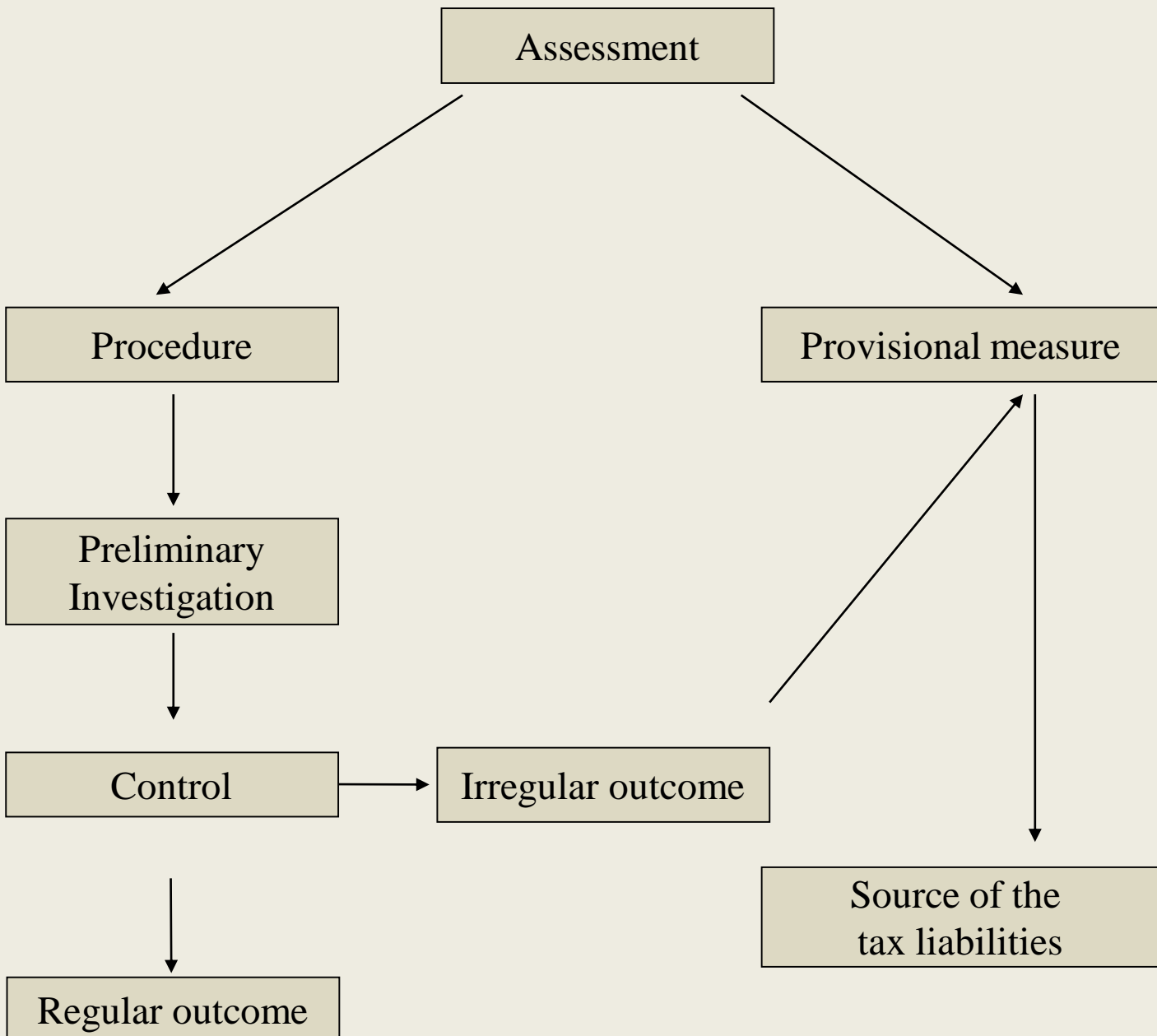


**10.**  
**TAX ASSESSMENT**

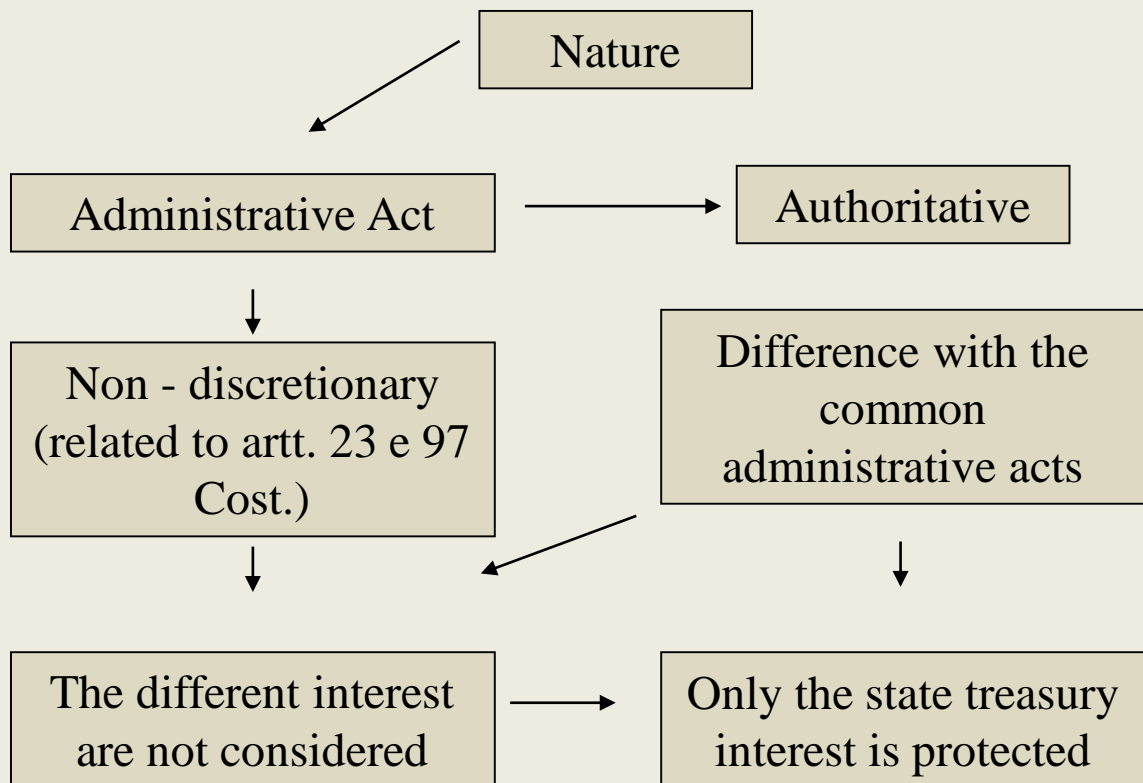
## 10.1 TAX ASSESSMENT: ACT AND PROCEDURE

