



# ***Audit/control functions***

## ***New Approaches***

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# Tax dispute prevention

Audit/control functions have evolved dramatically over time: there is now a fairly common understanding that it is much more effective to discuss issues ex ante rather than ex post.

# Tax dispute prevention

Combination of several actions such as:

- Cooperative Compliance regime
- Advance tax ruling on new investments
- ICAP Project
- Joint Audits

# Joint Audits - Definition

Simultaneous control on entities of the same group operating in different countries by means of single team made up of officials from tax administrations involved

# Joint Audits – Legal Basis

## **EU context**

Directive 2011/16

article 11 of (active presence of foreign officers) and  
article 12 (simultaneous controls).

## **No UE Context**

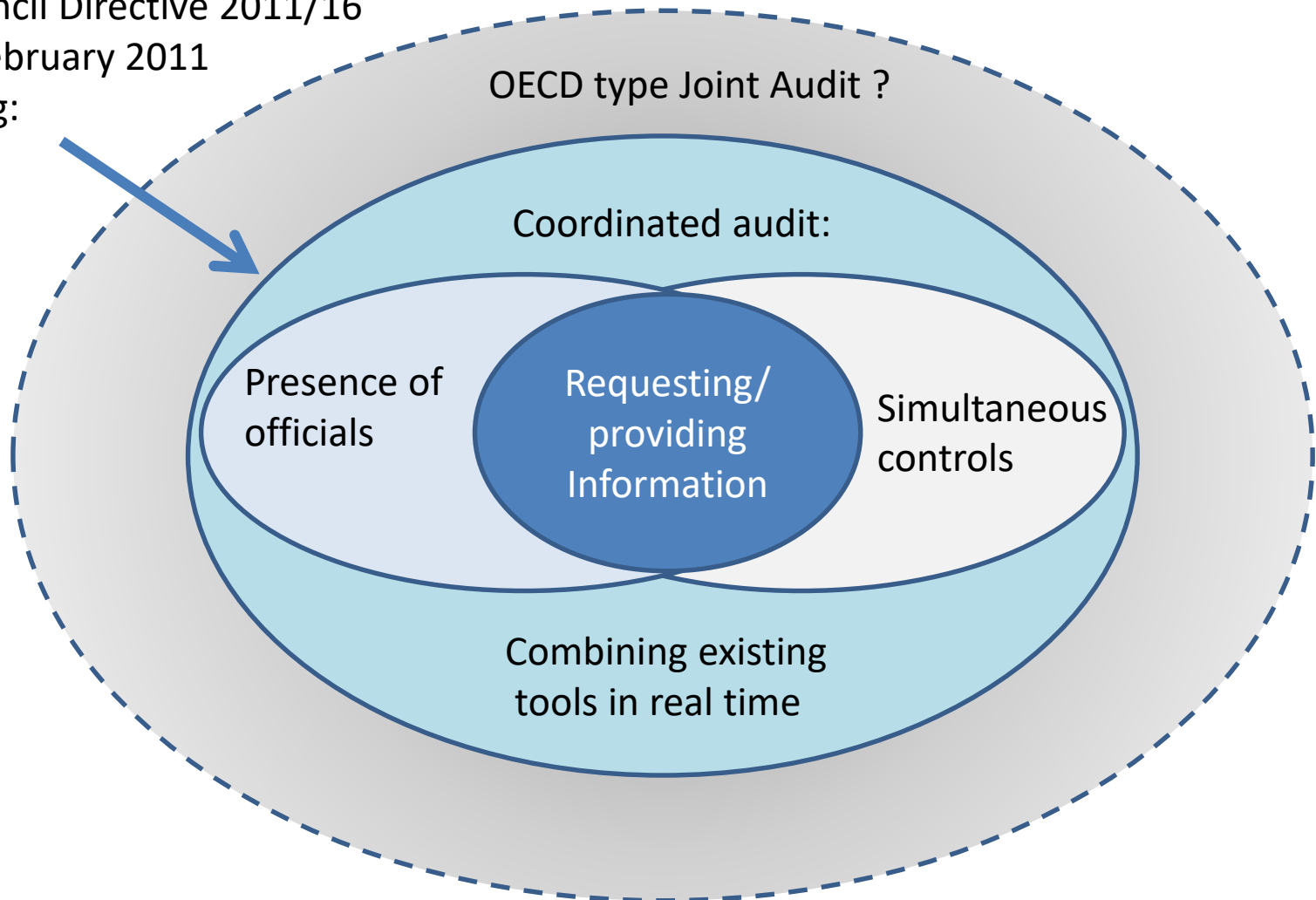
Article 26 of the OECD Model Tax Convention

- simultaneous examination and
- tax examination abroad

Article 9 of the Convention on Mutual Administrative Assistance in Tax Matters.

