

# NAUKI PRAWNE / LEGAL SCIENCES

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## FAIRNESS AND ETHICS OF TAXATION AS CONTEMPORARY CHALLENGES OF TAX LAW

### 1. Introduction

Ethics<sup>1</sup>, from the Greek *εθος* (ethos, which, in the common sense, means “character”, “behavior”, “custom”), is the science of human conduct, understood as conduct of the target to which tends the behaviour and the means to achieve it or as a search for the reason for the conduct itself<sup>2</sup>.

In its ordinary sense, the linguistic expression<sup>3</sup> includes everything that is considered moral in the practice of tax behavior held by those who, for various reasons, are taking part in the legal relationship of tax<sup>4</sup>.

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<sup>1</sup> N. Abbagnano, voce *Etica*, in: *Dizionario di filosofia*, III<sup>a</sup> ed. aggiornata e amplificata da G. Fornero, Torino 2001, p. 437 ss.

<sup>2</sup> C. Sacchetto, *Etica e fiscalità*, “Diritto e pratica tributaria” 2006, no 3, I, p. 477.

<sup>3</sup> G. Pellingra, *L'imposizione tributaria attraverso l'evoluzione storica dei suoi presupposti etici e giuridici*, Roma 1977; F. Sainz De Bujanda, *Sistema de Derecho Financiero*, I, vol. 1, Madrid 1977, p. 236; G. Higuera Udias, *Etica fiscal*, Madrid 1982, p. 36; G. Tremonti, G. Vitaletti, *Le cento tasse degli italiani*, Bologna 1986; K. Tipke, *Besteuerungsmoral und Steuermoral*, Köln 1997; P.M. Herrera Molina, *Moral tributaria del Estado y de los Contribuyentes*, Madrid 2002; L. Ferlazzo Natoli, *Tendenze della normativa tributaria verso un Fisco etico*, “Rivista di diritto tributario” 2003, no 1, p. 3; F. Gallo, *Etica e giustizia nella «nuova» riforma tributaria*, “Diritto e pratica tributaria” 2004, no 1, I, p. 3; U. Perrucci, *La prospettiva di un fisco «etico»*, “Bollettino tributario d'informazioni” 2004, no 1, p. 30–31; A. Fedele, *La funzione fiscale e la “capacità contributiva” nella Costituzione italiana*, in: L. Perrone, C. Berliri (a cura di), *Diritto tributario e Corte costituzionale*, Napoli 2006, p. 1; F. Moschetti, *Il principio di capacità contributiva, espressione di un sistema di valori che informa il rapporto tra singolo e comunità*, in: L. Perrone, C. Berliri (a cura di), *Diritto tributario e Corte costituzionale*, Napoli 2006, p. 39; F. Gallo, *Le ragioni del fisco. Etica e giustizia nella tassazione*, Bologna 2007; G. Falsitta, *Giustizia tributaria e tirannia fiscale*, Milano 2008; F. Gallo, *Etica, fisco e diritti di proprietà*, “Rassegna tributaria” 2008, no 1, p. 11; F. Santagata, *Etica fiscale o fiscalità etica? Una questione ancora aperta*, Napoli 2009; C. Sacchetto, *Riflessioni su etica e fisco rileggendo alcune pagine di Klaus Tipke*, in: *Studi in onore di Enrico De Mita*, Napoli 2012, p. 831.

<sup>4</sup> A.D. Giannini, *Il rapporto giuridico di imposta*, Milano 1937.

In this way, a legal matter, such as tax law, is allowed to confront and compete with non-legal disciplines, such as ethics, like what happens in other areas of the economic and legislative system<sup>5</sup>.

Although in everyday language the words “ethical” and “morality” are often used interchangeably, it is, in fact, expressions do not coincide, because morality is based on social behavior, while ethics requires a reflection on this behavior: the moral is a substantial component that gives content and efficacy to norm; ethics, on the other hand, can remedy the shortcomings of the law, appearing much less defined and circumscribed in relation to morality (sometimes gets confused with habit, use and custom)<sup>6</sup>.