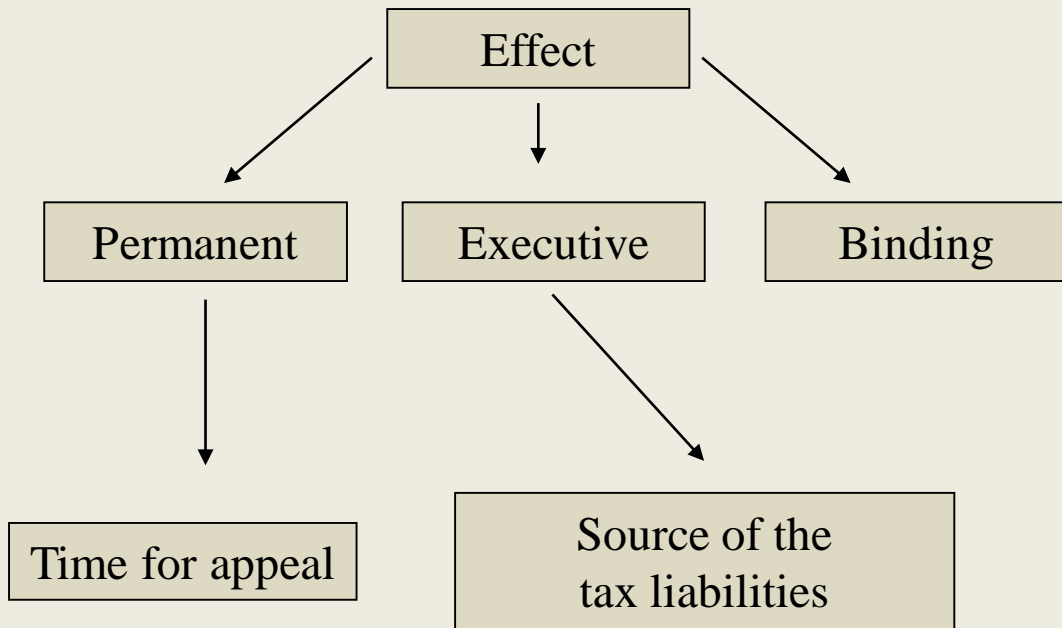


## 10.2 TAX ASSESSMENT

### 10.2.1 Nature and effect

Definition: non - discretionary administrative act, aimed to directly affect the taxpayer's assets. If it is not promptly challenged, it will become effective and permanent.



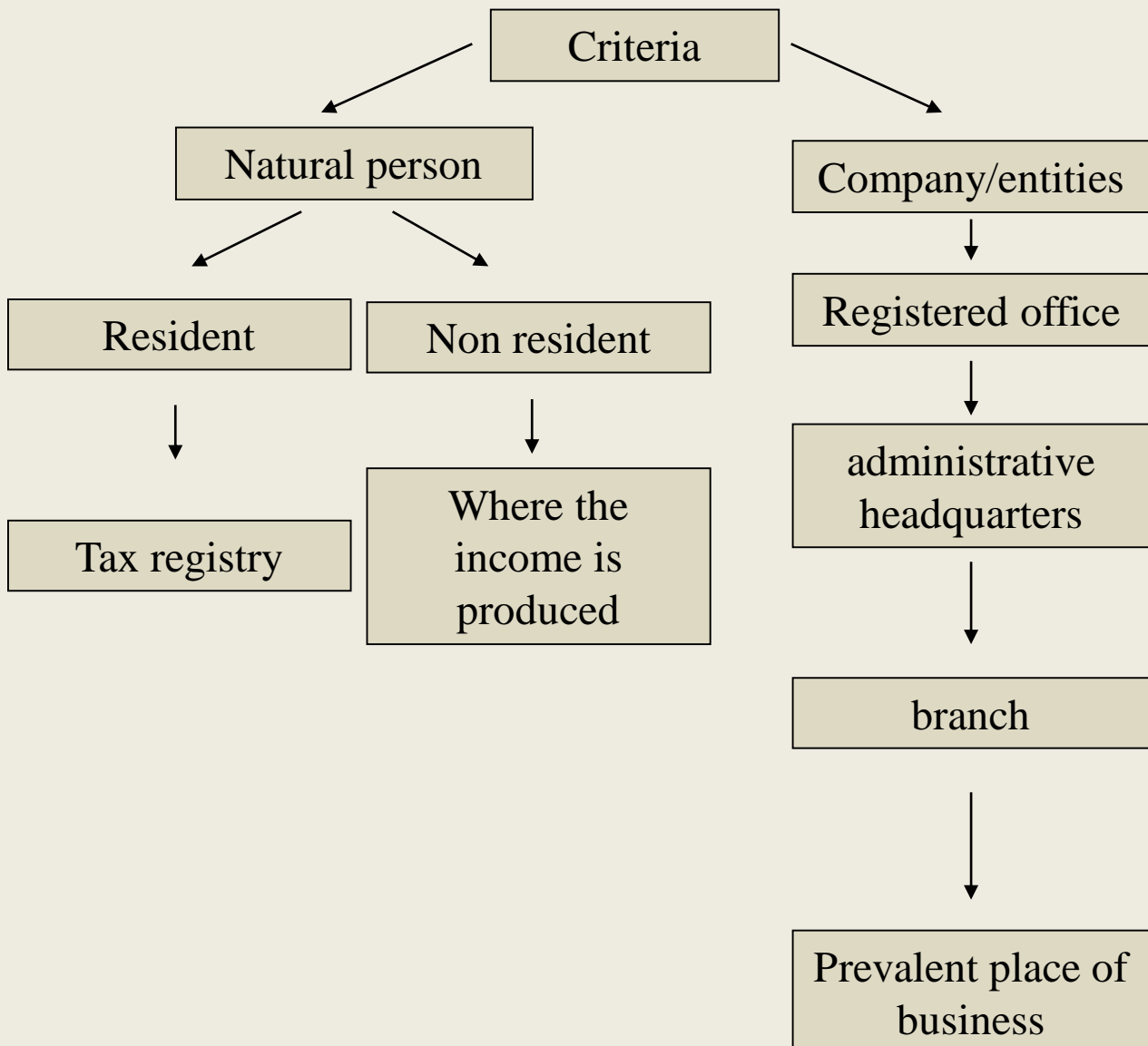


Tax assessments issued as from 1st October 2011, relating to fiscal year in progress on 31th December 2007 and thereafter, are enforceable and must contain a formal notice to pay.

