ALTERNATIVE DISPUTE RESOLUTION TAX IN ITALY

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CHAPTER I

About EXTRAJUDICIAL SOLUTIONS TAX DISPUTE IN NATURE COMPARATIVE LAW

1. On judicial means for solving the conflicts of tax nature in European countries

Reality can be branded today that both European countries with developed democracies: France, Italy, Germany and Britain, and the United States of America[1], Count on their tax jurisdictions with instruments or alternative formulas for the resolution of disputes tax nature[2].

The adoption of extrajudicial solutions to such problems mented countries, based on the implementation of -ínsitas valid and real alternatives under the agreement or other techniques transaccionales- leads to consolidation chaired by the objective of reciprocity and democratic systems . mutual collaboration between government and taxpayers, away from coercive enforcement systems of the Act is a direct consequence Cabe consecration which certainly fairer, next to the needs of the taxpayers tax systems; diametrically opposed to punitive measures disproportionate to the offenses committed.

The goal is-reaching tax systems definitively inspired by the principles of justice and legal certainty since in the principle of effectiveness, to be resolved extrajudicially those possible causes of unnecessary litigation, with the consequent reduction of bureaucratic costs and increased actual revenue. The goal is, why deny it, achieving the adequacy of tax punitive system to the crime committed and, what is very important, repair the legally protected "public funds". The goal is ultimately consolidate under revision in tax matters not collapsed by records likely to be resolved by extrajudicial methods but specialized in tax matters really aware of those processes requiring effective judicial protection. The goal I is concluded,

Underline the fact that the adoption of such alternative dispute resolution mechanisms tax nature, far from limited to the countries of "Anglo-Saxon court" -who of his own fertile

[1] In Latin American countries, both doctrine and legislation as a whole are reluctant to admit the transaction tax, albeit with some exceptions such as the Brazilian law (the National Tax Code includes the transaction) and the Venezuelan law. Thus OSVALDO CASAS, J., "The alternative mechanisms for resolving tax disputes in Italy and South America," Rivista di Diritto Internazionale Tax, 2002/2, p. 54, who is on a documented study on the issue. In this issue of the magazine can also be cited article TAVEIRA TORRES, H., on alternative mechanisms of conflict resolution in Brazil and other works of different authors concerning the regulation of this matter in the countries of Chile , Colombia, Spain and Uruguay.

[2] On these points, see FERREIRO Lapatza, JJ His work on the subject, we summarize the following: - "conventional conflict resolution in taxation: a concrete proposal," Fortnight Prosecutor, n. 9, 2003, p. 11 et seq .; - "extrajudicial resolution of tax disputes" Fortnight Fiscal 2002-I, pp. 9 ff .; - "Alternative mechanisms for resolving disputes in the Spanish tax system", Rivista di diritto internazionale tax, 2002/2, pp. 41 et seq.

ground for the fruitfulness of such methods while seated in systems tax management pivoted on the mechanism of "reverse" - it also extends to countries' continental cut "anchored in conventional settlement systems of taxes, in which the taxpayer performs the statement of facts subject to tax and Administration settles taxes[3].

Indeed, notice how, although these alternative methods are in great tradition in Anglo-Saxon systems since this would have the biggest controversies that accompany formal tax systems that adopt as tender the autoliquidación-, is the fact that also in the model continental introduction of these techniques has taken naturalization: "Germany" is the paradigm country where despite maintaining that system of declaration and administrative liquidation, the important mechanism of the "final interview" (regulated is introduced in § 201 of the German Tax Ordinance) as an alternative route to judicial conflict resolution[4] and where it has institutionalized the use of "Agreements on facts" as we shall see in later pages.

And also, states like France and Italy have adopted a battery of alternative dispute resolution, on the understanding that partly -France[5]- or much -Italy[6]- have endorsed the tax self-assessment mechanism.

1.1.- Some portraits of the Spanish case: the minutes with agreement and revocation of office of administrative acts tax nature (General Tax Law 58/2003)

In this line of generalization of the self-assessments we are the Spanish State[7]Though with less success as the introduction of extrajudicial systems of dispute settlement tax cut is concerned. Since those -today almost anecdóticas- global assessments of the Franco era, positivizando they have been some attempts to conventional solutions such agreements in insolvency proceedings[8]or expert appraisal, to reach more recently hand-and the reform of

[3]Vid: FERREIRO Lapatza, JJ - "conventional conflict resolution in taxation: a concrete proposal," ob. cit., p. 11 et seq .; and the same author: "Alternative mechanisms for resolving disputes in the Spanish tax system", op.cit. p. 41 et seq.

[4]FERREIRO Lapatza, JJ; - "alternative mechanisms ..." ob, cit., P.. 42.

[5] In France, for income tax still applies the continental system, but in the corporate income tax and VAT self-assessment is used.

[6] Autoliquidación in Italy has spread to the general practice of the tax system.

[7] Possibly Spain and Italy are among the countries where most widespread system of self-assessments over other democratic countries cut both Anglo-Saxon and continental. In this regard reads: "In the British system of settlement self-assessments were not then nor it still compared with generalized Spain-" (page 92.) .... "Neither in French tax law there has been widespread self-assessment system in our country lived. The taxpayer continues, in good measure, declaring and the Administration continues to exert on an almost exclusive basis, with notable exceptions such as the IVA- liquidation tasks ... "(p. 96). ROZAS VALDÉS, MOLINA HERRERA, MAURICIO SUBIRANA, "Statute of the taxpayer: a comparative view" Chronic Tax, n. 94/2000.

[8] Vine. For more information SÁNCHEZ PINO, JA, fiscal problems the suspension of payments, ed. Aranzadi, Pamplona, 1997, p. 52; MERINO MUÑOZ also, A., Privileges tax credit. General priority right,

the taxation of societies- the establishment of mechanisms such as special repayment plans; Agreements assessment to determine transfer prices in related party transactions; for the deduction of expenses in contributions to R & D; or deduction of expenses for services between management support activities linked[9]. For its part, Article 9 of the Act Taxpayer Rights and Guarantees (now repealed by Law 58/2003 LGT), generalized the advance pricing agreements to the entire tax system (currently under Art. 91 LGT).

Fortunately, the reform gestated our General Tax Law (LGT hereinafter) opens the gate to bear fruit in Spain some seeds blown by the winds that run in Europe.

A reality today is the new LGT: approved as of 17 December 2003 (Law 58/2003) and published on 1 July of the same year; the present Law on taxes welcomes between its articulated some extrajudicial solutions that streamline and possibly improve the tax system in the above sense ab initio. Thus, although -escasos in number, with different and today we regulation- exiguous nature of legeferenda with legal institutions that protect this philosophy greatly. Namely, one side "Proceedings with agreement" while termination mechanism conventional tax inspection procedure, and another, "Revocation of office of the administrative acts of nature tax"[10].

Ed. Aranzadi, 1996, pp. 205-206, cited in Fernandez Lopez, R., and RUIZ HIDALGO, "The transactionin Spanish Tax Law: present situation and future prospects. Special reference to the processes of corporate restructuring "Fiscal Aranzadi No. Fortnight. 14/2001 p. 9-33.

[9]Vine. FERREIRO Lapatza, JJ, - "conventional conflict resolution in the field ...", op. cit., p. 13 and the same author, "The alternative mechanisms for resolving disputes ...", op.cit. p. 44, and Garcia Novoa, C., "Alternative mechanisms for resolving tax disputes. Its introduction in Spanish law. " Rivista di diritto internazionale tax, 2002/2, pp. 146 et seq.

[10]We are aware that the new LGT maintain or introduce measures assimilated to the figure of the transaction has been debated by the doctrine reaching criteria do not always coincide, for example, consultation or advance pricing agreements. In this regard Fernandez Lopez, R., and RUIZ HIDALGO, C. "The transaction ...", op. Cit., Maintain that in the case of binding answers to queries, they do not constitute a legal business contractual basis . For such authors also be configured as a transactional business, even if they have a conventional character the cases provided for in Article 16.6 LIS (prior to determining transfer prices in related party transactions agreements, ...), as in the case of Article 9 the LDGC concerning valuation price agreements, which broadly to the generality of the tax system the provision of Article 16.6 LIS. Repealed LDGC, the content of article 9, becomes part of Article 91 of the current LGT). Well, well, as we said, for such authors, whenever there is a properly reasoned decision terminating the procedure, these agreements have a conventional character, but leaving no room configured as transactional business (as in cases of repayment schedules Article 11.1 LIS). Other interpretive criteria for this can be seen in: GONZALEZ-CUELLAR SERRANO, L ,, and ZORNOZA PEREZ SERRANO ANTÓN, F., cited all in said article. becomes part of Article 91 of the LGT force). Well, well, as we said, for such authors, whenever there is a properly reasoned decision terminating the procedure, these agreements have a conventional character, but leaving no room configured as transactional business (as in cases of repayment schedules Article 11.1 LIS). Other interpretive criteria for this can be seen in: GONZALEZ-CUELLAR SERRANO, L ,, and ZORNOZA PEREZ SERRANO ANTÓN, F., cited all in said article. becomes part of Article 91 of the LGT force). Well, well, as we said, for such authors, whenever there is a properly reasoned decision terminating the procedure, these agreements have a conventional character, but leaving no room configured as transactional business (as in cases of repayment schedules Article 11.1 LIS). Other interpretive criteria for this can be seen in: GONZALEZ-CUELLAR SERRANO, L ,, and ZORNOZA PEREZ SERRANO ANTÓN, F., cited all in said article. but leaving no room configured as transactional business (as in cases of repayment schedules Article 11.1 LIS). Other interpretive criteria for this can be seen in: GONZALEZ-CUELLAR SERRANO, L ,, and ZORNOZA PEREZ SERRANO ANTÓN, F., cited all in said article. but leaving no room configured as transactional business (as in cases of

The different legal nature of both legal institutes -actas agreement and revocation of office of the tributarios- acts did not start the existence of a common denominator among them, while extra-judicial mechanisms for resolving tax disputes aimed to prevent "tax lite "ridding the courts, in order to reduce litigation and reduce bureaucratic, administrative and litigation costs; increase administrative efficiency and speed; and increase the actual revenue.

And he said or rows behind "meager regulation," "timid" because, in my opinion, the agreements between the tax authorities and the taxpayer should be able to carry out both before the administrative liquidation (scheduled in the course of our proceedings with agreement) like, and what it is very important, once notified it. In fact, in Italy[11], Ninety percent of the settlement agreement with the taxpayer precisely produced ex post liquidation, at which time there is a greater sensitivity by the taxpayer and almost dare to say the administration to reach agreement. And also in the Anglo-Saxon model, both the British system as in the US, you can reach an agreement at any time after the tax notice time, usually through an interview with the tax authorities (Internal Revenue Service in the case of north America and Inland Revenue in Britain).

In contrast, the model adopted in Spain to reach an agreement between the Administration and the taxpayer is designed so that it takes place prior to the settlement, similar to the German system of the final interview regulated in art character mode. 201 of the Tax Ordinance, which although it was originally conceived within the inspection process, the effectiveness of this system has also led to extrapolate the tax collection and review procedures.

Y - exigua- regulation also say, in the case of cancellation of office of tax acts (Art. 219 LGT) since the reasons for withdrawing the act causes certain assessed constrict[12]Unlike the regulation of this legal in other jurisdictions. For example in Italy, it has recently created the so-called tax institute "autotutela della Amministrazione Finanziaria" comprising both "L'annulamento" or consider withdrawing tax administrative acts on grounds of legality (error of law) or as unfounded (error made); and the "Revoke" which allows removing the act for reasons of "opportunity" in genere[13].

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repayment schedules Article 11.1 LIS). Other interpretive criteria for this can be seen in: GONZALEZ-CUELLAR SERRANO, L ,, and ZORNOZA PEREZ SERRANO ANTÓN, F., cited all in said article.

Notwithstanding other mechanisms such as the procedure of "Abuse applying tax rules" referred to in Article 15 of the draft LGT, or also, the limited verification procedure, ...

[11] Country which gave rise to the new regulation of "acts in agreement with the taxpayer", also inspired by the German system. The Italian model is studied exclusively in the second part of this work.

[12]Acts clearly violate the law; supervening circumstances; defenselessness of the persons concerned during the proceedings.

[13] On these particular can be ANDREW AUCEJO, E., "The revocation of office of administrative acts: Challenges for adoption in Spanish tax law and its legal regulation in Italy", RDFyHP, 2003, n. 268, p. 281-318;

And this regardless of the Spanish LGT the reasons could be considered extended by the possibility stipulated in Article 235.3 of the LGT by which the Administration may, ex officio, "cancel whole or in part" administrative acts within a month since the administrative financial settlement is reported in first or single instance, provided it has not urged the administrative appeal.

It underlines that the fact that the reasons for which the administration may proceed with such cancellation is not envisaged, it is that could lead to consider open circle of causes that can annul the act, beyond reason defined in the art. 219 of LGT; also including, for example, assuming an annular act for reasons of economy (eg. to raise a tiny amount spent on administrative procedures and amounts management well above), or either if the law follows a line contrary to the sentiments of the tax authorities, etc.[14].

However, note well that the repeal of Article 219 "no" can act in case there is a final decision of the economic-administrative or simply has resulted in economic-administrative decision in the case of acts of application of taxes and organ imposition of sanctions (art. 213 LGT). And with regard to the cancellation provided for in Article 235.3 LGT it can only be done before there appeals and not at a later time.

In view of such upregulation might be inferred the following two comments. Namely:

First, we should reflect how such restrictions could thwart last of this mechanism in order, as if the act is capable of revocation or cancellation, it is always better to be set aside in a previous instance, it is, (obviously before that there is a final court or prescribed by the law judgment), to drag after checking with subsequent revision, either administrative economic means or contentious, because thus procedural instances with the consequent saving of bureaucratic and monetary costs are saved, whenever an increase in the effective actual revenue.

In fact, in Italy, the law itself that creates the institute "tax autotutela" provides for the possibility of withdrawing the act ex officio the unlawful, unfounded or inappropriate act, also in case of pendency of trial and no contestability (firm acts) , provided there is no final judgment of merit or background.

Second.- Amen to the above, in the current regulation of matters under the LGT, it is unclear why the legislator uses a voiceover or another: -revocación- (Art. 219), -anulación- (Art.

[14] I completely understand forced to introduce such causes why LGT Article 219 concerning "supervening circumstances". Yes enter, for example, the fact that there was a change in the judicial interpretation, which is not the case quoted text, as the text we mean a thing not uncommon and that the administration regardless of its discretion differs from Jurisprudencial has no qualms about putting it into effect. For conversations with Dr. Ferreiro, in the latter case it would be before the first case of withdrawal: for reasons of legality, and possibly does not lack reason this author to follow a broad concept of the rule of law, along the lines proposed by Merk.

Vine. ANDREW AUCEJO, E., The Origin of regulatory power of government in comparative law and the principle of legality (especially in tax law) Spanish public law; Legal magazine of Peru, N. 46, 2003, p. 119-148

235) ; and what differences exist between the two, since neither says.[15]. In any case, I consider that-could property- traced back to manifestations of declarative autotutela of the Tax Administration[16], For which it has the privilege of making their own interests without going to court, and to eliminate their own actions[17].

> **Note**: In the Italian tax legislation withdrawal of flawed act may occur for any of the three actions: - annullamento; - Revoke; - rinuncia all'imposizione in case di autoaccertamento ".
>
> ***annullamento***: Cancellation is effectively "ex tunc" of the affected act of a vice legitimacy or foundation. They are susceptible to annul "illegitimate" acts and "unfounded" although the regulations governing this matter does not define both adjectives. This gap has been overtaken by Italian doctrine meant by "illegitimate act" that in which there is an error of law. Collect all the figures disability arising from procedural irregularities or errors of interpretation of legal rules to fiscal matters.
> It is an "unfounded Act" when there is a factual error. The "infondatezza" refers instead to errors in the facts of the imposition and on forward issues quantification chargeable event. This is erroneous assessments of facts constituting the tax budget.
>
> ***repeals:*** revocation of self governance is a means by which we proceed to the removal of an "inopportune" act with effects "ex nunc". Note, therefore, that the main differences with respect to so-called "annullamento" are, on the one hand, the type of defect that causes the elimination of the act (reasons of "convenience and opportunity") and, on the other hand, the effects of the revocatory institute, which are not retroactive (effects "ex nunc"). In short, the power of revocation is specified in the power to re-consider and weight the act occurred as a result of elements supervening fact or better qualified reviews about facts and appreciated. synoptically:

Therefore, I say maybe and only maybe both revocation, as the so-called "nullification" in an article or section on tax autotutela (declarative, of course) it could have contemplated in the new LGT; to explain more the legal institute of the "cancellation", or, if preferred, in line with the design followed in the Spanish LGT that in the separate section dedicated to the "official review of tax administrative acts" would also welcome the so-called "nullification" of art. 235.3 LGT, because ultimately the foundation of the "official review" is none other than the privilege of declarative autotutela administration[18].

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[15] Yes reminds me, however, the voices used in the Italian tax legislation which making use of better legislative technique, defined in the standard, being developed by the administrative and scientific doctrine.

[16] For all, Benvenuti, Voice autotutela, (Dir. Amministrativo), "Enc. Dir. ", Vol. IV, Milano, 1959, pp. 540 et seq., Who hosts a broad concept of self governance which includes both decisional autotutela as executory.

[17] On these issues we recommend reading BOCANEGRA SIERRA, R., The cancellation of office of administrative acts. Academy of Jurisprudence, 1998, pp. 83 et seq.

[18]"The possibility of overruling its own initiative their own actions, is undoubtedly a privilege that the Administration is recognized; It is a privilege imposed by the very nature of things: the privilege of self governance. Consideration of autotutela as the foundation of the powers of review of trade is almost

From the above it seems-and this at the expense of subjective judgment and staff that suscribe- than via third paragraph of Article 235 has been introduced "by a side door," the possibility that the administration can "override" tax administrative acts " in genere "while reviewer Institute Administration office and always acts on nondeclarative rights and encumbrance or unfavorable[19].

Yet I do not want to show these institutes skeptical but quite the opposite. I find it optimal that the new LGT has introduced in its articles the legal mechanism of the revocation and cancellation of office of administrative acts, since the lack of legislative technique to which I referred, I think, not empecerá the positive effects that may involve: decrease bureaucratic, administrative and procedural costs, improving the functioning of public administration, reduced litigation, as well as more Célere and effective justice, all in favor of effective judicial protection is not reduced to a mere program intentions with appreciation, yes, constitutional. And I conclude, without implying an impairment of the principles of legality and unavailability of tax credit as I said at another time[20].

But to hear their effectiveness and statistical results, we have to wait. As much I fear there will also be expected to swell the cast of court solutions that equates us with the US and other advanced democracies of Europe.

Let's look at intermission, at least in its essential lines, which are the main routes of court settlement of tax disputes, in which countries are applied and which categories of tax procedures are framed.

1.2.- termination procedures **Tax Law** Compared: **Conventional resolution and other alternative routes**

We opened this paper arguing that European countries with developed democracies and US alternative mechanisms for conflict resolution have taken naturalization in their tax systems constitute a currency during high turnover in relations taxpayers with tax administration.

In general the adoption of extrajudicial solutions -ínsitas under the agreement or other transaccionales- techniques is inspired by the following objectives:

---

unanimous in doctrine, but, at least in Spanish, no further details about done. " SIERRA BOCANEGRA, cancellation ..., op. Cit., P. 85.

[19] On the general theory regarding favorable tax events and can be: SANTAMARÍA PASTOR, JA, and PAREJO, L., Administrative Law. Jurisprudence of the Supreme Court. Ed. Centro de Estudios Ramón Areces, 1989, pp. 266 ff. Meanwhile, PONCE Arianes, M., is refeire to the question in the following terms: "acts of encumbrance or nondeclarative of law (such as purely organizational) ...".

[20] "Ex officio revocation of administrative acts: Challenges for adoption in Spanish tax law and its legal regulation in Italy ", RDFyHP, 2003, n. 268,p. 281-318

1. Consolidating chaired by the objective of reciprocity and mutual collaboration between government and taxpayers, away from coercive enforcement systems and ultimately the law closer to the needs of the taxpayers democratic systems;

2. Decrease in litigation are resolved as extrajudicially those possible causes of useless disputes, with the consequent reduction of bureaucratic costs, process and increased actual revenue.

3. The adequacy of tax punitive system to the crime committed, avoiding punitive measures disproportionate to the offenses committed and, what is very important, repair the legally protected "public funds".

4. The aim pursued is ultimately not increase the number of courts or justice officials, but clean the scene of resources that can be avoided. The goal is ultimately consolidate under revision in tax matters not collapsed by records likely to be resolved by extrajudicial methods but specialized in tax matters really aware of those processes requiring effective judicial protection. The goal is, I conclude, a fairer, more effective and Célere tax system.

Note that the adoption of such alternative dispute resolution mechanisms tax nature, far from limited to the countries of "Anglo-Saxon court" which use the mechanism of "reverse" - the countries of "continental cut" anchored also extends in conventional settlement systems of taxes, in which the taxpayer performs the statement of facts subject to assessment and taxation liquid Administration[21]. On the understanding that more and more countries following the administrative system that has been called continental or French, have been promoting partly or largely in part France[22]and largely, Italy and Spain, the mechanism of self-liquidation. In the latter two self-assessment it has become in tender.

It is the fact that both Anglo-Saxon countries cut as those included in the so-called continental system the introduction of these techniques has taken naturalization.

1.2.1- Resolution of tax disputes (In administrative) by model Anglo: US, Britain and Australia

In the Anglo-Saxon model of management tax the taxpayer is assisted by a list of rights and guarantees recognized institutionally yesteryear.

Always with the aim of strengthening and institutionalizing the rights of taxpayers to balance the relationship of forces between the tax authorities and taxpayers, the various countries of the English-speaking world have adopted in their respective legal systems "Statements" or "Letters" Rights Taxpayers in order to assist and inform them in their relations with the services of the Treasury. Thus, in Canada the Charter of Taxpayers' Rights was adopted in 1985. Months later, Britain approve the famous Taxpayer's Charter or

[21]On these particular vine: FERREIRO Lapatza, JJ - "conventional conflict resolution in taxation: a concrete proposal," ob. cit., p. 11 et seq .; and the same author: "Alternative mechanisms for resolving disputes in the Spanish tax system", op.cit. pp. 41 et seq.

[22] In France, for income tax still applies the continental system, but in the corporate income tax and VAT self-assessment is used.

Charter of Taxpayers where the rights and guarantees of these relate to the tax procedure. For its part, the US adopted in 1998 called "Taxpayers Bill of Rights"

Maybe I should be meant as a clear highlights of such declarations adopted in those countries, concise, and correct delimitation of the rights which taxpayers are. Statements, these, in a brief, simple, direct and positive.

From reading the desire to achieve a consensual action to resolve conflicts that arise, seeking for this purpose a climate of collaboration between taxpayers and service tax administration in order to settle feuds and not reach contentious always glimpsed that this can be avoided.

We found nothing new to say that in the English model an inherent characteristic is the same using techniques pathway-inspired by agreement or "agreement" - also in the case of controversies in the tax.

-in addition Statements citadas- rights performance of the Tax Administration to that within the framework of its powers and the means at their disposal try to resolve conflicts exhausting the administrative and obviating as far as possible the route is extreme judicial; via which, moreover, it is also completely neglected by the taxpayer, given the high costs it entails.

Within the cast of taxpayer rights is extremely power the way of ex officio review of acts of the tax administration, incidiéndose in the alternative that has the taxpayer to arrange meetings (meeting, conference ...) with the Administration and guarantees themselves.

reaching even the administration be obliged to compensate the taxpayer if their actions have affected particularly bad or harmful way the taxpayer and may generate concerns and stress. compensation is expected to forfeit 25 to 500 pounds. Compensation which will place also if the administration acted maliciously or with undue delay.

Finally both the US, UK and Australia, are currency course alternative solutions to fit courts for the resolution of previous conflicts to the dispute, having an important weight offices mediation, consisting of services that intervenes service mediator to settle disputes between those responsible for the tax authorities and taxpayers.

In short, the countries of Anglo-Saxon court have systems of tax management characterized by the ability to withdraw, cancel and / or modify acts of the administration following the procedures established in the respective jurisdictions to claim against administrative acts and which broadly follow exactly the same iter. Namely:

A) Interview taxpayer with the tax authorities (Internal Revenue Service in the US; The Borrad Inland Revenue in Britain[23]*; Australian taxation office or* in Australia) to try to agree the parties, first with the clerk and secondarily with the clerk supervisor inspector.

B) Mediation with an office which hears complaintstaxpayers and trying to get an agreement between taxpayers and the tax administration when it has not been possible to reach an entente cordiale in administrative proceedings. Mediation is

[23] Management of direct taxes and The Board of Customs and Excise to manage indirect taxes and customs.

done by a hierarchical and functionally independent body of the Tax Administration (US appeals office: Appeals Office, office Judge: adjudicator's office in Britain and Complaints Australian Taxation Office.

C) *Ombusdman* or Taxpayer Advocate. US to go the defender (Taxpayer Advocate Service) must have exhausted administrative remedies, while in Britain it should either be addressed to the Administration or the Ombudsmen to claim against an act of the Tax Administration.

i) United States

In the US the main ways in which conflicts between the bodies responsible for tax administration and taxpayers are channeled are:

a.- Interview with the Administration to reach an agreement.
b.- Mediation to reach the resolution of the problem through an Appeals Office.
c.- Taxpayer Advocate
D. There are also other transactional techniques that have been established in recent years as a pilot program (arbitration Enterprise high volume business based on joint committees Like the French case, etc)

The adoption of these pathways derives from the depiction of rights required to pay taxes on the so-called "Declaration of Taxpayer Rights," also called Taxpayer Bill of Rights (Taxpayer Bill of Rights).

> The Declaration of Taxpayer Rights, also called Taxpayer Bill of Rights (Taxpayer Bill of Rights), has been preceded by the 1998 Act "Technical and Miscellaneous Revenue Act of 1988", which were introduced in the form -of not systematically a set of provisions related to the rights and guarantees of taxpayers[24].
> In that law is entrusted to Treasury Secretary drafting the Taxpayer Bill of Rights, Taxpayer Bill of Rights, saying that within max. 180 days deliver it to Congress and the Senate. This document should be provided hereinafter all immersed in a verification procedure or tax collection taxpayer.
> Later there was a reform, and July 30, 1996 Congress approves a new declaration of principles known as the "Taxpayer Bill of Rights 2", whose contents became part of the law reform of the tax administration: Restructuring and Reform Act of 1997, including the Internal Revenue Code.
> The Bill of Rights is widely developed through publications (Publications) issued by the IRS (Internal Revenue Service).
> As these effects interest, we work with one SP Publication Department of the Tresaury; Internal Revenue Service, which are contained in a first part of the Taxpayers' Rights[25]To develop in the second part of the document review processes, appeal, collection and refunds. While we will pay attention to Publication 5 (on rights to appeal and how to prepare a protest if not agree with the IRS[26]);

[24]This Act has 4 parts: 1. Taxpayers entitled Rights, which contains provisions on verification and inspection procedures, rules on notifications and agreements; 2. Rules on executive procedures; - 3 and 4 Resources.

[25]Rights taxpayers collected in the first part of the IRS Publication SP 1 are as follows: I. Protecting your taxpayer rights by inspection (IRS); II.- Privacy and confidentiality; III.- professional and courteous service; IV Representation; V.- only pay the correct amount of taxes; VI.- Help unresolved tax problems; VII.- office review appeals and judicial review; VIII Remission certain penalties and interest.

[26] Publication 5 (Rev. 01-1999) Catalog Number 460741; www.irs.ustreas.gov; Department of Treasury; Internal Revenue Service.

the Publication 556 (tax reviews, Appeal Rights and requests for return[27]) And Publication 3605 on the fast Mediation (Fast Track Mediation[28]).

Let us go to meet, at least in its lines essential- institutes for which the tax authorities can - if appropriate- to withdraw or amend the initial proposed tax assessment. Namely:

a) INTERVIEW taxpayer inspection services (IRS) in order to reach agreement on controversial aspects.

The process usually begins with a review of the tax return. In this regard, the review may be initiated either by mail (through a letter the reasons for the IRS start) or through a personal interview.

The meeting between the services of the tax administration and the taxpayer can inicarse at the request of its own motion or at the request of the taxpayer. If as a result of this meeting the taxpayer disagrees with the administrative criteria may request a meeting with the supervisor inspector actuary.

Among the rights that assist the taxpayer in the case of an interview are: the possibility of asking that the meeting takes place in a place and time convenient for both; the right to have explained the reasons in the event that the examiner proposed changes, the ability to act whenever representative has requested permission from the IRS, such as an attorney, certified public accountant or enrolled agent; lead someone to be present during the interview; record conversations that are provided with the official request this service well in advance, etc.

Of course the taxpayer continue without agreeing with the judgment of the supervisor, he may appeal to the Appeals Office (Appeals Office).

Importantly, in American law, the way the agreement is also acceptable in cases where evidence of tax offenses are observed.

b) MEDIATION BEFORE THE OFFICE OF APPEALS

Publication in 5 SP issued by the Internal Revenue Service establishes how to appeal tax issues when it disagrees with the interpretation of the tax authorities.

In this way, if the taxpayer does not agree with the criteria the IRS has at its disposal the ability to turn any of the following:

- Contact the Office of Appeals
- Go to the Ombudsman or Taxpayer Advocate
- Appeal to the Court (Court) Tax US (US Tax Court), the Court (Court) of Federal Claims of the United States (US Court of Federal Claims), or the Court (Court)

[27] Publication 556 (Rev. August 2005), Catalog Number 15104N; www.irs.ustreas.gov; Department of Treasury; Internal Revenue Service.

[28] Publication 3605 (rev. 12-2001), Cat. No. 29749Q

Federal of First Instance US (US District Court), belonging to the area of the taxpayer address.

Appeals Office is a separate and independent administrative service delegations IRS has local character[29].

Meetings or conferences taking place at the appeals office are informal meetings. The meeting may be in person, by telephone, or by mail. The taxpayer may act by proxy or, if desired, can be represented by an attorney, a certified public accountant, or agent registered to practice before the IRS. If you do not reach an agreement with the official appeal or not to appeal within the IRS, you can file your appeal in court[30].

Mediation with the Office of the taxpayer can be activated at the request of a party or trade. The same is accessed when there*uncertainty about the content of the settlement -for indeterminacy of facts or imprecision in the classification of the same-or, on the possibilities of their full and effective collection*. That is, it is only possible to conclude whether the facts or their legal classification concur elements casting doubt on the correctness of settling the obligation in one way or another, or what is the same, if there is a reasonable margin to agree that prevails one of several interpretations assumed to be[31].

-The track quickly mediation It should even be summarily point out that the IRS has recently launched the test program "fast track mediation" (Fast Track Mediation). It is regulated by the IRS Publication 3605 SP.

It is structured as follows: if the taxpayer does not agree with some or all ends of checking inspection by the IRS may request a meeting with the officer or the person who carried out the check. Mediation can take place at that meeting with the officer or later.

To start the process, both the taxpayer and the person in charge must sign a simple form in accordance with the purposes and then assigns a meter. Usually in less than a week mediated contacts with the taxpayer and the IRS supervisor to plan the meeting. After a brief explanation of the process, the mediator will discuss with the taxpayer when and where to hold the mediation session.

[29] The Appeals Office is separate from the IRS -and of- independent Office taking the action you disagree with (IRS Publication 5).

[30]For more information about the appeal process and information on how to prevent interest from accumulating on any foreseeable obligation, see Publication 5, "Your Appeal Rights and How to Prepare a Protest If You Do not Agree" (Your Rights Appeal and how to prepare a protest in case of disagreement) and Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund" (Review of statements, Appeal Rights, and Claims for Refund). Also, Publication 1660, "Collection Appeal Rights" (Collection Appeal Rights), explains how to appeal these actions. "

[31] ROZAS VALDÉS, JA, "The resolution of tax disputes in the American system", Rivista di diritto internazionale tax, 2002/2, p. "

At that session / it is the mediator will help the party reach a satisfactory agreement in accordance with applicable law. It is anticipated that the average time should be less than 20 to 30 days, without prejudice to either party may withdraw from the process before reaching a solution, written notice to the mediator and the other party.

c.- Taxpayer Advocate (Taxpayer Advocate Service)

Only once the taxpayer has concluded the interview with the chief inspector supervisor Actuary head to the IRS Taxpayer Advocate, an organization of local (SP Publication 556, IRS). "In each state or district of the IRS there is at least one Deputy Attorney Taxpayer (Local Advocate Taxpayer), which has its own or working office at the headquarters of the IRS through the Office of Dispute Resolution Agency tax (Problem Resolution Office)[32].

556 in the same document can be read as the Taxpayer Advocate Service (Taxpayer Advocate Service) is an independent body whose objective is IRS help taxpayers solve their problems with the IRS.

In short, the functions performed by this body Taxpayer Advocate are as follows[33]:

1) Intervene in situations, either because the IRS has failed or has failed to resolve by ordinary proceedings, either because the citizen considers violated their fundamental rights, require the mediation of an independent administrative body IRS seeks protection to citizens, trying to channel the proper and diligent resolution of the problem.

In this regard, the Advocate taxpayer whose function is to identify any incidents in the application of taxes: incongruities of substance or form, dispensable procedures, training contradictions or gaps, unfair terms, and so on. However, it has no jurisdiction to issue administrative acts of determination, assessment, verification and collection of taxes, although it has the power, in some cases, to suspend the processing and effects of a tax management process.

2) Study, analysis and presentation of proposals for regulations or guidelines for action in the implementation of the tax system to help improve efficiency by reducing at the same time, the indirect tax burden of taxpayers reforms

c) Other transactional techniques

[32] ANDREW AUCEJO, Eva and ROZAS VALDÉS, JA., "The Taxpayer Advocate. A study of comparative law: Italy and USA "; Institute for Fiscal Studies, Doc. N. 5/04, p.

[33]Almost literally follow Andrew AUCEJO, Eva and ROZAS VALDÉS, JA., "The Taxpayer Advocate. A study of comparative law: Italy and USA "; Institute for Fiscal Studies, Doc. N. 5/04, p. ; study to which reference is made for a deeper knowledge of the subject.

Since the late eighties ROZAS VALDÉS declares, JA[34]- have been tested and expanding alternative systems of conflict resolution -mediación- in pilot programs. Initially for senior debt to $ 10 million, later reduced this amount to one million dollars and, since 2001, expanding mediation -with a specially shortened procedure for minor issues. It is also working on the development of arbitration procedures for large companies. However, and without recourse to prejudice the success of these programs, these alternative systems are not seen as the panacea of the day-to-day dispute resolution, but as exceptional formulas for certain cases that have not been proven effective the ordinary formulas.

ii) United Kingdom

As no one escapes the UK is one of the countries where the technique of the agreement or agreements between inspection services tax and the taxpayer has naturalized, constituting -of antaño- a mechanism to act consubstantial with the British model.

Analogously to what happens in the American model also in the UK the adoption of these pathways conventional termination of conflicts of tax nature have its implementation in the well-known Charter rights of taxpayers and the regulations issued under development thereof by the UK tax inspection (Inland Revenue and Customs and Excise).

> ***The Bill of Rights Taxpayer: Taxpayer's Charter:*** In 1985, the British tax authorities in its annual report reproduces a ratio of taxpayer rights called Taxpayer's Charter. It is an administrative document where the rights and obligations of taxpayers in developing procedures for applying taxes are reflected. It represents the jurisdiction of the taxpayer, recognized by the Administration extraordinary importance in practice. The Declaration states that the taxpayer does not agree with the inspection service may complain to the tax authorities and if not satisfied go to the Director. Should not be also disagrees can go to "Adjudicators office" consisting of a mediation conducted by a judge so that both sides reach the agreement. Further,

In particular[35], Conventional formulas ínsitas in the context of tax procedures typified in Section 54, Part V, Chapter 9 of the Taxes Management Act 1970, under which it is possible to reach an agreement between taxpayer and inspector knows which management of directos- taxes, likely to occur at any time prior to the resolution of the appeal by the courts time. The agreement will focus on the amount of tax liability and may result as a consequence thereof the amount of the settlement; penalties or surcharges are maintained, modified or canceled. Its adoption will have "the same binding force as the decision of the Commissioners on appeal."

No less striking is the so-called "settlement agreement" that is supported in the British disciplinary proceedings as a conventional technique on sanctions, under which there is the transaction in relation to the amount of penalties and interest or even from removing them , "both before and after it has been issued the corresponding court decision"[36].

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[34] ROZAS VALDÉS, JA

[35] Vine. Casanellas CHUECO, M., Olay PAZ, M., "The review of administrative acts and the tax penalty system in the UK," Fortnight Prosecutor, n. 12, 2003, p. 42 and 45.

[36]So Casanellas CHUECO, M., Olay PAZ, M., "The review of administrative acts ...", op. Cit., P. Four. Five.

Let's see a little more detail what the iter you have to keep the taxpayer before exposing their case before the courts.

a) INTERVIEW taxpayer tax inspection services (Inland Revenue) in order to reach -if appropriate- agreement on controversial issues.

Appendix 1 of the Taxpayer's Charter reads, inter alia, the following: "If you are not satisfied: - We will tell you exactly how to complain; - You can ask your issues are looked at again by the Administration; - You can appeal to an independent court; - Refer your complaint to the Ombudsman ".

Meanwhile Appendix 7 of the Charter entitled Taxpayer ***Complaints and súlicas (complaints and appeals)*** it states: "If you are not satisfied with our service, you are entitled to give feedback and complain to us or the ombudsman. If you disagree with the amount of your tax assessment, you have the right to objection and appeal. "This caption is developed by CODE OF PRACTICE -COP1, document issued Inland Revenue and Customs and Excise which states how to claim and the procedure for claiming[37]. In short, the procedure is as follows:

1. If the taxpayer does not agree with the way the Inland Revenue and Customs and Excise has tried its affairs can make a complaint to the Office of Customer Relations (Customer Relations) or to the manager of complaints (Complaints Manager) office or unit with which he has dealt with.

[37]In the Code of Practice, COP1, expressly refers to the following practices and obligations of the tax authorities. Namely:

How we handle the quejas.- Many people prefer not claim, but we want to make it as easy as possible for things to law or order (putting thinks right) matching. When you resort will treat amicably and professional.

We treat your complaint seriously and confidential; We will not make discriminatory treatment by the fact that you have used, we do not discriminate on grounds of sex religion, nationality, etc.

We put things on the right (in order, correctly):When we have wrong, we: We will say sorry; We explain what went wrong and why we're wrong; Correct the error and if possible we will put their affairs in the same position as before committing the errror; We learn from our experience.

Request repayment of costs:You do not have to pay the extra costs resulting from our errors or undue delay. Should have arisen may request reasonable costs you have had to pay and are a direct result of: Postage postal service; Phone calls; Travel expenses; Professional fees; financial burdens.

Payments concerns and mental distress (distress):Our mistakes and delays can cause strong concern and mental anguish. If actions have affected him particularly bad or harmful way, please let us know. We will make a payment on signal recognition and apology for the way we've treated him. These payments, however, do not attempt to put a price on the mental anguish you have suffered, usually ranging from 25 to 500 pounds.

More errors or unjustified delays in processing complaints:If we handle your complaint maliciously or unreasonable delay time, we will pay it compensation, capped at reasonable costs. Generally ranges from 25 to 500 pounds.

2. If the taxpayer is not happy, you can direct the complaint to the Director of Service (responsible for that office or unit) or by letter, fax, telephone own choice of payment required.

3. If you are not satisfied with the responsible Director has the following alternatives:

- Request assistance from mediation service through the "Adjudictator office" (judge's office) to this office know of your claim.

- Or you can go to the "ombudsman" or taxpayer advocate to attend your complaint.

b) MEDIATION through the "Adjudictator office"

The judge's office ("Adjudictator office") was set up in 1993 to investigate complaints about the way the Inland Revenue and the agency office valuation manage the affairs of taxpayers. Since then, the office has taken on the responsibility to look into complaints about the agency contributions, now the office of national insurance contributions Inland Revenue, customs and suppressed, public office and service guardianship of insolvency.

The current judge, Barbara Mills QC, took over from his predecessor, Elizabeth Filkin, in April 1999. She acts as an impartial arbiter where he has not been able to the department in question to satisfactorily resolve a complaint and her services are free

If the office of judge makes a complaint for investigation, we ask the organization against which the complaint is made for a detailed report on the complaint and all papers from the original. We ask you to do this within one month of the complaint being made to the judge.

Once we receive the report and papers of the department, the case will be assigned to an officer of the trial, which will make a careful review of all the evidence and investigate the complaint. We looked complaints under codespractice organizations to see if the organization has acted properly in question in each case.

Sometimes we need to obtain additional information on how they have handled matters, particularly where things are not clear from the papers of the organization. Sometimes visited people who make complaints to staff or organization that have been a case for further information. Often we ask additional information by phone, although we are happy to deal with things in writing only, if people prefer this. We try to deal with things on a relatively informal basis, as quickly as possible. We are entirely objective and impartial.

Obviously, because we investigate matters in detail, this may mean that cases take time to settle. The average time it takes to investigate a complaint about five months, although many cases are placed more quickly than this. We always keep people informed our progress dealing with a complaint.

