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Abstract
Tax ethics includes everything that is considered moral in tributaries behavior held by those who, for various reasons, are taking part in the legal relationship.
The obligation to contribute to public expenditure, even before legal, is grounded in an ethical duty, who buys relevance when rises some form of common life. The power to impose taxes, expression of State sovereignty, assumes a particular dimension in the modern legal systems, being anchored to rigorous objective parameters, suitable to reinforce the ethical toll. It is illustrative of the authority exercised by the State on its own territory, in order to achieve the common good, ensuring order, freedom and rights of the individual; the performance of that function gives to the State a "moral legitimacy", founded on freedom and the sense of responsibility.
In the current regulatory system, taxing is bounded by two rigid constitutional parameters, closely related, surging to founding policy of tax arrangements, integrating advanced forms of protection of the rights of the taxpayer: the principle of legality in the imposition (article 23 of Constitution) and the principle of ability to pay (article 53 of Constitution).

Keywords: *tax ethics; taxing powers; obligation to contribute to public expenditure; rule of law; principle of ability to pay.*

Tax ethics, science of human conduct and tax law

The term "ethics" (Pellingra, 1977; Sainz De Bujanda, 1977, p. 236; Higuera Udias, 1982, p. 36; Tremonti – Vitaletti, 1986; Tipke, 1997; Goldstein – Halpern, 2001; Herrera Molina, 2002; Gallo, 2004, p. 3 ff.; Perrucci, 2004, p. 30–31; Fedele, 2006, p. 1 ff.; Moschetti, 2006, p. 39 ff.; Gallo, 2007; Falsitta, 2008; Gallo, 2008, p. 11 ff.; Santagata, 2009; Sacchetto, 2012, p. 831 ff.; more generally, on the relationship between ethics and law, comp.

Longobucco – Deplano, 2012, p. 380 ff.), in its ordinary sense, includes everything that is considered moral in the practice of tax behavior held by those who, for various reasons, are taking part in the legal relationship of tax (on the legal relationship of tax, comp. Giannini, 1937).

The term has the advantage of allowing a legal matter, such as tax law, to confront and deal with non–legal disciplines, such as ethics, like what is happening in other areas of economic and legislative system (Sacchetto, 2006, p. 475).

Moral and ethical aspects, related to tax matters, do not parse only the behaviors required by the taxpayers, but also invest tax policy choices made by the legislature and by the tax authorities (Leotta, 2009, p. 43).

Ethics, from the Greek εθος (ethos, which, in the common sense, means "character", "behavior", "custom", "custom"), is the science of human conduct, «understood as conduct of the end to which tends the behaviour and the tolls to reach that end, or how to search for the motive of same conduct» (Sacchetto, 2006, p. 477; Sacchetto – Dagnino, 2013, p. 618–619; Abbagnano, 2001, p. 437 ff.).

The periphrasis, seemingly with a meaning, can be understood at least in two meanings: one "prescriptive", which considers ethics as science of order to address human conduct, as well as the necessary means to achieve it, what you can deduce from the inherent nature of man; the other "descriptive", which locates in the ethics science of human conduct, aiming to identify reasons and causes the same, through the consideration of facts and abstention from any consideration of merit (Sacchetto – Dagnino, 2013, p. 619).

The difference is obvious: prescriptive ethics presupposes the possibility of identifying moral ideas and values appropriate to assume an absolute size; descriptive ethics, instead, makes relative values, demean them in decisions or resolutions, established by human will (Sacchetto – Dagnino, 2013, p. 619).

Although in everyday language the words "ethical" and "morality" are often used interchangeably, it is, in fact, expressions do not coincide, because morality is based on social behavior, while ethics requires a reflection on this behavior: the moral is a substantial component that gives content and efficacy to norm; ethics, on the other hand, can

remedy the shortcomings of the law, appearing much less defined and circumscribed in relation to morality (sometimes gets confused with habit, use and custom) (Sacchetto, 2006, p. 475 e 481; Uckmar, 2011, p. 153 ff.; Rosenbaum, 2005).

As much as ethics and law, though disjointed at the conceptual level, cannot be separated in the factual reality (Sacchetto, 2006, p. 481; Habermas, 1992); are not miss, however, different reconstructions (Kelsen, 1960, p. 19), designed to separate legal science and ethics, considering the function of a lawyer just to identify and interpret the applicable law (Sacchetto – Dagnino, 2013, p. 620). According to this last conception (Kelsen, 1960, p. 19), legal science would deal subject only, trying to seek what is and how is the right, rather than as it should be or how it could happen: however, nothing ban the jurist to take as a yardstick of investigation, an ethical perspective, considering that, ultimately, ethical analysis may affect the substance of the legislative decisions and speeches critical of the legislation (Sacchetto – Dagnino, 2013, p. 620)

In fact, the law cannot be solved in the formal law, nor coincide with morals, being to them compared, at the same time, autonomous and connected (Sacchetto – Dagnino, 2013, p. 622, nt. 16; Strauss, 1953; Padoa Schioppa, 2007, p. 653 ff.). Not by chance, the application of ethical principles to tax matters has remote origins (Concetti, 1995; Martini, 2000, p. 51; Salvini, 2006, p. 561 ff.), which, while not sinking in the mists of time, date back to the first organized civilization: the oldest historical exhibit is found during the age of the Sumerians (about 6000 b.c.), which forbade the burial until the heirs had not fulfilled the tax liability gardner on the deceased (Uckmar, 2011, p. 154); in the Sacred Scriptures[1] we find then the well–known maxim "render to Caesar the things that are Caesar's and to God what is God's", illustrative of how taxes have always been covered with considerable impact on human history (Adams, 2007), often making from motive of revolutionary movements (think of what has happened to the American and French Revolution).

The biblical aphorism, earlier set out, identify the behavioural model which must abide by the taxpayer in the dual role of citizen, part of a community, and as a believer; this helps to connote, also of moral value, duty to pay tribute (Sacchetto, 2006, p. 476).

The fiscal policy and the foundation of the compulsory contribution to public expenditure

The obligation to contribute to public expenditure, even before legal plan, is grounded in an ethical duty, which rises when comes to be some form of common life (Sacchetto, 2006, p. 476; Forte, 2012): the people are part of an organized group, whose management inevitably involves some expense, to meet the need certain revenue, which retract in part through taxation (Holmes – Sunstein, 2000, p. 37 ff.).

In this context fits the answer given years ago, during an interview, by then Economy Minister Tommaso Padoa–Schioppa, who considered taxes a "beautiful and civilized thing, one way to help everyone along with indispensible as the health, safety, education and the environment".

The ethical analysis of law may be positive or normative: the first hypothesis is to predict the effects of legal rules and understand the consequences of application; the second is to find ethically correct solution, turning to those who, for various reasons, are taking part in legal experience (legislator, jurisprudence and doctrine) (Sacchetto – Dagnino, 2013, p. 623–624).

Anyway, despite the ethical approach, one cannot disregard respect for rule of law, even when it appears morally unjust, with the effect that the same moral viewpoint, although it can be refused, it remains strictly legal binding (Sacchetto – Dagnino, 2013, p. 624).

The advantage of reconstruction, rather than undermine the rule of law (article 23 of Constitution), with a view to "return to ethics", is found in the ethical significance, which becomes a part of the legal phenomenon, acting as a stimulus for the development of new rules of law (Sacchetto – Dagnino, 2013, p. 624).

