



Building an enhanced relationship between taxpayers and the Revenue Agency on transfer pricing matters

Ostia, 15 March 2013

Chiara Putzolu

**ITALIAN REVENUE AGENCY
TAX ASSESSMENT DIRECTORATE
INTERNATIONAL DIVISION**

OUTLINE

1. International Division – Organization and tasks
2. Co-operation with International Organizations:
EU, OECD, IOTA
3. Key principles for Voluntary compliance on TP:
 - ❑ Certainty
 - ❑ Transparency
 - ❑ Fairness



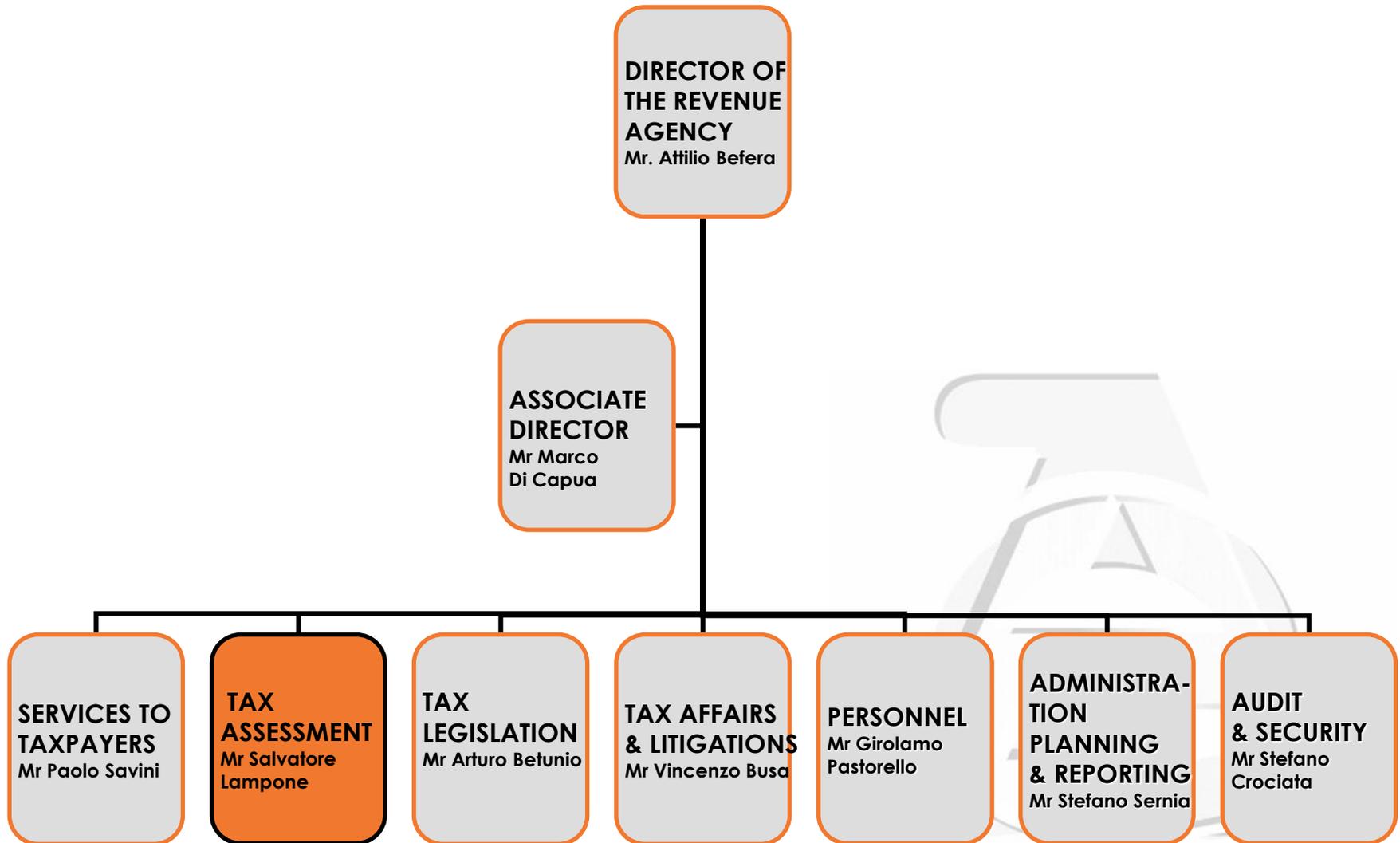
REVENUE AGENCY – Mission

- Revenue Agency's mission:
 - a) *to tackle tax evasion and avoidance, not only by means of **enforcement measures**, but also through initiatives aimed at increasing the **voluntary compliance** of taxpayers; and*
 - b) *to **assist** taxpayers to understand and meet their tax obligations*

