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Italian Perspective on BEPS and Focus on Implementation of Action 13 of the BEPS Action Plan

Piergiorgio Valente*

Italy has been paying special attention, to recent developments in the struggle against tax evasion and avoidance. Many of the provisions recommended by the Organization for Economic Co-operation and Development within the context of the Base Erosion and Profit Shifting Project were introduced into, and enacted by, the National tax system, in particular, by effect of Legislative Decree No. 147 of 14 September 2015, which contained 'Provisions setting forth measures for the development and the internationalization of enterprises', and of Law No. 208 of 28 December 208 setting for 'Provisions for the drawing up of the yearly and multi-year State Budget'.

1 Introduction

In the last few years, international and European Union (EU) debates mainly addressed such measures deemed most appropriate and effective to counter the erosion phenomenon of tax bases through profit shifting Base Erosion and Profit Shifting (BEPS).[1]

Further in depth research and studies on the above theme were mostly conducted by the Organization for Economic Co-operation and Development (OECD) within the BEPS Project context, and were conducive to the issuing in October 2015 of a number of measures to be implemented, at this point, by the single States of the International Community.

EU Institutions and among these the European Commission first and foremost, strongly supported and welcomed OECD activities aimed at clamping down on International tax evasion through specific interventions and recommendations addressed to Member States, which were in line with the solutions being progressively adopted within the BEPS Project context.

In view of the fact that Italy is a Member State of the OECD and of the EU, it has been centring, in particular, on recent developments in the fight against tax evasion and avoidance. Many of the provisions suggested by the OECD in connection with the BEPS Project were introduced into, and enacted by, the National tax system, in particular, by effect of Legislative Decree No. 147 of 14 September 2015, which contained '*Provisions setting forth measures for the development and the internationalization of enterprises*', and of Law No. 208 of 28 December 208 setting for '*Provisions for the drawing up of the yearly and multi-year State Budget*'.

Other sectors will be requiring the Italian Legislator's further interventions, who – moreover – will not be able to disregard the most recent guidelines provided by the EU Council, precisely with regard to BEPS-related measures.

2 Struggle against Taxable Base Erosion and Need to Reform Entire International Tax Framework

OECD interventions within the BEPS Project context represent an internationally coordinated and joint response to aggressive tax planning strategies that multinational enterprises[2] have been adopting precisely for the purpose of '*artificially shifting*' their profits to low-tax jurisdictions. OECD studies on the issue have been helpful to the adoption, on 5 October 2015, of a '*package of measures*' that actually represents the first substantial '*reform*' of international standards over the past century. The above '*reform*' became essential, not strictly with a

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* Piergiorgio Valente, *Chairman* of the Fiscal Committee of the *Confédération Fiscale Européenne* (CFE), is *Adjunct Professor* of *EU Tax Law*, as well as *Tax and Financial Planning* at the Link Campus University in Rome.

1 On BEPS in general, cf. Dourado A.P., *The Base Erosion and Profit Shifting (BEPS) Initiative under Analysis*, 43(1) Intertax 2–5 (2015); Baker P., *The BEPS Project: Disclosure of Aggressive Tax Planning Schemes*, 43(1) Intertax 85–90 (2015); Valente P., *Elusione Fiscale Internazionale*, 1895 et seq (IPSOA-Wolters Kluwer 2014).

2 On aggressive tax planning in general, cf. Dourado A.P., *Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6*, 43(1) Intertax 42–57 (2015); Baker, *supra* n. 1, at 85–90; Panayi C. HJI, *Is Aggressive Tax Planning Socially Irresponsible?*, 43(10) Intertax 544–558 (2015); Valente, *supra* n. 1, at 49 et seq.

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view to BEPS, but also for the purpose of guaranteeing the sustainability of the current international tax framework in its regulating cross-border activities.

The timely adoption of rules to counter taxable base erosion meets the need to instill in citizens a renewed sense of trust in the fairness and integrity of worldwide tax systems on the one hand, while on the other, to provide Governments with an efficient and most useful tool to ensure the effectiveness of the respective tax policies.

Avoiding that single Countries adopt unilateral measures to counter aggressive tax planning schemes is just as important. Non-coordinated actions might, in fact, consequently undermine international tax principles that constitute an important and long-established frame of reference for cross-border investments.

Avoidance schemes may involve double non-taxation phenomena which are being targeted by OECD studies within the agenda of the Project at issue. At the same time, countering double taxation cases is just as fundamental, since they represent a significant constriction to worldwide economic development, given that they increase capital costs and investments, as a consequence.