Ethics, in fact, rather than being the daughter of the law, becomes parent (Sen, 2009; Sen, 2010, p. 369): how authoritatively argued, «the legislature is master of law, but not of jus» (Parlato, 2000, p. 222); however, often the ethical principles become part of positive law, as from the latter received through reference (Sacchetto – Dagnino, 2013, p. 632).

On the ethical level, fiscal policy (*rectius*, taxing powers) (Pontificio Consiglio della Giustizia e della Pace, 2005, p. 618 ff.) serves to make up for the deficiencies of the single in meeting alone needs: to achieve the common good each has a duty, moral and legal, to contribute to public expenditure,

by paying the taxes. The passive individual legal situations on the taxpayer is entitled to claim state tax (article 53, paragraph 1, of Constitution).

So, in this light, the tax base is essential for creating the conditions for shared prosperity: the tribute becomes an active instrument of formation and distribution of resources, enabling any taxpayer to make means aimed at ensuring welfare society (Gallo, 2009, p. 404).

The constitutional principles of tax law: subsidiarity, solidarity and progressive taxation

In the Italian tax law it is possible to identify certain constitutional principles whose ethical appears relevant: subsidiarity, participation and solidarity (Sacchetto – Dagnino, 2013, p. 634).

Subsidiarity (Antonini, 2005; Perlingieri, 2006, p. 433 ff.; Parisi, 2007, p. 974 ff.; Longobucco, 2008, p. 229 ff.), regulated by article 118 of Constitution, is the policy that regulates the relationship within an organized group, making sure that whoever occupies a top position happens only when one is placed in a subordinate position appears inappropriate (Sacchetto – Dagnino, 2013, p. 634).

The application of this principle to tax gives life to the so–called "subsidiary State", characterized by an intermediate between a liberal tax system, which locates in the tribute the consideration of public services offered to citizens and that, therefore, only with considerable difficulty can't accept the idea of a progressive tax, an expression of solidarity and social justice, and a socialist logic, that, recognizing spaces excessive to governmental power, results in increase of proportion of public expenditure, supporting her with onerous and oppressive taxes, restricting individual freedom (Sacchetto – Dagnino, 2013, p. 636–637).

Even democratic participation (direct or indirect) of individuals to public choices, especially with regard to the determination of taxes, by virtue of the principle set out in article 23 of Constitution has a moral order. Therefore, the violation of principle as well as unlawful also appears unjust; from its application, however, the need for more complete information on the payer, the simplification of the tax system to make it more transparent (Grassi – De Braco, 1999), the taxpayer's education so that it can understand the important concepts of the tax system, in order to minimize the "fiscal

illusion" (Sacchetto – Dagnino, 2013, p. 639; for fiscal illusion means the inaccurate perception of the taxpayer, the actual amount of tax burden; it can be resized or deleted through the proper information and transparency: on the topic, comp. Puviani, 1903.).

The participation of the taxpayer, despite having to be effective, must not be excessive and disproportionate in order to hinder the decisions on tax matters: in this context, is part of the article 75, paragraph 2, of Constitution, that prohibiting the referendum of tax laws (Sacchetto – Dagnino, 2013, p. 639).

The same can be made in connection with the principle of solidarity, whose foundation is found not only in articles 2 and 53 of Constitution, but even in the Aristotelian ethics (Aristotele, *Etica Nicomachea*, V, 1, 1129b, 18 ff.), which believes that social justice is implemented through the joint implementation of the common good and of the individual (Sacchetto – Dagnino, 2013, p. 639–640).

Moreover, a connection between subsidiarity and solidarity can be found in the principle of progressivity (Schiavolin, 2006, p. 151 ff), which must be based on fiscal system, pursuant to article 53, paragraph 2, of Constitution: ensure compliance with ethical principles, it must be a progressive right, namely, nor vitiated by defect, nor even to excess, that is realized when the progressiveness is not toned down to the point of losing the function of solidarity, nor accentuated so as to constitute a limit on the freedom of the citizen (Sacchetto – Dagnino, 2013, p. 641).

The dual purpose of the tax claim: the constraint and the equity value. The tax "right" and the obligation to pay the tribute

The tax claim has a dual purpose: on the one hand, restricts freedom, rights owners and the economic potential of the individual; on the other, ensures a fair distribution of wealth, the economic and social inequalities, and promotes an ethic of responsibility (Gallo, 2009, p. 404 and 408).

The protection of the person and his individual rights is to ensure a "fair taxation" (Nagel, 1991; Sen, 1997, p. 25 ff.; Sen, 2000; Arneson, 2001; Krugman, 2001, p. 7 ff.; Dworkin, 2002; Gallo, 2004, p. 39 ff.), an expression of that substantial justice aimed at achieving the common good (Turchi, 2010, p. 462).

In the social doctrine of the Church (Pontificio Consiglio della Giustizia e della Pace, 2004; Galmarini – Giarda, 2004, p. 318; Turchi, 2010, p. 461 ff.) there are other sources where you may encounter the ethical toll: according to Saint Paul[2] payment of taxes rises to obligation of conscience; Saint Augustine condemning the evasion, even if justified by a worthy purpose, as to make donations to the Church, and considers legitimate resistance to pay tributes "unjust", involving an unbearable burden; Saint Thomas, instead, in the "*Summa Theologica*" (Tommaso d'Acquino, *Summa theologiae*, II–II, q. 47, a. 10, ad. 2) processes an embryonic notion of tax, emphasizing the ethical aspect of levy, who holds the prerogative of sovereignty, aimed to achieving the common good (Sacchetto, 2006, p. 475; on the "common good", comp. Rawls, 1972).

The analysis of the relationship between morals and taxation cannot be separated from the reference to the principles of the social doctrine of the Church, contained in part III, section II, of Catechism of the Catholic Church (Leotta, 2009, p. 33–34).

The ethical character of the tax, in the various forms (tax, local tax and contribution), to be analysed from two respects: by the taxpayer, taxable entity, the ethics is justified because the same which is the subject of the services divisible or indivisible, made available to the public, should not shirk the obligation to contribute to public expenditure; from the point of view of the institution, active subject of tax levying entity, the ethical duty of the tribute to prepare a fair tax system, accompanied by a correct use of public money, tended to avoid waste, lightness, errors in public spending, corruption and undue appropriation.

Only when the tax laws elaborated a "fair tax" (Berliri, 1945; Steichen, 2002, p. 243 ff.; Bernardi, 2002, p. 585 ff.; Uckmar, 2005; Miscali, 2009.) is a moral obligation, on the taxpayer, to pay tribute (Leotta, 2009, p. 36); on the legal level, however, he will still have to comply with the monetary claim, regardless of whether it is right or not, only to seek remedies granted by law.