We try to reach a settlement mediated in almost all cases. This means reaching an agreement to resolve the complaint following a thorough investigation of what happened. Where no agreement can be reached, the judge will make a decision and write a detailed letter to the person making the complaint, which fully explains the reasons for its decision to keep or

not keep a complaint. She sent a copy of this letter to the organization against which the complaint has been made.

C) Agreements on judicial

In addition to the above routes, there is the possibility that the taxpayer who has claimed in court proceedings but always before the decision on the appeal by the courts, it may reach an agreement (agreement) with the Tax Administration. This formula is typified in Section 54, Part V, Chapter 9 of the Taxes Management Act 1970, under which it is possible to reach an agreement between taxpayer and inspector knows which management of direct taxes. The agreement will focus on the amount of tax liability and may result as a consequence thereof the amount of the settlement; penalties or surcharges are maintained, modified or canceled. Its adoption will have "the same binding force as the decision of the Commissioners on appeal"[38].

I.2.2. - CONTINENTAL SYSTEM OR FRENCH: Germany, France, Italy

He moved at the beginning of this section that the adoption of alternative systems of tax disputes also finds a place in the countries of "continental cut" such as Germany, France, Italy, ...

i) Germany

In line with the scheme followed in the preceding paragraphs should even be made minimal reference to the regulation of the rights of taxpayers in Germany. And here in Germany[39], Unlike what happens in other English-speaking countries or even continental court where taxpayers' rights are born as a counterpoint to the strong powers of the tax authority does not take origin in this happening given the German Tax Ordinance as amended in 1977 and foresaw a model large extent balanced between taxpayer rights and powers of administration[40]. Rights, which, nevertheless, as a result of the spread of massive tax management has become necessary to strengthen the rights of citizens in matters such as data privacy, enter pacts in the process, resolve disputes quickly , etc.

[38]Casanellas CHUECO, M., Olay PAZ, M., "The review of administrative acts ...", op. Cit., P. Four. Five.

[39] Thus ROZAS VALDÉS, HERRERA MOLINA, Mauritius SUBIRANA, "The status of Contributing one comparative view" CT n. 94/2000, p.

[40] In Germany there is therefore specific rules governing the rights and guarantees of taxpayers, but all the rules that shape tax procedures since 1919 are encoded in tax Ordinance (AO) renovated in 1977. ROZAS VALDÉS, HERRERA MOLINA , MAURITIUS SUBIRANA, "the statute Taxpayer ..., ob cit., p.

As for present purposes we respect within the AO can be highlighted, on the one hand, the general principles governing tax procedures[41] and, secondly, the specific rights and guarantees of the various procedures (settlement, inspection, ..l.).

German tax system in two important legal institutes resolution alternative tax disputes to the courts. On one side it should make reference to review mechanisms of administrative action and within the review -in genere- the revocation of office of administrative acts of tax nature. On the other hand it should also refer to the solutions agreed through agreements and / or procedures of mediation, conciliation and arbitration and across the

a) The review of administrative acts in Germany

It is known that the German legal system belongs to the continental system known or French, from Roman law, which still retains the classic system of tax assessment by the administration, with some exceptions such as VAT[42].

As the liquidation competence of management, administration determines that it will produce a large number of administrative acts and therefore much of the mistakes made in the settlement are due to the administration itself. Also, note that there is a great speed for handling the liquidation procedure, largely due to the payment of tax debts is usually done in the following notice of settlement month, which is an incentive for Administrations settled very quickly, and can charge as soon as possible[43].

Review procedures acts of tax nature are governed by the German Tax Ordinance and may develop in the re-settlement procedure before it becomes final and secondly the review of final settlement. The first assumption is the possibility that the administration review its own actions, by changing criteria initially invoked to an interim settlement, and then a final settlement dictates[44].
In the second case, that is, for the purpose of reviewing settlements that have gained strength can be used procedures nullity (art 125.1 AO.); gross errors (129 AO art.); Emergence of new facts or evidence (Article 173 AO.), And the court redress in administrative

[41]General principles: - Pº equality in the development of inspections :; - Pº of proportionality. ; - Pº in good faith (not expressly stated in the AO, but in jurisprudence; - Pº right to the audience, very important with regard to the famous "final interview" which usually arise "acuersos on facts" .

[42]FERREIRO Lapatza, JJ - "conventional conflict resolution in taxation: a concrete proposal," ob. cit., p. 11 et seq .; and the same author: "Alternative mechanisms for resolving disputes in the Spanish tax system", op.cit. p. 41 et seq.

[43]TORSTEN Ehmcke, MARIN-Barnuevo FABO, D., "The review and appeal of tax acts in German law" .; CT 108/2003.

[44]For this purpose there are two types of provisional settlements: - Liquidation subject to verification: art. 164.1 AO when the liquidator Authority considers unfinished actions of verification and investigation of the chargeable event and temporary settlement, which is applicable when there is uncertainty about the realization of any of the elements of the taxable event. TORSTEN Ehmcke, MARIN-Barnuevo FABO, D., "The review and appeal ..., op. Cit., P.

proceedings before the same court that issued the act: Einspruch[45]. Most important of this resource is that in practice it works like a real REVOCATION, so that if the taxpayer does not agree with the settlement immediately attend to the administration and form free and free ask that you review the act. The Administration should fully review the file and if you see that you were wrong to proceed directly to its amendment without a formal decision on the appeal presented is necessary. Hence, I understand it straddles figure replenishment and institutor automatic review revocation, if not more inclined toward the latter.

Using this procedure the following purposes pursued: - Tutelar taxpayer legal position, first; - Controlling the performance of the administration itself; - Finally it constitutes a filter to prevent or avoid a great number of cases reach the courts[46].

b) The agreements made in German tax law

Meant stresses the importance of "Agreements on facts" in the German Tax System[47] as a way agreed for conflict resolution in the tax order. Also in this country one of the main objections raised against the positivization of transactions in the financial system has been precisely the emblematic principle of legality enshrined in § 85 of the German Tax Ordinance.

After the inspection activities performed the famous "final interview" in which all controversial issues are discussed to reach a final agreement

> "About the result of the inspection shall be maintained an interview (final interview) unless in accordance with this result occurs no change in the fundamentals of taxation or the

[45] The Fiscal German has been translated into Castilian by PALAO TABAODA, C. ..

For a development of such legal institutes in TORSTEN Ehmcke, MARIN-Barnuevo FABO, D., "The review and appeal ..., op. Cit., P.

[46] It is brought against most of acts of nature for tax resulting from application OA, excluding Only a few cases assessed (acts issued by the Financial Directions Supreme Federation and federated states, ...)

Shape: Writing, although it is based on the principle of freedom of form in order to facilitate access to laso managed. For this purpose they are allowed even resort either by appearance or by telephone as a means of approaching taxpayers and indeed it is widely used. It's free

- *Deadline*: One month from receipt of the contested measure

- *Competent Authority*It solves the same body that knew not the superior, unless the case is very complex and then solves a specialized department formed in the same tax office. And besides, it should be noted that fits in pejus reformatio, although in this case the administration must inform the taxpayer of the possibility that the resource will worsen their position, so that in his case to withdraw its claim and avoid reformatio in peius

- *costs*: There is no reimbursement of the costs incurred, even in the case where the claim flourish.

- *Effects*: The presentation of the appeal does not have suspensive effect, but the administration may suspend ex officio if you have serious doubts about the legality of the contested measure.

[47] All references in this paragraph do on the German system of the draw: MARTÍN GARCÍA Lobenhofer and FRÍAS, A., "alternative resolution of tax disputes in Germany. The practical implementation of the agreements on facts, "Fortnight Prosecutor, in press.

taxpayer waives the interview. In the final interview the facts and the legal classification of the evidence base on the inspection and its tax consequences are especially discussed "(§ 201 OA)[48].

Often, this leads to a final interview "agreed facts"[49]. Agreements, although there is no legal provision that expressly recognized in Germany; claims in favor of acceptance both by case law (since 1963) and the Administration, led to the consolidation and development of the institution through a "sort of tacit consensus" supported legally in the precepts established in the OA in one way or another contribute to conflict resolution by consensus pathways.

These provisions relate to the following aspects[50]: - The obligation of collaboration between administration and taxpayers: the tax administration should work together with the taxpayer (§ 89 OA); - The final interview (§ 201 AO); - The possibility of going to the path of the estimate when they can not be established the foundations of taxation.

It is noted that the jurisprudence denies that these agreements may affect the interpretation of the rules. However, the doctrine criticizes this distinction because in certain cases such as the valuation of the base imponible- questions of fact and law are inseparable "[51].

Hence, the "Agreements on facts" in Germany today constitute the most important instrument of conflict resolution expressly recognized by the doctrine, jurisprudence and administration. Also "administrative instruction on the implementation of the Tax Ordinance own urges officials to reach an agreement on the facts where there are difficulties of proof"[52].
So much so, that the latter two sources of knowledge have made a number of requirements[53] in relation to such agreements, to prevent them from being violated the principles enshrined in § 85 and 88 of the OA.

Well known that such agreements can be made of almost any type of tax procedure, it is certain that charge meant inspector relevance in the process, being "a regular working tool" with which the inspectors have. Under this procedure, if agreement is reached, the signature of the Chief Inspector will be required and will be binding on the parties that adopt them.

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[48] Lobenhofer and FRÍAS MARTÍN GARCÍA, A., "Alternative dispute resolution ...", op., Cit.

[49] ROZAS VALDÉS, HERRERA MOLINA, Mauritius SUBIRANA, "The status of Contributing one comparative view" CT n. 94/2000, p. 106.

[50]See further development on the subject at: MARTÍN GARCÍA Lobenhofer and FRÍAS, A., "alternative dispute resolution ..."; cited work.

[51]ROZAS VALDÉS, HERRERA MOLINA, Mauritius SUBIRANA, "The status of Contributing one comparative view" CT n. 94/2000, p. 106.

[52]ROZAS VALDÉS, HERRERA MOLINA, Mauritius SUBIRANA, "The status of Contributing one comparative view" CT n. 94/2000, p. 106.

[53]The following conditions are set: - The agreement must necessarily fall on questions of fact and never on points of law; He believes that the fact-finding is difficult in cases where the time or the work necessary to invest is higher than the usual average time; - Questions of fact must relate to a closed temporary period; - The agreements must be in writing; ....

Finally-and always the same source we come utilizando-, everything about regarding the inspector procedure is translatable to disciplinary proceedings, given the relevant subjects to instruct the latter are also inspectors.

In the disciplinary and criminal proceedings is remarkable recognition of the taxpayer's right against self-incrimination.

ii) France

Within Europe, the French Tax System[54]It incorporates alternative techniques for resolving disputes alternative to judicial proceedings. Specifically Tributary Phase administrative review measures conciliativa nature such as the figure of the transaction, whereby the agreement between the administration and citizens to reduce or eliminate tax penalties or allowed also the mechanism called recognized " gracieuse jurisdiction "consisting of the application (by the taxpayer to the government) a remission of default interest, penalties and tax payments under direct taxes and the latter -discrecionalmente- may grant or not grant, and if yes, completely or partially.

It is also important to highlight the signified relevance of the Institute of Arbitration in the French tax system, a mechanism based on the creation of specific joint committees, consisting of representatives of the administration and citizens through various corporate institutions created to intervene or arbitrate disputes arising between the Administration and taxpayers. Specifically they exist: the departmental Commission of direct taxation and tax revenues; the Departmental Conciliation Commission and the Advisory Committee for the Suppression of abuse of rights.

iii) Italy

Italy has also institutionalized the use of conventional solutions for conflict resolution in the tax, legislated both administrative and contentious administrative. As regards the administrative procedure both before and after the tax settlement rotated can reach agreement between the Administration and Taxpayer -figure known as tax concordat or accertamento with adesione the contribuente-, whose perfection is done with paying the agreed amount within 20 days with the resulting percentage reduction of sanctions.

Also before the courts can reach agreement by giudiciale Conciliazione, legal institution for which it is allowed in first instance courts that hear juridisdiccionales tax matters (Commissioni tributarie) you can reach conciliation.

[54] Regarding the model we follow Tovillas French Moran, JM, "Rights and guarantees of taxpayers in France," Documents of the Institute for Fiscal Studies, Doc. N. 25/02.

CHAPTER II

ALTERNATIVE ROUTE TO INSTITUTES JUDICIAL FOR RESOLUTION TAX DISPUTE IN ITALY

1. Origin and Enumeration

During the nineties of the twentieth century they are gestating a series of legislative improvements to the Italian tax administrative procedure, in line with what had been happening in most developed European countries with a view to achieving the following objectives:

- Enhance the rights and guarantees of taxpayers to balance the balance of power between government and taxpayers. In this regard and in 1990 a law to reform the Italian administrative procedure that aims at strengthening the guarantees of citizens within the framework of administrative procedures, culminating -in the tributario-field with the approval of the Law of Rights approved taxpayers in 2000[55].

- Consolidate administrative apparatus seated on the principle of "transparency"[56] and proper functioning of public administration.
- Fight the collapse of files pending resolution in judicial courts dealing with tax matters (Commissioni Tributarie Provinciali and Regionali)[57] and increase the effective collection.

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[55] Notable for their importance and significance Law 241/1990, Italian reform administrative procedures and 212/2000 Rights of taxpayers.
On the subject, see: morin, T., The Statuto del contribuente, ed. Come thing & 2000; BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, ed. Cedam, 2002; GIANLUCA FERRARA PATRIZI and GABRIELA, "The Definizioni degli imponibli in contraddittorio e l'Amministrazione Finanziaria" Il Fisco, 1999, p. 6488; ROZAS VALDÉS, JA, HERRERA MOLINA, P., MAURITIUS SUBIRANA, S., "Statute of the taxpayer: a comparative view" Crónica Tributaria, 94/2000; CAPOLUPO, S., and CAPOLUPO, M., Statuto del contribuente and diritto interpello, ed d'. IPSOA, 2000.

[56] Regarding the simplification of the system and the principle of "administrative transparency" notes that Law n. 241 7 August 1990, developed by ministerial decree n. 687 of 19 October 1994. Two important laws happen to that Law n. 241: Legge 59/97 (Bassanini 1) and Legge 127/97 (Bassanini 2). It should also be mentioned the Law 50/1999 of 8 March on Delegificazione unici di testi e procedimenti Amministrativi concernenti standard. We references Morina, T., Lo Statuto e le altre del contribuente forme di tutela, ed. Thing & Come, 2000, p. 61.

On these points can be found: GIANLUCA FERRARA PATRIZI and GABRIELA, "The Definizioni degli imponibli in contraddittorio e l'Amministrazione Finanziaria" Il Fisco, 1999, p. 6488; in similar vein, Consolazio, ML, "L'accertamento con adesione del contribuente" Rassegna Tributaria, 1997, p. 67; Massimo STIPO, "L'accertamento con adesione del contribuente ex D. Legs. 19 giugno 1997, n. 218, nel quadro generale delle obbligazioni di diritto pubblico e il problema della giuridica natura "Rassegna tax, n. 5/1998, p. 1251; Morin, T., The Statuto del contribuente, ed. Thing & Come, 2000, p. 61, among others.

[57]Throughout the decade of the 90 they are being approved a series of legal rules of the various legal institutions in order to reduce the huge volume of tax processes. As well as the D. Lgs. 546 of 30 November on "Urgent provisions on tax matters" introduced in taxation agreements between the administration and the

> In this last line it can not be ignored that, in Italy, the alternatives for conflict resolution techniques were largely adopted as a result of the urgent need to reduce the high rates of litigation plaguing the judicial landscape in the tax order to start the nineties[58].

Unfortunately this was not an isolated problem that was observed in the Italian tax scenario: that inflation in the overall mass of tax litigation spiral was motivated in part or large part- by lacking administrative settlements, often of legitimacy or foundation own systems tax management bent on mass politics of the large sums; Orphans allocation mechanisms in legal costs to the Financial Administration for loss process.

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taxpayer both administrative (accertamento con adesione) and jurisidiccional headquarters (Conciliazione Giudiziale). Law after 23.12.1996, Article 3, paragraph 120 delegates to the Government the organic revision of the Institute of accertamento con adesione through one or more legislative decrees. One year later in the RD 218/1997 of 19 June, the following alternative ways of resolving tax disputes are regulated: accertamento con adesione; "Conciliazione giudiziale" and "acquiescenza" or omission to challenge the settlement. Circular n. 235 / E dated August 8, 1997, issued by the "Dipartimento Entrate, Direzione Centrale "(in Treasury, n. 31/1997, p. 9188), develops the provisions of DL 218/1997, in addition to various rules and circulars are given subsequently.

Among the scientific literature they are noteworthy the following studies: MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 ff .; GIANZUZZI Concettina, "Gli strumenti deflattivi the Contentious" La Finanza locale, 2000, I, p. 421; Lupi, Raffaello, giuridico Manuale professionale di diritto tax, III ed. Ed. IPSOA, 2001, pp. 134 ff .; Massimo STIPO, "L'accertamento con adesione del contribuente ex D. Legs. 19 giugno 1997, n. 218, nel quadro generale delle obbligazioni di diritto pubblico e il problema della giuridica natura "Rassegna Tax, n. 5/1998, p. 1251; DE MITA, E., "Profili storici and costituzionali delle Definizioni transattive in Italy," Giurisprudenza delle Imposte, 2000, p. 470; Grassi, E., "Le partecipazione del contribuente the tax procedure nell'accertamento con adesione" Diritto e Pratica tax, 1998, p. 1502; Miccinesi, M. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milano, 1994, p. 4; FICARI, V., autotutela and Riesame nell'accertamento tribute, Giuffrè Editore, 1999, Chapter V, on "self governance and deflation litigation," pp. 179 ff .; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milano, 1994, p. 4; FICARI, V., autotutela and Riesame nell'accertamento tribute, Giuffrè Editore, 1999, Chapter V, on "self governance and deflation litigation," pp. 179 ff .; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milano, 1994, p. 4; FICARI, V., autotutela and Riesame nell'accertamento tribute, Giuffrè Editore, 1999, Chapter V, on "self governance and deflation litigation," pp. 179 ff .; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999.

[58]Beginning of period reaching a volume of pending cases in the Provincial Tax Commissions, as aggregate data for the whole of Italy, on the order of 2.5 to 2.7 million and the order of 250,000 pending cases in regional or appelli tax commissions. Vine. ANDREW AUCEJO, E .., "Evaluation of litigation in the" tax Rapporto "in Italy"; Rivista di Diritto Tributario Internazionale, 2002, n.2, pp. 244 et seq. Or, ANDREW AUCEJO, E. and ROYUELA MORA, V .: "L'evoluzione della litigiosità nelle commissioni nel corso tributarie italiane degli anni 1990-2000, p. 915 "Diritto e Pratica tax, N. 4/2004.

> The situation described is trying to finish through the procedural institution called "Soccombenze" or charge the costs to the financial administration, if so decided by the judge. This figure is approved for the first time in the Law n. 546 1992 Litigation Reform Italy, Law that would not take effect until 1 April 1996. Actually the practical application of the institute Soccombenze not charged until the end of the nineties[59].

To this is aunaba and combines the reported short deadlines to appeal, so the taxpayer, which he has the right to request the review procedure but, for reasons attributable or not attributable to it, let elapse term to appeal, you could see forced to pay cash as whether they bring cause of illegitimate tax administrative acts or unfounded, that is, you could see compelled to pay "undue sums", what evil comport with constitutional precepts such sublime as set out in Article 53 of the Italian Constitution concerning the principle of economic capacity or Article 97 of that Constitution concerning the proper functioning of the administration.

These and other reasons, on which I do not consider necessary to elaborate any further here, led to curdle alternative ways for conflict resolution in the Italian tax system.

In order to carry out a systematic exposition can outline the following table of legal institutions whose ultimate goal is the resolution of conflicts waged nature of tax litigation. That is, trying to avoid the performance of the tax courts as a way to end their tax strife. Knowledge of their legal status and development is precisely the object of this work.

Retaking as the sistematizador character speaking lines can be distinguished behind the pre-litigation and litigation phases and various legal forms of alternative resolution of tax conflicts which may occur.

to) ***Phase pre-contentious***

Institutes are cutting pre-litigation while substantiating that during the procedure management / settlement and therefore prior to the stage of the appeal court of Justice alike. Its regulation is in the DL n. 218 of 19 June 1997. Received avviso di accertamento or avviso di accertamento in RETTIFICA (equivalent to our tax settlement) the taxpayer can: provide compliance and therefore not challenge (acquiescenza); accertamento perform with adesione or finally challenge.

Acquiescence is an absence of objection by the taxpayer, so that it is agrees to act accertamento (settlement) rotated by the Administration thus obtaining a reduction of sanctions.

The tax Concordator Accertamento with adesione the contribuente is also developed in preparatory stages, but unlike the previous institute, between administration and there is a contributor contradittorio for determining the tax liability. Usually performed once notified the avviso di accertamento or avviso di accertamento in RETTIFICA, however, can also be performed prior thereto.

[59] This procedural institution may be the chapter IV of this work.

Note: In the Italian tax system-run I insist on verification procedure and tax research distinguishes between avviso di accertamento and avviso di accertamento in RETTIFICA. Both terms are equivalent to the term tax assessment. Contain a real settlement of the overall budget of the taxable, however, while the former occurs when there is no tax autoliquidación, the avviso di accertamento in RETTIFICA is issued when, after checking and tax investigation, the statement submitted by the taxpayer rectifies .
In the event of indirect taxes it was also used the avviso of liquidazione, in which case only the quantitative aspects of the tax was discussed, (applicable rate, exemptions, etc.). At present, however, no longer used. On these particular vine. FANTOZZI, A., tax Diritto, ed. UTET, 1998, pp. 407 et seq.

b) ***pre-contentious and contentious phases***

There is also an institute included under the umbrella of the official review by the financial administration to review its own actions that can act both administrative and tax litigation headquarters.

This is specifically the legal institution called autotutela della amministrazione finanziaria[60], A native institution of administrative law, which -in Italy- since 1992 also legislates in tax matters.

Its scope extends beyond the management procedure / tax assessment, taking into account can make use of it even when the administrative act of tax nature has gained administrative firmness and in cases that are pending judgment, but whenever there is no final judgment on the merits.

c) litigation stage

Also in the contentious process has been legislated tax the possibility of the taxpayer and the administration can reach (total or partial) agreements on the subject matter of lite. In this sense, the Conciliazione Giudiziale is a legal entity legislated in the Italian tax system, currently provided for in Article 48 of D. Lgs. 546 N. Dec. 31. 1992, as amended by Legislative Decree of June 19, 1997, n. 218 Article 14.

Bring your typical cause Institute disciplined "transaction" in the Italian civil proceedings. Conciliazione Giudiziale is a dispute resolution procedure to the Provinciali Commissioni developed through an agreement between the parties. Conciliazione is completed with the payment of the sums agreed in a timely manner[61].

The Institute of Giudiciale Conciliazione given that takes place in the contentious process takes place before the Commissioni Tributarie Provinciali.

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60 On the subject can be seen: FICARI, Valerio, autotutela and Riesame nell'accertamento tribute, Giuffrè Editore, Milan, 1999; BATTISTA, A., "L'autotutela nel Diritto Tributario" Diritto & Diritti in, Rivista giuridica online, 2001; Stevanato, D., L'autotutela dell'amministrazione finanziaria, ed. CEDAM, Milano, 1996; PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, Giuffrè Editore, 1999, Milano.

61Vine. among others: PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela; op. cit., p. 115 et seq.

Comissioni called Italian Tributarie are bodies belonging to special tax jurisdiction. They possess nature of "Jurisdictional" bodies as it has thus declared the Italian Constitutional Court ruling of 19 December 1974, n. 287, and resolve disputes tax field. In particular all known disputes concerning taxes under DPR n. 546 1992 (Income Tax, Iva, Property Transfer, etc.); including regional and local taxes.

Currently they are structured as follows: -Commissioni Provinciali, in first instance and have jurisdiction under the jurisdiction of the province; - Commissioni Regionali, responsible for solving on appeal or appeal and its scope covers the entire region. Against the judgment delivered by the Commissione Regionale be appeal to the Court of Cassation[62].

Finally, also the procedural institute called "Socombenze" or complaint in court costs to financial management takes place in contentious phase and is an important stop for the purpose of bringing litigation in the courts of tax jurisdiction deterrents.

2. Reasons devoted themselves to the establishment institutes alternative to litigation tax for resolving controlled versies tax in Italy

It is the common opinion, not only between the administrative doctrine[63] but also between the scientific doctrine tax[64]That the adoption of the conciliators institutes between the Treasury and the taxpayer finds its ratio legis of the following reasons:

[62]In this regard can be found: GALLO, S., Manuale di tributary pratico diritto, ed. Cedam, 1997, pp. 233 ff .; GIULIANI, G., tax Diritto, Giuffrè Editore, 2001, you pay. 161 ff .; Lupi, R., tax Diritto. Part generale, Giuffrè, 2000, pp. 261 ff .; DE MITA, E., Principi di tributary diritto, Giuffre, 2000, pp., 482 et seq., Among others.

[63]In this sense they can be Circulars Agenzia Entrate: DC Accertamento, n. 235 of August 8, 1997, Il Fisco, 1997, pp. 9188 et seq., And n. 65 dated August 28, 2001, justifying the Institute of accertamento con adesione as deflactivo instrument contentious and speed of acquisition by the Treasury of taxes transferred.

[64]Among others: FICARI, V., and Riesame autotutela nell'accertamento tribute, ob cit Chapter V on "autotutela and deflation of litigation", pp... 179 ff .; GIANZUZZI Concettina, "Gli strumenti deflattivi the Contentious" La Finanza locale, 2000, I, p. 421; Lupi, Raffaello, giuridico Manuale professionale di diritto tax, III ed. Ed. IPSOA, 2001, pp. 134 ff .; Massimo STIPO, "L'accertamento con adesione del contribuente ex D. Legs. 19 giugno 1997, n. 218, nel quadro generale delle obbligazioni di diritto pubblico e il problema della giuridica natura "Rassegna tax, n. 5/1998, p. 1251; DE MITA, E., "Profili storici and costituzionali delle Definizioni transattive in Italy," Giurisprudenza delle Imposte, 2000, p. 470; Grassi, E., "Le partecipazione del contribuente the tax procedure nell'accertamento con adesione" Diritto e Pratica tax, 1998, p. 1502; FICARI, V., and Riesame autotutela nell'accertamento tribute, op. Cit., Chapter V, on "autotutela and deflation of contentious" p. 179 ff .; Miccinesi, M. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milani, 1994, p. 4; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999, p. 37; MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 et seq. Autotutela and Riesame nell'accertamento tribute, op. Cit., Chapter V, on "self governance and deflation litigation," pp. 179 ff .; Miccinesi, M. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milani, 1994, p. 4; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI,

1. Need to reduce the high rate of litigation in tax matters to which devoted itself largely the Italian tax reform of 1973, reaching the beginning of the 90s a volume of pending cases in the Provincial Tax Commissions, as aggregate data for the whole of Italy, on the order of 2.5 to 2.7 million and the order of 250,000 pending cases in the Regional tax Commissions or appelli[65].

> Note: In Italy there have been three procedural stages to exhaust before the Court of Cassation tax litigation. Namely Commissioni Tributarie Provinciali with anteción called Commissioni tributarie di grade I; Commissioni Tributarie Regionali previously called Commissioni tributarie di II degree (appelli) and Tax Commissione Centrale. It is known that the contentious reform in Italy dates back to 1992, conducted by DL 546 (in force since 01/04/96). Among the important developments that were approved reform[66] one of them was precisely the suppression of the Commissione Tributaria Centrale, Body would have time until 2000 to resolve outstanding records[67]. So today there is only the first degree and raised to exhaust the appeal before tax litigation.

2. Increased recovery; subtly says Professor Lupi, R., who pursue the quantitative maximization of the claim is not always the best way to return efficient administrative activity, as the administration runs the risk of succumbing before the trials. The interests of public money can be better achieved with an administration that is content with less pretension, but better founded and, therefore, available for certain[68].

Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999, p. 37; MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 et seq. Autotutela and Riesame nell'accertamento tribute, op. Cit., Chapter V, on "self governance and deflation litigation," pp. 179 ff .; Miccinesi, M. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milani, 1994, p. 4; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999, p. 37; MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 et seq. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milani, 1994, p. 4; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999, p. 37; MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 et seq. "Accertamento con adesione and conciliazione giudiziale" in Commento agli interventi di tax riforma, ed. CEDAM, Milani, 1994, p. 4; PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, ed. Giuffrè, 1999, p. 37; MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000, pp. 57 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tax, ed. Giuffrè, Milan, 2001, pp. 148 et seq.

[65] Source: Rilevazione sullo Stato generale delle dipartimento entrate. Commissioni Tributarie. statistico system Nazionale, Ministry of Finance, Rome. Memories of the years 1990 to 1994.

[66] Special note are the introduction of the Institute of Soccombenze or procedural imputation tax administration costs, as discussed in Chapter VI of this work.

[67] Unfortunately deadline was not met because after a few years from that date were still pending at the Commissione Centrale. Although unofficial, the reason behind this fact is that the magistrates in charge of resolving pending at the Central Commission simultaneaban this task with its regular work.

[68]Manuale Professionale giuridico, op. Cit., P. 137-138 and the same author: "Prime Considerazioni sul nuovo regime of the Concordat fiscale"; tax rassegna, 1997, p. 794.

Indeed, if the taxpayer reaches an agreement with the tax authorities in administrative proceedings the dispute is avoided and thus the uncertainty of collection that even in the case of being favorable to the administration, has not been an exception that not effective until many years later did. Therefore, the tax settlement with membership of the taxpayer is an ideal place for effective constant tax revenues and procedure, given these must be made within twenty days from the signing of the "atto di accertamento" without prejudice fit fractionations the amounts due to be made effective in up to eight quarterly installments over a maximum of twelve quarterly installments if the amount due exceeds 100 million lire, provided that the guarantee is provided by art. 38-bis DPR n. 633/1972.

3. With the accertamento with adesione the uncertainty and the extensions of the controversy is avoided[69], Which carries while saving management costs, administrative and procedural.

4. Amen of the above purposes, other reasons given to justify the adoption of the institutes mentioned are:

- *L'Accertamento with adesione*The giudiziale conciliazione and autotutela are useful tools to simplify administrative activity.

- "Responsibility of the tax administration and improvement of the Institute generic designed in 1994" is encouraged[70].

- The concordat also involves stabilization of the tax claim and limiting the areas contesting the act[71].

Logically, these mechanisms have been built and developed with a new scenario in which administrative transparency must prevail seated on a presided over by a renewed spirit of treasury-taxpayer relationships environment[72]. Administrative activity, as said, can not be exercised by a rigid preordained scheme therefore requires some discretion[73] which must be derived from an adequate professionalism and strong sense of responsibility[74]. On the understanding that rather than administrative discretion, strictly speaking we should talk technical-evaluative discretion.

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[69]Lupi, R., - "Prime Considerazioni sul nuovo regime of the Concordat fiscale"; tax rassegna, 1997, p. 794.

[70] MARELLO, E., L'accertamento con adesione, op. Cit., P. 61-62

[71] Ibid, p. 20-21

[72] V. GIANLUCA FERRARA PATRIZI and GABRIELA, "The Definizioni degli imponibli in contraddittorio e l'Amministrazione Finanziaria" Il Fisco, 1999, p. 6488; in similar vein, Consolazio, ML, "L'accertamento con adesione del contribuente" Rass. Tax, 1997, p. 67; and STIPO, M., "L'accertamento con adesione del contribuente ...", op. cit., p. 1251.

[73]See STIPO thereon, M. "L'accertamento con adesione ...", op. Cit., P. 1256-1257. In general, administrative discretion vid., SABINO CASSESE, Trattato di diritto amministrativo, Diritto amministrativo generale, volume I, Milan, 2000, pp. 691 et seq., And in the field of taxation, among others, MOSCATELLI, MT, "Discrezionalità tax dell'accertamento and protection del contribuente" tax Rassegna, 1997, pp. 1107 et seq.

[74]GIANZUZZI Concettina, "Gli strumenti deflattivi the Contentious" La Finanza locale, op. Cit., P. 421.

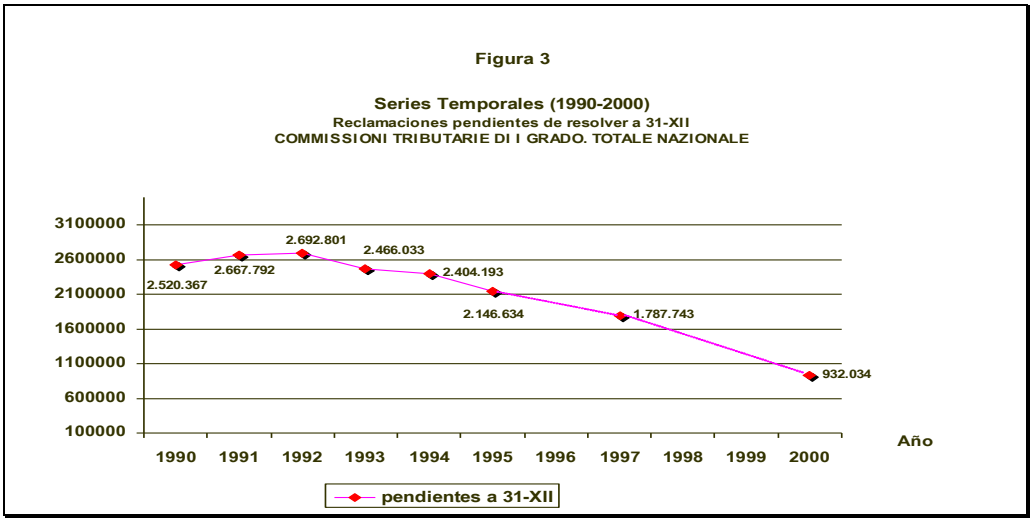
The problem, as can be intuited is to know the limits of such administrative powers, such power must be reconciled with a system that guarantees the principle of taxpayer's ability to pay[75], Since the principle of constitutional law reserve recognized in Article 23 of the Italian Constitution[76].

3. The effectiveness of alternative ways of resolving conflicts of tax nature in Italy: statistics on the dramatic decline in the volume of tax litigation

The main conclusions are exposed[77] in relation to the evolution of the litigation experienced in the Jurisdictional Courts of Italian tax nature (Commissioni Tributarie) during the years 1990 to 2005.

As it said -during the decade of the nineties implementing alternative ways of resolving tax disputes, without prejudice to the specific tax amnesties that have been performed occurs.

In Commissioni tributarie provinciali Italy, according to data aggregated to the national assembly in the tax order, it can be said that since the beginning of the nineties until 2000 there has been a very strong decrease in the number of cases pending resolution, which they have been reduced by more than 50% share. It has been the order of the 2,700,000 outstanding issues to resolve 31-XII-1992 to 900,000 unresolved claims at 31-XII-2000. In this time series the sharpest jump accused in the range 1997-2000, in which the number of pending cases at year end is reduced by 48% (from 1,800,000 to 900,000).



[75] MARELLO, E., L'accertamento con adesione, op. Cit., P. 20-21; - Grassi, E., "The partecipazione del contribuente the tax procedimento nell'accertamento con adesione" Diritto e prat. Trib., 1998, p. 1506.

[76]On the subject recommend the article by Professor FEDELE, A., "nuovi metodi Rapporti tra di principio di accertamento and legalità" Rivista di diritto tributary, 1995, fasc. 3 March, p. 241-246. The same author: "Commento all'art. . 23 Cost "in Commentario alla Costituzione a cura di G. Branca, Bologna-Rome, 1978; and - "The reservation di Legge" in Trattato di tributary diritto, diretto gives Amatucci, Padova, 1994, I, p. 157 et seq.

[77] Vine. Annex to this work.

If we see how it has evolved the litigious process until today we see that at the end of 2005 remain unresolved in the provincial courts in tax nature of the order of 400,000 records. Which means that the volume of litigation has gone from almost 3 million resources in 1992 (where the maximum period studied experienced) up to 400,000 records pending resolution in the courts of 1st instance throughout Italy in 2005. that is, in that meantime litigation has been reduced by 86%

As regards the Commissioni tributarie regionali is evident how during the nineties litigation is not reduced but experienced in the middle years an increase in pending litigation (of the 240,000 records are coming to increase by about 100,000) , declining in 2000 to be around 200,000 records about pending resolution (vol. less than at the end of the year).

However, during the five-year period 2000-2005 we can mention that there has been a downward trend in the number of unresolved, from 175,181 outstanding at December 31, 2000 to be about 100,000 records in late 2005 records records.

Therefore we can say that reducing litigation in Regionali Commissioni from 1990 to 2005 is estimated at a rate of 58% (240,000 to 100,000)

Underline the different amount of resources that move these higher courts (regional) regarding 1st instance (provincial). Note that in the 1st instance were talking about millions of records in the early nineties. These figures, however, are very close to the end of 2005, as the provinciali Commissioni 400,000 are pending on resources, and regionali Commissioni the order of 100,000 records.

Finally we can also establish a comparison with the aggregated data for the whole of Italian courts dealing with tax matters.

Since the sources used measure different sets of courts see the sequence separately, on the understanding that, as common-denominator can speak of a dramatic reduction in tax litigation in Italy during the 1990s to today.

In this sense, in the nineties (1990-2000) in the years 1992-1993 will reach more than 3 million cases pending resolution in tax courts (aggregates of commissioni provinciali include, regionali and centrale) to decrease more than the 1.5 million outstanding at the beginning of 2000 records volume.

During the latter part of 2000 to 2005 the trend is clearly downward -asimismo-: according to aggregate data for the previous court's appeals pending in the Court of Cassation, at the end of 2005 remain unresolved in the order of 500,000 records, which means a sharp fall in litigation in the whole of the Italian tax courts.

In conclusion, pending appeals 3,200,000 in 1993, remnants of 500,000 is reached, which in percentage terms means that slope is only 16% of that volume, or what is the same, the litigation has fallen into 84%.

CHAPTER III

AGREEMENTS BETWEEN THE ADMINISTRATION TAX AND TAXPAYER IN ITALY: THE "Concordat" TRIBUTARIO U "ACCERTAMENTO *Adesione WITH THE CONTRIBUENTE "*

1.- *The agreements between the tax authorities and the taxpayer in Italy. Concept: "Concordat", equivalent to the term "L'accertamento with adesione the contribuente"*

This has been that "The definition placed in the porch of a discipline has the power to guide the steps of who intends to study, to mark the limits of its travel and to clarify, in short, the peculiar nature of the issues on which It is to bring his attention "[78]. Therefore becomes urgent task to clarify the different names used to define such institutes that move and, due to a reason for purely political-legislative, as has been the legislator of matter which, depending on the tax regulated and the historical moment considered, he has been awarded one name or another.

In this regard says BERLIRI[79]the designation and regulation of the act is different according to the different tax laws. So the fact of "concert between the Administration and the taxpayer" to reach a matching valuation has been called "concordat" (in the laws governing direct taxes to the 1956 Act[80], Registration tax, inheritance[81] and general income tax[82]); "Agreement" (local taxes[83]) And "adesión of contribuente" (direct taxes from the 1956 Act[84]).

[78]SAINZ Bujanda, F., Financial Law System I, ed. Faculty of Law, University Complutense de Madrid, 1977, p. 19.

[79]Principles of Tax Law, translation by C. Palao Taboada, Vol. III, Ed. Financial Law, Madrid, 1974, p. 207

[80]In relation to direct taxes: Regulation of 11 June 1907, n. 560, art. 8.

[81]RDL of 7 August 1936, n. 1936, art. 14.

[82]DL of December 27, 1946, art. fifteen; DL from May 3, 1948, n. 799, arts. 16 and 17

[83]single text of the Local Finance of September 14, 1931, n. 1175, art. 292

[84] Law of 5 January 1956, n.1, first and then, Consolidated Text of direct taxation of January 29, 1958, art. 3. 4.

Consequently, the DL 19 June 1997 n. 218 re-introduced into Italian law institute that particular one known as the Concordat term but as from 1958 only text on direct taxes, defined as "accertamento with adesione the contribuente"[85].

Concept: The accertamento with adesione the contribuente is a figure of conciliativa nature innate in the Italian tax management process, whereby Administration and taxpayer -well at the request of its own motion or at the request of the party- reach an "entente cordiale" on the determination of "tax debit" well known that may not be discussed those constituent elements of the debt on which the administration has factual evidence and certain about their volume and amount, nor on the rate and essential elements of the tax provided by law[86]. Such an agreement is formalized in writing in the so-called "atto di accertamento I with adesione" signed by the government and signed by the taxpayer. The adhesion of the subject and therefore subscription accertamento comprises, on one side, the reduction to a quarter of the minimum of the penalty if any matched and, secondly, the impossibility of challenge, so that, if the taxpayer refines act by entering the agreed debt, "atto di accertamento with adesione" becomes effective, ending the procedure, no further appeal fitting its contents; content must also respect the Administration, who can not change the atto di accertamento except in exceptional cases assessed standard[87].

