

Representation And The Power Of Local Government To Levy Taxes¹

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1. The “no taxation without representation” principle in local government

In Italy “no taxation without representation” is a key principle laid down by Art. 23 of the Constitution. The principle of legitimacy contained in the constitutional norm implies that taxation is a matter for the government and Parliament, representing the electorate, including minority groups, and responsible for public policy³. Political processes are intended to result in the implementation of taxation policies and public expenditure based on social consensus. This consensus is necessary for a tax system to operate properly, through a system of representation and influence over public policy⁴.

The development of the Italian system, as in other countries, has resulted in a decentralized model of public management, based on the view that “fiscal federalism” increases public accountability: the relationship between public policy, tax revenues and local representation should enable citizens to be well informed and have an influence over public policy, through their representatives. Decentralization is intended to ensure greater administrative efficiency and coherence in public policy; however, there is a risk that public borrowing for public goods and services, with a view to obtaining political consensus, without an awareness of the need for adequate revenues, can lead to irresponsible spending on the part of

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³ FALSITTA G., *Corso istituzionale di diritto tributario*, III ed. riveduta, Padua: CEDAM, 2000, p. 64.

⁴ DI PIETRO A., *Il consenso all'imposizione e la sua legge*, in *Rassegna tributaria*, 1, 2012, p. 12.

decision-makers⁵. Administrative efficiency can be achieved by reinforcing the link between tax revenues and the provision of public goods and services. At the local government level this relationship between the tax revenues and the services rendered by the local authority takes on a specific meaning: taxpayers providing the revenues necessary for funding public goods and services in a given territory can directly use public services in that territory⁶ and they can form an opinion about the quality of the services rendered. In this way, the principle of “no taxation without representation” can be implemented. The dynamics at local level are qualitatively similar to the national level but because of the limited range of action, taxpayers can directly benefit from and evaluate the public services provided by local government.

2. Weaknesses in the fiscal system of Italian local government

However, the management of municipalities risks violating the “no taxation without representation” principle. In particular, the Italian norms give rise to a contradiction between different levels of government. The 2001 reform of the Italian Constitution decentralized administrative authority and functions to the local authorities, and it is widely recognized that administrative powers reflect political representation. The reform introduced the principle of the equivalence of local government to other public bodies in the Republic, stating that “*Municipalities, provinces, greater municipal areas and regions have financial autonomy in terms of revenue and expenditure*”⁷.

However, with regard to the principle of autonomy of revenue and expenditure for local government, it is possible to identify some contradictory elements. Above all, there is an intrinsic difference in constitutional powers: pursuant to Art. 117 of the Constitution, only the

⁵ AMATUCCI F., *Il nuovo sistema degli Enti locali*, II ed. Turin: Giappichelli, 2010, p. 2.

⁶ STEVANATO D., *Forum. Il federalismo fiscale come trasferimento del gettito nelle aree di produzione*, in *Dialoghi tributari*, 4, 2008, p. 24.

⁷ Article 119, Italian Constitution, that “describes financial autonomy of authority therein, as autonomy of revenue and expenditure (1948 text concerned financial autonomy only)”; PEREZ R., *L'autonomia finanziaria degli Enti territoriali*, in *Rassegna tributaria*, 1, 2007, p.

State and the Regions can legislate, whereas municipalities simply establish certain characteristics of the taxes to be paid⁸. Furthermore, the regional legislator has the power to implement local autonomy through the imposition of new taxes, but the range of action continues to be severely restricted since almost all legislative prerogatives for the application of the taxes pertain to the State⁹. This shows that, in relation to the federal system envisaged by the 2001 reform of the Italian Constitution, there is an inconsistency between the tax-raising powers initially envisaged for local government and their real power to raise taxes. As a result contradictions between different levels of government are evident.

3. Obstacles associated with the European Union

The European Union also has a powerful influence. The European Union does not intervene directly in the policies of the Member States concerning their domestic organization. However, the need to respect European obligations on the part of the State and the Regions in their legislative activity and to take account of the rulings of the Court of Justice of the European Union (CJEU) tend to circumscribe moves by the Member States towards federal or autonomous structures.

It can be argued that the European legal system has diminished legislative autonomy at regional level¹⁰. The financial autonomy of local government originates from this level, especially since the 2001 reform, by which European provisions became directly applicable at the regional level, regardless of any mediation on the part of the state¹¹.