The '*package*' adopted by the OECD comprises measures that must be enacted at the level of national systems and within international tax conventions, in a coordinated manner and with rules that set forth monitoring and transparency requirements.[3] Implementation of the said measures is expected to ensure a clear-cut alignment between the identification of the precise location of the taxable income to be tracked and the specific location in which the economic activity relating thereto is carried out. Furthermore, Tax Authorities will be guaranteed that any information and/or data that will be made available to them shall be thorough and comprehensive, in order to comply with the full-fledged application of the rules provided by the various tax systems.

3 Position of EU institutions and member state obligations

The European Commission also intends to '*tighten the screws*' on taxable base erosion and ensure that enterprises pay their taxes in the same place in which profits are earned.

The Action Plan for fairer and more efficient taxation of corporate income within the EU (COM 2015/302) put forth on 17 June 2015, is – in fact – part of a rather ambitious program having the specific purpose of countering tax evasion and avoidance by enterprises, and to create a more equitable Single Market with the further aim to enhance employment, economic growth and investments within the EU.

An important step in that direction had already been taken with the presentation of the Tax Transparency Package to guarantee greater openness and cooperation between/among Member States on matters of corporate taxation. One of the package's most significant elements is the proposal on automatic information exchange of tax rulings (amendment proposed by 2011/16/EU Directive on administrative cooperation), upon which unanimous consensus was reached on 6 October 2015 by the various EU States.

Tax evasion and aggressive tax avoidance by companies put at risk a rightful allocation of obligations among taxpayers and fair competition among enterprises. Companies, in effect, take full advantage of the complexity of tax rules and cooperation gaps and loopholes between/among low-tax States to minimize to the utmost taxation on their income. Hence, the need to intensify and maximize transparency and cooperation in order for the fight against aggressive tax planning and abusive tax practices to be as effective as possible.[4]

The Action Plan defines a new EU approach in order for taxation to be fairer and more efficient. Such objective shall be achieved thanks to a number of initiatives that are to be adopted within the short, medium and long term, based on the ones already provided by the Tax Transparency Package. The Plan includes some key actions involving a specific strategy to relaunch the Common Consolidated Corporate Tax Base (CCCTB)[5] and the realization of a frame of reference to guarantee effective taxation in the place in which income is produced, in order to comply with BEPS developments.

While welcoming the '*package of rules*' adopted by the OECD on 5 October 2015, the EU called the attention to the fact that deliberations are in progress – at EU level – with regard to various interventions linked to the international action plan to forestall and counter aggressive tax planning.[6]

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3 The purpose is to counter aggressive tax planning schemes through effective intervention on the phenomenon's causes rather than on its symptoms.

4 The press release published on 17 June 2015 by the European Commission draws the attention to the fact that the current provisions regulating EU taxation are not '*keeping the pace*' with modern economy. As a matter of fact, some enterprises are taking full advantage of the lack of coordination between/among national regulations to avoid taxation; this entails a considerable reduction of revenue for Member States, a heavier tax burden for citizens and distortions for competition, all of which harms such enterprises that paid their '*just tax dues*'.On countering actions against aggressive tax planning at EU level in general, cf. Dourado, *supra* n. 2, at 42–57.

5 Pursuant to the Commission, the CCCTB may give considerable results, by enhancing the Single Market for enterprises while simultaneously countering evasive/avoidance behaviors by companies. For the said reason, it intends to launch soonest some projects to develop a new proposal for the mandatory introduction of a CCCTB. The text for the new proposal should be submitted in 2016.For further details on the matter of the CCCTB proposal, Valente, supra n. 1, at 2255 et seq.

6 Further to the Directive proposal to introduce the CCCTB and to the recasting of the so-called *Interests and Royalties Directive*, the action of the Code of Conduct Group on taxation of EU enterprises is quite important. The same Code might provide Member States with fundamental guidelines to implement such measures indicated by the OECD.

The most recent impulse goes back to 28 January 2016, date on which the anti-avoidance rules package against international tax avoidance was adopted; within such context the Commission had submitted – among other measures – a proposal for an Anti Tax Avoidance Directive containing binding provisions for the countering of avoidance schemes.