REFERENCE to Chapter 23 – Tax collection

## 17.2.2 Characteristics

- a) Tax assessment must be issued on the basis of the tax domicile of the taxpayer who has to present the tax return, with a reference to the date-presentation or to the due-date of presentation (if the tax return is not submitted) (Artt. 31 II° c., 58 e 59 Dpr 600/73 e 40 Dpr 633/72);



b) Notification (Artt. 42 and 60 Dpr 600/73 and 56 Dpr 600/72)

c) Tax assessment must specify:

1. the office place where it is possible to get information;
2. the administrative responsible official;
3. The authority to request to review the act;
4. Terms and conditions to challenge the act;

(Art. 7, c. 2, l. 212/2000)

d) Law deadlines;

Direct taxes

(art. 43, I e II c, DPR 600/73)

VAT

(art. 57, I e II c., DPR 633/72)

e) Signed by the head of the office or by another employee in the management career delegated by the first (Art. 42 Dpr 600/73)

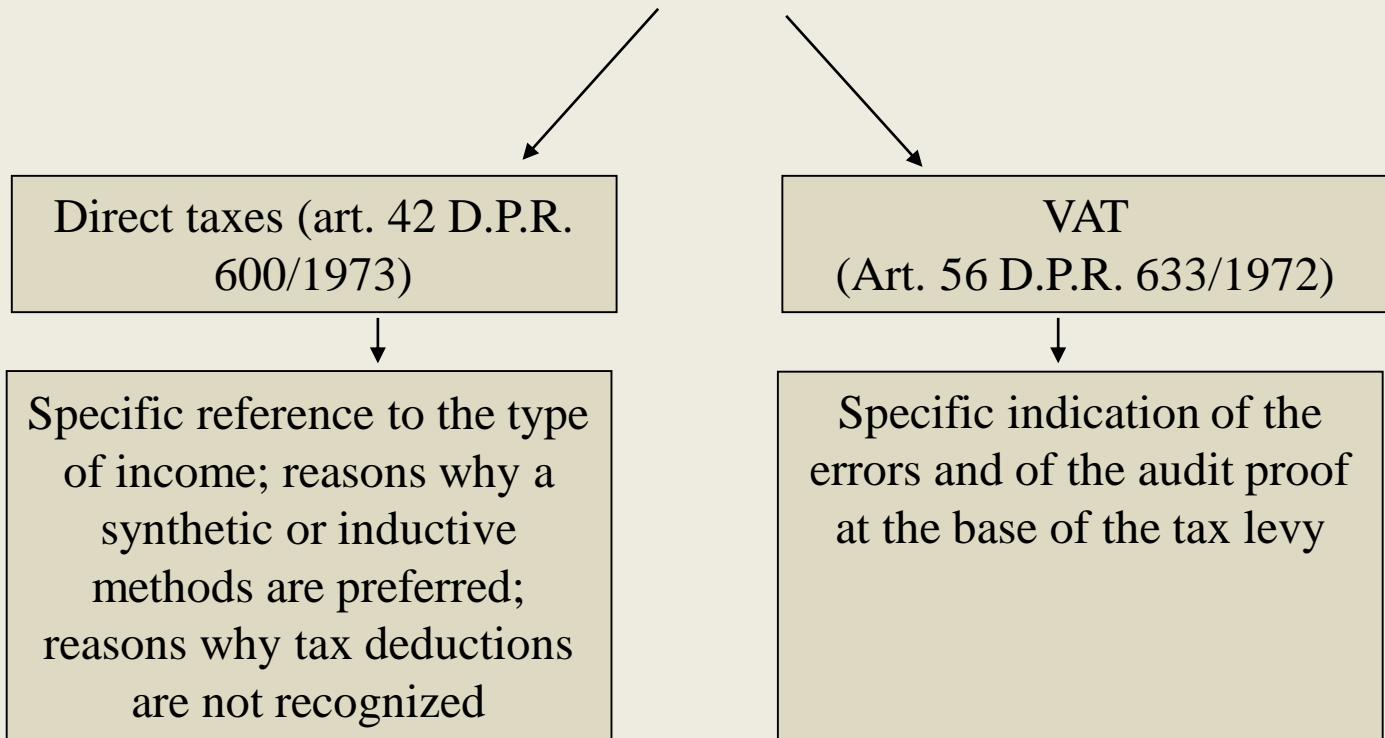
f) Indication of the taxable base and the applied tax rate (Art. 42 Dpr 600/73)

### **10.2.3 Contents**

1. Claim: assertion on tax base and rates
2. The function of the reason of the assessment:
  1. to allow the taxpayer to defend himself (Art. 24 Cost.),
  2. to judges the administration's activity(Art. 97 Cost.),
  3. to mark the dispute's object in case of litigation



- b) Contents: juridical reason for the tax levy (Art. 7 l. 212/2000).  
More information could be requested in the tax assessment by the specific tax law.



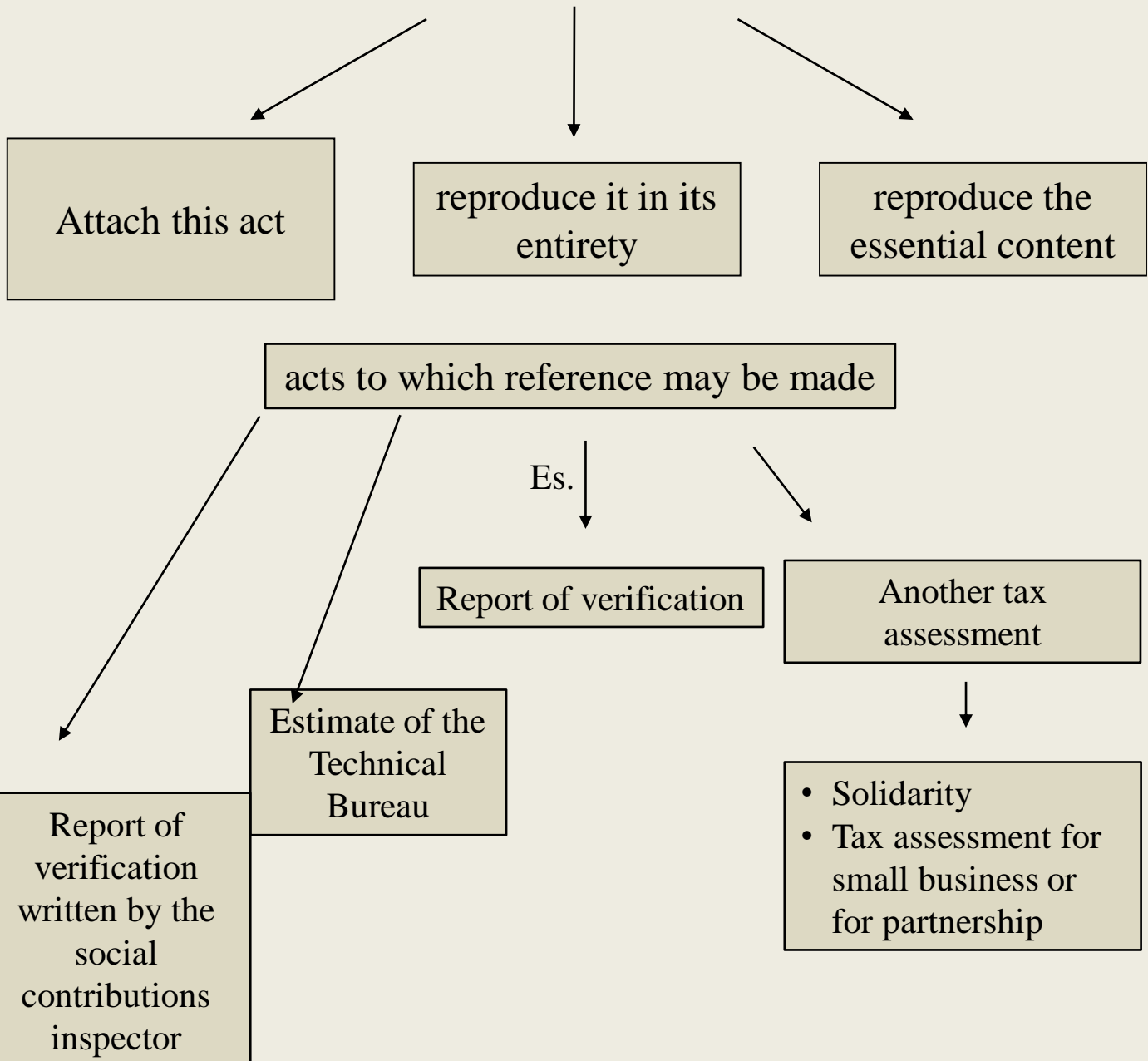
- c) Difference with the reason of the common administrative acts:

Only the treasury interest is protected. There is no discretionary (mediating between conflicting interests)

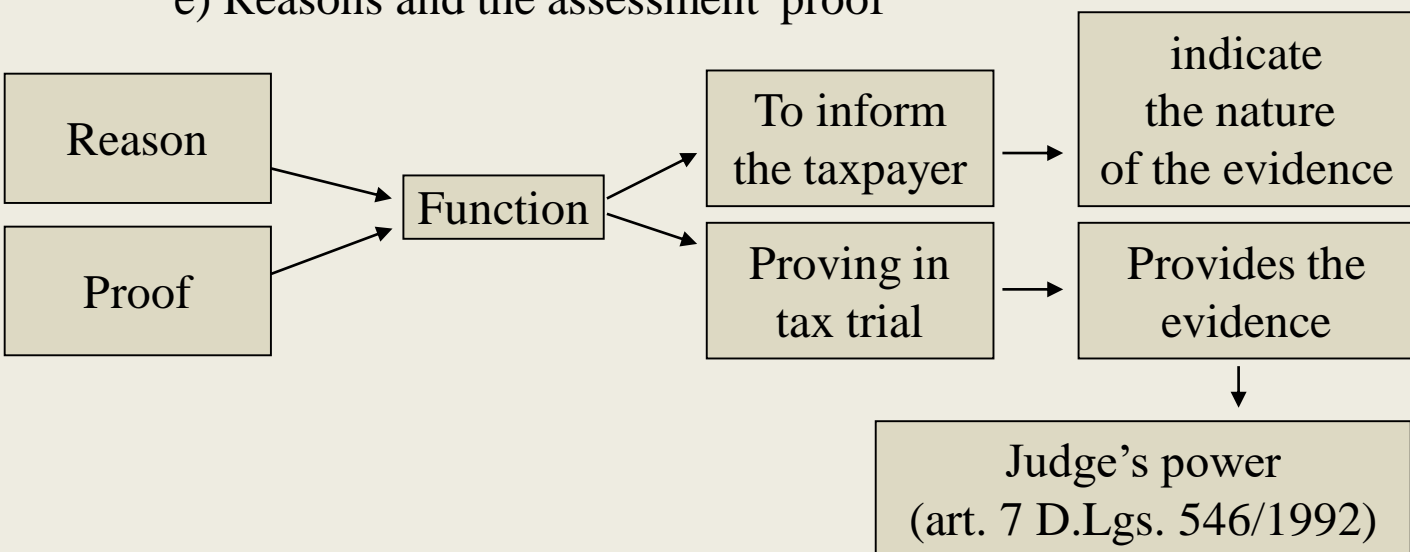
## 10.2.4 (follow) Reasons for assessment

d) per *relationem* reason: **legitimacy: limits and conditions.**

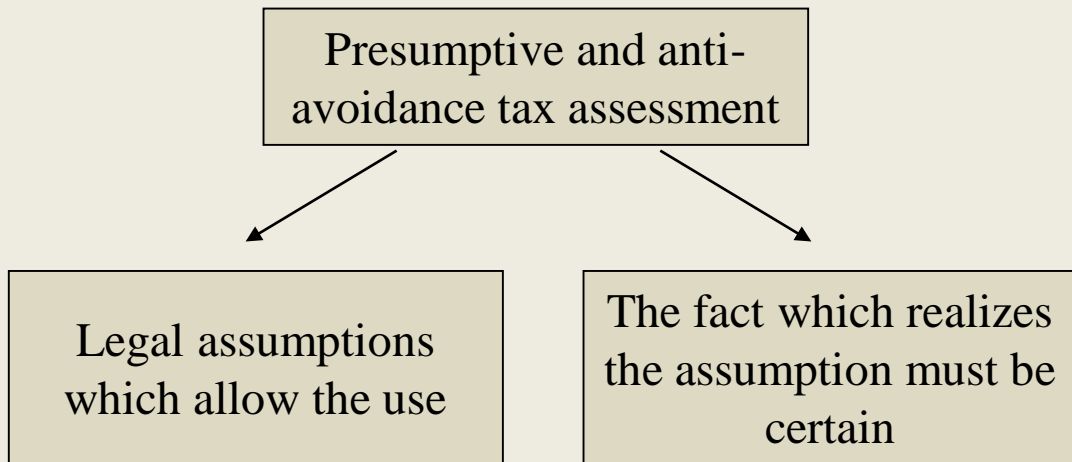
Tax assessment which refers to another act must:



### e) Reasons and the assessment 'proof

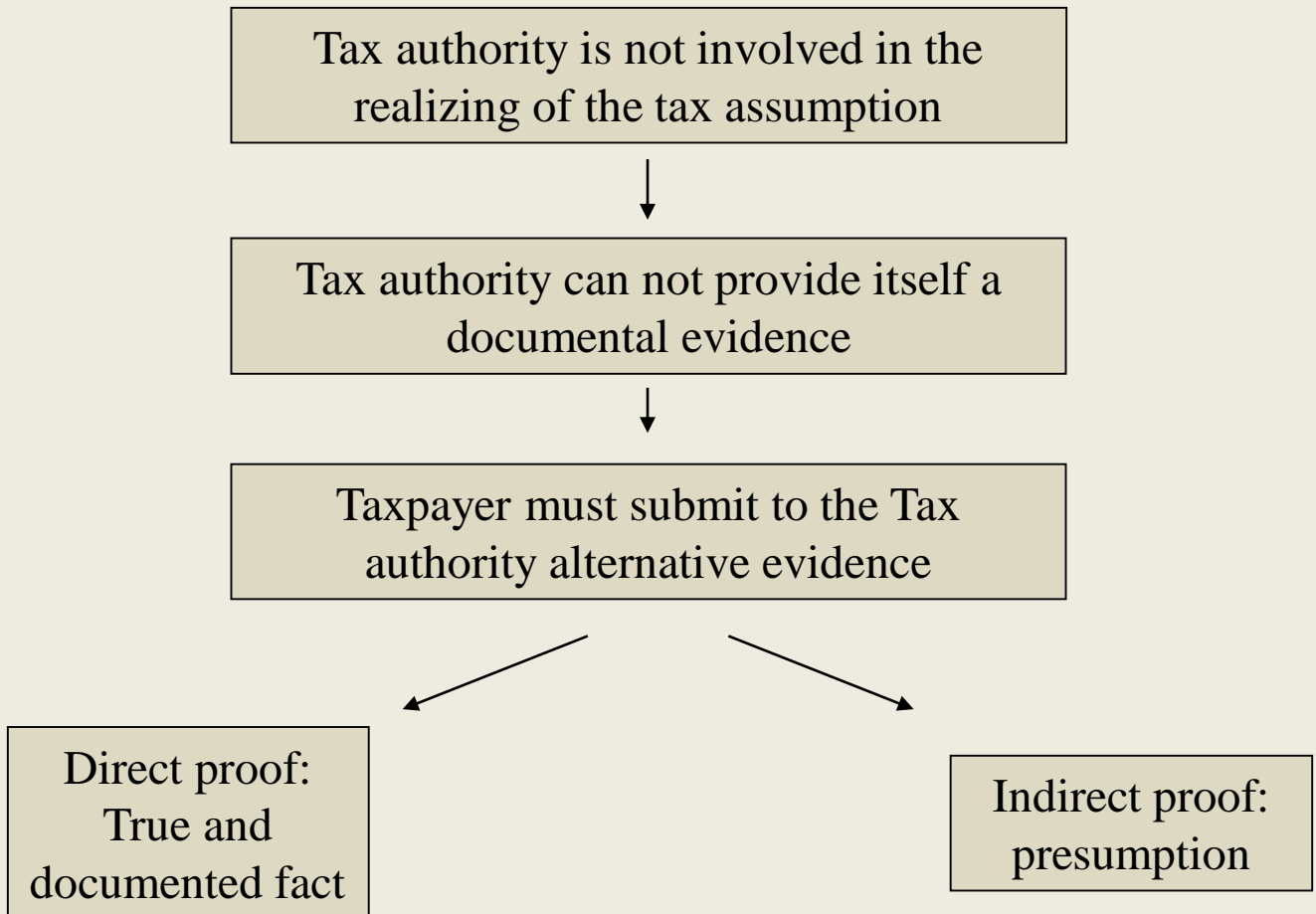


f) Further indications required by tax assessment

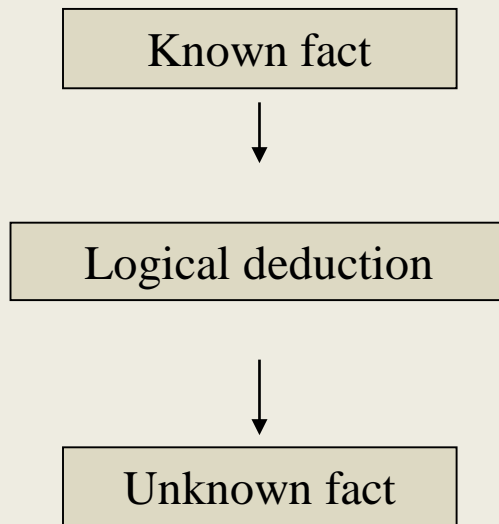


## 10.3 Evidence

a) Reasons to justify the use of the presumption in the tax assessment

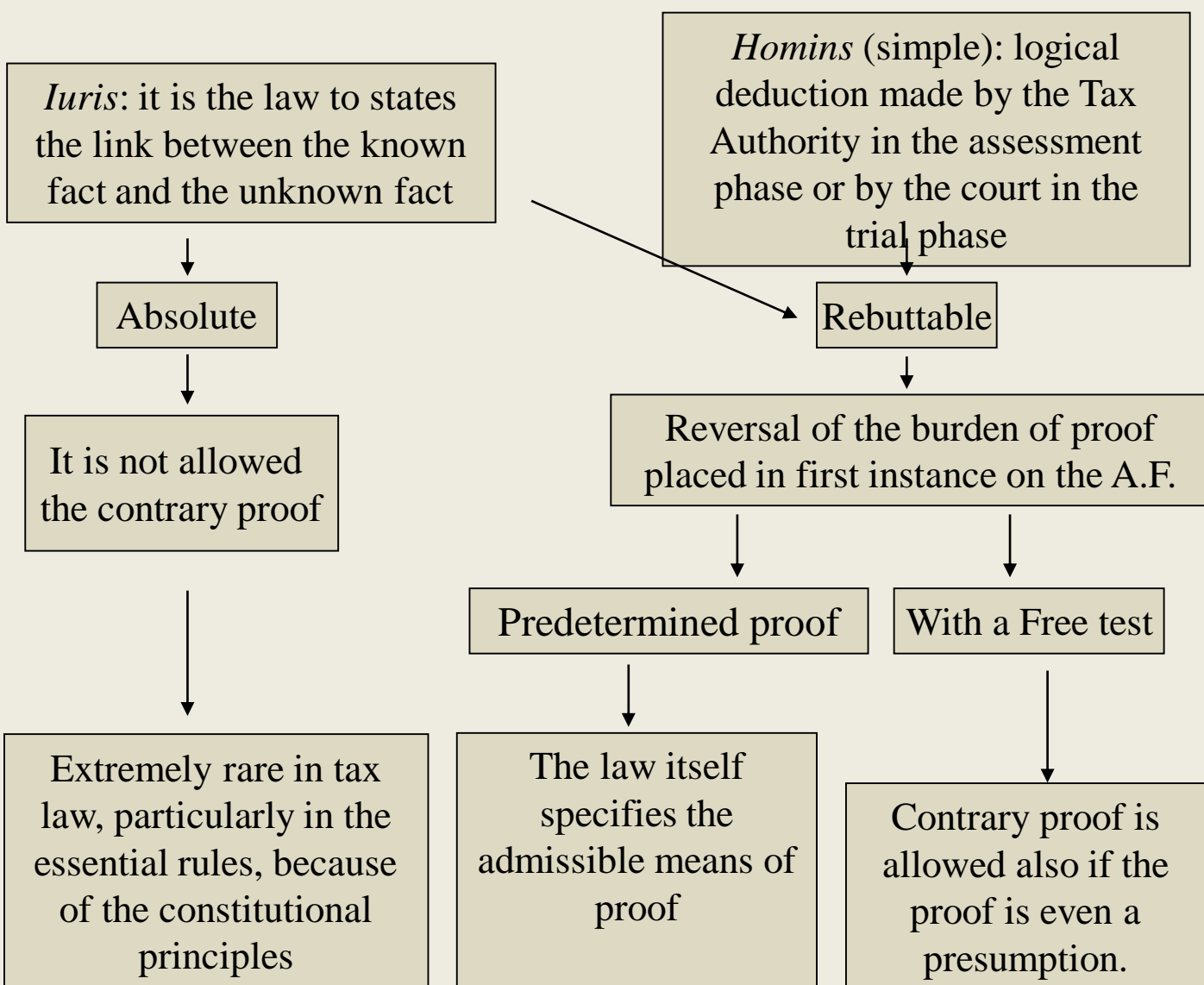


b) Definition: logic-deduction procedure whereby with a knowledge of a well-known fact it is possible to prove a unknown fact

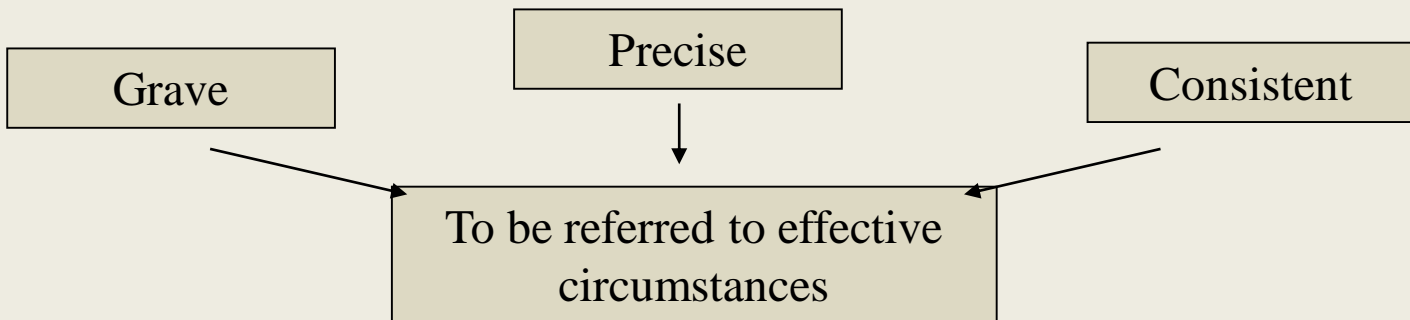


c) Presumption classification:

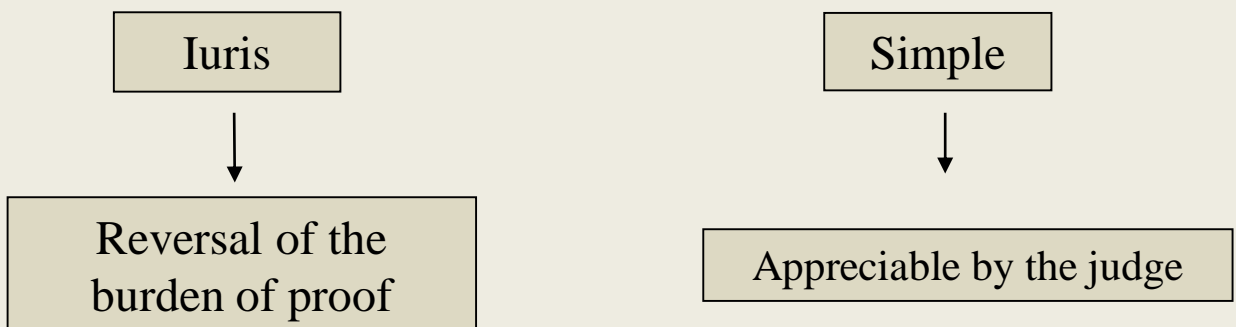
1. *praesumptiones iuris*;
2. Rebuttable or conclusive presumption;
3. *praesumptiones hominis* (simple presumption)



### c.2) Characteristics:



### c.3) Probative value:





Double  
presumption



At the origin of the presumption  
there is another supposed fact

higher assessed income with a  
supposed methods on top of the  
small limited company

Distribution of  
profits presumption

*praesumptiones  
hominis*

Account opened  
in name of third  
person connected  
to the taxpayer  
assessed

*Presumptiones  
iuris*

Unjustified  
operations have  
to be considered  
as income

The principle of fair trial (Art. 111 Cost.) and  
right of defense (Art. 24 Cost.)

