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Rappresentante Permanente d'Italia
presso l'Unione Europea*

Bruxelles, 16 settembre 2015
Prot. 8260

M. de Préval,

Oggetto: Request for information on the activities of the TAXE special committee. **Replies from the Italian authorities.**

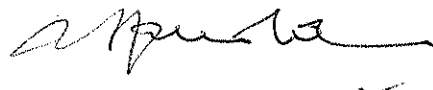
Concerning your request for information made as Chair of the TAXE special committee of 23 April 2015, let me first apologize for the late reply, due to time required to gather the relevant and up to date information.

In this respect, I am now pleased to submit the replies given by the Italian Department of Finance (Ministry of Economy and Finance) on your list of questions, that are complemented by confidential statistical data on national activities of administrative cooperation during the five-year period 2010 – 2015.

Yours sincerely,

Bien à vous,

Stefano Sannino



H.E. Alain Lamassoure
Chair of the Special Committee Taxe
Tax Rulings and other Measures Similar
in Nature or Effect
European Parliament
B-1047 Bruxelles

AF: 6.

ANNEX

1. Action take or planned at national level to increase transparency in the area of corporate taxation.

The issue of tax transparency has been high on the global agenda for quite some time. Exchange of information for tax purposes is regularly in the press releases of ECOFIN and G20. US-sponsored FATCA-like IGA agreements have represented a step change in tax transparency with its unique feature of mandatory automatic exchange of financial account information with a broad spectrum.

In this context, the most favoured nation clause spurred five important EU Member States (among which Italy) to be at the forefront of an historic venture by promoting, as “early adopters”, a pilot initiative rallying the participation of a wide range of EU and non-EU jurisdictions to guarantee FATCA-like comparable conditions for the exchange of financial account information for tax purposes.

To this purpose, a new Standard for Automatic Exchange of Financial Information (Common Reporting Standard - CRS) has been developed under the auspices of OECD, approved in July 2014, and is poised to mark a turning point at the international level.

During the Italian Presidency of the EU Council, Italy has achieved the incorporation of the said CRS into EU legislation, with no deviations from the original model while respecting European Union specificities.

It will be under the new Directive 2014/107/EU that Italy will exchange information with EU Member States, as well as with the five European third countries with which the Commission is negotiating equivalent agreements. The parallel repeal of the old Saving Directive is under way.

The Common Reporting Standard is set to become in a few years the new common denominator of transparency for tax purposes, as a new lingua franca. All major financial centres have joined the standards according to the G20 calendar (2017 or 2018).

Italy is committed to implementing the DAC2 and the CRS starting on 1 January 2016 with the first exchange of information by September 2017.

Italy is now in the phase of legislative implementation at domestic level. Primary legislation has been approved. Secondary legislation is under way.

Italy chairs the Global Forum AEOI group on automatic exchange, and attaches great importance to the effective implementation of the new Standard.

2. Action take or planned at national level to limit corporate tax base erosion and profit shifting.

Among the actions already taken by Italy in tackling corporate tax base erosion it is worth mentioning that with the Legislative Decree n. 128 of 5 August 2015 (in force since 2 September 2015), we introduced in our legislation for the first time a legally binding definition of anti-abuse behaviors for tax purposes. In particular, abuse of rights is now envisaged in the presence of one or more transactions without economic substance which, despite formal observance of the tax rules, achieve essentially undue tax advantages. The abuse makes those transactions not opposable to the tax authority which can disregard the tax benefits and defines taxes due by the taxpayer on the basis of rules and principles avoided.

Italy has actively taken part in the implementation of OCSE/G20 BEPS Action Plan, through active participation in the groups discussing the relevant Actions, by chairing the WP11 on aggressive tax planning and as Bureau member of the Task Force on Digital economy dealing with Action 1 (Addressing the tax challenges of the digital economy).

Italy is working to implement the recommendations and minimum standards which are outcomes of the Actions, noting that most of the recommended measures already exist in Italian legislations. In particular:

Italy already has within its domestic legislation a rule designed to tackle the use of some hybrid instruments, a CFC regime greatly in line with the approaches recommended as best practices under Action 3 and a rule on the limitation on the deductibility of interest expenses which can be deemed in line with the common approach recommended under Action 4. However, in respect to hybrids there will be a need for specific provisions in order to implement the recommendations under Action 2.

In the field of the digital economy, the Stability Law for 2014 introduced a rule which states that companies operating in the field of on-line advertising and auxiliary services to it must determine the taxable income in Italy over transactions covered by transfer pricing rules by using profit indicators other than those applicable to costs incurred in Italy in the conduct of their activities (i.e. the "Cost-plus method"), subject to an international tax ruling with tax authorities.

