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SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL TAXATION: WHAT FUTURE PROSPECTS?

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ABSTRACT

In an attempt to tackle the environmental imbalances produced by the excesses of the global economy, the great contemporary legal systems are gradually evolving towards remedial intervention models of a different nature, in line with environmental sustainability policies.

To encourage this trend, the OECD has qualified interventions aimed at environmental protection all measures that affect the choices between different technological or consumption alternatives, through the modification of convenience in terms of private costs and benefits.

Within these coordinates, a strategic position is assuming environmental taxation which, supported by a widespread cultural orientation, can help to prevent, eliminate or reduce polluting activities through a complex of taxes, tariffs, fees, contributions and other services imposed owed by the polluting manufacturer or user. In this context, the role of environmental taxation can be truly decisive to discourage pollution. Environmental taxes and eco-incentives are frequently used by the Member States, whose domestic laws give more importance to “green taxation”, inspired by EU principles. For the future, we can hope for greater coordination of environmental taxation within the EU, through a rethinking of it, with a view to improving European integration policies in order to develop a uniform response to the current economic-financial crisis and favor economic growth.

KEYWORDS: *Environmental imbalances; sustainable governance policies; the “polluter pays” principle; green taxation tools; environmental taxes*

Summary:

- Introduction;
- 2. “Sustainable development” and the “polluter pays” principle;
- 3. The instruments of environmental taxation;
- 4. The European framework and the policies prepared by domestic legislators;
- 5. Conclusions.

1. In an attempt to tackle the environmental imbalances produced by the excesses of the global economy, the great contemporary legal systems are gradually evolving towards more complex remedial models in the wake of sustainable territorial governance policies.

To encourage this trend, the OECD has qualified interventions aimed at environmental protection all measures that affect the choices between different technological or consumption alternatives, through the modification of convenience in terms of private costs and benefits.

Within these coordinates, a strategic position is assuming environmental taxation which, supported by a widespread cultural orientation, can help to prevent, eliminate or reduce polluting activities through a complex of taxes, tariffs, fees, contributions and other services imposed by the manufacturer or user^[1].

This form of taxation can also act as a collector of resources to finance the rehabilitation works and the exercise of environmental services through the use of the fiscal lever and non-tax instruments as a resource to meet the costs of the services of which the citizen can benefit from environmental matters: waste disposal, thermal destruction, recycling and regeneration processes.

Considering that it is inappropriate for environmental taxation to be followed by an increase in the overall tax burden, it will be the task of the legislator to proceed with a correct distribution of the tax burden to compensate for the higher revenues deriving from environmental taxes with the revenue that can be deducted from other forms of taxation.

In any case, the environmental tax must affect “eco-sustainable” productions: the producer is required to pay the tax levy to the tax body so that the latter does what is necessary to avoid and prevent negative effects on the environment^[2].

^[1] Comp. S. CIPOLLINA, *Osservazioni sulla fiscalità ambientale nella prospettiva del federalismo fiscale*, in *Riv. dir. fin.*, n. 4/2009, I, p. 577; M. PROCOPPIO, *La natura non commutativa dei tributi ambientali e la loro compatibilità con il principio di capacità contributiva*, in *Dir. prat. trib.*, n. 5/2013, p. 1170; S.A. PARENTE, *Tassazione ambientale e politiche d'intervento: principi, rimedi e forme di prelievo. Parte prima*, in *Riv. trim. dir. trib.*, n. 3/2020, p. 624-625; A.F. URICCHIO, G. SELICATO (a cura di), *“Circular Economy and Environmental Taxation”*, Bari, 2020.

^[2] Comp. C. VERRIGNI, *La rilevanza del principio “chi inquina paga” nei tributi ambientali*, in *Rass. trib.*, n. 5/2003, p. 1615.

On the contrary, the fiscal instrument does not comply with production activities aimed at generating waste, discharges, noise emissions or polluting gases when these are prohibited by law and sanctioned from an administrative or criminal point of view. In fact, in such situations, the tax cannot finance the environmental remediation service^[3].

