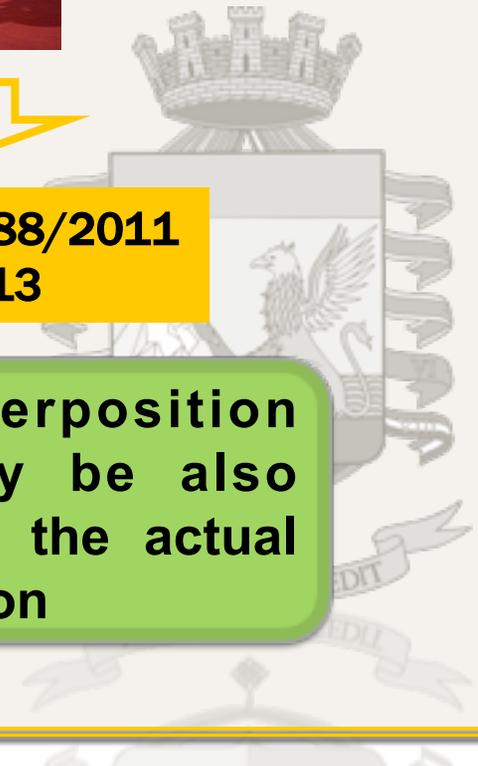
dec. no. 3979 /2000
and 8671/2011

VS

dec. no. 12788/2011
and 449/2013

Art. 37, par. 3, does not
provide the rule for the
so called actual
interposition

the “interposition
rule” may be also
applied to the actual
interposition



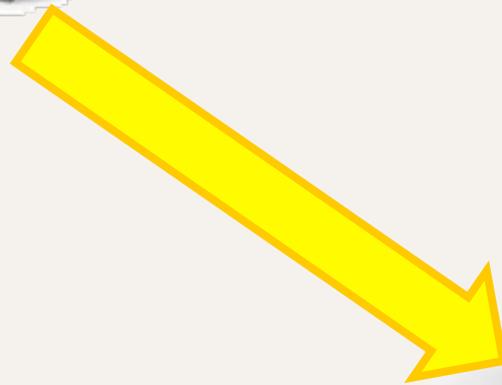
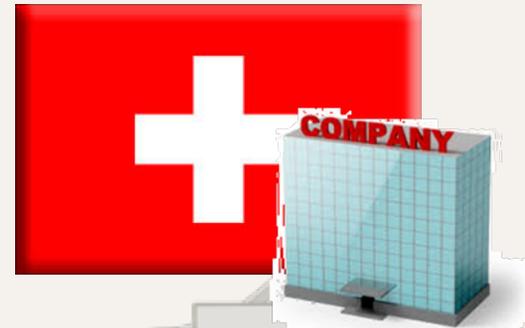


DISCUSSION OF TAX PLANNING SCHEMES: THE “ALFA-BETA CASE”

ALFA SRL



BETA AG





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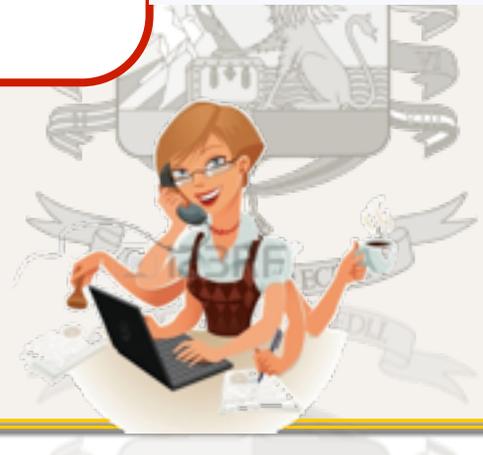
ALFA SRL



