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**CRIMINAL TAX LAW BETWEEN PROBLEMATIC ISSUES  
AND PROSPECTS FOR REFORM**

The present thesis deals with the issue of criminal tax law as a peculiar sector of corporate criminal law, outlining its regulatory evolution and examining its main problematic issues which arose in interpreting and applying it, and which only today partly find a response in the recent reform of the system of sanctions in tax matters carried out by means of Legislative Decree no. 128 of 2015 and of Legislative Decree no. 158 of 2015.

If, on one hand, the presence of the State in the economy has been characterized over the past few years by a decisive decrease in its impact, on the other hands, in tax matters, mostly due the present economic and financial crisis, the activity of the public authorities is still rather incisive.

The legislation in this sector is, indeed, protected by a number of sanctions operating in parallel both in criminal law and administrative law.

Over the years, however, the criminal legislation aiming to safeguard the fulfillment of tax obligations has been amended numerous times, going from a model founded on the anticipation of punishment of the conducts by “unfaithful” taxpayers, through crimes of danger and the duplication of the criminal sanction with the administrative one, to a model – launched with the entry into force of Legislative Decree of March 10th 2000, no. 74, – which focuses on the violation of the obligations in matters of tax return and payment of the tax, offering a crucial role, in the construction of the types of crime, to tax evasion and introducing the principle of specialty also in the application between a criminal offence and an administrative one.

Said perspective was confirmed most recently by the reform of the criminal tax sanctions carried out by means of Legislative Decree no. 158 of 2015, which amended Legislative Decree no. 74 of 2000, acting not only on the wording of the behaviors described for the different types of crimes, but also on the taxpayer’s punishability, by increasing the thresholds established by the single crimes and introducing special causes of non-punishability connected with the payment of the evaded tax.

Starting, then, from the very beginnings of criminal tax law, to be found in Law no. 4 of January 7th 1929 as the first comprehensive set of regulations issued in matters of criminal tax violations within the Italian legal system, moving forward to analyze Law no. 516 of 1982 (the so-called law “*handcuffs on the tax evaders*”, as it proposed a criminalization of the criminal conducts carried out to evade taxes, not only using the criminal tool as a cornerstone remedy, but giving it a function which is more preventive than repressive, anticipating the threshold of the criminal safeguard to preliminary or instrumental conducts to the evasion conduct), attention is focused on examining Legislative Decree no. 74 of 2000 as a microcode of criminal tax law that, although recently amended, still represents the legal text of main reference on this matter.

The analysis of the main provisions to be found in the single incriminating types of offenses which are all contained in Legislative Decree no. 74 of 2000 (in matters of, among others, relationships between tax crime and criminal-tax crime, of crime

that can be committed only by specific categories of persons and participation in the crime, of delegation of functions and criminal liability within big-sized entities, of mistakes on a tax provision) permits to examine these more completely and efficiently. Among these incriminating types of offenses particular, attention is certainly focused on the crimes in matters of tax returns.

These are, in fact, - fraudulent tax return through invoices and fictitious transactions, fraudulent tax return through other artifices and, mostly, unfaithful tax return and omitted tax return – crimes around which there arose some of the most important interesting problematic issues that have been dealt with in the present thesis, and which were raised when interpreting the provisions and often resulting in improperly broadening the significant application scope of criminal-tax crimes: the reference is clearly being made to the topic of the abuse of right and tax avoidance, in the terms in which the recent reform of 2015 has affected their criminal importance.

If tax planning represents, in fact, an important moment in the life of economic operators, it is evident that the choice among a number of alternative taxation systems, made available by the legal system with equal dignity, is lawful to the extent that it does not result in the abuse of a legal tool aiming to obtain a tax advantage in the context of a transaction which would otherwise have no valid economic reasons, sometimes exploiting the gaps which can inevitably be found in the tax legislations.

The phenomenon of tax evasion consists, in fact, in the instrumental use of legal arrangements whose aim is to reach a goal that is different from the one for which said arrangements have been created. In tax matters, said goal coincides with the decrease in the tax burden.

In dealing with the issue of the possible importance of avoidance in a criminal court – until reaching the recent introduction of art. 10-bis within the Statute of the Rights of the Taxpayer -, with the present thesis concern is expressed, thus, when dealing with the need to respect the principle of lawfulness of the incrimination, as well as the principle of freedom of tax planning, expressly set forth both domestically and globally.

In the absence of a precise reference by the legislator, in fact, it is not possible to invoke the application of the most serious sanction in relation to a behavior that, far from representing the violation of a specific provision and, thus, an offence, results instead in a conduct, lawful *per se*, but instrumental in achieving an unrecognized advantage.

In the same way, and with the same spirit, the present thesis takes into consideration additional phenomena existing in the current economic and legal reality – such as, for example, the problem of the responsibility of the *extraneus* in the *reato proprio* (a crime that can be committed by specific categories of persons), the respect of the prohibition of *bis in idem* in the relationship between administrative offence and criminal offence, the debate on the legal classification of the thresholds of punishability – analyzing how they are dealt with by the actual legislation, to then examine their compatibility with the principles, both constitutional and non-constitutional, governing the system, with particular reference to the principles of offensiveness and guilt.

If, thus, also as a result of the latest reform, there seems to exist, on the part of the Legislator, the will to entrust the role of *extrema ratio* to the criminal sanction (as, indeed, it should be), the emphasis placed on the “discriminating” suitability of conducts of voluntary disclosure or satisfaction, even *ex post*, of the Tax Authorities’ claims, highlights once more, in the construction of the criminal tax system, the importance of the reason of State and, thus, of the Tax Authorities’ interest in the timely and complete collection of taxes.

In any event, it is an interest that must coexist, in mutual respect, with the freedom of private economic initiative as well as with the other rights and applicable protections, also on a constitutional level, in favor of the individuals within the legal system.

As a matter of fact, it is undoubted the extent to which criminal law contributes to defining, on a legislative level, the limits within which it is lawful to act, from a viewpoint both economic and non-economic, of partners who – both operating a single individuals and when setting up a company – need a defined scope that is easily recognizable and in which they can operate.

In said context, thus, the tax legislation represents an indispensable part of that network of rules which limit and affect the actions of individuals and companies.

In this respect, within criminal tax law it is necessary to strongly assert the demands of certainty of the law, fulfilled by respecting the principle of legality, and mainly referring to the derived principles of strictness and precision of the case in point.

On the contrary, against a criminal tax law that seems determined to intervene less and less in the life and choices of the economic operators, the legislation as actually applied by the judges broadened the criminally relevant area.

The aim of the present paper, thus, is not only to examine the evolution of criminal tax law within our legal system, with the goal to identify the *ratio* of the legislative choices adopted from time to time, as well as these latter's compliance with historical situations or to an effective planning of the system, but rather also that of understanding if the requests of the Legislator are effectively received by the actual legislation in the resolution of that category of phenomena which stand outside the literal content of the individual incriminating offences and that has, therefore, raised over time a number of sensitive issues and relevant frictions with the principles governing criminal law.