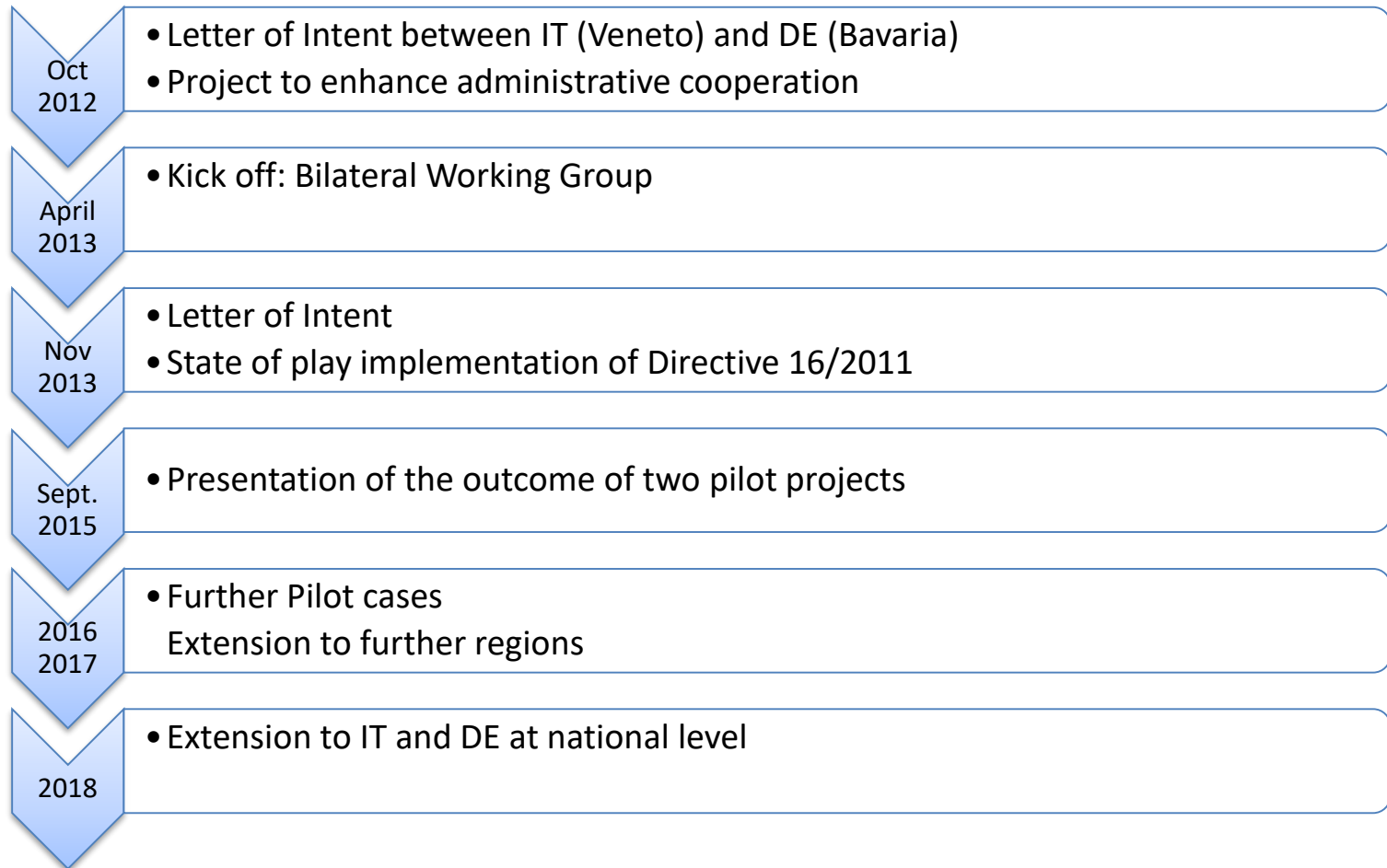
# Legal Framework

EU Council Directive 2011/16  
of 15 February 2011  
allowing:



# Joint Audits

## The IT/DE Project at a Glance



# Legal Framework

Two examples of how MSs, working together, could change their internal laws to carry on more Joint Audits:

- before the IT/DE JA Project “*presence in administrative offices*” and “*participation in administrative enquires*” was not permitted under the Italian legislation. In order to be able to carry on the 1st JA, in 2014 Italy implemented article 11 of the EU Directive 2011/16 with the Legislative Decree dated 4 March 2014 no. 29.
- in 2017 the Italian law provided for downward adjustments by modifying article 31-quater of the Presidential Decree no. 600/1973: according to this provision, downward adjustments of income can be granted at the conclusion of the controls carried out within the framework of international cooperation activities whose results are shared by the participating States.