BETA AG

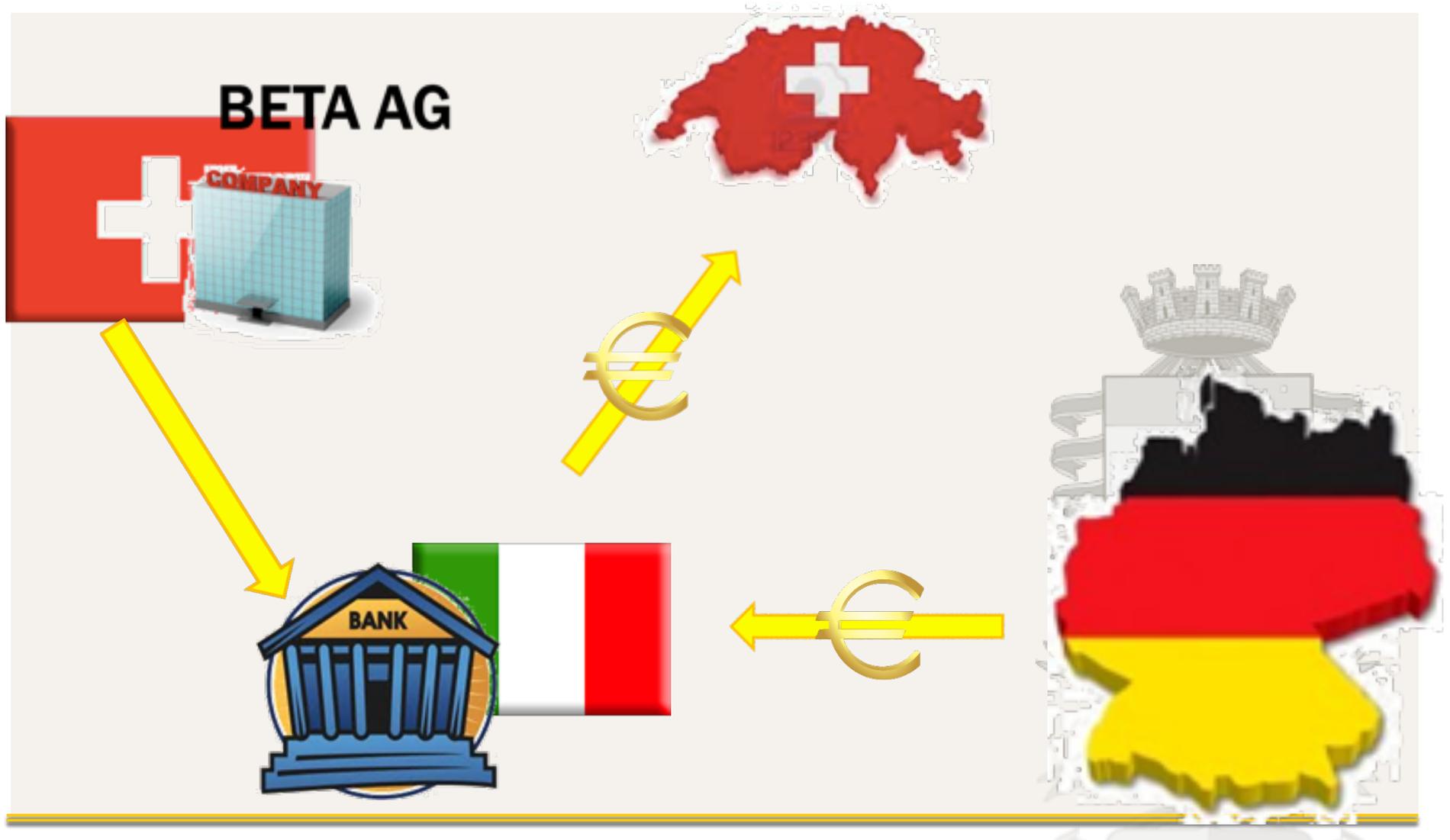


- data processing;
- language assistance;
- administrative office tasks;
- relationships with “Beta” customers;
- control upon the correct fulfilment of orders;
- logistic organization of transport services





