

## ABSTRACT

The main object of the research is twofold: a general one and a more specific one.

In regard to the general one, in the research are examined the most critical profiles raised by the art. 182<sup>ter</sup> l.f., also known as *transazione fiscale*, or “*treatmento dei crediti tributari e contributivi*”, in the event of which it is applied during the major insolvency procedures known as “*concordato preventivo*” or “*accordo di ristrutturazione dei debiti*”, with the aim to give a systematic approach to the main issues of the disposition and trying, where possible, to give a proper solution.

In this context, the 2016 reform takes a principal role, cause it has deeply modified the general structure of the disposition so arising a completely new kind of issues and modifying the already known ones as well.

In regard to the specific one, the main object of the research is the study of the function’s typology of the Tax authorities, as well as the consequential procedural issues raised every time the application of the art. 182<sup>ter</sup> l.f. is involved.

For the above mentioned purpose, it has been necessary an in-depth study of one of the most critical issues of the contemporary tax law, represented by the “*ability to pay principle*”, variously identified starting from the pre-constitutional era and object of the main studies conducted by the tax doctrine.

Form this point of view, the analysis has been supported by an in depth study of a different topic, represented by the function’s typology in it’s two known qualifications: the discretionary function and the bound function.

More in specific, the results achieved by the administrative doctrine have been compared to the specifics of the tax field in order to verify the complementary interrelations between the typology function and the ability to pay principle.

Form this comparison, it has emerged that the ability to pay principle is indissolubly linked to the specific powers exercised by the public administration, due to a discretionary power matches always the power to dispose the credit likewise, to a bound power matches always the lack of the power to dispose of the credit.

After having identified in the art. 182<sup>ter</sup> l.f. a bound power and so, consequentially, the lack of a real disposing power of the tax credit, it has been necessary to verify the impact of this conclusion form the procedural point of view.

In this regard, the first issue that has been faced was the research of a juridical position in need of protection. For this reason the found out raised the issue to identify the correct court jurisdiction

also taking in consideration that, from a general perspective, all the possibilities that characterized our system were possible.

Form this point of view, a central role was taken by both studies about the jurisdictional criteria conducted by the procedural doctrine, in general, and the studies about the provision of art. 2 and 19 of the legislative decree n. 546/1992 conducted by the procedural tax doctrine, in particular.

Thanks to the previously mentioned studies, and after having compared their results with the specifics of the art. 182<sup>ter</sup> procedure, and also thanks to a comparative approach involving other similar provisions, it has been possible to verify the jurisdiction of the tax law courts with the resulting consequences.