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Exploring the Interconnections Between Tax Crime and Corruption: National Report for Italy

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Exploring the Interconnections Between Tax Crime and Corruption: National Report for Italy

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1. The Fiscal Corruption Phenomenon: Setting the Scene

The notion of *fiscal corruption* has been present in economic literature for several decades[1]. Studies on the subject start from the consideration that an important area of government where corruptive practices lurk is that of assessment and collection of tax revenue[2], as discussed below.

Although there is no formal definition of the concept of 'fiscal corruption', this juxtaposition of corruption with tax matters is generally understood to refer to corrupt practices in tax administration, i.e. the behavior on the part of tax officials to improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them[3]. Correspondingly, by paying a bribe to tax officials, taxpayers secure themselves the chance to evade taxes without running the risk of being subject to tax assessment.

The purpose of this research is to explore how widespread or 'systemic' corruption can influence the commission of tax crimes, and vice versa. As shown by several scholars, such interaction represents a major issue particularly in developing countries, where it is reported that approximately 50 percent or more of tax revenue may go uncollected because of fiscal corruption and tax evasion[4]. Indeed, with reference to the situation of transitional economies, characterized by institutional vulnerabilities and more permeable to corruption, theories have been developed to emphasise the role of the tax officials and the conditions of service. According to such proposals, tax officials should be properly motivated, through training as well as bonus/incentive schemes, to resist corruption and work harder to improve tax revenue[5].

However, it seems evident that the interconnections between corruption and tax crime[6] are a problem that also affects developed countries with strong institutions and settled and well run tax systems, with significant effects on their economic growth. The OECD and World Bank report *Improving Cooperation Between Tax Authorities and Anti-corruption Authorities in Combating Tax Crime and Corruption* (2018) highlights that these two phenomena are "often intrinsically linked, as criminals fail to report income derived from corrupt activities for tax

[1] See Chand S.K., & Moene K. O. (1997). Controlling Fiscal Corruption. *IMF Working Papers 97/100*, International Monetary Fund, 1 ff.; Li, J. (1997). Counteracting Corruption in the Tax Administration in Transitional Economies: A Case Study of China. *Bulletin of the International Bureau of Fiscal Documentation*, 51, 474 ff.; Wei, S. J. (1999). Corruption in Economic Development. Beneficial Grease, Minor Annoyance, or Major Obstacle?. *Policy Research Working Paper Series 2048*, The World Bank, 1 ff.; Fjeldstad, O.H., & Tungodden, B. (2003). Fiscal Corruption: A Vice or Virtue?. *World Development*, 31, 1459 ff.

[2] Fjeldstad & Tungodden (2003). Fiscal Corruption: A Vice or Virtue? (*supra* note 1), 1459; Richardson, G. (2006). Taxation Determinants of Fiscal Corruption: Evidence Across Countries. *Journal of Financial Crime*, 13(3), 323.

[3] Li (1997). Counteracting Corruption in the Tax Administration in Transitional Economies (*supra* note 1), 475.

[4] See Fjeldstad & Tungodden (2003). Fiscal Corruption: A Vice or Virtue? (*supra* note 1), 1459 and the literature cited therein.

[5] Chand S.K., & Moene K. O. (1997). Controlling Fiscal Corruption (*supra* note 1), 5 ff.

[6] This central topic has been extensively addressed during the *VIRTEU Roundtable "Exploring the interconnections between tax crimes and corruption"*, held on 29 January 2021.

purposes, or over-report in an attempt to launder the proceeds of corruption. A World Bank study of 25 000 firms in 57 countries found that firms that pay more bribes also evade more taxes. […] [W]here corruption is prevalent in society, this can foster tax evasion. A recent IFC Enterprise Survey found that 13.3% of businesses globally report that 'firms are expected to give gifts in meetings with tax officials', with the frequency of this ranging across countries from nil to 62.6%"[7]. Such data suggest an interaction between these two areas of crime greater than one could imagine at first sight and the need to investigate further the underlying entanglements.