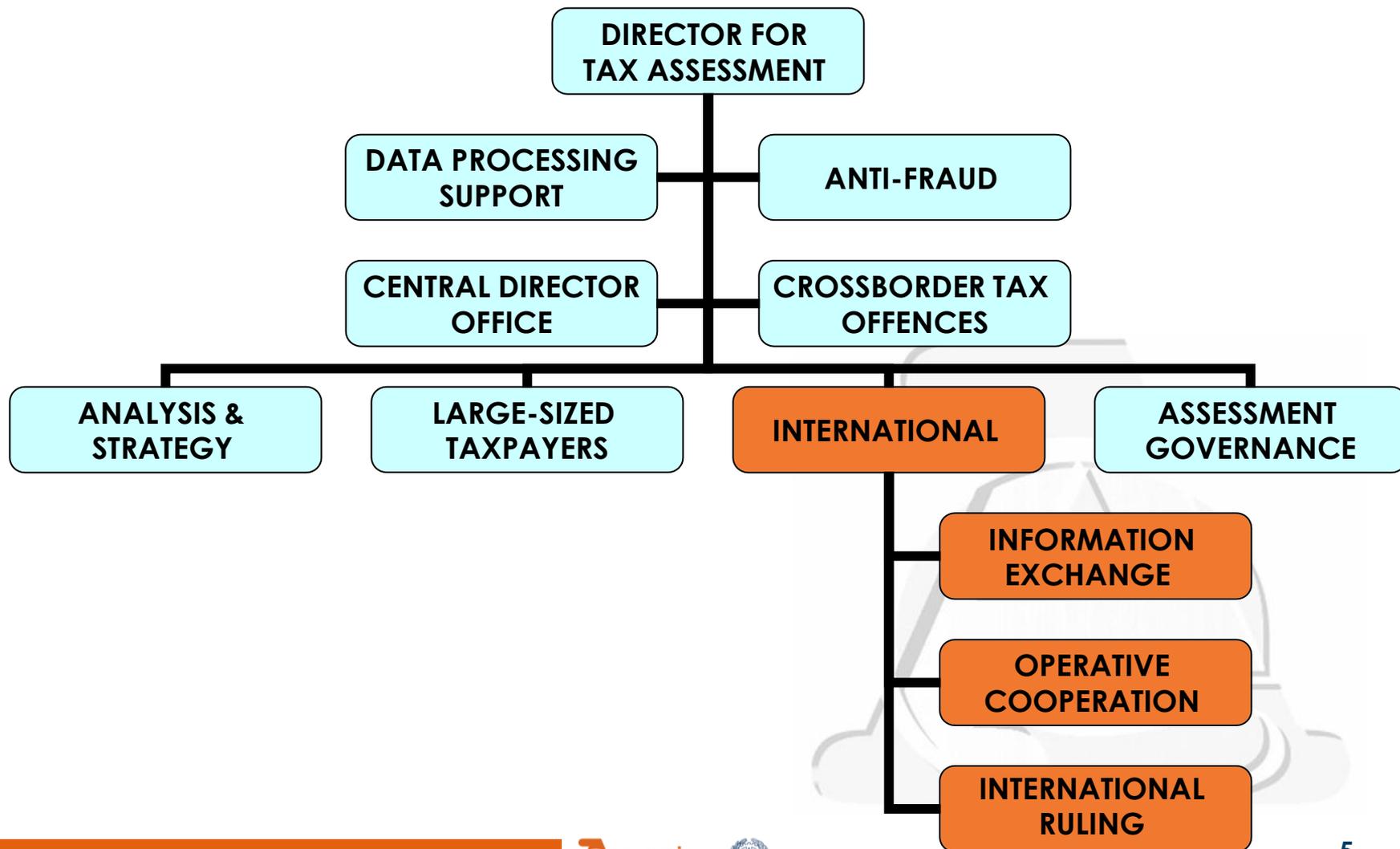
- **Tax compliance policy & assistance**
- Specific framework for tax compliance of **LBTs - Risk analysis approach**
- **Focus on transfer pricing**



REVENUE AGENCY – Structure



DIRECTORATE FOR TAX ASSESSMENT- Structure



International Division – Structure and Tasks

❑ EXCHANGE OF INFORMATION (including on TP)

