Master in International Taxation
(University of Hamburg)

Master in Pianificazione Tributaria Internazionale
(Università di Roma Sapienza)

Corso Superiore di Polizia Tributaria
(Guardia di Finanza)

2nd Joint Seminar

Tax Havens in the Age of Global Standards:
a Comparative Analysis between Germany and Italy
(University of Hamburg, 4th March 2011)

The Constitutional Framework in the Italian Perspective

Dott. Laura Muzi



Constitutional framework (The Italian perspective)

Summary:

- Italian Constitution (General Provisions)
- Italian Constitution (Fiscal Provisions)
- Assessment Procedures
- Taxpayer's Statute
- Activities of Tax Authorities in Assessment Proceedings
- General Rules on the Burden of Proof
- Anti-Avoidance Procedural Instruments



Italian Constitution (General Provisions)

In Italy we have no specific constitutional frame ruling mutual assistance in tax matter related to other countries.

The relevant frame is the same that rules the acquisition of information (and evidences) for **domestic reasons**.



Italian Constitution (General Provisions)

The Italian Constitution guarantees as **inviolable** some rights of the individuals that could be compromised (also) in tax assessment procedures.

Indeed, during these activities individuals could be submitted to the authoritative power of the tax officers that could compromise their fundamental rights.

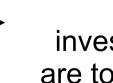


Italian Constitution (General Provisions)

The Italian Constitution provides ad hoc regulations concerning:

- freedom of persons (art. 13 Cost.)
- freedom of domicile (art. 14 Cost.)
- freedom of letter (art. 15 Cost.)

Investigations are allowed only according to the provision of law (art. 14 Cost.).



Assessments and investigations for fiscal goals are to be ruled by special laws.



Ability to pay principle

(art. 53 of the Italian Constitution)

Any limitation of individual rights connected with fiscal inspections is justified by reasons related to the **duty of contribution** to the Italian public expenditures, both of the central and of the local authorities



Art. 3 Cost.

(principle of equality)

and

Art. 53 Cost.

(ability to pay principle)





Fiscal interest principle:

enables the tax legislator to enforce the guarantees of the State to the effectiveness in the assessment and collection of taxes also giving more power to the tax offices.



Art. 2 Cost.

duties of politic, economic and social solidarity This provision gives legal base to the power to ask information to **third person**, that is, to those other than the taxpayer



Every inquiring activity conducted by Fiscal Authorities is based on

art. 97 Cost.

which states the main rules under which public bodies must behave.

Principle of Good Administration

Principle of Proportionality



Powers of Fiscal Authorities are stated in:

Presidential Decree 26 october 1972, n. 633

Ruling assessment on **VAT**

Presidential Decree 29 september 1973, n. 600 Ruling assessment on income taxes



Rights of Taxpayer during tax assesment proceedings have a particular legal base:

the **Taxpayer's Statute**, approved by law 27th July 2000, No. 212

Art. 10, par. 1 states:

Relationship between Taxpayer and Fiscal Authorities must be based on the **principles** of **cooperation** and **fairness**.



The **Taxpayer Statute** acknowledges a series of rights in the taxpayer's favour, in particular the

duty to provide grounds of the assessment

that bind the Authorities in every activities they are engaged in.

E.g. Identify the reasons for the inspection started regarding a Taxpayer, or the reasons that made it necessary to enter his office to obtain documentation, etc.



General rules on the burden of proof

Italian Tax Law states that, generally, the burden of proof is borne by **Tax Authority**.

In **domestic situations**, the subdivision of the burden of proof during the trial is always shaped on the structure of the legal relationship formalized at the outcome of the administrative proceeding in tax claim.



General rules on the burden of proof

The discharging of the burden of proof in all trials, is ruled by

«The party who wishes to assert a right before a court is to provide evidence of the facts on which the right must be grounded in. The party who objects that such facts are non-effective or that the right itself has changed or expired, is to provide evidence of the facts on which the objection must be grounded in.»



Anti-avoidance procedural instruments

This general rule knows some exceptions in those cases where presumptions concerning **fiscal residence** or **tax benefits** are admitted.

In the latter cases the burden of proof is **reverted** on **taxpayers**.



Anti-avoidance procedural instruments

When **Tax Havens** are concerned the general rules on burden of proof have some significant variations due to the **particolar situation** the Fiscal Authorithies encounter



Anti-avoidance procedural instruments

Principle of Good Administration

(art. 97 Cost.)



Fiscal Interess Principle

(art. 3 + 53 Cost.)

The combination of these constitutional principles entitle the Fiscal Authorities to use particular means, such as **presumptions** and the shift of the *onus probandi*, also in those cases where, otherwise, they wouldn't be allowed.