Not only bribery can be instrumental to commit tax evasion, but also tax crimes can be instrumental to commit bribery. Thanks to tax crimes, taxpayers (both natural and legal persons) can create a black budget aimed at bribing public officials, for example in order to win public procurements – one of the business sectors more vulnerable and exposed to corrupt practices, where "in addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders"[8].

Against this background, the 'economic dimension' of fiscal corruption reported in the literature seems able to embrace only partially the phenomenon in its wideness and variety. This investigation must therefore be directed towards the identification of the features of tax evasion and corruption and the way they interact, to explore the possibility and desirability of shaping a more inclusive concept of fiscal corruption.

Therefore, at this stage, it seems appropriate to start framing the concepts moving from the broader phenomenological dimension as to address their effects and their fundamental elements. Then, the analysis will move on to the technical/legal definitions for criminal law purposes in the Italian context.

As the first aspect, it should be recalled that tax evasion is harmful in several respects. On the one hand, government are deprived of the resources to finance collective goods, services and welfare programs, and this can increase social inequalities; on the other, the lack of revenue prevents cuts in tax rates, thus affecting in a negative and unpopular way the perception of taxation.

Corruption raises equally serious concerns. It impacts on economic development as – quoting the Preamble of the Council of Europe Criminal Law Convention on Corruption (1999) – it "threatens the rule of law, democracy and human rights, undermines good governance,

[7] OECD and The World Bank (2018). *Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption*, 13, available at http://www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.pdf.
[8] OECD (2016). *Preventing Corruption in Public Procurement*, 6, available at https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf.

fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society"[9].

To capture the 'basics' of the two phenomena at stake it is useful to begin with broad, policy oriented-definitions. The notion of tax evasion "[…] is generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities" [10]. More specifically, tax fraud "is a form of deliberate evasion of tax which is generally punishable under criminal law" including "situations in which deliberately false statements are submitted, fake documents are produced, etc."[11]. Tax evasion is usually opposed to "tax avoidance" that – by referring to the same source – "is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow"[12]. In practice, drawing a line between tax evasion and tax avoidance is often not easy.

Regarding corruption, Transparency International defines it as "the abuse of entrusted power for private gain". This expression encompasses three of the main characteristics of corruption: the fact that it can occur both in public and private sectors, and that either individuals and organisations can be involved as key actors; the idea of 'abuse' of power, as corruption entails abusing power in a State institution or a private organisation; the concept of 'benefit', as both the corruptor and the corrupt gain something, in terms of money or advantage. Apart from this very general definition, it is said that there are as many different notions of corruption as there are manifestations of the problem itself, as they vary according to cultural, legal or other factors and it is not easy to determine what specific acts should be included or excluded[13].

Thus, building on these notions, at least another possible meaning of 'fiscal corruption' could be envisaged. Tax evasion may be considered as a visible manifestation of bribery effects. In fact, the more corrupt political institutions are, the more taxpayers will be led to evade taxes, being aware that tax revenue could be used to satisfy interests other than those of the "common good"[14]. The relationship between corruption and tax offences can therefore be a key determinant of public trust.

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[9] Council of Europe (1999). *Criminal Law Convention on Corruption*, available at https://rm.coe.int/168007f3f5.
[10] See OECD, *Glossary of Tax Terms*, available at https://www.oecd.org/ctp/glossaryoftaxterms.htm.
[11] ibid.
[12] See "Avoidance", ibid.
[13] OECD (2007). *Corruption. A Glossary of International Criminal Standards*, 19, available at https://doi.org/10.1787/9789264027411-en.
[14] In Italy, in particular, the risk of tax evasion is considered high in the following business sectors: constructions, consulting, advertisement, trade of technological goods. See Banca D'italia, Unità di Informazione Finanziaria per L'italia. (2020). *Schemi rappresentativi di comportamenti anomali ai sensi dell'articolo 6, comma 7, lettera b), del d.lgs 231/2007*, 3, available at https://uif.bancaditalia.it/normativa/norm-indicatori-anomalia/schemi-rappresentativi/index.html.

