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The tax Court system in Italy : an overview



Consiglio di Presidenza della Giustizia Tributaria

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In Italy, tax disputes are dealt with by specialized judges sitting in tax Courts of first and second instance called Provincial Tax Commissions and Regional Tax Commissions.

The Commissions decide in panels of three members appeals concerning the imposition of taxes and the denial of tax refunds.

The two levels of Courts are composed of both ordinary (career) judges, and lay (technical) judges who represent the legal professions (mainly practicing lawyers and qualified accountants).

The ordinary judges and the lay judges are part-time judges devoting part of their time off the private job or office.

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The tax judges in service are 3146

Tax judges are fee paid judges, receive a monthly fixed fee and a variable one related to the number of the appeals decided.

An important requirement for the tax judges is the removing of situations of incompatibility that happens when, the judge, his spouse or relatives within the second degree play activity of legal assistance or performing tax consulting in the place where the judicial functions are exercised.

In such case the judge must opt for the transfer to another Commission located in a different region or province not contiguous to that one of origin.

Failure to comply with this ethical rule constitutes a disciplinary offence.

The supervision over tax judiciary and the management activities (transfer of judges, assessments of incompatibility, disciplinary measures, legislative proposals, professional training) belong to the High Council for Tax Judiciary, self-governing body, whose members are elected every four years between the tax Courts judges (11) and the members of Parliament (4).

Tax proceedings are essentially based on documents. The witness evidence is not allowed even when necessary to know the relevant facts of the case.

The prohibition validated by the Italian Constitutional Court is inconsistent with the case law of the European Court of human rights which considers such ban incompatible with the right of defense when it is extremely difficult or impossible for the taxpayer to produce documentary evidence.

During the proceeding the taxpayer can benefit of a strengthened system of provisional measures (precautionary protection) in the presence of appearance of right (*fumus*) and danger in delay (*periculum*), in order to obtain the stay of enforcement concerning either tax claims or judgements under appeal or cassation (double guarantee).

The judgment (1st instance) can be appealed before the Court of 2nd instance within 60 days.

The appeal involves a total re-examination of the case in fact and law

In the appeal proceedings it is forbidden the *ius novorum* meaning that are not admissible « new » questions or exceptions.

Otherwise new documents can always be produced (diverging from the civil system where the ban is absolute).

The decisions of the Italian tax Courts are briefly justified and contain the condemnation of the losing party to reimburse the costs of litigation, both are enforceable in favour of the taxpayer or the financial Administration.

However tax collection takes place gradually compared to the various stages of litigation.

Enforcement of tax decisions requires specific compliance proceedings (*c.d. ottemperanza*) as provided for decisions of the administrative Courts and it falls within the competence of a single judge.

Taxation concerns subjective rights and therefore falls under the (ultimate) judicial control of the Court of legitimacy .

The Italian Court of Cassation is the highest level of jurisdiction and its mission is to ensure uniformity of jurisprudence and to ensure legal certainty.

The Court of Cassation is a “general” Supreme Court of last instance dealing with all sorts of cases and is organized into more divisions, each chaired by a President and specialized in a specific field of the law, i.e. civil, criminal, labour, taxation, etc.

Tax cases are hearded by one of the divisions which decides in panels of five members (who are all career judges)

When there is diverging case law of the divisions of the Court of Cassation or when questions of law of major importance are raised, the decision is given by the United Chambers of the Court acting in an extended panel (nine judges consisting of Presidents of the divisions).

Recourse to the Supreme Court may be accepted or rejected. If the recourse is accepted, either the decision appealed is annulled (cassata) without referral, or the case is remitted to a tax Court of the same level as the Court whose decision was quashed which re-examines the case implementing the law as set out by the Supreme Court.

If no new findings of fact are necessary, reasons of procedural economy allow the Supreme Court, after amending the violation of law, to decide on the merits of the case itself.

The decisions of the Court of Cassation produce “*res judicata*” with regard to the issues decided: such decisions are final and immutable for the parties.

The interpretation of the law by the Court of Cassation is a powerful reference point for the Tax Commissions, but it is not binding in other cases than the case decided by the Court.

The principle of “*stare decisis*” does not apply in the Italian legal system.

All CSC decisions are published with a summary in a database that can be consulted by the public.

The tax litigation pending before the Italian tax Courts (Commissions) amounts to 470.000 proceedings and in the Court of Cassation about 37.000 cases are awaiting for judgement.

Recently, the electronic process was introduced to accelerate and simplify the procedures, but the digital system alone is not sufficient if not implemented with filters of access to the jurisdiction and friendly compositions of the disputes.

Lets' see what the italian system offers.

Judicial actions relating to disputes not exceeding EUR 50.000 in value are submitted to an administrative complaint and mediation attempt procedure of the tax authorities, which is a preliminary requirement to be included in the appeal before activating the jurisdiction of the tax Court.

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The appeal therefore works as preliminary administrative recourse in view to provoke a reconsideration of the tax claim and reach a settlement with the taxpayer avoiding the judgment.

A settlement can be made always by the judge during the proceeding in all types of disputes without limitation of value.

Besides, on the example of the "leave" model, the competent Court has the possibility to declare an appeal inadmissible when previously verifies that it is not reasonably likely to be accepted.

There are also pre-requisite conditions for the access to the Supreme Court

An indirect filter is represented by the rule that before the Supreme Court only attorneys who are qualified and have the certification to appear before the highest Courts may represent taxpayers.

An internal filter - on the model of french *formation restreinte* - consists of the preliminary examination of appeals assigned to a Chamber within the Supreme Court (c.d. *struttura*), which verifies if there are reasons to declare the appeals inadmissible or manifestly founded or not founded ,deciding the case immediately without referring it to the public hearing.

It should be noted that appeals regarding insufficient or inconsistent reasoning of the decision (non resolving in a total absence) are no more admissible and such limitation contributes further to reduce the indiscriminate access to the Supreme Court .



Thank you for your attention

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