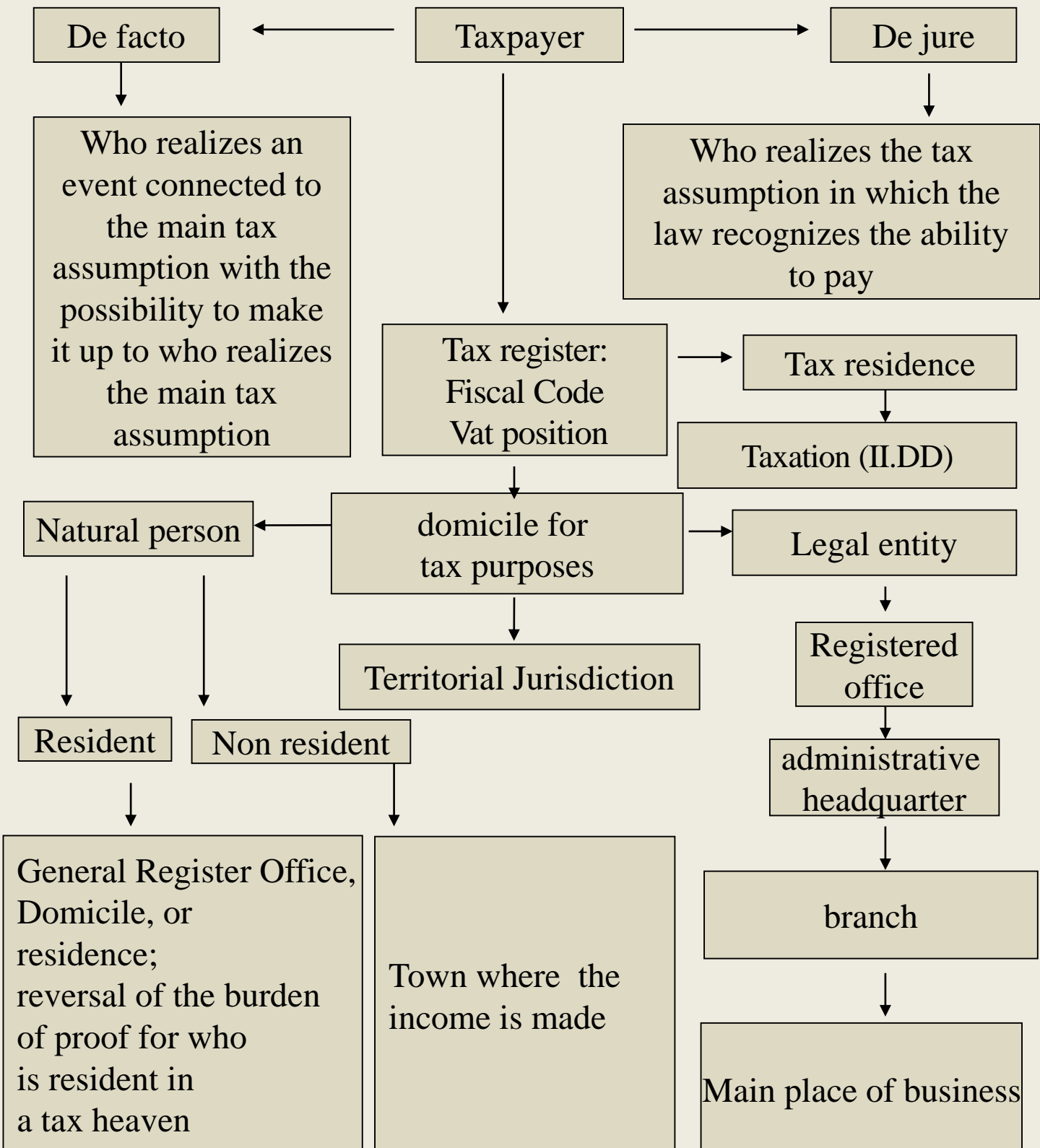


**6.**

**PASSIVE TAX LIABILITY SUBJECTIVITY**

## 6.1 THE TAXPAYER



## 6.2 PASSIVE FISCAL SOLIDARITY: JOINT AND DEPENDING SOLIDARITY

- Formal and substantial subjectivity
- Solidarity obligation → 

General applicability art. 1292 ss. Italian civil code.
- Principal debtors: (joint solidarity: the tax assumption is jointly realized by each person)
- Depending debtors: (depending solidarity: the person who realize the tax assumption is obliged before the law)

- General description of the solidarity



relation to the civil law code

- distinction depending on the relation with the tax assumption and/or guarantee requirements between depending or jointly solidarity
- Joint solidarity
- Depending solidarity



depending obligation exists only when the main obligation exists

- Litigation aspect:

- there is no solidarity
- act must be notified to everyone
- art. 1306 civil code, joint obligation, joinder litigation:
- The Appel (art. 1306 civil code) is alternative to the joinder litigation



- art. 1306 civil code: depending solidarity obligation (INVIM, register) and value determination between two tax but with one transfer deed:
- Art. 1306 shall apply for equality principle and not for the tax solidarity

DPR n. 602/1973 (Collection of income taxes):

Solidarity circumstances during the tax income collection

art. 34:  
joint and several  
liability for the tax on  
the natural person

art. 35: joint and  
several liability of the  
withholding agent

art. 36: joint and several  
liability for managers,  
liquidators and business  
partner

