

Modern taxes and post-national States*

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1. Taxes and modern States: a necessary hendiadys

Financing public expenses through taxation and the existence of the modern States represent an hendiadys which is nowadays recognized as necessary. In the European experience and tradition, taxation has always aimed at financing public expenses. It is an indispensable source of financing for the modern countries; it is indispensable for the sovereignty and is strictly intertwined to the territory on which the State, as a sovereign entity, exercises its competences, in the plurality and with the distinction of public functions, but also with the authority and strength, of which it has the monopoly, to exercise them.

In Europe taxation has been crucial for the full expression, development and consolidation of modern States. It supported an extraordinary financial effort, the one necessary in order to finance the two World Wars, and the one in order to support the post-war reconstruction. Then, with the peace and the new Constitutions, taxation served to sustain the idea that taxation could contribute to build social justice, a social justice which is necessary in order to pursue the substantial equality between the citizens, not only the taxpayers, also thanks to the redistributive role of progressive taxation.

In the last century the ability to contribute of the taxpayers has been measured taking as a starting point some indicators such as income, heritage, consumption, production, trades; these are expressions of an economic model and benefited from a market that was allegedly national. With the

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consequent creation of constellation of taxes whose existence resists also within the Internal Market notwithstanding the fact that national States lost the linkage between the territory where to exercise sovereignty, including tax sovereignty, and the economy and market, on which it originally relied.

2. The welfare States emphasizes the financial role of the tax without modifying its structure

The improvement of the personal, social and employment conditions of the citizens becomes the ambitious aim of welfare States. This reinforces both the social services and Europe, together with the economic integration and with the affirmation of the European legal system. The final aim is to support an economic development whose purpose is to improve the employment and to facilitate the fluidity of the labour market, rather than increasing the income of the shareholders and investors. The success of these objectives relied on the adequacy of the public funding. This entailed a leading role of taxation, as it appears from the entity of the tax burdens. However, the tax burden did not experience radical changes but only gradual changes which were in turn influenced by the changes in the national level of wealth, especially in the last years of long economic and financial crisis. Hence, the financial role of those indicators of wealth such as consumption, income, heritage, production and trades, that, in Europe, since last century, have enriched the constellation of national taxation, improved. This type of wealths were considered as objects of taxation in the traditional structure of the tax. For sure their financial relevance varied depending on the national fiscal policies. In fact the latter ones sometimes gave greater relevance to direct taxation, sometimes to indirect taxation, also depending on the development of the economy, even though this is less and less national, that sometimes supports and sometimes suffers from trades, consumption and profits. Also, the social burden of these wealths varies depending on how it is distributed among the citizens; depending on how the Parliament decides to split the tax burden. All this takes place taking into account the parameter of social solidarity and also of financial solidarity that, considered by the Constitution as a guarantee of the State as a community, had already forgotten the

horizontal solidarity, the one between wealthy and less wealthy people, heritage of the nineteenth century paternalistic vision.

3. With an integrated market and with a European economy the national State experiences the weakening of its territorial fiscal sovereignty

Within the modern State everything takes place within the national dimension. Firstly, the necessity of financing public expenses is only due to political choices, then, it is rationalized in the context of the apportionment of sacrifices and needs, then it is reorganized in the budgetary balance and, finally, it is limited by the European limits resulting from the four freedoms within the European Market and by the single currency. Nonetheless this necessity of financing is always satisfied by national taxes which are applied and are effective in so far as they are coherent with the development of the national market and economy. Hence, within European tax systems, taxation rules over a coherent financial circuit: it withdraws from taxpayers which largely remain national, on territorial tax events, then it redistributes to citizens in inverse proportion to the tax burden.

Everything changes when the territory, the one that was able to conciliate the tax sovereignty with the national market, appeared too limited for the European aims and non-adequate when it had to face an economy which finds new impetus in its transnational dimension, the one which is necessary for the free movement of capitals and other factors of production.