2.- regulatory legal sources of legal institution: "L'accertamento with adesione the contribuente"

The current regulation of accertamento with adesione is provided in the following legal texts. Namely:

- 12/23/1996 law, which paragraph 120, Article 3 delegates to the Government the organic revision of the Institute of accertamento with adesione through one or more legislative decrees.

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[85] Thus, RUSSO, P., Diritto Manuale of Tax, generale part, ed. Giuffrè, 2002, p. 322. Similarly TESAURO, F., Manuale of Diritto Tax, ed. Utet, Torino, 2000, p. 212, note n. 85; DE MITA, E., "Profili storici and costituzionali delle Definizioni transattive in Italy," Giurisprudenza delle Imposte, 2000, p. 473; Ferlazzo NATOLI, L and V. Fusconi, Guida al nuovo fiscale concordato, ed. Thing & eat, Guiffre Editore, Milan, 1998, p. XIII. Says Grassi, E., "Le partecipazione del contribuente the tax procedure nell'accertamento con adesione" Diritto e Pratica tax, 1998, p. 1494 the deletion of the word "concordat" and the new discipline given taxpayer accession were justified with the opportunity to exclude the determination of imponibile could form the subject of a transaction between the Treasury and the taxpayer ". Vine. Also, Giannini, AD, Istituzioni di diritto tax, ed. Giuffre, 1948, pp. 149 et seq.

[86] Position held by the Italian Financial Management in line with Circular 235 / E Department della Entrate, Direzione Centrale, paragraph 1 in fine, which states: "The lack of regulation forecast parameters that inform the accertamento con adesione and expansion the scope of the institute should not induce retain all species, also those in which the existence of the tax liability is determinable on the basis of certain elements, they must be traded with the contributor. " Note: This consists us is the criterion that is asserted in unici Uffici delle Entrate (tax offices) based in Rome and managed by the Department "L'accertamento con adesione" in Delegazione Regionale della Regione del Lazio, Agency della Entrate.

[87] Specific assumptions that we shall analyze when studying the effects of the concordat.

- D. Legs. 218/1997 of June 19, consisting of 16 items subdivided into three sections and four complementary rules. The first chapter regulates the object and purpose of accertamento with adesione; the second includes the procedural aspects of the institute for the purposes of direct taxes and VAT, while the third chapter provides the procedure for defining the accertamento with adesione in other indirect taxes. Articles 14 and 15 are devoted to the disciplines of "conciliazione giudiziale" and "acquiescenza" or omission to challenge the settlement. The last article contains rules transient.

  Legislative Decree n. 218/1997 has undergone slight partial amendments in laws passed before whose detail will notice in the following pages.

  With respect to the sanctions regime they are noteworthy:

- Legislative Decree of 30 March 2000, n. 99, in the area of tax administrative sanctions.
- Law 25.06.1999, n. 205 Criminal penalties matters
- Legislative Decree n. 74 of March 10, 2000, concerning penalties for new tax offenses.

For the application and development of the above texts they have been issued the following Circulars:

- **Circular n. 235 / E dated August 8, 1997**Issued by the "Dipartimento Entrate, Direzione Centrale" (in Treasury, n. 31/1997, p. 9188), explaining the provisions of DL 218/1997[88]. Establishes precise operational instructions for the tax administration and taxpayers can make a correct application of the institution[89].
- Circular n. 309 of December 9, 1997 the Ministry of Finance on provisions applicable to accertamento with adesione for indirect taxes and VAT.
- Circular 203 / E of the Ministry of Finance of October 20, 1999, which contains the instructions necessary to implement the concordat to accertamenti sulla dei parametri basis.
- Circular No. 65 of 28 June 2001 (Agenzia Entrate: DC Accertamento), Accertamento with adesione. Development issues concerning procedural management.
- Circular n. 145 of 20 August 2002 on contributions to the "Social Providenza" (social security) for income liquidated by the Revenue Agency in 98.

  On sanctions:
- Circular n. 180 of 10 July 1998 concerning the general provisions on administrative penalties for violation of tax rules.
- Circular n. 23 of 25 January 1999 on reform of non-criminal tax penalties on direct taxes and VAT.
- Circular n. 138 of 5 July 2000 on the amendments made by the Legislative Decree of 30 March 2000 concerning tax administrative sanctions.

3. Legal background

In line with previous statements, far from being a new institution in the Italian tax system, the accertamento with adesione the contribuente brings cause of the so-called "Concordat", legislated since the late nineteenth and early twentieth institute, fully developed in the mid this last (Direct Taxes Consolidation Act 1958). With the tax reform of 1973 it would be

[89]For more information on this circular may be MENOTTI Gatto, "he agrees Concordat" Il Fisco, 1998, vol. II, No. 10, p. 3248;

virtually abolished[90], Establishing instead a system based on the analytical method for the determination of the tax liability completely apegostrado the figures resulting from the financial statements system. It was not until 1994 when the past comes back; around the figure of the concordat, since 1958 -a known effects of taxation directly "with adesione accertamento" but with a narrower scope than expected then. Finally, in 1997, it developed by Legislative Decree n. 218 orderly legislative provision in the Law of 12.23.1996, extending the field of objective and subjective application, while being tried to overcome some interpretive and operational problems which, de facto, had prevented the financial administration to apply correctly Institute accertamento with adesione[91].

Let's look a little more detail the legislative iter suffered by the institution analyzed.

3.1.-*Originally*, the possibility of reaching an agreement between the IRS and the taxpayer on the quantum debeatur foresaw the following tax effects:

- Chattel tax wealth, developed by the regulations of 11 July 1907, n. 509, Article 81.
- Tax on manufacturers; Act of June 6,1877, n. 3684
- Registration tax; RD of 7 August 1936, n. 1639
- The Institute concordat was also extended both taxes on income in direct taxation (sui imposte redditi: Article 81 of Regulation No.506 /1907), as indirect taxes (art. 41 and RDN 3269/23 art. 77 RD. 3270/23).

3.2.- A mid-twentieth century in part, as it has been said[92]Motivated by the interest shown by the doctrine[93]- the Single Text of direct taxes of 1958 contains a detailed regulation of

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[90] He initially remained in force for the purposes of certain indirect taxes (registration, inheritance, etc.); Subsequently, however, it was also suppressed in these sectors.

[91]Particularly on the vine. FABBIANI, F., and SALVATORE CAZZELLA, F., Le alternative to the tax processo, ed. Theorema, 1999, pp. 373-377; - BERSANI, G., "Accertamento con adesione and giudiziale conciliazione: effetti penali sostanziali and processuali" Riv. Dir. Penale, 1998, vol. II, p. 1057; Consolazio, ML, "L'accertamento con adesione del contribuente" Rass. Tax, 1997, pp. 68 ff .; Ferlazzo NATOLI, L. and Fusconi, V., Guida al nuovo fiscale concordato, ed. Thing & eat, Milan, 1998, pp. XII et seq .; - GIANZUZZI Concettina, "Gli strumenti deflattivi the Contentious" La Finanza locale, 2000, I, p. 423. For a more developed study of the issue, see Ferri, F., "L'accertamento con adesione del contribuente: evoluzione storica" Riv. Dir. Fin. E Sc. Fin., 2000, pp. 665 ff .; DE MITA, E. "Profili storici and constituzionali delle Definizioni ...", op. Cit., P. 469: MARELLO, E., L'accertamento con adesione, ed. Giappichelli, Torino, 2000; VERSIGLIONI, M., Contributo allo dell'accertamento studio con adesione e della concilizaione guidiziale, Giuffre, Milano, 2001.

[92] BERLIRI, A., Principles of Tax Law, op. Cit., P. 209.

[93]The appeal and interest of the same is evident through the significant number of previous writings and later concerning the tax concordat. They are ment in this regard, among others, INGROSSO, "Sul contenuto giuridico the tax concordat" in Italian Forum, 1939, p. 1538; BERLIRI, "Appunti sul tax concordat" in "Tributi", 1937, p. 71 ff .; BRUNELLI, "Sulla nature of the tax concordat", Riv. Dir. Pubb., 1936, II, pp. 15 ff .; COCIVIERA, Il concordat tax, Milano, 1948; -GRIZIOTTI, "Natura ed effetti dell'accertamento and the tax concordat, Impugnabilità and termini" Riv. Dir. Fin., 1938, p. 238; - Maffezzoni, "Alcune riflessioni sul tax concordat", Riv. Dir. Fin. E Sc. Fin., "1941, I, p. 254; - PUGLIESE, "The nature of the tax concordat" in Foro Lomb, 1934, I, p.. 379 ff .; CARNELUTTI, "Note sull'accertamento negoziale" Riv. Dir. Proc. Civ., 1940, I, p. 3 ff .; FURNO, Accertamento convenzionale and confessione stragiudiziale, Firenze, 1948. In recent times, come back to these issues: Ferri, F., "L'accertamento con adesione del contribuente ...", op cit, pp... 684 ff .; DE MITA, E., "Profili storici and costituzionali delle ...", op. Cit., P. 472 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tributary; op. cit., p. 49 et seq. . ", Op. Cit., P. 472 ff .; VERSIGLIONI,

the institute of the concordat, and called herein as -accertamento with adesione- including the concept, content and effects of the figure analyzed. In particular, Article 34 of the only text quoted states that the "tax" can be defined adherence taxpayer by writing a letter of that act is given to copy the taxpayer, an act which, under penalty of nullity must be dated and it signed by the representative of the tax office and the taxpayer (or his representative), indicating productive and elements based on sources which determines the taxable[94].

They deserve to be highlighted as most important features of the legislation analyzed as follows:

- By accertamento with adesione you can set a different planned in the proposed settlement taxable income.
- Regarding the timing for implementation can be both before and after notification of avviso di accertamento (settlement) and even on the tax commissions (not only in grade I).
- The main effect produced by its application is that you can not resort once subscribed the act of accession must be signed by -the mismo- both sides. Nevertheless, if supervening appear new elements impossible to know in advance, the Office may perform integrative or modifying checks.
- Another effect derived from "atto di adesión" is that the pre-accession contributor to the intervention of the decision of the Tax Commission of I degree involves reducing penalties for omitted statements, infidels or incomplete.

3.3.-Later in time, into and seventies, it takes place far-reaching tax reform. In the field of direct taxation institute Concordat it was abolished (reform 71-73) remaining in force for the definition of taxable transactions for the purposes of indirect taxes (registration, inheritance, etc.), also after being abolished in such sectors[95].

The new regulation radically changed the general principles for determining the performance of the business and self-employment, given the requirement imposed by the legislature to take accounting, linking the proposal from the administration to an analytical method on documentary bases, Reaffirming the probative value of the balance sheet and accounting records regularly carried[96]. It is established in line with the above, a system incompatible "analytical accertamento" with the concordat, which runs in time for

M., and disposizione Accordo nel diritto tributary; op. cit., p. 49 et seq. . ", Op. Cit., P. 472 ff .; VERSIGLIONI, M., and disposizione Accordo nel diritto tributary; op. cit., p. 49 et seq.

[94] Vine. DE MITA, E., "Profili storici and costituzionali delle ...", op. Cit., P. 472 et seq.

[95]Says Bersani G., "Accertamento con adesione and giudiziale conciliazione: EFFETI penali sostanziali and processuali" Riv. Penale, 1998, vol. II, p. 1057, the Institute concordat was reinstated in 1994 because of an ever greater demand for "safe" by the State Treasury.

[96] Only in exceptional cases where this was not possible, due to insufficient or non-keeping of accounting records it was possible the "inductive accertamento". FABBIANI, F., SALVATORE CAZZELLA, F, Le alternative to the tax processo, op. Cit., P. 374. From a historical and political perspective, in the late 60s, at the same time when Italy approved a general tax reform, the most important tax law of our young democracy (one Tutta reform all'insegna della simplificazione e delle efficienza), our country, which differs from other Western democracies suppressed the concordat. Thus, MITA, E., "Profili storici and costituzionali ..."; op. cit., p. 469, for whom the main reason that the Concordat was abolished because it violates the constitutional principle of legality.

approximately twenty years and that, in practice generated significant adverse effects complicate tax administration and relations between the treasury and the taxpayer because of the "major formal requirements were imposed to contain the elusive phenomenon"[97].

3.4.-In recent times -Year 1994- the Italian legislature reintroduces the tax concordat by Legge Decree 564/1994, subsequently converted into law, with modifications-n. 656 of November 30, 1994[98]. However, this time, the discipline of the concordat, unlike the 1958 rules, would contain lines generals -in a field of application more restricted[99].

Law n. 656 of 30 November 1994 regulated the following institutes:
- *Accertamento with adesione* the taxpayer for the purposes of income tax and VAT (Art 2-bis.) "adesione accertamento with a regime"
- *Accertamento with adesione* concerning indirect taxes (art. 2-ter)
- *Accertamento with adesione* contribuente for years of progressive, also called "di massa concordat" (art. 3)
- *Conciliazione giudiziale* (Art. 2-ae)
- *amministrativa autotutela* (Art. 2-c)

Undoubtedly, the central institution for concordato is referred to in Article 2-bis whose salient lines are specified thereupon. Namely:

- While the concordat regulated in 1958 applied to all categories of income, it affects only the current business income and self-employment (professional).

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[97] FABBIANI, F., SALVATORE CAZZELLA, F, Le alternative to the tax processo, op. Cit., P. 374.

[98] The cast of rules legislated in this era can be found in DE GREGORIO, MG "Brevi note istituti sui nuovi e della dell'accertamento con adesione definizione delle controversie tributarie" Rassegna delle Mensile Imposte, 1994, n. 11-12, pp. 979 et seq.

[99]On the reincorporation of this figure in Italian tax law and nurtured there is a scientific doctrine meant, among which we review the following authors and works: CAPOLUPO S., "Il transitional regime" Il Treasury, 1995, p. 9894; FALSITTA, G., "written off or concordato, questo è il problema" Il fisc, Vol. IV, p. 9543 et seq; -. GALEOTTI FLORI, M., "Accertamento con adesione, autotutela and concilizaione quali forme di attività che accertamento conseguono alle concorrenti dei due soggetti tributary rapporto" Il fisc, 1995, II, pp. 3085 ff .; - GALLO, Franco, "Ancora sul neoconcordato e sulla giudiziale conciliazione" Rassegna tax, vol. II, pp. 1483 ff .; - "The Reintroduzione tra concordato velleità and scorciatoie" tax Rassegna, 1994, pp. 1205 ff .; LA ROSA, S., "Concordat, conciliazione and flessibilità finanziaria dell'amministrazione "Diritto and tax Pratica, 1995, vol 1, 2, pp. 1089 ff .; Lupi, R., - "Le Crepe concordat nuovo: anatomia di un'occasione perduta" tax Rassegna, 1994, II, pp. 1859 ff .; MOSCHETTI, Francesco, "Le possibilità di accordo tra Amministrazione Finanziaria e contribuente Italian nell'ordinamento" Il Fisco, 1995, pp. 5331 ff .; Consolazio, ML, "L'accertamento con adesione del contribuente", op. Cit., P. 69 et seq. "Le possibilità di accordo tra Amministrazione Finanziaria e contribuente Italian nell'ordinamento" Il Fisco, 1995, pp. 5331 ff .; Consolazio, ML, "L'accertamento con adesione del contribuente", op. Cit., P. 69 et seq. "Le possibilità di accordo tra Amministrazione Finanziaria e contribuente Italian nell'ordinamento" Il Fisco, 1995, pp. 5331 ff .; Consolazio, ML, "L'accertamento con adesione del contribuente", op. Cit., P. 69 et seq.

- Regarding the subject of accertamento with adesione, a restriction is also produced, because unlike the previous regulation in which the object is extended to the quantitative determination of taxable budget (quantum), the current states that "the definition is intended the existence, estimation, involvement and charging the tax period of the positive and negative components ... "in other words, such positive and negative components (income, expenses and other) to have legal relevance must to enjoy certain existence, be objectively determinable (stima)[100]; membership or pertaining to the business activity or profession and ultimately be attributable to the tax period at the discretion of competenza (equivalent to an imputation system accounting correlation of income and expenses[101]). So that the concordat could only be about any of these aspects.
- Effects of the Concordat regime:[102]1) the taxpayer can not challenge the result derived from atto di adesione; 2) Financial management can not integrate or modify the result on business activity or profession defined adesione the contribuente; 3) administrative penalties are reduced to a quarter of the minimum applicable; 4) the act is not relevant to criminal purposes, nor to extratributarios purposes.

Aside from the regulation of accertamento with adesione a regime that we have just referred, the Law n. 656 above, Article 3 contemplates the figure of a sui generis concordat called "di massa concordat", consisting of a unilateral proposal for the financial administration carried out a posteriori of avviso di accertamento with progressive effects for years. The aims pursued by the legislature conciliativa typing this figure, clearly inclined towards an increase in tax revenues, led the institute to resemble a kind of tax amnesty, legally equivalent to those provided in previous years[103].

The main characteristics which define the concordato di massa versus accertamento with adesione to regime, can be summarized as follows[104]:

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[100] Note that while the requirement of certain existence is predicated in absolute sense (a component exists or not), the objective determination must be interpreted more elastic sense, as it can be also collected by presumptive elements. In this regard PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, op. Cit., P. 29, authors performing full on each of the four said elements (esistenza, stima, inherenza and competenza) pp comment. 27 et seq.

[101]Expenses are charged to the tax year in which the corresponding revenues are achieved, well known that the legislation establishes as a requirement for the application of the principle of competenza revenues, expenses and other components have some existence and are determinable objectively about the amount (art. 75, paragraph 1 TUIR). Failure to meet such requirements shall be charged to the period in which the characteristics of certainty and effective determination are acquired. Vine. Also note above.

[102]Thus Article 2-bis, paragraph 5, Law 656/1994. In this regard can be found, among others, MOGOROVICH, S, Gallovich, I., Manuale tributary difensore, ed. Maggioli, 1997, p. 371.

[103] Among others, STEFANO CARMINI, "L'scriminante efficacia of" di massa concordat ": meritevolezza morale ed Esigenze di gettito" Bollettino tributary, 1999, III, pp. 1721.

[104] STEFANO CARMINI, "L'scriminante efficacia of" di massa concordat ": meritevolezza morale ed Esigenze di gettito" Bollettino tributary, 1999, III, pp. 1720 ff .; - PATRIZI, MAURICI, PATRIZI, Accertamento con adesione, ob, cit, pp... 20 and 22; LOVECCHIO, L., "L'accertamento con adesione per gli anni pregressi: note aplicative" tax Bollettino 13, 1995, pp. 967 ff .; PATRIZI, G., FERRAZZA, G., "The definizione degli imponibili in contraddittorio ...", op. Cit., P. 6488-89;

	CONCORDATO DI MASSA	*ACCETAMENTO ADESIONE WITH A REGIME (AAR)*
START OF PROCESS	Activation of the concordat di massa can only be proposed by boosting financial management.	AAR activation could be done to boost or automatically.
PROCESS	It consisted of a unilateral act of the administration, for which the taxpayer could only accept or reject.	In the act of rectification involved both the Administration and the taxpayer through a proc. Contradictory, which means the existence of active presence of the party.
PHASE CONTRADDI-TTORIO	There is no phase of contraddittorio. The taxpayer can not answer or discuss the proposal accertamento rectification by the competent financial office.	The taxpayer actively participates in the rectification of the act, declaring their adherence to such rectification by atto di accertamento subscription, also signed by the Administration.
PAYMENT	If the taxpayer accepts the proposal of the office must make direct payment of the amounts specified therein and thereafter without adversarial procedure, send the proposal to the competent authority duly signed by the justification of payment (invoice).	First there is the contradictory procedure between the parties and after signing the atto di adesión both by the administration and by the hand, there is a short deadline to make payment (20 days).
MODE PAYMENT	Fits installment payment.	Payment of the amount due should be done at once. They not fit subdivisions.
INTERESTS AND SANCTIONS	1/8 reduction of sanctions and exclusion of interest payments.	1/4 reduction of sanctions.

Finally, the current regulation of the institute of accertamento with adesione derives from the Law n. 662 of December 23, 1996, whose art. 3, paragraph 120 delegates to the government the power to issue -in within six months from the entry into force of this law- one or more legislative decrees to regulate the institute as well as giudiziale Conciliazione. Delegation that has materialized in the DL n. 218 of June 19, 1997, text that seeks to solve the problems of interpretation and operational aspects of the previous legislation, introducing -asimismo- figure of acquiescenza (art. 15).

Said DL 218 which entered into force occurred on 1 August of the same year, repealing Articles 2-bis and 2-ter of Decree 564 of 1994, since the provisions of the implementing regulations, as are incompatible with current legislation. Loses force also the so-called concordat di massa.

4- Legal nature of accertamento with adesione

Of delicadísima (debated and controversial) it has been branded the question of the legal nature of the concordat Institute[105]. Since the first legal rules that regulated the issue arduous debate between the scientific doctrine concerning the determination of the legal nature of this sui generis figure was raised.
Disregarding a complete and comprehensive analysis of the issue[106], But without renouncing to make a synthetic presentation of it, it can be said, in line with the statement by the generality of the doctrine[107]That throughout the history of concordat institute have poured two opinions faced about it. Namely:

- The concordat as a unilateral act of the administration
- The concordat as a bilateral act: transactional contract
- New theory: the concordat as a public law agreement[108].

4.1.- The concordat as a unilateral act of the administration

There is an old and very Italian tributarista signified doctrine that considers the concordat as a unilateral act of the administration to which the taxpayer consents. leading exponent of the above thesis was GIANNINI[109], Which was echoed by a number of authors[110]As well as the legal text of the mid-twentieth century (Direct Taxes Consolidation Act 1958) itself, Article 34 replaced the term concordat by the taxpayer's accession to liquidation.

[105]STIPO, M., "L'accertamento con adesione ....", op. Cit., P. 1258.

[106]A complete and substantiated study of the issue can be seen in VERSIGLIONI, M., Contributo dell'accertamento allo studio con adesione e della concilizaione guidiziale, op. Cit., Chapter IV.

[107] Among others: FANTOZZI, A., Manuale di Diritto Tax, provisional version of the third edition, ed. UTET, 2002; DE MITA, E., "Profili storici and costituzionali ...", op. Cit., P. 473; -GRASSI, E., "Le participazione del contribuente ...", op., City., Pp. 1496 ff .; - Ferri, F., "L'accertamento con adesione ...", op cit, pp... 678-684 and 690-700; - Ferlazzo NATOLI, L. and SERRANO, V., Il nuovo tributary concordato dopo il D. Legs. 19 giugno 1997, n. 218 "Il Fisco, 1998, n. 12, p. 3726; - Miccinesi, M., "Accertamento con adesione ...", ob, cit, pp... 2 et seq .; RUSSO, Manuale di diritto tax. Part generale, 2002, pp. 324 ff .; PATRIZI, B., MARINI, G., and PATRIZI, G., Accertamento con adesione ... ", op. Cit., P. 37-38; - Lupi, R., Manuale giuridico ..., op cit, pp... 138-139 ...; - STIPO, M., "L'accertamento con adesione ....", op. Cit., P. 1258.

[108] Recently Professor GALLO, F., has published an interesting article on the matter arguing that the accertamento con adesione has the nature of "public law agreement," refuting also the previous two theses: "The giuridica natura dell ' accertamento con adesione "Rivista di Diritto Tax, n. 5, 2002, pp. 425 et seq. In this line may be the previous work: -STIPO, M., "L'accertamento ...", op cit, pp.. 1230 et seq .; VERSIGLIONI, M., Contributo allo studio ..., ob, cit., P. 420 ff .; Miccinesi, M., "Accertamento con adesione ..." ob, cit., P. 1 et seq.

[109]Giannini, AD, Il rapporto d'giuridico impost, Milan, 1937, p. 262, doctrine that holds later in his famous book Istituzioni di diritto tax, Milan, 1965, pp. 149 et seq.

[110] INGROSSO, "Sul contenuto giuridico ..."; op. cit., p. 1538; COCIVIERA, tax concordat Il, Milan, 1948, pp. 25 ff .; Griziotti, "Natura ed effetti dell'accertamento and the concordat", Riv. Dir. Fin. E Sc. Fin., 1938, II, p. 238; Pugliese, M., Corso di diritto and tax washing procedure. L'obligazione tax, Padova, 1937, pp. 189 ff; etc.

Concept that has enjoyed also favor the Commissione Centrale both Tax[111] as by the Corte Suprema di Cassazione[112], Since the Assonime, which in circular dated January 19, 1998 maintains that the concordat is not an act neither bargaining, nor transactive, but a unilateral administrative act issued in the exercise of a typical public authority[113].

The bulk of this thesis lies in the fact the disparity of positions that support the administration and the taxpayer, so that the concordat, is nothing but an act adopted unilaterally by the first, with the collaboration of the cornerstone for taxpayer procedure, but not essential for quantification of the tax claim, which can be determined only by the Administration. Such being the common substrate underlying the mentioned theory, the authors who currently defend, maintain, however, different positions in order to justification[114]Some expressly lead back to the wider or "general" power of review by the Administration (S. LA ROSA); others tend to include it as verification of an event (assessment of all taxable, Miccinesi) or, clarification of a voluntary exchange of information between the financial contributor and Administration (MARELLO, E).

4.2.- The concordat as a bilateral act: transactional contract

It consists of the doctrine known as contractual thesis, which assimilates the tax concordat to a transactional business given the same are all the elements of the transaction agreement (governed by Article 1965 of the Italian Civil Code). It is part of the basis of a parity of positions considered equal to the taxpayer and the Administration.

This conception has ancient origins, since the introduction of the tax legislative concordat occurs, remember, prior to the First World War, with deep roots in times last to areas: legislative[115], doctrinal[116] and case (Commissione Centrale Tax[117]).

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[111]Comm Centr. 16 nov. 1976, n. 13232 in "Comm. Tributi ", 1976, I, p. 74; Comm. Centr. 23 maggio 1983, n. 952, in "Do It." Rep. 1983, voce Tributi in genere, n. 477, cited by STIPO, M., "L'accertamento ...", op. Cit., P. 1260.

[112]S. March 10, 1975, n. 883 in Boll. Trib. 1975, p. 1460; Cass. February 8. 1978, n. 595, in "Riv. Fisc. ", 1978, p. 1241;

[113]Vine. Ferlazzo NATOLI, and SERRANO L., V., "Il nuovo tax concordat dopo ...", op. Cit., P. 3727.

[114] We continue in this point FANTOZZI, A., Manuale di Diritto Tax, provisional version of the third edition cited.

[115] See section 4.1 of this paper where the first institute legal background of the concordat exposed.

[116] The main exponent of this thesis is CARNELUTTI, "Contratto e diritto pubblico", in Riv. Dir. Pubbl. 1929, I, p. 665; Among the first authors who defend this thesis they are ment: QUARTA, Commentario all'imposta di ricchezza mobile, II edizione, Milano, 1902, pp. 482 ff .; Uckmar, A., La legge registration, Padova, 1928, pp. 519 ff .; VANONI, Lezioni di diritto Finanziario e Scienza delle Finanze, Rome, 1934, pp. 428 ff .; ALLORIO, Diritto processuale tax, Torino, 1942, pp. 178 et seq. (Cited in FANTOZZI, A., Manuale di Diritto Tax, provisional version of the third edition).

[117] Comm. Centr. 26 maggio 1928, in "Giur. Imp. Dir., "1929, p. 156; 17 February. 1934, in "Giur. Imp. Dir. ", 1945, n. 48, p. 202.

The main stumbling block with this theory faces is, without doubt, the general principle of financial law on the unavailability of tax credit. Deeply convinced of this thesis is, however, Professor RUSSO, P.[118]who argues important considerations in order to his defense, among which is a strong legal weight, also maintained by other advocates authors of this thesis, which is that the contract accertamento with adesione is perfected at the time in which the taxpayer actually performs the benefit due. It not therefore depends solely on the unilateral will of the administration.

4.3.- *Ecleptica position*[119]

Finally, reference is made to an intermediate position inspired by the changes made in the field of discipline of the administrative procedure to access a bilateral scheme[120]. In short, this is to redirect the question to the dogmatic scheme of "administrative agreement" noting the accertamento with adesione, on the one hand, a publicístico substrate with carrier function, and moreover one privatístico content, transactivate connotation[121]. According to this theory, from a bilateral perspective, it is necessary to attribute the right weight "consensus taxpayer", but without forgetting that the role of the institute is to reach a more realistic determination of the tax base and whose effects depend exclusively on the law and not of the will of the parties (given the unavailability of tax liability)[122].

5. Legal framework of the "accertamento with adesione" for the purpose of Direct taxes and VAT

The fundamental principles of the new regulation of tax concordat contained in the abovementioned Law of 23 December 1996 (art. 3, paragraph 120), developed by DL No

[118]RUSSO, P., Manuale di diritto tax. generale part, op. cit., p. 325, states that there is more than one argument in favor of the thesis of the transaction: 1. In formal terms, the accertamento con adesione leading to the drafting of a unitary and bilateral act insofar as it is signed by both parties of the tax rapporto; 2. With regard to the effects of accertamento con adesione, one of which is the prohibition by the financial administration proceeding to modify or integrate the agreement, except in special circumstances; 3. The concordat is perfected agreed by the payment of the amount owed by the taxpayer. 4. In short, in the accertamento con adesione there is a tradeoff of the parties in the presence of dubia res, which is the essential and typical connotation of transativos agreements.

[119] Cited in FANTOZZI, A., Manuale di Diritto Tax, provisional version ..., op. Cit.

[120] STIPO, M., "L'accertamento con adesione ...", op. Cit., Págs.1231 et seq, professor of administrative law and scholar of administrative law agreements, denouncing the fact that the consensus creates between private and public administration does not tally with the mindsets and traditional categories giuspubblicistica systematic science. Therefore it is not certainly the dogmatists closed schemes exercise new forms of public, typical of a democratic state founded on the principle of popular sovereignty power.

[121] This is, in short, the reasoning by VERSIGLIONI, M., Contributo allo dell'accertamento studio con adesione e della concilizaione guidiziale, op. Cit., P. 420 et seq.

[122]In this sense we can see the thesis by GALLO, F., "The giuridica dell'accertamento natura ...", op. Cit., P defended. 433, for whom the accertamento con adesione is a encuadrable institute consensual acts between bilateral non-contractual, not traceable or activity of private law, or that activity and authoritarian rules of financial management. This is because the determination of the tax credit in the accertamento con adesione is the result of the law- My dear critically and concorde subjects no parity valuation of positions, to overcome the uncertainty of the dispute and not to dispose of Tax debt.

218 of 19 June 1997, since in Circular . 235 / E of 8 August 1997, in which detailed detailing the legal status of accertamento with adesione and giudiziale Conciliazione. It is important to note also the important modification produced in 2000 (Legislative Decree of 10 March, n. 74) on criminal sanctions applicable to taxable persons who opt for the tax concordat[123].

Recently the Law n. 311 of December 30, 2004 Article 1 paragraph 418 substantially modifies the installment payment of amounts due to adhesion of the taxpayer settled.

5.1.- Subjective scope

Safely, operated the most important innovation in the new rules governing the concordat is the extraordinary breadth of its scope of application somewhat subjective as objective. Contrary to the previous applicable regulations (L. n 656/1994) only business and self-employment income (professional), the current -such as figure and is designed in the DL 218/1997 contains no limitation, being, therefore apply to all taxpayers and all categories of income. In this sense and synthetically we can establish the following relationship:

Taxable persons eligible for the accertamento with adesione[124]:
- Physical persons
- Partnerships and other subjects Article 5 of the TUIR[125]
- Capital companies and entities of art. 87 TUIR[126]
- Substitutes tax (detents), Title III of DPR n. 600/1973[127]

Taxes which may be subject and access the accertamento with adesione:
In general we can say that applies to all the Italian tax system. It is clarified, however, that there is a common legal regime for the accertamento with adesione in direct taxes and VAT and then a specific legal regime has for other indirect taxes[128].

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[123] Vine. Question No. 9 "Effects of accertamento con adesione".

[124] Art. 2, paragraph 7 of DL 218/1997 and Circular 235 / E of 8 August 1997.

[125] It refers, in short, to transparent companies in which the partners are taxed according to their respective participation quotas

[126] All those subjects who are taxed on corporate income tax: corporations, limited liability cooperative society, ...

[127] LUPI says that these cases are frequent in terms of quantifying the amounts subject to withholding. Manuale Professionale giuridico, op. Cit., P. 140.

[128] This study focuses on the legal regime of accertamento con adesione in the event of direct taxes and VAT. Circular n. 235 cited a list of direct taxes and indirect nature nature, whose taxpayers can make tax concordat. Among indirect taxes relate the following nature:
- Fascia di register (DPR 131/1986 n.). Transfer tax
- *Impost sostitutiva dell'imp. di registration* (D.Lgs. N. 347/1990).
- *INVIM*(DPR n. 643/1972) Tax on the increased value of real estate. It has now been replaced by the ICI (Comune della): Local property tax.
- *Imposta sulle successioni and Donazioni*(D. Lgs. N. 346/1990). now repealed.
- *Impost erariale di trascrizione*(Ln 952/1997). State tax official transcripts
- *Addizionale all'imposta Regionale di trascrizione* (Legislative Decree 398/1990 n..);

DIRECT TAXES (INCOME)[129]

Note: Law n. 80/2003 of 7 April a new tax sistem based on five ordinary taxes collected in a single Code approved in Italy: Income tax, tax on corporate income; VAT; Tax services and Excise

- *IRPEF*, TUIR n. 917/1986 (tax on income of natural persons):
- *IRPEG / IRES*,TUIR n. 917/1986 (Income Tax Society[130])
- *ILOR*, TUIR n. 917/1986 (local income tax). now repealed
- *Contributo straord. per l'Europa* (Art. 3, paragraphs 194-203, L. n. 662/1996)[131]. Repealed today.
- *Imposta sul netto delle imprese heritage*(DL n. 394/1992, conv. Dalla L. n. 461/1992). Tax equity of the company. repealed
- *Impost sostitutiva your riserve or Fondi in sospensione d'imposta*(DL n. 41/1995, conv. Dalla L. n. 85/1995). Substitute tax on untaxed reserves or funds.
- *Impost sulla sostituttiva Rivalutazione dei beni mandatory Inmobili delle imprese*. Substitute tax on mandatory revaluation of real estate company.
- IRAP (D.Legs. N. 446/1997), regional tax production.

imposte INDIRETTE
- VAT, DPR, (633/1972)

6.2 Objective scope

The current regulations of accertamento with adesione extending its scope to any performance category[132]. Consequently from the arrangements applicable from 1997 the previous requirement to limit the scope of accertamento field with adesione is not established certain elements[133] (L. 564/1994) and certain categories of income, admitting contrast and express character, the possibility of the accertamento with adesione whatever

- *Impost sull'inmatricolazione provinciale dei nuovi veicoli*(Art. 20-22 D.Legs. N. 504/1992). (Provincial tax on new car registrations).

To which must be added indirect taxes other substitute nature.

[129] Taxes listed in Circular n. 235.

[130]The IRES is the new tax replaces the IRPEG (income tax of legal persons), with effect from 01.01.2004. The IRES is included in the TUIR (Consolidated Text sbre Income Tax, approved by Presidential Decree 917/86 of 22 December.

[131] Tax currently missing whose origin was due to requirements of the EMU (2nd phase).

[132]A fact that justifies the opportunity of such an extension, since even the Legislative Decree n. 218/1997 the accertamento con adesione had a much more limited than the guiduziale conciliazione applicative field, being an unjustified contradiction. In this regard, Lupi, R, "Prime considerazione sul nuovo regime fiscale concordato", op. Cit., P. 795.

[133]Remember it was only possible to promote accertamento con adesione if he intended one of the following four aspects: 1. Discussion of existence ("n") of the attributable positive and negative elements. 2. Methods of evaluation of the elements. 3. Impact on business or professional activity of the elements. 4. apportion the elements discretion of correlation of income and expenses.

the nature of the revenues obtained, also when they have been determined by the synthetic method (by redditometro cd yl)[134].

In general, you should state that the application shall institute the accertamento with adesione regardless of the type of performance that (dependent capital company, derived from art exercise or profession, etc.) concerned and regardless of the type of accertamento made[135] (Analytical: accounting or non, inductive or synthetic)[136]. The amplitude of the target application preached the concordat area is also evident when extended to cases of non statements made by direct taxes and VAT, since its object also extends to issues of "right"[137]. Examples which Circular 235 / E (section 1.2) provides a list of sensitive cases constitute object concordato[138].

Note: synthesis in the process of management of taxes in Italy there are three major systems used by the administration for the actions of tax assessment[139]:

1. ***analytical Accertamento****:* Can be:

   a) *Analytical accounting:* Article 39, first paragraph (letter c) of Presidential Decree No 600/73
   b) *analytical*-Inductive: (Article 39, first paragraph letter d, DPR 600/73 and artículo54 the second paragraph of the DPR 633/1972 n..)

a) Analytical accounting:
The analytical accounting accertamento of business income is one that involves the rectification of the individual components of the taxable income. It is therefore correct individual items. For example, when it has been deduced share higher amortization which

[134] Among others, STIPO, M., "L'accertamento con adesione ..." ob cit., P. 1251.

[135] The omnicomprensión the concordat also affects the procedural aspect: for each type of accertamento you can reach the concordat. Vine. MARELLO, E., L'accertamento con adesione, op. Cit., P. 63.

[136] The system that lends itself to the implementation of the concordat certainly inductive

[137]Lupi, R., "Prime Considerazioni sul nuovo regime of the Concordat fiscale"; tax rassegna, 1997, p. 796, notwithstanding that as the author himself is often difficult to distinguish between issues of fact and law.

[138] - analytical Accertamento (Art 39, first paragraph letter d, DPR 600/73 and the article 54, second paragraph of DPR 633/1972 n..)
- *Accertamenti induttivi* (Art. 39.2º paragraph of DPR 600/73 n and 55, second paragraph of DPR n. 633/1972).
- Rettifiche dichiarazioni delle delle persone fisiche sui fondate presunzioni semplici di cui all'art. 38, 3rd paragraph, DPR, n. 600/1973
- *Accertamenti Sintetici* (Art. 38, 4th paragraph of DPR, n. 600/1973).
- Accertamento automatically by failure to present settlement (art. 41 RPR n. 600/1973).
- Accertamenti made by applying coefficients Presumptive income, compensation and business volume, also the parameters and sector studies.
- *Accertamenti* made thanks to the help of external expertise estimates the administration organs.
- *Accertamenti induttivi* by tax substitutes.

[139] THESAURUS follow, F., Manuale of Diritto Tax, ed. Utet, Torino, 2000.

is permissible tax or specific deductions non-tax deductible (liberalities, taxation, etc.). In practice the correction may occur:

- the confrontation between statement, balance and accounting writing
- the examination of the documents on which accounting is based (invoices, bank accounts, etc.)
- strange to accounting or enterprise sphere (documents from third parties) circumstances.

The most significant aspect of this mechanism is that the correction is made taking into account an effective (no presumptions) test and is always done by grinding batch to batch.

b) Analytical inductive: (article 39, first paragraph letter d, DPR 600/73 and the article 54, second paragraph of DPR 633/1972 n)...

Similarly to the previous case this method consists in rectifying individual items, however, differs in that said rectification is performed based on simple assumptions. In these cases, the law allows the tax authorities by assumptions that determine the existence of undeclared activities or non-existence of liabilities.

2. Inductive Accertamento (Art. 39.2º paragraph of DPR 600/73 n and 55, second paragraph of DPR n. 633/1972)

Also known as inductive-extra-. It is a method of inductive and synthetic character. Unlike analytical systems in which the correction is performed by simple headings in the inductive it is the complete rectification of accounting assumptions through. It occurs in very serious situations such as when the accounting is completely useless, while all cases in which can be used, taxed by law.

3.- synthetic Accertamento: (Article 38 4th paragraph of the DPR 600/1973 n..)
It aims to determine the income obtained globally. It is used for individuals. Is the use of facts or indicative of economic capacity legitimizing the office to perform settlement rates. To this end the Minister of Finance may publish in the official Gazeta parameters or indices should be taken into account to make the synthetic accertamento. These indexes are of different types:

a) The redditometro: indexes are considered the availability of aircraft, ships, sport boats, cars, etc., main and secondary residences, etc. This is indicative rates of economic capacity by which financial management can inductively determine the overall income earned in the year.
b) There are other presumptive indexes such as the costs incurred to increase equity (eg. Acquisition of equity securities, real estate acquisition, capital increase, etc.)
c) Indices based solely on spending or consumption by the individual.

Study areas:Of course equivalent to our system of objective estimation signs, indices and modules made for the different economic activities of the country tending to objective parameters (no. dependent workers, local square meters, electric power, etc.). This mechanism has existed since 1998, in advance are called coefficients used was somewhat similar but more rudimentary (only took into account some economic activities, etc.). It is still an inductive method of determining the tax base (Circular 11/04/2002, n. 29).

It is important to stress the impossibility of reaching a fiscal concordat with respect to elements of the Administration to effective evidence of their existence and amount[140]So that, for example in the case of employment income subject to withholding, generally it has reliable information, which weakens the use of accertamento with adesione on these lease,

[140] See footnote on page number 92.

but it may happen that there are other undeclared or partially declared, etc. Conversely, optimal systems to reach the concordat are the inductive estimation in which the administration has a wide enough margin to move and recalculate the income actually obtained. Administration reached verbal procedure-taxpayer (I insist on the contradictory procedure), it may prove to what extent such income obtained.