The syntagm “ethics”, apparently with a meaning, can be understood at least in two meanings: one “prescriptive”, which considers ethics as science of order to address human conduct, as well as the necessary means to achieve it, what can deduce from the inherent nature of man; the other “descriptive”, which locates in the ethics science of human conduct, aiming at identify reasons and causes of the same, through the consideration of facts and abstention from any consideration of merit.

The difference is obvious: prescriptive ethics presupposes the possibility of identifying moral ideas and values appropriate to assume an absolute size; descriptive ethics, instead, makes relative values, demean them in decisions or resolutions, established by human will<sup>7</sup>.

The ethical analysis of law may be positive or normative: the first hypothesis is to predict the effects of legal rules and understand the consequences of application; the second is to find ethically correct solution, turning to those who, for various reasons, are taking part in legal experience (legislator, jurisprudence and doctrine).

Moral and ethical aspects, related to tax matters, not only analyze the behaviors required by the taxpayers, but also invest tax policy choices made by the legislator and the tax authorities<sup>8</sup>.

Both ethics and law, though disjointed at the conceptual level, cannot be separated in the factual reality<sup>9</sup>; are not miss, however, different reconstructions<sup>10</sup>, designed to separate legal science and ethics, considering the function of a lawyer just to identify and interpret the applicable law. According to this last conception,

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<sup>5</sup> C. Sacchetto, *Etica...*, p. 475; S.A. Parente, *Tax ethics and taxing powers*, in: B. Sitek, L. Roman (edited by), *The selected contemporary aspects of human rights*, Józefów 2016, p. 39.

<sup>6</sup> V. Uckmar, *Etica e giustizia nella tassazione*, “Diritto e pratica tributaria” 2011, no 1, I, p. 153; T. Rosenbaum, *The Mith of Moral Justice. Why our legal system fails to do what’s right*. Perennial, New York 2005.

<sup>7</sup> C. Sacchetto, A. Dagnino, *Analisi etica delle norme tributarie*, “Rivista trimestrale di diritto tributario” 2013, no 3, p. 618–619.

<sup>8</sup> F.F. Leotta, *Tasse: XI comandamento? Spunti per una riflessione sui rapporti tra fisco e morale*, “Diritto e pratica tributaria” 2009, no 1, I, p. 43; S.A. Parente, *The power of tax: ethical profiles and legal analysis*, “Civitas et Lex” 2018, no 2, p. 39.

<sup>9</sup> C. Sacchetto, *Etica...*, p. 481. On the topic, comp. J. Habermas, *Morale, Diritto, Politica*, Torino 1992.

<sup>10</sup> H. Kelsen, *La dottrina pura del diritto*, Roma 1960, p. 19.

legal science would deal subject only, trying to seek what is and how is the right, rather than as it should be or how it could happen: however, nothing prevents the jurist from assuming an ethical perspective as a parameter of investigation, considering that, ultimately, ethical analysis can affect the substance of the legislative decisions and speeches critical of the legislation.

In fact, the law cannot be solved in the formal law, nor coincide with morals, being to them compared, at the same time, autonomous and connected<sup>11</sup>. Not by chance, the application of ethical principles to tax matters<sup>12</sup> has remote origins, which, while not sinking in the mists of time, date back to the first organized civilization<sup>13</sup>.

## 2. Contribution to public expenditure and tax policy

The obligation to contribute to public expenditure, even before legal plan, is grounded in an ethical duty, which rises when comes to be some form of common life<sup>14</sup>: the people are part of an organized group, whose management inevitably involves some expense, to meet the need certain revenue, which retract in part through taxation<sup>15</sup>.

Therefore, the ethical cornerstone of the tax obligation is found in respect of distributive justice – administered by the authority in favor of citizens – and of the legal one concerning the conduct of individuals with respect to the common good.