The financial responsibilities remain up to the State which became social. The fiscal sovereignty does not find anymore the natural effectiveness of tax levy in the territory; on the contrary, it has to accept some limitations which were unknown before. The latter ones legally come from a new legal order, the European one, even more effective in so far as it is accepted and recognized as supranational. From the economic point of view, the limitations are originated by the fiscal competition in the context of the European market, as an effect of the economic freedoms which characterize it in such original way.

Every fiscal reaction of the States which aims at protecting its sovereignty and tax revenue finds new and unknown limits in the European legal system. This prevents the States from adopting regimes which discriminate the non residents or limit the economic freedoms in the European market within which the actors of the *tax relationship* act. The national fiscal sovereignty cannot enjoy the previous freedom and, in addition, for its exercise, cannot neither act regardless of the comparison between residents and non residents, nor forget the localization of those who act within the market, being the latter ones economic operators, investors or consumers. While the taxpayer is less and less national, the financial exigencies are more and more national, rather, they grow together with the solicitations of the citizens, including the European ones, by now recognized in a supranational Community, even beyond the prerogatives of the European citizens.

In fact, the State, once the needs of the State as a Community have increased, although particularly weakened in its sovereign and territorial prerogatives, has in any case to increasingly grant the effectiveness of the taxation-financing circuit. The national dimension, that was traditionally referred to the citizens, then, has to deal with the Community of Europeans that, although not provided for in the European treaties, was created. Here the belonging is more important than the citizenship: within the European Community people participate, integrate themselves, change legal systems and places taking advantage from the freedom offered by the European market. In this Community fundamental and social rights are increasingly shared, these fundamental rights are directly recognized by the European legal system and not only by the national Constitutions.

4. Taxation at the national level and non fiscal purposes: when it is important to grant the best environmental and personal conditions within the Community of Europeans

The progressive affirmation of this Community of Europeans contributes to emphasize the exigence of new indicator of the ability to contribute to the public expenses. These, also on solicitation of the OECD and the EU, enrich and are different from the traditional indicators of wealth on which taxation

at the national level is based. These indicators are the expression of the new economic relevance attributed to the environmental condition and to the quality of life. These are indicators that the national State would have not been able to intercept, as it was focused on sources of wealth on which it based its sovereignty for more than one century and to which it conformed its fiscal faith. This happened because it aimed at having greater fiscal resources to face the major financial exigencies of the various social services. The figure of the *homo oeconomicus*, protagonist of an economy that focused on the national market, is supported and complemented by the figure of the *homo socialis*. The latter, when he affirms its presence within the new Community of the Europeans, lives in spatial context which is definitely bigger than the territory of the national legal system. In fact, it benefits from the protection and legal recognition of a legal system that, being supranational, prevails, also in terms of rights and economic freedoms, over the national ones.

Hence, environment and quality of life represent at the same time a social and personal condition that has, within the Community of the Europeans, economical consequences that cannot be ignored by the national States and, especially when we take into account its social evolution, cannot be ignored in making fiscal choices. These are the modern traits of a model of taxation which is oriented at recognizing in this new spatial dimension where the market and the legal system coincide, a national collectivity that becomes a Community of Europeans when it assumes an economic and social dimension which is broader than the national one. Taxation cannot ignore this evolution of the national State and, hence, it accepts circular economy or environmental economy as the most evolved parameters of taxation. The latter should also contribute at enriching the sources of financing and should have positive effects on the State budget, being able to support, in varying degrees, the decrease in the tax revenue which is caused by the lost possibility to tax the traditional parameters of wealth consisting in consumption and income.

For the new Community taxation also undertakes an extra-fiscal function: it forces the national States to undertake greater financial obligations for those expenses which concern the environment or health. So, the new model of

taxation supports, together with the financial function which is typical of the national States, also the needs that characterize the post national State. This is such also because it takes care of the social needs of a Community which is supranational. A Community that experiences the effects of the integrated economies and, nonetheless, renovates the faith and protection of the human being, in its dignity as enhanced by the community of origin. For these reasons, modern taxation should, without ignoring the national financial effects, use its authority, the one given by the national parliamentary consensus, to make onerous the development of an economy that could potentially be harmful for the environment and for the quality of life, since environment and quality of life became common heritage of the Community of the Europeans.

