

The Corte dei Conti's role in the assessment of fiscal policies***Massimo Romano¹**

The Italian Court of Auditors ("Corte dei Conti") is characterised by the duality of its institutional role: the jurisdictional function in the field of public finance and its function of control. Leaving the jurisdictional function aside, one should remember that the function of control is performed, first of all and even on a historical level in the control of the central State's budget, through forms of preventive control on measures and of control on management. This function has been progressively extended to the budgets and management of local entities (Municipalities and Provinces) and Regions, with the creation of regional offices (regional control sections) located in the main town of all Regions.

As far as the control over state budgets is concerned, the attention of the Court has historically focused, in the past, mainly on public expenditure. The Court of Auditors has essentially paid, in decades past, limited attention to the field of state revenue and to the connected topics of taxation, both because it performed an intensive activity of preventive control on measures and because it was historically led to the control over expenditure.

Over the last decades the attention has significantly shifted also to the problems concerning the management of public revenue and it can now be stated that the Court dedicates a considerable part of its professional resources to the topic of the management of public revenue, especially at central level, and, in particular, to the topic of fiscal revenue.

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This role is performed through various phases, some of which constitute yearly appointments, such as the Report to the Parliament on the State's general financial statement. It is a complex document, approved and published each year in the month of June following an articulated activity of examination on the management of the previous exercise. The Report entails the so-called "*giudizio di parifica*", i.e. a control, strictly from an accounting point of view, of the reports that the Government submits to the Parliament, and the true Report, analysing in detail the State's revenue and expenditure. In particular, as far as revenue is concerned, the Report deals with the different aspects of the topic, through a general analysis of fiscal management, of the effects deriving from most recent legislation and of the results of the Tax Administration.

For a number of years another document concerning public finance is drafted, usually in the month of May, dealing with the topic of revenues, i.e. the Report on the coordination of public finance, which is concerned with the management of the public finance of the State and of territorial entities, providing an organic description of the evolution of public finance with regards to the general tendencies of international and national economy.

It is a very interesting document, which is destined essentially for the Parliament and which develops an overall examination of the modifications occurred during the relevant exercise, providing a reliable "radiography" of the state of public finance. This document contains specific assessments on the effects of tax measures adopted during previous years, to the purpose of providing indications on the management of taxation and on previously adopted tax measures.

Another fundamental activity, which has become more and more relevant in recent years, is the conducting of hearings in the context of Parliamentary Commissions. Commissions dealing with budget and public finance, in fact, often request the Court's opinion on certain relevant topics. To this purpose, the Court's Central Sections draw up specific documents that are subsequently submitted to Parliamentary Commissions. Many of the hearings have concerned, in these years, the tax topic, on which

parliamentary bodies often focus in light of its relevance for managing public resources and for the malfunctioning that historically characterises the Italian tax system

To the Report, the financial statement, the Report on the coordination of public finance and the documents on parliamentary hearings one must add the inquiries on the management and functioning of taxation that are performed on a yearly basis by the competent central Section. They have the purposes to evaluate how all different legislative choices have actually been implemented by the Tax Administration. However, such reports often give rise to alerts and propositions made directly to the lawmaker, since they concern malfunctions and failures of the legal system, with the purpose of having Parliament and Government (Ministry of the Economy and Finance) taking them into account and using them to introduce the modifications suggested by the Court.

On this point, we should highlight that a considerable part of the Court's attention has been paid, during these years, to the topic of tax evasion, which constitutes the principal critical point in the tax field for Italy. The malfunctions of the Income Tax (IRPEF) system have determined, during decades, significant distortions in the levying of taxes to the detriment of employees and retired persons. Ever since its introduction (1973 for VAT, 1974 for IRPEF), the new fiscal system has, in fact, excessively relied on personal taxation, with a lesser degree of attention paid to the functioning of indirect taxation and of VAT in particular. Also in recent times, the analysis of the European Commission, which have been confirmed by other studies conducted at OECD level, place the performance of Italian VAT at the lowest positions (irrespective of the effects on the tax revenue coming from base erosion as a result of exemptions and tax advantages). The true problem is evasion, i.e. how much of tax base that should be taxed is not declared by the taxpayer. To this one should add the other negative and growing phenomenon of taxes that have been assessed but not actually paid, a large part of which is not later recovered.