2. In functional terms, there are many forms of protection available to the legislator: “command and control” policies, aimed at establishing limits, prohibitions and controls; “green taxation” measures^[4], aimed at encouraging non-polluting behavior and discouraging polluting conduct from a promotional point of view^[5].

These instruments are preordained to achieve “sustainable development”, a situation of growth aimed at meeting the needs of the present generation without prejudice to future generations^[6].

In the current perspective, the legal regime of environmental protection, governed by the Italian Constitution (articles 9, paragraph 3 and 117, paragraph 2, letter s), draws mainly on supranational sources, including those of a UE matrix, based on principles of precaution and preventive action, on the principle of priority correction at the source of damage caused to the environment and on the “polluter pays” principle (article 191, paragraph 2, TFEU)^[7].

^[3] Comp. F. GALLO, *Profili critici della tassazione ambientale*, in *Rass. trib.*, n. 2/2010, p. 304; M. PROCOPIO, *La natura non commutativa dei tributi ambientali e la loro compatibilità con il principio di capacità contributiva*, cit., p. 1169; C. SCIANCALEPORE, *Cambiamenti climatici e green taxes*, Bari, 2016, p. 96.

^[4] Comp. A. URICCHIO, *Le frontiere dell'imposizione tra evoluzione tecnologica e nuovi assetti istituzionali*, Bari, 2010, p. 181-182; A. URICCHIO, *Prelievo fiscale e emergenze ambientali*, in M. PENNASILICO (a cura di), *Studi in onore di Lelio Barbiera*, Napoli, 2012, p. 1487-1488.

^[5] Comp. A.F. URICCHIO, M. AULENTA, G. SELICATO (a cura di), *La dimensione promozionale del fisco*, Bari, 2015.

^[6] Comp. A. BUONFRATE, A. URICCHIO (a cura di), *Trattato breve di diritto dello sviluppo sostenibile*, Milano, 2023.

^[7] Comp. P. SELICATO, *Imposizione fiscale e principio “chi inquina paga”*, in *Rass. trib.*, n. 4/2005, p. 1167-1168; S.A. PARENTE, *Tassazione ambientale e politiche d'intervento: principi, rimedi e forme di prelievo. Parte prima*, cit., p. 629.

From a fiscal point of view, the “polluter pays” parameter^[8] becomes a source of legitimacy for taxes to protect the environment and for subsidized treatments that pursue the same purpose: the criterion not only allows the public body to receive tax benefits in which the “environment” factor is included within the taxable case, but constitutes a canon for identifying an autonomous economic strength of the taxpayer which is a prerequisite for the application of a real “environmental tax”, a type of tax in which the conduct harmful to the environment is a direct index of wealth to be subjected to taxation.

Given the complexity of the subject, therefore, the reflection on the theoretical models of analysis requires an investigative development not limited to the traditional elaboration schemes of environmental issues, but aimed at enhancing the new prospects of investigation disclosed by the emerging forms of environmental taxation.

3. The environmental tax affects the economic burden on the environment. In fact, polluting activities, on the one hand, produce a cost that can be assessed financially, equal to the impoverishment suffered by the community to remove or limit the harmful effects; on the other hand, they make the agent obtain an enrichment, that means an individual, immediate and economically evaluable advantage, equal to the value of natural resources in danger of extinction taken away from common use, which is configured as the power to dispose for free of the tools necessary to satisfy their needs.

This form of taxation is based on a twofold order of reasons: in the externality of the “environment” asset, likely to positively or not negatively affect the cost of producing or consuming certain goods; in the configuration of environmental values as public or widespread heritage.

^[8] Comp. L.M. MELI, *Le origini del principio “chi inquina paga” e il suo accoglimento da parte della Comunità Europea*, in *Riv. giur. amb.*, 1989, p. 218 ff.; G. TARANTINI, *Il principio “chi inquina paga” tra fonti comunitarie e competenze regionali*, in *Riv. giur. amb.*, 1989, p. 728 ff.; F.M. PALOMBINO, *Il significato del principio “chi inquina paga” nel diritto internazionale*, in *Riv. giur. amb.*, n. 5/2003, p. 871 ff.; M. LOMBARDO, *Il «principio chi inquina paga» e la responsabilità ambientale da inquinamento diffuso nel diritto dell’Unione europea*, in *Il Diritto dell’Unione Europea*, 2011, p. 722 ff.; R. ALFANO, *Tributi ambientali. Profili interni ed europei*, Torino, 2012, p. 51 ff.