5. With the new taxes the post national State tries to regain the territorial tax sovereignty that the new economy and the integrated European market had subtracted

5.1. Taxation of dematerialized wealth

With the new economy the features of traditional taxation, the one which was objectively directed to consumption and income, underwent a transformation. The importance of immaterial goods grew and, with their diffusion, also their economic incidence on production activities.

Translating this transformation in tax terms is difficult: it is hard to define the features of immaterial goods in order to establish the criteria to allocate, in temporal terms, the revenues arising from taxation of the income which can be referred to immaterial goods. It is even more difficult to grant the effectiveness of this type of taxation. These kinds of income are characterized by the same evanescence and the same mobility of the goods to which they are referable and, hence, they can easily escape any form of control which is and remains national. These goods easily move within the European market, taking advantage of the freedoms that the latter offers; they are integrated in production processes depending on tax considerations; they can disregard, with the appropriate collocation, also the national tax sovereignty. In fact, the more we emphasize the European market, the more the weight of revenue from immaterial goods grows within the composition of corporate income tax,

the more the tax component is considered a cost and, hence, it stimulates the mobility from one territory to the other. With the consequent sufferance of the taxing power. This stops at the national border, but the national State cannot, if it does not want to incur the European censorship, neither reduce the danger of the subtraction of this taxable bases making use of regimes which are more unfavorable for the non residents. In this way a new tax weakness of the national States is demonstrated and it would be possible to remediate to such weakness both making use of specific regimes, that would nonetheless remain national, and in this way income would remain national as well, and multiplying in Europe the cooperation between the different tax administrations.

5.2. Taxation of digital wealth

It is more difficult for national taxation to face the other transformation of the economy which is represented by the digital economy. In the national State, the legal system and the market corresponded and taxation concerned goods materially qualified or well identified trades between identified subjects. All these, then, needed the legal protection that the legal system could offer. This happened even before they were legally relevant to determine their economic content from an objective point of view and to determine the fiscal liability from the subjective point of view.

It is possible to legitimize the taxation of the different form, either legal or factual, of the digital economy. Nonetheless it is the same digitalization or, better, the original features that characterize its development that make an effective national taxation of digital wealth difficult. In fact, the digital economy is a type of economy that goes beyond the traditional distinctions between goods and services, that is able to create a market where circulation and trade take place without the natural territorial allocation referable to the national State, that does not make use of contractual terms that correspond to models recognized by one or more national systems, that apportions the legal liability and, as a consequence, also the financial liability between identified subjects on the basis of a criterion which is rather economic than legal.

In this scenario legal uncertainty amounts to the cost of the freedom that characterizes the digital market. The latter is successful because of a complex combination, even though not a system, of relationship and exchanges that is continuously renovated in a dimension which is nowadays a mass dimension and which is made dynamic thanks to the use of electronic tools with an open and generalized access. This uncertainty does not only burden market relationships but also the application of taxes. This is understandable when the national States, without changing the object nor the structure of the tax levy, refer consumption and income, respectively, to the digitalized trade or to the deriving revenue and, then, wants to accrue the latter ones to subjects that can be qualified as taxpayers according to the national tax systems.

This is an uncertainty which is clearly common to the national States when they want to make use of traditional tax schemes such as those concerning consumption and income. Nonetheless, these were born within an economic context where goods and services were exchanged within the national market. It is reasonable that these are scarcely effective if applied to a digital economy that is so diffused because it is easy to access, independently from the contractual schemes used, and it is easy to propose and consume in the space of information technology which is well greater than the territorial space that is traditionally referable to national taxation. Neither the large European market, within which harmonized taxation on consumption seems to have found a European criterion to determine the object and territorial scope of taxation, at least as far as the digital trade between member States is concerned, seems to be able to effectively tax the extra-european trades when they take place out of the European market.