It is worth mentioning that Italy has recently introduced a Patent box regime which is overall compliant with substantial activity minimum standard required for IP regimes established under action 5 and will proceed to bring the relevant provisions completely in line with the standard. As regards mandatory spontaneous exchange of information on rulings provided under action 5, Italian legislation already provides for exchange of ruling with EU Member States. Moreover, Italy is actively participating in the negotiations in the Council on the amending proposal of Directive on Administrative Cooperation to introduce mandatory automatic exchange of information on tax rulings.

3. *Overview (including date and name of company) of all tax rulings issued since 1991.*

The European Commission opened a horizontal inquiry regarding tax rulings in 2014 and asked Italy a series of information. In this regard, Italy provided the answers to the Commission services, including the names of the concerned companies. Such information cannot be disclosed for confidentiality reasons.

4. *All information since 1.1.2010 shared with other MS according to Council directives 2011/16/EU article 9 and 77/99/EEC article 4.*

As regards the fourth bullet, please find herewith enclosed the Italian contribution concerning the statistics on administrative cooperation for the years 2010-2014, based upon the European Directives 77/799/EEC and 2011/16/EU.

Council Directive 2011/16/EU on administrative cooperation in the field of taxation repealed Directive 77/799/EEC on mutual assistance in the field of direct taxation and taxation of insurance premiums and entered into application as of 1st January 2013. According to Article 23(4), Member States are required to provide statistics for evaluation of the functioning of administrative cooperation as provided for in the Directive. These statistics reflect agreements and endorsement achieved during the official meetings between Member States and the European Commission.

5. National list, if defined, of non cooperative tax jurisdiction and its evolution and justification.

In the field of corporate taxation, the two following lists are to be mentioned. Both have been recently modified.

The first list is applied for the non deductibility of costs and the application of Article 110, paragraph 10 of Income Tax Code (TUIR). In this regard, enterprises cannot deduct costs arising from transactions with enterprises resident in States listed in black list ex Ministerial Decree 23 January 2002. In the event of transactions between taxpayers resident in Italy and companies resident in any of the States listed in black list ex Ministerial Decree 23 January 2002, the relative costs cannot be deducted by Italian taxpayers, unless they prove that the foreign enterprises concerned carry out an effective commercial activity or the relevant transactions have an effective economic interest and concretely takes place. According to recent amendments to the mentioned list, the only relevant criterion for the black list on the "non-deductibility of costs" related to transactions with foreign jurisdictions is the lack of an adequate exchange of information with Italy. Accordingly, 21 countries and jurisdictions with which it is in force a bilateral agreement (Convention against double taxation or TIEA - Tax Information Exchange Agreement) or multilateral (Multilateral Convention on Mutual Administrative Assistance in Tax Matters) which allows for the exchange of information on tax matters with Italy were deleted from the black list.

Another list concerns the field of CFC Rule (articles 167-168 of Income Tax Code "TUIR"): taxation of the foreign controlled company's income by the resident taxpayer (imputation as CFC was a transparent entity). The mentioned list provides that there must be links of control, direct or indirect, between the Italian taxpayer and the CFC and the CFC must be resident in one of the States included in the black list ex Ministerial Decree 21 November 2001. Italian taxpayers can avoid the imputation of the CFC income if they prove that the company resident in the black-list State manages an effective commercial or industrial activity in the geographical area where it is located or there is no relocation of income from Italy to a black list country, through the control of the CFC. With reference to CFC legislation, the Italian black list of foreign jurisdictions is based on the two criteria of the exchange of information and the level of taxation of foreign subsidiaries (Article 167 of the Income Tax Code). According to recent amendments, a level of taxation in the foreign country of less than 50% of the Italian one is considered significantly lower than that applied in Italy. Following this change, some Countries (e.g. Philippines, Malaysia and Singapore) were removed from the black list at issue. Furthermore, by Regulation of the Director of the Italian Revenue Agency, pursuant to paragraph 4 of Article 167 of the Income Tax Code, a list of special tax regimes which provide a level of taxation below 50% of that provided in Italy, even if applied by a country with taxation regime general not less than 50% of the Italian, will be laid down.

Lastly, there is a list for the application of the presumption of residence ex article 2-bis of the Income Taxes Code (TUIR), which is applied only to individuals resident in the States listed in Ministerial Decree 4 May 1999. Such individuals are considered to be resident in Italy and taxed in accordance with Italian tax law, unless they prove otherwise.

Please find below the following link to further details on the list on corporate taxation:

http://www.mef.gov.it/ufficio-stampa/comunicati/2015/comunicato_0077.html

6. *A list of current international tax treaties having effect to reduce corporate tax rates.*

With reference to the point concerning tax treaties having an effect to reduce corporate tax rates, Italy, like many other European States, has concluded a number of double taxation agreements (DTAs) according to the OECD model convention.

The purpose of a DTA is the allocation of taxing rights between the two Contracting States. They are not aimed at changing their domestic laws (i.e. laws regarding corporate tax).

In order to avoid double taxation, DTAs generally provide for the application of reduced rates by the State of source to outgoing payments of dividends, interest and royalties.