In the study system sectors, it is also widely used system of the concordat because often not all producers items of income are declared, for example the number of dependent workers or machines used, or, for example, electricity is calculated worn by some older machines that consume more modern and therefore higher costs than projected in official tables are allocated, etc.

5.3.- competent authority

Article 4 of DL 218/1997 states that are competent for the purposes of the concordat administrations -Uffici Unici delle Entrate- whose constituencies the taxpayer has its tax domicile.

> Note: The system of the Italian tax administration has undergone a major change following the creation of the Revenue Agency. created by Legislative Decree n. 300/1999 and in operation since 1.1.2004, develops functions relating to management, tax assessment and collection Delos. Agenzia is structured in the following divisions: Central administrations; Regional governments and local administrations and Uffici delle Entrate Unici through which the state agency has a presence in all Italian provinces.
>
> Prior to this reform, were locally competent the following organizations:
> - Amministrazione delle distrettuale imposte dirette: had a somewhat smaller area of the province application. In turn this administration consisted of two parts, the first for the income tax and the second for the IS
> - *Amministrazione provinziale dell'IVA*, Provincial level
> - *Amministrazione delle distrettuale Imposte indirette*For the rest of indirect taxes.
>
> Law 358/1991 on the reform of financial management developed by Presidential Decree of 27 March 1992, n. 287 was established as the deadline to be activated all Uffici delle Entrate until 2000 (until July 1997 had been activated only nine Uffici delle Entrate in different provinces).

As a result of that reform there are now called Uffici unici or single administrations. Their number depends on the size of the province (eg in Rome there are eight delegations of the Agenzia Entrate in Milan six in Torino three, etc.). The main difference from the previous system is that now each of these delegations carry the management of all direct and indirect taxes so that there are several windows, depending on the tax but centralized in the same delegation. Their skills are management, assessment, collection, trattazione of litigation, the taxpayer assistance and information.

5.4.- *Activation procedure*

The DL n. 218 provides two ways to activate the concordat procedure: a momentum of its own motion or initiative on the part[141].

6.4.1 At the request of trade

In this case, the procedure is initiated ex officio impulse by sending so-called comparire invite or invitation to appear. Importantly, the time to bring such a document should be during the course of verification and investigation procedure, provided in advance to avviso di accertamento or di RETTIFICA. This act shall be notified for the purposes of art. 60 DPR n. 600/73 or issued by racomandata letter with acknowledgment[142].

The document that contains the invitation must contain the following[143]:

a) Susceptible check tax periods.
b) Date and place of the hearing for the accertamento with adesione
c) Elements considered relevant for the purposes of verification and investigation: is a requirement contained in Circular 235 / E in order to make transparent the administrative action, as well as allowing taxpayers an immediate knowledge of the facts and the issues to be contradictory procedure. Thus the taxpayer can discuss and debate with more informed of the allegations since they can provide elements and evidence justifying such action Administration.

Note: This is to clarify that Article 5.2 of the DL so often cited, the purpose of which is subject to applicable thereto the inductive method of determining yields, resembles the riquiesta dei chiarimenti[144]a kind of notice to appear. So for those subjects who apply to them presumptive determination coefficients for inductive income, compensation and business volume, shipping richiesta di chiarimenti also an invitation for a possible concordat.

Invitation to appear notified the taxpayer can:

- Accept and therefore engage in adversarial proceedings with the administration through verbal acts to reach a settlement with the taxpayer membership, if any.
- Not accept the invitation, since it is not mandatory response, which, the following procedure will be the liquidation notice by the Administration. Underline that in this

[141]On the procedural iter developed in the accertamento con adesione can be seen, apart from the specific monographs on the subject, and cited, among others, STIPO, M., "L'accertamento con adesione ...", op. Cit., p. 1251 ff .; Grassi, E., "Le partecipazione del contribuente to ...", op. Cit., P. 1508 et seq.

[142] There are two existing reporting systems in the Italian legal system:
- *notifies*or notification is done through an agent to be delivered by hand to receiving the shipment, which must sign the certificate as received such a message. Absence should try again and if I elapsed a number of times he fails to deliver by hand, hangs by edicts and will have the effect of official notification
- Notified by letter with acknowledgment of receipt, in which case, the postman delivered by hand the message to be signed by the recipient or porter, etc. In the absence of receptor is left in the mailbox with acknowledgment to pick him up at the post office.

[143] Article 5.1 of Decree n. 218 and section 2.3 of Circular 235 / E.

[144] It is a kind of request for clarification of statements

case, may not subsequently urge his request the accertamento with adesione, the process provided for in art. 6 DL n. 218.

Article 2, first paragraph of Legislative Decree n. 218 states that the agreement is reached by adhering taxpayer has effects also in relation to value added tax. On this matter we must make an important clarification in paragraph 2.1 of Circular 235 / E. In the latter provision provides for the need to distinguish between those territories where (in 1997) has already enabled the new system of administrative organization, ie where uffici delle Entrate or only administrations and work and those in which still it has not entered into force reform.

> In response to the previous tax administrative structure, the procedure was being prepared at the request of uffuci delle imposte dirette who could vetting the concordat after consultation and asked the dell'IVA uffici to transmit to them all relevant elements that could lead to avviso di RETTIFICA for a research unit. For its part, the dell'IVA uffici did have autonomous power to turn their own VAT settlements but to activate the concordat procedure to bring into uffuci knowledge delle dirette imposte all documentation suitable work in his power to rotate an IVA settlement , in order to make a uniform definition of accertamento with adesione. In addition uffici dell'IVA could actively participate and the possibility that they delegate their own official to participate in that procedure is contemplated. Notwithstanding the foregoing, the dell'IVA ufficio own initiative may transmit the uffici delle dirette imposte all the elements that are deemed appropriate for the purposes of avviso di accertamento (Section 2.1 of the Circular 235)[145].

Currently in Italy it has implemented the reform so that the competition have now Uffici delle Entrate Unici or territorial tax administrations of the district where the taxpayer has its tax domicile. These unique administrations, as already indicated, are currently responsible for the management of both direct and indirect taxes.

5.4.2 A parte

The taxpayer, meanwhile, can also activate the procedure for reaching a accertamento with adesione. Unlike the previous case, in which the Administration has only one period to activate the concordat (before avviso di accertamento or di RETTIFICA), if the procedure is driven in part there are two moments to request activation. Namely:

a) When it took place a verification procedure and investigation (accessi, ispezioni or Verifiche) for the purposes of the Act (DPR n. 600/1973 for Income Taxes) and art. 52 DPR n. 633/1972 with reference to VAT); Always before avviso di accertamento or di RETTIFICA.

b) In the event that the taxpayer has received the avviso di accertamento or di RETTIFICA, provided in advance I not been invited to appear to proceed to the concordat with the Administration[146] and logically, has not challenged the act.

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[145] For more information, see Lupi, R., "Prime Considerazioni ...", op. Cit., P. 800-804.

[146]Plante doubt that despite the wording of Article 6.2 of Decree 218 is whether the taxpayer who has received the invitation to appear and fail to appear later, when the notification reaches settlement may request the concordat. Faced with a rigid and strict interpretation of the law that understands precluded the deadline for this purpose, some authors believe that in this case the needs of timeliness and appropriateness of agreeing that led the administration to send the invitation to appear may be present, who remained unanswered. Thus

In both cases, once the Administration receives the application or request for proposal concordat taxpayer, you will have fifteen days to invite the presence of the subject either by phone or telematic[147], Which will follow the adversarial procedure. Activated this way the possibility granted to the taxpayer to benefit from reduced penalties under Article 15.párrafo 1 DL n is lost. 218 (acquiescenza), since the option of the concordat involves the resignation of voluntary payment after settlement (acquiescenza).

a) Presentation of the request by the taxpayer before the tax assessment notice

Having taken place a verification procedure and investigation carried out either by the Guardia di Finanza or by officials of financial management, the taxpayer has the possibility of submitting an instance in a letter released (without preset format) by making a request to reach a accertamento with adesione in which indicate the years for which the proposal is made.

Since the proposal is formalized conducted the verification procedure and investigation, the contradictory procedure takes place, where appropriate, to reach the accertamento with adesione, will consider fiscally relevant elements contained in the verbal procedure and notified the taxpayer. In addition, when the subject makes the proposal is advisable to attach point by point the arguments alleging also against any documentation in his defense[148]. There is no preclusive deadline for submitting this instance. There will be time until management turn the corresponding clearance.

> Note: Since it has not yet turned the tax assessment period is not suspended to appeal to the Commissione Provinciale Tax, as the verbal process is merely the Inquiry Act (which does not end the process) and therefore, not challengeable.

Circular 235/1997 which develops profusely develop the procedure to reach a settlement with the taxpayer accession states that the submission of the request by the subject is a stimulus for financial activity in order to accelerate the eventual term concordat. At no time it is stated no end about whether the administration is required to activate the procedure after receiving the request from the party. In this sense, fit the following possibilities:

- That, after receiving the request to start the concordato decide urge processing procedure by the invitation to appear (regulated in the art. 5 DL 218) taking into account the result of verbal process, and other relevant elements fiscally that they are in its possession.

- Or, ignore the request for concordat proposal by the taxpayer and proceed directly to the liquidation. This thesis has been held protected by the legal absence of any rule where the obligation of the administration necessarily activate the concordat procedure is contained. In fact there is no legal text where mandatory financial management to activate the procedure of accertamento with adesione once requested by the party

Ferlazzo NATOLI, SERRANO, V., "Il nuovo concordato dopo il D.Lgs. 19 giugno 1997 ", n. 218, Il Fisco, 1998, p. 3728.

[147] In this regard can be found FRANCO R., "Accertamento con adesione and sottoscrizione di atti giudiziari trasmessi via telefax" Il Corriere tax, 2001, fasc. 43, pp. 3221-3224.

[148]Ferlazzo NATOLI, L., Fusconi, V., Guida al nuovo ..., op. Cit., P. 37

establishment. And even it remains that the administration may not motivate the refusal of the proposal of the taxpayer[149]. Yet without question the absence of legal classification regard, following recent amendments made in terms of motivation resolutions Administration Act guarantees the taxpayer, and also taking into account the provisions of Circular n . 65 of 28 June 2001 concerning motivation, it seems reasonable to think that the administration should at least argue and justify its passivity.

Note: This is, moreover, the opinion of management of the Delegazione Regionale del Lazio, Agency Entrate, accertamento -section with adesione[150]- where it is considered that it is within the competence of tax administrative nature correspond to the request administered, or at least encourage such passivity.

b) <u>Submission of the application at the request of the taxpayer once notified settlement</u>

There is room for this course you need to:

1. The taxpayer has not received the invitation to appear at the pre
2. Not challenged before the Provincial Commission the act of liquidation, for the challenge of it it means renouncing concordat.

The filing of accertamento with adesione has the effect of suspending the deadline for appeal to the Provincial Tax Commission is 60 days[151]. In both cases the period of time for which the deadline to be suspended challenge is 90 days from the date of submission of the request by the taxpayer.

It also notes the Circular n. 235 / E that the Administration within receipt of the request of the taxpayer filed after the notice of liquidation fifteen days will make the taxpayer a "I invite comparire" in which the office is limited to indicate the day and place the taxpayer or his representative must appear contradictory for instruction[152].

5.5.- *The contradictory procedure between the parties*

The contest between the Treasury and the taxpayer is the backbone that supports and enables the development of the institute of accertamento with adesione[153]. It is therefore difficult to

[149] Ferlazzo NATOLI, Fusconi, V., Guida al nuovo concordat ..., op. Cit., P. 37

[150]Body responsible for the supervision and control of concordats made by the unique whole region of Lazio administrations. Regional Directorates perform functions programming, management, coordination and control of local authorities.

Body also exercises functions of consulting concerns raised in the matter.

[151]Also it suspended the payment of VAT due to items of art. 60, paragraph 1 of DPR n. 633 1972.

[152] Note: on the obligation or obligation of the administration to send the invitation after receiving the request of the party, we refer to the comments made in advance on the matter

[153]It is, as mentioned, neuralgic procedure of accertamento con adesione, in which assists the manifestations of the two competing interests. DE MITA, E., "Profili storici and costituzionali ...", op. Cit., P. 475. "The procedure of accertamento con adesione says STIPO, M.- finds its foundation in the dialogue that necessarily

explain the lagoon tax legislator to not discipline regulation, absence patent also Circular 235 / E, which despite acknowledging in paragraph 2.5 the particular relevance of the contradictory procedure with the IRS in order to complete the internal procedural iter accertamento with adesione, just a few lines devoted to its study. Laguna we try to alleviate pouring here the development of the issue by the doctrine as well as the description of the situations that occur in practice.

Once the procedure of concordat initiated either at the request of a party, either at the request of craft and sent the invitation to appear the taxpayer, the contradiction between the two takes place only at the time when the taxpayer is physically in front the financial Administration official in charge of accertamento with adesione and only from this point you can claim the tax assessed and, if necessary, be modified by the standards of transparency and fiscal equity[154].

Under the provisions of Circular 235 / E (2.5) will require that the outcome of each encounter contradictory is collected in a verbal act by the acting official (equivalent to a kind of diligence). Such acts terminate when signed the atto di adesione, or in the case of failure to reach an agreement, at the time it becomes apparent that the concordato to regime can not be applied either because of an excessive request taxpayer or also on the assumptionirrevocabilityby the Administration to hold a tax claim more than founded. If there is no agreement, is spared the possibility of activating the giudiziale conciliazione and autotutela.
The mentioned Circular also states that the contradictory documents provided by the taxpayer in order to justify their claim and try to modify the content of the administrative settlement must take into account

Completed a verbal act shall indicate the date of the next appointment for the next verbal, or failing that the reasons preclude the continuation of proceedings shall be indicated. Each of these verbal acts must be signed by both parties, gathering, the last the exact ends of the determination of the components of income, stating the reasons that have led to such an agreement, especially those of a legal tax that led to the new settlement, showing the documentation provided by the taxpayer that has been proven tested for such an agreement[155].

Finally, it is important to refer to an implicit question throughout the contentious procedure: logically, the actuary responsible for the procedure plays a role unparalleled purposes of the successful completion of the procedure of the concordat. They have noted Ferlazzo NATOLI and Fusconi, V., who added that the important skills such officials would come sued:[156]

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develops between treasury and taxpayer analyzing the elements that can eventually lead to reduction or modification of the tax claim". "L'accertamento con adesione del contribuente ...", op. Cit., P. 1253.

[154]PATRIZI Bruno, MARINI Gianluca, Gianluca PATRIZI, Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 55 et seq., Authors who follow at this point.

[155] Despite this be the criterion of the authors cited above, in practice the last verbal does not differ too much from the previous ones.

[156]Guida al nuovo fiscale concordato, op. Cit., P. 50 et seq.

- Having a good knowledge of the activity of verification and investigation in relation to all taxes that may be splattered.
- Possess adequate professional and specific training on how to exercise their own discretion
- Have the necessary knowledge to assess the actual sustainability of the tax claim, also in view of a possible contentious proceedings
- Having the ability to make a choice based on a cost-benefit of the internal operation range are also quantify the hypothetical cost resulting from carrying out the procedure, compared to "sacrifice" represents lower revenue analysis.

6. Termination of proceedings

The final phase of the procedure passes Accertamento with adesione performing the following two steps:
- Written wording of the act called "Atto di accertamento"
- Improvement of "Atto di accertamento" by paying the agreed sum.

6.1 Drafting of "Atto di accertamento"

Circular 235 states / E that after the adversarial phase of the competent authority drawn up in duplicate copies which comprises the Atto di accertamento with adesione, which must be signed by both the taxpayer or his representative as the acting director of the Administration. The taxpayer, however, you will not be given a copy of the act immediately after his signature, but instead receive a settlement larger agreed tax, which shall also include interest and penalties, so that such settlement the taxpayer can proceed to payment or performance. Only once the subject displays the receipt of such payment shall be entitled to obtain a copy of atto di adesione and perfecting the legal business of the concordat and thus acquiring full legal validity.

Both the DL 218 and Circular 235 / E ends which must contain the atto di accertamento are provided. Namely:
- Indication of the factors and motivation in which the concordat is based, separately for each tax for the purpose of reaching a single agreement pertains to direct taxes and VAT
- Liquidation of the higher tax due with mention also of interest and penalties
- Clearance possibly due other sums.

It should be emphasized the extraordinary importance that the requirement for each tax motivation for these purposes. Its purpose, as has been said, is not so much that the taxpayer becomes aware of possible errors of fact and law committed in the tax assessment (as in the motivation of the liquidation itself[157]), But rather it aims to inform and clarify why it has reached an agreement that does not match the verbal notified in the verification procedure, or liquidation (liquidation if the concordat develops notified). In short, it is transparent to

[157] The Supreme Court has stated the importance of the motivation of the act, highlighting the duplicity of the notification tax assessment purposes: to enable the taxpayer to know the reasons of fact and law on which the claim of government is founded and contemporaneously, crystallizing the content in demand in the future and eventual procedural headquarters, excluding punibilidad a subsequent amendment of such a claim by the administration. For all MULEO, S., "Sulla motivazione dell'accertamento as limit beyond matter Contendere nel processo tax", RASS. Tax, 1999, p. 506.

the discretionary powers of the administration that led to reformulate the "quantum" of the tax claim, so as to avoid any administrative arbitrariness[158]. This, of course, allow for judicial review by the superior actuary on the reasons of opportunity, fairness or efficiency on which the agreement was built[159]. (Eg. In Rome the body responsible for such necessity is the section of accertamento with adesione of the Regional Delegation of the Lazio Region, the Agenzia Entrate, a body that monitors and reports, if any, on concordats made by the Agenzia Entrate delegations of jurisdiction).

6.2.- Improvement of accertamento with adesione

Enhanced legal business concordato is achieved with paying proper amount specified in the contract, either the whole amount or divided amounts if the satisfaction of the first fraction to that adequate security is accompanied.

Regarding the "deadlines" for cash income, in both cases (either the total or the first installment due) must be entered during the twenty days following the drafting of the act of accession. Within ten days that payment to the taxpayer must submit to the Administration the proof of it and, where appropriate, documentation relating to the guarantee. It is then when the clerk Administration to transmit a copy of Accertamento with adesione and decreeing its validity for all legal purposes.

"Place" in which to make payment is a bank authorized to receive such payments or process the competent dealer service revenue last fiscal domicile of the taxpayer.

The "payment arrangements" as mentioned above include: full or fractional.

By Law n. 311 of December 30, 2004 there have been some changes in terms of "installment payments" to the exchequer. In particular paragraphs n. 418 and 419 of the said Act n. 311 modify articles 8 (accertamento with adesione) and 15 (adquiescenza) respectively of D. Lgs. n. 218 of 19 June 1997; and Article 48 (Conciliazione Giudiziale) of Legislative Decree. n. 546 31 December 1992.

According to the original wording provided for in Article 8 second paragraph of the D.Lgs. n. 218/1997, the amounts due can be paid by installments for a total of eight quarters (two years), or in twelve quarters (three years) if the sums due exceed 100 million lire. Under this provision the fractional model behaved that from the first installment legal interest calculated on the act of commitment and payment of such sums girasen the taxpayer should provide the guarantees required by Article 38-bis of Presidential Decree 26 ottobre 1972, n. 633, for the deferral period increased year.

The two key amendments presented by the new rules on the subject are as follows:

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[158]Here, STIPO, M., "L'accertamento con adesione ...", op. Cit., P. 1256-1257, considers that the purpose of motivation in the accertamento con adesione is to justify the discretionary exercise by financial management, provided, that administrative discretion in the strict sense can not speak, because it is discretionary rather technical valuation.

[159] ROZAS VALDÉS, JA, "Tax Transaction: the Italian model," paper presented within the framework of the R + D, entitled "Reform of the system for resolving conflicts between the Administration and taxpayers in Spain", directed by FERREIRO Lapatza , JJ

a) Eligible collateral subject of the cast of the guarantees provided is replaced by Article 38-bis of DPR 26 ottobre 1972, n. 633 for an "ideal guarantee by fideiussoria policy or bank fideussione".

b) In the art itself. 8.3 D. Lgs. N.218, for the sake of the Law n. 311/2004 a new Article 8.3 bis is introduced, whereby the subject providing the guarantee may be required to pay the debt urgency even if non-payment of a single payment by the taxpayer. Stated 3-bis paragraph provides that in case of failure to pay a single fee installment payments, if the guarantor does not pay the guaranteed amount within 30 days of notice of the claim for payment (which indicate the sums due, the budgets of fact and law of the claim), the competent authority shall order the payment of such sums in urgency by the taxpayer and the guarantor himself.
Consequently, there has been an increase in the powers of recovery of the bodies of the Revenue Agency.

Consequently, under current regulations payment of sums due may be split into eight quarterly installments of the same amount or a maximum of twelve quarterly installments if the amount owed exceeds 51,645.69 euros.

Whether it is the total amount as if it were the first of fractional shares, it shall be paid within 20 days following the drafting of atto di adesión.
Regarding the lease payment (taxed with the legal interest) is necessary for the taxpayer to provide assurance in the manner provided in the law that is currently using fideissoria policy or bank fideussione throughout the period increased by fractionated year.

Under circular n. 14 / E of 13 April 2006 of the Agenzia delle Entrate, Direzione Centrale Accertamento) the policy speech fideissoria equals "asegurativa policy" and refers to the typical document evidencing the contract of assurance with which a company assurance ensures compliance credit from a third party[160].

The amounts due shall be paid at any bank, post office or dealer suitable for this purpose, using models printed F23 / F24 (direct taxes and VAT and other indirect, respectively taxes) and indicating the code / tribute consisting on the website of the Revenue Agency.

Consequences of failure to pay any of the fees fractioned (Art. 8.3-bis of D. Lgs. N. 218 and Circular 14 / E of 13 April 2006, Agenzia delle Entrate, Direzione Centrale Accertamento)

a) Nonpayment of one of the first lease payment automatically determines the end of the benefit of installment payments, so that the guarantee will run for the total residual loan plus interest.

[160] The circular indicating that these aspects type asegurativas companies are accepted for such purposes, including ends develop.

b) It assumed that the taxpayer does not pay any of the fees is notified a letter to the guarantor to pay within 30 days of such notification. In that letter indicating the sums due and budgets of fact and law of the tax claim it is contained[161].

c) In the event of default of credit guarantor delegation of the collection in order Agenzia urgency of such sums by the taxpayer and the taxpayer's own guarantor.

7. Effects of the Accertamento with adesione

The effects of the tax concordat can be summarized as follows:

a) *Inability to challenge the agreement reached*

Once perfected the legal institution of accertamento with adesione, the agreement has been reached between the Administration and the taxpayer is not modifiable, unless there are special circumstances. In this sense:

- The taxpayer can not contest the act of accession
- The administration is not authorized to integrate or modify the agreement by a new test procedure and investigation, unless the following notes are met:
  - Knowledge of new elements leading to the determination of more than 50% of the proven and agreed and not less than 50 million liras rent income.
  - When the agreement reached partial settlements ATANA[162]
  - If the agreement affects the income from participation in transparent societies or community property managed as corporate[163].

b) Reduction of penalties for tax offenses

An important effect of accertamento with adesione is reduced penalties for tax offenses relating to the object of accession, committed in the period to which the Concordat is concerned. Reduction as embodied in the application of such sanctions to the extent of one quarter of the minimum required under the law[164].

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[161]) The residual revenue interest at the statutory rate will be rotated and therefore the administration should indicate in communication the date on which the interest due to the effect that the Guarantor can proceed to the calculation of the amounts due.

[162]Under Articles 41.bis of Presidential Decree n. 600/1973 and art. 54.5 of Presidential Decree 633/1972

[163] Cases to which should be added the last of the cases referred to in Article 2.4, paragraph d of Decree 218 which says: "Se l'azione è esercitata accertatrice nei Confronti delle società or associazioni or coniugale dell'azienda di cui alla lett. c) alla quale il cui partecipa contribuente nei Riguardi intervenuta the definizione è. "

[164]Note: The difference from the conciliazione giudiziale is that in the latter institute a reduction of one third is allowed but rotated about the sum irrogata by the Administration and not the legal minimum. Regarding the effects of the accertamento con adesione versus the effects of the giudiziale conciliazione refer, Fransoni, G., "sui rapporti fra Osservazioni conciliazione ...", op. Cit., P. 1812 et seq.

c) Accertamento with criminal effects of adesione

In recent times there has been a significant change in this area[165]: Legislative Decree n. 74 of 10 March 2000 on developing the delegation made by Law 25 March 1999, n. 205, it has completely restored the tax, introducing an article in which the legal consequences of accertamento are regulated adesione[166]. Specifically, Article 13 of Decree n. 74 provides that the penalties provided for new tax crimes will be reduced by half, since no additional penalties apply[167].

Background: Originally drafted DL 218/1997 (Art. 2.3) predicted that the agreement or concordato excluded from punibilidad (also retroactively) relative to the offenses under DL of 10 July 1982, n. 429, converted with amendments to Law n. 516 of August 7, 1982, with limitation to the facts that have been concordat. According to the same standard DL 218, they were not excluded from criminal offenses punishable the following[168]:

- Undue by the substitute tax appropriation, withholdings
- tax fraud: concealment and destruction of the scriptures and other accounting documents and false assumptions and tax fraud (Art 4 D. 429.)

For its part, the sixth paragraph of the same Article 2 of Decree No 218 has generated major problems of retroactivity of the tax law as it provides that the tax concordat made according to the rules of 1997 will also apply to tax periods in which it was applicable the concordato under Article 3 DL 30/09/1994, n. 564, converted with modifications L. 30-November-1994, n. 656. That is, the periods in which the application was accertamento di massa.

> In 1998 the Constitutional Court in Sentenza of 30 December has settled the question of retroactivity allowing the DL 218 also for those subjects who had performed the concordat di massa regulated in 1994.
> The problem, in short, arose because the 1994 regulations on the concordat di massa not exclude criminal subjects qualify to benefit from this rule punibilidad. If a taxpayer has made the Concordat of 1994, you can then carry out the accertamento with adesione in 1997 to exclude criminal liability from previous years ?.
> The Court of Modena in its judgment of 20 October 1997 considered that the standard of 1997 does not apply to the "subjects" who had made the Concordat in 1994, but the "tax periods" that they were implementing the Concordat di massa, since defends this court, the DL literally talking about tax periods rather than subjects. The TC in S. Cited of 30 September. 1998, carried out a consensus decision and equity[169].

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[165] On the question we refer to the work of ROSSI, P., "Gli dei meccanismi efetti premiali sulla punibilità in penale based tax" tax Bollettino, n. 18, 2001, pp. 1307.

[166] For all Lupi, R., giuridico Manuale professionale di diritto tax, op. Cit., P. 141.

[167] Contained in art. 10 Leg. of 10 March 2000, n. 74: -a) Disqualification managerial positions of legal entities and companies for a period not less than six months and not exceeding three years; - b) Incapacity to contract with public administration for a period not less than one year and not more than three years; c) disabling the functions of representation and assistance in tax matters for a period not less than one year and not exceeding five years, etc.

[168]Contained in art. 2, paragraphs 3 and 4 of Decree n. 429.

[169]Vine. Cerqua, LD, "L'scope applicativo dell'accertamento con adesione" Diritto penale e processo, 1999, fasc. 6, pág.709. The full wording of the abovementioned judgment of the Court Costituzionale can be found

We can therefore conclude this section by reiterating the important amendment introduced by Legislative Decree n. 74/2000, Article 13 amended the penal consequences of accertamento with adesione by providing that the penalties provided for new tax crimes will be reduced by half, with the consequent abolition of the additional penalties[170].

It is therefore risky to wield one of the undoubted advantages of reaching an agreement with the financial management to determine the tax debit is undoubtedly this important reduction of 50% of the penalties provided for new tax offenses.

in magazines: Diritto penale e processo, 1999, fasc. 6, pp. 707 et seq, as well as "Italian Il forum", 1999, I, p. 754 et seq.

[170] Contained in art. 10 Leg. of 10 March 2000, n. 74: -a) Disqualification managerial positions of legal entities and companies for a period not less than six months and not exceeding three years; - b) Incapacity to contract with public administration for a period not less than one year and not more than three years; c) disabling the functions of representation and assistance in tax matters for a period not less than one year and not exceeding five years, etc.

CHAPTER IV

Autotutela THE ITALIAN FINANCIAL MANAGEMENT: THE POWER OF FINANCIAL MANAGEMENT TO SET ASIDE AND / OR REVOCATION OF ADMINISTRATIVE ACTS OF NATURE OCCUPATIONAL TAX

1. On the word "autotutela della Amministrazione would finance"

1.1 Introduction

On the occasion of the adoption of the Decree of the President of the Republic of March 27, 1992 (art. 68) is instituted for the first time in the Italian tax system the power of financial management to cancel and revoke ex officio acts that are unlawful, unfounded or inopportune.

But it would be only the Government of the Italian Republic which, echoing the scientific doctrine[171]-in order tributario- recognize this power of self governance of financial management, as only two years after the legislature, for the sake of the Law n. 656/1994 of 30 November[172]Includes a specific provision under the rubric "self governance" (Article 2-quarter), which provides that Regulation bodies of financial management and the criteria of economy fit for the exercise of the power of annulment or revocation of office of indicating unlawful or unfounded acts. Materialisation which will be held by the DM n. 37 of 11 February 1997, the ends of which develop in the following pages.

In extreme synthesis the Italian legal institute called "The autotutela financial management" consists in the power of it to cancel and / or revoke ex officio their own illegitimate or unfounded and inopportune acts.

Among others, they are decisive for review and adoption of self governance mechanism of financial administration in the following Italian tax law factors. Namely: the inflation in the

[171] Said Professor Lupi, R. in this regard: anche quando l'In fine atto and illegitimo per un vero e dell'ufficio errore own non c'è nulla di male to revoke: sbagliarse è umano, ma è intestardirsi nell'errore diabolico ; Diritto tax. generale part, Giuffrè Editore, Milan, 1996, p. 97. The same author in his article "La nuova sull'annullamento rules degli atti d'ufficio impositivi illegittimi: Spunti per una discussione" Bollettino tributary, n. 23, 1992, pp. 1799 et seq., Praises the fact that art. DPR 68.1 consents to the tax administration unilaterally cancel illegitimate or unfounded acts, as it responds to a policy of "transparent and collaborativo rapporto" between tax authorities and taxpayers. You can also read about these individuals, Muscarà, Riesame and rinnovazione degli atti nel diritto tax, Milano, 1992, pp. 44 et seq. Also cited by FICARI, V., "Il potere di autotutela dell'amministrazione finanziaria nei recenti chiarimenti Ministeriali" Rivista di Diritto in Tax, 1994, III, p. 391 et seq. Similarly MESSINA, A., "L'annullamento degli atti d'ufficio impositivi illegittimi alla luce dell'art. 68 287/1992 DPR; ROSINI, E., "L'tax autotutela: • A ricorso in opposizione" Rass. Trib., 2002, n. 3, p. 831, etc. one ricorso in opposizione? "Rass. Trib., 2002, n. 3, p. 831, etc. one ricorso in opposizione? "Rass. Trib., 2002, n. 3, p. 831, etc.

[172] D. Lgs. N. 546 of 30 September 1994 was converted, with amendments, Law n. 656 of November 30, 1994 - "Urgent provisions on tax matters" (GU No 230 of October 1, 1994.).

overall mass of tax litigation motivated partly or largely devoid spiral administrative settlements, often of legitimacy or basis[173], Own tax management systems in mass empecinados large sums policy; the collapse driven by the volume of claims pending in the Italian tax commissions at the beginning of the nineties[174]; the imperative of not emptying constitutional precepts content as sublime as that ruleth Article 97 of the Italian Constitution concerning the proper functioning of the administration or the principle of effective economic capacity defined in Article 53 of that Constitution, and in general, the requirement of a fair and just tax system contemporaneice those taxpayers who, despite having stopped short deadlines for passing the resort, are compelled to pay sums unduly as a result of illegitimate or unfounded tax administrative acts.

But in advance and development of that matter, it seems appropriate to address the terminology adopted. Repárese that the Italian tax legislator identifies the term "self governance"[175] with the power of the financial administration to cancel or revoke officially illegitimate or unfounded acts and in the same line, the bulk of the Italian tax doctrine[176]When you define the concept of "tax autotutela" refers to that dimension of that legal institution. We can not, however, ignore that this is a multifaceted concept court[177]And therefore susceptible to analyze under different prisms. Which brings us to the need to "dust off"[178] -siquiera is so minimalist- the content of the repeated phrase.

In this way, the Italian tax doctrine echoing the general theory developed by administrativistas on particular warns that even among the latter there is no univocal position. In short, following the leading voices of the term "self governance" -plasmadas in prestigious collections italianas- legal encyclopedias and can be differentiated, on the one hand, those authors favored a broad concept of the term[179]Which would include both the

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[173] Similarly Stevanato, D., "autotutela: quando sono i termini per ricorrere troppo stretti" RASS. Trib., 1994, n. 5, p. 757.

[174] Vine. Chapter II, section II.2 of this work.

[175]As is well known the autotutela is a classic figure in Administrative Law Court while spring that absolute power that once held the crown in both the legislative and judicial. See in this respect: PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, Giuffre Editore, 1999, Milano, pp. 191-192, or, GIULIANI, G., tax Diritto, part generale, Giuffrè, 2002, among others.

[176] Among others: - Morini, S., Ferrari, A., ARISI, M., Come evitare or risolvere the fiscale lite, ed. Thing & coma, 1997, pp. 59 et seq. ; - ROSINI, E., "L'tax autotutela ...", ob, cit, pp.. 831 ff .; - FICARI, V., "Pregi and difetti della regolamentare discipline dell'autotutela dell'amministrazione finanziaria" Rass.Trib. 1997, n. 2, pp. 343 ff .; - SANTAMARIA, B., tax Diritto. Part Generale, Giuffrè, 2000, p. 209 .; - PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ..., ob, cit, pp.. 188 ff .; BATTISTA, A., "L'autotutela nel Diritto Tax" in Diritto & Diritti, giuridica rivista online, 2001.

[177] Among others, prof. Lupi, R., reiterated the diversity of meanings of the term autotutela. "Atti decadeze definitivi e: is non arriva l'autotutela, which può yl fare contribuente ?. Rassegna Tax, n. 5, 1994, p. 750.

[178] In this regard, Palladino P. and Sassani, MA, "L'annullamento degli atti d'ufficio dell'amministrazione finanziaria" Il Treasury, 3/1995, p. 483.

[179]Benvenuti, Voice autotutela, (Dir. Amministrativo), "Enc. Dir. ", Vol. IV, Milano, 1959, you pay. 540 ff .; GHETTI, G., who distinguishes between autotutela spontanea, necessaria and contentious. Autotutela della Amministrazione Finanziaria voice in "Dig. Disc. Pubbl. ", Vol II, Torino, 1987, pp. 81 et seq. They also favor a broad concept of autotutela other authors of Administrative Law (Sandulli, AM, or Galli, R., in their manuals

decisional autotutela as executive autotutela and within the first, also the possibility of annulment and revocation of unlawful acts or unfounded[180]; while, on the other hand, participants authors of a narrow concept of the term would be positioned autotutela referred only to the enforceability of administrative acts[181]. "Hence He dogmatic They concluded the placement of power uncertain cancellation of trade, by some considered the so-called spontaneous expression of self governance and from other reputed alien to the very concept of self governance"[182].

We closed since the parentheses reiterating that the purpose of the realization of the work at hand and admitting that its purpose is encuadrable between the manifestations of declarative autotutela, we ignore the study of the remaining facets, which far exceed the boundaries of this writing , since we abstract from other legal institutions such as administrative and judicial protection, to specifically focus on the power of financial management to cancel and revoke unlawful acts ex officio, unfounded or inopportune.

1.2.- Legal sources

The legal institute called "financial self governance" observes a late arrival in the Italian financial and tax system. The insistence expressed by the doctrine on the urgency of a ministerial statement concerning spontaneous elimination from the financial administration of their own actions illegitimate bore fruit in 1992, the year in which the "Regolamento degli Uffizi and the personale of Ministero delle approved finanze "via Decree n. 287 of the President of the Republic of 27 March, in which articulated a provision (art. 68) which includes the functions of the financial administration the power to cancel its own illegitimate or unfounded acts is introduced. In this sense,[183].

Administrative Law). They cited Palladino P. and Sassani, MA, "L'annullamento degli atti d'ufficio ...", op. Cit., P. 483 et seq.

[180] Benvenuti, Voice autotutela, (Dir. Amministrativo), "Enc. Dir. ", Vol. IV, Milano, 1959, pp. 540 et seq. In this line are quoted authors tax experts as FICARI, V., "Il potere di autotutela dell'amministrazione finanziaria nei recenti chiarimenti Ministeriali" Rivista di Diritto in Tax, 1994, III, p. 391-392 or also PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 192, and GIULIANI, G., tax Diritto, part generale, Giuffrè, 2002, p. 24, for whom self governance, as genus comprises two complementary aspects, the first consisting of the enforceability of the administrative act and the second consisting of the possibility of selflessness. Among the Spanish literature on the subject can be seen: BOCANEGRA SIERRA, R., The cancellation of office of administrative acts, op cit, pp... 86 et seq., Who makes a comment about the concept of autotutela maintained by Benvenuti. On the various manifestations of autotutela can be SANTAMARÍA PASTOR, JA; Principles of Administrative Law, Vol I, Ed Studies Center Ramón Areces, Madrid, 2000, p. 102;KNIFE FOIX, M."The official review and revocation in LRJPAC", op. Cit., P. 348 et seq.

[181] Thus: -CORAGGIO, G., voice autotutela - diritto amministrativo in "Enc. Giur. "Vol. IV, Rome, 1988, pp. 6 et seq .; - Giannini, MS Amminstrativo Diritto, vol. II, Milano, 1993, pp. 279 et seq., 829 et seq. Vine. Palladino P. and Sassani, MA, "L'annullamento d'ufficio degli ...", op. Cit., P. 484.

[182] Palladino P. and Sassani, MA, "L'annullamento d'ufficio degli ...", op. Cit., P. 484.

[183] The Article 68 of DPR is abolished by Article 23 of DPR of 26 March 2001, n. 107, "although such removal does not appear to have given any consequences on the full operability of the Institute". So ROSSI, P., "Il potere di autotutela in tax matters", Forum Fiscale, n. 7-8 July-August 2001.

Such a provision has the merit of grant and generally recognized[184]said power financial management, however, already existed but referring to different and specific assumptions regulatory texts referred to in certain subjects. Namely[185]:

- DPR n. 636/1972 (art. 21) on tax process, possible modification of the contested tax before the Commissione at the request of the judge, who invites financial administration to heal the defect in the act liquidation.
- Or, also, for the purposes of direct taxes (Art. 43 paragraph 3 DPR September 29, 1973, n. 600) and VAT value (art. 57, paragraph 3, of DPR of 26 October 1972, n. 633), it is expected that within the period in which the winding must be notified by the Administration[186] You may notify the taxpayer a new settlement "integrated" or "modify" the previous connection with the appearance of new elements not previously known, which should be indicated -so Invalidity penalty in the new settlement.
- It has also been studied by the doctrine of Article 12, paragraph 2 DL of 10 July 1982, n. 429[187].

It was not until 1994, year in which for the sake of the Law n. 656 of 30 November[188] is cradled in the tax law the legal institution of autotutela[189]. Specifically in Article 2-quarter of the Act, a provision that under the generic heading "self governance" reads:

> *Decrees of the Minister of Finance will be shown the bodies of the competent financial administration for exercising the power of cancellation of office or revocation, also in pendency of trial or if no contestability, illegitimate or unfounded acts. Decrees with the same criteria will be defined on the basis of economy of which is initiated or leaves activity administration.*

In implementing such a regulatory reference Regulation on "Rules governing the exercise of power of direct action by the organs of financial management" via DM n approved. 37

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[184] See Stevanato, D., L'autotutela dell'amministrazione finanziaria, ed. CEDAM, Milan, 1996, pp. 4 et seq.

[185] For a more complete study of the history of self governance in financial matters can be found: FICARI, V., "Novitá in topic Finanziaria di intervento unilaterale dell'amministrazione in headquarters di autotutela" Rivista di Diritto Tax, 1995, pp. 644 ff .; - GIULIANI, G., tax Diritto, ob, cit, pp... 25 and 26; MORONI, S, FERRARI, A., ARISI, M., Come evitare or risolvere the "lite fiscale", op. Cit., P. 61 .; PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 191 et seq.

[186] When there has been autoliquidación: in December 31 the fourth successive year that in which the declaration is presented. When there is failure to declare or no statement, just the fifth year following the one in which the declaration should have been submitted (art. 43 Law n. 600). For VAT purposes, art. 57, 3 and 1 refer to the fourth successive year that in which the taxpayer present the VAT.

[187] DL become modified in Law n. 516 of 7 August. Vine. FICARI, V., "Art. 12, comma 2 Legge n. 516/1982 and negative Finanziaria di potere autotutela dell'amministrazione "Riv. Dir. Trib. 1998, n. 2 pp. 105 et seq.