Appropriate, in this regard, are the words spoken by Oliver Wendell Holmes Jr, famous judge of the Supreme Court of the United States of America, according to which “taxes are the price of civilization”, so much so that “in the jungle there is no exist”<sup>16</sup>.

As Ezio Vanoni, famous Italian jurist, said, on the occasion of the presentation in Parliament of a bill on fiscal equalization, evading the duty to contribute to public spending would create a sort of anarchy, in which the basic values of civil

<sup>11</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 620–622, nt. 16. In addition, on the topic, comp. L. Strauss, *Diritto naturale e storia*, Venezia 1953; A. Padoa Schioppa, *Storia del diritto in Europa*, Bologna 2007, p. 653.

<sup>12</sup> G. Concetti, *Etica fiscale. Perché e fin dove è giusto pagare le tasse*, Casale Monferrato 1995; C.M. Martini, *Solidarietà e fisco. Sulla questione fiscale*, Milano 2000, p. 51; G.P. Salvini, *Sistema fiscale ed etica*, “La Civiltà Cattolica” 2006, I, p. 561; A. Salvati, *Etica dell'imposta e rapporti “Fisco-contribuenti”: l'attualità nelle suggestioni delle opere di Caravaggio e dei pittori fiamminghi. Uno studio di “Law and Literature”*, “Rivista telematica di diritto tributario” 2021, no 1, p. 32.

<sup>13</sup> C. Adams, *For good and evil. L'influsso della tassazione sulla storia dell'umanità*, Macerata 2007, p. 25; P. Boria, *Il potere tributario. Politica e tributi nel corso dei secoli*, Bologna 2021, p. 75.

<sup>14</sup> C. Sacchetto, *Etica...*, p. 476; B. Forte, *Pagare le tasse è un dovere etico purché siano eque*, “Il Sole 24 Ore” 6 maggio 2012.

<sup>15</sup> S. Holmes, C.R. Sunstein, *Il costo dei diritti, perché la libertà dipende dalle tasse*, Bologna 2000, p. 37.

<sup>16</sup> J.D. Sachs, *Il prezzo della civiltà. La crisi del capitalismo e la nuova strada verso la prosperità*, Torino 2012.

coexistence would be denied: the tax evader, if the tax were fair, it would be equated to a deserter<sup>17</sup>.

The tax contribution becomes, therefore, a fundamental moment to create the conditions of a shared well-being, allowing the associates to actively contribute to the training and redistribution of the resources necessary to guarantee goods and services functional to civil coexistence, in the name of the responsibility imposed on each for the common good<sup>18</sup>.

Everyone therefore has the moral and legal duty to contribute to public spending, complying with the tax burden; the right of the State to tax claim corresponds to the passive subjective legal situation affecting the taxpayer (article 53, paragraph 1, Constitution).

Taxation makes possible to participate in the cost of diversified and variegated legal situations: “social rights”, also called “rights to well-being” as they are aimed at improving the condition of the weaker groups, which notoriously require substantial financial efforts on the part of the associates; “negative rights”, such as the right to property, freedom of religion and personal freedom, which, far from constituting a sort of “gift of nature” which the individual enjoys at no cost to the community, require a organizational apparatus to be faced with public money<sup>19</sup>.

The investigation approaches are different: if, on a moral level, the taxpayer is required to pay the tax only in the presence of a “fair tax”<sup>20</sup>, on the legal level, however, the taxpayer will still have to comply with the tax, regardless of whether it is or not right, only to then use the means of protection guaranteed by the legal system.

In other words, the payment of taxes is a moral and legal duty of each taxpayer; conduct of tax evasion or avoidance, although prohibited from a legal point of view, also becomes immoral only when there is a fair tax<sup>21</sup>.

Therefore, despite the ethical approach, respect for the rule of law cannot be neglected, even when it appears morally unjust<sup>22</sup>.

