

**DOTTORATO DI RICERCA IN DIRITTO TRIBUTARIO DELLE SOCIETÀ**

XXIII Ciclo

*L'autonomia tributaria delle Regioni e degli enti locali  
alla luce della riforma del federalismo fiscale*

**- Abstract -**

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***Abstract***

The study sets out to examine the question of fiscal federalism, in particular the tax autonomy of Regions and local authorities.

The analysis, centring mainly on the legal and taxation aspects characterising fiscal federalism in Italy, makes no attempt to be exhaustive or cover all the complex and varied issues of fiscal federalism, as well as administrative and economic questions, but rather seeks to provide a systematic overview of the tax autonomy of Regions and local authorities.

After a brief look at the concept of fiscal federalism and the features and principles underpinning such a system, the first chapter is devoted to tracking the evolution of the federalist phenomenon in Italy's legal system.

The first task is to dispel any doubts as to the constitutional compatibility of fiscal federalism. As has been authoritatively argued, *“underpinning the federalist process are (i) the same values and the same constitutional principles of local autonomies, i.e. of regionalism and municipalism”*. The major references are, prior to the changes made by constitutional law no. 3 of 2001, to articles 5, 128 and 119 of the Constitution. The wording of Title V of the Part Two of the Constitution following constitutional law no. 3 of 2001 undeniably contains a federalist leaning, in particular the contents of art. 119.

This first chapter thus analyses the principles drawn up by the Constitutional Court in the period (from 2001 to 2009) in which new constitutional precepts remained on paper only, and when the Constitutional Court was actually forced to come to the aid of the lawmaker, specifying not only the scope of the provisions of art. 119 of the Constitution

but also the consequences deriving from delays to the introduction of legislation ó defined as a ònecessary premiseö ó to enact constitutional changes.

The second chapter examines the implementation of art. 119 of the Constitution, with a close look at the main points of the legislative decree implementing fiscal federalism (Law 42 of 5 May 2009).

We may state extremely briefly that this legislative decree seeks to:

- a) outline a series of guiding principles and general criteria to inform the development of the entire fiscal federalism system;
- b) define a framework for the actual exercise of tax autonomy, establishing that Regions, only for matters not subject to State taxation, can set regional and local taxes and determine the subject matters and areas in which the tax autonomy of local authorities is to be exercised;
- c) establish the institutional framework of financial relations among the various levels of government, in particular, the start-up of a gradual process, including a phase of transition, restoring a sense of rationality to the allocation of resources and rendering this allocation consistent with the standard cost of services provided;
- d) ensure an adequate level of tax flexibility during the development of the overall framework, planning for a basket of one's own and shared taxes, the composition of which includes mainly so-called flexible taxes, yet in a context in which the need for simplification, the reduction of tax obligations to be met by taxpayers, the efficient administration of taxes and the rationality and coherence of single taxes and of the system as a whole is stressed;
- e) plan for the creation of suitable measures to ensure the orderly transition from a financial system such as that in place in Italy, characterised by the existence of a

regional and local finance system that is still largely *derived* to a new, more autonomous system.

Chapters three and four focus on studies of the themes of the tax autonomy of Regions and local authorities.

These two chapters seek to analyse *insofar as possible* in view of the *de iure condendo*<sup>1</sup> phase *in* the choices made by the delegated lawmaker in enacting the law, considering that these choices appear crucial in characterising the extent to which the system being introduced in our country can be called *federalist*.

There appears to be no doubt indeed that the legislative decree contains the seeds for the construction of a federalist-oriented tax system, but at the same time, considering the principles laid down in the decree, there also emerge, equally clearly, numerous and significant limitations to the powers of Regions and local authorities (for example there is the policy reserve in favour of the State and the related double taxation prohibition).

It was thus felt it was necessary to analyse, in order to better outline the new tax system, a number of aspects of legislative decrees implementing provisions in the sphere of regional, provincial and municipal tax systems.

This legislation is not yet in force (and is thus liable to undergo changes, possibly radical).

In greater detail, the legislative decree concerning the revenue autonomy of ordinary-statute Regions and provinces and the calculation of standard costs and needs in the healthcare sector, approved by the Council of Ministers (Italian Cabinet) on 7 October 2010, is now being examined by parliamentary Commissions, while the decree

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<sup>1</sup> The dissertation was last updated on 10 February 2011.

Provisions on the subject of municipal fiscal federalism was fully approved by the Council of Ministers on 3 February 2011.

With regard to the overall system that emerges from the reading of these draft laws, one cannot but share the opinion of legal theory arguing that we remain in the presence of a centralistic system, still a considerable distance from a federal model.

In this sense, the choices of the delegated legislator rest on basing the financing of Regions on shared interests in the VAT system and confirming the dominant position of IRAP (income tax) among the derived taxes of the Regions. In such a system the role to be played by the taxes set by the Regions alone appears to be a marginal one.

The same conclusions appear to be reached considering provincial and municipal taxation, if one looks at enacting decrees. For Provinces, indeed, it can be seen that the biggest innovation is the elimination of state and regional transfers in favour of the creation of that sharing of revenue from state and regional taxes. In terms of impact, however, the re-steering into the group of own provincial taxes of third party liability insurance deriving from motor vehicle traffic (RCA), as well as confirmation of the allocation to Provinces of the provincial transcription tax (IPT), in addition to other taxes already allocated to provinces by existing legislation, all appear to be of little relevance. With regard to municipal federalism, the legislative decree, approved by Parliament on 3 February 2011, introduces a system based on several sources of funding. Reference is given firstly, within the framework of the taxes of municipalities created through a state or regional law, to the main municipal tax and to the secondary municipal tax. Secondly, with regard to special purpose taxes, to the planned introduction of the so-called visitors' tax (*imposta di soggiorno*) and the extension of the scope of application of special purpose taxes, already introduced with the 2007 finance law. Finally, among other funding sources of Municipalities, to the devolution

to these bodies of property taxes and the parallel creation of a new form of optional levy (the flat-rate levy on rent), and the unblocking of the additional municipal income tax and sharing of VAT revenues.

In conclusion, we believe it would be difficult to define such a system as actual fiscal federalism. Nevertheless, we cannot fail to note that the very *positivisation* ó enacted by legislative decree 42/2009 ó of the idea of introducing a federal model in our taxation system is in itself a real breakthrough which, as such, will require a considerable amount of time for the new system to be fully implemented. Accordingly, even though the current drafts of implementing legislative decrees actually appear to wander from (or reduce the reach of) the ideas of the reform conceived by the delegated legislator, there is no reason to rule out the possibility of significant corrective measures being adopted as these decrees are screened.