In other words, payment of tax payable is a moral and legal duty of each subsidiary; behaviour of tax evasion or tax avoidance[3] (Cipollina, 1990, p. 220 ff.; Lovisolo, 1989, p. 1 ff.; Tabellini, 1999, p. 545 ff.; Lupi – Sepio, 2007, p. 1 ff.; Tabellini, 1989; Tabellini, 1995; Kruse, 1994, p. 207 ff.; Tabellini, 2007; Fiorentino, 1996; Ficari, 2009, p. 390 ff.; Colli Vignarelli,

2009, p. 677 ff.; De Mita, 2009, p. 393 ff.; Ficari, 2009, p. 997 ff.; Lovisolo, 2009, p. 49 ff.; Marcheselli, 2009, p. 1988; Zizzo, 2009, p. 487 ff.; Melillo, 2010, p. 423; Pedrotti, 2010, p. 597 ff.; Parente, 2011, p. 423 ff.), although prohibited from a legal point of view, they also become immoral only when there is a just tax (Leotta, 2009, p. 43).

On the ethical level, to ensure the common good is necessary, on the one hand, pay the taxes and, on the other hand, avoid forms of waste, to safeguard the respect of the universal destination of goods and the right to private property[4]. The moral characterizes the act of subjects of tax law: the public authority, instead, characterizes the tax authority and the taxpayer (Sacchetto, 2006, p. 476).

The ethical foundation of the tax liability is found «in respect of distributive justice, administered by the authority, and that legal citizens as regards the conduct of individuals in relation to the common good» (Leotta, 2009, p. 34).

In this light, the ethical management of tax ensures to taxpayers a management of tribute thrifty and efficient to what retracts from the exercise of the power to impose taxes; in addition, the same should be allowed to participate, albeit indirectly, through their representatives in Parliament, with the preparation of tax laws.

The right of the State to levy taxes is not unlimited: deferring to the next discussion the purely legal considerations, on ethical profile, the tribute must be fair and addressed to the common good, so as not to encroach on private initiative and encourage tax evasion or tax avoidance behavior (Leotta, 2009, p. 36).

The "fair tax" presents certain particularities: first, the character of proportionality and equity, since the tax burden be distributed according to the real possibility of taxpayers, so as to realize a substantial equality aimed at treating equally unique situations and different situations differently; secondly, the tax burden should not be excessive, resulting in a confiscate tax with expropriation effects (Falsitta, 2008, p. 141 ff.; Gaffuri, 2008, p. 442), such as to compel the taxpayer substantially effects to use their assets to meet the tax liability; additionally, you must respect the principle of subsidiarity, ensuring that the management of the *res publica* can multiply bureaucracy and turn the State into a welfare office (Gentile, 2001, p. 67 ff.),

characterized by inadequate extension of the tasks of the human and financial institutions, waste of energy and increase bureaucratic structures dominated by exaggerated logic rather than by the concern to offer an efficient service; finally, the opportunity to challenge and check the tax claim, by motivating the act of taxation, the adversarial principle recognized in the process of investigation, the correct use of presumptions, the guarantee of judicial protection and transparent and prudent administration of public money, according to the canon of good paterfamilias (Leotta, 2009, p. 36–37).

Administrative transparency must be accompanied by the clarity of the policy in the economic and financial field, so as to monitor the extent of sampling, the expenditure data and the objectives pursued by the proceeds of the revenue (Leotta, 2009, p. 42). Given the part played by the tribute in the context of policies aimed to protecting and promoting the dignity of the person, it is possible to identify in transparency, simplicity and efficiency which characters allow you to believe "fair" a tax system to ensure a withdrawal right (Turchi, 2010, p. 469).

Tax ethics and functions of tax norm: acquisitive, redistributive and promotional function

Tax ethics cannot be separated from the analysis of the primary functions carried out by the tax law, identified in acquisitive, redistributive and promotional purposes (Sacchetto – Dagnino, 2013, p. 641).

The acquisitive purposes takes priority and essential in tax field, being the tribute intended to provide resources to the treasury, in order to finance public spending, aimed to pursuing the interests of the citizen/taxpayer (think of the drafting of laws, administration of Justice, public order and other public services indivisible) (Sacchetto – Dagnino, 2013, p. 642). To do so, is not recommended as much an imposition too low, as a too high: the first could undermine the principle of solidarity, the second that of subsidiarity; the best solution should be identified in practice (Sacchetto – Dagnino, 2013, p. 646).

The redistributive function (Stefani, 1999, p. 43 ff.), implemented through the principle of progressivity of taxation, aims to remove the social and economic inequalities between taxpayers, subjecting the richest for a more than proportional tax in relation to disadvantaged groups; in this way,

the tax system is no longer geared exclusively to the production of public goods and services, but also to the fulfilment of a duty of social solidarity (Sacchetto – Dagnino, 2013, p. 642).

Also with an eye redistributive are discard extreme assumptions: an overly limited redistribution would be contrary to the duty of solidarity by creating social inequality and discontent within the population; high redistribution, however, would increase public spending enormously rewarding who benefits from subsidies without contributing to social progress and encouraging, at the same time, tax evasion, tax avoidance or relocation of the affluent classes who consider such oppressive and unjust to keep people who do not work (Lupi – Turchi, 2011, p. 350 ff.); the right fit must be identified in practice (Sacchetto – Dagnino, 2013, p. 649).

Moreover, related to both the acquisitive and redistributive function is the institute's tax amnesty (Ferlazzo Natoli, 2003, p. 645 ff.), which gives rise to considerable doubts, because if to "cash" in a short time, making the new acquisition interest, compresses distribution to cancel it, arousing injustice and frustration on honest taxpayers (Sacchetto – Dagnino, 2013, p. 649).

More feature of the tax law is that promotional (Dagnino, 2008, p. 23 ff.) aimed to achieving purposes purely extra tributary, such as stability and economic development, through the provision of incentives and penalties that you encourage/discourage conducting certain activities (Sacchetto – Dagnino, 2013, p. 643).

Also facilitating or penalizing instruments should not be excessive, as it could result in an unreasonable State influence in the economy, diverting resources from profitable areas to other less profitable, resulting in infringement of the subsidiarity principle (Sacchetto – Dagnino, 2013, p. 649). Also, the ethical value of promotional rules must contend with the canons of necessity, proportionality and suitability: if the norm is not required would infringe the principle of subsidiarity, because the do not need requires that the aim pursued could be realized even without State intervention; in the absence of proportionality, the rule would be unfair to excess, going beyond what is necessary to achieve the end in charge; if the arrangement is not appropriate would be unfair to fault, because it is not in intensity and quality such that direct the choices of individuals, thus departing unnecessarily from the general rule (Sacchetto – Dagnino, 2013, p. 649–650).

The dimension of the taxing powers and constitutional boundary parameters: the principles of legality and of ability to pay. The phenomenon of self–taxation

The power to impose taxes, an expression of the State sovereignty, in modern legal systems assumes a particular dimension (Lupi, 2007, p. 633–634), being anchored to rigorous objective parameters (Bertolissi, 1992, p. 523–524), suitable to reinforce the ethical toll.

It is illustrative of the authority exercised by the State on its territory, the principal aim of realizing the common good, ensuring order, freedom and rights of the individual; the performance of that function gives the State a "moral legitimacy", founded on freedom and the sense of responsibility (Turchi, 2010, p. 462).

The foundation of *jus impositionis* has been variously rebuilt in different historical periods: during the Roman empire, through the middle ages and up to the time of absolutism, the tribute was an expression of unilateral and unconditional exercise public authority, allowing almost to him who had the power to impose any tribute, giving no account of the intended purpose and use of revenue; currently, however, the *ius impositionis* is characterized by the involvement of taxable persons, participating in the dynamics of taxation by the expression of "consent" to the imposition (Parente, 2013, p. 513).