On the other side, such a free and elusive type of richness cannot be easily taxed according to the traditional national schemes but neither making use of innovative schemes. In order to be effective, the new type of taxation should provide for a simple object of taxation on trades and consumption, an object of taxation which is compatible with the European ban to introduce a tax which is substantially correspondent to VAT. Even the revenues and not only the trades concerning digital economy can be hardly combined with the

traditional types of income. This is the reason why they should be taxed as a specific type of income. A type of income that should go together with a more generic identification of the subjects that participate to the digital market and should make use of a simpler territorial criterion in order to be coherent with a supranational economy within which activity and organization change depending on the opportunities offered by the relevant markets.

In fact, every national solution, even though it is innovative, is destined to meet the national boundaries. It would be very hard to provide for the taxation of such a mobile and elusive object, so hard that its application would finally be ineffective. In a free market such as the digital one, where it is not easy to distinguish the European scope from the extra-European one, the national tax choices undergo a tax competition that would risk to nullify the economic and financial effects of the new type of taxation.

Every national solution should not be the result of a unilateral choice but the application within the different territories of a tax model with its own rules concerning territoriality and the same rules, used in order to identify the income, that are used at the European level. If this is not possible because of the requirement of unanimity which is used at the European level, these criteria should be at least shared by those countries that agree on enhanced cooperation. Only in this way every national solution would have both the effectiveness of the limits imposed at the European level and the limitation of the tax competition at least within the European market. This confirms that taxation of the digital economy, in order to be modern, should be post national.

6. Back from the future: new taxes inherit the features of the national tax systems

Despite their modernity, both the new taxes and the new systems of taxation may not abandon the distinctive features of traditional taxation, that have become part of the common tradition of the European tax systems. Nonetheless, it is difficult to find, in the new taxes, those features of clearness, transparency and tax justice that characterize the traditional

taxations on consumption and income, which had been part of the consolidated national tax system.

It is difficult to combine the idea of tax justice with the effects of an environmental taxation or a taxation on the quality of life, which are set mainly to affect the most productive part of the population. It will be very hard to gain the approval of the citizens to such taxes; such taxes intend to avoid the consumption of food and beverages that have been considered unhealthy or the production of goods classified as polluting but they could be effective only if the taxpayers accepted and shared such outcome. Tradition may help these new forms of taxation. What if the excises are applied also to products that are considered unhealthy? And what about applying higher excises on energetic goods when they are produced making use of polluting procedures? Traditionally, excises have financial effects on the producer and the same thing would happen if they are applied for environmental purposes in order to push for an healthy lifestyle. Though, as in the general application of the excise, such effect will not affect directly the producer, because, thanks to the consolidated mechanism of pricing, the economic effect is transferred to the consumer. In this hypothesis, the disincentive effect works even though it is possible to figure out a negative outcome, which is a progressive decrease of the revenues; due to the higher prices on unhealthy and polluting products, virtuous behaviors will spread and, consequently the revenues would be lower.

Of course tax justice cannot focus only on traditional indicators of wealth, even though the latter ones are easier to identify rather than the new ones, because of the simplified access to digital market and because they are not connected with the territory anymore. Each national tax system aims at granting a fair taxation on the new forms of wealth but also faces the difficulties of it, because of the virtuality of the taxpayers, the lack of any boundary of the digital market and the atypical nature of the contracts that regulate such exchanges. For that reason even a simple model of taxation may require much more organization than it happened in the traditional experiences.

In order to find a simple and transparent model of taxation on the new forms of digital wealth it is possible to figure out two different solutions. The first one will exalt the tax responsibility and it will focus on the beneficiaries of such new richness. The latter ones are, with different roles, the main actors of this digital market because they provide, handle and distribute digital goods and digital services. Taxation would be referred to them, according with the type of products digitally exchanged and the number of such exchanges.

The second model would only focus on the economic responsibility, so the tax burden would entirely affect the consumers which is the one takes advantage from the product, although it does not produce or gain any new richness. This model emphasizes the legal certainty of the tax revenues, which is fundamental to make the new taxes competitive with the old ones, that in the last centuries have guaranteed the solvability of National States.