On the occasion of the OECD's presentation of the '*package of measures*' dated 5 October 2015, the EU Council had seized the opportunity to specify how implementation through a Directive appears to be the most adequate instrument, in view of the fact that it is in a position to guarantee legal certainty, proportionality and a certain level of harmonization between/among the systems of the various States.[7]

4 Enactment of BEPS-countering measures in Italy

4.1 *Legislative Decree No. 147 of 14 September 2015: Supporting Measures for the Internationalization of Enterprises*

Themes dealt with at OECD level within the BEPS Project, and endorsed by EU Institutions, provided the Italian Legislator with some significant input and in particular, in connection with the tax reform, for the implementation of the 2014 Delegated Legislation (Law No. 23 of 11 March 2014).

In effect, the BEPS measures – defined in their general outline in the 5 October 2015 '*package*' – cannot but considerably impact on cross-border business activities of Italian multinational enterprises.

Legislative Decree No. 147 of 14 September 2015, containing '*Provisions setting forth measures for the development and the internationalization of enterprises*' (published on Official Gazette No. 220 of 22 September 2015 and in force as of 7 October 2015), introduced important tools to support international entrepreneurial activities.

On the topic of Advance Pricing Agreements (APA) for enterprises with international activities, for example, ex Article 31-*ter* of Presidential Decree No. 600 of 1973, it is worth noticing how paragraph 4 ('*based on EU legislation, the Tax Authorities forward a copy of the Agreement to the competent Tax Authorities of the States of residence or establishment of the enterprises with which taxpayers carry out the related operations*') meets the need to adapt national Italian rules and regulations to the more recent EU positions adopted in connection with tax rulings, as expressed in the proposal to amend Directive No. 2011/16/EU on administrative cooperation (contained in the so-called Tax Transparency Package of 18 March 2015).

Always with regard to APA, it should be noted that paragraph 2 of Article 31-*ter* of Presidential Decree No. 600 of 1973 sets forth that, where the Agreement concluded pursuant to paragraph 1 follows other agreements signed with the competent Authorities of foreign States as a result of amicable procedures established by International Treaties Against Double Taxation (hereinafter '*DDTs*'), the validity of the said Agreement may not start running before the prior tax period in progress as at the date on which taxpayer submitted/filed the request.

On the application of the retroactive effectiveness of an APA, the OECD[8] calls the attention to the fact that issues related to an already concluded APA might be relevant for prior tax periods that were not considered within the application term related to the already concluded APA.[9] OECD studies observe how some Countries allow the so-called APA '*roll-back*' (that is, retroactive application of the APA), where there is a clear-cut identity of factual circumstances and elements, and always provided such identity be duly established. Given that the APA '*roll-back*' function is to prevent, or promptly settle any potential transfer pricing controversies, such provision is not only conceptually/legally admissible, but is even applied in certain systems by reason of its function to optimize resources and to prevent/settle transfer pricing controversies.

The possibility of APAs' retroactive application is also admitted and acknowledged by the European Commission in its Communication '*on the work of the EU Joint Transfer Pricing Forum in the field of dispute avoidance and resolution procedures and on Guidelines for Advance Pricing Agreements within the EU*' of 26 February 2007.[10] In line with OECD statements, acknowledgement of APA '*roll-back*' is subject to the existence and ascertainment of identical factual elements and circumstances. The Commission further specifies that '*roll-back*' of an APA is strictly applicable subject to taxpayer's consent.

In connection with the issue of so-called '*black list*' Countries, Article 10 of Legislative Decree No. 147 of

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[7] Thus, the so-called *EU-derived (hard) law* might be preferred over the so-called *soft-law*.

[8] The OECD document '*BEPS ACTION 14: MAKE DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE*' dated 18 Dec. 2014, defines an APA as an '*arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time*'. An APA therefore serves to regulate – from a transfer pricing perspective – intercompany transactions that shall be entered into upon conclusion of the selfsame APA. For further details, tools to settle international disputes, Valente, *supra* n. 1, at 2329 et seq.; Valente P., *Manuale del Transfer pricing* (Transfer Pricing Manual), 1801 et seq (Wolters Kluwer 2015).

[9] Pursuant to the OECD such kind of scenario might occur in the case where taxpayer may not have submitted the APA request within the due terms with regard to a given (prior) tax period, regardless of the fact that a MAP request might have been submitted in connection with such prior period.

[10] In particular, the Commission asserts that any '*roll-back*' '*should only be a secondary result of the APA and should only be carried out where it is appropriate to the facts of the case. Similar facts and circumstances to those in the APA should have existed for previous periods in order for rollback to be appropriate*'.