Testimony  
(eyewitness) is not  
allowed

On a  
report

Third party  
declarations

Questionnaire  
replies

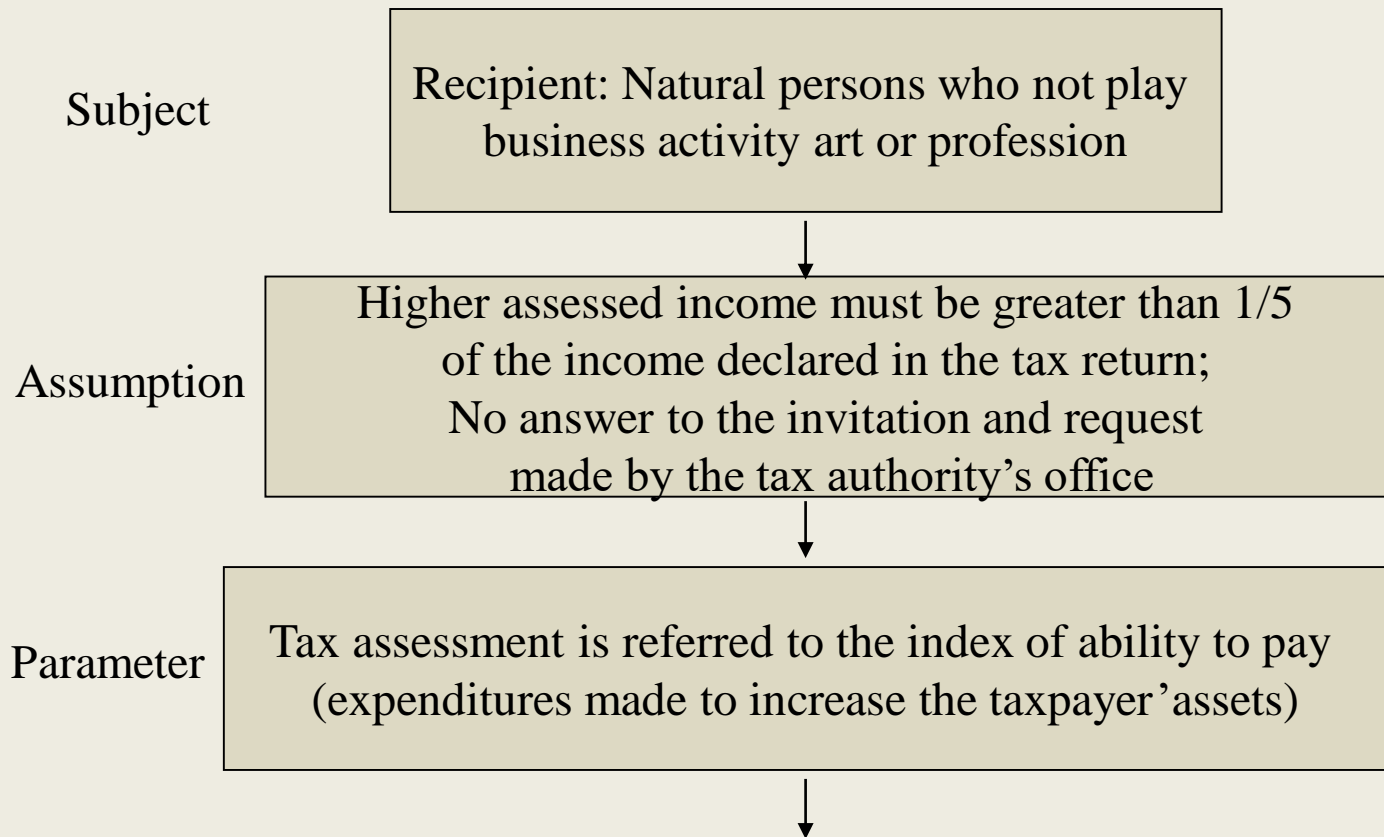
Presumption proof  
is only in favour of  
the tax authority

The contrary proof provided by the  
taxpayer can be presumptive but it  
has to have the same demonstrative  
nature

## 10.4 TAX ASSESSMENT METHODS

### 10.4.1 Synthetic

#### Characteristics



Allocation

The assessed income is constantly allocated in the year of the expenditure and in the previous fourth; expenses can not be deducted (art. 10 TUIR)



Burden of  
proof

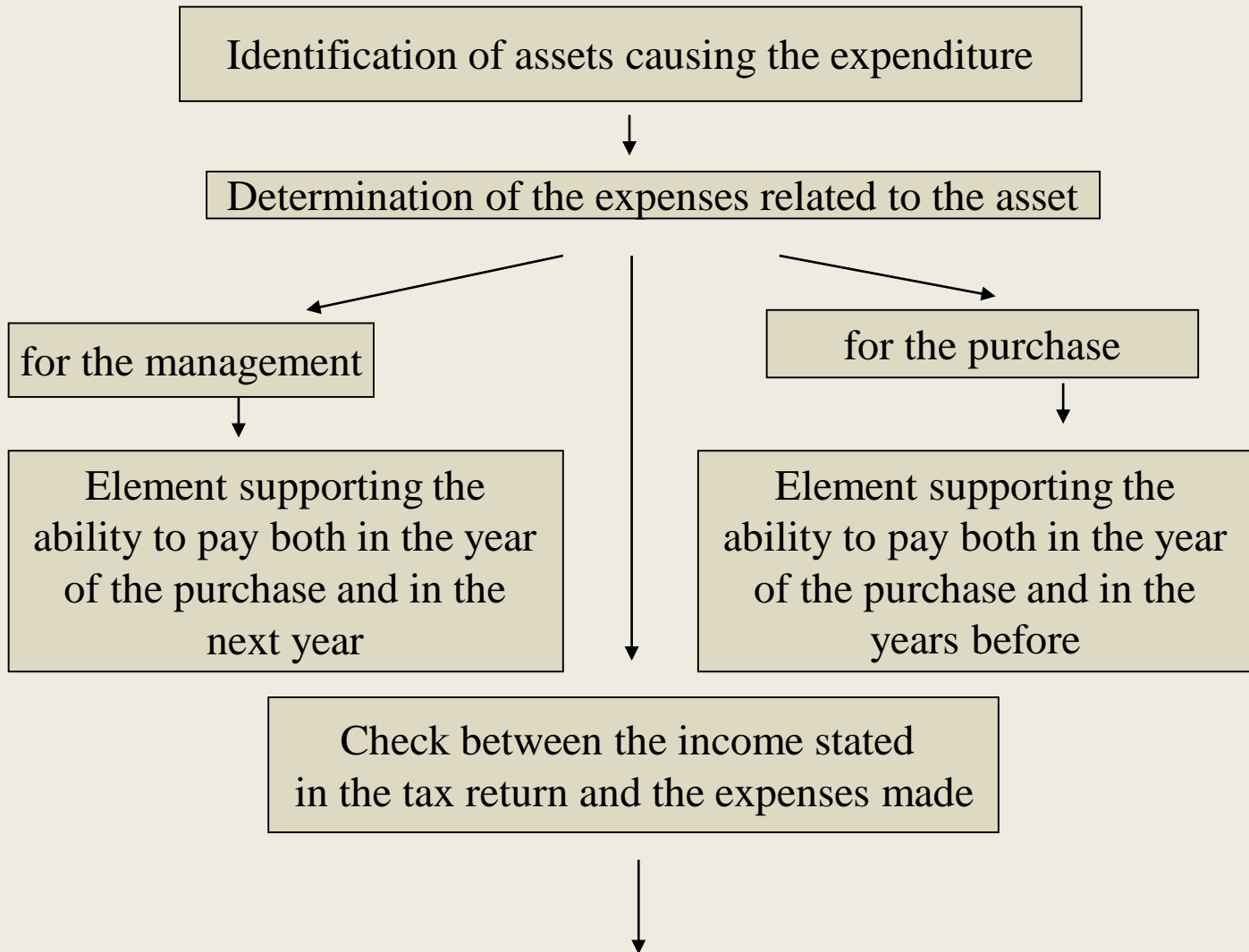
Burden of proof on top the taxpayer



Contrary  
documental  
proof

Higher assessed income might be justified: if it is exempted by the law; if it is subject to a withholding tax; if it is a donation or if it comes from financial or assets divestiture

## Synthetic tax assessment procedure



↓

Valuation of the household income situation  
through the available information in the tax registry

↓

Check between the assessed income and the  
income stated in the tax return

↓

The difference between the assessed income and the  
stated income in the tax return must be greater than 20%