Providing administrative assistance on the basis of DTCs, OECD-COE Convention, EC Directive 16/2011, EC Directive 2003/48 (savings directive), EC Regulation 904/2010, **Mutual Agreement Procedures**

❑ OPERATIVE COOPERATION

Managing cross-border requests for mutual assistance on recovery under DTCs, OECD-COE Convention, EC Recovery Directive

❑ INTERNATIONAL RULING

Managing the so-called “international standard ruling” procedure, including **APAs**



Structure based on a transversal approach to administrative assistance
Taking care of relations with international organizations

Co-operation with International Organizations

- **OECD:**
 - WP6 - **OECD Transfer Pricing Guidelines**
 - WP10

- **GLOBAL FORUM**
 - Peer review process

- **European Union**
 - **EU Joint Transfer Pricing Forum (JTPF)**
 - C.A.C.T. Committee
 - S.C.A.C. Committee

- **IOTA**



Key principles for Voluntary compliance on TP

- ❑ **QS: Which principles should drive relations between taxpayers and the Revenue on transfer pricing matters?**

- ❑ **Key principles**
 - 1. Certainty**
 - 2. Transparency**
 - 3. Fairness**

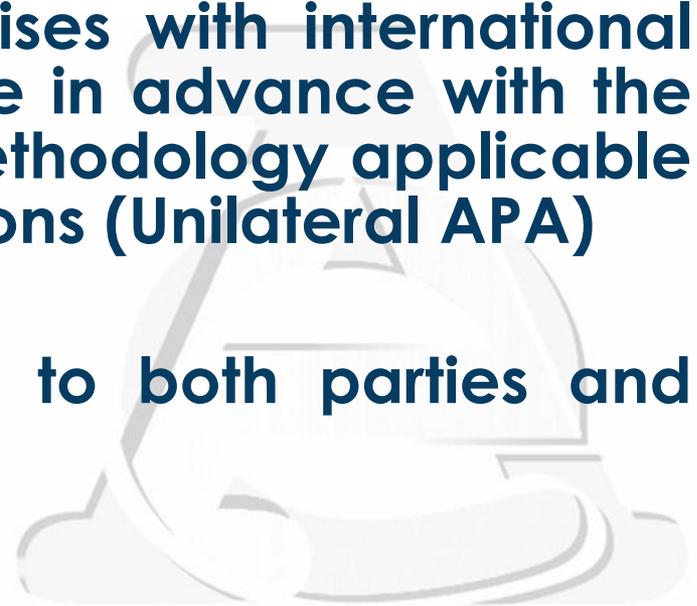
- International Sector carries out its activities on the basis of these principles



CERTAINTY

From unilateral to bilateral/multilateral APAs

- ❑ International standard ruling procedure
- introduced by Article 8 of Decree Law no. 269 of 30 September 2003
- Scope: addressed to enterprises with international activity which intend to agree in advance with the Revenue on the correct TP methodology applicable to their cross-border transactions (Unilateral APA)
- Aim: provide legal certainty to both parties and prevent legal disputes



CERTAINTY

From unilateral to bilateral/multilateral APAs

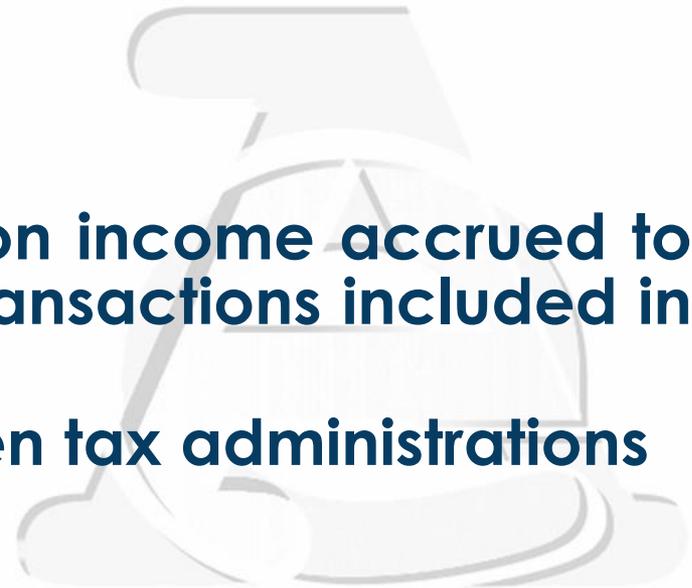
- ❑ International standard ruling procedure
- Procedure: voluntary basis, no fees, geographical jurisdictions, several meetings, analysis of the documentation, tax officials visit the enterprise
- Outcome: agreement valid for three years, auditing powers are suspended, conditions must be verified regularly, modification, renewal
- Voluntary compliance tool: dialectical process, does not end with a unilateral decision by TA instead by an agreement between TA and taxpayer

