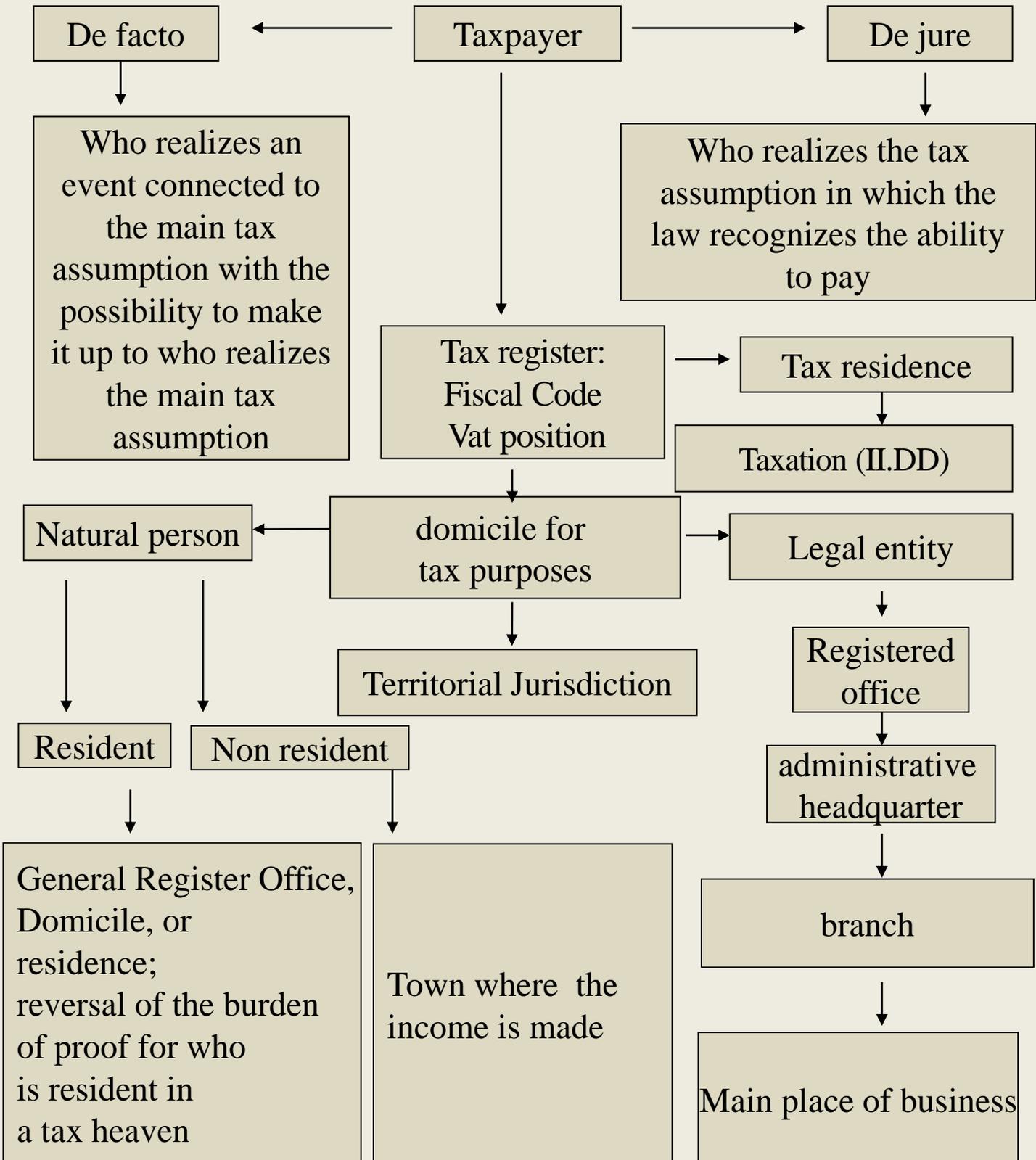


6.

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



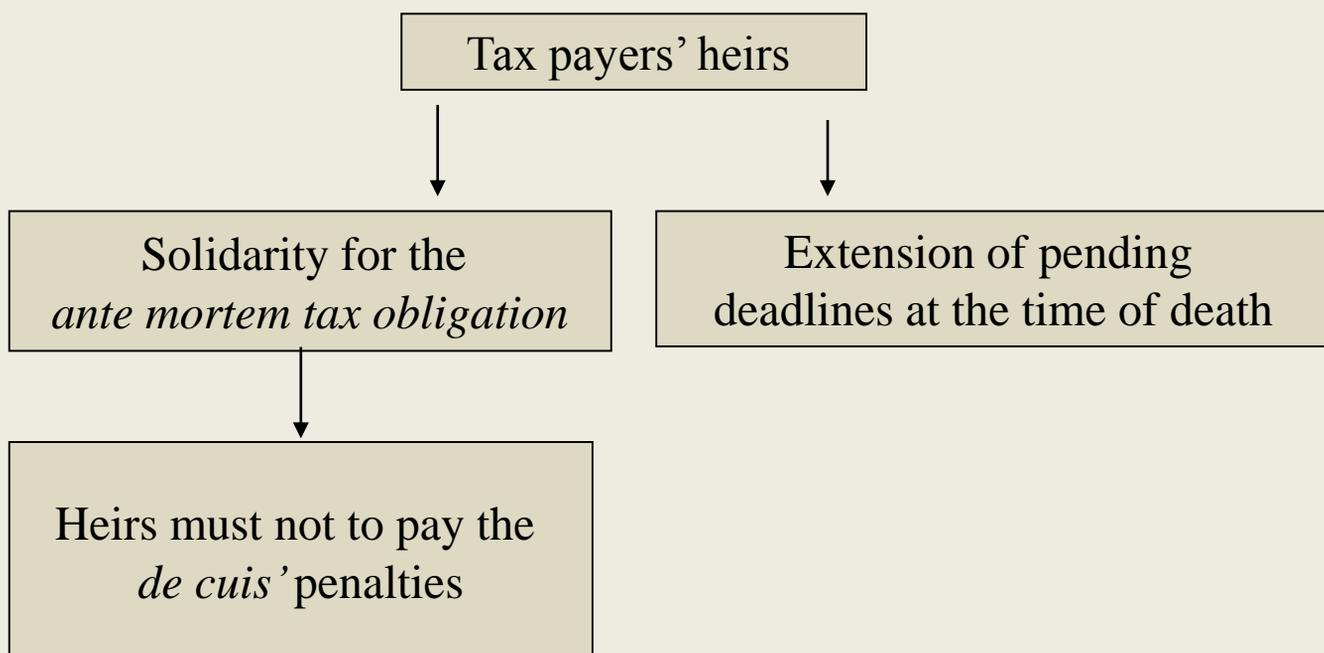
Even the assignee is a taxable person



Price is lower than the arm's length value

6.4 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



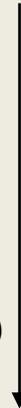
6.5 TAXATION SHIFTING

- 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