With reference to the strictly legal facet, since tax crime and corruption are able to produce profound societal and economic consequences, the global fight against them has traditionally relied on international cooperation and on the development of solid regulatory frameworks, where criminal law plays a pivotal role. However, in this transition from the phenomenological plan to the technical one, it should be noted that, even in the context of supranational sources of reference, the definition of tax crime and corruption falls within the competence of each State. Hence, the necessarily national dimension of criminal law emerges, as such provisions may be quite different across jurisdictions and the undeniable preliminary consideration is that tax crime and corruption are treated and regulated *separately* across most legal systems. Therefore, the connections among the two are usually not expressly reflected in formal definitions.

This is basically the approach followed also by major organisations and institutions at international and European level. Regarding tax crime, the 2017 OECD's guide *Fighting Tax Crime: The Ten Global Principles* establishes that "jurisdictions should have the legal framework in place to ensure that violations of tax law are included as a criminal offence, and that effective sanctions apply in practice" (*Principle 1, Ensure Tax Offences are Criminalised*)[15]. As explained in the document, these conducts may be manifold, as "jurisdictions may criminalise actions starting from simple non-compliance, such as any deliberate failure to correctly file a tax return. Some other jurisdictions may apply the criminal law starting from a higher threshold, where the deliberate failure to comply with a tax obligation is accompanied by aggravating factors such as if the amount of tax evaded exceeds a certain threshold, if the offence is committed repeatedly, when taxable income is actively concealed, or when records or evidence are deliberately falsified. Alternatively, jurisdictions may have set a very high threshold to classify tax crime, such as organised crime for profit, or tax evasion accompanied by particularly aggravating circumstances"[16]. At EU level, the most significant act is the Directive (EU) 2017/1371 of the European Parliament and the Council adopted on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), that in particular requires the criminalisation of the most serious forms of VAT fraud (defined under art. 3).

As far as corruption is concerned, the OECD, the Council of Europe and the UN Conventions against corruption do not offer a general definition, rather they define international standards on the criminalisation of corruption by establishing specific offences for a range of corrupt behaviours. In fact, the 1997 OECD Convention provides for the offence of bribery of foreign public officials, while the 1999 Council of Europe Convention establishes offences such as bribing domestic and foreign public officials and trading in influence. In addition to these

[15] OECD (2017). *Fighting Tax Crime: The Ten Global Principles*, 14, available at https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-second-edition-006a6512-en.htm. Principle 1 has been reiterated also in the second edition of the guide, published in 2021.
[16] OECD (2017). *Fighting Tax Crime* (*supra* note 15), 15.

types of conduct, the UN Convention also includes embezzlement, misappropriation or other diversion of property by a public official, and obstruction of justice. Within the EU legal system, the most important anti-corruption instrument, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, was adopted in 1997. It requires EU countries to criminalise both active and passive corruption [17] by public officials and, also, the fact of participating in and instigating either of these forms of corruption. It has to be noticed that EU member States consequently adopt quite similar definitions of corruption within their jurisdictions.

In the light of the above, it becomes necessary to question whether the approach adopted to tackle these criminal phenomena has any weaknesses. In fact, as noted by the abovementioned OECD and World Bank report of 2018, "there remains significant room for improvement in co-operation between tax authorities and anti-corruption authorities. Despite success stories, anecdotal evidence provided by many jurisdictions […] suggests that reporting and information sharing between authorities often occurs on ad-hoc basis rather than systematically. […] [T]he OECD's 2017 study on the Detection of Foreign Bribery […] provides that only 2% of concluded foreign bribery cases between 1999 and 2017 were detected by tax authorities".

This report is structured as follows. Section 1 outlines the main legal instruments in force in the Italian jurisdiction to highlight the possible interrelation between corruption and tax evasion. Section 2 presents the features of the Italian legal system through the lens of specific areas of action – namely, prevention, investigation, enforcement, sanctions, recoveries and remedies. Section 3 addresses specific research topics selected for their relevance in the context of the present research, such as corporate prevention of tax crimes, *ne bis in idem* issues and whistleblowing. Section IV concludes.