Thus, over the centuries it has switched from rigid principle of authority to the parameter of "consent" to the imposition, with whom he intended to rebalance the structure of powers and ensuring the integrity of the individual against the will of those who exercise the *jus impositionis* (Parente, 2013, p. 513).

In the current regulatory system, taxing is bounded by two rigid constitutional parameters: the rule of law (article 23 of Constitution); the principle of ability to pay (article 53 of Constitution) (Parente, 2013, p. 514).

The two principles, closely related, surging the founding of tax policy (De Mita, 1987, p. 454), since they integrate advanced forms of protection of the rights of the taxpayer.

The principle of reservation of law (Fedele, 1978; Fedele, 1994; Marongiu, 1995; Fedele, 2005, p. 37 ff.; Cipollina, 2006, p. 163 ff.; Gaffuri, 2006, p. 23 ff.; La Rosa, 2006, p. 7 ff.; Russo, 2007, p. 39 ff.; Amatucci, 1990, p. 1 ff.) is laid down in article 23 of Constitution, which provides that «no personal or

financial performance may be imposed except in accordance with the law» (on the distinction between "personal and financial performance", comp. Fantozzi, 2005, p. 14; Lupi, 2007, p. 636–637; Fedele, 1978, p. 27; Micheli, 1976, p. 55 ff.; Tesauro, 2009, p. 18; Russo, 2007, p. 40–41; Tesauro, 1987, p. 24; Zingali, 1968, p. 700; Micheli, 1973, p. 1082; Bertolissi, 1992, p. 532; Paladin, 1991, p. 186). The term "law" wrong pertains exclusively to formal law, distinguished from the ordinary procedure of approval by Parliament (articles 70–74 of Constitution), but also to acts having the force of law, adopted by the Government, such as decree law (article 77 of Constitution) and legislative decrees (article 76 of Constitution); the use of decree laws on tax matters is circumscribed by article 4 of the Statute of the rights of the taxpayer (Law July 27, 2000, no. 212), which implementing the orientation of consolidated constitutional jurisprudence[5], held that «you cannot have with decree law the establishment of new taxes, nor provide for the application of existing tributes to other categories of persons».

The law becomes, therefore, a primary source of tax rules, governing both the institution that the implementation phases of the tribute (Fantozzi, 2005, p. 46; d'Amati, 2006, p. 7; Zingali, 1968, p. 697 ff.; Giannini, 1956, p. 22; Micheli, 1976, p. 48). In the present case, it is a relative reserve of law (Micheli, 1976, p. 48; Bertolissi, 1992, p. 527; Lupi, 2007, p. 639; d'Amati – Uricchio, 2008, p. 28), because the source of law has the task of defining the principles concerning the essential aspects and basic of matter, while the administrative authority has the power to integrate discipline, within the limits laid down by the law itself, with acts of secondary legislation (Del Giudice, 2011, p. 1019; on the difference between absolute and relative legal reserve, comp. Carlassare, 1990, p. 5–6; Casalena, 2007, p. 609; Martines, 2010, p. 386).

Therefore, the law, despite being a foundation of taxing powers, is not the only source: may not report fully regular tax and bringing to subject sources the discipline of detail items (Bertolissi, 1992, p. 528; Fantozzi, 2005, p. 47–48).

The mandatory minimum content, that should be imposed by law, consists of the elements necessary to identify the tribute[6]: the facts, taxable persons, principles of determination of rates, taxable amount, penalties. Therefore, it would be unconstitutional, for violation of article 23 of Constitution, a law which, by creating a tribute, not determine these elements and decline them to secondary legislation (Lupi, 2007, p. 639; Parente, 2013, p. 517).

The reserve of law in tax matter, underpinning the rule of self–taxation (Bartolini, 1957, p. 3 ff.), is an expression of the classical principles of liberal democracies, synthesized in Latin words «*nullum tributum sine lege*» and «*no taxation without representation*» (Parente, 2013, p. 519): the principles, of nature clearly guarantees, processed in English experience with the *Magna Charta Libertatum*[7] of John Lackland of 1215 and with the *Confirmatio Chartarum* of Edward I of 1297, have spread in the nineteenth–century liberal constitutions, allowing taxpayers to limit the taxing powers, through the expression of consent to the imposition, accomplished by representation within democratic bodies.

The *Magna Charta Libertatum* originated as a result of substantial increases, decided by John Lackland between 1204 and 1214, of the *scutagium*, a substitute tax of military service that the knights were obligated towards the King in the event that they had requested exemption from the obligation to perform military service; beside this tribute was then the *auxilium*, consisting of a pecuniary benefit that the King had the right to ask to meet the extraordinary expenses (Adams, 2007, p. 210; Sacchetto – Dagnino, 2013, p. 637, nt. 59). In doing so, was given effect to the principle, with a significant ethical, democratic participation of partners at the most important choices of society, including those relating to the tax.

Indeed, such requirement has been advised already many centuries before: for example, Aristotle in "*Policy*"[8] considered citizens who had the opportunity to take part in the Government of the *polis*, acting as director and judge and deciding in the assemblies; the same philosopher in the opera "*The Constitution of the Athenians*"[9] showed that as early as the fourth century b.c. was in force a system of indirect participation in tax matters, which today we would consider very similar to that adopted by the *Magna Charta Libertatum*.

In ancient Greece, the tributes were decided by ten parker, along with military funds treasurer and treasurer of the parties; the parker were magistrates, as holders of a public office (*magisterium*), which represented the people, being chosen by drawing lots, one for each tribe. This allowed the people's representatives to fix taxes, depending on the needs of revenue necessary to tackle the public spending (Sacchetto – Dagnino, 2013, p. 638, nt. 62).

However, initially the principle of legality in the imposition was perceived not as an instrument of democracy, aimed to giving to the taxpayers voice in politics, but in the sense that the taxes imposed without their consent took confiscatory nature, destroying the rights owners (Gallo, 2009, p. 400).

From a systematic point of view, the rule summarized in words «*nullum tributum sine lege*» does not simply express a principle of voluntary limitation of the power of the State, but behind the need that the discipline of the tax is contained in a law or another act bears the same effectiveness (Micheli, 1976, p. 49).

In the new legislative background, is net the shift from relationship authority – awe to the human compulsion: the taxable entity must express, albeit indirectly, consent to taxation, thus limiting the political power (Fantozzi, 2005, p. 45).

The system of "checks and balances"

The current fiscal system is characterized by a system of "checks and balances", imposed in order to limit the excessive power in tax matters (Parente, 2013, p. 520).

The mechanism consists of two rounds, structured in logical – chronological connection: on the one hand, citizens – taxpayers are called to elect members of Parliament; on the other, the latter, through the approval of budgetary and tax laws, has control over who holds the executive power, as once exerted on the monarch (Tesauro, 2009, p. 16; Fantozzi, 2005, p. 50; Lupi, 2007, p. 636).

Because the law is made by Parliament, the representative body of citizens, parliamentary control in the field of taxation is an expression of the normative principle whereby every public intervention on the property and the freedom of citizens can only be done by law (liberty and property clause) (Tesauro, 2009, p. 16; Grippa Salvetti, 1998, p. 17 ff.; Fedele, 1978, p. 22, 27 and 126; Parente, 2013, p. 520).

