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The Constitutional Framework in the Italian Perspective

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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.



Italian Constitution (Fiscal Provisions)

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



Italian Constitution (Fiscal Provisions)

Art. 3 Cost.

(principle of equality)

and



**Fiscal interest
principle**

Art. 53 Cost.

(ability to pay principle)



Italian Constitution (Fiscal Provisions)

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.



Italian Constitution (Fiscal Provisions)

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



Activities of Tax Authorities in Assessment Proceedings

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



Activities of Tax Authorities in Assessment Proceedings

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



Activities of Tax Authorities in Assessment Proceedings

Rights of Taxpayer during tax assessment 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.**



Activities of Tax Authorities in Assessment Proceedings

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

Article 2697 of the Italian Civil Code



«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 **particular situation** the Fiscal Authorities encounter



Anti-avoidance procedural instruments

**Principle of Good
Administration**
(art. 97 Cost.)



**Fiscal Interest
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.

