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 5th, 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 wheter 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 22nd, 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?