7. The importance of being remunerative: the old taxes maintain a key role in financing the post-national States, despite the new ones

The old, traditional, consolidate taxes on richesses, never dismiss their key role in financing public expenditure, whatever would be the new taxes or the new model of taxation that the States introduces. Of course, the modernization process connected with the necessity of a different taxation for the digital economy have reduced the financial importance of the traditional revenues: taxation on consumption, income and heritage have all the limit of the connection with the territory where consumption take place, income is produced and heritage belong, and this necessary connection is in conflict with the economic integration that is growing faster and involves a way larger number of people and investments.

However, income deriving from the traditional forms of taxation still plays the main role in the State's public budget. These taxes are still generally applied, according to the power of taxation that each State maintains within its borders, and the taxpayers recognize them as a lawful claim, considering that the power of taxation over this types of wealth of the State dates back the last century. During such a long time the features of richesses that were considered relevant and the relative beneficiaries became clear and they

gained a legal qualification; accordingly, the awareness that they would have been subject to taxation arose and, finally, the idea that they were certainly applied has become a general knowledge. This development became much more important when the production of income and consumption of goods and services spread through the mass and, consequently, the number of taxpayers grew. As the number of the taxpayers increased, the legal features that wealth should present to be considered taxable should have been much more clear and guaranteed by legal certainty. Furthermore, the more the object of the taxation became clearer, the more effective should have been the control activities, carried on by the tax administration.

The success of the new forms of taxation of intangibles, as those concerning wealth that is produced in the digital market, instead, depends from legislative choices that only apparently are within the powers of a single country. In fact, any choice that a national State assumes with respect to taxation of digital wealth is inevitably connected with the choices that any other national State assumes in the same field. This connection represents a necessity for each national State, rather than a willingness, because the most important reason for the success of the digital market is the possibility to conclude operations without the limits connected with the national boundaries, both related to the establishment and the place where the exchanges take place, which is, obviously, the dematerialized, unbounded market of internet.

However, the same reasons which justify the success in the market at the same time represent the weakness of taxation, which is traditionally set to work within the national borders and that needs, to be effective in this changed scenario, to go beyond such borders, sharing common models of taxation, even if there is a lack of direction in this field and a lack of political will to settle a reinforced cooperation. Digital economy is too unpredictable and it changes too quickly to be constrained within the limit of national tax models, that are inexplicably connected with the existence of political borders, with predictable exchanges and with the clear identity of the beneficiaries.

On the other hand, any kind of taxation based on divergent aims, as the above mentioned environmental taxation or taxation which is specifically dedicated to unhealthy products, finds its weakness in its own success. So, those taxes are destined to the decline when their application determinates the reduction of consumption of unhealthy products or the choice of more ecological forms of production of energy.

8. Back from the future: a further weakness of tax sovereignty, the new taxes cannot be effective nor legally certain

8.1. Effectiveness: territorial national control in a "stateless" market

In the broad global digital market, even controls and tax assessments cannot be as effective as they are within the national boundaries. There is an heterogeneous amount of reasons for this weakness: the mobility of wealth and factors of the production, the increasing dematerialization of commercial products, the research for new forms of taxation, that have to be respectful of the nature of the digital economy or of the aim of protection of the environment and health through taxation.

Every national State faces the difficulty of balancing the full deployment of their power of taxation, also beyond the national borders, and the limits that such borders represent to the exercise of control and tax assessment power. Any effort committed to make the action of the Tax Administration more efficient in a wider territorial sphere encounters procedural obstacles. The latter ones could create legal uncertainty, which may also obstacle the full exercise of the market freedoms, the full fluidity of the commercial exchanges and the specific responsibility of the actors of the market. The necessity of a different policy of cooperation with the taxpayers arise from such legal uncertainty; consequently, the tax administration, that lost its unilateral power of assessment, could only conclude arrangements with the MNEs that are somehow connected with its own territory. Indeed, the use of the agreements allows the national tax administration to recover the efficiency of tax assessment even in regard of transnational wealths; this power will operate in a different scenario, where the cooperation between the taxpayer and the tax administration represents the more evolved stage of the public action, also in the field of tax law.

