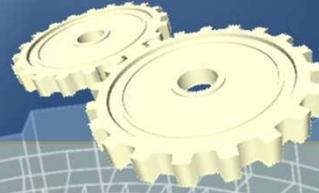


**The GdF's role in the compliance
with tax rules
International cooperation to fight
against tax evasion**



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The GdF: general features & mission



The Guardia di Finanza is an economic and financial police Corps that is placed under the direct authority of the Minister of Economy and Finance. It is organized along military lines and is an integral part both of the Armed Forces and of the Police Forces of Italy.

The mission of the Guardia di Finanza may be broken down by distinguishing between the fundamental economic and financial police mission and the so-called “shared” missions of the Corps.

The economic and financial police mission includes the financial area, regarding the revenues and expenditures of the State and of the European Union, and the economic area, regarding the safeguard of the capital market as well as the consumer and services markets.

The shared missions cover public safety, border defence and some services upon request by other public entities.

The GdF: personnel



Category	Authorized strength	Actual strength		
		Women	Men	Total
Officers	3.221	147	2.578	2.725
Senior NCOs	23.602	501	22.005	22.506
Junior NCOs	13.500	0	9.847	9.847
Senior Agents & Agents	27.807	248	25.960	26.208
Total	68.130	896	60.390	61.826

In order to fulfil its mission, the GdF numbers (as of December 2010) just shy of 62,000 personnel. In the slide you can see their breakdown in the various categories.

The GdF & the compliance with tax rules



The institutional task that I want to delve into today is the compliance with tax rules. The priority mission of the Guardia di Finanza, as an economic and financial police force, is the fight against tax evasion, which places a serious burden on the budget of the State, of the regions and of the local authorities.

For this reason, the Corps' plan of action, in fulfilment of the guidelines established by the Minister of Economy and Finance, aims specifically at continuing and stepping up efforts to recover undeclared taxes.

To that end, intelligence, risk analysis and economic control activities have been greatly intensified, with the aim to increasingly fine-tune the selection of checks made on individuals and economic categories with the highest level of tax evasion.

Among these, a priority action is the fight against international tax evasion and tax havens, and increasing efforts have been made in controlling individuals responsible for exporting capital illegally, as well

as people and businesses with fictitious residences or headquarters in countries with reduced levels of taxation, or which maintain trade relations with subsidiaries or subjects domiciled in off-shore locations.

Another priority action is the fight against VAT fraud, in relation to which the Corps has sharpened its focus on large “carousel fraud” organizations, which continue to seriously disrupt a number of segments of the national and European markets.

The experience gained, in fact, shows that the issuing of invoices for fictitious operations by means of “missing traders” for tax evasion purposes and the marketing of consumption goods at lower than market prices is an on-going phenomenon in the present scenario.



In order to fulfill the tasks related to the compliance with tax rules, Italian tax inspectors (both the Revenue Agency and the Gdf) are authorized to use within the national borders a wide set of powers to collect the proof of tax evasion.

Powers to fight against tax evasion



These powers are ruled by the Income Tax Law and the VAT Law, that provide:

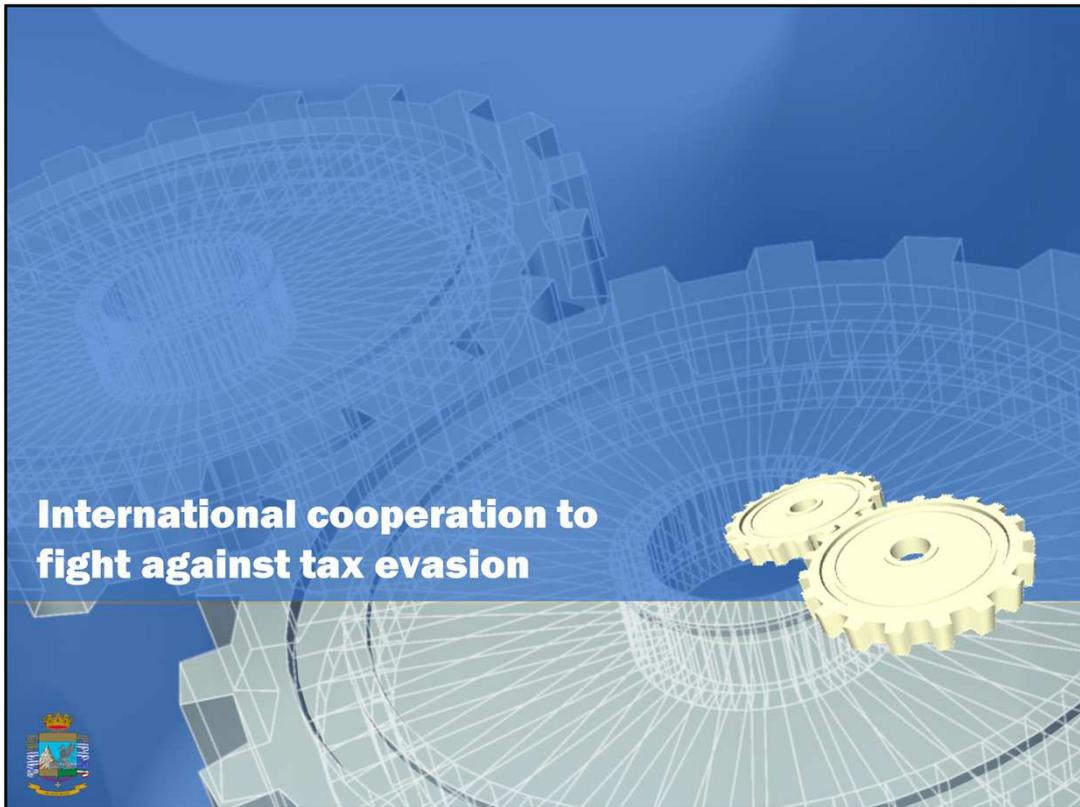
- powers to request documents and information to the taxpayer;
- powers to ask the taxpayer to present himself before the office;
- powers to make inspections in the residence and in the office of the taxpayer;
- powers to ask third persons, companies and the public administration to give information related to the taxpayer.

The subjects obliged to give cooperation to the tax authorities are:

- State administrations and public entities;
- Insurance companies;
- Agents of collection and payment;
- Notaries, Registrars of mortgages and charges, other public officers;
- Banks, financial brokers, investment companies and trust companies;
- Withholding agents;
- Building administrators;
- Finally, every other subject (in the Income Tax Law a residual

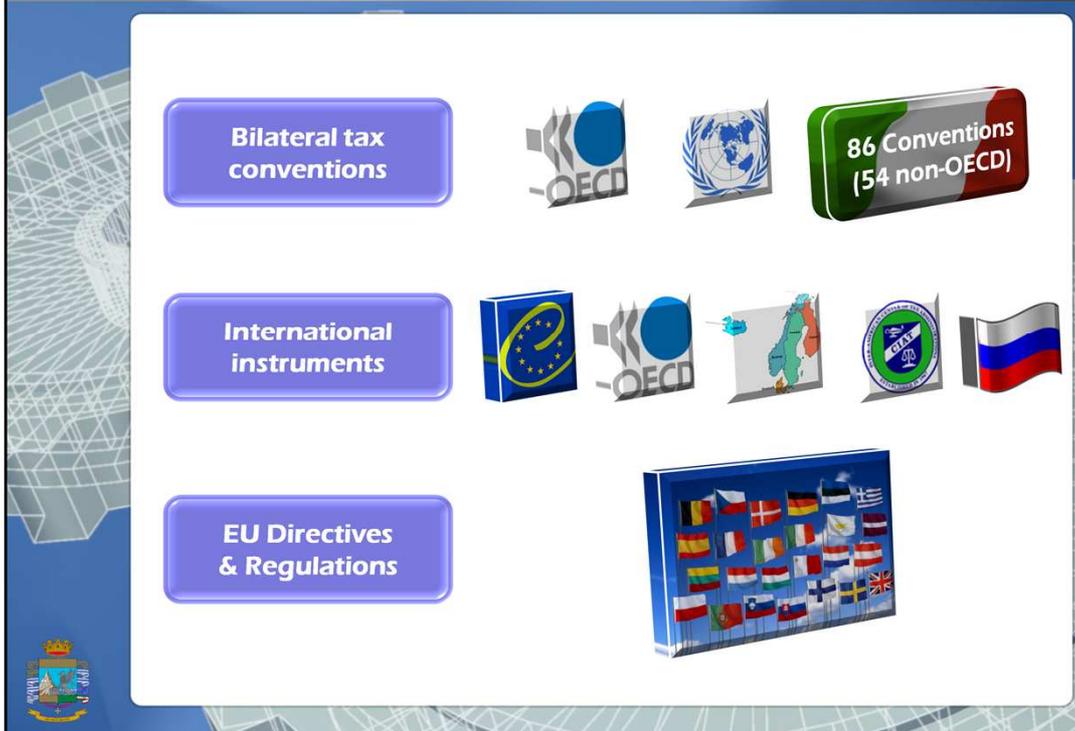
provision authorizes tax officials to ask everybody to show documents with fiscal relevance regarding specific relationships with one or more taxpayers).