[188] Law that brings cause of DL 09/30/1994 N. 564. It is to note that Article 2-quarter cited was subsequently amended by Article 27 of the Law of 18 February 1999, n. 28 added some paragraphs concerning: - the possibility of the suspension of acts that seem illegitimate or unfounded; - the extent of autotutela regions, provinces and municipalities for taxes within their competence, etc.

[189]GIULIANI, tax Diritto G., op. Cit., P. 26

of 11 February 1997. Going further from the original scope of the referral itself, this regulation develops not only the bodies of the competent financial administration for the exercise of such power and inexpensiveness criteria cited[190]But also a whole lot of aspects that order and described in detail the practical implementation of that exercise, for example, aim the scope, assumptions where applicable, procedural aspects, etc., to be developed in subsequent pages.

Finally it not is disregarded that outside these texts in various legal provisions subsequently issued some specific references on the matter contained autotutela such as 212 in Legge (Statuto of contribuente), art. 7, point 2 or Legge n. 241 of August 7, 1990; Legge n. 448 of 28 December 2001 (Law on State Budget for 2002) and DL n. 203 of 30/9/2005 linked to the 2006 Budget Law.

-Infralegales- instructions and other rules

In addition to the rules set there is also a set of infralegal provisions issued either by the Ministry of Finance Italian or own by the regional directorates delle Entrate in certain regions (in this case effectively in the territorial limits of its jurisdiction), who develop and complement the Institute of autotutela in tax matters.

Issued prior to the adoption of Regulation n. 37/1997 are to emphasize the directives of March 29, 1994, n. 10932, the Direzione dell'Emilia Romagna Regional Entrate and 6 June 1994, n. 450 Lazio.

Following the same stand Circulars 195 / E of 8 July 1997 the Ministry of Finance and 198 / E of 5 August 1998 the General Secretariat of the MOFTEC. chronologically[191]:

- **A)** Circular 49 / S / PICU -Ufficio indicatore centrale di produttività- 13 Febbraio 1995 (Speciale "The amministrativa trasparenza alle finanze" - Guida Regulations 47 March 10, 1995);
- **B)** Lettera-Circolare 22 giugno 1993 protocollo 4602/93, the Segretariato Generale Ministry of Finance (Speciale "The amministrativa trasparenza alle finanze" -Guida Regulations 47 March 10, 1995);
- **C)** Direttiva 29 March 1994, n. 10932, della Direzione Regionale delle Entrate dell'Emilia Romagna;
- **D)** Lettera-Circolare 18 maggio 1994, n. 067 / SP, della Direzione Centrale per l'accertamento and the programmazione the Ministry of Finance;
- **E)** Direttiva 6 giugno 1994, n. 450, direzione della regionale delle entrate Lazio;
- **F)** Lettera-circolare 18 luglio 1994, n. 4079 of Segretariato Generale Ministry of Finance;
- **G)** Relazione degli SECIT -Servizio Centrale Ispettori Tributari- Settembre 1995;
- **H)** Circolare 7 ottobre 1996, n. 42242, della Direzione Regionale delle Entrate dell'Emilia Romagna;
- **I)** Direttiva 25 novembre 1996 the Minister of Finance in materia di "Semplificazione dei rapporti tra Amministrazione Finanziaria e contribuenti";
- **J)** Circolare 42 / E 17 febbrario 1997 Ministry of Finance;

[190] Only two points which cited Article 2 mentions quarter. Aspect that has been questioned by the doctrine as could be excessive delegation. Vid .: RUSSO, P., "Riflessioni and Spunti ...", op. Cit., P. 552; and FICARI; V., "Pregi and difetti della regolamentare discipline ...", op. Cit., P. 344-346.

[191]Vine. MORINA Tonino, Lo Statuto e le altre del contribuente forme di tutela, op. Cit., P. 76-77, and updated VILLANI, M. "Problematiche sull'autotutela" www.commercialistatelematico.com

K) Circolare 138 / E 16 maggio 1997 Ministry of Finance;
L) Resolution of 148 / E 30 giugno 1997;
M) Circolare 8 luglio 1997, 195 / Regionale, the Ministry of Finance, circolare March 12, 1997, protocollo 9282/97, della Direzione delle Entrate della Provincia Autonoma di Trento;
N) Circolare 206 / E 17 luglio 1997 the Ministry of Finance;
O) Circolare 225 / E of 6 August 1997 the Ministry of Finance;
P) Resolution of 190 / E dell'11 August 1997;
Q) Resolution of 191 / E dell'11 August 1997;
R) Circolare Lettera-198 / S, of August 5, 1998 the Segretariato Generale per l'Ufficio informazione of contribuente, the Ministry of Finance.
S) Circolare the Ministry of Finance n. 143 11/07/2000 (integrata successiva dalla circolare n. 103 06/12/2001).
T) Circolare dell'Agenzia the territory n. 11 26/10/2005.

1.3.- Concept and purpose of self governance in financial matters

Possibly the "public interest" the ultimate reason underlying the tax formulation of the phenomenon of self governance. The purpose of doing justice; to pursue the public interest in respect for name and administrative transparency, Amparan and pay the adoption of ius poenitendi (literally power to repent) by the Financial administration regarding their unlawful acts or unfounded[192].

It should be emphasized, in line with the views expressed by the bulk of the financial doctrine italiana- that the public interest in tax matters justifying the exercise of power of cancellation of office or revocation of flawed act, can not only identify with the mere " ripristino della legalità violata »[193]But it identifies with the substantial interest of the administration whose satisfaction must be preordained the autotutela, which individualizes "in the correct levy of the tax due on the basis of the law." In this sense, the public interest in tax matters which declares SANTAMARÍA, B.- derived from the combination of primary constitutional rules laid down in Articles 53 numbers (ability to pay) and 97 (proper functioning of public administration, according to the principle of inexpensiveness), it is the correct and fair tax levied by the financial management, which provides working and of itself an image correction and correct behavior and fair[194]. Hence the so called "public interest" or "general interest", always projected on the tax, to settle on the effectiveness of

[192] In this regard, the Board of Finance states that the activity of autotutela is done in order to ensure the most effective pursuit of general interest ... Rilazione the Consiglio Supreme delle Finanze alle bozze the Ministerial Decree in materiale di autotutela in Tributi, n . 6/7, 1996, p. 760. In this regard can be seen, PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 190.

[193]Graphic enough phrase, reiterating all authors tax experts familiar with the matter, which could be translated as the "restoration of legality violated". Among others, RUSSO, P., "Reflessioni and Spunti ...", op. Cit., P. 554 .; SUCCIO, R., "L'autotutela dell'amministrazione finanziaria: alcune Considerazioni" Diritto e Pratica tax, 1998, n. 5, p. 1515, ...

[194]So SANTAMARÍA, B., tax Diritto. Part Generale, Giuffrè, 2000, p. 759 who echo the provisions of the Higher Council of Finance Relazioni the Consiglio ... is made. Another important author also refers to this Council is Professor RUSSO, P., in "Riflezzioni and Spunti in theme di autotutela nel diritto tax" Rass. Tax, 1997, n. 3, p. 555.

the two constitutional principles such "economic capacity"[195] and "proper functioning of the administration."

Under the first of these economically -Ability a correlation between public spending and contribution to the taxpaying capacity should be observed. Correlation or situation not excluded if corrective action ("ravvedimento") of the Administration against an illegitimate or unfounded tax would act[196]. The second of the aforementioned principles under Article 97 CI[197]prescribed as a rule of the administrative activity impartiality and proper functioning; These aspects included in the scope of the administrative procedure[198] and that materialize not only in streamlining and proper development of administrative activity, but also on respect for the principle of economy[199], Under which (as well as the provisions of the Law of 30 November 1997, n. 656), the administration starts or leaves the administrative activity by factors related to the cost / benefit ratio, exceeding the dogma of the unavailability of the financial obligation[200].

Notwithstanding recitals exposed, and for a wider exposure it is essential to contextualize the institute of tax autotutela in the historical moment in which adoption was agreed. Late in the nineties, the courts dealing with tax matters in Italy are experiencing a situation which, as has already been said well could be labeled collapse[201]. Tax reforms carried out in 1971-

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[195]In similar terms, says BATTISTA, A., public interest which may be referred, inter alia, the principle of ability to pay, Article 53, CI, according to which the taxpayer can only be called to pay according to capacity tax and no more than what is actually due. "L'autotutela nel diritto tax", op. Cit., P. 2.

[196] In this regard MOSCHETTI, F., The tax capacità, Padova, 1993, p. 13. On these individuals can also consult ROSSI, P., "Il potere di autotutela ...", op. Cit., P. 83 author that echoes the Court where evidence that "the prelievo fiscale" should always be in harmony with the contributive capacity of the taxpayer "is allowed. (Cass March 29, 1990, n 2575, in Boll Trib 1990, p 1105;..... Commissione Nazionale di Roma Tax March 23, 1998, in "Il fisc", p 5160.).

[197] Originally developed by circular of 13 February 1995, n. 48 / S of "generale Secretary of the Ministry of Finance" Vid. FICARI, V.,., "Novitá in theme dell'amministrazione Finanziaria di unilaterale intervento in headquarters di autotutela" Rivista di Diritto Tax, 1995, p. 462.

And also the judgment of the Court of Cassation n. 1758 May 29, 1993, which reads:

"Public authorities have a general duty to ensure the proper functioning of the administration, a concept that also involves guiding and facilitating administered in the performance of their duties and in the exercise of their rights, editing and ignoring its own initiative mistakes by them in good faith. "

[198] Thus, FICARI, V., "Novità di unilaterale intervento in issue ...", op. Cit., P. 462, adding, "the management intervention on its own acts attends therefore to 'razionalización administrative activity', the 'optimum operation thereof in relation to the media and the time available, but more overall, the requirement for fiscal justice ".

[199] FICARI, V., "Pregi and difetti della regolamentare discipline dell'autotutela dell'amministrazione finanziaria" Rass.Trib. 1997, n. 2, p. 348.

[200]Similarly BATTISTA, A., in "L'autotutela nel diritto tax", op. Cit., P. 2, which in turn echoes authors as parisio, V. becomes, and FORNANI, G.

[201]Vine. Chapter II, section II of this work.

1973 characterized by excessive complexity of the tax law[202]; the old mentality of many officials of the tax administration, unfounded or illegal acts before the tax commissions passed its own responsibility[203]; the pressing financial needs of public resources that cleave unto the Treasury; They are, among others, factors framed and conceived in a tax management system characterized by mass and speed collection effort, often do prevail undue tax collection legally relevant positions on the taxpayer[204]; ultimately, on the duty to act justly[205].

The controversy, then, was served. Weather derivative thereof could not be other than a deep and frequent conflicts in relationships between financial management

and the citizen, while growing dissatisfaction of public opinion by the then current tax system.

As you can read in Directive n. 10932 of March 29, 1994[206]The legislature of 1991, noting the unsustainability of the situation foresaw the complete overhaul of the system through the following measures, namely: restructuring the Ministry of Finance; revision of the tax process and simplification of legislation and the requirements by the taxpayer. More particularly and in order to contain the high litigation occurred in the contentious order a set of legal institutions among which are assumed precisely, the possibility that the administration itself annulling unlawful acts or inopportune[207].

Legal nature 1.4.-

Synthetically under this section, the determined univocally -no question or by doctrine or by italiana- case regarding what the degree of requirement for financial administration to cancel or revoke illegitimate or unfounded acts arises. In other words: Does the administration have a duty to perform the exercise of autotutela either of its own motion whether parte, or simply a mere power than its discretion may decide to exercise or not exercise ?.

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[202] Vine. Directive of 29 March 1994 n. 10932 Direzione Regionale delle Entrate dell'Emilia Romagna.

[203]Among others, morin, T., The statuto of contrtibuente, ed. Thing & Come, 2000, p. 82; Stevanato, D., "autotutela: quando sono i termini per ricorrere troppo stretti" RASS. Trib., 1994, n. 5, p. 758.

[204] In similar sense FICARI, V., "Novità di unilaterale intervento in issue ...", op., Cit. P. 462.

[205] Lupi, R. said: "It has long been appreciated that the administration has a duty to act fairly and sometimes this involves the duty to waive an advantage when that is manifestly unjust". "Atti definitivi e decadente: l'autotutela is non arriva, which può contribuente yl fare ?. tax rassegna, n. 5, 1994, p. 751.

[206] Directors of the "Direzione Regionale delle Entrate dell'Emilia Romagna".

[207] For enumeration vine. Chapter II, Section I of this work, although Accertamento institutes con adesione, and tax autotutela are those who have contributed most to achieve the purpose I intended.

The question is not trivial, to take into account any possible answer to be tested about going to repair at least in the following paragraphs. Namely: it -the scope of financial management discretion in the exercise of their performances; or what, if any, whose interests to protect financial autotutela are: merely the preservation of public interest or otherwise co-exists a legitimate interest of the taxpayer ?. In short, it is conceivable the self governance in the financial law autonomously to administrative autonomy or, on the contrary, be understood as a branch of it and therefore subject to the principles and interests that justify it.

For a doctrinal sector, tax autotutela is a faculty of public administration that is explained by a discretionary administrative act that seeks to correct the mistakes. He therefore that he adds, would "exercise of administrative discretion"[208]. From this point of view the financial autotutela is based on discretionary powers of the Administration analogous to presiding administrative autonomy, so that financial management bodies have discretion[209] removing their own unlawful acts or unfounded, without the eventual application of the private behave obligation for the administration of stoking the procedure autotutela[210]. Fact that, furthermore corroborate Article 2.1 of Regulation No. 37/1997 stating that "Financial management" may "proceed in whole or in part to the cancellation ..."[211].

Following this line of argument would apply all the principles developed by the administrative case law on administrative autonomy[212]As well as the principles and purposes that govern, in general terms consistent in achieving the public interest through the restoration of legality violated.

Other authors, however, embrace opposing positions which, in one way or another, but do not let traslucir autonomous concepts of financial autotutela respect to generic Institute of administrative autonomy. In this sense, they will reveal the specific features of the tax discipline regarding administrative law and civil[213]So that, even recognizing the absence of administrative discretion in the identification of the chargeable event; in determining the tax base and the application of the tax rate, the existence of administrative discretion stands[214]

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[208] Vine. BATTISTA, A.,., "L'autotutela nel Diritto Tax" in Diritto & Diritti, giuridica rivista online, 2001, p. 4, who is referred to as Ferlazzo Natoli others; F. Duca; G. Ripa.

[209] This apparently is BALDASSARRE, S.,Tributary ... Diritto, ob cit., P. 209. Also Cass. Sez. Trib. 02/05/2002, n. 1547.

[210] Vine. Relazione the Supreme Conseglio ... delle Finanze, in Tributi, n. 6/7, 1996, p. 760

[211]Some considerations on this theoretical argument carried out by BATTISTA, A., "L'autotutela ...", op. Cit., P. 4 who defends the need for a systematic interpretation with the rules and not strictly stuck to the letter of the specific provision.

[212] On these theories can be a more detailed discussion on ROSSI, P., "autotutela his definitivi atti: evoluzione della giurisprudenza ed one ricostruttiva ipotesi" Riv. Diritto Tax, n. 5, 2002, pp. 473 et seq.

[213] Lupi, R., "Atti definitivi ...", op. Cit., P. 754, who says: - lack in tax law proceedings in the technical sense, and the private does not participate or rarely participate ...; - deadlines for the right to reimbursement decay generally shorter than those of civil law ... deadlines; - applying tax indiscriminately directed to the entire mass of citizens, which entails an anonymous relative impersonal management procedures; etc.

[214]On the discretion in our case the financially administration has insisted on the need to distinguish between discretion and "act with discretion" as discretion is the opposite of arbitrary or optional. Thus the term should be understood in the aforementioned "technical-legal" sense "a motivated choice between partly conflicting

in connection for example with the instructor phase winding tribute or other hypotheses[215], So it is argued that the Administration should conduct a legally relevant valuation between a private interest and public interest[216].

Precisely the fact that not only the public interest but also a legitimate interest of the taxpayer is at stake, that is, an "indirectly supervised subjective position" to exercise the power of cancellation takes place reasonably and not arbitrary "[217] leads to consider the exercise of self governance as a "power / duty" by the financial administration[218]. That is, it is a duty of the administration to exercise autotutela rather than a simple option. Line of thought which are in addition to a part of the doctrine[219]Some jurisprudential pronouncements[220], Since this seems to be the recent positioning of financial management[221].

1.5.- Development exercising self governance in financial matters: the DM n. 37 of February 11, 1997

1.5.1 Scope

requirements." Lupi, R., "Atti definitivi ...", op. Cit., P. 752 et seq. Automatic extrapolation of managerialism autotutela doctrine on financial law, continues this author, would leave the fate of the unsuspecting taxpayer only the goodwill of the administration (p. 753).

[215]For example cases in which the "control activity" is not immediately translated into actions that affect the determination of the tax base or others may be added as suspension of operation in dependence of resource, etc. FICARI, V., "Novitá in issue ...", op. Cit., P. 485.

[216] The author mentioned above joins, a doctrinal industry including appointment: -SCHIAVOLINI, R., "Poteri Istruttori dell'amministrazione finanziaria" Journal of Tax Diritto, 1994, I, p. 919; - GALLO, F., Discrecionalitá tax nell'accertamento ...; - L. Salvini The partecipazione of all'accertamento privato ...; among others. Vine. FICARI, V., "Novitá in issue ...", op. Cit., P. 485.

[217]See on these currents doctrine work Paola ROSSI, "autotutela its definitivi tai", op. Cit., P. 478 and generally pay. 477 et seq.

[218] "Part of the doctrine (...) argues the mandatory exercise of power (although always discretionary) of autotutela recognizing the taxpayer ownership of a legally protected (therefore a legitimate interest) and as such amenable to judicial protection interest." PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento with adhesione ..., op. Cit., P. 201

[219] So FICARI, V. For whom the exercise of self governance has nature of power / duty. "Pregi and difetti ...", op. Cit., P. 351-352. Or morin, T., The statuto del contribuente ..., op. Cit., P. 79 and 81, among others.

[220]Judgments of the Commissione Tributaria Centrale of 22 April 1988 and 6 February 1986. A brief comment on them can be seen in BATTISTA, A, "The autotutela ...", op. Cit., P. 5. See also, ROSSI, P., "autotutela their atti ...", op. Cit., You pay. 481 et seq.

[221]Circular of the Ministry of Finance n. 198 / S / 2822/98 / GCF of 5 August 1998 on the exercise of the power of self governance, in which-based on the provision contained in DMN 37/1997 regarding the obligation of the intervention of the superior in if "serious inertia" (inactivity, negligence) - is considered the exercise of autotutela not as a kind of option that can act or not act at its own discretion, but as a component of the correct behavior of the leaders of the administrations and therefore, as an element of assessment of their activity from the point of view of discipline and professional.

C) Subjective

Developing the provision contained in Article 2-quarter of the law n. 656 of 30 November 1994, Regulation No. 37/1997 refers to the relevant bodies for the exercise of power for annulment and revocation or renunciation of taxation in autoaccertamento[222]. In this way, Article 1 of the aforementioned regulatory text establishes the general rule that "the act must be annulled by the Financial administration that issued". Adding that in the case of "serious inertia" correspond to the regional or territorial area of the same administration that depends Address[223].

> Italian tax doctrine questions the exact meaning of the term "serious inertia". According to some authors, the answer is positive when there are harmful effects either for the taxpayer, whether for administration, which may be caused by lack of exercise of power by the competent authority (for example, when already ongoing enforcement proceedings)[224]. While other authors the presence of the adjective "serious" is understandable, because the inertia of administration and means default or prolonged failure, since the inertia He is always harmful They concluded[225].

Notwithstanding the above, when the amount of tax, penalties and other alleged object of the cancellation or waiver of taxation above a miliardo lire[226]The opinion of the regional management or territorial scope of which depends the competent authority is required[227].

From a territorial point of view it is remarkable that according to the final wording of Article 2-quarter of Law n. 656 1994[228]- the power to exercise self governance in financial headquarters extends to the various local authorities, so that the regions, provinces and municipalities must indicate, according to their respective jurisdictions, the competent bodies to exercise it in relation to acts concerning the taxes within its jurisdiction.

B) Objective Scope Application

B.1.) Main media autotutela financial matters.

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[222] Term is defined in the following section.

[223] Which, as mentioned, it was not surprising therefore ultimately has done an analog systematic discipline autotutela administrative law in resolving the same body that issued the act, or, via a subsidiary, the superior. Vine. Stevanato, D., L'autotutela dell'Amministrazione finanziaria ..., ob cit., P. 300.

[224]PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 203.

[225] MORONI, S., Ferrari, A, ARISI, M., Come evitare or risolvere ..., op. Cit., P. 64

[226] A miliardo = 1,000,000,000 lire (516,456,899 euros).

[227] And Article 4.1 of the DM n. 37/1997; diction is completed in the circular n. 195 of July 8, 1997, stating that nothing prevents the required apparently superior also in cases other than this hypothesis.

[228] Carried out by Law 28 February 1999.

The exercise of self governance by financial management, understood as the power of this office to revise their illegitimate tax acts, unfounded or inopportune, it materializes through the following actions:

- annullamento (canceled)
- REPEALS (revocation)

Both means autotutela in financial terms refer both Law n. 656 of 30 November 1994 (Art. 2 quarter) and Ministerial Decree No. 37/1997 amending that provision is developed, although the latter text adds a third course called literally "rinuncia ALL'IMPOSIZIONE IN CASE DI AUTOACCERTAMENTO".

precisions:

- In all three cases the range may be total or partial.
- Irrespective thereof, may note that they are only being studied media autotutela ending with the removal or withdrawal of the act (negative autotutela), obviating in this office the autotutela with sanatoria purpose, ie, the autotutela called "sostitutiva "consisting of the reinstatement of the annulled a privately instead of vice which had in advance[229].
- for Annulment may be not only the typical acts of taxation and tax assessments and penalties, but also all those that adversely affect the legal rights of the taxpayer, for example, orders of urgency, acts of denial of tax breaks or tax refund wrongly paid[230].

Given the silence of the regulations governing the issue it has been the doctrine and jurisprudence knowledge sources responsible for fleshing out the terms outlined. Namely:

annullamento: Cancellation is effectively "ex tunc" of the affected act of a vice legitimacy or foundation. Therefore, they are likely to override those "illegitimate" and "unfounded" acts, although the rules governing this matter[231]not define both adjectives. This gap has been overtaken by Italian doctrine meant by "illegitimate act" that in which there is an error of law while it is "unfounded" when there is a factual error[232]. In the latter regard it is to clarify

[229] Vine. Lupi, R., tax Diritto ...., Op. Cit., P. 96. For its part, the Court of Cassazione italian proclaimed the legitimacy of the sostitutiva autotutela individualizing their limits and budgets (Cass 04/27/1984, n 2646;.. Cass 29.3.1990, n 2576;.. Cass .. 8.4. 1992, n. 4303. in particular the judgment of the Court of Cassation n. 11114 of 16 July 2003 confirms the legitimacy of the sostitutiva autotutela but unshakeable budget established as the act invalid, suffering from a defect of a formal nature, not impinge on the existence or amount of the tax credit. Vid. Review this sentence FAZZINI, S. E Chiorazzi, M., in Fisco Oggi, I Martedi August 26, 2003.

[230]Circolare the Ministry of Finance n. 195 (Regionale) of 8 July 1997.

[231] Article 68 of Decree n. 287 of 27 March; art. 2 quarter of Law n. 656 of 30 November 1994 and Regulation No. 37/1997

[232] For all Lupi, R., "Atti definitivi and decadent ...", op cit., P. 753.

that the "infondatezza" refers instead to errors in the facts of the imposition and on forward issues quantification of taxable[233].

REPEALS: The revocation is a means of self governance by which we proceed to the removal of an "inopportune" act with effects "ex nunc". Note, therefore, that the main differences with respect to so-called "annullamento" are, on the one hand, the type of defect that causes the elimination of the act (reasons of "convenience and opportunity")[234]and on the other hand, the effects of the recall institute, which are not retroactive (effects "ex nunc"). In short, the power of revocation is specified in the power to re-consider and weight the act occurred as a result of elements supervening fact or better qualified reviews about facts and appreciated[235]. synoptically[236]:

MEDIA autotutela	***annullamento***	***repeals***
CAUSES	or even unlawful acts unfounded	inopportune or inconvenient acts
EFFECTS	Ex tunc effects	Ex nunc effects

[233]So STIPO, M., "Osservazioni in topic Finanziaria di autotutela dell'Amministrazione a favore del contribuente" Rass. Trib. N. 3/1999, p. 712. Furthermore stated that the concept of illegality collects all figures disability arising from procedural irregularities or errors of interpretation of legal rules to fiscal matters and "infondatezza" all other figures of invalidity of a substantial nature resulting from erroneous assessments of facts constituting the tax budget. PATRIZI, G, MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 213-214. Also on this subject can be FICARI, V., autotutela and Riesame ..., op. Cit., P. 116 et seq.

[234] In this regard he said Regulation n. 37 regulatory matter, speaking of autotutela as power not only to "override" but also to "revoke" acts. So they can be withdrawn or canceled pronouncements not only illegitimate but also those recognized in respect of which, for reasons of economy of administrative activity, the chance of a reversal is recognized. PATRIZI, G, MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 195.

[235] In similar sense SUCCIO, R., "L'autotutela dell'amministrazione finanziaria: alcune ...", op cit., P.. 1515. So the "revoke" is based on the continued existence of new facts that make longer available under the current public interest in the administration (Cons. Stato. March 3, 1997), in Il Foro Amm. Vo., 1997, p. 746.

[236]This distinction coincides tax doctrine in line with the administrative literature and jurisprudence. Among others: FICARI V., "Pregi and difetti della regolamentare discipline ...", op cit., P. 348-349; - autotutela and Riesame nell'accertamento tribute, ob, cit., P.. 134; BATTISTA, A., "L'autotutela nel Diritto ...", op. Cit., P. 2; Ferlazzo NATOLI, L., Corso di diritto ... 1997, op. Cit., P. 157; PATRIZI, G, MARINI, G., PATRIZI, G., Accertamento con adesione ..., op. Cit., P. 195; SUCCIO, R., "L'autotutela dell'amministrazione finanziaria: alcune Considerazioni" Diritto e Pratica tax, 1998, n. 5, pp. 1515 ff .; SANTAMARIA, B., Diritto tax .., op. Cit., P. 212.

Jurisprudence: Cons. Stato Sez. V., 1992, n. 1049, Il Cons. Stato, 1992, I., p. 1330; Cons. Stato Sez., March 3, 1997, in Il Foro Amm. Vo. 1997, p. 746

[236] In similar sense SUCCIO, R., "L'autotutela dell'amministrazione finanziaria: alcune ...", op cit., P.. 1515. So the "revoke" is based on the continued existence of new facts that make longer available under the current public interest in the administration (Cons. Stato. March 3, 1997, in Il Foro Amm. Vo., 1997, p. 746.

*Rinuncia ALL'IMPOSIZIONE IN CASE DI AUTOACCERTAMENTO*This third course of financial autotutela introduced into the DM n. 37/1997 is certainly not a term entirely clear. We believe, with some specializing in the matter- author refers to cases in which the tax is self-assessed by the taxpayer erroneously[237] and administration, aware that it is not for the tax, forgoing the total tax or partially improper[238].

B. 2.) Budgets or exemplifying hypothesis of invalidity of the act.

Article 2 of Regulation of 11 February 1997 lists -of no way restricted to, some of the assumptions that may lead to the cancellation or waiver of taxation in the case of self-assessments. Namely:

- Error person
- Logical error or calculation
- Error in the budget tax
- Double taxation
- Claims of tax payments already made by the taxpayer
- Lack of documentation subsequently healed in time by the taxpayer.
- Subsistence requirements to enjoy deductions, detractions or previously denied relief schemes.
- Material error easily recognizable by the taxpayer Administration.

B. 3) inexpensiveness criteria that can justify abandoning the contentious activity.

Article 7 of Regulation No. 37/1997 inexpensiveness contains criteria for starting or abandonment from litigation. Under that provision the bodies of the Departments[239] must provide a set of guidelines, for whose preparation the following information is taken into account:

● Documentation on the reasons why -more frequently- are estimated or dismissed by the judicial tribunals that matter, appeals against acts of peripheral and central financial authorities

● The issues most frequently involve appealed, stating cases of disagreement with national and Community law.

● Generally, jurisprudence poured in the art.

[237] Occur as a result of some of the hypotheses of invalidity typified in Article 2 of the regulation 37/1997 (see next section)

[238] FICARI, V., "Pregi and difetti della discipline ..."; op. cit., p. 349.

[239] The Central Directorate for legal affairs and tax litigation for the Department delle entrate; Central Directorate for General Affairs, staff and computer technicians and customs department services; ...

Such guidelines are developed and taught for the purpose of tax administrations in the exercise of self governance, leave the lite or, if any, do not start a new one, based on the following parameters:

- The probability that the administration is to pay the costs
- cost / benefit that would result in the execution of the claim ratio.

Note: Article 8 of the regulation refers to successive decrees inexpensiveness criteria on the basis of which still have to be initiated or abandoned administrative activity are established.

1.5.2 Procedure

A) opening procedure

The initiative to activate the procedure for annulment or revocation in financial matters can exercise:

- First, the *own body that passed the act*On the understanding that under no circumstances is subject to the request of the taxpayer, or, much less, the fact that the latter present application involves legal obligation for the competent authority[240].

Yet here Consider again the speech and exposed[241]on the power and duty of financial administration to carry out the exercise of autotutela when he takes on the invalidity of an act dictated by herself. Position, as we saw, both endorse the latest guidelines for financial management, as the fact that the Regulations of development n. 37/1997 provides for the aforementioned substitute mechanism in cases of severe inertia (long delays) then by becoming competent Regional or territorial scope of which depends the financial body itself address.

- Second and all newly formulated shadings, also *taxpayer* You can activate the procedure reported instance autotutela to cancel an illegitimate or unfounded act[242]. In these

[240]In this sense both scientific and administrative doctrine manifests. For all FICARI, V., "Il potere di autotutela dell'amministrazione finanziaria nei recenti chiarimenti Ministeriali" Rivista di diritto tributary, 1993, III, p. 400; Circular Ministerial (regionale) n. 195 of July 8, 1997; circular n. 3/22993 / Dir / 99 of 19 November 1999 Direzione Regionale Entrate per Lombardia.

[241] Vine. Section 1.4 (in fine) of this Chapter.

[242] We advise the taxpayer who has filed autotutela for instance hecer annul an act he considers unlawful or unfounded, do not let pass the deadlines for submitting relevant resource without the written declaration that has accepted the request confirmation. In the absence of response is better to file an appeal against the act of taxation for the following the notification of the act sixty days: MORONI, S., FERRARI, A, ARISI, M., Come evitare or risolvere ..., op. cit., p. 65.

cases the instance of application may be submitted in "letter semplice"[243] without any specific formality.
Under Article 5 of the DM n. 37/1997 any requests for cancellation or waiver of taxation in self-assessments urged by the taxpayer shall be addressed to the competent financial administration. Should be sent to an incompetent body, it is required to submit it to the competent authority, giving news of the transpaso the taxpayer.

- Finally, it is noted that the "Taxpayer Advocate" [244] It is also empowered by law to activate the procedure autotutela in financial matters[245]. This is explicitly stated in the positive law governing the matter. In particular paragraph 6 of Article 13 of Law No. 212 of 27 July 2000 of taxpayer rights, says the taxpayer advocate, also based on indications given in writing by the taxpayer or by any other interested person to regret dysfunction, menstrual irregularities, abnormal or irrational administrative practices or any other susceptible behavior undermine the relationship of trust between citizens and financial management, direct request or demand for documents or clarifications to the bodies of the competent authorities, which must respond within thirty days,

> Note: The doctrine has stated[246], As indeed it is logical that the performance Taxpayer Advocate in order to activation of autotutela should be limited to highlight, point out the anomalies so that financial management is aware and if necessary to exercise the autotutela, because in otherwise there would be a true and proper removal of competition that would be foreign to positive discipline. Therefore, the initiative of the Ombudsman does not produce immediate or direct effects.

B) Development process: requirements and formalities

The exercise of power via autotutela annulment must be exercised following the same procedure and the same formalities established for the emanation of susceptible act of annulment, Application of the "actus contraries"[247].

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[243] Letter no bun (seal ring) is required.

[244] Figure Taxpayer Advocate in Italy has been created recently by Law n. 212 of 27 July 2000 in which Article 13 the composition and functions of it is contained. Thereon can be CIAVARELLA, Domenico, "Il guarantor del contribuente" in Nuovi Diritti and Garanzzie of Terzo Millennio all'inizio cittadino of; May, 2002.

[245] For a rigorous study on activation procedure autotutela and in particular its activation by the "guarantor or taxpayer advocate" vid. D'AYALA VALVA, "L'attivazione delle" procedure "di tax autotutela" Rivista di Diritto Tax, Vol. XIV, 2004, pp. 145 et seq.

[246]CAPOLUPO, S., CAPOLUPO, M., Statuto del contribuente and diritto interpello, ed d'. IPSOA, 2000, pp. 147 et seq.

[247] And the Ministerial Circular n. 195 of July 8, 1997. Some prominent author validates this statement for cases of cancellation by the same financial body that passed the act, ie considered applicable also in the tax area the general principle of "contrarius actus" in cases of annulment by the same body that issued them; no clutch, in the event of cancellation by the hierarchical body understands more doubtful to be found in administrative law an extensible approach to taxation. GHETTI, autotutela ...; op. cit., p. 271.

In developing such an activity relevant to cases of general interest is prioritized and, among the latter, "those who are still under way" or there is a risk of a contentious vast[248] (Art. 3 DM n. 37/1997).

Formalities: Under what established the former Article 68 of Presidential Decree n. 287 of 27 March 1992 and the provisions of the CM 195 of 8 July 1997 on Accertamento with adesione, autotutela, etc ...[249]The statement of financial management in which proceeds to the cancellation of all or part of the acts themselves recognized illegitimate or unfounded must be motivated and communicated to the recipient of the act.

As regards the obligation to "Motivation", this is a direct expression of the principle of transparency of administrative activity, in turn derived from the constitutional principle of impartiality (art. 97, paragraph 1 of the Italian Constitution)[250]. In addition to this, the motivation performs its functions not only in relation to the recipients of the act, but also in confrontation to the community, which, through motivation is placed in a position to know and control the proper exercise of administrative functions[251]. Regarding its content, it should consist of the factual and legal reasons that have determined the decision of the administration regarding the outcome of the pretrial phase[252]. What is more, and always quoting the circle to the assumptions of motivation pronouncement unlawful or unfounded acts issued by financial management; the administrative criterion is that express indication of specific and current public interest is made and illegitimacy of the reasons justifying its adoption[253].

Once issued motivated by financial management should be "communicated" to the addressee of the statement. In this activity, Regulation n. 37/1997 individualize the subjects

[248] Article 3 of DM 37/1997 literally says "quelle sia per le quali in atto" which we translate for those who are still in progress or force. This would mean that, for example in the course involving cases of significant public interest, including an administrative act becomes final by the deadlines have passed for recourse, and another whose legality is discussed having been recently notified by the administration, priority will be given to the latter.

[249] Circular in which reads: "Il provvedimento comunicato di annullamento going to contribuente (...) e deve essere l'punctually motivato with espressa dell'interesse indicazione specifico pubblico ...".

[250] Vine. STIPO, M., "Osservazioni in theme di autotutela ...", op. Cit., P. 715.

[251] For a more extensive discussion of the obligation to justify recommend reading the work of Professor STIPO, M., "Osservazioni in theme di autotutela ...", op. Cit., P

[252] As this is provided for in the Italian law: Article 3, paragraph 1 of Law 241 of 1990.

[253] Circular Ministry of Finance n. 195 of July 8, 1997. In such circular added that well known the presence of administrative discretion that characterizes the power of annulment path autotutela, and ensure transparency and proper performance relationships with contributors, such administrations, also when considering that there are no budgets to annul acts, must give the taxpayer the respective communication refusal or rejection. "Bearing in mind that, in such case, -Follow saying Circular n. 195- given the absence of a legal obligation pronouncement by the administration and correlative of a legally protected interest of the taxpayer, the refusal may be expressed without explaining the reasons. "

that should be given communication of the annulment of the act or, where applicable, the waiver of taxation (in cases of self-liquidation). Namely[254]:

- The taxpayer, first
- the court in which the corresponding is, where appropriate, pending contentious (for purposes of extinction according to Art. 46 DL 546/1992)
- The administration that issued the act, if it is resolved in an alternative form by the superior.

Regarding the effects of communication in the case of acts recepticios -those in which communication is established in the standard as a requirement of communication obligatoriedad- the act itself, it determines its "effectiveness" about the recipients, not the validity of the act itself statement[255].

1.5.3.- Limits on the exercise of self governance in financial matters

Precisely one of the main interpretive nodes raised regarding the application of the power of self governance in financial matters has been know exactly how far it is possible to exercise, this is, of course fits your exercise there is a pending lawsuit on the matter under discussion ?; And if that was pronounced a judgment about it ?; Are they subject to annulment ex officio unlawful acts or unfounded nature of tax accrued by firm deadlines for challenge has elapsed? ....

The answers to these questions were generically in Article 68 of DPR n. 287 and 1992, with slightly more detail, Ministerial Decree n. 37/1997, -five years later regulation specifies limits for the exercise of power via autotutela annulment; without prejudice to administrative interpretations under different circulars of the Regional Delegations of the Italian Treasury "[256]. Let us see what guidelines are contained:

- The repealed Article 68 of DPR n. 287 cited, provided that the financial management bodies may proceed to all or part of their own acts recognized illegitimate or unfounded, "nullification" provided there is no final judgment[257].

- In line with the above formulation principle which operated as a limit for the exercise of autotutela by the financial management, DM n. 37/1997 concrete the following aspects. Namely:

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[254]Article 4.2 of the DM n. 37/1997.

[255]Vine. STIPO, M., "Osservazioni in theme di autotutela ...", op. Cit., P. 720 et seq.

[256]Directive of March 29, 1994, n. 10932 direzione Regionale delle of entrate dell'Emilia Romagna; Directive of June 6, 1994, n. 450, of Regional direzione delle entrate Lazio; Lettera circolare of 18 July 1994; n. Generale 4079 Segretariato the Ministry of Finance; Directive of the Ministry of Finance (Regionale) n. 195 of July 8, 1997 ...

[257] To know when there is a final court judgment should be with the provisions of Article 324 of the "Code of Civil Procedure" in which a sentence is defined as "passata in giudicato" when it is not subject to appeal, or appeal; in general, when it is no longer subject to revocation. On these particular can be seen, among others: PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione ... ", op cit., P.. 208.

1. As a criterion or negative limit is set to not proceed ex officio cancellation or waiver of the imposition, for reasons over which there is a final court judgment in favor of financial management (art. 2.2 DM n. 37/1997)

Amen of this it is to point out the fact that there is a final court judgment only prevents the exercise of self governance in the event that falls on the merits, that is, when seen on material issues and not procedural or formal (Circular , n. 195 of July 8, 1997 the Ministry of Finance).

2. Positively, the first paragraph of article two, enables the appropriate financial management, in full or in part to the cancellation or waiver of the imposition, also on the following assumptions:

- Case pendency of trial.

- Assumptions not impugnability; that has been said, it may be the result not only of the "definitività" the tax act because the deadlines for contestation have passed, but when judgment has been passed merely procedural content that does not enter into the merits of the lawsuit[258].

[258] Compagno Stefano, "Il limiti tax all'autotutela their atti non impugnabili". Diritto & Diritti, giuridica Rivista on line, p. 4 of 14 in the same direction as circular n. 198 / S 1998. Similarly, D'ANGELO, F., "Riffessioni sul potere di autotutela" Fisco Oggi, 23/03/2003.

CHAPTER VI

THE GIUDIZIALE CONCILIAZIONE

1. Concept, nature and object

Conciliazione Giudiziale is an institute of a procedural nature, typical tax jurisdiction which aims to bring the positions of the parties ínsitas the first instance of the tax process.

It is, in short, an instrument that aims to reach the meeting point between the taxpayer and financial management in order to controversial subject[259]But always based process. Hence, as has been said "reconciliation through the agreed possibility and administrative, to avoid receivership is renewed". That is, the Judicial Conciliation is presented as a "projection on the procedural ground of accertamento with adesione the contribuente"[260].

Indeed, in the pages that precede this and more specifically in Chapter III devoted to Accertamento with adesione the contribuente, we study the possibility of reaching agreement between the taxpayer and the administration always in administrative proceedings.

With identical conciliativa philosophy, aimed at finding the pact, although procedural and non-litigation procedure, the Italian legislature introduced the Institute of Judicial Conciliation both the basic rules regulating the tax litigation, as in Acts and Decrees tax nature specifically responsible for regulating the legal status of the dispute deflactivos institutes.

So hand came institutes Accertamento with adesione the contribuente and Giudiziale Conciliazione, which has given them a common history and parallel lives[261].

On the understanding that while L'accertamento with adesione practiced in administrative proceedings, the giudiziale conciliazione is intended for use once initiated the tax process, although always limited to the first instance of the tax court order.

