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Panel 2

The conduct of tax audits and the intersection with taxpayer rights: case studies

Title:

***Audit Practices:
The Formalistic Temptation Over the Substantial Protection of TR***

ABSTRACT

Among global legal challenges, in the ongoing debate about a target model of balanced, reciprocal and efficient Citizen-State (i.e. Taxpayer-Tax Agency) relationship, the Italian ‘tax audit practices’ need to be investigated in a distinctive comparative law perspective approaching the operational and critical issues arisen in jurisdictions¹, like Italy, facing a permanent fiscal crisis and public debt deficit (see, lastly, the 2020 Economic and Financial Report by the Ministry of Economic and Finance and the Economic Recovery Plan 2021).

The Italian efforts to respond to the needs for updating the tax administrative framework reveal a peculiar perspective when focusing on the tax audit stage and the operational conducts: their foundational elements and legal safeguards, indeed, are not just related to the domestic Taxpayer-Tax Agency dichotomy but, rather, to the new challenges Italy is facing with its Strategic Plan 2021-2023, which is connected with a supranational scenario, including detailed goals, recommendations and standard guidelines (OECD- IBFD/OPTR, EU: lastly, see the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, Italy February 2021, and April 2021).

The Italian controversial case on tax audits shows the relevant and risky gap between legal principles and their fictional or weak empirical application. Many factors stand on the reconsideration of a new turning point in the audit policy: a part of the audit procedure and principles explicitly provided by the article 12 of the Italian Taxpayer Bill of Rights (ITBOR), by the constitutional principles and by the four volumes of operational guidelines from the Guard of Finance (Circolare no.1/2018) along with the ongoing arduous process towards the taxpayer-tax agency cooperation complicated by the serious lack of financial resources. The aim is to combine the enhancement of tax compliance programs with the AI

¹ OPTR, *The IBFD Yearbook on Taxpayers’ Rights 2020*, at <https://www.ibfd.org/sites/ibfd.org/files/content/pdf/2020%20IBFD%20Yearbook%20on%20Taxpayers%27%20Rights.pdf>.

procedure of automatization (“data lake” platform; Network Analysis (Sna), risk evaluation of no compliant) to be implemented in a way to efficiently direct the tax audit to the recovery of the financial resources uncollected for the high rate of tax evasion. Meanwhile, the human component of legal tax provisions (i.e. constitutional principles, the ITBOR, and the case law) and the related taxpayer’s behavioral studies are going to be almost completely dismissed.

Some specific issues are at the forefront. The digitalization of the Italian Tax Agency, presently emerging as a touchstone of new trends of conduct of tax audits, is actually reducing the intersection with taxpayer’s rights to a mere bureaucratic step from a variety of perspectives: considering the dialogue with the taxpayer and his/her right to be heard, and its critical recognition; the interconnection between the Guards of Finance’s access and audit, their final report and the time to let the taxpayer set his/her remarks; the way the formal observation has to be structured and its link with the judicial stage (the controversial ability to challenge and the difficulties connected with the Agency explanation and the right to be informed); the controversial role of the formal justification to be provided by the tax agency after the GdF report; the attempts for mediation and the weak relevance of the invitation to a meeting, which is connected with the risk of a public financial damage for the tax agency itself in case of self-defense and, finally, the role of amicable agreements.

Finally, within the institutional and administrative Italian context, persistently struggling to balance the authoritative tax power with the participatory rights, a recent alternative is becoming increasingly relevant: not opposition to the different interests linked to the tax audit (the State’s public interest for revenue and the protection of the taxpayer’s rights), rather resolution to construct an updated, bottom-up legal paradigm including the role of the taxpayer-citizen and the effective constitutional legal value of his/her rights (specifically, right to be heard and right of information) during tax audits. Within the general framework of the rights discourse, the Italian official set of taxpayers’ rights on audits reveals a continuous tension between a command-and-control and a cooperative compliance approach.

The pandemic has revealed the authenticity of that critical tension and has contributed to a renewed public debate maximizing the fight against tax evasion in view to operationally face the dangerous ‘tax gap’ and its connections with the ‘compliance gap’. The debate on the “quality of the tax audit”, especially in Italy, embraces that challenge. Strategic foresights to inspire an updated taxpayer-oriented tax audit?