As far as the acquisition of bank or financial information is concerned, this is only possible if the competent Authority (for the Guardia di Finanza: the Regional Commander) deems it necessary to issue – as provided for in the Tax Laws – the appropriate authorisation to obtain financial data and information from banks, trust companies, stockbrokers, and so on.



In the current scenario, where tax evasion, avoidance and frauds often involve international transactions, the powers provided for in the national legislation may not be adequate to fully investigate a tax case. The cooperation with foreign counterparts is therefore often necessary to complete the inspection activities.

Legal instruments



The legal instruments currently in force, which allow the Italian Tax Administration to exchange information on Income Tax and VAT with foreign authorities are:

- Bilateral tax conventions, which are generally based on the OECD Model Convention or the United Nations Model Convention. As of July 2010, Italy has signed 86 bilateral tax conventions, applicable to 92 countries (among these, 54 agreements are signed with non-OECD countries);
- International instruments designed specifically for administrative assistance purposes in tax matters, such as tax information exchange agreements generally based on the 2002 Model Agreement, the Council of Europe/OECD Convention, the Nordic Assistance Convention, the Model Agreement on the Exchange of Tax Information developed by CIAT or the Model Agreement on Co-operation and Mutual Assistance developed by the Russian Federation;

- EU directives and regulations, which provide detailed rules for exchanging information in tax matters between the Member States.

GdF's role

Ministry of Ec. & Fin.
Head Dpt. of Finance



Exchange on request Automatic exchange Spontaneous exchange

	2009		2010	
	Incoming requests	Outgoing requests	Incoming requests	Outgoing requests
Income Tax	139	156	211	243
VAT	1.005	1.002	1.092	1.777

While the Italian government, through the Head of the Department of Finance, within the Ministry of Economy and Finance, is responsible for the negotiation and signing of agreements, the practical implementation of conventions and treaties is delegated to specific services within the Tax Administration.

The General Head Quarter (GHQ) of the Guardia di Finanza has been designated, together with the Italian Revenue Agency, as the competent Authority for exchanges of information on request according to Directive 77/799/EEC and to current Conventions to avoid double taxation and prevent tax evasion.

As regards automatic and spontaneous exchanges, the task has been assigned respectively to the Revenue Agency and the International Relations Office of the Department of Finance.

In this framework, the Guardia di Finanza General Head Quarter acts in order to coordinate the flow of information with foreign authorities as well as with the Gdf operational units.

In the slide you can see some data concerning the exchange of information carried out by the GdF in 2009 and 2010, that, as you can see, has a growing trend.



Both the OECD Model Tax Convention and the 2002 Model Agreement are particularly interesting for the topic we are dealing with today. Considered that the latter will be described in depth by my colleague, I'll try to deal with the OECD Model Tax Convention, in particular with article 26.

General features

Most accepted legal basis
for bilateral exchange of
information



3000 +

Obligation to exchange
information on tax
matters



Since 2005: less
possibilities to reject a
request for information



Article 26 of the OECD Model Tax Convention provides the most widely accepted legal basis for bilateral exchange of information for tax purposes. More than 3,000 bilateral treaties are based on the Model Convention.

Article 26 creates an obligation to exchange information that is foreseeably relevant to the correct application of a tax convention as well as for purposes of the administration and enforcement of domestic tax laws of the contracting states.

The article was updated in July 2005, at which time paragraphs 4 and 5 were added. These paragraphs make it clear that a state cannot reject a request for information solely because it has no domestic tax interest in the information or solely because it is held by a bank or other financial institution.

Forms of information exchange



Article 26 provides for broad information exchange and does not limit the forms or manner in which information exchange can take place.

Exchange of information covers not only what is necessary for carrying out the provisions of the convention, but also all information that is foreseeably relevant to the administration or enforcement of the domestic laws of the contracting parties concerning taxes (“narrow clause”).