CERTAINTY

From unilateral to bilateral/multilateral APAs

- ❑ Unilateral APA as compliance policy tool
 - improving cooperation and dialogue between taxpayer and tax administration
 - providing legal certainty... to a certain extent

- ❑ Bilateral and multilateral APA
 - no double/multiple taxation on income accrued to associated enterprises from transactions included in the scope of the agreement
 - prevention of disputes between tax administrations



From unilateral to bilateral/multilateral APAs

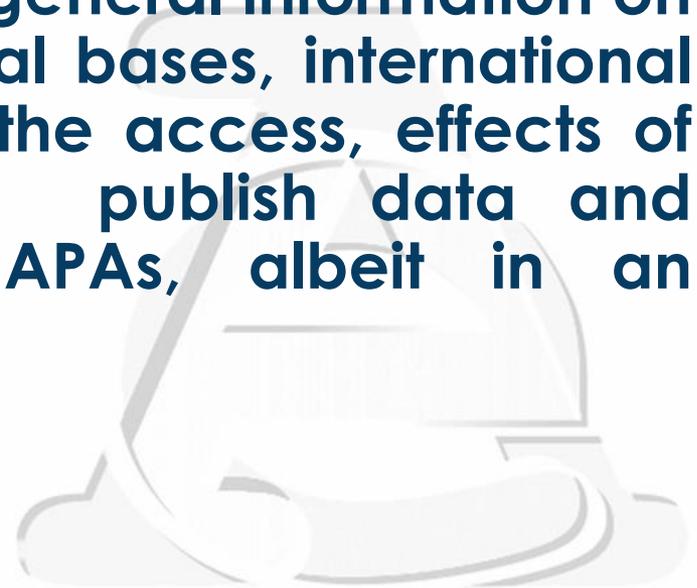
- ❑ End 2009: dialogue opened with the Italian Ministry of Economy and Finance to extend the international ruling procedure to the stipulation of bilateral/multilateral APAs
- ❑ End 2010: extension of the domestic procedure to bilateral/multilateral APAs under Article 25, paragraph 3, of OECD Model tax convention and Article 8 of Decree Law no. 269 of 2003.



TRANSPARENCY

The International standard ruling report

- ❑ International standard ruling report of 13 April 2010, published in the Revenue Agency website also in an English version
- ❑ Purpose of the report: to give general information on the procedure (domestic legal bases, international framework, requirements for the access, effects of the arrangement etc.) and publish data and statistics relevant to our APAs, albeit in an anonymous form



The International standard ruling report

- ❑ **Statistical analysis**
- **applications for APAs submitted and arrangements signed**
- **APAs completion time**
- **methods used for determining transfer prices**
- **classes of taxpayers by turnover and industry**
- **relationships between associated parties**
- **transactions covered by arrangements**