On the topic of tax evasion, the Court of Auditors has, in the latest years, dedicated more than one analysis, both through general documents and specific essays, which are all published through the institutional website.

One of the purposes recently set by the Court is to provide as far as possible an objective assessment of the reality of things, given that statistical analysis and summary reports often do not allow to grasp which are the actual malfunctions and distortions of the system. There have been thus several analysis and inquiries, with the cooperation of the relevant administrations, in order to correctly portray the reality.

One of the assessment has tried to measure the impact of fiscal control on the subsequent taxpayer behaviour. It was concluded that the action of fiscal control performed by the Tax Administration, year after year, results in a certain recovery of taxes, partly due to automatic mechanisms and partly due to the inquiries and actual recovery conducted by the Administration, but does not substantially modify taxpayer behaviours when it comes to tax. Tax evasion remains essentially stable in time, with slight improvements that are due not much to the controls performed but mainly to new instruments and techniques that have led to a reduction of unlawful behaviour. One of the fundamental issues is, therefore, understanding what does not work in the strategy for fighting tax evasion and in managing the system. On this point, there has been an attempt, also with recent documents, to point out existing contradictions.

The tax system nowadays is positively, though very slowly, going towards a development of various forms of pre-emptive contacts between the Administration and the taxpayer, to the purpose of leading to a higher level of tax compliance and of discouraging evasion not only in a repressive way, but in a persuasive manner as well.

Most recent laws have set out to provide the taxpayer in advance with the necessary information for his tax compliance (relationships with clients and suppliers, real estate income, other expenses...). As of today, these new provisions have been implemented, to the purposes of simplification, only for those taxpayers with income from employment or retirement, who are,

however, those that are less relevant for the purposes of tax evasion. It would be advisable that all the information held by the Tax Administration through the fluxes of data going into their databases are soon made available to all taxpayers before they issue their tax returns, with a persuasive purpose, and are not used only for sanctioning purposes only. It would be a change in strategy that appears to be fundamental to curtail unlawful behaviour.

The strategy for fighting tax evasion is not, however, made of only one element. On one hand, it would be necessary to work on the preventive and timely use of data, while, on the other hand, it would be useful to set up systems for stronger repressive control for that part of tax evasion not deriving from taxpayers' mistakes, but from a deliberate will not to pay the tax due.

Italy is a country where illegal behaviour is frequent, where, therefore, only a part of the taxpayers correctly complies with its fiscal duties. In light of this, some choices made by the Government, and then approved by Parliament, seem to be contradictory. Reference is made, for instance, to the institution of the so-called "*ravvedimento operoso*", i.e. the possibility for the taxpayer to correct his mistakes and his omissions. Originally, this possibility was granted only insofar as no control activity had been put in place by the Tax Administration. This is not the case anymore and taxpayers may modify their positions even after inquiries have begun, up until the moment in which the final tax assessment has been issued by the Administration, by paying a small sanction (16,66% of the tax that has been assessed). This is cause of more than one concern, since it is easy to predict that non-compliant taxpayers will essentially "wait" and then pay all of the tax due only if the Administration were to begin a fiscal control.

In the field of criminal tax law, several reforms have succeeded over the years. However, none of them has proven to be effective. There are several reasons for this outcome and they specifically concern the low level of effectiveness of sanctions, given the current statute of limitation for a large

part of the crimes discovered during the Administrations' and the Prosecutors' inquiries.

Another often severely underestimated aspect is the forced recovery of tax credits. Taxes that have been assessed but that have not been paid (VAT, withholding taxes and actual taxes) have exceeded 15,8 billion Euros per year (with regard to 2013) and, notwithstanding the seriousness and relevance of the phenomenon, the lawmaker has weakened the enforcement actions that can be put in place. We now have a legal order in which the State's enforcement action enjoys less protection than the enforcement action of the private citizen (for example, the credit of the State cannot lead to the foreclosure of the first home, while the private citizen usually may resort to this possibility).

These are the topics that the Court of Auditors has repeatedly highlighted in recent years. The Parliament has been able to carefully listen; however, this has led to limited results in terms of implementation of the results of the assessment and of the proposal into legislative and systematic reforms.

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