14 September 2015 – which is in line with the latest transparency and information exchange standards adopted at international and EU levels (Directive No. 2011/16/EU) – provides for the enactment of a list of territories and States that allow an adequate information exchange (list that is mainly used for the treatment of financial income realized by non-resident subjects, the identification of non-regulated markets, etc.). The newly introduced regulations are aimed at conveying relevance to the criterion of '*adequate information exchange*', for the purposes of issuing the so-called '*white list*' (in implementation of Legislative Decree No. 239 of 1996).

Observance of EU laws is also found in tax rules for the transfer abroad of the company's seat. Article 11 of Legislative Decree No. 147 of 14 September 2015 inserts the following provision:

> The same provision is applicable to the transfer, by an non-resident enterprise in the State's territory, of part or the sum total of all assets linked to a permanent establishment, related to a business or a business unit, towards another State belonging to the European Union, or rather, adhering to the Agreement on the European Economic Area (Art. 11 of Legislative Decree No. 147 of 14 September 2015).

which complements Article 166 of the Testo Unico delle Imposte sui Redditi (TUIR) (that is, Italian Income Tax Code, hereinafter '*TUIR*'), and is in line with provisions of the Court of Justice of the European Communities in the National Grid Indus B.V., case of 26 November 2011, Case No. C-371/10, on the exit tax topic.

4.2 *Provisions of Law No. 208 of 28 December 2015: Country-by-Country Reporting Requirements*

Pursuant to the OECD, transfer pricing is an area that offers multinational enterprises innumerable opportunities to '*artificially*' shift their profits to jurisdictions with more advantageous[11] tax systems.

To such purpose, indications provided within the scope of Action 13 of the BEPS Action Plan, which are aimed at preventing the aforesaid phenomena by introducing additional documentary duties to the ones already provided (that is, Master file and Country/Local File)[12] are all-important.

The Italian Legislator conformed to OECD Guidelines on transfer pricing documentation, with Law No. 208 of 28 December 2015.

4.2.1 *OECD Measures Suggested for Action 13 of the BEPS Action Plan: Country-by-Country Reporting Template*

With the document entitled '*Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*' of 16 September 2014, and with the Final Report of 5 October 2015[13] on the subject, the OECD provides Tax Authorities with standards for the compilation of transfer pricing documents (that is, *Master file* and *Local File*) and a template for Country-by-Country Reporting, always for the purpose of countering international tax avoidance.

This allows Tax Authorities to be well informed as to the transfer pricing position of multinational groups, assess any possible risks and address auditing activities as efficiently as possible towards companies having pursued transfer pricing practices for the sole purpose of shifting profits artificially to other low-tax States. The above allows Tax Authorities to maximize the ratio between the employment of limited available resources and tax revenues.

At the same time, it is necessary to ensure that the compilation of the required documentation shall not entail additional compliance costs for taxpayer. It is important to strike the right balance between information/data requested by Tax Authorities and activities that multinational enterprises are required to perform in order to comply with the above requests.[14] To such purpose, some fundamental aspects are the identification of the most suitable means to file the requested information, and the introduction of provisions to guarantee the privacy of the data provided.

Implementing such kind of system would allow Tax Authorities to better focus on salient aspects related to transfer pricing audits, reducing thus the time generally

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[11] For further details on the transfer pricing and BEPS topics, cf. Brauner Y., *Transfer Pricing in BEPS: First Round – Business Interests Win (But, Not in Knock-Out)*, 43(1) Intertax 72–84 (2015); Pogorelova L., *Transfer-Pricing and Game Theory*, 43(5) Intertax 395–404 (2015).

[12] For further details on documentary duties for transfer pricing, Valente, *supra* n. 8, at 810 ss.

[13] Cf. OECD, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report*, 5 Oct. 2015.

[14] The document published by the OECD on 16 Sept. 2014 emphasizes the positions adopted by the various Member States in connection with the mentioned '*balance*' to be achieved between such information/data requested by the Tax Authorities and such compliance costs/duties falling on multinational enterprises to satisfy the said requests: Some countries would strike that balance in a different way by requiring reporting in the country-by-country report of additional transactional data (beyond that available in the master file and local file for transactions of entities operating in their jurisdictions) regarding related party interest payments, royalty payments and especially related party service fees. Countries expressing this view are primarily those from emerging markets (Argentina, Brazil, China, Colombia, India, Mexico, South Africa, and Turkey) who state they need such information to perform risk assessment and who find it challenging to obtain information on the global operations of an MNE group headquartered elsewhere. Other countries expressed support for the way in which the balance has been struck in this document. Taking all these views into account, it is mandated that countries participating in the BEPS project will carefully review the implementation of these new standards and will reassess no later than the end of 2020 whether modifications to the content of these reports should be made to require reporting of additional or different data (cfr. OCSE, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, 16 Sept. 2014).

required to carry out audits as well as costs and any inefficient employment of resources.