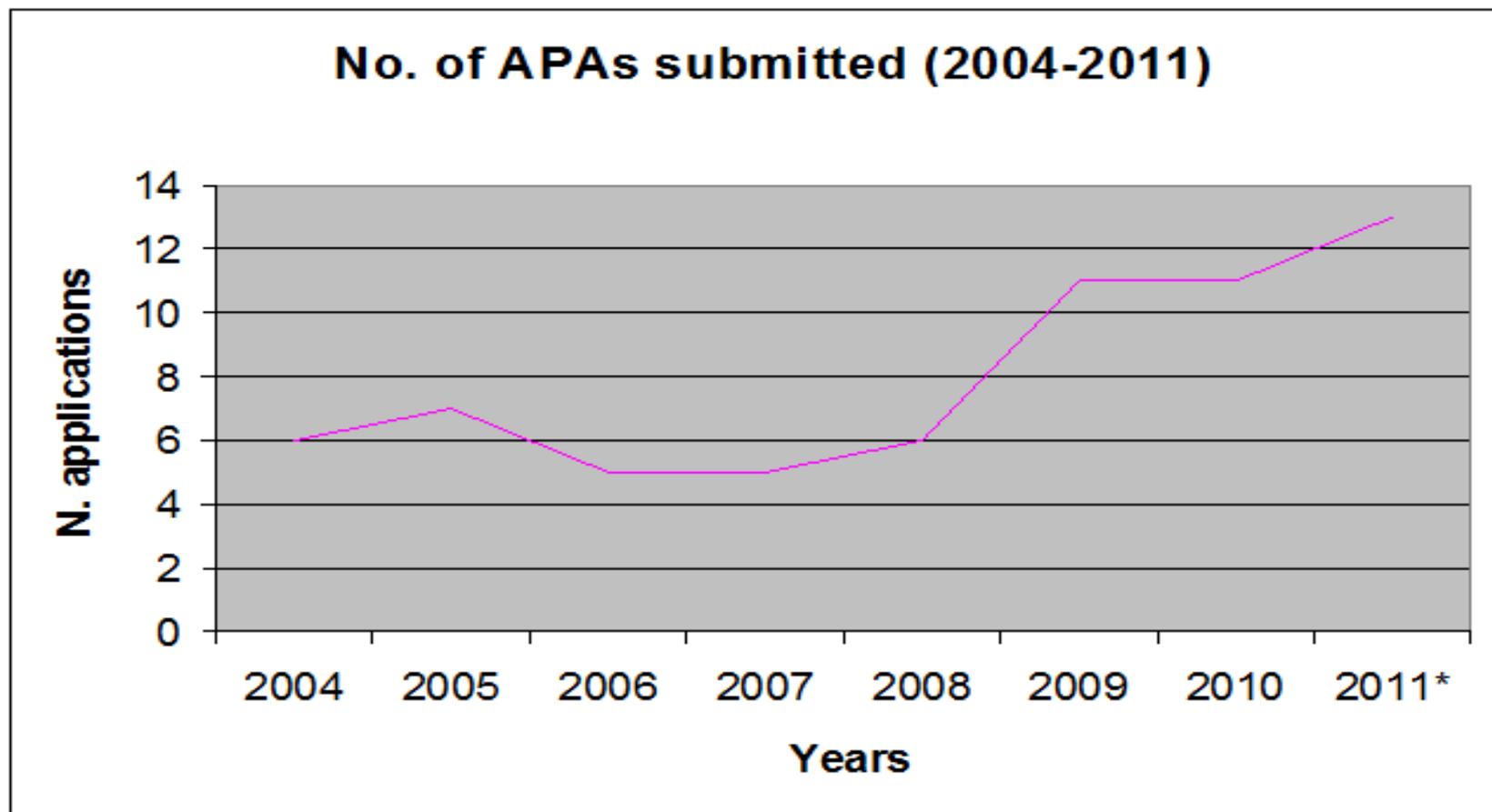
The International standard ruling report

- Applications & Agreements signed

TABLE 1	
Applications for international standard rulings submitted during the period 2004-2009	
	<i>Total</i>
<i>Applications submitted</i>	52
<i>International rulings granted</i>	19
<i>Procedures in progress</i>	17
<i>Applications rejected</i>	7
<i>Applications withdrawn</i>	9

Report: positive feedback

- An increase in the applications for APAs was recorded after publishing the Report



□ Article 26 Decree-Law no. 78 of 31 May 2010

If an upward transfer pricing adjustment is made, adjustment related penalties do not apply where in the course of the visit/examination/audit the taxpayer submits to the tax administration proper documentation compliant with the Regulation of the Director of the Revenue Agency of 29 September 2010.

Taxpayers who opt for the documentation regime shall notify their option to the tax administration.

Documentation requirements – International standards

- ❑ OECD Transfer pricing Guidelines, Chapter V
- ❑ Code of Conduct on transfer pricing documentation for MNE in the European Union, adopted by the Council and the representatives of the Member States
- ❑ Taxpayer Charter



Documentation requirements

TP Documentation – compliance policy tool

PROs

❑ For the tax administration

less complicated and time-consuming transfer pricing examinations thanks to the availability of information useful for identifying the inter-company transactions and determining if the taxpayer's tp policy is consistent with the alp

❑ For the taxpayers

certainty and awareness of what pieces of information are necessary to determine their own transfer prices

Documentation requirements

Regulation of 29 September 2010

- ❑ regime optional for businesses
- ❑ documentation package made up of Masterfile and Country specific documentation

EU TPD approach: *“in an EU-wide context a multinational group would generally prepare one set of transfer pricing documents consisting of:*