The exchange of information that the European Union had enhanced and enriched in the past years, together with the growth of the fiscal integration between the member States, offers another useful instrument. Even in this hypothesis, though, the possibility of a control on the transnational forms of wealth remains unilateral and it is influenced by the efficiency of each different national tax administration.

8.2. Legal Certainty

In the European market, and especially because of the digital economy, also the juridical classification of wealth and contracts, that was traditionally been the best guarantee for legal certainty in every national tax system, is useless to define who the new taxpayers are.

The European market logics respond to the evaluation and full enforcement of the economic freedoms and, on the other hand, it suffers from the attempt to protect the environment from pollution, from the habits of the consumers and also suffers in order to properly tax the digital economy. All these necessities, and the logic underlying them, are mutable and unpredictable and, which is more important, completely unsuitable to replace the traditional legal categories referred to the taxable richness or the taxpayers. Undoubtedly legal certainty is useful for the taxpayer who wants to make some accurate tax planning but it becomes absolutely necessary for the State which bases its whole budget on those revenue provisions. Though, the traditional, authoritative reaction of the tax administration is not enough to face this problem; first of all, because such authoritative instruments for tax recovery often show their limit even with respect to the traditional, national taxes; moreover, because arrangements offer cooperative instruments, in order to solve legal uncertainty connected with transnational richnesses, relocate the responsibility in terms of legal certainty to the taxpayer, which discloses information to the tax administration. Consequently, legal certainty will increasingly depend on the correct and fair disclosure offered by the taxpayer, with regards to those mobile or dematerialized wealths that the traditional authoritative procedures were not able to assess. The different models of cooperation differ from each other in terms of procedural rules and object. The latter could refer to interpretation or to the inversion of the

burden of proof or the safety of the investment in Italy. Models of cooperation differ from each other also in terms of procedural rules, in that they may result in an interpretative *Interpello*, in a real arrangement or in an anticipated resolution. Not all these models could be considered fully mandatory for both the tax administration and the taxpayer. In a such complex scenario, it is very hard to guarantee legal certainty, and it is even harder when transnational richness's are at stake. Therefore, the applicable tax regime cannot be foreseen, as it would be desirable both for tax planning and budget provisions based on tax income. On the opposite, both of them will be determined by the fairness of the taxpayers and the openness of the tax administration.

9. National tax policies make post-national State's budget policies more complex

9.1. The unfair distribution of the tax burden between different categories of taxpayers

Traditional taxes maintain their key role within public budgets, they still ensure the main portion of the public income but they are forced by the economic integration and the mobility of the factors of production to focus on products that are more connected with the national territory, as employment and real estate. In order to maintain the key role of income taxation against a market which is broader than the national political borders and against an economy which is free and elusive, each national State admits that the personal taxes on income have a wider incidence than the taxes concerning the activities that relate to the open market. The same categories of taxpayers suffer the burden of supporting public finance and this situation may damage the equality in the allocation of the tax burden. This equality, which is protected by the Constitution, is represented by the various categories of income and the regulation of income taxation. Now, this scheme is practically infringed by the different impact of personal income tax on the different categories. This inequality is also a consequence of progressive taxation, although the current proposals of a reform of the tax rates and relevant levels of income.

