

8.

TAX OBLIGATION

8.1 TAX OBLIGATION NATURE

DECLARATIVE THEORY

Tax obligation arises *ex lege* upon the occurrence of specific facts



Proof of ability-to-pay (assumption)

ARGUMENTS SUPPORTING DECLARATIVE THEORY

- «Riserva di legge» principle: binding nature
 - power of taxation excludes tax authorities' discretion.
- Judicial protection: only annulment decision are allowed

CONSTITUTIVE THEORY

The arising of tax obligation



Proof of ability-to-pay (assumption)



Tax assessment

ARGUMENTS SUPPORTING CONSTITUTIVE NATURE

- Constitutive nature of the tax assessment
- Forfeiture of the taxation power expiring the assessment deadline

PROCEDURAL THEORY

Plurality of taxation procedures (distinguished on the tributes type) in order to satisfy the public interest in tax collection.

8.2 ESSENTIAL ELEMENTS OF THE TAX OBLIGATION

A. TAX ASSUMPTION

Is the event allowing the arising of the tax obligation

Proof of the ability-to-pay *ex art. 53 Cost.*

Obligation of taxation formal and functional obligation

Extra-taxation scope (taxes with a specific scope)

Please refer to ENVIRONMENTAL TAXES

B. TAX BASE

Parameter for tax measuring

C. TAX RATE

Is the tax amount expressed in a fixed or variable rate

D. TAXABLE PERSON

See CHAPTER 6

8.3 EXEMPTION AND EXCLUSION

A. EXEMPTION

Exemption rules respect the general discipline:

Total or partial reduction of the tax collection



Personal or objective

Depending on the nature of the tax exemption (facts or persons)



Incentive purpose

B. EXCLUSION

Exclusions mark the scope of the tax and the line of the specific tax assumption

SUBSTITUTE TAXATION

Type of taxation aimed to affect the same tax assumption of the principal tax (supporting and simplification scope)

8.4 TAX CLASSIFICATION

A. DIRECT TAXES

- Direct taxes affect direct manifestations of wealth: income or assets

B. INDIRECT TAXES

- Indirect taxes affect indirect manifestations of wealth: commercial trading

C. PERSONAL

- Personal taxes are connected to manifestations of wealth referred to personal aspect of the taxpayer
- General, all-inclusive and proportional rate

D. REAL

- Real taxes are not connected to subjective profiles of the taxpayer
- Proportional rate

E. PERIODIC

- Tax assumption is repeated over the time (fiscal year)

F. ISTANTANEUS

- Tax assumption is realized *una tantum* (e.g., register fee for real estate transaction)

G. FIXED

Taxes can be expressed in a predetermined amount of money (stamp duty)

H. VARIABLE

Compared to the amount of the taxable base

I. PROPORTIONAL

Tax rate is fixed and it is not connected to the variation of the taxable base

I. PROGRESSIVE

Tax rate varies on the basis of the taxable base.

Beyond a specific limit the rate become proportional (art. 53, par.2, Italian Constitution)