- (i) one set of documentation containing common standardized information relevant for all EU group members (the "masterfile") and*
- (ii) several sets of standardized documentation each containing country-specific information ("country specific documentation").*

Documentation requirements

❑ Masterfile

- follows the economic reality of the enterprise
- provides a “blue print” of the MNE group and its transfer pricing system
- relevant for all EU Member States concerned

❑ Country specific documentation

- supplement to Masterfile
- available to tax administrations with a legitimate interest in the tax treatment of transactions covered by the documentation

Documentation requirements

... as a consequence:

no adjustment related penalties
where documentation includes

- ❑ effective information, complete and compliant with the Regulation
- ❑ information corresponding to the real facts and circumstances of the enterprise



Documentation requirements and audits

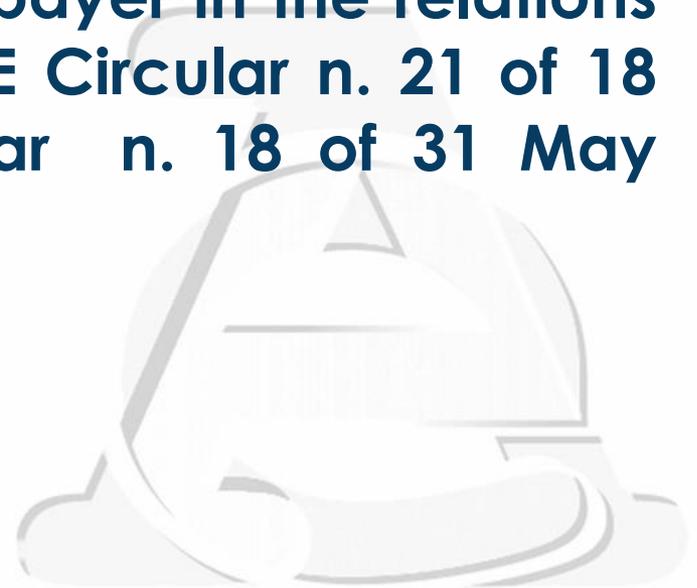
- ❑ the preliminary communication: enable TA to better target the control activity
- ❑ Maintenance of transfer pricing documentation: provided that the taxpayer behaves with due diligence and in good faith, may prove, on the whole, that the taxpayer has made his best efforts in order to comply with tp rules



Documentation requirements and risk assessment

□ LBTs – ‘tutoring activity’

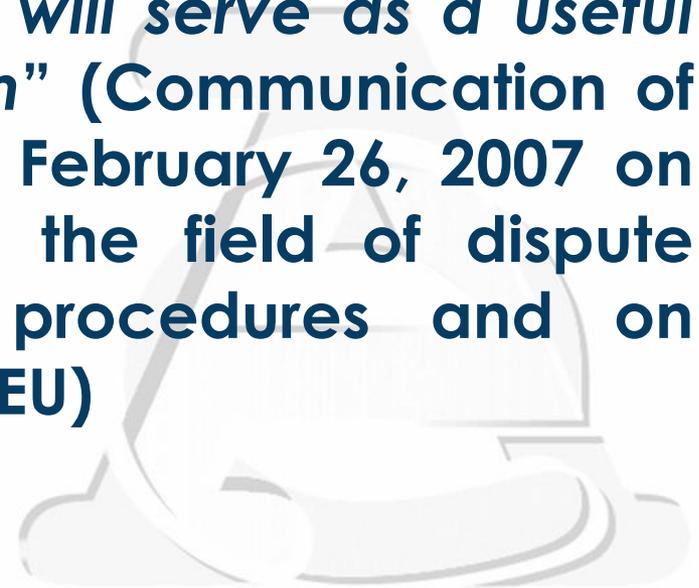
the option for the documentation regime is especially considered - among the risk indicators in place for the selection of cases to be subjected to control - as an indicator of transparent and cooperative attitude by the taxpayer in the relations with the Tax administration (AdE Circular n. 21 of 18 May 2011, confirmed in Circular n. 18 of 31 May 2012).



Documentation requirements and APAs

- EU TP Documentation as preliminary, basic information furnished by the taxpayer with a view to obtain an APA

“Where a MNE uses the EU Transfer Pricing Documentation (EU TPD), this will serve as a useful basis for any APA application” (Communication of the European Commission of February 26, 2007 on the work of the EU JTPF in the field of dispute avoidance and resolution procedures and on guidelines for APAs within the EU)



Thanks for your Attention!



Chiara.putzolu@agenziaentrate.it