In truth, at the origins, this system could not call fair and democratic: for the absence of universal suffrage, the consensus of contributors to the tax, rather than the will of the people, symbolized the privileges and the strength of the dominant classes, each with their own deductibles

and prerogatives limited the power and slammed the arbitrariness of the monarch (Ricca Salerno, 1897 – 1932, p. 163, nt. 3).

For example, after the adoption of the *Magna Charta Libertatum*, the decision to introduce new taxes, in line with the medieval society, constituted exclusive of nobles and prelates to rank higher and certainly not of the representatives of the people, who, instead, were excluded from opportunities to participate in such decisions (Sacchetto – Dagnino, 2013, p. 638, nt. 62).

Currently, the widespread recognition of the right to vote is an instrument of control, thanks to which the taxpayer, by going to the polls, it could express its disagreement regarding economic, fiscal and spending policies made by the majority that recurs in elections (Gallo, 2008, p. 272).

In addition, due to the principle of democratic participation of individuals at public choices, citizens, besides being equipped with the right to vote, also have the right to overcome bureaucratic, cultural, legal and social obstacles to effective participation, in order to be effectively informed, listened to and involved in the exercise of public functions (Sacchetto – Dagnino, 2013, p. 638).

In our rule of law, by contrast, taxation is not only an expression of State sovereignty, but it has to be justified by law, which is the source of all personal performance or sheet, because the doctrine and case law attribute to the constitutional principle of legality (article 23 of Constitution) the function of protecting the property and the freedom of individuals to avoid the excesses of executive power in tax matters (Giannini, 1950, p. 274; Vanoni, 1962, p. 73 ff.; Amatucci, 1964, p. 10; Longo, 1968, p. 33 ff.; Rastello, 1987, p. 205 ff.; Falsitta, 2005, p. 131 ff.; Parente, 2013, p. 521)[10].

However, the top political authority, which exercises legislative power in tax matters, does not have a boundless discretion: to decide how to raise the financial resources needed to tackle the public spending, the legislature often is forced to operate purely political choices, taking account of a number of variables (asset integrity of individuals; promoting development; excellence of certain sectors of social life; caution against frauds and evasions; mediation between precision of sampling and his simplicity and slenderness) (Lupi, 2007, p. 634).

The ability to pay as a limit on the taxing powers and guarantee for the taxpayer: measurement indices.

In this context fits the second parameter limited, located in the principle of ability to pay (article 53 of Constitution) (Tesauro, 2009, p. 68), which seeks to limit the taxing rights, depending on the taxpayer's warranty (Parente, 2013, p. 522).

The legislature is not free to subject to tax any fact of life, being able to apply the tax only to cases that are expressions of ability to pay (Tesauro, 2009, p. 69; Micheli, 1976, p. 93; Santamaria, 2011, p. 51; Moschetti, 1988, p. 7): this allows you to validate the design ethics of the tribute, orienting the taxing rights, so as to hit the only expressive assumptions of wealth to meet public expenditure.

The tribute shall possess the requisite of ability to pay "to be constitutional, not to be tribute" (Tesauro, 1987, p. 6), because, for positive system tribute is only that conforms to the Constitution, then anchored to the contributory capacity (Bertolissi, 1992, p. 529; Bartolini, 1957, p. 9–10; Parente, 2013, p. 523–524).

Therefore, the ability to pay presents, at the same time, as assumed, limit and measure of taxation (De Mita, 1987, p. 455–456, nt. 1; Moschetti, 1988, p. 2; Manzoni, 1967, p. 13–14 and 73)[11], makes an impassable limitation for ordinary legislature's freedom in choosing of taxable persons, assumption and amount of the tax benefit (Micheli, 1976, p. 94; Moschetti, 1988, p. 2).

This will allow to the taxpayer to gain control over the constitutionality of tax rules, where they are contrary to the principle of ability to pay, not reconnecting that constitutional duty of share of the costs of the community to an economically assessable (Micheli, 1976, p. 94; Lupi, 2007, p. 688).

The principle has the advantage to qualify the activity taxation by reconnecting it to the needs of society: the latter, on the one hand, undergoes a deprivation of their wealth, on the other hand, takes advantage of a strengthening of the rights whose enjoyment is subject to the existence of financial resources (Bertolissi, 1992, p. 529).

In this context, the constitutional norm constrains the ordinary legislator and restricts the discretion, preventing him from typing as social behaviors that are not tax assumptions manifestation of wealth, nor economic strength (De Mita, 1987, p. 455; Parente, 2013, p. 526).

The contributory capacity denotes the suitability of the person to bear the economic burden of taxation and is aimed to identifying the extent of participation of the individual to public expenditure (Del Giudice, 2011, p. 127; Lupi, 2007, p. 687): as two sides of the same coin becomes then a guarantee for taxpayers and limit for the State apparatus (Parente, 2013, p. 526).

The principle also constitutes the audit policy of the adequacy of laws with constitutional principles and, therefore, essential for the interpretation and application of tax law (Santamaria, 2011, p. 52).

In terms of limits, fixed by ability to pay to power to impose taxes, you can check two: an absolute limit, that forces you to select, which requirements of the tax, effective and timely facts likely to manifest economic strength; a relative limit, which constrains the legislature to assume what ratio of the charge, expressed by the assumption, a principle consistent with those found in the legal system, reasonable compared with the purpose of participation in public expenditure (Fantozzi, 2005, p. 26; Micheli, 1976, p. 93).

In sum, the constitutional provision protecting two interests of equal rank: the public interest in the competition of all public expenditure, expressive of the function of solidarity; the interest of the individual to respect for his ability to pay, symptomatic of the function of constitutional guarantees of the law (Fantozzi, 2005, p. 19).

In the absence of a normative notion, in the recent past, the contributory capacity (Griziotti, 1953, p. 351 ff.; Giardina, 1961; d'Amati, 1964, p. 464 ff.; Manzoni, 1967; Micheli, 1967, p. 1530; Gaffuri, 1969; Maffezzoni, 1970; d'Amati, 1973, p. 106 ff.; Moschetti, 1973; Berliri, 1974, p. 114 ff.; La Rosa, 1981, p. 233 ff.; De Mita, 1984; Marongiu, 1985, p. 6 ff.; De Mita, 1987, p. 454 ff.; Moschetti, 1988, p. 1 ff.; Antonini, 1996, p. 274; Perrone, 1997, p. 577 ff.; Batistoni Ferrara, 1999, p. 345 ff.; Fedele, 1999, p. 971 ff.; Russo, 2007, p. 48 ff.; Gaffuri, 2008, p. 429 ff.), based on three legal arguments – the vagueness of the concept; the absolute immunity of legislative choices; the opportunity to report article 53 of Constitution to the tax system as a whole (Moschetti, 1988, p. 5) –, was depicted as a kind of "empty box" (Balladore Pallieri, 1948, p. 63; Giannini, 1950, p. 273; Ingrosso, 1950, p. 158; Balladore Pallieri, 1955, p. 370; Tesauro, 2009, p. 69; Micheli, 1976, p. 93; Fantozzi, 2005, p. 21; De Mita, 1987, p. 454; for critical remarks, comp. Maffezzoni, 1980, p. 1009; Gaffuri, 2008, p. 431; Parente, 2013, p. 527–528).