9.2. The different financial influence of European consumption

Also, consumption, which amounts to the other source of national taxation, cannot carry out its financial role anymore. In fact, together with the European market, also consumption became transnational and started to take advantage from the free movement of goods. Taxing consumption corresponds, in the different member States, to a European model of taxation. The European model of taxation, thanks to the destination principle, is focused on national consumption and does not take into account the different financial and economic consequences which vary depending on whether the transactions take place within the national or European market. In fact, the more national consumption derives from transnational transactions which are facilitated by the free movement of goods, the more it is difficult for the national States to effectively apply and collect taxes on consumption such as VAT. National sovereignty in the field of taxation is and remains linked to the territory, as well as the administrative functions that cannot go over the national borders. The member States can rely on the exchange and cooperation of the other national administrations; they can simplify the controls thanks to telematics procedures; but they cannot fully exercise their sovereignty in the tax field as it happens for internal transactions. However, in this way, both internal transactions and transactional ones formally concur to tax national consumption. Nonetheless the first can be more effectively taxed because they take place within the territory of the States and, hence, they undergo the sovereignty of the national States both at the moment of taxation and tax assessment. On the contrary, the second are left to the operators that, from their side, orient the choice of the contractors and the localization of the transaction according to parameters of opportunity and economic convenience that the single member States cannot take into account as far as they remain uninvolved in the transactions which take place within a European market that is wider than the national borders.

In substance, national consumption which is provoked by international exchanges does not have the same economic incidence and the same financial liability as internal exchanges.

9.3. The limited financial capacity of taxing the digital economy

On the other hand, the taxes that want to effectively follow the expansion of the market and the freedom of the digital economy, that the traditional forms of taxation cannot capture, have not yet a role which is proportionate to the importance of the digital economy within the member States. On the one side, the national solutions to the digital economy are financially weak when compared to a market that, especially because it is free and extraterritorial, does not allow the member States to effectively apply the national taxes that it uses to tax digital wealth. On the other side, there is a lack of European solutions that, either in the different forms of coercion which are legally admitted or because of a common political knowledge, can adopt forms of taxation of the digital economy that share the definition of wealth with subjective and territorial criteria that are coherent with the European market.

9.4. The uncertainties of the fiscal policies and their effects on budgetary policies

In this way, the fiscal policies of the post national State have lost the stable and continuous financial structure that the national State left to the traditional types of taxation before the economy and the market changed the relationship between wealth and territory; the relationship that was necessary for the fiscal liability and for an effective public financing.

On the other side, no trace exists, within national fiscal policies, probably because of the difficulties to project innovative fiscal regimes or because of the political skepticism to look for European solutions, of a new structure. The one that is desirable from the financial point of view or necessary from the economic point of view, the one that allows to increase the financial influence of the new types of wealth without being limited by the freedoms of the market. This would be necessary also to build, on new basis, coherent with the post national dimension of the States, the relationship between fiscal sovereignty, wealth and territory that was the basis of the national State.

With the uncertainty of the fiscal policies, nonetheless, the secure, stable and effective flow of the financial resources that the traditional types of taxation ensured and that the new are not able to grant anymore is interrupted. Therefore, budgetary policies suffer as well, as they are solicited by the welfare State to finance a certain quantity of services and the quality of the

public functions that cannot be radically reduced without provoking social reactions that would weaken the political consensus. The budgetary policies, hence, in this way stiffened by the current expenses, with a more and more limited redistributive effect, need of a constant and especially elevate flow of tax revenues.

Also, the budgetary balance suffers because of this situation because it is not easy to reconcile the boundaries to the public expenses with the flow of financial resources which is made uncertain by the difficulties in the national fiscal policies. Hence, it is difficult to define a budgetary policy when, in order to remedy the uncertainties concerning the resources of the national States, the latter ones rely on a fiscal legislation whose effectiveness is limited in time or is limited to a certain sector. All these are part of the same Budget Law, in order to strengthen the budgetary balance, when the latter is damaged by the irregular flow of revenues, than to strengthen a new systemic structure.

9.5. The Parliament and the Government are facing the responsibilities deriving from the fiscal and budgetary policies

The research of the responsibility or, better, the responsibilities concerning the relationship between fiscal and budgetary policies still has to be analyzed. The latter ones are strictly intertwined with a State that cannot be considered traditionally national anymore, neither at the political level nor at the legal, administrative or financial ones. None of the bodies which, according to the Constitution, compose the national State can be subtracted. However, at the same time, none seems to maintain the same role: the one which is typical of a national State.