In the dialectic between the polluting activity resulting from individual action and the impoverishment of environmental values suffered by the community, is grafted a methodological analysis based on a global approach to the phenomenon and on a remedial dynamics that cannot exclude the tax lever.

This methodological framework suggests the need to scrutinize the new legal issues related to environmental protection also from a fiscal point of view and to dwell on pervasive structures with sometimes unprecedented and insufficiently explored profiles.

In fact, the advantage obtained by the user of the “environment” asset, resulting from the polluting activity carried out to the detriment of the community, is a fact suitable for expressing the ability to pay, effectively showing wealth, as it affects the economic strength expressed by the taxpayer, connected to the particular value constituted by the dominion over the good-environment, endowed with its own autonomy and easy measurability^[9].

In this context, the *ratio* assumed by the “polluter pays” principle of making economic operators bear the actual cost of the pollution produced in order to relieve the burden of the state system, avoiding that the restoration costs are faced only by state bodies in a direct or mediated manner, that is through the granting of aid aimed at favoring some and not others, and may create unjustified competitive advantage positions, so as to distort the market.

Currently, the “polluter pays” principle is an axiom of Community environmental policy, which has assumed binding force for all Member States, even in matters not covered by specific interventions.

Basically, those who carry out activities or behave in contrast with environmental standards must bear the expenses necessary to remove or reduce, within acceptable limits, the effects of the pollution produced and implement precautionary and corrective actions at the source: so understood, the “polluter pays” principle does not take on the nature of an authorization to pollute for a fee, nor does it have the character of a sanction, but represents a preventive criterion of distributive efficiency, codified in the Community legal system.

^[9] Comp. S.A. PARENTE, *Tassazione ambientale e politiche d'intervento: principi, rimedi e forme di prelievo. Parte seconda*, in *Riv. trim. dir. trib.*, n. 4/2020, p. 879 ff.

4. Nowadays, despite the commitment of the EU institutions, there are still no real community environmental taxes, although there is no lack of proposals in this direction.

Within the framework of the programme called “Fit for 55”^[10], the European Commission presented a series of proposals aimed at achieving the objectives of the “European Green Deal” to reduce net carbon dioxide emissions by 55% by 2030 and energy neutrality to be achieved by 2050 through a series of regulatory interventions to change or revise the European framework of taxation of energy products^[11].

Depending on the objectives, the EU Directive 2023/959 of 10 May 2023 on the Emissions Trading System and the EU Regulation 2023/956 of 10 May 2023 on the creation of a new EU own resource, the ‘Carbon Border Adjustment Mechanism’^[12], are of further relevance.

The aim of the latter measure is to counter carbon leakage outside the EU, which occurs when EU-based companies transfer carbon-intensive production abroad to countries with less stringent climate policies or when EU products are replaced by carbon-intensive imports. This would nullify the effects of the EU policy of reducing greenhouse gas emissions pursued through the EU Emissions Trading System^[13].

Environmental taxes and eco-incentives, instead, are frequently used by the Member States, whose domestic laws give more importance to “green taxation”, inspired by EU principles.

For the future, we can only hope for greater coordination of environmental taxation within the Community, through a rethinking of it, with a view to

^[10] Comp. M.T. MONTEDURO, *Cambiamenti climatici e politiche fiscali: impatti sociali ed effetti economici del pacchetto europeo “Fit for 55”*, in *Riv. dir. fin.*, 2021, p. 447 ff.; M.C. FREGNI, *Politiche fiscali ambientali, osservazioni tra pandemia e crisi geopolitiche*, in *Rass. trib.*, 2022, p. 158 ff.

