Which new fiscal civic-mindedness? *

Mario Santoro[1]

In a country such as ours, where the taxpayers' attitudes and fiscal behaviours move across an axis that goes from "it is good to pay taxes" to "I am paying taxes only if someone comes and asks me", talking about fiscal civic-mindedness is quite complicated. Symmetrically, it is not easy to deal with the topic if one looks at fiscal civic-mindedness interpreted as the set of actions that are put in place by the Administration in order to substantially increase the level of compliance in its relationships with taxpayers.

However, a positive story of which to talk about, as an employee of the Administration, concerns the institution of the "*interpello*" (tax ruling), i.e. the right for the taxpayer to ask questions to the Administration and to receive certain and binding answers. It should be stated that in our country, until 2000, no such right for the taxpayer to receive a binding answer existed. The one concerning tax rulings is a juridical matter, concerning essentially rights, but also the organisation of the Administration, since it is not easy to set up a structure which is able to provide those answers. Until 2000 there was the possibility to ask for an opinion (as for the tax rulings on extraordinary operations) only for large enterprises and no time limit for the response was in any way set.

The right to ask for a tax ruling, interpreted as a general right for the citizens to ask questions and receive binding answers, was essentially born in 2000 with the Charter of Taxpayers' Rights, which, at its Article 11,

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[1] Mario Santoro, Regional Director of Agenzia delle Entrate. Translation by Andrea Amidei, PhD in European Tax Law at European School of Advanced Tax Studies – Alma Mater Studiorum, University of Bologna, Italy.

extends this possibility to a wider public. Thus, all taxpayers may ask questions to the Administrations if they deem there to be a condition of interpretative uncertainty with regard to a specific and determined fiscal case.

What was introduced in the Charter and was recently reshaped, with a reform which will enter into force after January, 1st 2016, is that general right in case of a condition of interpretative uncertainty.

Once the Charter was enacted, with a considerable success related to the introduction of such form of ordinary tax ruling, after the years 2000s special forms of tax rulings have been introduced, such as that on controlled foreign companies and on shell companies. The possibility has been also envisaged to ask the Administration for a ruling with regards to the disapplication of unfavourable provisions. The "*interpello disapplicativo*" was thus created, i.e. a tax ruling aimed at the disapplication of specific anti-avoidance rules limiting advantages and other subjective positions of the taxpayer.

However, irrespective of the positive judgement concerning what has been done during the 2000s, the system was quite fragmentary with regards to the time limits for the response to be given to the taxpayer and to other aspects concerning the various types of tax rulings. Most of all, the biggest limit, if we are talking about fiscal civic-mindedness, was constituted by the fact that, for many types of tax rulings, there were no time limits for the answer to be given by the Administration. For example, in the "*interpello disapplicativo*" the time limit for the answer to be given was not binding.

All of this has led to a necessary rethinking of the situation. In 2014 an enabling act was passed for the reform of some fiscal institutes. Article 16 of said act (n. 23/2014), besides providing for certain specific measures, also provided for the possibility for the lawmaker to reshape the tax ruling regime.

The lawmaker has thus brought order in the matter, first of all by making all of the different rules concerning tax rulings converge in Article 11 of the Charter, which now includes almost all provisions on such institute, while

other provisions only concern specific and sophisticated cases of tax rulings (international rulings).

The new Article 11 of the Charter still provides for the ordinary tax ruling, which can be resorted to in case of interpretative uncertainty, where the notion of "interpretative uncertainty" given by the lawmaker is in a negative sense. We have interpretative uncertainty whenever the Administration has not yet pronounced with its own general measures (circulars or resolutions) on a certain case. This means that the ordinary tax ruling is not an instrument that can be resorted to in order to have the Administration change its orientation.

If the Administration has already ruled on the point with measures of a general nature, the tax rulings cannot be resorted to, which means that the taxpayer will not be able to use this tool, even though there is a certain degree of interpretative uncertainty *lato sensu* (for example, if he states that the Administration has been wrong).

With the new reform, the time limits have been reduced; thus, if according to the previous provisions the answer to an ordinary request for a tax ruling had to be given within 120 days, now the time limit is of 90 days. It is now provided that a request for a ruling can be made not only in case of interpretative uncertainty, but also to provide the qualification of a certain fiscal case where the doubt does not concern a specific provision, but rather how the provisions in questions must be implemented and adapted to a specific fact. For example, one should consider the situation in which the problem is to qualify a certain transaction as either a sale of an enterprise as a whole or of single assets. These cases could not previously be brought before the Administration through requests of tax rulings, given the relevance of factual elements that escaped the interpretation of the provision. Now, after the reform, a request for a tax ruling can be lodged in such cases as well.

Another kind of tax rulings is the so-called "evidentiary ruling" ("*interpello probatorio*"). In this case, the novelty is that the Administration's answers must be given within a certain time, whereas such peremptory term did not

exist before the reform. Previously, in fact, a request for a tax ruling could be submitted to the Administration and the time limit for the answer was not binding, while now the Administration must provide its answer within 120 days.

Furthermore, another type of ruling is the anti-avoidance ruling ("*interpello antielusivo*"), as defined by the lawmaker in connection with the institute of abuse of law. It is now given the possibility for taxpayers to ask the Administration in advance whether certain conducts they intend to put in place may be sanctioned as abusive. This form of ruling is particularly relevant, since it allows a pre-emptive conversation on extremely important institutes, but also because, if it is certainly true that the notion of "abuse of law" which has been introduced is a horizontal one concerning all kinds of taxes, the anti-avoidance ruling is a horizontal instrument as well. Earlier on, there was a certain deficiency in the dialogue with the taxpayer, especially with regard to "abusive" situations for example in the field of indirect taxation. It is the case, for instance, of the interpretation of Article 20 of the provision on Registration Tax, by virtue of which the Administration used to sanction and redefine certain transaction and there was no possibility of a pre-emptive dialogue for the taxpayer.

This evolution, incurred in a substantially short period of time as compared to the usual evolutions of the Administrations and juridical institutes, in a discussion concerning fiscal civic-mindedness, must certainly be coloured with a positive note. Let me highlight again the importance of having established that local entities shall have to reshape their statutes as well in order to adapt, with concern to local taxes (ever more relevant in our country), to forms of rulings on the model of the new Article 11 of the Charter of Taxpayers' Rights.