This is true for the Parliament that formally remains the center of the political decisions concerning public finance but the fiscal policies are more and more influenced by exogenous factors such as the market or the economy. The latter ones measure the effectiveness of the fiscal choices and, as a consequence, the prescriptive value of the fiscal rules which are adopted by the Parliament. These emphasize the limits of the national fiscal sovereignty, sometimes because of the European legal system, sometimes because of the European market and the new and more movable economies and, with them,

also because of the limits to the financial role that the Parliament has always set to the financial tasks. Nonetheless, in this way, also the role of the Parliament for the financial policies changes and it becomes, notwithstanding the unchanged constitutional structure, politically disproportionate to the responsibilities the member State takes in front of the EU.

The Parliament is undoubtedly recognized as the one that has to grant the budgetary financial balance. However, the strict European financial boundaries in substance oblige it to contingent fiscal interventions, aimed at balancing the reductions in the tax revenue which are provoked by the difficulties in fully applying the fiscal sovereignty in a new framework of international economies and European market and, at the same time, limits the decisions of the Parliament concerning the use of the resources in the budgetary forecasts of the bodies of the Government, in this way taking away from it every specific choice on the single expenses.

On the contrary, the Government, from its side, improves its role in the financial management of the national State. In fact, the continuity and stability of the tax revenues depend from on efficiency of the Tax Administration and these are indispensable for the budgetary balance as a European requirement, even if the responsible in front of the Union remains the Parliament. Efficiency, on its side, depends on the effectiveness of the application of the tax but the effort to be efficient increases together with the increased influence of the European market and of the international communities on national legal systems. Hence, the Government has to deal with a financial uncertainty that calls for a certain responsibility in the use of resources that would not be effectively undertaken continuing to entrust the Parliament the choices concerning the administrative expenses. The latter ones are duties of the Government that, on its side, must respect the political choices of the Parliament in the State balance but has to valorize in any case the effectiveness of the different functions. So, in sharing their resources, the Government can also overcome the formal rigidity of the parts of the State balance, making great use of the funds which have a generic destination. This is a decisive role of the Government for the substantial respect of the budgetary balance and the full compliance with the European constraints.

The controls should serve precisely to define the respective responsibilities of the Government and the Parliament in respect of the fiscal policies. These controls are a duty of the Italian Court of Auditors but they are more and more difficult, as they have to adequate to a framework where the roles of the constitutional bodies that deal with public finance are changing fast.

The control on fiscal policies remains unchanged as a form of control on the legislative activity of the Parliament. It is still focused on the features of taxation but, since it cannot touch the financial effects, it does not concern the effectiveness of the fiscal policies. Nonetheless the European economy and market precisely concern this effectiveness, in this way reducing the stability and continuity of tax revenues. The financial effects of the fiscal policies can be noticed but the technical parameters prevail: they are the unique criteria on which to rely in a complex framework as the one concerning the revenues' forecasts, this is evident when we consider that they are already multiplied within the Parliament itself.

Hence, the effectiveness of the fiscal policies cannot be verified earlier than the approval of the *projected balance*. With the approval of the statement showing the situation as regards the implementation of the State budget, the possible liability of the Government in the management of the State balance is combined with the previous liability of the Parliament in the approval on the financial forecasts concerning the revenues that the same Parliament had previously adopted. With the *consolidation statement* every change in the fiscal policies cannot be other than contingent. The legislative changes that the latter requires are needed in order to re-establish a budget balance but not in order to verify the cause for the inadequacy of the forecasts. Nonetheless, the latter ones are in several respects linked to the limits of the tax sovereignty, those limits hat nowadays do not manifest themselves only in the acceptance of tax models which are proposed by the European legal system but also when it is necessary to compare the legitimacy of the fiscal policies with its effectiveness and the stability of the tax revenues.

For a national State, it is not easy to admit that the financial weakness of its fiscal policies is caused more and more by elements, such as legal systems, markets and economies, that are formally exogenous to the prerogatives of

the constitutional bodies. However, being aware of that also means to orient the political role of the State, not only the financial one, to a post national dimension, the dimension that, till now, the national State has irresponsibly ignored.

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