The main forms of information exchange are: on request, automatic and spontaneous. The Model Agreement only applies to the exchange of information on request, although the contracting parties may agree to expand their co-operation by including the possibility of automatic and spontaneous exchange. In particular:

- Exchange of information on request refers to a situation where the competent authority of one country asks for particular information from the competent authority of another contracting party;

- Automatic exchange of information typically refers to many individual cases of the same type, usually consisting of details of income arising from sources in the source country, e.g. interest, dividends, royalties, pensions etc. This information is obtained on a routine basis by the sending country and is thus available for transmission to its treaty partners;
- Spontaneous exchange of information occurs when one of the contracting parties, having obtained information in the course of administering its own tax laws which it believes will be of interest to one of its treaty partners for tax purposes passes on this information without the latter having asked for it. The effectiveness of this form of exchange of information largely depends on the ability of tax inspectors to identify, in the course of an investigation, information that may be relevant for a foreign tax administration.

There are also other forms of exchange of information besides the traditional ones described above, like:

- Simultaneous tax examinations, arranged by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of taxpayer in which they have a common or related interest with a view to exchanging any relevant information which they so obtain;
- Visit of authorised representatives of the competent authorities. We all know that travelling to a foreign jurisdiction for purposes of gathering information for a particular case may be useful in certain circumstances. However, this visit has to be authorized by the foreign jurisdiction, otherwise it would represent a breach of sovereignty;
- Finally, industry-wide exchange of information, which does not concern a specific taxpayer but an economic sector as a whole.

Limits

In no case a State can be obliged:

“to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State”

“to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State”

“to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).”

Art. 26 affirms then that in no case a State can be obliged:

- “to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State”;
- “to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State”.

These two points mean that a contracting party, when collecting information for the other contracting party, is obliged only to obtain and provide such information that the requesting party could itself obtain under its own laws in similar circumstances. Furthermore, a requested party is not obliged to supply information that the requesting party itself could not obtain in the normal course of administration.

- Art. 26 also affirms that in no case a State can be obliged “to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*)”.

This point concerns, *inter alia*, two fundamental issues: the taxpayer’s privacy and the bank secrecy.

Taxpayer's privacy



Information only to authorities involved in assessment, implementation or judgment related to taxes

No limitation to the use for criminal prosecution

No "triangular exchange"

As far as the former is concerned, the instructions issued by the Italian Tax Administration affirm that article 26 is to be interpreted in the sense that:

- information received may be communicated only to persons and authorities, including courts and administrative bodies, involved in the assessment, implementation or judgment, related to taxes covered by the Convention and for the purposes set out in paragraph 1 of art. 26;
- there is no limitation to the use of the information exchanged in cases where there may be violations sanctioned under criminal law by the tax law of a Contracting State;
- due to the nature of bilateral agreements, the information exchanged does not qualify for the so-called "triangular exchange of information".

Bank secrecy



Bank & financial info = any other means of investigation

Reciprocity

(Australia, Austria, Russia, France, Germany, Holland, Spain, USA)

Possibility to use exchange of info to obtain bank documents abroad

A foreign request can be fulfilled if a similar request submitted by Italy would be fulfilled

As far as the bank secrecy is concerned, it is not mentioned specifically by article 26. Our national instructions state therefore that:

- bank and financial information are to be treated as any other means of investigation, and can be exchanged in the framework of general rules;
- the only limit to the exchange of such information between Italy and another country is reciprocity. As of today, the countries that have shown a willingness to exchange banking information are Australia, Austria, Russia, France, Germany, Holland, Spain and the United States. In the relationship with these countries, therefore, Italy will provide, if requested, the bank information. It is in fact not possible to oppose obstacles such as "national interest" or lack of status of "taxpayer" on the part of the non-resident;
- to obtain the documents held by a foreign branch of an Italian

bank or by a foreign bank abroad, the exchange of information based on bilateral conventions to avoid double taxation can be used;

- and a foreign request for bank information can be fulfilled provided that the same application, if submitted by Italy, would be concretely fulfilled by the requested State under its own legislation.

Nevertheless, it must be finally and once more stressed that, according to the Italian legislation, it is possible to request financial investigations only if, on the basis of grounds given by the foreign authorities, the competent Authority (the Regional Commander for the Guardia di Finanza) deems it necessary to issue the appropriate authorisation to obtain financial data and information from banks, trust companies, stockbrokers and other financial operators.



Thanks for your attention



"Nec recisa recedit"
(Even when broken, will not retreat)