^[11] Comp. A.F. URICCHIO, G. SELICATO (a cura di), *Green Deal e prospettive di riforma della tassazione ambientale*, Bari, 2022.

^[12] Comp. G. SELICATO, *The EU proposal for a Carbon Border Adjustment Mechanism: an advanced tool to combat ‘carbon leakage’, a new EU own resource of ‘moral suasion’ for third Countries?*, in *Review of European and Comparative Law*, n. 3/2022, p. 25 ff.; A. COMELLI, *Profili europei della tassazione ambientale*, in *Dir. prat. trib.*, n. 6/2023, p. 2264 ff.

^[13] Comp. F. GALLO, *È il tempo di un sistema fiscale europeo?*, in *Riv. dir. trib. int.*, n. 1/2022, p. 9.

improving European integration policies in order to develop a uniform response to the current economic-financial crisis and favor economic growth; reasoning differently would produce the antinomian effect of widening the inequalities of treatment, still existing, through the establishment of national environmental taxes, wholly or partly uncoordinated by the community context.

The environmental purpose, therefore, rises to the political, cultural and social intent of the tax claim, an extra-fiscal objective external to its assumption that can lead to qualify the levy in terms of purpose tax with an indemnity function rather than as a real environmental tax.

In fact, once a tax has been identified (be it a manufacturing tax, an excise duty, a consumption tax, or other) an environmental function is attributed to it, acting either on the destination of the revenue or on the measure (rate, mainly) of the tax.

5. In the context of environmental taxation, particular importance is given to environmental taxes “in the strict sense”, qualified structurally environmental taxes, which respond directly to the Community principle “who pollutes pays” (article 191 TFEU), having as a prerequisite the polluting factor, that is the productive event of the damage: the taxable case is given by the physical unit, whose harmful effects for the environment, in case of use or release, are proven with certainty^[14].

^[14] Comp. F. GALLO, F. MARCHETTI, *I presupposti della tassazione ambientale*, in *Rass. trib.*, n. 1/1999, p. 118 ff.; G. STEFANI, *Finalità e limiti della tassazione ambientale*, in *Boll. trib.*, n. 20/1999, p. 1493; O. ESPOSITO DE FALCO, *Larmonizzazione fiscale e le tasse ecologiche*, in *Riv. giur. amb.*, n. 5/2004, p. 658; S. CIPOLLINA, *Fiscalità e tutela del paesaggio*, in *Riv. dir. fin.*, n. 4/2008, I, p. 560; S. CIPOLLINA, *Osservazioni sulla fiscalità ambientale nella prospettiva del federalismo fiscale*, cit., p. 578; F. GALLO, *Profili critici della tassazione ambientale*, cit., p. 303; A. URICCHIO, *Le frontiere dell'imposizione tra evoluzione tecnologica e nuovi assetti istituzionali*, cit., p. 184; A. URICCHIO, *Prelievo fiscale e emergenze ambientali*, cit., p. 1490; M. PROCOPPIO, *La natura non commutativa dei tributi ambientali e la loro compatibilità con il principio di capacità contributiva*, cit., p. 1168-1169; S. DORIGO, *I tributi ambientali nel sistema costituzionale italiano*, in S. DORIGO, P. MASTELLONE, *La fiscalità per l'ambiente. Attualità e prospettive della tassazione ambientale*, Roma, 2013, p. 152 ff.; V. GUIDO, *La Consulta frena i primi entusiasmi federalisti in materia di fiscalità ambientale; spunti per una riflessione in tema di fiscalità locale*, in *Riv. trim. dir. trib.*, n. 1/2013, p. 224; L. STRIANESE, *Fini extrafiscali del tributo e protezione dell'ambiente nel contesto globale e nazionale. La prospettiva italiana*, in

Different are environmental taxes “in the broad sense”, defined taxes “with environmental purposes”, characterized by a traditional assumption, such as consumption, assets or income, which is accompanied by the purpose of protecting the environment implemented through the incentive or disincentive for certain activities or the use or production of goods of environmental importance^[15].