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[259] Miccinesi, M., "Accertamento con adesione and giudiziale Conciliazione" in Commento agli tax reform intervente di cura di Miccinesi, M., Ed., Cedam, Milan, 1999, p. 22.

[260]Miccinesi, M., "Accertamento con adesione and giudiziale conciliazione" ..., op. Cit., Pp. 21-22.

[261] Fransoni, Guglielmo, "sui rapporti fra Osservazioni conciliazione giudiziale ed accertamento con adesione" tax Rassegna, 2000-II, p. 1803.

> Among the Italian tax doctrine it has raised the discourse on identities and differences between the two figures. Thus, notwithstanding the many points between both institutes deflactivos while the litigation, they have revealed differences as the fact that judicial conciliation can be practiced partially; the possibility of using this instrument even if the lite be solely on the disbursement of sanctions is also support for tax refund requests and[262].

From the foregoing it follows the Conciliazione Giudiziale is a legal institution whose nature can be framed under the ends of the tripod following adjectives. Namely institute "procedural nature"; of "Conciliative character" and "tax area".

Precisely the "procedural nature" is the reason that determines the application of conciliation to the existence of a pending lawsuit, so it will only be possible to reconcile between the parties when there is a true tax lite; that is, when filed tax appeal before judicial courts, and the action was declared admissible in light possesses all time requirements and manner provided by law.

Moreover, the "conciliativos character" is, in essence, the object of conciliation as reiterated in the tax address scientific doctrine[263]It is to justify the existence of the Conciliazione Giudiziale while preventive volume and deflactivo tax appeals pending litigation based instrument. At the same time -ocasión we had to see how another direct effect of pefeccionamiento of conciliativos institutes is achieving a faster and more accurate collection of the debt agreed.

Finally it is noted that the specific scope of the Settlement is limited to "tax area" so you can only find application in proceedings pending before the tributarie Commissioni (jurisdictional tax courts) Provinciale (first instance); ie provincial constituency.

[262] Miccinesi, M., "Accertamento con adesione and giudiziale conciliazione", op. Cit., P. 22-23.
[263]Among others: GIANGUZZI, C., "Gli strumenti deflattivi the dispute", Revista La Finanza Locale ", 2000, I, p. 421-422; FABBIANI, F., SALVATORE CAZZELLA, F. Le alternative to the tax processo, ed. Teorema, 1999, p. 384; Fransoni, Guglielmo, "sui rapporti fra Osservazioni conciliazione giudiziale ed accertamento con adesione" tax Rassegna, 2000-II, p. 1805; ....

2. Legal sources: Regulation current and background

Currently the Institute of Judicial conciliation is governed by Article 48 of Legislative Decree n. 546/1992 of 31 December, initialed "Provisions on the tax process", as amended that provision by D. Legs. n. 218 of 19 June 1997 on "Provisions on" Accertamento with adesione and Conciliazione Giudiziale "[264].

> Note that Article 48 was previously the subject of reform of Article 12 of Legislative Decree n. 123 of 15 March 1996, reiterated by D. Legs. n. 259; by D. Legs. n. 329 of 22 June and the D. Legs. n. 437 of August 8, 1996.

Itself in the field of tax law would not be until 1994 date on which, for the sake of D. Legs. n. 564 of 20 September (converted with modifications Law n 656 of 30 November), the procedural institution Concilazione Giudiziale is introduced; to institute civil proceedings typical date (Transazione) and that from this moment and through the new Article 2-sexies created by Decree n. 564 is introduced into the tax field conceived as an act of resolving disputes between parties through an agreement with creditors.

It is true that the various legislative newsrooms operated in this institute have observed changes in specific aspects such as the objective scope or legal effects of the figure in question, or even the legal system of installment payments on the understanding that such and as has been said, the current regulation is contained in Article 48 of D. Lgs. 546/92 as amended by D. Legs. n. 218 and whose legal regime will pay attention along the pages that follow in this chapter.

In summary it can be argued that the gradual process of such modifications are characterized by an extension of the scope of this figure, so that currently can reconcile both total aspects of tax lite as partial aspects thereof, while which considerably extends the subject matter of reconciliation as we will see.

It not with legislative but administrative rank is to mean the Circular n. 235 / E of the Revenue Agency of August 8, 1997 that develops the legal regime so often cited Institute of Judicial Conciliation.

3. Objective scope

3.1 Total Range or partial range

The court settlement can have full or partial range depending on whether the agreement is projected onto the total in dispute or, on the contrary, is limited to fractional parts thereof.

In the event that the settlement is partial, that is, come limited to any of the contents of the tax act or contested tax assessment will occur, if applicable, a partial extinction of the subject matter of the lite, however, trial will continue with respect to other aspects[265].

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[264]PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela; ed. Giuffrè, 1999, p. 135 regulations state that the first training institute giudicial Reconciliation is in the artículo 30, 1, let.b) of Law No. 413 of 30 December 1991 concerning the "Riesame of tax litigation." Authors who refer for a more extensive commentary on legal sources Conciliazione Giudiziale Institute (pp. 135-138).

[265]PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 138.

In this sense, it is not possible for the judge makes partial judgment, that is limited to any question demanded. On the other hand the judge should continue until the conclusion and sentencing containing the motivation of the courts aspects in dispute, and the finding, regarding the aspects under conciliation has ceased the subject matter of litigation[266].

Contrary to the assumption mented, judicial conciliation may also affect the whole object of the claim, in which case this constitutes a complete reconciliation and whose effects are ceasing the subject matter of dispute or litigation and judgment was declared extinct.

3.1.- Matters subject to judicial conciliation

In the current regulation of the institute of judicial conciliation according to D. Lgs. n. 218 are no limits or conditions limiting express purpose of subject matters reach conciliation.

Article 48.2 of D.Lgs. n. 546 of 31 December (drafted by D. Lgs. N. 218) simply states that "reconciliation can take place only before the Commissione Provinciale", which has led to the doctrine to assert that any end that can be challenged before the tax courts may be subject to judicial conciliation. That is, you can reach an agreement on procedural stage in respect of all matters that are subject to appeal before the tax courts.

Far yes Circular explicitly states the Revenue Agency 235 / E Development D. Lgs. n. 218 which provides that the scope of judicial reconciliation extends to all tax disputes whenever they are in the first instance procedural phase of the trial that is pending at the time of the agreement, before the Commissione Tributaria Provinciale "[267].

The fact that the aim of conciliation match the same level of admissible disputes in the provincial tax jurisdiction (art. 48.2 D. Lgs. N. 546/1996) leads to materials that are capable of reconciliation related to virtually all state taxes, regional and provincial level.

For example[268], Taxes on income of physical persons and companies; the various territorial taxes on business income; stamp duty; mortgage and property taxes; substitute tax; VAT (except those relating to imports and entertainment sector); etc etc. On the other hand they are not included in the target area of judicial conciliation those taxes that are not contested to the Commissioni Ttributarie Provinciali, such as: road tax; the imposto di bun (stamped paper, stamps); manufacturing tax, entertainment tax and customs duties.

3.2.- Conciliation susceptible Judicial Acts

The institute conciliation can be used for any type of tax lite[269]motivated by challenge either administrative acts of liquidation; acts of collection; actions for recovery of sums paid, and even those whose sole object the levy of tax penalties.

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[266] PACE, F., Il contencioso in materia di dirette imposte; ed. Giuffrè, 2002, p. 259.

[267] A tax such commissions we have referred in Chapter II, Section I, point c) in fine.

[268] The complete list of these with the corresponding development can be seen in MORONI, S., Ferrari, A., ROTA, Marco Arisi, Come evitare or risolvere the fiscale lite; ed. Thing & Come, 1997, pp. 88 et seq. So in PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 140 et seq.

[269] Regarding the subject of conciliation says the prof. Miccinesi, M.- is common ground that can refer to any kind of issues regardless of their nature (in fact or law) and complexity. Miccinesi, M., "Accertamento con

Note: during the successive redactions granted Article 48 of D. Lgs. n. 546 has expanded the list of items subject to conciliation. Thus at first it was limited in scope unresolved disputes according to certain and written tests. Application came later linked solely to those issues for which it was possible to implement the agreement on administrative or accertamento with the contribuente adesione at that time[270]They were limited to four. Namely, certain existence (esistenza), objective determination (stima) affectation to a empresial or profesonal activity (inerenza) and apportion according to accrual basis (competenza) of positive and negative components of business income and derived from self-employment . Finally to be able to apply the Conciliative agreement on any of the issues raised on appeal before the tax courts.

In line with what was stated by the scientific doctrine[271] when liquidation administrative acts are issued from tests based on "assumptions", the greater the possibility that valid arguments against the administration contrary to a settlement is reached based process.

In this way, the subject matter of direct taxation in Italy is provided in a particular way to the implementation of the institute of conciliation given the existence of numerous rules that authorize the Directors to issue tax acts on the basis of circumstantial evidence or presumptions[272].

4. Subjective scope

Reza Article 48.1 of D. Lgs. n. 546:

> "Each of the parties to the instance provided for in Article 33, may propose to the other party the total or partial settlement of the dispute".

The instance set out in that Article 33 is none other than the instance which is requested to take place "in pubblica trattazione audience" (discussion at the public hearing). While as noted, most of the time the agreement is achieved gradually and generally beyond the search process to reach a point of equilibrium[273].

As regards the parties entitled to propose conciliation, under Article 10 of D. Lgs. 546/92 are the following: the subject who has lodged the appeal; financial management, the local authority and the entity responsible for the collection[274].

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adesione and giudiziale conciliazione", op. Cit., P. 23, author who in turn echoed authors like Menchini is done in Giudiziale Conciliazione, p. 409; BATISTONI FERRARA, Conciliazione giudiziale: come, quando, perché, cit, 1575;. FINOCCHIARO, A. M. FINOCCHIARO, Commentario the new tax Contenzioso, Milano, 1996, 676-677; Tosi, giudiziale Conciliazione, cit., 893-899. In the same vein can be seen, among others, FABBIANI, F., CAZZELLA, FS Le alternative to the tax processo, op. Cit., P. 387.

[270] For a more complete study on the subject vid. Chapter III, section 3 of this work.

[271] PACE, F., Il contencioso in materia di dirette imposte; op. cit., p. 263 and 262.

[272] Il in materia di contentious dirette imposte, op. cit., (pp. 262 et seq.) a series of articles containing various assumptions and other assumptions on which would use the conciliation before the judge are collected.

[273] Tosi, L., Il Processo new tax; ed. Cedam, 1999, p. 112.

[274]On these particular FABBIANI, F., CAZZELLA, FS Le alternative to the tax processo, op. Cit., P is available. 384 et seq.

- The appellant may be both natural and legal persons or society also lacking legal personality which has lodged the appeal before the Commissione Tributaria Provinciale.

- The public part can be represented by the financial administration and local authorities. As regards the administration, competition for the formulation or acceptance of the proposed settlement is the Director of the "Ufficio del Ministero delle Finanze" (art. 37.4-bis, D.Lgs. 545/96). Under the Ministerial Circular 235 / E if the Conciliative agreement is achieved at the public hearing will be taught the necessary instructions to the delegated official.

> It has been argued that the "public part" includes both the organs of financial management as local and collection agencies and not just financial management as may separate from an isolated reading of Article 48.5, interpretation evil pity which, moreover - with sections 1 and 4 of the article 48.
> Therefore, a joint interpretation of Article 10 and Article 48.1 of D. Lgs. 546/92 with the term "Ufficio" the legislator is referring to the public part in generating and consequently also to local public agencies and collection agencies developed by the publicist attività[275].

For its part, the tax court Court (Commissione Tributaria Provinciale), despite not being a party to the proceedings has the possibility to encourage the parties to reach an agreement. So much so that the Commission itself can request conciliation though none of the parties has headquarters respondent in first public hearing.

5. Iter procedural

The procedure to be followed to implement the Institute of Judicial Conciliation can be either short or an ordinary procedure.

5.2.- Simplified procedure

Simplified or abbreviated judicial conciliation procedure is one that takes place before the first public hearing.

It is called abbreviated because it greatly simplifies the process Conciliative as the agreement between the parties prior to the completion of the public hearing be attained, it no longer has instead limited the judge to declare extinguished the trial by decree.

The procedural iter is as follows:

Financial management in advance to take place the public hearing can deposit a conciliation proposal previously accepted by the other party signed by the head of the Administration and by the appellant.

[275] FABBIANI, F., CAZZELLA, FS Le alternative to the tax processo, op. Cit., P. 386 and 387.

Note that the proposal should come from the hand of the Administration and accepted by the taxpayer, but not vice versa; a fact that has led some authors of the doctrine to question the disparity of treatment between the parties[276].

In such a conciliation proposal shall be recorded in the following points. Namely[277]:

- What is the competent provincial tax commission and identification of the parties, both financial management as the appellant
- The bases of conciliation and elements on which the conciliation proposal rests
- The settlement of the amounts due
- The motivation of using the institute of conciliation while positive instrument for the interests of the Treasury
- Acceptance by the applicant of all the contents in the proposed settlement.

The proposed settlement by the office, accepted by the taxpayer and deposited with the Commission in a previous fixing of Public Hearing phase, the President of the section of the Court should hear the appeal will control the legitimacy of the act and declare the extinction of judgment.

The proposed settlement and the subsequent decree of the President produced the same effects as the verbal conciliation process regulated in paragraph 3 of Article 48 of D. Lgs. 546/92[278], That is, it has the same effect as if the settlement had been reached in the course of the public hearing following the normal procedure.

Normal procedure 5.1.-

The normal procedure, called ordinary rite, is that the Conciliative agreement is reached during the public hearing. To this end the initiative may be taken:

a) By "any party" through the instance provided for in Article 33 of D. Lgs. 546/92 by which the "Trattazione in pubblica hearing" is requested (cause). This is a unilateral act which, according to Article 48.1 of D. Lgs. 546 each of the parties may formulate. For this purpose, it is necessary to previously deposit with the secretariat of the body an instance, and notice to the other party at least ten days before the discussion.
b) The initiative to reach an agreement may also Conciliative from "tax court" through an invitation to the parties to reach reconciliation.

After the public hearing two things can happen. Namely: to reach an agreement Conciliative or that it is not reached.

[276] In this regard Amatucci, "Perplessità e sulla nuova critie giudiziale conciliazione" In Treasury, 1994, p. 9644 states that since the conciliation is carried out of the subtexts, by the mere intervention of interested parties has therefore no sense that the administration be put into a pre-eminent position on the taxpayer.

[277] PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 148.

[278] Thus PACE, F., contentious Il in terms of dirette imposte, op. Cit., P. 271.

- Of course that takes place during the conciliation hearing should draft a "apposito processo verbale" (document which record the verbal process is left) in which stating the amounts due to differential identification of the different concepts:
  - tax due
  - sanctions
  - interest

  For the purposes of carrying out the collection of outstanding amounts verbal process constitutes sufficient title to their collection.

- Given the impossibility of reaching an agreement during the public hearing, the Court may still try to be achieved during conciliation following the date of the first hearing two months. To this end, the Commission may defer discussion potestativamente cause up to 60 days for -in this period- can be presented a proposal for the pre-agreed upon administration and accepted by the other party.

  Of course, the instance is present before that moratorium, the President of the Commission checks whether subsist budgets and conditions of admissibility of the case and if so, declares the termination of the trial by Decree termination of the subject matter of litigation.

  This decree is communicated to the part and Payment must be made on the assumption -Same previously for the full amount or the first installment to twenty days following the date of communication.

  Finally it may happen that conciliation is not considered acceptable by the tax commission in which case the chairman of the committee sets the date for discussion of the dispute.

  The document where the statement of the President is collected is deposited in secretariat within the date of submission of the proposal ten days.

6. The improvement of the Judicial Conciliation

Under Article 48.3 of D. Lgs. 546/92 in the version given by D. Lgs. 218/97 institute judicial conciliation is perfected through the payment or provision of security.

The main consequence of this is that the declaratory judgment of extinction may not be issued by the Commission until you have verified the regular fulfillment of the obligations in question[279].

With regard to the form of payment, this may be done at once or in installments. In the second case is supported, in general, a subdivision in eight quarterly payments equivalent amounts. Exceptionally, if the amounts exceed EUR 51,645.69 may perform twelve quarterly payments.

As we adujimos to discuss the improvement of Accertamento with adesione the contribuente, the matter of payment fractionation has undergone some changes for the sake

[279] Miccinesi, M., "Accertamento con adesione and giudiziale conciliazione", op. Cit., P. 25.

of the approval of Law n. 311/2004 of 30 December (Budget Law 2005), affecting the collateral effects of a default and nonpayment of quotas (Article 419 of Law n. 311 partially amended Article 48 D. Lgs. N. 546/1992).

In this sense, considering the new regulations, provided that the debt payment is deferred must be provided consistent policy fideissoria guarantee or bank fideussione throughout the period of fractionation increased by one year[280].
Regarding the time of payment, it must be paid during the 20 days following the date of writing the verbal process, either the entire amount or the first installment payout guarantee covering the amount of the remaining outstanding installments of conduct and legal interest calculated in relation to the same date becomes effective the first installment; for the entire period fractionation of the increased amount in one year (art. 48.3 of Legislative Decree no. 546/92).

It is to repair, as so does Professor Miccinesi[281]- that Article 48 cited refers only to the improvement of conciliation when it occurs in the course of the public hearing and then the act of verbal process in which the amount of the sum due is collected is drawn, interests and sanctions as stated. However, in the event that conciliation bring cause of a simplified and no regular procedure, that is, on the assumption that the present authorities a proposed settlement accepted by the taxpayer prior to the discussion at the public hearing there is none forecast on improving reconciliation on the precept that regulates this issue (art. 48.5 D. Lgs. 546/92). For the teacher said this coordination to a defect is due in Legislative Decree. In spite of which, in his view,

In line with this interpretation, the very Agenzia delle Entrate (www.agenziaentrate.it, Guide 2005) provides that payments due may be exercised:

a) In single payment within 20 days from the date of the verbal process (Conciliation Public Hearing) or communication of the Decree of the President of the Commission (Conciliation outside the Public Hearing).

b) If payment is split, the first installment must be paid within 20 days following the date of the verbal process or after notification of Presidential Decree.

Finally, in the event of default, even in the event of default of one of them, quotas, under both the new paragraph 3-bis of Article 48 of D. Lgs. 546/92 introduced by Law n. 311/2004 (Budget Law 2005) and Circular n. 14 / E of the Revenue Agency, Direzione Centrale Accertamento, the following will happen:

a) Nonpayment of one of the first lease payment automatically determines the end of the benefit of installment payments, so that the guarantee will run for the total residual loan plus interest.

[280]See the comments made in this regard in the cap. III, section 6.2; "Improvement of accertamento con adesiones del contribuente: payment and payment", which sets out how the guarantee to be submitted was intended for the purposes of Article 38-bis, of Presidential Decree 26 October 1972, n. 633.

[281]Miccinesi, M., "Accertamento con adesione and giudiziale conciliazione", op. Cit., P. 25 and 26.

b) It assumed that the taxpayer does not pay any of the fees is notified a letter to the guarantor to pay within 30 days of such notification. In that letter indicating the sums due and budgets of fact and law of the tax claim it is contained[282].

c) In the event of default of credit guarantor delegation of the collection in order Agenzia urgency of such sums by the taxpayer and the taxpayer's own guarantor.

Under Circular 235 / E of the Agenzia delle Entrate in cases of non-payment or insufficient payment of the first or single installment, as well as failure to provide sufficient guarantee on the assumption fractionation, the Administration shall report such violations to the tax judge to continue the trial. Circular consequence that also extends to the assumption that judicial conciliation takes place outside the public hearing.

7. The effects of Judicial Settlement

The main effects that occur as a result of the implementation of the Institute of Judicial Settlement are as follows. Namely:

1.-Respect the taxpayer, perhaps the most significant direct effect is the reduction of sanctions on a third of the sums due. It has been said that perhaps the biggest advantage to the taxpayer is that the penalty is calculated on the debt agreed in the judicial conciliation[283].

Note: the reduction of the penalty provided for judicial conciliation is lower than expected for the accertamento with adesione, since the penalties are reduced by one third and not in a room[284].

Moreover, another effect of which has echoed the tax doctrine is that after the wording of Article 48 according to D. Lgs. n. 218 course is reached a court settlement, the taxpayer is not entitled to the resitutución of sums already been paid to the public treasury.

2.- As regards the Treasury, the direct and immediate effect is that within 20 days proceed to the recovery of the sums concordadas.

In the opposite case, that is if the taxpayer does not pay, since the verbal process of judicial conciliation is sufficient for recovery of sums due title, such amounts with the relevant surcharges will be required[285].

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[282] Residual revenue on interest at the statutory rate will be rotated and therefore the administration should indicate in communication the date on which the interest due to the effect that the Guarantor can proceed to the calculation of the amounts due.

[283]PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 157.

[284] On these aspects can be found, among others, GALLO, S., giuridico Manuals professionale di tributary diritto, ed. IPSOA, 2001, pp. 133 et seq.

[285] Vine. Tosi, L, Il Processo again ..., op. Cit., P. 116

Direct consequences that become effective income twenty days are among others the following:

- Effective increase in actual revenue
- Decreased administrative costs and bureaucratic
- Reduction in procedural costs given the lite is avoided.

3.- As for the judicial process, the main effect is that the trial termination of the subject matter of the litigation

If you have reached the judicial conciliation through the ordinary procedure at a public hearing, the pronouncement of the judge declaring the extinction of the dispute is not revocable because the parties have already expressed an irrevocable will and therefore does not fit the hypothesis in a second time to change the decision already made[286].

When, unlike the previous one, has been reached conciliation via the simplified procedure, the Decree of the President of the Commission declaring the extinction fact is appealable within 30 days of the communication of the decree of the President to the parties, however, this is irrevocable[287].

4.- In relation to possible criminal purposes it should be emphasized that judicial conciliation does not produce effects in a criminal court, which means that[288]:

- Does not extinguish any tax offense
- Not undermine the possibility that the criminal court liquidates the criminally relevant facts.

[286] PACE, F., Il contencioso in materia di dirette imposte; op. cit., p. 265.
[287] PACE, F., Il contencioso in materia di dirette imposte; op. cit., p. 265.
[288] PATRIZI, B., MARINI, G., PATRIZI, G., Accertamento con adesione, conciliazione and autotutela, op. Cit., P. 158.

CHAPTER VI

Legal costs ITALIAN TAX IN THE PROCESS CONTENCOSO. IN PARTICULAR, THE ALLOCATION IN court costs "CESSAZIONE DELLA CONTENDERE STUFF ".

1. Introduction. Concept and legal regulation

Just started the nineties in Italy, took place -after years of discussion- a major reform in Tax Dispute Process whose purpose was to achieve the homogenization of it. Thus, under the legislative delegation contained in Article 30 of Law 413/1991 they saw the light of Legislative Decrees 545/92 and 546/92 for the sake of which completely transformed the discipline of tax litigation.

Among the matters that were the subject of reform is the issue of legal costs and other procedural institutes like Conciliazione Giudiziale studied in the preceding chapter of this book[289]. As far as we are interested in knowing, the regulation of financial management attributable to the tax process in court costs is regulated in Articles 15 and 46 of Legislative Decree 546/1992. Namely[290]:

1. Article 15, Leg. 546/92: On this precept, with general character establishes the legal regime of the costs in the tax process. It provided that they will be charged to the unsuccessful party judgment (soccombente), notwithstanding that the judge can offset all or part of the costs of the proceedings[291].

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[289]The new regulation of legal costs -such as has been said, largely responded to the need for litigation deflactivos instruments. Among others, PULCINI, M., "The condanna alle spese tax litigation nel" Il treasury, n. 38/1999, p. 12249-12250.

[290]The previous legislation provided for in the Decree of the President of the Republic (DPR) 636/72 excluded the applicability of the Institute of Soccombenza (imputation for costs against the losing party) in the tax process. Article 39 said: "No tax process apply to the provisions of Article 90 to 97 of the Codice di Procedura Civile".

[291] Article 15 of Legislative Decree. 546 reads: 1. "The losing party is ordered to reimburse the costs of judgment that are settled with the sentence. The Tax Commission can offset all or part of the costs, under Article 92.2 of the standard Code of Civil Procedure ". (Art, 15. Spese of giudizio. 1. Part soccombente è condannata to rimborsare spese sono le che giudizio liquidate the Commissione può sentenza Tax dichiarare in tutto Compensate or in part le spese to dell'art standard, 92 , secondo comma, the Code of Civil Procedure).

2. Unlike the previous case, where regulation coasts generally is entered, Article 46 regulates the issue of legal costs in the tax litigation process but confining its scope to a number of specific budgets. Specifically, the article discusses the legal costs in cases of "definizione delle pendenze tributarie" or any other case of "cessazione della matter contendere" (cessation of the subject matter of litigation. Art. 46.1 Legislative Decree 546 / 92).

> Note: In the area of taxation are considered as hypothesis definizione delle pendenze tributarie the following assumptions: the condono, the withdrawal of an act or annulment of the act in self governance and the giudiziale concilizione[292]. In short, it is as we have had occasion to study along this work-institutes created to reduce the number of appeals pending in the tax litigation
>
> Among the cases referred to Cessazione della matter contendere, include, in addition to the above, others such as reimbursement from the Administration to the taxpayer sums it has paid unduly[293].

Regarding procedural expenses cessation of the subject matter of litigation the legislature has made a derogation on the general principle of condemnation of the costs of the trial of the party who loses in court, it does not impute costs to the losing party but which makes them fall on "the party which anticipated." It follows from art. 46.3 l Leg. 546/92 which states:

> "The costs resulting from the termination of the trial in the cases of paragraph 1 of art. 46 shall be borne by the party who has anticipated, unless different provisions of law. "

2. Differences between "Cessazione della matter contendere" and other procedural institutes

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In the alternative the regulations established in the Civil Procedure Law (Article 1 of Legislative Decree 546/1992) shall apply.

Art 92 of the Code of Procedura Civile. (Condanna alle spese per singoli atti Compensazione delle spese.). è reciprocates or concorrono soccombenza giusti altri motivi, il guidice può will compensate, partially or per intero is vi, we spese tra le parti.

[292] Vine. Circular 98 / E of Income Agency.

[293] *In tax field sono di cessazione considerate ipotesi della materia of Contendere the giudiziale conciliazione, il "condono" or l'il ritiro annullamento dell'atto in aututela (cfr. Circolare 98 / E 23 Aprile 1996) and nel caso di controversy per Ripetizione di quanto il indebitamente pagato dal contribuente, il rimborso somma di tale da part dell'Amministrazione finanziaria* (Cf. Comm. Trib. Prov. Gorizia, sez. II, 1996 Maggio 25), in Boll. trib., n. 2/1999.

Exposed the legal regulation of legal costs in the tax litigation process, it seems appropriate to analyze in more detail what is meant by "cessation of matter of the dispute or matter in question, distinguishing it from other procedural institutes as a waiver either resigns inactivity part, either resignation "agli atti", ie, by abandoning the process and distinguish it from the "sopravvenuta carenza di interesse".

TO) Both legal practice and scientific doctrine have defined the cessation of the subject matter of the dispute as a situation in which -a result of an event occurred during the pendency of Judgment contestants no longer have an interest in continuing the trial, being no longer necessary jurisprudential pronouncement claimed or the occur an event that for reasons of public order make impossible the continuation of the process[294]. For example, if the administration proceeds to the cancellation of a settlement via declarative autotutela during the pendency of a trial ceases matter at issue.

So, note that in both cases where litigation is pending or the condono debt occurs, either withdrawn by the Administration the tax act autotutela, or you reach a court settlement as a consequence of urged the giudiziale conciliazione before the Provincial Tax Commission, or other cases such as the Administration effectively reimburse the sums paid to the taxpayer ceases the subject matter of litigation.

It has been discussed a lot about the nature of that statement (of cessazione della matter contendedere), in the sense of whether the sentence under which ends the lawsuit is a judicial pronouncement of merit (background) or so. Jurisprudence and doctrine consider it a statement of merit, which has value of a final judgment without any possibility, for the sake of art. 2,909 of the Civil Code, art. which it is fully applicable in administrative law and tax budget capable of constituting a di ottemperanza (execution of judgments) trial[295].

B)Such an institute is distinguished from the "sopravvenuta carenza di interesse" which occurs when one of the conditions lack of judgment, that is, when a part of the process while recognizing the reasons of the other, does not fully satisfy your interest. In practice is missing one of the conditions to continue lite because the appellant still not getting full satisfaction of his claim no longer has interest and use to get to the judgment of merit.

An example of this hypothesis is the case in which the tax authorities pending litigation removes a tax settlement and at the same time gives another "integrative" or "substitute" act. In such a case it is not accurate to speak of cessation of the subject matter of dispute because the taxpayer is not definitively released from the claim of

[294] Cfr. MONTESANO-arieta, Trattato di Diritto processuale Civile, II, 1997, STEFANO, The cessazione della materia of contendere, Milano, 1972, MANDRIOLI, Corso di Diritto processuale Civile, II, 334, RUSSO, Cessazione della materia of contendere, "Enc. Giur. Treccani ", VI, Rome, 1988, GLENDI, C.," condanna delle spese di estinzione in case of giudizio per cessata matter contendere ", in Riv. giur. trib., 1997, A. Benigni "condanna alle spese and RESPONSABILITA 'processuale aggravata nella cessazione della materia of contendere" in Dir. prat. trib., 2001, Cass., n. 8829/1997; Cass. H.H. UU., N. 6625 and 622 of 1997.

[295] In the tax process see art. 70, D. Lgs. 546/1992; on the vine administrative process. art. 37 L. 6 dicembre 1971 n.1034.

the treasury. "The object of judgment remains simply no longer interested in seeing annulled withdrawn by the Financial Administration Act" (GLENDI, C.).

C) It is also distinguished Renunciation, which can have two modes[296]:

- Renunciation agli atti that occurs when the proceedings a party decides not to pursue or simply abandon the trial. In this case it shall reimburse the costs to the other party unless a different agreement between them (art. 44 Legislative Decree no. 546/92, in taxation)[297], Y

- Waiver inactivity part, consisting of a part does not continue, resume or integrates the trial -in the term provided by law or by the judge. In these cases the costs of prosecution are borne by the party which anticipated (art. 45 Leg. 546/92, in taxation)[298].

Procedural institutes "cessazione della matter contendere" and "resignation" are distinguished by both the factual and the effects. For the purpose, the statement of cessation of the matter at issue is a ruling on the merits, substantial, preventing another lite on the same subject are being carried out, while the decision on the resignation in all its forms is a pronouncement of law is ineffective final judgment and does not entail the ineffectiveness of possible sentences of merit (bottom) that can be pronounced in the course of the dispute.

3. The allocation of legal costs in the Litigation Process
Taxation in cases of "Cessazione della matter contendere".

3.1.- Problem statement. scientific doctrine and jurisprudence

We now analyze cases where the cessation of the subject matter of the dispute (art. 46) and its relationship to the costs of prosecution, issues on which there is much controversy and strong disagreement occurs.

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[296] The distinction between the removal of self governance act (by the government) and the renunciation by the taxpayer, vid. Cesare GLENDI, "condanna alle spese di estinzione in case of giuidizio per cessata matter contendere" Journal di tax Giurisprudenza, n. 10/1997, p. 959.

[297] Art. 44 (Extinzione of processo per renounces the ricorso) .- 1. Il Processo if extinguishes per renounces the ricorso. 2. ricorrente Il che waiver must rimborsare alle altre parti le spese diverse unless agreed fra parrot.

[298] Art- 45. (Extinzione the processo per inattività delle parti) .- 1. Il processo if extinguishes nei cui le parti almost in alle quali spetta di proseguire, riassumere or integrare yl guidizio non provveduto entered via abbiano il termine urgent Stabilito dalla legge or dalla legge che dal Giudice autorizzato sia to fissarlo. 2. Le spese the process estinto standard codicil 1 restano to Carico delle parti che hanno you anticipate. (...).

3. Le spese of estinto guidizio a codicil standard restano cousin Carico della che part he has anticipate, except di legge diverse arrangement.

In this sense can be seen, on the one hand, the interpretation of jurisprudence and doctrine and secondly, the interpretation of the Constitutional Court.

The main problem arises from the wording of Article 46.3 of Decree 546/1992. This paragraph refers to the costs to be paid in cases of cessation of the subject matter of the dispute, understanding that must assume the costs the party that has anticipated, instead of allocating costs to the party unsuccessful. This causes, that claimed at first instance, it is always the taxpayer who pays the costs, so that if the administration once called the process, for example, removes the act autotutela, not be required to bear the costs of judgment, because the costs are paid by the taxpayer. And also pay when is the taxpayer who loses.

Note that in the case cited earlier if the act is removed by autotutela it is because it was illegitimate, ineffective or inappropriate tax administrative act, despite everything, the taxpayer who is forced to go to court to challenge the act even in the best case, that is, that the act is removed, is forced to pay the costs of prosecution[299].

In response to the dictates of Jurisprudence[300] and scientific Doctrine[301] This situation is contrary to the following principles:

a) Principle of equality (Art. 3 CI)
b) Right to effective judicial protection (art. 24 CI)
c) Principle of efficiency and effectiveness of public administration (art. 97 CI)

a) *Principle of equality*: The disparity of treatment between the Administration and the taxpayer laments. The tax authorities under that legislation can remedy the error by

[299]In these cases it has been said that the regulation of Article 46.3 is not "in accordance with logic." Note that because the taxpayer is notified that a tax is illegitimate act that should enable the trial to protect their own interests. Finally the trial concludes with a statement of cessation of the subject matter of the lite by the Tax Commission (judicial tribunal tax), which did not even examine the merits because the act is annulled in the process of self governance. Repárese the taxpayer to an unlawful act must not only turn the instruments of legal protection provided for in order to assert their rights but must also bear the costs, which is a penalty for taxpayers who uses, situation against reacted including the Commissione Provinciale Pisa (CT also Piedmont, Macereta, etc., as well as the court Cassazione in some statements). Vid., GRAZIANO, Fabio, "Le spese di guidizio and the cessazione della matter contendere" Rivista di Giurisprudenza tax, n. 6/2002, p. 560.

[300] Jurisprudence, cfr. tra tutte, Comm. Trib. Prov. Lecce, sez. IV, 23/09/1997, n.60, Comm. Trib. Prov. Reggio Emilia, sez. VI, 04/02/1997, n.1, Comm. Trib. Prov. Torino, sez. XV, 19/03/1999, n. 24, Comm. Trib. Prov. Torino, Sez. XXXIII, 14/04/1999, n. 25, Comm. Trib. Reg. Piemonte, sez. XIX, 23.08.1999, n. 160, Comm. Trib. Reg. Puglia, sex. VII, 15/03/1999, n. twenty.

[301]Cf. Doctrine. Tra tutti, G. PORCARO, "Ritiro of provvedimento and refusione delle spese di lite, in il Fisco" n. 45/97 G. Ferraù ', "Le spese of estinto giudizio to Carico della che part he has anticipate (note to sentenza Corte Cost. N. 53/98)" in Corr. Trib., N. 20/98 BUSCEMA A., "The declaration della cessazione della materia tra Contendere giudicato sostanziale and di soccombenza principle", in Treasury yl, n. 22/1997, GRAZIANO, F., "La Consulta" saves "le spese the giudizio anticipate dalla part (note to Ordinanza Corte Cost. N. 465 of 11/03/2000)" in Corriere Tax, n. 17/2000, M. Fossa "The discipline delle spese della Corte Costituzionale to vaglio," Dir. Prat. trib., II, 1999, GLENDI, C., "condanna delle spese di estinzione in case of giudizio per cessata matter contendere", in Riv. giur. trib., 1997, G. PETRILLO, "Le spese processuali, nell'estinzione the giudizio per cessazione della materia of contendere" in Treasury yl, n. 31/99.

issuing a statement of "annulamento" in autotutela without suffering any consequences for this in respect of the procedural costs. While the taxpayer in the same situation, can only resort to the resignation of the resource (resignation agli atti), ex Article 44 Legislative Decree. 546/92, must, however, reimburse the procedural costs to financial management.

In addition to this, it is also contrary to the principle of equality by diverse regulation for costs in the tax process one hand and in the civil and administrative process, on the other hand; because in civil proceedings[302] and administrative[303] the virtuale soccombenze applies: that means that the judge "may" determine, where appropriate, that the losing party pay the legal costs[304]So that it is free to say whether the costs charged to the losing party in the process.

b) *Right to effective judicial protection*(Art. 24 Italian Constitution). this principle is violated because, in a fair fight, if the taxpayer is due in the process should not have to pay the costs. This is a disincentive for taxpayers, even knowing that he is right and can enforce it in court, in any case must pay court costs[305].

c) *Principle of efficiency and effectiveness of public administration* (Art. 97 Italian Constitution)

It is also considered that such legislation is contrary to Article 97.1 of the Italian Constitution (principles of effectiveness, efficiency and impartiality of public administration), because if the Administration still pendency of litigation has possibility to withdraw acts by it dictates illegal, inefficient, or inopportune, without reimbursing costs to the injured party, it does not contribute to improving the effectiveness, efficiency and smooth running of the administration[306].

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[302] Principle established by case law, but not by law. Judgment Cassation Court ....Cass., 26/04/1993, n.4869, cass., 24.09.1994, n. 7847, Cass., 14/04/1995, n. 4278...

[303] Art. 23 of Law 1034-1071 of the Regional Administrative Tribunal.

[304]In this sense it has been said that the regulation under Article 46.3 violates Article 3 of the Italian Constitution because while other jurisdictions (civil, administrative, ..) in the case of public administration exercising the autotutela, the body should declare ceased the subject matter of the dispute and, where appropriate, condemn public administration according to the "soccombenze virtuale" in the tax process public administration can run the autotutela and get the declaration of cessation of the subject matter of the dispute without power it will eventually sentenced to expenses for virturale soccombenza. GLENDI, C., "condanna alle spese ...", op. Cit., P. 959.

Similarly GRAZIANO, F., "Le spese di giuidizio and the cessazione delle contendere matter". Revista di tax giurisprudenza, n. 6/2002, p. 561.

[305]Article 46.3 may also conflict with Article 24 of the Italian Constitution (effective judicial protection), since it limits the exercise of the right to defense of the appellants, unlike public administration. For the applicants, despite having reason they may resort not because they know that public administration after recognizing their own mistakes, puts an end the dispute by leaving recurrent costs of the process. GLENDI, C. "condanna alle spese ...", op. Cit., P. 959.

[306] Cfr. Comm. Trib. Prov. Crotone, ordinanza di remissione alla Corte Costituzionale of 29 ottobre 1996.

3.2.- The doctrine of constituzionale Italian Court

On the other side is the view of the Corte Costituzionale, who has always turned a deaf ear to these arguments, not considering there because of unconstitutionality[307] and proclaiming, on the contrary, the constitutionality of Article 46.3 of Legislative Decree 546/1992.

First asserts that there is no violation of the principle of equality for the different treatment received by the matter of costs in the case of cessacione della matter contendere in the tax process, with respect to civil and administrative proceedings, given the specificity of tax process (regarding both the organ that decides as to the subject matter of judgment)[308].

In addition, the full autonomy of such procedural system prevents taking a procedural model parameter of the other, given the absence of privilege for Public Administration[309].

The Corte Costituzionale says it is not paragonable regulation Articles 44 (waiver of liability: which provides that anyone who renounces the lawsuit must reimburse the costs, except different agreement between them) and 46 (cessazione della matter contendere), given the various budgets and effects they cause, and therefore excluded any privileged position for financial management drifter confrontation between such institutes[310].

Moreover, the Constitutional Court said that the art is not violated. IC 24 because the principle of the sentence court costs to the losing party is a general principle but not absolute, since it can abrogate; well for good reasons (as provided for in Article 92.2 of the Code of Civil Procedure.); although in the case in which the particular characteristics of the process required. Furthermore, according to the Court it does not prevent taxpayers exercising their right to defend themselves in court.

The Court finally exclude the violation of Article 97.1 because the principles CI containing relate to the functioning of public administration and in this case, the functioning of the judiciary from the administrative point of view. Consequently, such a rule can not be considered as a parameter of constitutional legitimacy of rules that regulate the exercise of the constitutional function.

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[307] Among others: judgments of the Constitutional Court of: 12.03.1998, n. 53; commented by Ferraù, G. in tax Corriere n. 20/1998, p. 1558; October 28, 1998, n. 368; March 11, 1999, n. 77; June 23, 1999, n. 265; R Quattro Codici della Tax-big reform, CD-ROM, IPSOA; November 3, 2000, n. 465 and n. 368 n 1998 and Ordinances. 77 and n. 265 1999.

[308]GRAZIANO, F., "Le spese di giuidizio and the cessazione delle matter ...", op. Cit., P. 561, in footnote No. 4 cites judgments of the Constitutional Court in which reference to the specialty of the tax process is the following: January 21, 2000, n. 18; January 10, 2001, n. 6; February 23, 1989, n. 76; December 10, 1987, n. 506, etc.

[309] *Corte Costituzionale*12/03/1998, n. 53

[310]F. GRAZIANO, "La Consulta" saves "le spese the giudizio anticipate dalla part (commentary on the judgment of the Constitutional Court n. 465 of 11/03/2000), in Corriere Tax, n. 17/2000.