Solidarity in the indirect taxation

VAT



Solidarity between assignor and assignee  
Art. 60-bis D.p.r. 633/1972



Even the assignee is a taxable person



Price is lower than the arm's length value

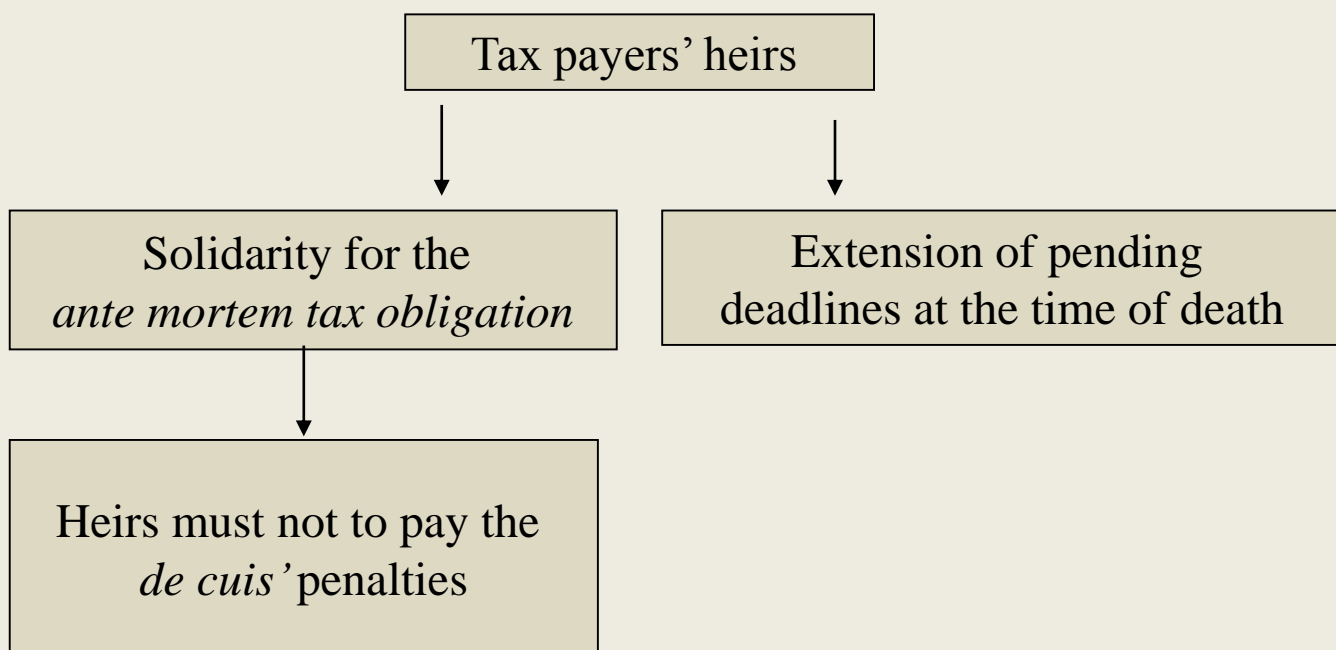
### 6.3 WITHHOLDING AGENT

- «Colui che è responsabile in luogo di altri per fatti o situazioni esclusivamente riferibili a questi con obbligo di rivalsa» (art. 64 DPR n. 600/1973): Withholding agent is any person or entity who is in control of the payment subject to withholding tax and therefore is required to deduct and remit taxes withheld to the government
- Italian «riserva di legge» principle
- Relation with art. 53 Italian constitution and with the effective ability-to-pay principle.
- Substitution during the tax collection phase:
- Supporting the tax levy; **the withholding agent has no interest in tax evasion**
- Types of withholdings:
 

- deduction at source	—————→	- tax obligation is run out
		- solidarity of the tax levy
- installment	—————→	- tax obligation is not run out
- Link of Prejudice/dependence
- Administrative profiles
- Processual profiles
  - omitted withholding
  - withholding deduction made but not paid to the public treasury
- Litigation between withholding agent and the substituted

## 6.4 TAX LIABLE PERSON

- «colui che è responsabile insieme con altri per fatti o situazioni esclusivamente riferibili a questi con facoltà di rivalsa» (art. 64 DPR n. 600/1973): person who is liable with others for facts or situation which refers to them
  - Notary for registration fee
  - Representatives for registration fee
  - Banks guarantee for VAT reimbursement
- No connection with the tax assumption
- limited or unlimited liability





## 6.5 TAXATION SHIFTING

- Legal shifting  
(compensation)



- Economic shifting



- *De iure* taxpayer  
(subject to taxation )
- *De facto* taxpayer  
(affected by the taxation)

- Assumption of taxes  
agreement:

- mandatory compensation  
-(null and void)
- other (validity)

- Hidden and conventional shifting - Juridical and economic  
double taxation  
(art. 67 DPR n. 600/1973)

## 6.6 SUCCESSION IN THE TAX LAW

### 1) In the tax liabilities:

- law of descent and distribution (*mortis causa*):
  - “responsabilità solidale degli eredi per le obbligazioni tributarie il cui presupposto si è verificato anteriormente alla morte del dante causa” (art. 65 DPR n. 600/1973): joint and several liability of the heirs when the tax assumption is occurred before the death of the principal;
  - Exception on the civil liability limitation within the limits of the heirs’ share
  - Penalties are non-transferable
  - art. 65 DPR n.600/1973 (taxpayer ’heirs)
- *Inter vivos* succession:
  - M&A
  - tax debt disposal (shifting agreement)

### 2) Tax Credit :

- Tax credit disposal (II.DD and VAT) *i.e.* reimbursement right:
- Between natural person
- In the tax consolidation group
- Group VAT settlement
- Succession in tax losses
- Succession in tax concessions