The distinction between “redistributing” environmental taxes and “incentive” environmental taxes assumes a higher elaborative importance: the former tend to finance environmental protection and clean-up measures, charging the costs to the authors of the polluting conducts with taxing environmental policies; the latter, in addition to affecting those who pollute, can induce investment in innovations and technologies to reduce harmful activities with favorable environmental policies (so-called “green taxation”)^[16].

F. AMATUCCI, R. ALFANO (a cura di), *Ordinamenti tributari a confronto. Problematiche comuni e aspetti procedurali. Italia, Spagna e Colombia*, Torino, 2017, p. 397-408; A. URICCHIO, *I tributi ambientali e la fiscalità circolare*, in *Dir. prat. trib.*, n. 5/2017, p. 1855; A.F. URICCHIO, *Classificazioni tradizionali e classificazioni innovative dei tributi*, in A. URICCHIO, V. PERAGINE, M. AULENTA, *Manuale di scienza delle finanze, diritto finanziario e contabilità pubblica*, Molfetta, 2017, p. 229; S. DORIGO, P. MASTELLONE, *La declinazione di “ambiente” e la tassazione ambientale oggi*, in V. FICARI (a cura di), *I nuovi elementi di capacità contributiva. L'ambiente*, Canterano, 2018, p. 58 ff.; P. BORJA, *Diritto tributario*, Torino, 2019, p. 215-216.

^[15] Comp. S. CIPOLLINA, *Osservazioni sulla fiscalità ambientale nella prospettiva del federalismo fiscale*, cit., p. 578; F. GALLO, *Profili critici della tassazione ambientale*, cit., p. 303; S. DORIGO, *I tributi ambientali nel sistema costituzionale italiano*, cit., p. 152 ff.; V. GUIDO, *La Consulta frena i primi entusiasmi federalisti in materia di fiscalità ambientale; spunti per una riflessione in tema di fiscalità locale*, cit., p. 224; L. STRIANESE, *Fini extrafiscali del tributo e protezione dell'ambiente nel contesto globale e nazionale. La prospettiva italiana*, cit., p. 408-409; A. URICCHIO, *I tributi ambientali e la fiscalità circolare*, cit., p. 1851; A.F. URICCHIO, *Classificazioni tradizionali e classificazioni innovative dei tributi*, cit., p. 229; S. DORIGO, P. MASTELLONE, *La declinazione di “ambiente” e la tassazione ambientale oggi*, cit., p. 57; P. BORJA, *Diritto tributario*, cit., p. 216.

^[16] Cfr. O. ESPOSITO DE FALCO, *L'armonizzazione fiscale e le tasse ecologiche*, cit., p. 650-651; S. CIPOLLINA, *Osservazioni sulla fiscalità ambientale nella prospettiva del federalismo fiscale*, cit., p. 573; A. URICCHIO, *Le frontiere dell'imposizione tra evoluzione tecnologica e nuovi assetti istituzionali*, cit., p. 186; A. URICCHIO, *Prelievo fiscale e emergenze ambientali*, cit., p. 1491; L. STRIANESE, *Fini extrafiscali del tributo e protezione dell'ambiente nel contesto globale e nazionale. La prospettiva italiana*, cit., p. 406-407; A.F. URICCHIO, *Classificazioni tradizionali e classificazioni innovative dei tributi*, cit., p. 230.

Finally, there is no lack of fiscal or parafiscal instruments capable of having a positive impact on the environment: this is the case of taxes with effects of regulation (direct or indirect) of the degree of exploitation of natural resources, such as, for example, the regional tax on state concessions, the concession fee and the taxes applied to concessions for mines and small diversions of public waters.

In this context, the use of taxation or facilitating fiscal instruments, in the context of environmental policies, can have advantageous effects according to the system of underlying values, even if they can be graduated in terms of effectiveness.

In order to conclude, the role of environmental taxation can be truly decisive for discouraging polluting emissions and the consumption of pests and for preserving environmental matrices and non-renewable resources, both through direct taxation tools aimed at hitting retractable income from conduct that is not respectful of the environment, and through indirect encumbrance techniques capable of affecting consumption with purpose taxes intended for the reclamation of polluted sites.

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