3.3.- latest trends Jurisprudence: The charge for costs and the tax authorities also in cases of cessation of the subject matter of litigation according to various dicta of various tax Provincial Commissions of Italy, and under certain judgments of the Court of Cassazione Italiana

Without prejudice to the doctrine established by the Court Costituzionale there have been several attempts resulting from various judicial courts (Commissioni Tributarie and Court of Cassation) to apply the principle of virtuale soccombenze the tax process. In this sense it can be seen among others the judgments of the Com. Trib. Prov. Reggio Emilia[311], CT Prov. Di Lecce on May 23, 1997, n. 60*[312]*; Com. Trib. Prov. Of Pisa[313]*; CT Prov. Of Torino*of 3 September 2001, n. 71[314].

Such statements affirm the need for costs of financial management in the event of termination of the subject of the dispute without going to develop legal reasoning[315]. Limited to stress that contrary to the general principle that a party system that was due to start an action against an act dictated by the tax authorities should bear the cost of the trial, when the latter realizes the error and removed.

> Note: Notwithstanding the above, is a finding of judicial rulings applying faithfully (rigorously) letter of Article 46.3 of DL 546/1992, such as sentences Com. Trib. Reg. Basilicata, of 2 December 1999, n. 299 and 2 March 2000, n. 37; both R Quattro Codici della tax-big reform, CD-ROM, IPSOA; Com. Trib. Reg. Lazio of 14 May 2001, n. 272 in Tributi, 2002, p. 287[316].

Another attempt to seek the sentence in the financial management process in the case of annulamento of a tax settlement and subsequent issuance of a new settlement costs can be found in the judgment of the Provincial CT Puglia[317]. This court has called the hypothesis of notification of a new replacement notification liquidation of the above hypothesis as a "renunciation of ricorso" ex. art. 44.2 D-Leg. 546/1992, condemning the Administration (as established that standard) to reimburse the costs to the taxpayer.

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[311]Cfr. Comm. Trib. Prov. Reggio Emilia, cit.

[312]In this judgment the Tax Commission Lecce literally states that if the tax process is canceled by the financial administration via autotutela the contested measure, the Tax Commission must declare ceased matter of dispute to the senses of Article 46.3 of the D . Lgs. 546/1992, but you may condemn the same administration costs of the trial, following the criterion of virtuale soccombenza.

[313]Cfr. Comm. Trib. Prov. Pisa, sez. VI, 11/05/2001, n. 43.

[314]Commented by GRAZIANO, F., "The questione delle thickens ...", Revista di Giurisprudenza tax, n. 2/2002, p. 180.

[315]G. PORCARO, "Ritiro of provvedimento and refusione delle spese di lite" in Treasury yl, n. 45/97.

[316]Cited by GRAZIANO F., "Le spese di giudizio and the cessazione della matter contendere", op. Cit., P. 561

[317] Cfr. Comm. Trib. Reg. Puglia, cit.

However, we disagree with such reconstruction considered entirely unfounded and contrary to law. In fact, the ability to renounce recourse is proper only to the taxpayer, he has seen through recourse to challenge the act of liquidation. Therefore, in the case of withdrawal of a liquidation and replacement by a new, one should speak not of resignation agli atti, but cessazione dela matter contendere or even better inadmissible demand for sopravvenuta carenza of interest[318].

For its part, the Com. Trib. Reg. Piedmont[319]It has established that it is necessary to distinguish the case in which the annulamento of a tax settlement occurs before or after the action started. Only in the latter case should be considered legitimate sentenced to pay court costs, since if the tax measure is annulled before it is turned, the taxpayer does not need to challenge the act and therefore does not need incurring legal costs, without prejudice, however the act has been annulled by the administration can also decide to use[320].

Finally it is referring to two judgments of the Court of Cassazione Italian (Cass. June 11, 2001, n. 7833 and October 4, 2001, n. 12276), which have not implemented the mandate of Article 46.3 of Decree 546/1992 with in order to redirect equity a situation which penalizes the taxpayer-recurring[321].

[318] In the Regional Court (2nd degree) however, can also produce a waiver agli atti by the Financial administration since the art. 61 of D. Lgs. 546/92 it expected incompatibility unless the appeal procedure can apply rules adopted for the procedure of first grade and therefore also the art. 44. (*Nel secondo degree invece if potra 'avere anche agli atti one rinuncia part dell'Amministrazione finanziaria seen da che l'art. 61 of D.Lgs. 546/1992 che prevede except incompatibilita 'nel procedimento d'appello if osservano in quanto le norme applicabili dettate per il procedimento di quindi anche prime degree and l'art. 44*).

[319]Cfr. Comm. Trib. Reg. Piemonte, sez. XXXI, 07/06/2000, n. 110.

[320]A. CORIGLIANO 'Cessazione della materia of contendere and spese of estinto giudizio, in Corr. Tax, n. 37/97.

[321] Commented by GRAZIANO, I. "Le spese dell questione the tax processo ...", op. Cit., P. 182 and 183.

CHAPTER VII

The body responsible for ensuring RIGHTS OF TAXPAYERS IN ITALY: IL guarantor of CONTRIBUENTE

1. The origin of ombudspersons taxpayer in Italy: its existence in comparative law

Chapter II began this book by saying that during the nineties of the twentieth century in Italy they are gestating a series of legislative improvements headquarters administrative procedure aimed among other objectives to promote the rights and guarantees of taxpayers to balance the balance of power between government and taxpayers.

De facto, the aforementioned decade -a effects opens here interesan- with the approval of the Law of reform of the Italian tax procedure (Law 214/1990, of 7 August) with the efforts made to strengthen the guarantees of citizens under administrative procedures.

Ten years later, that is, it spent the nineties, would see the light of Law 212/2000, of 27 July (Statuto dei diritti of contribuente), Law -with cause that text n. 214/1990 administrative-procedure reform, called contains important innovations to reduce uncertainty in the application of the rule and to establish a tax discipline based on principles rather casuistry, stable over time, reliable and transparent[322].

Among the rights and guarantees that Law 212/2000 has to recognize good taxpayers is precisely the creation of an ad hoc body set up in order to protect the interests of taxpayers, called "Guarantor of contribuente" so that the figure of taxpayer advocate appears for the first time in the Italian tax legal scenario on the occasion of the adoption of the Law 212/2000 of 27 July on "Disposizioni in materia di Statuto dei diritti of contribuente"[323].

In broad terms it can be said that the repeated Law 212/2000 of taxpayer rights was an important milestone in Italian tax law for the two following reasons: firstly, enshrines the modern conception of the tax phenomenon that had been taking shape in legislation Italian tax along the nineties, aiming to make real a new model in the treasury-taxpayer relationships inspired the idea of administrative transparency[324]and proper functioning of

[322]On these particular can be seen: BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, ed. Cedam, 2002, pp. 173 et seq.

[323] pertains to reform the Italian administrative procedure affected as has been said within the scope of the statute of taxpayer law. Here, ROZAS VALDÉS, JA, HERRERA MOLINA, P., Mauritius SUBIRANA, S., "Status taxpayer: a comparative view" Chronic Tax, 94/2000, p. 119.

[324] See about GIANLUCA FERRARA PATRIZI and GABRIELA, "The Definizioni degli imponibli in contraddittorio e l'Amministrazione Finanziaria" Il Fisco, 1999, p. 6488; in similar vein, Consolazio, ML, "L'accertamento con adesione del contribuente" Rass. Tax, 1997, p. 67; Massimo STIPO, "L'accertamento con adesione del contribuente ex D. Legs. 19 giugno 1997, n. 218, nel quadro generale delle obbligazioni di diritto

financial activity. While, on the other hand, the Italian legislature introduced into their own country although with some belatedly a law and a recognized figure in foreign legislation for many decades. Underline it will not be until 2000, date on which Italy can count on a law guaranteeing the rights of taxpayers, thus becoming part of an "international scenario, aimed at strengthening the legal position of taxpayers in their relations with the administration"[325]. Underline that only two years ago saw the light in Spain Law 1/1998 of Rights Taxpayers according to the widespread occurrence of what happened in developed countries cut both continental and the environment of the Common Wealth, if well with the peculiarity that in Italy and in Spain only the protection of the rights and guarantees of taxpayers, unlike other countries which accommodated both sides of the coin discipline, that is, to "rights "attending taxpayers and" obligations "that weigh on them.

> Since the mid-seventies of the twentieth century Western democracies were forged more developed a set of rights and obligations of taxpayers who were pleased to collect documents or charters of rights and obligations of regulated entities in tax matters.
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> 1975 dates the "Charte du contribuable" or Taxpayer inspected letter published by the French tax authorities, with the aim of making available the taxpayer at the beginning of inspections. This document is updated in 1978 and 1986 is drawn back one of "Taxpayer Rights inspected". By Law 87/502 of 8 July 1987 the "legal" obligation that this letter be attached to the notice of the commencement of inspections as a substantial procedural requirement under penalty of nullity of the same set, while reportedly linking Administration to its provisions (Livre des procédures tax) as well as the guiding principles of the procedure, location, duration, development, restatements, rule of burden of proof, penalty system,[326].
>
> In Canada, the Charter rights of taxpayers approved in 1985, months later, Britain approve the famous Taxpayer's Charter or Charter of Taxpayers where the rights and guarantees of these relate to the tax procedure. For its part, the US adopted in 1998 called "Taxpayers Bill of Rights," which has been subsequently amended and whose content is part of the Act Amending the Tax Administration: Restructuring and Reform Act of 1997, incliuida in the Internal Revenue Code . Within the Common Wealth deserves to be highlighted the "Taxpayer 'Charter" the Australian Goverment; Australian Taxation Office, where their rights to the taxpayer, their obligations, the services provided by the tax authorities and the mechanism are expected to claim against decisions,

In line with the statements made in the preceding paragraphs, among the most striking developments of the law regulating the rights of the taxpayer in Italy, it is certainly remarkable institution of "Guarantor of contribuente" (Taxpayer Advocate). He claims

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pubblico e il problema della giuridica natura "Rassegna tax, n. 5/1998, p. 1251; Morin, T., The Statuto del contribuente, ed. Thing & Come, 2000, p. 61, among others.

[325]ROZAS VALDÉS, JA, HERRERA MOLINA, P., Mauritius SUBIRANA, S., "Status taxpayer: a comparative view".., Op cit, pp. 84-86 and 124. Work on a series of reports and seminars on the rights and guarantees of taxpayers, such as the Questionnaire (1987) and approved by the OECD Council of 27 transcribed Report April 1990 (Taxpayers' Rights and Obligations, OECD, Paris, 1990); Conference convened by the European Foundation for Fiscal Studies, the Erasmus University Rotterdam, 1994, on the rights of taxpayers in the European Union, or even the 41st Congress of the International Fiscal Association on the theme Taxation and Human Rights.

[326]On the subject can be found: Cubiles SÁNCHEZ-LEAN, P., "film speak taxpayers in France, 2000, n. 107, pp. 413 ff and in general ROZAS VALDÉS, JA, HERRERA MOLINA, P., Mauritius SUBIRANA, S., "Status taxpayer: a comparative view"., Op cit, pp... 86 et seq.

figure[327]- is one of the privileged to try and balance in relations between the Administration and the taxpayer financial instruments, while the body responsible-just-to seek the implementation of the rights and guarantees included in the legal texts should not be mere declarations of principles.

Its origin[328]Far from being a native of Italian tax law, it comes from abroad. Particularly in Sweden, where the first record of this figure is under the name "Ombudsman" (whose literal meaning is "representative" or "agent"), created by Act of June 6, 1809. Born with a profile with characteristics similar to those possessed by this; since its inception responds to the configuration independent body with authority to make recommendations to the Administrations to correct the observed dysfunctions. Lightning-fast and quick you can no doubt be branded any, its dissemination throughout the twentieth century in European countries and America, Africa and Asia[329].

[327] Caputi, G. "Il guarantor del contribuente" Corriere tax, 34/2000, p. 2484. Similarly, it states that this figure is intended to ensure a real and concrete balance between the parties of the tax liability. CAPOLUPO, S., and CAPOLUPO, M., Statuto del contribuente and diritto interpello, ed d'. IPSOA, 2000, p. 142.

[328] On the origins and evolution of the figure of defender of the taxpayer, see the documented study of D'AYALA VALVA, F., "Dall'Ombudsman the guarantor del contribuente. Studio di percorso normative. " Rivista di Diritto Tributario, 2000, n. 11, pp. 1050 et seq.

[329] A study of comparative law on the subject is included in D'AYALA VALVA, F., "Dall'Ombudsman the guarantor del contribuente. Studio ... ", op. Cit., P. 1055 et seq.

2. Scope of "Guarantor of contribuente" in Italy

Figure Taxpayer Advocate disciplined in Article 13 of Law 212/2000 the "Statuto dei diritti of contribuente". In this commandment have room for all the fundamental aspects of its legal regime, without perjucio some small modification of the wording following the adoption of laws which subsequent budgets will realize in the corresponding sections of this work.

Under paragraph of Article 13 first:

> *Presso ogni direzione regionale delle entrate e delle direzione entrate delle Province autonome è il istituito contribuente guarantor.*

Which means that in Italy the figure Taxpayer Advocate is legislated by the state parliament with regional and non-state scope, so that to carry out such a requirement a defender of the rights of taxpayers in each Italian Region was created, corresponding dependent Direzione Regionale Entrate and in the two autonomous Povincias of plaited and Bolzano under Direzione Entrate such autonomous provinces.

> Note: The structure of the Italian Ministero delle Finanze is divided into three levels: Central, Regional (or compartmental) and local. Traditionally the strictly operational part of the Ministry has been formed by three major departments [Entrate (income), Territory (land and public property), Dogane (customs)]. By DL 300/99 it is carried out a reorganization of the Ministry of Finance, through the creation of so-called Agenzie Fiscali [Entrate (operational from January 2001), Dogane, Territory and Demaniale), non-economic public bodies exercise the functions previously performed the Departments of the Ministry of Finance. They are endowed with regulatory, administrative, patrimonial, organizational autonomy,
>
> Peripheral organization of local Revenue is structured in 19 Direzioni Regionali Entrate (per region) and two provincial offices for the autonomous provinces of Trento and Bolzano. Of them depend Uffici delle Entrate periferici, which previously fell into Uffici delle imposte dirette; Uffici VAT; Uffici registry; etc., and after the reform of financial management (Legge n. 358/91 of 10 October and DPR n. 287/92 of 27 March) the gradual unification of the Uffici envisaged in the so-called Uffici delle unici entrate, so that each of these administrations only known from various taxes and the number of administrations or Uffici depends on the size of the Province (eg. in Rome there are eight venues in Milan six in Torino three, etc.)[330].

Consequently, the Italian tax legislator renounces set up a unique Taxpayer Advocate throughout Italy, opting for the creation of colleges made up of three components of different origins, based in each of the Italian regions. Unlike, for example, what happened in Spain under state law that regulated the issue (Law 1/1998 of Rights of Taxpayers) under which it was envisaged the existence of a single Council for the Defense of taxpayer with physical headquarters in Madrid and functions throughout the national territory, without

[330]"Contribuente Annuario of 2003" published by the Revenue Agency .; Lupi, R., tax Diritto. generale part. Giuffrè, 2000, pp. 100 et seq., Etc.

prejudice, of course, the corresponding peripheral legislation have been pleased to create a taxpayer advocate with competence in the relevant constituency[331].

Respect the territorial scope of development of the functions of Guarantor of contribuente the question posed more questions and on which there is no unanimous opinion it is to know if the Guarantor of contribuente has or does not have jurisdiction over local taxation.

In the area of local taxes by Law 142/1990 the institution in each municipality or province, of a "civic difensore" to guarantee the impartiality and proper functioning of the provincial or municipal administration, noting also it foresaw abuses, malfunctions, delays the administration in its dealings with taxpayers[332]. However, from the creation of the Guarantor of contribuente by the Italian State Law 212/2000 the Statuto dei diritti the contribuente, the potential problem of overlapping responsibilities between the defenders in relation to local taxes arises.

Despite a widespread view attempting to separate the powers of such circumscribing the performance of the Guarantor of contribuente the scope of the central financial administration[333] and regional and therefore denying that this body has any jurisdiction over local taxation[334]There are also significant partisan doctrinal opinions that competition extends Guarantor local taxes by express provision of Article 1 of Law 212/2000 amending the Statute of taxpayer rights approved[335].

3. Legal nature of the body called the "Guarantor of contribuente"

The spirit that presides over the creation of a body as the defender of the taxpayer is attempting to create a figure that can assist taxpayers in their dealings with the Treasury and who can address the taxpayer when it considers that their rights have been undermined or circumvented by the body financial. In this way, between the Guarantor of contribuente undertaken highlights the role of protection and defense of the interests of the taxpayer, as well as monitoring and reporting of irregularities or dysfunctions observed in the development of financial activity.

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[331] Thus, in Madrid, by decree of the Mayor of July 9, 2004 the Office of the Taxpayer Advocate, attached to the Government Department of Finance and Public Administration is created; or, the Defense Council Taxpayer Community of Castilla y León.

[332] A more extensive commentary on the functions, selection form, legal regulation, etc., the "Civico Difensore" can be seen in D'AYALA VALVA, F., "Dall'Ombudsman the guarantor del contribuente. ... ", op. Cit., P. 1084 et seq.

[333]This is the opinion defended by civic defenders of Tuscany, among others. Vine. the letter of February 4, 2002 sent to the Minister Giulio Tremonti on the Guarantor del contribuente, by civic defenders regionale and Comunale of Florence, requesting the Minister a directive to safeguard the reciprocal competences (state-local) avoiding interference of the State in the autonomy of local authorities (letter published on the internet).

[334]BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 181.

[335] Thus, D'AYALA VALVA, F., "Dall'Ombudsman the guarantor del contribuente. ... ", op. Cit., P. 1090 .; in the same direction, Spaziani TESTA, E., considers that the Guarantor also has competition for local taxes, Il Fisco, n. 26/2001, p. 8914

In this sense it can not be denied that the activation of the Institute guarantor of contribuente may constitute an alternative route to judicial resolution of disputes tax nature to the extent that the intervention of the defender avoid a lite or is filed, filed it, an end to the cause object of the tax litigation process.

For the purposes above, it should be emphasized that the organ of taxpayer advocate has no jurisdictional nature, taking into account Article 102 of the Italian Constitution prohibits the establishment of new special courts, on the understanding that the decisions of the taxpayer advocate are not mandatory execution by the organs of financial management.

Regarding what the legal nature of the defense organ of the taxpayer, the Act establishing this figure (L. 212/2000) says only about the following entry:

"Il guarantor of contribuente, operating in piena autonomia ... (art. 13.2)

In the absence of more specific about the law, the doctrine has poured their own interpretations and thus there who advocates[336] that the figure of "defender" could fit into the genre of legal categories that make up the group of authorities characterized by notes of impartiality, independence[337], Autonomy, security, (such as the Bank of Italy, the Authority to guarantee communications, etc.). Characteristics which confirm and ensure its configuration as a body that is above the parties (administration-taxpayer), with capacity to denounce abuses and faults committed in the areas of public interest and receives no gender guidelines whatsoever on the part of the government. This is opera "in piena autonomia"[338] in the administration.

From other voices, indicated that the meaning of "autonomy" better if attagliathe nature and functions of the guarantor is the "Independence". And precisely this note independence arises is where an opinionazzardata in relation to this functional independiencia can assimilate the guarantor to the model of independent administrative authorities.

4. Composition of the body: Members part the "Guarantor of contribuente".

The collegial body called the "Guarantor of contribuente" consists of three members elected and appointed by the President of the "Regional Tax Commission" or Court of Appeal, in whose district is including the Direzione Regionale delle Entrate.

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[336]We continue in this point BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 175-177.

[337]For a more comprehensive study on the independent authorities in Italy, vid .: Foa, S. I Regolamenti delle autorità amministrativa independenti, ed. G. Giappichelli, Torino, 2002; D'AYALA VALVA, F., "Dall'Ombudsman the guarantor del contribuente. ... ", op cit., P. 1066 et seq.

[338] MAGALÚ, Luca, "The statuto del contribuente ed il suo guarantor", Boll. Trib. 17, 2000, p. 1209.

These charges have a four-year period and may be renewable based on professionalism, productivity and activity already developed[339]. Its members are chosen from the following categories[340]:

a) Judges, university professors of legal and economic matters, notaries, either retired or active. That person elected in this group shall act as President.

b) Leaders of financial management and senior officers of the Guardia di Finanza, formed in a short list, whose members are elected by the Direttore Generale Dipartamento delle Entrate in the case of the civilian component (leaders of financial management) and the Commander Generale the Guardia di Finanza (military component). This short list is made for each of the Direzioni Regionali delle Entrate and its members must have been active for at least two years.

c) Lawyers, economists and graduates in economics or business, retired, chosen from a short list formed for each of the Regional Offices delle Entrate, of the respective orders of membership[341].

retribution: In Law 212/2000 it stipulates that the remuneration of organ components "Guarantor of contribuente" shall be determined by Decree of the Minister of Finance[342].

5. powers of the collegial body called "Guarantor of contribuente"-.

Article 13 of Law 212/2000 on the rights of taxpayers functions attributed to the body responsible for safeguarding the rights of taxpayers are detailed. Common denominator we can say that all the competence framework of the Guarantor is inserted into a channel that

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[339] This is an amendment by Law 289/2002 since the original wording of this provision in the Law 212/2000 provided for a maximum duration of three years, renewable once, without being subject to such conditions renewal.

[340] A more extensive discussion of these categories can be seen in ROSINI, E. "Il Guarantor del contribuente: struttura, competenze, funzioni" Rassegna Tributaria, 1/2004, pp. 43-45.

[341]Reviews, however, have not failed in relation to the determination of bodies including body members "Guarantor del contribuente" are chosen. We review the following (CAPUTI, "Il guarantor del contribuente" Corriere tax, 34/2000, pp 2486-2487.): - the fact that for the purposes of appointing members only membership is required to categories Questioned provided for in paragraphs b) and c). However, other important aspects are not mentioned such specific knowledge of the implications of the taxation; a proven professional experience in the sector; manifest a particular sensitivity to the instance of "protection" of users of public services ....;
It is-likewise-criticized the requirement in relation to the category under point c), which refers to the need in any case try to "retired" people, because it can lead to a discrimination against other subjects of the same categories that have ceased activity, but not having the status of boarders and vice versa, some who have the condition but exert activity subordinately depending third. Requirement it has been said in response to the premise of fairness should also be required in the case of judges, university professors and notaries (CAPOLUPO, S., and CAPOLUPO, M., Statuto del contribuente e diritto d'interpello, ob ., cit., p. 144). Atales other critical categories of membership can be seen in ROSSINI, E., "Il guarantor del contribuente: struttura, competenza, funzioni, tax Rassegna, 1/2004, pp. 43 and 44

[342] They have been fixed monthly six million liras for the President and five million lire for his compenentes. Vine. BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 175.

runs through dialogue with the Administration, which aims to react to this by putting revealed irregularities, improprieties and, in general, those dysfunctions can harming the rights and guarantees of taxpayers and aims -in definitively realize all the maxims and principles recognized by the Law of taxpayer rights.

Undertaken to achieve this, this body has among its tools with the ability to request clarifications, documents, make recommendations, require the respect of the rights recognized to the taxpayer, etc; on the understanding that given the aforementioned legal nature of the same, independent of the judiciary; You may not impose penalties, repressions or any judicial or punitive measure to the failure of financial management. Hence, precisely, it has been questioned by the authors of the effectiveness of the actions of this body[343].

Yet as we shall see later, the Guarantor of Contribuente must inform the Regional Director of the Financial Administration or the Commander di area of the Guardia di competent Finanza, those behaviors administration to determine a disservice to the taxpayers, so initiate any disciplinary proceedings.

In particular, the Guarantor may develop the following actions. Namely:

TO) The first is in line with its configuration as "institutional recipient" of complaints from taxpayers who see their rights violated by the Administration. In this way, the body responsible for defending the taxpayer, either automatically or at the request of taxpayers to submit complaints to this body lamenting malfunctions, irregularities, improprieties, abnormal or irrational administrative practices that could undermine the relationship of trust between citizens and financial management, shall send request for documents or request clarification from the bodies of the competent authorities, who must respond within thirty days.

When this procedure starts parte, the complaint must be made in writing (not fitting the telephone complaint), identifying the address of the taxpayer (DNI, NIF, address, ...), being worth noting the facts and law relating to the case and malfunctions, errors or mistakes attributable to the treasury well known that such complaint shall refer to an individual, specific interest and not a collective interest[344].

It wants to stress that giving such circumstances the "Guarantor of contribuente" is empowered by law to implement the procedure autotutela organ.

Autotutela della amministrazione finanziaria as we saw in Chapter IV of this work- is a general principle of administrative law collected late in Italian tax law (Presidential Decree of 27 March 1992, N. 287), whereby bodies financial administration may proceed unless there is a final judicial judgment, annulment (annullamento) or revoke (revokes) total or partial of the unlawful acts themselves; unfounded or inopportune, by a reasoned process communicated to the addressee of the act.

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[343] Caputi, G. "Il guarantor del contribuente" Corriere tax, op. Cit., P. 2484 et seq. ; BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 183 ff, book which is quoted GLENDI (p. 185), who "is said yl guarantor one organo inutile" and where abundant literature cited thereon.

[344] On these particular concerning the request made by the taxpayer, we have consulted, BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 177-178

The exercise of self governance can also be developed in the case of pendency of trial or in the case of non-contestability of administrative acts have acquired firmness and not necessarily required parte.
The main assumptions on which this tax proceeds typify legal institute in the Ministerial Decree of 11 February 1997, n. 37 and consist of: mistaken identity, logical error or calculation error in the tax budget; double taxation; taxpayer material error easily recognizable by the administration, etc.

The doctrine has stated[345], As indeed it is logical that the performance Taxpayer Advocate in order to activation of autotutela should be limited to highlight, point out the anomalies so that financial management is aware and if necessary to exercise the autotutela, because in otherwise there would be a true and proper removal of competition that would be foreign to positive discipline. Therefore, the initiative of the Ombudsman does not produce immediate or direct effects.

Finally the body responsible for defending the taxpayer must report the result of the activity to the Regional Directorate of financial management or the Command area of the Guardia di competent Finanza, as well as the supervisory bodies, reporting -a turn - of all the person / s who filed the complaint / s.

B) Guarantor of contribuente makes recommendations to administrations in order to ensure the protection of the taxpayer and the best organization of services (art. 13.7 Law 212/2000).

C) It also has the power to access financial administrations to control the correct functionality of assistance and taxpayer information, and accessibility[346] of spaces open to the public (art. 13.8 Law 212/2000).

D)The body responsible for ensuring the defense of the rights of the taxpayer may urge financial authorities in order to be carried to term the requirements set out in Articles 5 and 12 of the Act Taxpayer Rights and Guarantees. Let's look a little more detail the content of the two provisions:

-Competencias the Guarantor in relation to the obligation of the administration of "taxpayer information" -

Article n. 5 of Law 212/2000, headed under the heading, "taxpayer information" provides for the obligation of financial management to provide complete and accurate knowledge of the legislative and administrative provisions in force in tax matters, also seeking the realization of texts coordinated which should be made available to taxpayers in each impositora administration.

[345]CAPOLUPO, S., CAPOLUPO, M., Statuto del contribuente and diritto interpello, ed d'. IPSOA, 2000, pp. 147 et seq.

[346] The law uses the agibilità term, which in this case we understand it referred to the need for the headquarters of financial management meet "minimum" (hours to the public, regime "tails", smooth operation of open public windows, availability of printed information, waiting areas, etc.)

As indeed it has been revealed by the doctrine[347]Despite the existence of the presumption of knowledge of the laws already published, it is clear that its realization in the tax field difficult, for various reasons. Namely: a high technicality of the matter; increased ministerial circulars and resolutions issued by the Financial administration, often unpublished; etc. Hence accurate information on tax regulations is a basic right of citizens in other relevant aspects, such as: avoid incurring penalties, which may even be of criminal relevance. Also for reasons of economy of choice, ie choosing the most advantageous possibility for the taxpayer. Also, an accurate knowledge of tax law revoked in increased administrative efficiency, since it will affect fewer appeals before the Tax Commissions based on violations of a formal nature, valuation errors, etc., that is, in any case resources are based violation of the rules for tax evasion. All this will lead to a decrease in the rate of litigation allocate available resources enabling the suppression of the elusive phenomenon.

Above all and in line with previous considerations, Article 5 of Law 212/2000, complete the duties of financial management information to the taxpayer, ordering that it brought to the attention of citizens by all appropriate means, circular and resolutions have provided and any administrative act or decree be: either on the organization, either on the functions or on financial administrative procedures. -ésta- mention of great importance if one takes into account the inflationary spiral of "minor" administrative rules in recent years are ravaging the tax scenario.

Finally, towards meeting the above designs, Law 212/2000 (art. 5.1, in fine) also typifies the obligation to provide financial management of electronic information for free[348].

-Competencias the Guarantor in relation to the rights and guarantees of taxpayers subject to a verification and investigation procedure-

The functions of the Taxpayer Advocate is also urging the administration to respect the rights and guarantees that the taxpayer should assist in verification and investigation procedures that will be instituted. In this regard, Article 12.6 of Law 212/2000 provides that if the taxpayer notes that the ongoing investigation is not performing under the Act may apply to the taxpayer advocate for it to act where appropriate by the powers conferred by Article 13 of the Act and are analyzed.
In particular, Article 12 of that Act[349] develops the rights and guarantees that the taxpayer has against which a proceeding is brought VERIFICA[350]. Namely:

[347] At this point we follow the CAPOLUPO, S. CAPOLUPO, M., Lo Statuto del contribuente ..., op cit., Pp authors. 36f.

[348]Among the most important email addresses we quote: www.finanze.it; where models of statement of income and the relative ministerial instructions, verification own tax code, etc. are provided Agency for entrate, please consult the www.agenziaentrate.gov.it page.

[349]Article 12 of Law 212/2000 is entitled Diritti e Garanzzie of sottosposto contribuente to Verifiche fiscali. For more information see: GALLO, S., pratico Manuale di diritto tax, ed. Cedam, 1997, pp. 208 ff .; CAPOLUPO, S. CAPOLUPO, M., Lo Statuto ..., op cit., P. 117 et seq .; also refers to the subject, but with less depth, morin, T., Lo statuto del contribuente, ed. Thing & Come, 2000, p. 13.

[350]Check procedure, equivalent to verification and investigation procedure carried out inspection bodies in Spain. It is essentially an activity of tax police as Professor GALLO, S., Manuale di diritto pratico ..., op cit., p says. 209. According to the Dictionary of taxation terms of the Revenue Agency (voice VERIFICA) is called Procedimento di verified the activity of the organs of the Agenzia Entrate or the Guardia di Finanza to control

- Entries, or tax inspections at the premises for the exercise of industrial, commercial, agricultural, artistic or professional activity, must respond to a real need, a need for research and effective control of the site.
- Initiated the procedure of "checks" the taxpayer is entitled to know the reasons for it and the object that justifies starts.
- These activities shall be conducted during regular exercise schedule activity, except in exceptional cases, taking care to minimize disruption to the development of professional activity and trade relations or taxpayer.
- Duration at the headquarters of the taxpayer can not exceed 30 working days, extendable by another 30 more in cases of particular complexity and whenever motivated by dell'ufficio leader (equivalent to chief inspector).
- The tax investigation concluded the taxpayer has two months to submit comments and requirements that must be assessed by the Administration prior to notification of the settlement. During this time, the administration also will return to the seat of the taxpayer to review comments and requests submitted by the taxpayer prior consent of the leader motivated ufficio, for specific reasons.
- There is a right that the proceedings attended by a qualified professional represent you. Observations of the taxpayer and where appropriate professional to assist you, substantiated in the oral procedure must be recorded in writing.
- Finally only when the taxpayer's request, the review of administrative and accounting documents may be made in the office of inspectors or professional actuaries to represent or assist.

AND) The Taxpayer Advocate is also in charge of urging financial administrations to meet the deadlines for the purposes of tax returns[351].

5.- Bodies and institutions on reporting "Il Guarantor of contribuente"

The taxpayer advocate individualize cases of particular relevance in which provisions or behavior management determine injury taxpayers or negative impact on their relations with the administration, bringing them to the attention of the Regional Director of the Financial Management or Commander di area of the Guardia di Finanza and competent Ufficio Centrale per l'Informazione the contribuente, in order that it may be instituted any proceedings discipline.

Amen to that and despite the omission of any reference to it in the Law 212/2000 of taxpayer rights, for the sake of the provisions of the Italian Code of Criminal Procedure, the Guarantor the taxpayer must report to the judicial authority the causes they can be constitutive of crimes committed by the financial administration in the exercise of their

---

the regular fulfillment of tax obligations. It is carried out through direct access or entry into the headquarters of the taxpayer. The scope of the "check" is broader than documentary inspection because one side seeks to control the accuracy and veracity of the obligatory deeds,

[351] For a general theory of tax returns (budgets and actions for recovery of sums paid) we recommend reading ENRICO DE MITA, Principi di diritto tax, Giuffrè Editore, 2000, pp. 359 et seq.

duties, to start -in its case- criminal proceedings[352]; and report to the Court of Auditors the facts constituting damage to the exchequer[353].

Moreover, the Taxpayer Advocate is obliged by law to report -every six months to certain agencies on the progress and performance management. In this sense, will present a report on the activity the Minister of Finance; the Regional Director of Financial Management, the compartmental Customs Directors and Territory and Commander di area of the Guardia di Finanza, identifying the most relevant critical issues and proposing the respective solutions (art. 13.12 Law 212/2000).
Logically, if these high charges transferred to the organs responsible to them such conclusions; as these are taken into account, it will refine the operation and management of financial management, being a very important way to achieve the much acclaimed balance between Administration-taxpayer, while for achieving a transparent financial system, effective and just.

The work of the Guarantor of contribuente is followed by the relevant parliamentary committees regarding the operation of the Taxpayer Advocate. So every year the Minister of Finance informs these Parliamentary Committees on the effectiveness of the work done by the taxpayer advocate and also about the acts and measures taken as a result of the recommendations made by the taxpayer advocate (art itself. 13.13 Law 212/2000).

Finally by Finanziaria Law 289/2002 (LPGE) A new paragraph of Article 13 (art. 13-bis), which provides that each year the Taxpayer Advocate must provide data and information on the state of relations is introduced between the treasury and taxpayers in the field of fiscal policy, both the Government and the Parliament. It appears that what is being asked is that the Guarantor perform a kind of annual report in which statistical data and news on the activity and must send annually to the Government and Parliament are collected.

[352]In this regard, BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 179; MAGALÚ, L., "Lo statuto of contruibuente ...", op. Cit., P. 1209-1210; CAPOLUPO, S., and CAPOLUPO, M., Statuto del contribuente and diritto d'interpello, op. Cit. P. 145.

[353]BUSCEMA, A., FORTE, F. and Santilli D., Statuto del contribuente, op. Cit., P. 179

ANNEXED

STATISTICS ACTIVITY JUDICIAL COURTS DEVELOPED BY TAX IN ITALY

The opportunity of this chapter, introduced as an annex to this work, responds in order to develop and learn more kind of detail the evolution of judicial activity carried out by the Italian courts of justice of the tax order.

It is, in short, statistically explain the conclusions are given in Chapter II of this work and that demonstrate the high efficiency in practice has been the introduction of alternative ways of resolving tax disputes in Italy.

Coordinates that define the contents of this study are as follows:

- From an "objective point of view" the report is limited to tax matters and more particularly to litigation arising from claims that deal with taxes of those who know the Tributarie Commissioni[354]. In this sense, the memories of the Ministry of Finance. Commissioni Tributarie, systematize information in two voices: Direct Taxes and Excise, picking each major tax while a residual item called "Other Taxes" or "Other Taxes" institutes.

- From the "subjective view", a record of the judicial activity carried out by the courts who know of taxation in Italy, which are divided into:

- *Commissioni tributarie di grade I* now called Commissioni tributarie provinciali: Courts of First Instance provincial level
- *Commissioni tributarie di II degree (Apelli*), Currently called Commissioni tributarie regionale: known on appeal and are regional.
- *CommissioneTributaria Centrale*: Unique Court for all Italy with physical headquarters in Rome. It was abolished during the contentious reform held in Italy in 1992 by DL 546, which came into force on April 1, 1996[355].

- With respect to the variable "time", the study traces the evolution of litigation since the beginning of the nineties until recently (2005)[356]. In this time slot the following ranges are studied:

[354] For more information about such claims can be found in Chapter VI, paragraph 3.1 "Matters subject to judicial conciliation" and 3.2 "Acts subject to judicial conciliation".
[355] Cargo volume of outstanding work from that date answers to solve pending cases admitted at an earlier date and are resolved very slowly.
[356] Note: Unfortunately the Ministry of Finance has not made the memories of the years 1998 and 1999. With respect to 1996 only available data for the first quarter so was not included in the study

- From [1990-1993] in 1991 and 1992 various tax remissions are made. By D. Lgs. n. 546/1992 of 31 December, initialed "Provisions on the tax process," the Institute of Giudiziale Conciliazione is regulated, without prejudice to the subsequent regulations that discipline this matter.
- [1994-95 to 1996-97] 1994 is the DL 564/1994 converted into Law 656/1994 approves texts that bring cause accertamento figures with adesione; the autotutela, the concordat di massa and giudiziale Conciliazione.
- [1997-2000]: 1997 DL 217 of June 19, 1997 where the current of accertamento institutes with adesione and giudiziale conciliazione regulation contains approved.
- [2001-2005]: in this five fluid use of legal institutes listed it occurs.

This study was divided into two sections because its embodiment has been performed in two different stages of time. The first section covers the early years [1990 - 2000][357]and to execute the following "sources" were used: the memoirs published by the Ministry of Finance. Ufficio di Statistica[358], taking as elements of analysis data aggregated for all Italy, given the greater representation that this implies; Memories (unpublished) activity by the Tributarie Commissioni[359]As well as the study of various statistical data obtained from the Ministry of Finance, Ufficio di Statistica di Roma.

In this section the developments in the different Commission ï Italian Tributarie is analyzed, for which use is made of instrument time series[360]. Later some indices hosting the evolution and distribution of judicial activity in tax matters so that you can better know the type of litigation that occurs are calculated; the frequency with which processes are solved; the effectiveness of the courts; rates annual resolution; etc., in order to build the framework that allows us to approach the picture presented by connoisseurs Italian courts in tax matters at the time referenced.

The second section of this section covers the five years 2001-2005 and its development has only been able to count the information provided in the reports published by the Ministry of Finance. Ufficio di Statistica, 2005 (www.agenziaentrate.it).

SECTION I- litigation OF THE COURTS DURING ITALIAN TAX YEARS 1990-2000

[357] On the subject is available, ANDREW AUCEJO, E., "Evaluation of litigation in the" tax Rapporto "in Italy, Rivista di Diritto Tributario Internazionale (International Tax Law Review), 2000, n.2, p. 244-278 and ANDREW AUCEJO, E., ROYUELA MORA, V.: "L'evoluzione della litigiosità nelle commissioni nel corso tributarie italiane degli anni 1990-2000, p. 915 "Diritto e Pratica tax, N. 4/2004.

[358]Source: Rilevazione Generale sullo Stato Dipartimento delle Entrate. Commissioni Tributarie. Statistico system Nazionale, Ministry of Finance.

[359] Memories deposited in the Commissione Provinciale di Roma, where both reflected and disaggregated data as the total of the activity of such jurisidiccionales organs studied.

[360] Constructed from parameters such as: - Number of pending records at the start of exercise; - Number of complaints entering the year; - Number of annual total claims (pending the start admitted more); - Complaints resolved a year; - outstanding at the end of each year claims.