DISCUSSION OF TAX PLANNING SCHEMES: THE "ALFA-BETA CASE"





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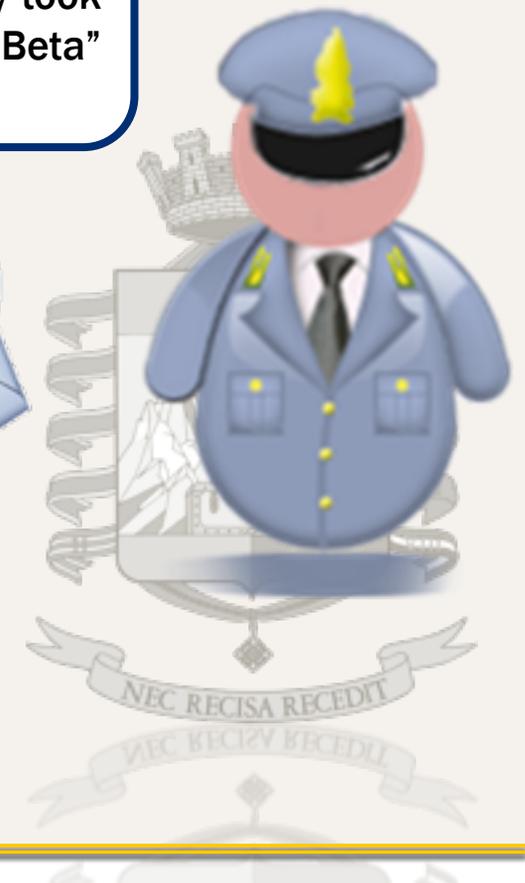
we also discovered that the bank account held in Italy by Beta was used to cash profits from sales, to transfer these sums to the company’s Swiss accounts as well as for the payment of some suppliers and various expenses. This account was used by the CEO and by selected employees of the Italian company “Alfa”





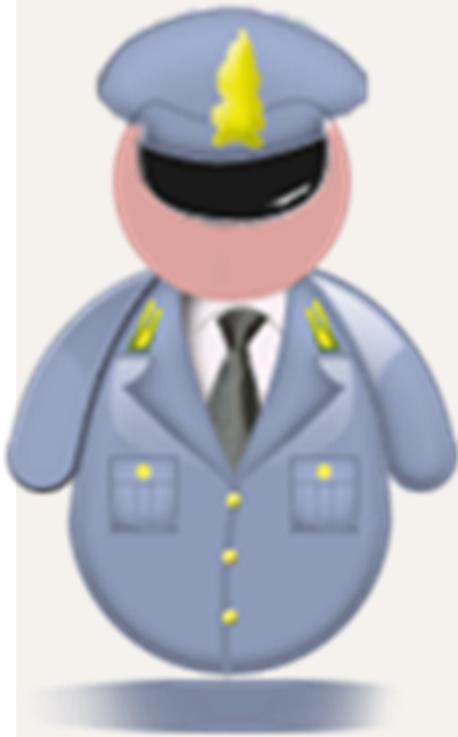
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the questionnaires sent and cross-checks of some Italian clients and suppliers of the Swiss company “Beta”, aimed at finding out the individuals acting on behalf of the company, confirmed that the business activity took place through “Alfa” main office, which clients and suppliers of “Beta” considered as the only contact point





THE “ALFA-BETA CASE”



The aim of the tax planning scheme was to transfer to Switzerland the income earned in Italy by “Alfa” in order to apply a very favourable taxation on company’s income. “Beta” was actually residing in a Swiss Canton having one of the lowest tax rates in Europe

Since the Swiss company was not carrying out any real activity in Italy and had been established with the exclusive aim of preventing the taxation in Italy of profits earned by Alfa, we established again “Alfa” income adding all incomes produced by “Beta” in Italy

In connection with years 2006-2010, we assessed undisclosed income for a total amount of over 49 million euro. Consequently, we reported “Alfa” CEO to the Judicial Authorities



Thank you !