The advantage of reconstruction, rather than undermine the rule of law, with a view to “return to ethics”, is found in the ethical significance, which becomes a part of the legal phenomenon, acting as a stimulus for the development of new rules of law.

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<sup>17</sup> E. De Mita, *La funzione del tributo nel pensiero di Ezio Vanoni*, in: E. De Mita, *Interesse fiscale e tutela del contribuente. Le Garanzie costituzionali*, Milano 2000, p. 13; F. Moschetti, *Etica del tributo ed etica del potere fiscale nell'art. 53 Cost.*, “NEQTEPA” 2015, no 2, p. 20, nt. 1.

<sup>18</sup> F. Gallo, *Ezio Vanoni e il senso etico del tributo*, “Diritto e pratica tributaria” 2017, no 1, p. 168.

<sup>19</sup> G. Marongiu, *La concezione etica del tributo*, “NEQTEPA” 2015, no 2, p. 16, nt. 41.

<sup>20</sup> L.V. Berliri, *La giusta imposta*, Roma 1945; A. Steichen, *La justice fiscale entre la justice commutative et la justice distributive*, “Archiv de philosophie du droit” 2002, t. 46, p. 243; L. Bernardi, *Imposte giuste, giuste giustizie e riforme impossibili*, “Politica economica” 2002, no 3, p. 585; V. Uckmar, *La cultura del impuesto*, “Diritto e pratica tributaria internazionale” 2005, no 3, p. 813; M. Miscali, *Il diritto alla giusta imposta: contributo allo studio del diritto all'equa redistribuzione delle risorse*, Milano 2009.

<sup>21</sup> F.F. Leotta, *Tasse: XI comandamento?...*, p. 36–43.

<sup>22</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 624.

Ethics, in fact, rather than being the daughter of the law, becomes parent<sup>23</sup>: how authoritatively argued<sup>24</sup>, the legislator is a teacher of law, but not of *jus*; however, often the ethical principles become part of positive law, as from the latter received through reference<sup>25</sup>.

On the ethical level, tax policy<sup>26</sup> (*rectius*, taxing power) serves to make up for the deficiencies of the single in meeting alone needs: to achieve the common good each has a duty, moral and legal, to contribute to public expenditure, by paying taxes. So, in this light, the tax becomes an active instrument of formation and distribution of resources, enabling any taxpayer to make means aimed at ensuring welfare society<sup>27</sup>.

### 3. Taxation and constitutional values

In the Italian tax law it is possible to identify certain constitutional principles whose ethical value appears relevant: democratic participation, solidarity and subsidiarity<sup>28</sup>.

The democratic participation of individuals to public choices, especially with regard to the determination of taxes – by virtue of the principle set out in article 23 of Constitution<sup>29</sup> – has a moral order. Therefore, the violation of this principle as well as unlawful also appears unjust; from its application, however, derives the need for more complete information on the taxpayer, the simplification of the tax system to make it more transparent<sup>30</sup>, the taxpayer's education so that he can understand the important concepts of the tax system<sup>31</sup>.

Transparency must be accompanied by the clarity of the economic-financial policy, in order to monitor the extent of the levy, the expenditure data and the objectives pursued with the proceeds of the revenue. In fact, taking into account the role played by the tax in the context of policies aimed at protecting and promoting the dignity of the person, it is possible to identify in transparency, simplicity and efficiency the characteristics that allow a tax system to be considered “fair”, in order to ensure a fair levy.

<sup>23</sup> A.K. Sen, *Etica ed economia*, Roma–Bari 2009; A.K. Sen, *L'idea di giustizia*, Milano 2010, p. 369.

<sup>24</sup> A. Parlato, *Principi, tecnica legislativa e Corte costituzionale*, in: Aa.Vv., *L'evoluzione dell'ordinamento tributario italiano*, Atti del convegno I settanta anni di “Diritto e pratica tributaria”, Genova, 2–3 luglio 1999, coordinati da V. Uckmar, Padova 2000, p. 222.

<sup>25</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 632.