Considering that a fact is expressive of ability to pay if it is economic in nature, that is when expresses economic force (De Mita, 1987, p. 455–456, nt. 1; Giardina, 1961; Gaffuri, 1969; Lupi, 2007, p. 683), it seems reasonable to assign to the contributory capacity (Tesauro, 2009, p. 69; Gaffuri, 1969, p. 63 ss.; Zonzi, 1976, p. 2218; Lupi, 2007, p. 687; Perrone Capano, 1979, p. 83–95; for a different orientation, comp. Granelli, 1981, p. 30 ff.) the minimum meaning of economic capacity (Moschetti, 1988, p. 6; Maffezzoni, 1980, p. 1009), without identifying the ability to pay with the limited economic capacity of the subject (Parente, 2013, p. 529–530).

In fact, the ability to pay, while assuming the requirement of economic capacity, not identified with it, implying an evaluation in relation to the taxpayer's position and its ability to contribute to the public expenditure (Moschetti, 1988, p. 10; Vanoni, 1937, p. 89–90 and 94): are index of ability to pay the facts expressive of strength or economic potential, namely those who have wealth in a broad sense (Gaffuri, 2008, p. 438)[12].

However, hypothesize generically that the economic facts are expressions of ability to pay is rather an understatement (d'Amati, 2006, p. 31–32; d'Amati – Uricchio, 2008, p. 37; Gaffuri, 1969, p. 88 ff.; Manzoni, 1967, p. 73 ff.), being, however, must indicate, positive and concrete, individual economic facts symptomatic of contribution principle (De Mita, 1987, p. 457; Parente, 2013, p. 530–531).

On the point have formed different currents of thought (Gaffuri, 2008, p. 434–435): a first reconstruction (Basilavecchia, 2002, p. 292; La Rosa, 2000, p. 185)[13] has embraced a subjective notion of ability to pay, referring to the actual suitability of person to cope with the tax duty, through indexes concretely detectors of wealth; a different orientation[14] married a objective view, locating it in whatever economic fact likely to be expression, even without subjective eligibility requirement; in the middle is the thesis that processed a relative notion (Fantozzi, 2005, p. 25), as a function not only of the need for each precondition expresses economic potential, but also expresses the need to differentiate taxpayers and tributes (on the evolution of the orientation of constitutional jurisprudence in the matter, comp. Salvati, 1998, p. 507; Marongiu, 1999, p. 1757).

Among the "direct" indices of contributory capacity (Moschetti, 1988, p. 6; Cosciani, 1977, p. 393 ff.) may be counted the income (wealth

acquired) (Tesauro, 2009, p. 71; De Mita, 1987, p. 457), the heritage (wealth possessed)[15] and its value increases[16], while constitute "indirect" indexes consumption, business and transfer of goods (Tesauro, 2009, p. 71–72; De Mita, 1987, p. 457; Parente, 2013, p. 531–532).

These indexes express the attitude to the contribution, understood as a collection of events and conditions that manifest the ability to cope with the public expenditure by paying tribute (Gaffuri, 2008, p. 430).

In fact, the decision of what hit with the imposition depends on conception of the State, of its role and relations with taxpayers: a classic liberal theory focuses on proprietary rights, respect to the public interest to withdraw (on tax interest, comp. Boria, 2002), while minimizing State intervention; an egalitarian and welfare regulation approach, however, rejects the model of "minimal State", reevaluating the public interest to the levy to the rights owners (Gallo, 2007, p. 19; Gallo, 2009, p. 399).

The link between contributory capacity and person obligated: the debtor, the substitute and tax responsible.

The article 53 of Constitution, stating a principle of substantive tax law, with a programmatic significance norm, features that «everyone is expected to contribute to the public expense because of their ability to pay»: the norm does not restrict the duty insurance to citizens, but extends it to all those who, in relation to the various situations considered by the individual tax laws, are in touch with our legal system (Micheli, 1976, p. 13).

Furthermore, the constitutional enunciation, where has that "everyone" are obliged by virtue of "their" ability to pay, find the connecting factor subsisting between contributory capacity and party responsible (Moschetti, 1988, p. 11).

In short, they are required to contribute to public expenditure only holders affected by the ability to pay tribute, to the extent of such entitlement: result of semantic link between "all" and "their" place in article 53 of Constitution, each taxpayer is required to pay by reason of their ability to pay, not because of an ability to pay in whole or in part attributable to others.

This fact raises the question of the constitutionality of the figures of the substitute and the responsible of tax, hypothesis of "almost tax subjectivity" that pursuing a paramount aim of collective interest, allowing to facilitate the

assessment and collection of taxes: despite the substitute and the responsible are required to pay in connection with a people's ability to pay, the institute of recourse allows you to comply with article 53 of Constitution (Gaffuri, 2008, p. 437).

The ability to pay cannot be generalized, being limited only to taxes to ensure the cost of public services indivisible, included in the concept of sets, not even those who seek to influence the cost of public services divisible, within the concept of tax (Moschetti, 1988, p. 3–4; Maffezzoni, 1980, p. 1012; Micheli, 1976, p. 97; Granelli, 1981, p. 30–31; La Rosa, 1968, p. 51–52; Gaffuri, 2008, p. 430–431; Parente, 2013, p. 533)[17].

The constitutional provision, as is the norm on the principle of legality in the imposition (article 23 of Constitution), cannot be considered divorced from the source system and normative values, but in light of systematic and axiological interpretation, must be coordinated with legislation that recognizes and guarantees the inviolable rights of man and forces the fulfillment of the duties required by political, economic and social solidarity (article 2, paragraph 1 of Constitution), fixed on constitutional State foundation (Micheli, 1976, p. 14 and 92; Moschetti, 1980, p. 3; Santamaria, 2011, p. 51–52; De Mita, 1976, p. 338; Braccini, 1977, p. 1258; Forte, 1980, p. 28–29; Tesauro, 2009, p. 66; d'Amati – Uricchio, 2008, p. 37; Lupi, 2007, p. 689; Parente, 2013, p. 534).

In this view, the duty of every subsidiary to cope with public spending because of their ability to pay becomes a mandatory principle of social solidarity, which descends directly from article 2 of Constitution, by requiring on each member of State community to participate in needs of the community not by virtue of a commutative relationship with the State, but as a member of the community (Micheli, 1976, p. 14; Maffezzoni, 1970, p. 29 ff.; Tesauro, 2009, p. 66–67; De Mita, 1987, p. 455; Maffezzoni, 1980, 1009 ff.; Fedele, 1971, p. 27; Moschetti, 1988, p. 3; Parente, 2013, p. 535).

The value of the setting is that of giving the tribute a function of social justice, making public expenditure contribution to duty of solidarity (Gallo, 2009, p. 403).

The foundation of this theory is found not so much in a benefit that an individual receives from the State, against the fulfillment of general or special services, but as a duty of political solidarity, capable of expressing

the interest of all the creation and life of the public body (Micheli, 1976, p. 13–14; Moschetti, 1988, p. 10; Perrone Capano, 1979, p. 82–83).

In this light, the tribute not expressed the function, typically tax, to raise government revenue, fulfilling also to an extra tax task: implement the principle of social solidarity, through the use of taxation to economic, redistributive, social and extra tax purposes typically (Moschetti, 1988, p. 10; Micheli, 1976, p. 94; Tesauro, 2009, p. 67; for critical remarks, comp. Gaffuri, 2008, p. 436).