All of the above is useful also for multinational enterprises, especially in terms of greater certainty and cooperation with the Revenue Office.

Chapter 5 of the OECD Guidelines – as updated on the basis of the measures adopted within the BEPS Project – contains three Annexes indicating the respective structures of the Master file, the Local File and the Country-by-Country Reporting[15] template.

The latter must include a given amount of information related to global income allocation, taxes paid as well as a number of specific economic indicators such to allow the Revenue Office to assess any possible transfer pricing risks and to identify any other likely BEPS issues. It should be clearly emphasized that such kind of document may not be used by the Revenue Office for the purpose of any possible transfer pricing adjustments, which must be necessarily based on specific functional and comparability analyses, in compliance with international transfer pricing practice.

4.2.2 *Documentary Duties of Italian Enterprises*

In compliance with OECD guidelines on the Country-by-Country Reporting, Law No. 208 of 28 December 2015 introduced into the Italian system specific reporting obligations for enterprises (cf. in particular, paragraphs 145 to 147 of Article 1 of the said Law).

Reporting obligations rest with the holding companies of the Group residing in Italy pursuant to Article 73 of the TUIR which provides that the above companies are required to draw up consolidated Financial Statements, if the Group realizes a consolidated turnover volume of at least Euro 750 million during prior tax year and if the companies are not, in turn, controlled by subjects other than individuals.

The same obligation also rests with subsidiaries (that is, controlled companies) residing in Italy, if the holding is a resident of a State '*which has not introduced the obligation to submit a Country-by-Country Report, namely, that no agreement entered into with Italy is in force such to allow any information exchange pertaining to the Country-by-Country Reporting, that is, does not comply with the obligation to exchange information relating to the Country-By-Country Reporting*' (cf. paragraph 146).

Items that are subject to the Country-by-Country Reporting involve the amount of gross revenue and expenses, taxes paid and accrued, including other indicative elements to corroborate the fact that an economic activity actually exists.

The Italian Revenue Office guarantees the privacy of any and all information subject to the Reporting, in compliance with confidentiality requirements set forth under the multilateral Convention on mutual administrative tax assistance[16] (cf. paragraph 145).

Paragraph 147 entrusts to a Decree of the Italian Minister of Economy and Finance the task to establish the conditions to ensure that holding companies with some given geographical requirements and turnover, submit to the Revenue Office a specific Country-by-Country Report pertaining to revenue and expenses, taxes paid and accrued, including other indicative elements to substantiate the fact that an economic activity[17] actually exists.

As may be clearly observed in the following paragraphs, the provisions at issue are consistent with guidelines provided by the OECD on the matter involving the BEPS Project.

In line with the specific instructions on the Country-by-Country Reporting provided by the OECD, the Italian enterprises shall have to provide precise information which should include the following:

– a list of all jurisdictions in which the relevant Group companies are tax-resident; in the case where a company is found to be tax-resident in two or more States, rules provided by Dynamic Taxation and Training Services (DTTs) apply;

– the turnover volume of all Group companies generated by transactions entered into with related parties, the

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15 The Country-by-Country Reporting template consists of three tables. In the first, the parent company indicates, for each State in which business activities are being carried out through either subsidiaries or permanent establishments:

– income deriving from transactions between/among Group companies and income deriving from third-party transactions;

– income and losses before tax;

– taxes paid within the tax year in progress and the ones due on an accrual basis for the same period;

– stock capital and reserves;

– employee number (at year end, or yearly average);

– book value of tangible assets.

The second table identifies such companies (or permanent establishments) of the group (highlighting cases for which tax-residence is not in the State of establishment), as well as the core business carried out by the single entities. The third table includes notes to comment the data provided in schedular format.

16 For further details on the Multilateral Convention, Valente, *supra* n. 1, at 2845 et seq.; Valente P., *supra* n. 8, at 1633 et seq.

