



DOTTORATO DI RICERCA IN DIRITTO E IMPRESA

XXVIII CICLO

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*The taxation of banks' income*

*(SINTESI)*

*English version*

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## SUMMARY

Banks are a «special *status* entities» that are regulated by a specific law (the Legislative Decree no. 385/1993). As it is known, the typical banking activity contain two «component activities»: the credit supply and the collection of saving.

This work aims to comprehend how the peculiarity of the banking activity reflect in the tax law and, in particular, in the income tax. The legislative interventions in the field of banking taxation can be reconducted to three categories: i) the provisions related to the typical bank's assets (credit and passive interests); ii) the provisions aimed to follow counter-cyclical or promotional objectives; ii) the provisions that determine a surcharge.

As far as the first category is concerned, tax law provides, for banking and financial sector, an *ad hoc* regulation for the deductibility of receivables' write-down and for the deductibility of passive interests. In particular, tax law provides for the full deduction in the fiscal year in which they are booked in the balance sheet. The new regulatory asset outstands for the increased fiscal issues' derivation from the financial asset and, so, for the considerable simplification of the fiscal regulatory framework. Anyway, doubts remain as far as the *ratio* of the regulation and the check of the tax Revenue are concerned.

The second category includes the possibility to convert deferred tax assets (DTA) into tax credits (provided by the Law Decree no. 225/2010) and the possibility to apply to the participation acquired on the conversion of loans or on their extinction (as it is agreed in financial restructuring plan of companies in crisis) the tax treatment of loans extinguished/converted (provided by the art. 113 of

the Consolidated Income Tax Act). These two measures, which can be defined as “asystematic” tax reliefs aimed to pursue extra-fiscal objectives, seem to go in different directions and are susceptible to determine state aids.

The third category comprehends a set of varied measures that fundamentally can be reconducted to: the cd. *Robin Hood Tax* related to the banking sector, the *una tantum* surcharge provided by the Law Decree no. 133/2013 and the surcharge provided by the Law no. 208/2015. All these measures are susceptible to determine constitutional questions. Furthermore, the latest surcharge implies some applicative problems that should be resolved as soon as possible.