<sup>26</sup> Pontificio Consiglio della Giustizia e della Pace, voce *Politica fiscale*, in: *Dizionario di dottrina sociale della Chiesa*, Roma 2005, p. 618.

<sup>27</sup> F. Gallo, *La funzione del tributo ovvero l'etica delle tasse*, “Rivista trimestrale di diritto pubblico” 2009, no 2, p. 404.

<sup>28</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 634.

<sup>29</sup> A.F. Uricchio, *Percorsi di diritto tributario*, Bari 2017, p. 47; A.F. Uricchio, *Manuale di diritto tributario*, Bari 2020, p. 89.

<sup>30</sup> S. Grassi, S.C. De Braco, *La trasparenza amministrativa nel procedimento di accertamento tributario: i rapporti tra fisco e contribuente*, Padova 1999.

<sup>31</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 634.

In this way, citizens see the bureaucratic, cultural, legal and social obstacles to effective participation overcome, being effectively informed, listened to and involved in the exercise of public functions.

The participation of the taxpayer, despite having to be effective, must not be excessive and disproportionate in order to hinder the decisions on tax matters: in this context, is part of the article 75, paragraph 2, of Constitution, that prohibiting the referendum of tax laws.

The same principle can be made in connection with the duty of solidarity, the basis of which is found not only in articles 2 and 53 of Constitution, but even in the Aristotelian ethics<sup>32</sup>, which believes that social justice is implemented through the joint implementation of the common good and of the individual.

Subsidiarity<sup>33</sup>, regulated by article 118 of Constitution, is instead the policy that regulates the relationship within an organized group, ensuring that the intervention of those who occupies a top position takes place only when that of those placed in a subordinate position appears inadequate.

The application of this principle to tax gives life to the “subsidiary State”, characterized by an intermediate tax system between a liberal view, which locates in the tax the consideration of public services offered to citizens and that, therefore, only with considerable difficulty can’t accept the idea of a progressive tax – an expression of solidarity and social justice – and a socialist logic, that, recognizing excessive spaces to governmental power, results in increase of proportion of public expenditure, supporting her with onerous and oppressive taxes, restricting individual freedom.

A connection between subsidiarity and solidarity can be found in the principle of progressivity<sup>34</sup>, which must be the basis of the tax system, pursuant to article 53, paragraph 2, of Constitution. In order for ethical principles to be respected, it must be a question of just progressiveness, as such, neither spoiled by defect nor by excess; in other words, progressivity must not be attenuated to the point of losing the function of solidarity, nor accentuated in such a way as to constitute a limit to the freedom of the citizen<sup>35</sup>.

In this light, the tax is the most flexible among the instruments available to the State to achieve social justice, overcoming the inequalities resulting from the greater or lesser availability of the goods of life and realizing the values

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<sup>32</sup> Aristotele, *Etica Nicomachea*, V, 1, 1129b, p. 18.

<sup>33</sup> L. Antonini, *Sussidiarietà fiscale. La frontiera della democrazia*, Milano 2005; P. Perlingieri, *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, Napoli 2006, p. 433; M. Parisi, *Principio di sussidiarietà orizzontale e finanza etica: due nuovi strumenti operativi per le formazioni sociali religiose?*, “Il diritto di famiglia e delle persone” 2007, no 2, II, p. 974; F. Longobucco, *La “questione ermeneutica” della sussidiarietà orizzontale: assiologia costituzionale e attività amministrativa*, in: P. Perlingieri, *Temi e problemi di diritto regionale. Un’esperienza didattica*, Napoli 2008, p. 229; P. Boria, *Diritto tributario*, Torino 2019, p. 150.

<sup>34</sup> R. Schiavolin, *Il principio di «progressività del sistema tributario»*, in: L. Perrone, C. Berliri (a cura di), *Diritto tributario e Corte costituzionale*, Napoli 2006, p. 151.