Well as the tributes with prominent extra tax purposes, such as environmental objectives (Gallo – Marchetti, 1999, p. 115 ff.; Gaffuri, 2008, p. 437; Selicato, 2008, p. 111 ff.; Uricchio, 2013, p. 731 ff.; Parente, 2015, p. 319 ff.), must comply with article 53 of Constitution, connecting to get expressive ability to pay, refer to facts that are economically significant manifestation of wealth (De Mita, 1987, p. 464; Tesauro, 2009, p. 67; Fantozzi, 2005, p. 25; Maffezzoni, 1980, p. 1023; Gaffuri, 2008, p. 435–436).

Ability to pay requirements: effectiveness, certainty and timeliness

The Constitutional Court[18], to reconstruct the scope of article 53 of Constitution, identified three requirements that must comply with the ability to pay: effectiveness, certainty and timeliness (d'Amati, 2006, p. 32; d'Amati – Uricchio, 2008, p. 37; Micheli, 1976, p. 96; Parente, 2013, p. 537).

Under the first requirement, the link between the fact that expresses ability to pay and tribute should be actual, and not apparent or fictitious, expressing the suitability of assumption with respect to the tax liability, which must be a real economic event, such as to allow the measurement of an existing income and not merely alleged (Santamaria, 2011, p. 54; Tesauro, 2009, p. 73; Fantozzi, 2005, p. 23; De Mita, 1987, p. 463; Micheli, 1976, p. 97; De Mita, 1981, p. 60; Gaffuri, 2008, p. 439; on the exemption of "minimum subsistence", comp. Moschetti, 1988, p. 9; Maffezzoni, 1980, p. 1011–1012).

Like this, the competition at public expense is based on the possession of actual ability to pay and tax eligibility: cannot, therefore, be classified as ability to pay an economic suitability not based on "real facts", but on a "basic dummy"[19] (Moschetti, 1988, p. 13).

The second requirement is closely related to the first, having ability to pay to be effective, in other words certain and current and not merely fictitious[20] (Fantozzi, 2005, p. 23).

Finally, applying the actuality parameter, the tribute should be related to an ongoing ability to pay, not even past or future: it must be when taxation occurs; in this perspective, actuality is an irreducible limit to introduction of "retroactive taxation"[21] (Fantozzi, 2005, p. 25; Tesauro, 2009, p. 75), which are unconstitutional when they lost, at the time of their application, «an appropriate relationship with the then existing wealth, but now probably spent»[22] (Gaffuri, 2008, p. 442).

In fact, the three requirements are inextricably linked: actuality is an explanation of effectiveness, which, in turn, has an affinity with the certainty requirement (Tesauro, 2009, p. 75; Parente, 2013, p. 539).

The actuality parameter excludes the possible adoption of retroactive taxation, which, having to object past situations, refer to an ability to pay current, but not passed (Amatucci, 2005; Mastroiacovo, 2005).

In fact, given the actual connection between premise and taxes also in terms of timing, the legislature cannot impose retroactive duties, as such in contrast with both the actuality principle of ability to pay, than with that of legal certainty[23] (Moschetti, 1988, p. 15).

In any case, in tax matters, the principle of non–retroactivity cannot be interpreted rigidly, being retroactive duties constitutionally legitimate when they hit past events that express an ability to pay still current[24].

In this regard, article. 3, paragraph 1, Law July 27, 2000, no. 212 (Statute of the rights of the taxpayer), entitled "temporal effectiveness of tax rules", enshrined the principle of non–retroactivity in tax matters, ruling that «except as provided by article 1, paragraph 2, the tax provisions do not have retroactive effect. With regard to periodic tributes changes introduced only apply from tax period following that existing on the date of entry into force of the provisions that provide for». Therefore, in the light of this provision, which codified, even in the field in question, the general principle of non–retroactivity of the law, established by article 11, paragraph 1, preliminary provisions to the civil code, has excluded the retroactive application of the law, if retroactivity is not expressly established[25] (Parente, 2011, p. 480, nt. 57).

The category's ability to pay, as a basic constitutional on fiscal matters, aimed to guarantee the taxpayer, can also be used as an interpretative criterion: between multiple interpretations, the interpreter has to stick to the one that face except the connection between tax and assumed (De Mita, 1987, p. 460).

The ability to pay is inextricably linked to the principles of reasonableness (Luther, 1997, p. 341 ff.; Paladin, 1997, p. 900 ff.) and tax equality, connoting ethical value of the tribute: the combination between articles 53 and 3 of Constitution implies that equal situations should be equal taxation regimes and, correlatively, to different situations an unequal tax treatment[26] (Paladin, 1997, p. 305; Micheli, 1976, p. 95; Moschetti, 1988, p. 17; Gaffuri, 2008, p. 430).

The transposition of this principle to the tax matters helps create a fair tax system, characterized by the same regulation of economic facts that express equal ability to pay and from a different discipline for situations which do not exhibit the same wealth (Tesauro, 2009, p. 78).

Therefore, identical or similar taxpayer are treated in, as far as possible, an equal or similar way, by supporting a higher sacrifice for those who demonstrate greater ability to cope with collective expenses, according to reasonably progressive criteria (Commissione Diocesana "Giustizia e Pace", 2000, p. 6).

The principle of progressive improvement models taxes on condition of individual taxpayers, guaranteeing a rational and efficient reallocation of wealth (Turchi, 2010, p. 469).

This allows to ability to pay to be absorbed by the principle of equality, guaranteeing the redistributive wealth, more noble purposes than merely corresponding: this approach made it possible to identify the basis of the tax, initially limited to the fiscal sovereignty of the State, in contribution–related duty, understood as a duty of solidarity, which corresponds the exercise, for the purpose of apportionment, a legislative power of taxation (Gallo, 2009, p. 401).

There are also anomalies, because, by releasing the ability to pay by the existence of an effective wealth on the taxpayer, it gives to legislature the power to allocate tax public loads choosing the taxation assumptions on autonomous reviews of social importance and economic virtuality (Leotta, 2009, p. 37–38.; Gallo, 2007, p. 90).

In this way, the individual would no longer be identified in *homo oeconomicus*, which includes proprietary rights, but in a political, social and moral person, inserted in an institutional and abstractly capable of competing at public expense, as holder of an advantageous position susceptible to economic evaluation, suitable to satisfy needs and requirements (Gallo, 2008, p. 270; Gallo, 2009, p. 402).

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Endnotes

[1] The expression, derives from the Greek (*Ἀπόδοτε καὶ τὰ τοῦ Θεοῦ τῷ Καίσαρι οὖν τὰ Καίσαρος Θεῷ*) and translated into Latin (*Reddite quae sunt Caesaris Caesari et quae sunt Dei Deo*), is a famous phrase traceable to Jesus, which is listed in the synoptic Gospels (the Gospel according to Matthew 22,21; the Gospel according to Marco 12,17; the Gospel according to Luke 20,25) and also outside of the canonical writings, such as in the Gospel of Thomas (100,2–3) and in the Gospel Egerton (3,1–6).

[2] Comp. *Epistle to the Romans* 13,7.