In addition, some rulings of the Court of Justice of the European Union have resulted in certain local taxes being deemed to be incompatible with

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⁸ GALLO F., *Prime osservazioni sul nuovo art. 119 della Costituzione*, in *Rassegna tributaria*, 2, 2002, p. 585.

⁹ VANNI M., *Il federalismo fiscale: gli annunci e la realtà*, in *Quaderni Costituzionali*, a. XXIX, 3, 2009, p. 675.

¹⁰ G REGGI M., *Articolo 120 della Costituzione*, in (Falsitta G., ed.) *Commentario breve alle leggi tributarie*, tomo I, Padua: CEDAM, 2011, p. 430.

¹¹ CARINCI A., *Autonomia tributaria delle Regioni e vincoli del Trattato dell'Unione Europea*, in *Rassegna Tributaria*, 4, 2004, p. 1206.

European Union law as they violated certain fundamental principles, such as the free movement of goods between Member States, freedom of establishment, the prohibition on State aid and the prohibition on taxes having the equivalent effect to customs duties. Some examples are: C-17/00, C-72/03, C-173/05, C-88/03 and C-169/08. A restrictive interpretation of these rulings tends to work against the move towards fiscal federalism. While, on the one hand, the European Union does not have direct powers over Member States with regard to their domestic organization, on the other hand, European case-law has a *de facto* impact on measures aiming to promote decentralization.

4. The crisis of representation in the local tax system

In decentralized systems, financial autonomy is insufficient to ensure good governance: the spending capacity of local government must be accompanied by a degree of independence in raising taxes in the area governed by the local authority. In this way a circular relationship between political, financial and fiscal autonomy develops¹². The power to raise taxes constitutes the strongest expression of political and administrative autonomy of the local authorities because they can fund their activities from taxation¹³ and, consequently, they can perform the functions implementing their policies¹⁴. Fiscal autonomy, understood as "legislative self-determination of tax revenue implementing an independent political and political-administrative orientation",¹⁵ should be accompanied by legislative autonomy, distinct from financial autonomy, that is just the search for sufficient funding for the needs of the institution. Adequate powers to raise

¹² ANGIOLILLO L. C., *L'autonomia tributaria degli Enti locali: dall'inquadramento dogmatico-normativo alle problematiche interpretative ed attuative alla luce della Riforma del Titolo V della Costituzione*, in *La finanze locale*, 1-2, 2008, pp. 124 e 125.

¹³ DEL FEDERICO L., *Il finanziamento delle autonomie locali: linee di tendenza e principi generali tra dettato costituzionale e legislazione ordinaria*, in AA. VV. (Leccisotti M., Marino P., Perrone L., eds.) *L'autonomia finanziaria degli Enti Locali territoriali*, Rome: ETI, 1994, p. 146.

¹⁴ GALLO F., *Federalismo fiscale e ripartizione delle basi imponibili tra Stato, Regioni ed Enti locali*, in *Rassegna tributaria*, 6, 2002, p. 2012.

¹⁵ GALLO F., *Prime osservazioni sul nuovo art. 119 della Costituzione*, in *Rassegna tributaria*, 2, 2002, p. 591.

taxes imply that local government bodies can pursue their own policies independently from any state influence. The ability to determine their own revenue safeguards the local authorities' political independence and the citizens' participation in a given territory through their chosen representatives.

As highlighted above, the local authorities' power to levy tax is severely restricted *de facto* by domestic factors and European policies. As a result, local administrators, as the representatives of citizens in a given area, are not in a position to determine their own tax policies and have to fund local expenditure by means of revenues determined by other levels of government, although the Constitution assigns administrative functions to the institutional levels closest to the citizen. This lack of independence in legislative activity raises issues with regard to local powers to collect taxes, and with regard to the financial policies of local authorities. As a result contradictions can be identified between functions and levels of government in tax collecting and expenditure on the one hand, and, the representativeness of local government on the other.

In Italy the contrast between different levels of government and the influence of European Union Directives and CJEU case-law gives rise to tensions between the power to raise taxes and the autonomy of local government. This tension between the powers of local authorities to raise taxes and the devolution of administrative authority risks having a major impact on the policies of the local authorities.