<sup>35</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 639.

of solidarity: it aims to remedy the distortions and the imperfections of the market, favoring freedoms (individual and collective) and protecting social rights<sup>36</sup>.

#### 4. Tax performance between mandatory and fairness: the new challenges of tax law

The tax claim has a dual purpose: on the one hand, restricts freedom, rights owners and the economic potential of the individual; on the other, ensures a fair distribution of wealth, reduces economic and social inequalities and promotes an ethic of responsibility<sup>37</sup>.

The evolution of the ethical notion of tax in a solidarity and distributive key is coeval with the transition from the liberal State (centuries XVIII and XIX) to the rule of law and social State (centuries XX and XXI): the tax levy, far from constituting mere self-limitation for the individual, fits into a modern property rights system and market rules, in implementation of the principles of equality, solidarity and dignity of the person (articles 2 and 3 of the Constitution)<sup>38</sup>.

The protection of the person and his individual rights is to ensure a “fair taxation”<sup>39</sup>, an expression of that substantial justice aimed at achieving the common good<sup>40</sup>.

The ethical character of the tax, in its various forms (tax and contribution), must be analyzed from two aspects: by the taxpayer, ethics is justified because the same, using the services made available to the public, should not escape the obligation to contribute to public expenditure; from the point of view of the tax authority, the ethical duty to prepare a fair tax system, must be accompanied by a correct use of public money, tending to avoid waste, lightness, errors in public spending, corruption and misappropriation.

On the ethical level, to ensure the common good is necessary, on the one hand, pay the taxes and, on the other hand, avoid forms of waste, to safeguard the respect of the universal destination of goods and the right to private property.

About it, appear appropriate the words of Luigi Einaudi<sup>41</sup>, who considered sacred “taxpayers’ money”, as the struggle cannot be preached to tax evaders without being equally indignant towards those who squander public money, since both are placed outside the ethical dictates.

<sup>36</sup> F. Gallo, *Etica fiscale e fisco etico*, “NEΩTEPA” 2015, no 2, p. 4–5.

<sup>37</sup> F. Gallo, *La funzione del tributo...*, p. 404–408.

<sup>38</sup> F. Gallo, *Etica fiscale...*, p. 6.

<sup>39</sup> T. Nagel, *Equality and priority*, New York 1991; A.K. Sen, *La libertà individuale come impegno sociale*, Roma–Bari 1997, p. 25; A.K. Sen, *Lo sviluppo è libertà. Perché non c’è crescita senza democrazia*, Milano 2000; R.J. Arneson, *Eguaglianza ed eguali opportunità di benessere*, in: I. Carter (a cura di), *L’idea di eguaglianza*, Milano 2001; P. Krugman, *Meno tasse per tutti?*, Milano 2001, p. 7; R. Dworkin, *Virtù sovrana, teoria dell’eguaglianza*, Milano 2002; F. Gallo, *Etica e giustizia...*, p. 39.

<sup>40</sup> A. Turchi, *Giustizia fiscale e dottrina sociale della Chiesa*, “Iustitia” 2010, no 4, II, p. 462.

<sup>41</sup> L. Einaudi, *Lezioni di politica sociale*, Torino 1949, p. 28.

The ethical foundation of the tax liability is found in respect of distributive justice – administered by the authority – and that legal citizens as regards the conduct of individuals in relation to the common good.

In this light, the ethical management of tax ensures to taxpayers a management of tax thrifty and efficient to what retracts from the exercise of the power to impose taxes; in addition, the same should be allowed to participate, albeit indirectly, through their representatives in Parliament, with the preparation of tax laws.

The right of the State to levy taxes is not unlimited: on ethical profile, the tax must be fair and addressed to the common good, so as not to encroach on private initiative and encourage tax evasion or tax avoidance behaviour<sup>42</sup>.