[3] Moreover, tax avoidance is linked to the issue of abuse of rights, regulated by article 10 bis, law July 27, 2000, no. 212, concerning «transactions devoid of economic

substance which, while respecting formal tax rules, achieve essentially undue tax advantages» (Mastroiacovo, 2016, p. 31 ff.; Mastroiacovo, 2015, p. 2 ff.; Zizzo, 2012, p. 1019 ff.; Zizzo, 2012, p. 2848; Zizzo, 2008, p. 869 ff.; Perlingieri, 2012, p. 38 ff.; Beghin, 2012, p. 1298 ff.).

[4] Comp. *Catechismo della Chiesa Cattolica*, n. 2401.

[5] Comp. Corte Cost., 10 marzo 1988, n. 302, in *Giur. cost.,* 1988, p. 1022 ff.

[6] Comp. Corte Cost., 28 dicembre 2001, n. 435, in *Fin. loc.,* 2002, p. 193.

[7] In point number 12 of this document reads: «*nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad hec non fiat nisi racionabile auxilium, simili modo fiat de auxiliis de civitate London*».

[8] Comp. ARISTOTELE, *Politica*, III, 1, 1275b 19–20.

[9] Comp. ARISTOTELE, *La Costituzione degli ateniesi*, II, 47.

[10] In addition, comp. Corte Cost., 26 gennaio 1957, n. 4, cit.; Corte Cost., 22 marzo 1957, n. 57, in *Giur. cost.,* 1957, p. 598; Corte Cost., 8 luglio 1957, n. 122, in *Giur. cost.,* 1957, p. 1101; Corte Cost., 27 dicembre 1973, n. 183, in *Foro it.,* 1974, I, c. 314.

[11] In addition, comp. Corte Cost., 6 luglio 1966, n. 89, in *Boll. trib.,* 1966, p. 1832; Corte Cost., 10 luglio 1968, n. 97, in *Giur. cost.,* 1968, I, p. 1538; Corte Cost., 29 dicembre 1972, n. 200, in *Boll. trib.,* 1973, p. 433.

[12] Comp. Corte Cost., 16 giugno 1964, n. 45, cit.; Corte Cost., 31 marzo 1965, n. 16, in *http://www.giurcost.org/decisioni/index.html*; Corte Cost., 6 luglio 1966, n. 89, cit., p. 1832; Corte Cost., 10 luglio 1968, n. 97, cit., p. 1538; Corte Cost., 18 maggio 1972, n. 91, in *Dir. e prat. trib.,* 1973, II, p. 193; Corte Cost., 22 giugno 1972, n. 120, in *http://www.giurcost.org/decisioni/index.html*; Corte Cost., 28 luglio 1976, n. 200, in *Giur. cost.,* 1976, I, p. 1254; Corte Cost., 20 aprile 1977, n. 62, in *Giur. cost.,* 1977, I, p. 606; Corte Cost., 23 maggio 1985, n. 159, in *http://www.giurcost.org/decisioni/index.html*; Corte Cost., 4 maggio 1995, n. 143, in *Riv. dir. trib.*, 1995, parte II, p. 470; Corte Cost. n. 21/1996, in *http://www.giurcost.org/decisioni/index.html*; Corte Cost., 22 aprile 1997, n. 111, in *Giur. it.,* 1997, I, p. 476; Corte Cost., 21 maggio 2001, n. 155, in *Riv. dir. trib.*, 2001, II, p. 589; Corte Cost., 21 maggio 2001, n. 156, in *Giur. it.,* 2001, 10, p. 1079; Corte Cost., 28 gennaio – 6 febbraio 2002, n. 16, in *Giur. it.*, 2002, p. 1788; Corte Cost., 8 aprile – 10 aprile 2002, n. 103, in *Giur. cost.*, 2002, p. 853.

[13] Comp. Corte Cost., 10 luglio 1968, n. 97, cit., p. 1538; Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 20 aprile 1977, n. 62, cit., p. 606.

[14] Comp. Corte Cost., 21 maggio 2001, n. 156, cit., p. 1079, with note by R. SCHIAVOLIN, *Prime osservazioni sull'affermata legittimità costituzionale dell'imposta regionale sulle attività produttive.*

[15] Comp. Corte Cost., 22 aprile 1997, n. 111, cit., p. 476, with note by E. MARELLO, *Sui limiti costituzionali dell'imposizione patrimoniale*.

[16] Comp. Corte Cost., 30 settembre 1987, n. 301, in *Boll. trib.,* 1987, p. 1747.

[17] In case law, comp. Cons. St., 14 dicembre 1963, n. 1058, in *Riv. dir. fin.,* 1964, II, p. 166; Cass., 13 luglio 1971, n. 2247, in *Dir. e prat. trib.,* 1972, II, p. 176; Cass., 18 ottobre 1971, n. 2930, in *Dir. e prat. trib.,* 1972, II, p. 1099.

[18] Comp. Corte Cost., 12 luglio 1967, n. 109, in *Riv. dir. fin.,* 1967, II, p. 223; Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 26 marzo 1980, n. 42, in *http://www.giurcost.org/decisioni/1980/0042s–80.html*; Corte Cost., 22 aprile 1980, n. 54, in *Rass. Avv. Stato,* 1980, I, 1, p. 691; Corte Cost., n. 252/1992, in *http://www.giurcost.org/decisioni*; Corte Cost., 29 gennaio 1996, n. 73, in *http://www.giurcost.org/decisioni/index.html*; Corte Cost., 26 luglio 2000, n. 362, in *http://www.giurcost.org/decisioni/index.html.*

[19] Comp. Corte Cost., 26 marzo 1980, n. 42, cit.

[20] Comp. Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 26 marzo 1980, n. 42, cit.; Corte Cost., n. 252/1992, cit.; Corte Cost., 29 gennaio 1996, n. 73, cit.; Corte Cost., 26 luglio 2000, n. 362, cit.

[21] Comp. Corte Cost., 22 aprile 1980, n. 54, cit., p. 691.

[22] Comp. Corte Cost., 10 giugno 1966, n. 64, in *Giur. cost.*, 1966, p. 737; Corte Cost., 15 luglio 1994, n. 315, in *www.giurcost.org/decisioni/1994/0315s–94.html.*

[23] Comp. Corte Cost., 4 aprile 1990, n. 155, in *Foro it.,* 1990, I, c. 3072.

[24] Comp. Corte Cost., 23 maggio 1966, n. 44, in *Giur. cost.,* 1966, p. 737; Corte Cost., 11 aprile 1969, n. 75, in *Dir. e prat. trib.,* 1969, II, p. 349; Corte Cost., 27 luglio 1982, n. 143, in *Boll. trib.,* 1982, p. 1764; Corte Cost., 20 luglio 1994, n. 315, in *Fin. loc.,* 1994, p. 1199; Corte Cost., 19 gennaio 1995, n. 14, in *Foro amm.,* 1997, p. 1597; Corte Cost., 27 luglio 1995, n. 410, in *Foro it.,* 1995, I, c. 3074; Corte Cost., 4 novembre 1999, n. 416, in *Giur. it.,* 2000, p. 678.

[25] On the topic, comp. Cass., 2 aprile 2003, n. 5115, in *http://rivista.ssef.it*; Cass., 9 dicembre 2009, n. 25722, in *https://webrun.notariato.it/notiziario*

[26] Comp. Corte Cost., 6 luglio 1972, n. 120, cit., p. 1452.