17 Omitted submission of the Report or the submission of incomplete data involves a pecuniary penalty ranging from EUR 10.000 to EUR 50.000.

one deriving from transactions with independent parties and the sum total of both[18];

- the total of pre-tax profits/losses of all Group companies;
- the amount of income tax effectively paid by all Group companies within the period of reference;
- number of employees of each Group company, taking as frame of reference the average number of employees at fiscal year-end; a certain leeway is left to approximation of figures which must not, in any case, detract from the accuracy of data/information involving employee distribution among the various Group companies;
- the sum total of the Financial Statements' net values of the Group companies' tangible assets, excluding from such indication any pecuniary, financial and intangible values;
- the functional role, in terms of activities, carried out by each Group company, by drawing up a specific table.

4.2.3 *Closing Remarks*

BEPS studies have disclosed that transfer pricing is an area in which multinational enterprises are most facilitated in pursuing aggressive tax planning schemes. According to the OECD, the introduction of documentary standards that are consistent with the ones previously illustrated represents the most adequate response to international tax avoidance within transfer pricing.

Countering actions to the erosion of taxable bases within transfer pricing by the single States cannot leave out of consideration a prompt and coordinated implementation and application of Country-by-Country Reporting standards as developed within the context of Action 13 of the BEPS Project.

In view of the above, the intervention of the Italian Legislator is therefore rather praiseworthy since, in view of the guidelines provided by the OECD, the former introduced the Country-by-Country Reporting for enterprises, without nevertheless neglecting the strongly felt taxpayers' need to safeguard the confidentiality of any and all information they provided.

The same OECD Guidelines, and in particular the one related to the Country-by-Country Reporting, shall now have to steer the Italian Revenue Office in drawing up the relevant regulation that shall establish means, terms, elements and conditions for the transmission of the above Reporting to the Revenue Office by the parties required to comply therewith.

5 Reform prospects

Notwithstanding the Italian Legislator's numerous interventions, in order to comply with the most recent international and EU standards, several international taxation areas might, however, require further and more targeted measures.

In the first place, a salient aspect is the definition of '*permanent establishment*' (For example Article 162 of the TUIR, currently in force) within an anti-avoidance perspective, which should take into consideration the most recent business models implemented by multinational enterprises (whether digital or not). The regulation of the personal permanent establishment should also consider, for example, the fact that, where activities carried out by a subject (that is, a commissionaire) in a given State involve the regular conclusion of agreements by the foreign enterprise, this latter has a '*sufficient taxable nexus*' in that State, unless the subject/commissionaire carries out the above activities as part of an own independent activity.

A further provision should be set forth for enterprises subdividing '*a cohesive operating business*' into more operations, establishing that none of the activities deriving from such fragmentation may be deemed to be either preparatory and/or auxiliary. The above principle should not only be applicable to cases in which activities carried out by the same enterprise in different locations are fragmented, but also for such cases in which fragmented activities are carried out by several related enterprises, in different places or in the same place.[19]

As far as transfer pricing is concerned, special attention should be given to practical application procedures for the determination of intercompany transfer prices related to intangibles and so-called '*low added-value services*' as provided by the most recent guidelines contained in the OECD Transfer Pricing Guidelines. Although these latter do not require national implementation rules, it might be useful for multinational enterprises to be provided with specific practical application guidelines.

Amicable and arbitration procedures for the settlement of international controversies between/among States, regulated by the Italian Treaty system and by administrative practice (Circular No 21/e by the Tax Authorities dated 5 June 2012) should become an effective tool to counter

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[18] Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction (cf. OECD, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, 16 Sept. 2014).

[19] For further details on BEPS issues involving permanent establishments in general, cf. Pleijsier A., *The Agency Permanent Establishment in BEPS Action 7: Treaty Abuse or Business Abuse?*, 43(2) Intertax 147–154 (2015).

double taxation phenomena. Provisions establishing mandatory forms in connection with the reaching of an agreement by and between the Revenue Offices involved – and which are not included in the vast majority of Italian bilateral Treaties that are currently in force – might guarantee such effectiveness.

Lastly, in order for the fight against taxable base erosion to be successful disclosure obligations involving aggressive tax planning schemes should be absolutely and fully regulated. In particular, such disclosure requirements might be:

- established at taxpayers' and/or at their consultants' level;
- coordinated, through the identification of specific restrictions, with the confidentiality requirement;
- enhanced by providing specific penalties.