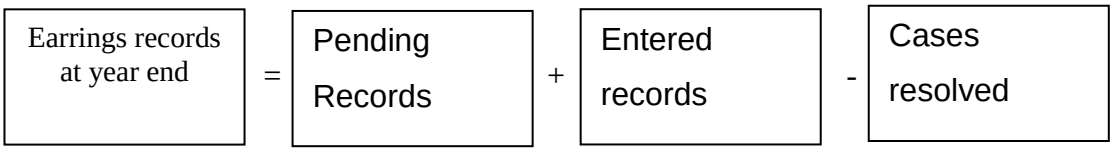
I. 1. Evolution of the annual litigiosidad of Commissioni tributarie calculated in response to the volume of cases pending resolution at year's end

To demonstrate the effect of the introduction of certain measures to reduce the weight of lawsuits in the courts of justice Italian tax cut, we proceeded to test empirically this effect by studying the following aspects:

1. Assessment of the evolution of the volume of cases filed in each period and at each of the courts;

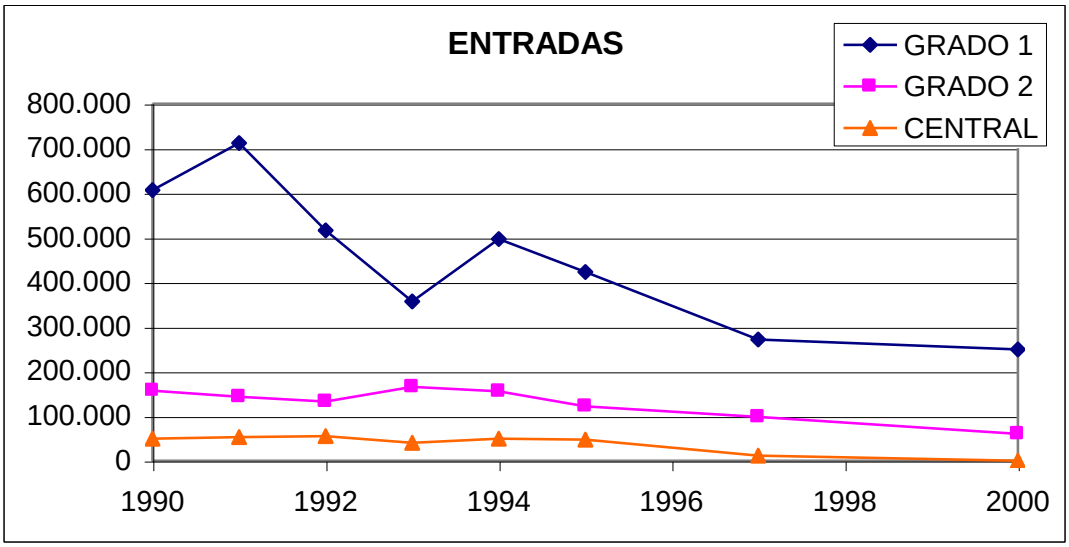
2. The volume of claims settled annually in each of the courts, which will allow us to analyze the effect on the volume of pending cases in each court.

Figure 1. Determinants of changes in the volume of pending cases



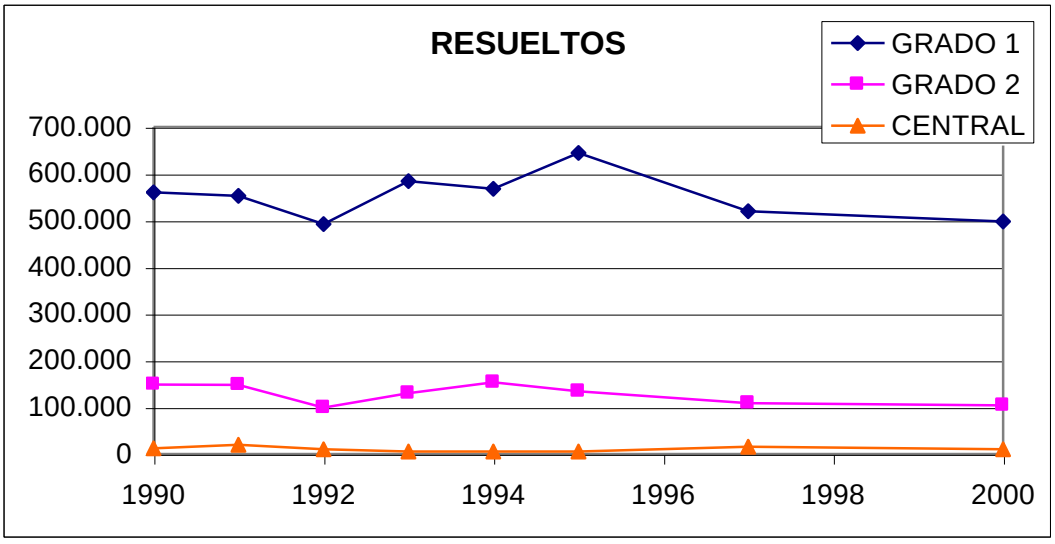
Figures 2 and 3 graphs that reflect the evolution of the records admitted annually to court and resolved throughout the nineties records are presented. It can be seen in these two figures as a major in the number of complaints admitted each year in the courts reduction occurs, while the number of cases resolved each year not experience large swings. The result of the behavior of both variables is a decrease in the number of cases pending resolution at the end of the year. This decline has also been quite general in the whole court.

Figure 2. Records Entered by court



	1990	**1991**	**1992**	**1993**	**1994**	**nineteen ninety five**		**1997**		**2000**
GRADE 1	606701	711562	515965	356851	496563	422614		271979		249358
GRADE 2	157258	143657	132572	165369	155303	121910		98321		60091
CENTRAL	49,640	53238	54,845	40,369	49657	47496		11,423		78

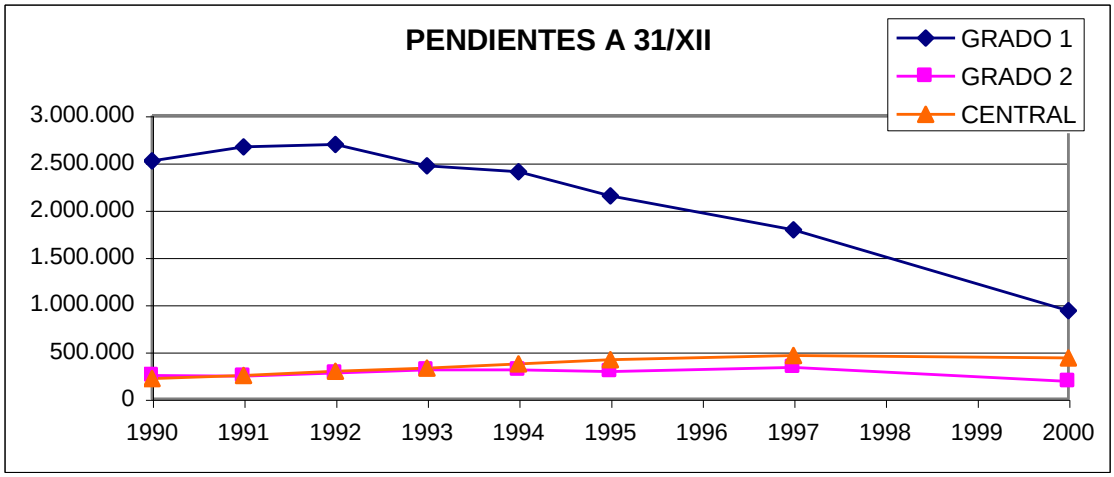
Figure 3. court cases resolved by



	1990	**1991**	**1992**	**1993**	**1994**	**nineteen ninety five**		**1997**		**2000**
GRADE 1	560361	552253	492291	584063	567510	644523		519375		497866
GRADE 2	148472	148294	99277	130315	153519	134329		108,687		104136

CENTRAL	12,066	19,753	10,003	5,325	5,710	5,813		16,093	10,237

Figure 4. pending cases by court



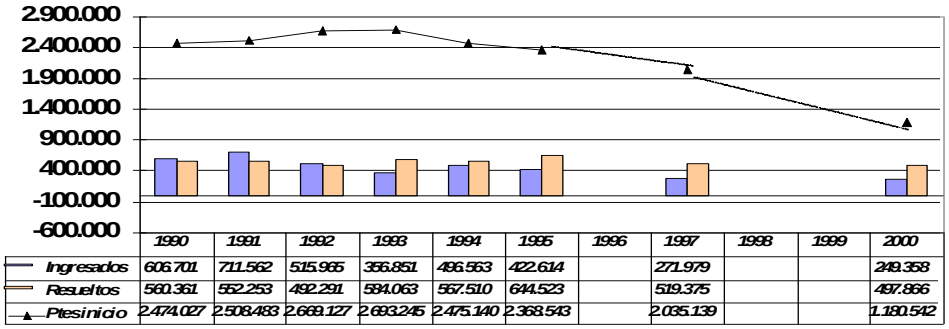
	1990	**1991**	**1992**	**1993**	**1994**	**nineteen ninety five**		**1997**		**2000**
GRADE 1	2520367	2667792	2692801	2466033	2404193	2146634		1787743		932034
GRADE 2	248582	242359	275300	307698	308505	288538		331800		183669
CENTRAL	214003	247488	292330	327374	371321	413004		459582		434503

Figure 4 shows the evolution of pending cases seen at the end of each year for each of the tributarie commissioni. a clear downward trend observed from mid-90s to the courts grade 1. On the other courts can not get to say the same.

I. 2. .- Evolution of the annual litigiosidad of Commissioni Tributarie Provinciale With assets under admitted, resolved and pending cases, according to aggregate data for Italy and for all taxes

DESCRIPCIÓN DE LA LITIGIOSIDAD PRODUCIDA EN LAS *COMMISSIONI TRIBUTARIE DI I GRADO*.
TOTALE NAZIONALE

Figura 5.



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Ingresados	606.701	711.562	515.965	386.851	496.563	422.614		271.979			249.358
Resueltos	560.361	552.253	492.291	594.063	567.510	644.523		519.375			497.866
Ptesinicio	2.474.027	2.508.483	2.668.127	2.693.245	2.475.140	2.368.543		2.035.139			1.180.542

In Fig. 5 shows the evolution of experienced litigation shown in commissioni tributarie provinciali. Three variables were analyzed:

- Number of complaints admitted annually over the decade of the 90s: a decrease is observable entering records annually. Note that the maximum occurs in 1991 with a volume of records in the order of 700,000 in 1995 down to the order of 400,000 (which means a reduction of 43%), while in 2000 admitted some 250,000 claims.

- Number of records annually resolved: contrary to the above sequence, we see how the number of cases resolved following, in general, a consistent trend ranging in the order of 500,000-600,000 annually resolved records, experiencing in 1995 the maximum 644.5234 year in which claims are solved and the minimum period in 2000 in which cases resolved are somewhat lower than 500,000

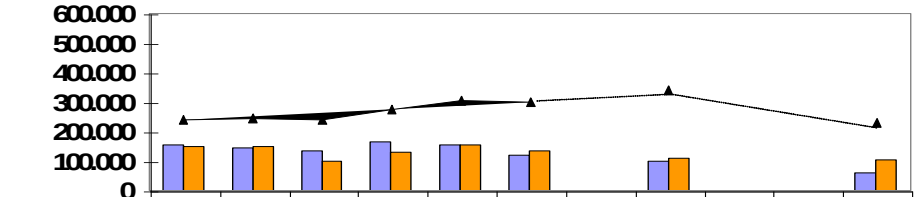
- Consequence of previous sequences, is the backlog at beginning of year records. Repárese in the volume of pending cases at the beginning of the year reaches its peak in 1993, touching the 2,700,000 unresolved records. From here, gradually reduce this figure becomes the order of the records 2,000,000 in 1997 to 1,200,000 outstanding at the beginning of 2000. Therefore issues, reduced quantitatively more important during this decade It produced from 1997 to 2000, which means that during this period the number of cases filed annually has necessarily been resolved less than the number of records per year.

I. 3. Evolution of the annual litigiosidad of Commissioni Tributarie Regionale With assets under admitted, resolved and pending cases, according to aggregate data for Italy and for all taxes

DESCRIPCIÓN DE LA LITIGIOSIDAD PRODUCIDA EN LAS *COMMISSIONI TRIBUTARIE DI II GRADO: APELLI*

TOTALE NAZIONALE

Figura 6



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
ingresados	157.258	143.657	132.572	165.369	155.303	121.910		98.321			60.091
resueltos	148.472	148.294	99.277	130.315	153.519	134.329		108.687			104.136
Ptes inicio	239.796	246.996	242.005	272.644	306.721	300.957		342.166			227.713

Figure 6 shows the litigiosidad produced in Commissioni Provinciali Regionali (Apelli) as aggregate data for Italy. The first remarkable note, compared with the previous courts, is the lower volume of records moving in this second instance. Thus, we can see how roughly the average number of records at beginning of year for the entire decade is around 300,000 records, versus (2.700.000- 900,000) that exist in the first place. As regards the admitted and resolved a year records, do not exceed 200,000 in Apelli, while in the first instance are the order of 600,000-700,000 years.

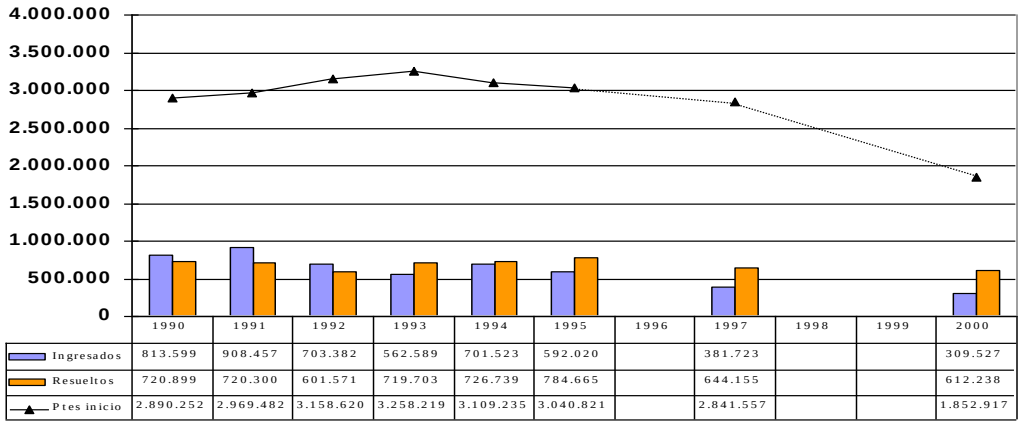
Similarly to the study of Figure 5, the litigation is discussed in the lower courts, based on the entered records and determined annually as well as outstanding at beginning of year issues. From 1990 to 1994 complaints annually observed entering an oscillating sequence (in 1990: 147,258; 1992: 132,572; 1994: 155,303). Since 1994 a decrease is seen in the number of records entered following order: from 1994 to 1997: 37%; from 1997 to 2000 of 39%.

Records resolved annually until 1995 undergo an oscillating sequence far exceeds the figure of 100,000 cases per year, while in 1997 and 2000 appear to have stabilized in the order of 100,000.
Finally, the volume of outstanding claims at the beginning is the result of the behavior of variables "admitted" and "resolved" a year. As in the previous cases the trend is oscillating, although the largest number of pending cases is reached at the beginning of the year 1997 (342.166), and the lower volume of business throughout the decade achieved in 2000 in which at 31 December 227,713 pending decisions are recorded.

I.4 Evolution of litigation regarding the total annual workload of experiencing all the Tax Courts.

CARICO DI LAVORO (RICORSI IN 1º GRADO, APPELLI, E RICORSE IN CENTRALE)
TOTALE NAZIONALE

Figura 7



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Ingresados	813.599	908.457	703.382	562.589	701.523	592.020		381.723			309.527
Resueltos	720.899	720.300	601.571	719.703	726.739	784.665		644.155			612.238
Ptes inicio	2.890.252	2.969.482	3.158.620	3.258.219	3.109.235	3.040.821		2.841.557			1.852.917

This figure represents all the courts dealing with tax matters as aggregated data for all Italy (picks up, the behavior of experienced litigation therefore those admitted, resolved and pending at the beginning of the year of the Commissioni records tributarie I grade II and grade Centrale).
Note: Remember that the Commissione centrale tax was abolished, notwithstanding that even today it remains a significant amount of resources pending.
The following variables were analyzed:

- Number of admitted claims per yearUp to 1994 the trend is oscillating and from this moment is decreasing:
  1994: 701523
  1995: 592020
  1997: 381723
  2000: 309527

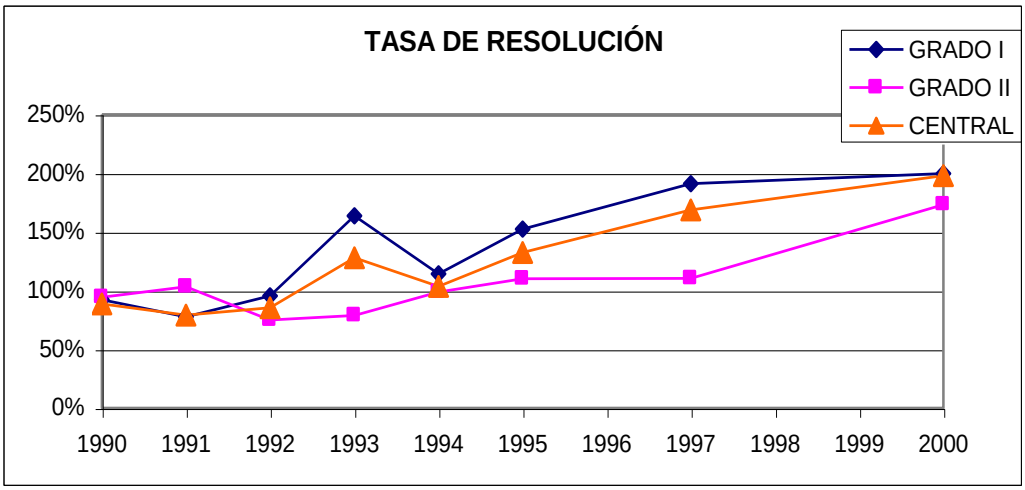
  That is, from the period from 1994 to 2000 has decreased the number of complaints admitted annually by 56%

  Number of cases resolved: by 1997 range around the order of 700,000 cases resolved each year (slightly less in 1997). In 2000 decrease 612238
- outstanding at the beginning of the year recordsUp to 1994 they experienced an oscillating trend with highs and lows, while from this year the trend is decreasing:
  From 1994 to 1997 decreased by 9%
  From 1997 to 2000 decreased by approximately 35%.

I. 5- *resolution times, efficiency and pendency of the "Commissioni Tributarie "*

I.5.1.-Resolving rate Expedientes.- resolution rate measures the percentage of records that meet annually on the volume of records entering the same period. Provided that the rate is less than 100 records will be solved less of entering the year, generating an accumulation of unresolved issues. By contrast, rates above 100 effectively lead to a reduction of outstanding resolution files.

Figure 8. Rate of court resolution



	1990	**1991**	**1992**	**1993**	**1994**	**nineteen ninety five**		**1997**		**2000**
GRADE I	92%	78%	95%	164%	114%	153%		191%		200%
GRADE II	94%	103%	75%	79%	99%	110%		111%		173%
CENTRAL	89%	79%	86%	128%	104%	133%		169%		198%

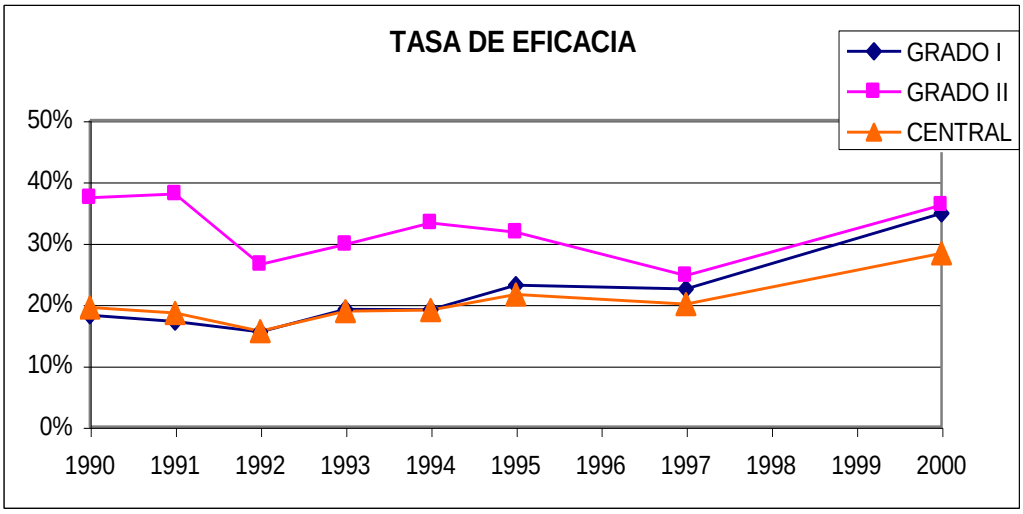
In the figure it presents efficacy rates of tributarie Commissioni 1 and 2 degree and centrale tax commissione compared.

For the first instance is observable how until 1993 a lower percentage of issues resolved by their volume entering the year, and from this year the trend is reversed, reaching solve in 1997 and in 2000 almost double what is entered; (Fact led by the decrease in the number of cases admitted per year). Rate, however, still insufficient to end all outstanding cumulative solve.

Secondly, the resolution rate until 1994 is less than 100, trend changes from this year, showing percentages of 110.5% in 1997 and 173.3% in 2000, also largely motivated by the decrease in the number of entered records.

I.5.2.- Effectiveness rate in resolving expedientes.- In this case called efficacy rates are analyzed by the court, a ratio that measures the volume of cases resolved per year compared to the total annual volume of records (ie, those entering the year trailing the prior year).

Figure 9. Success Rate by court



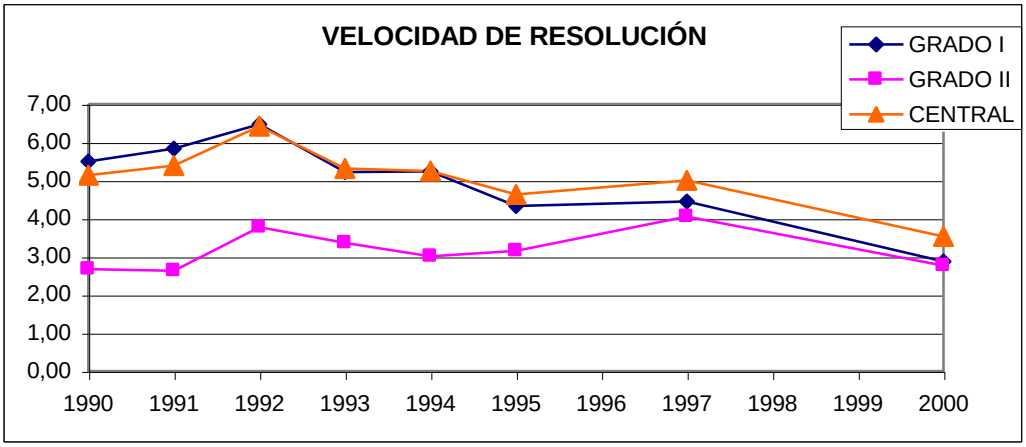
	1990	**1991**	**1992**	**1993**	**1994**	**nineteen ninety five**		**1997**		**2000**
GRADE I	18%	17%	fifteen%	19%	19%	2. 3%		2. 3%		35%
GRADE II	37%	38%	27%	30%	33%	32%		25%		36%
CENTRAL	19%	19%	16%	19%	19%	22%		twenty%		28%

Repárese the outlook now is not as healthy, because although it has improved the resolution rate throughout the nineties, especially in recent years, these percentages determined annually records are insufficient to end the annual volume of backlog. Thus, starting with di tributarie commissioni grade I to 1994 solved in the order 20% of the total annual records, percentage increases slightly in 1995 and 1997; subsequently reaching a rate of around 35% in 2000, by the already mentioned factors.

Commissioni in tributarie di II degree the success rate is somewhat higher. It begins being of the order of 38%, decline in the following years until 1997 where it reaches the minimum (25%) experienced a significant increase in 2000 (36%).

I.5.3.- speed resolution of expedientes.- The rate we have called speed resolution of cases, calculated as the inverse of the effective rate, represents the delay in years since a record enters the court until it is finally resolved.

Figure 10. Speed of court resolution



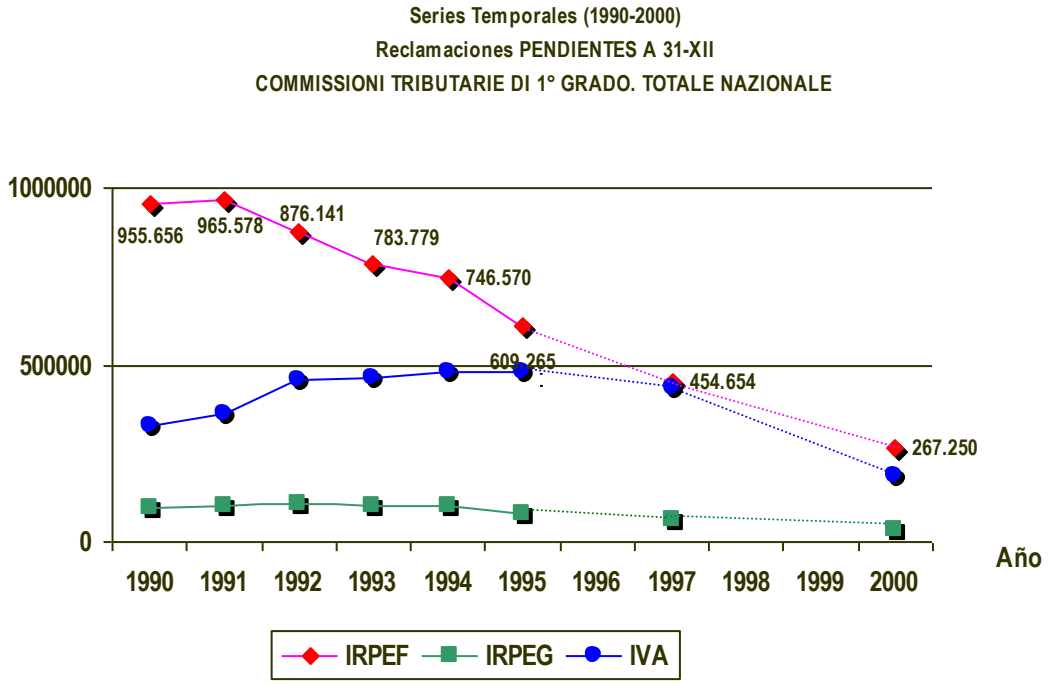
	1990	1991	1992	1993	1994	nineteen ninety five		1997		2000
GRADE I	5.50	5,83	6.47	5.22	5.24	4,33		4.44		2,87
GRADE II	2,67	2,63	3.77	3.36	3,01	3.15		4.05		2.76
CENTRAL	5,14	5.38	6.42	5.31	5.24	4.63		5.00		3.53

Comparing values to appreciate how Commissioni tributarie provinciali observe lower effective rates, which means it is that years later to resolve: from 1990 to 1994 this time is between 5 and 6 years. Since 1994, waiting times to just over 4 years reduced. Reduction, which for 2000 is even greater, not reaching the 3 years since the resource admitted in court until it is resolved.

Secondly, the rate at which it resolves is, for the whole decade older. Note, however, that the amount of resources that moves here is much smaller than the volume of resources in the first instance. In the time period of 1990-1995 the rate of speed round (default or excess) three years, which happens to be 4 years in 1997 due to the backlog of claims in that period, while in 2000 falls to something over two and a half years as a result of reducing the number of records entered annually order.

I. 6. Breakdown of pending litigation annually in the "Commissione Tributaria Provinciale", based on taxes: IRPEF, IRPEG, IVA

Figure 8. outstanding claims. Grade I.



This graphic reflects the evolution undergone in outstanding claims of IRPEF (equivalent to our income tax), IRPEG (IS in Spain), and VAT at the end of the year in Commissioni tributarie di I degree. The common denominator in all three functions is a decrease in the number of pending cases at 31 December, although the different taxes are different functions. Namely:

- The IRPEF, as can be seen, experienced a downward trend with steep slopes:

  From 1991 to 1994: Claims decreased by 23%

  From 1994 to 1997, outstanding claims decreased by 40%

  From 1997 to 2000, the reduction is 41%

- For its part, the function representing the VAT, shows how slightly until 1995 pending claims resolution increase at the end of the year. In 1997 already seen a decrease (from 480,000 to 436,000 records), accused decline sharply in 2000, outstanding being reduced to a third of cases (185,000).

- In the event of IRPEG although the absolute values are lower, we also see a gradual decline in backlog over the decade studied records. In this sense, until 1997 oscillate about 100,000 pending cases in 1997 it falls to the order of 60,000 and 31-XII-2000 33,000 records are pending.

conclusions:

In Commissioni tributarie provinciali of Italy, since the beginning of the nineties until 2000 there has been a very strong decrease in the number of cases pending resolution, which have been reduced by a percentage greater than 50% (while 31-XII-1992 were pending on the order of affairs is passed 2,700,000 900,000 unresolved claims at 31-XII-2000).

Fact corroborating the figures which the reports made by the Ministry of Finance. In this sense, according to aggregate data for the whole of Italy relating to all taxes, in the first instance the "number of cases resolved each year" shows how undergoes an oscillating trend largely unchanged throughout the nineties, while the variable yes it is decreased corresponding to the "number of records entering the year." Phenomenon that has led to a very positive ratio in the rate of resolution of cases (annual solved / annual admissions), which begins being less than 100% (ie entered the year records which were settled annually) and ends up being in 1997 and 2000 almost 200%, that is,

However, these figures need to be relativised because such a relationship would be optimal if a large volume of records unresolved is not dragging. Hence, the success rate in this decade has improved over time but continues to show insufficient ratios to end the workload with the Commissioni Tributarie Provinciali [in the early 90s is to compared with 18% of the total issues (more entered the year pending) and in 2000 it is approximately 35%].

This has a direct translation timeouts to take the records to be resolved. -Speed resolution, taking into account also the year in which entered in court records and -the pendency rate which measures the time it would take to resolve the pending cases at the end: To this end, two ratios can be used year, if we continue with the current rate of resolution, rejected, therefore, the year of entry of resources.

Note that the rate of resolution of cases in the first instance Commissioni is very slow, because until 1994 had been taking between 5 and 6 years on average. It is perceived improvement in 1997 (just over 4 years) to drop below 3 years of waiting in 2000[361].

Therefore, the final conclusion is that there has been a decrease in litigation in Commissioni Tributarie Provinciali for which it was necessary to establish measures of impact to deal with the mass of files pending resolution than previous rates of resolution they could not have absorbed. Way, however, much remains to be done. However, the good behavior that have had conciliativos tax institutes and, above all, the accertamento with adesione, predicts that the trend seen in recent years followed, will continue to fall the number of cases entering the courts each year, allowing adjust the resolution capability of these resources with the number of the year entered what, if any, is carried pending. This fact obviously can not but have an impact on improving the quality of decisions taken, because what really needed to be tried before a court will be resolved. In short, more efficient, and qualified Célere justice[362].

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[361] Note: The pendency rate is equal to the previous one but always reduced by one.

[362]We do not overlook the great responsibility that weighs on tax actuaries in charge of materializing the Institute of accertamento con adesione and whose good work will largely depend on the kindness of this mechanism. What carries the risk of irregularities, for example, when not carried out a review and reassessment of the data with tax transcendence and contributed or contributed later to achieve accertamento

As regards the Commissioni tributarie regionali is evident how during the nineties in the section 1997-2000 are achieved reducing resolution pending cases by 45%. The number of cases admitted to the year 1994 ranges over 150,000 cases in 1995 fell to 122,000 in 1997 to 98,000 and in 2000 to 60,000, which means that tickets are reduced from 1994 to 1997 by 37% and 1997 to 2000 by 39%. This means that the resolution rate varies from year 1994, reaching rates of 110% in 1997 and 173% in 2000, insufficient, however, to end the backlog of accumulated records resolve, as notice that although the rate of efficacy in the lower courts is better than in the first instance,

Finally, waiting times calculated from the rate of speed resolution indicates that from 1990 to 1997 is increasingly takes longer to settle disputes. At the beginning of the 3 years, reaching in 1997 the four years, while in 2000 is reduced to just over two and a half years.

con adesione, but the actuary is confined to the provide the taxpayer with a flat-rate reduction in the "tax debit" (eg. 20%). Even knowing this, our study focused on the analysis of large figures or aggregate figures relating to the Italian national tax system,

SECTION II

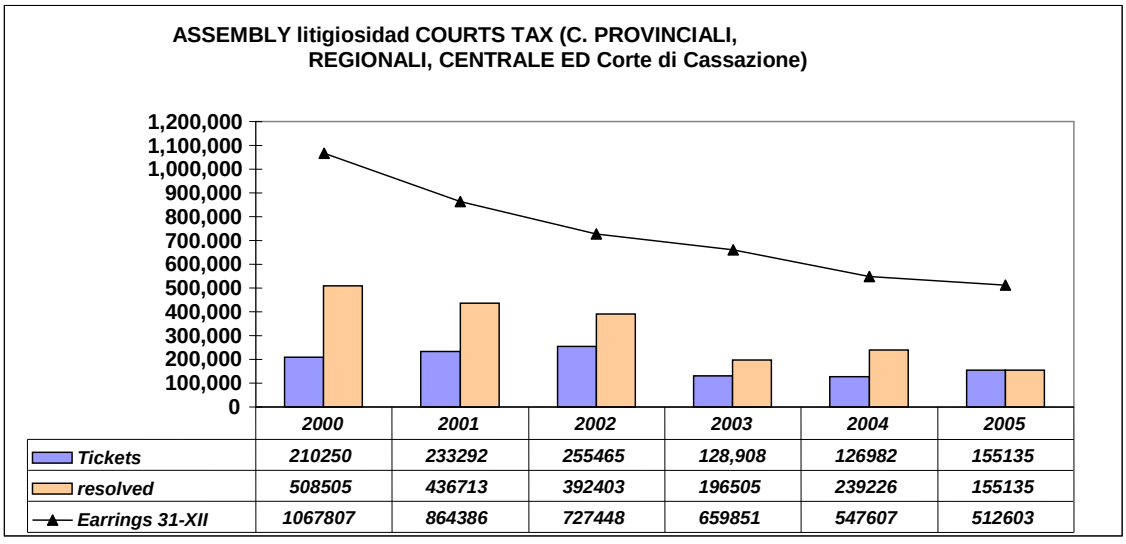
II. 1- Evolution of litigation in Commissioni Tributarie Provinciali (2000-2005)

In general, in tax courts (provincial) during the years 2000 to 2005 is experienced, in line with acontencido in the previous decade, a marked reduction of outstanding resolution files, since moving from 881 301 31 lawsuits pending XII 2000, to 385,038 resolve outstanding resources at the end of 2005. Note that as of December 31, 2004 were 409,368 outstanding resources, this is 50% less volume that existed in the year 2000.
If we compare this evolution based on the year 1992, where the maximum pending (about 2,700,000) expedintes register, we can say that the litigation has been reduced by 86%

Commissioni TRIBUTARIE PRONVINCIALI

MEANS	2000	2001	2002	2003	2004	2005
Tickets	153279	175527	194597	99916	99449	126450
resolved	408802	350999	319,650	171599	199174	150780
Earrings 31-XII	881301	705829	580776	509093	409368	385038

Source: Agenzia delle Entrate (www.agenziaentrate.it), Statistica, 2005, data closed to October 20, 2005



With respect to the variable "inputs" or resources entered in the year can be seen as an irregular trend over the five years is experienced. The maximum is reached in 2002 with a volume of about 250,000 records to go down in the next few years to be around 100,000.

More worrying seems the situation of cases resolved, because the trend is clearly downward, passing resources to solve some 400,000 in 2000 to solve only half of that five years later.

Still and all, the most important fact to note is the dramatic drop in the rate of litigation produced in the Italian tax provincial courts. So the nearly three million litigation that existed in 1992, has been recently (2005) to oscillate about 400,000 pending in courts pronvinciales such records.

II. 2. Evolution of litigation in Commissioni Tributarie Regionali (2001-2005)

Commissioni in Tributarie Regionali has passed 175181-102843 pendentes resources to solve (remaining 114749-31 December 2004). Which means that also the regional commissions have experienced a downward trend in the volume of litigation although in relative terms the percentage of reduction (41%) is lower than have been observed tax provincial courts during this five-year period and throughout the previous decade.

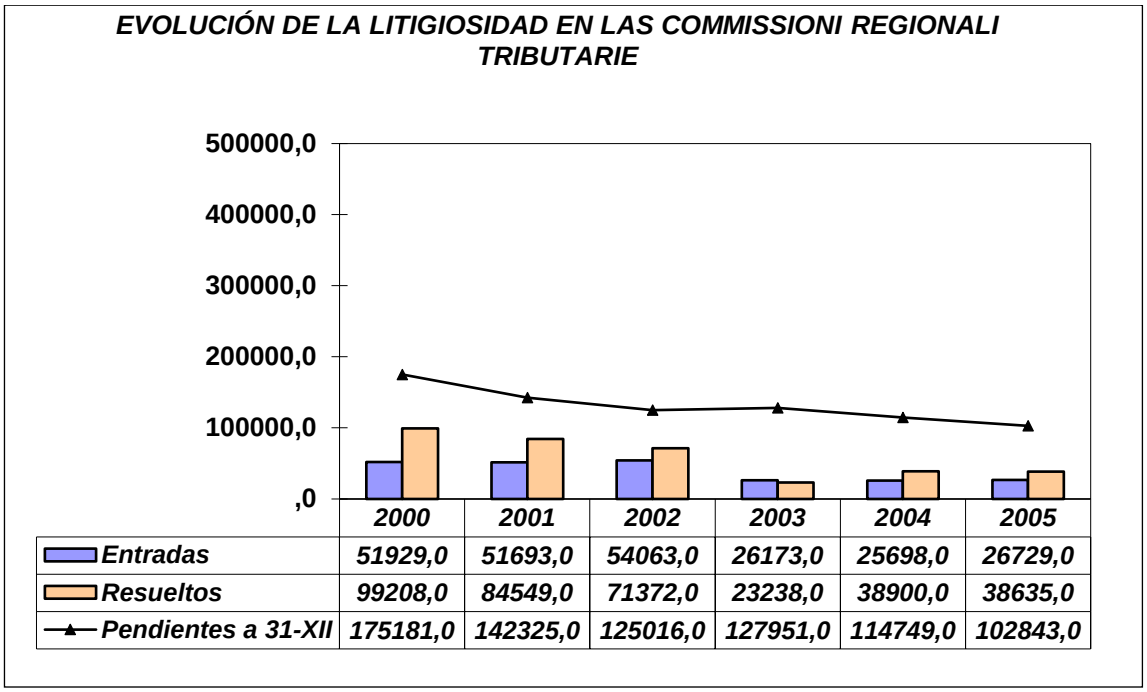
If we take as a basis data to know reducing litigation 1992, date on which there were 275,000 pending files, we can say that has fallen by 63%.

	2000	2001	2002	2003	2004	2005
Tickets	51929	51693	54,063	26,173	25,698	26729
resolved	99208	84549	71372	23,238	38,900	38,635
Earrings 31-XII	175181	142325	125016	127951	114749	102843

Source: Agenzia delle Entrate (www.agenziaentrate.it), Statistica, 2005, data closed to October 20, 2005

Is worth noting the positive fact that the number of resources elevational entering the regional courts has been reduced by 50% (52,000 to 27,000 are passed).

On the contrary resolved records raised during the five years are dwindling and resolved a year about 100,000 in 2000 is going to meet at the end of five years only a quarter small part.



	2000	2001	2002	2003	2004	2005
Entradas	51929,0	51693,0	54063,0	26173,0	25698,0	26729,0
Resueltos	99208,0	84549,0	71372,0	23238,0	38900,0	38635,0
Pendientes a 31-XII	175181,0	142325,0	125016,0	127951,0	114749,0	102843,0

II.3.- Evolution of litigation in all the courts that hear the tax order

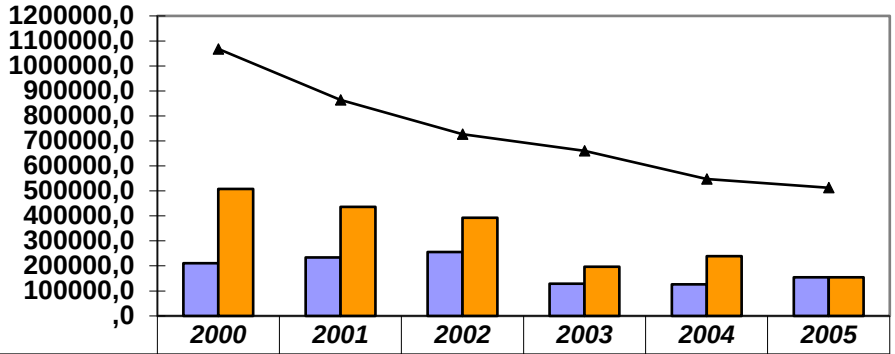
Finally computed litigation is analyzed as a whole for the whole of the Italian tax courts during the five reference.

Analysis of the table then transcribed, evidenced a constant decrease of pending passing of1,062,185 to 512,603 records using data for the whole of all courts (first instance: Commisssioni Provinciali, appeal: Commissioni Regionali, Commissione Centrale and Court of Cassation). This means that in the reference period litigation has dropped about 52%. This reduction is due not so much that it has increased the number of solved cases per year (it happens just the opposite), but it decreases the volume of records entered annually.

Year	2000	2001	2002	2003	2004	2005
Tickets	210250	233292	255465	128,908	126982	155135
resolved	508505	436713	392403	196505	239226	155135
31-earrings XII	1067807	864386	727448	659851	547607	512603

Source: Agenzia delle Entrate (www.agenziaentrate.it), Statistica, 2005, data closed to October 20, 2005

LITIGIOSIDAD DEL CONJUNTO DE TRIBUNALES TRIBUTARIOS (C. PROVINCIALI, REGIONALI, CENTRALE ED CORTE DI CASSAZIONE)



	2000	2001	2002	2003	2004	2005
Entradas	210250,0	233292,0	255465,0	128908,0	126982,0	155135,0
Resueltos	508505,0	436713,0	392403,0	196505,0	239226,0	155135,0
Pendientes a 31-XII	1067807,	864386,0	727448,0	659851,0	547607,0	512603,0