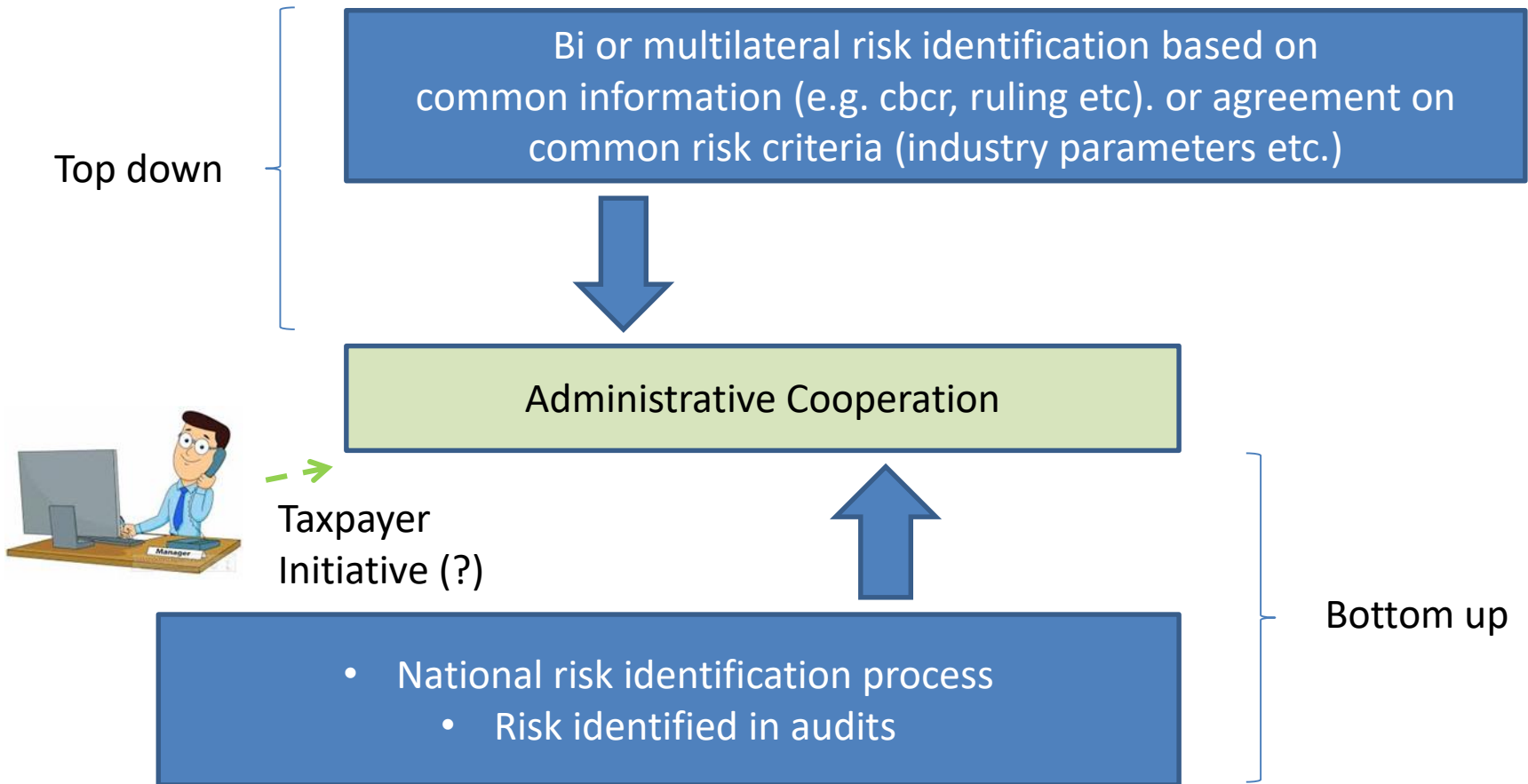
# Memorandum of Understanding

- **Origin:**
  - Article 11 of the Directive: *active presence ... is allowed by agreement between the requesting authority and the requested authority,*
  - The Communication from the Commission to the EU Parliament and the Council (An Action Plan to strengthen the fight against tax fraud and tax evasion)
  - The FTA 2010 Joint Audit Report which recommended to enter into an agreement with the other(s) tax administration(s) involved in the joint audit in order to provide a framework to deal with many issues that could arise in the preparation, planning, conducting and completing a joint audit.
- **Academia:**
  - MoU was supported

# Lessons learned so far

- MoU provides a concrete and tangible starting point for admin cooperation and lays down “minimum standard” rules for procedural issues
- Fast and secure exchange of information within the Joint Audit Teams needed
- Early involvement of cooperative taxpayers of benefit
- Clear audit plan needed (s. R 6, R7 and Annex to JTPF report on TP Risk management)
- The importance of the Intermediate Reports (to set the shared facts and circumstances of the case between the TAs involved) and the Final Report
- A solid structure for communication btw. German and Italian auditors up to a quick reaction mechanism
- Flexibility as regards audit practices
- On the Italian side, important changes to the domestic legislation

# Under consideration



# Under consideration

- A clearer legal framework (the taxpayers' rights, the value of the Final Report and of the conclusions of the TAs involved, Rights and obligations of auditors abroad etc.) ?

**Thank you for  
your attention**