The “fair tax” presents certain particularities: first, the character of proportionality and equity, since the tax burden be distributed according to the real possibility of taxpayers, so as to realize a substantial equality aimed at treating equal situations equally and different situations differently; secondly, the tax burden should not be excessive, resulting in a “confiscation tax”<sup>43</sup> with expropriation effects, such as to compel the taxpayer substantially effects to use their assets to meet the tax liability; additionally, must respect the principle of subsidiarity, ensuring that the management of the *res publica* can multiply bureaucracy and turn the State into a welfare office<sup>44</sup>, characterized by inadequate extension of the tasks of the human and financial institutions, waste of energy and increase bureaucratic structures dominated by exaggerated logic rather than by the concern to offer an efficient service; finally, the opportunity to challenge and check the tax claim, by motivating the act of taxation, the adversarial principle recognized in the process of investigation, the correct use of presumptions, the guarantee of judicial protection, the transparent and prudent administration of public money, according to the canon of good *pater familias*.

Administrative transparency must be accompanied by the clarity of the policy in the economic and financial field, so as to monitor the extent of sampling, the expenditure data and the objectives pursued by the proceeds of the revenue<sup>45</sup>. Given the part played by the tax in the context of policies aimed at protecting and promoting the dignity of the person, it is possible to identify in transparency, simplicity and efficiency those features allow to believe “fair” a tax system to ensure a withdrawal right<sup>46</sup>.

In this perspective, fairness and ethics of taxation represent the contemporary challenges of tax law.

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<sup>42</sup> F.F. Leotta, *Tasse: XI comandamento?...*, p. 34–36.

<sup>43</sup> G. Falsitta, *L'imposta confiscatoria*, “Rivista di diritto tributario” 2008, no 2, I, p. 89; G. Gaffuri, *Garanzie di giustizia e diritto tributario: la capacità contributiva*, “Iustitia” 2008, no 4, p. 442.

<sup>44</sup> F. Gentile, *Ordinamento giuridico tra virtualità e realtà*, Padova 2001, p. 67.

<sup>45</sup> F.F. Leotta, *Tasse: XI comandamento?...*, p. 36.

<sup>46</sup> A. Turchi, *Giustizia fiscale...*, p. 469.

## 5. Conclusion

In modern legal systems, the power of taxation, expression of state sovereignty<sup>47</sup>, assumes a peculiar dimension, linked to rigorous objective parameters, aimed at validation the ethical essence of the tax. This power is emblematic of the authority exercised by the State on its own territory for the achievement of the common good and to guarantee order, freedom and the rights of the individual. The fulfillment of this task confers on the State a “legitimacy moral”, founded on freedom and a sense of responsibility<sup>48</sup>.

In this perspective, tax ethics cannot be separated from the analysis of the primary functions carried out by the tax law, identified in acquisitive, redistributive and promotional purposes.

The acquisitive purposes takes priority and essential in tax field, being the tax intended to provide resources to the treasury, in order to finance public spending, aimed at pursuing the interests of the citizen/taxpayer (think of the drafting of laws, administration of Justice, public order and other public services indivisible). To do so, is not recommended as much an imposition too low, as a too high: the first could undermine the principle of solidarity, the second that of subsidiarity; the best solution should be identified in practice.

The redistributive function<sup>49</sup>, implemented through the principle of progressivity of taxation, aims at remove the social and economic inequalities between taxpayers, subjecting the richest for a more than proportional tax in relation to disadvantaged groups; in this way, the tax system is no longer geared exclusively to the production of public goods and services, but also to the fulfilment of a duty of social solidarity<sup>50</sup>.

Even with a redistributive eye are discard extreme solutions: an overly limited redistribution would be contrary to the duty of solidarity by creating social inequality and discontent within the population; high redistribution, however, would increase public spending enormously rewarding who benefits from subsidies without contributing to social progress and encouraging, at the same time, tax evasion, tax avoidance or relocation of the affluent classes who consider such oppressive and unjust to keep people who do not work<sup>51</sup>; the right fit must be identified in practice.