↓

Litigation composition with the taxpayer  
is not mandatory. It is in any case necessary for the  
efficiency of the administrative activity

↓

The higher income is allocated to the fiscal year  
of the expenditure and to the previous forth

Safeguard clause



The assessed income with the synthetic method must be different of  $\frac{1}{5}$  from the income stated in the tax return

Temporal scope



The check of the ability to pay for at least two year it is no longer compulsory

## Synthetic determination of the income

```
graph TD; A[Synthetic determination of the income] --> B[On the basis of any expenses occurred in the fiscal year under control;  
Through the mechanism so-called REDDITOMETRO: it is based on specific elements which are index of ability to pay (stated in a Decree of the Ministry of Economy).]; A --> C[The onus in the art. 10 Italian tax code can be deducted;  
Deductions from tax to be pay are allowed.]; B --> D[Expenses for asset increase]; C --> D; D --> E[The new words of the art. 38 D.P.R. 600 does not contain any legal provision: expenses for asset increase were considered occurred in the year of the purchase and in the previous fourth];
```

- On the basis of any expenses occurred in the fiscal year under control;
- Through the mechanism so-called REDDITOMETRO: it is based on specific elements which are index of ability to pay (stated in a Decree of the Ministry of Economy).

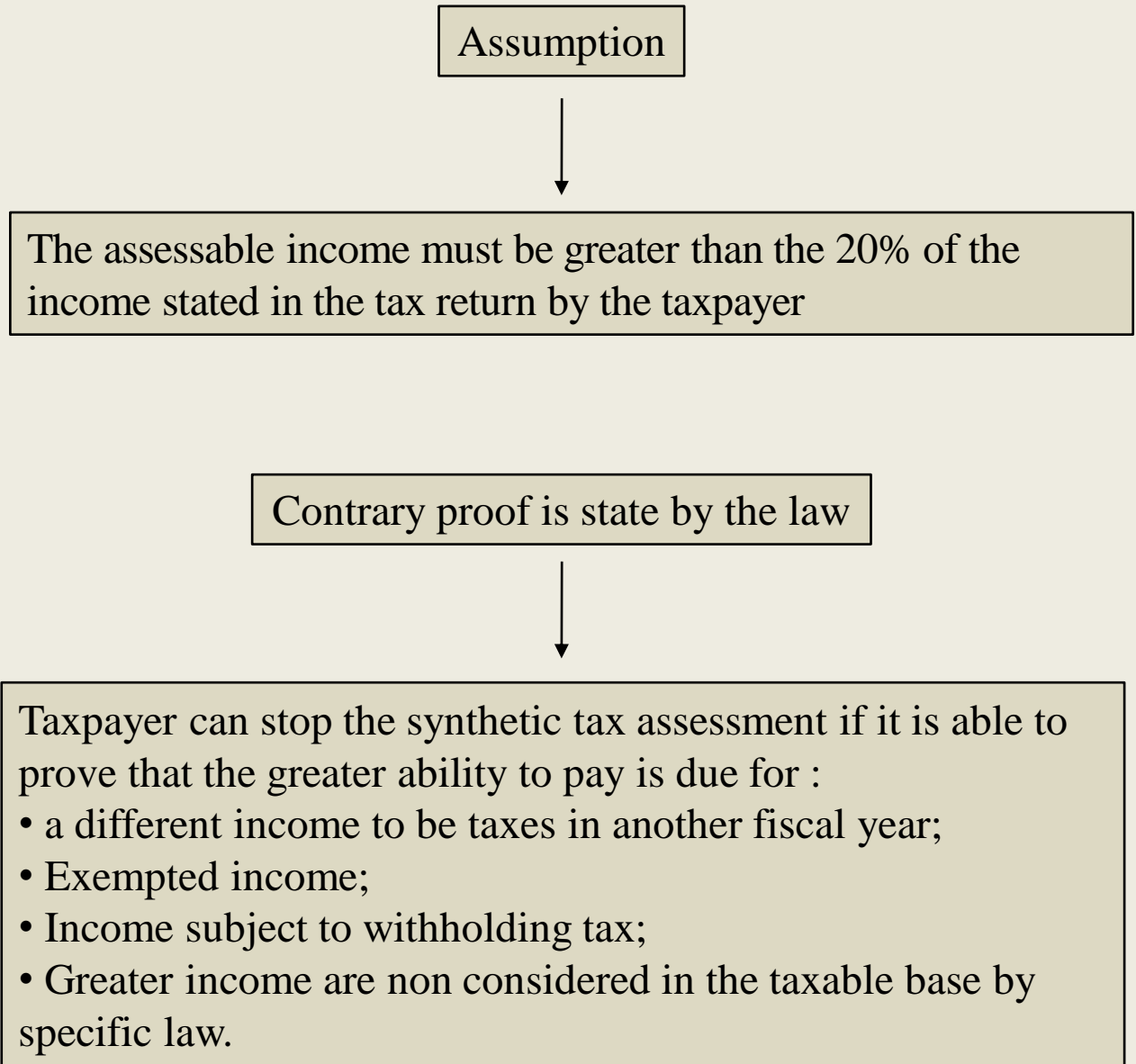
- The onus in the art. 10 Italian tax code can be deducted;
- Deductions from tax to be pay are allowed.

## Expenses for asset increase

The new words of the art. 38 D.P.R. 600 does not contain any legal provision: expenses for asset increase were considered occurred in the year of the purchase and in the previous fourth



Assumption



```
graph TD; A[Assumption] --> B[The assessable income must be greater than the 20% of the income stated in the tax return by the taxpayer]; B --> C[Contrary proof is state by the law]; C --> D[Taxpayer can stop the synthetic tax assessment if it is able to prove that the greater ability to pay is due for :

- a different income to be taxes in another fiscal year;
- Exempted income;
- Income subject to withholding tax;
- Greater income are non considered in the taxable base by specific law.

];
```

The assessable income must be greater than the 20% of the income stated in the tax return by the taxpayer

Contrary proof is state by the law

Taxpayer can stop the synthetic tax assessment if it is able to prove that the greater ability to pay is due for :

- a different income to be taxes in another fiscal year;
- Exempted income;
- Income subject to withholding tax;
- Greater income are non considered in the taxable base by specific law.

Mediation

```
graph TD; A[Mediation] --> B[Tax authority is obliged to invite in the administration office the taxpayer to provide useful data for the assessment]; B --> C[Verification with acceptance]; C --> D[In case the taxpayer is not able to show elements in his favour, the office must proceed with the Verification with acceptance ex art. 5 del D.Lgs. n. 218/1997];
```

Tax authority is obliged to invite in the administration office the taxpayer to provide useful data for the assessment

Verification with  
acceptance

In case the taxpayer is not able to show elements in his favour, the office must proceed with the Verification with acceptance  
*ex art. 5 del D.Lgs. n. 218/1997*