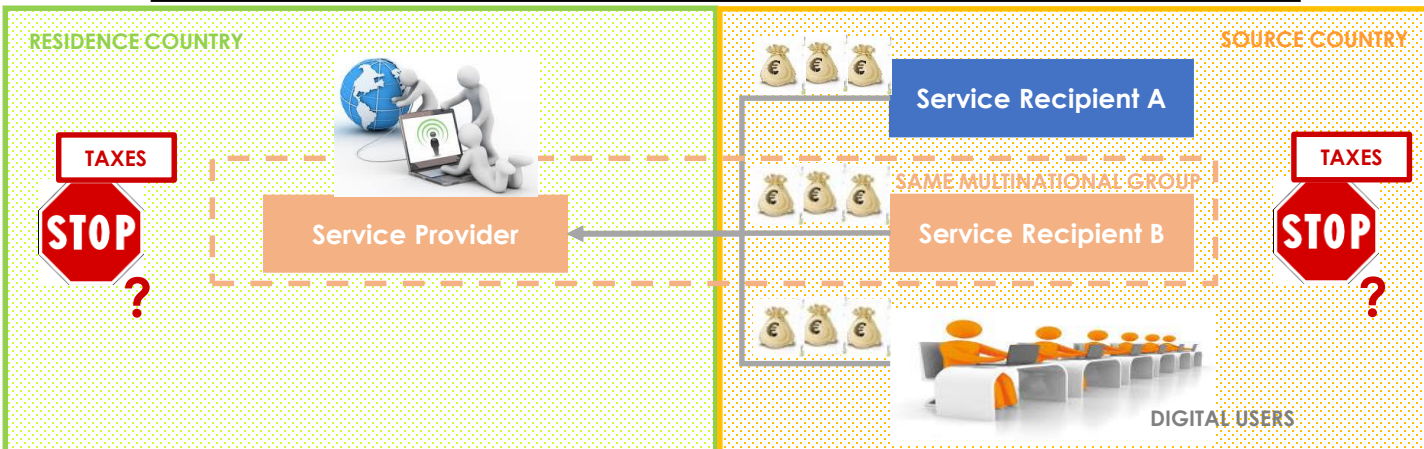


## THE TREATMENT OF CROSS – BORDER SERVICES IN THE CURRENT INTERNATIONAL TAX SYSTEM



### Analysis 1: Tax treatment of the cross – border services

- ✓ The domestic legislation of several source countries provides for a withholding tax on service fees
  - Example 1 from developing countries: India
  - Example 2 from America: Canadian Regulation 105
  - Example 3 from EU: Greek legislation
- ✓ The current international tax system does not provide for a taxing right of the source country, unless a PE exists in the source country (being the income from services treated as business profits)
  - 2011 UN Model Double Taxation Convention: art. 5 – PE (Service PE); art. 7 – Business profits (+ Limited force of attraction rules); art. 12 – Independent Personal Services
  - 2017 OECD Model Tax Convention on Income and on Capital: art. 5 - PE (optional OECD provision for service PE); art. 7 – Business profits; Deleted art. 12 – Independent Personal Services
  - Existing tax treaties: some deviations from the UN / OECD Model Tax Convention (e.g. tax treaties Italy – Brasil; Italy – India; Italy – Uganda; Italy – Vietnam)
- ✓ Double taxation in all those cases in which the source country levies a withholding tax on service fees and the relevant tax treaty does not provide for such withholding tax / there is no tax treaty applicable (i.e. no tax credit / exemption admitted in the residence country):
  - The Italian experience (see Circular Letter n.9/E issued by the Italian tax authorities on March 5<sup>th</sup>, 2015)
  - In case of intra – group services with fee determined according to the cost – plus method, BEPS actions n. 9 - 10 suggest to limit the withholding tax applied by the source countries to such part of the service fee corresponding to the mark – up (not to the costs recharged).

### Analysis 2: Tax treatment of the cross – border intra – group services

- ✓ 2017 UN Practical Manual on transfer pricing
- ✓ 2017 OECD Transfer Pricing Guidelines
  - Determination whether intra- group services have been rendered + determination of the arm's length charge
  - Simplified approach for the low – value adding intra – group services (BEPS Actions 8 - 10)
- ✓ 2011 EU Joint TP Forum Guidelines on low – valued adding intra-group services
- ✓ Domestic legislation: the example of the Italian tax authorities guidelines (Circular Letter issued by the Italian tax authorities on September 22<sup>nd</sup>, 1980) + Italian case law

### Analysis 3: Tax treatment of the cross – border digital services

- ✓ 2017 UN report "Tax challenges in the Digitalized Economy"
- ✓ 2015 OECD Action 1 "Addressing the tax challenges of the digital economy" + 2018 OECD Interim Report
- ✓ 2018 EU Digital Tax Package
- ✓ Proposals from the scholars: see Brauner – Pistone, 2018 (new concept of PE); Petruzzi – Buriak, 2018 (Proper applications of the TP rules)
- ✓ Domestic legislations: the example of the Italian web tax

### THE THREE AFOREMENTIONED ANALYSES AIM TO ANSWER THE FOLLOWING THREE MAIN RESEARCH QUESTIONS:

- 1) Is the current tax treatment of cross – border services effective?
- 2) Which impacts have the BEPS OECD Project had so far?
- 3) Which one of the proposed changes to the current tax treatment appears to be the most proper one?