Moreover, related to both the acquisitive and redistributive function is the “tax amnesty”<sup>52</sup>, which gives rise to considerable doubts, because if makes

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<sup>47</sup> M. Ferrante, *Sovranità fiscale ed integrazione comunitaria*, Napoli 2006; P. Boria, *Il potere tributario...*, p. 550.

<sup>48</sup> A. Turchi, *Giustizia fiscale...*, p. 462.

<sup>49</sup> G. Stefani, *Economia della finanza pubblica*, Padova 1999, p. 43; F. Ferraro, *Una felicità giusta. Considerazioni su utilitarismo, progressività dell'imposizione fiscale e redistribuzione*, in: F.V. Albertini, L. Cominelli, V. Velluzzi (a cura di), *Fisco, efficienza ed equità*, Pisa 2015, p. 43.

<sup>50</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 641.

<sup>51</sup> R. Lupi, A. Turchi, *L'obiezione fiscale tra etica, politica e diritto*, “Dialoghi tributari” 2011, no 4, p. 350.

<sup>52</sup> L. Ferlazzo Natoli, *Riforma etica, condoni iniqui*, “Bollettino tributario d'informazioni” 2003, no 9, p. 645.

“cash” in a short time, the figure compresses the distributive interest until it is canceled, arousing a sense of injustice and frustration on honest taxpayers<sup>53</sup>.

Another characteristic of the tax law is the promotional function<sup>54</sup> aimed at achieving purely extra-tax purposes, such as stability and economic development, through the provision of incentives and penalties that encourage/discourage the performance of certain activities.

Even the facilitating or penalizing instruments should not be excessive, as they could provoke an unreasonable influence of the State on the economy, diverting resources from profitable areas to other less profitable areas, with consequent violation of the principle of subsidiarity.

The ethical value of promotional rules must be measured with the canons of necessity, proportionality and adequacy: if the rule does not necessary, the subsidiarity principle would be violated, since the pursued objective could have been achieved without State intervention; in the absence of proportionality, the rule would be unjust by excess, exceeding what is strictly necessary to achieve the goal supervisor; if the rule were not adequate, it would be unjust by default, not being of such intensity and quality as to guide the choices of individuals, with unnecessary derogation from the general rule<sup>55</sup>.

To conclude, fairness and ethics of taxation<sup>56</sup>, alongside a serious education program on legality aimed at forming a new “tax conscience”<sup>57</sup>, present themselves as current challenges of tax law, not only to reduce the tax burden and overcome the phenomenon of inefficient public spending, but also to implement wealth redistribution policies aimed at reducing social inequalities.

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<sup>53</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 649.

<sup>54</sup> A. Dagnino, *Agevolazioni fiscali e potestà normativa*, Padova 2008, p. 23.

<sup>55</sup> C. Sacchetto, A. Dagnino, *Analisi etica...*, p. 643.

<sup>56</sup> R. Artoni, L. Micheletto, *Per una traduzione sul piano operativo del concetto di equità nella tassazione*, in: F.V. Albertini, L. Cominelli, V. Velluzzi (a cura di), *Fisco, efficienza ed equità*, Pisa 2015, p. 121.

<sup>57</sup> M. Basile, C. Sciancalepore, *La leva tributaria quale strumento per ricomporre la frattura intergenerazionale*, in: L.R. Corrado (a cura di), *Le uguaglianze: diritti, risorse, sfide per il futuro*, Milano 2015, p. 37.

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## FAIRNESS AND ETHICS OF TAXATION AS CONTEMPORARY CHALLENGES OF TAX LAW

### SUMMARY

Fairness and ethics of taxation arise as contemporary challenges of tax law, a public legal science that deals with the study of taxation and its applications. The ethical connotation of tax law, strictly connected to the legal profiles, requires the examination of the acquisitive, redistributive and promotional purposes of taxation, which are among the primary functions of tax law.

**KEYWORDS:** Functions and contemporary challenges of tax law, fairness, tax ethics, constitutional values, primary functions of taxation