[17] Active corruption consists in "the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions" (art. 2, Council of Europe Criminal Law Convention on Corruption). Passive corruption is "the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions" (art. 3, Council of Europe Criminal Law Convention on Corruption).

2. The Fight Against Tax Evasion and Corruption in Italy

Following the guiding thread of this analysis, it is necessary to primarily underline that, in Italy, *fiscal corruption* is not regulated as a unitary phenomenon and that tax evasion and corruption have mostly two separate legal regimes. Indeed, under the criminal law perspective, tax evasion and corruption equate to different crimes specifically and strictly identified by the legislator. These offences, as they have been legally structured and defined, have a narrower scope of application than what the phenomenon of fiscal corruption may suggest.

Fiscal corruption instead, understood as a broad concept, aimed at encompassing the relevant interconnections between corruption and tax crime, evokes more heterogeneous criminal behaviours. Thus, the convergence between tax evasion and the damage to the correct and the impartial public administrative function can take several forms: in this phenomenological dimension, 'corruption' may correspond to offences other than the typical ones (pursuant to arts. 318 ff. of the Italian criminal code), such as those relating to the "bid rigging" (*turbativa d'asta*, art. 353 of the Italian criminal code) or "influence peddling" (*traffico di influenze*, art. 346-*bis* of the Italian criminal code).

Another reference could be made to tax avoidance, that currently no longer has criminal relevance[18]. As an example, it is known that in the corporate context the use of aggressive tax planning schemes may become an instrument to exploit national regulatory loopholes, in order to significantly increase profits[19]. In such a perspective, it could be interesting to test whether tax avoidance can have interference with corruption and whether this can produce even greater damages than those made by explicit VAT fraud conducts. In fact, aggressive tax planning may determine a distortion of competition between companies and between national tax systems, as well as a damage to the European Union market.

In short, by underlining that not only formal offences come into play, the notion of fiscal corruption undoubtedly helps to shed light also on *other* practices that may jeopardise the public administrative function, the lawful and proper functioning of the market and the competition regime.

This premise not only explains and enhances the relevance of the present research, but also serves as a necessary starting point in approaching such a phenomenon, that – as mentioned – is structurally non-existent in the Italian legal system as a crime.

[18] Aldovrandi P. (2018). Elusione e diritto penale nella giurisprudenza: l'eterogenesi dei fini del legislatore nel "diritto vivente" e la crisi del principio di legalità nel diritto penale postmoderno. *L'Indice penale*, 147 ff.
[19] OECD (2013). *Action Plan on Base Erosion and Profit Shifting*, available at https://www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm

2.1 The Approach to Countering Tax Crimes

The Italian system of sanctions in tax matters is characterised by a "double track", as criminal law punishes the most relevant offences, in terms of amount of evaded taxes and obstacles to Italian Revenue Agency ("*Agenzia delle Entrate*")[20] tax assessment, while administrative sanctions refer to less serious cases. Moreover, since the entry into force of the general administrative provisions established by Legislative Decree No. 472/1997, it should be mentioned that this latter field has been essentially inspired by criminal law principles as well. Nevertheless, this regulatory framework soon revealed the problem of the overlap between criminal and administrative offences, which could be seen as one of the major issues to be addressed[21].

Preliminarily, it deems appropriate to briefly trace the evolution of criminal tax law in Italy[22]. Since the 1970s, the fight against tax crime has long been characterised by a particularly repressive approach and by the lack of an effective and transparent dialogue between the financial administration and taxpayers. From this viewpoint, the Law No. 516/1982, known as "handcuffs to the evaders" (*manette agli evasori*) should be mentioned, as this model of protection proved to be quite problematic and not in line with fundamental domestic criminal law principles, such as 'offensiveness' (*offensività*) and subsidiarity. Additionally, by focusing tax offences (mostly misdemeanours, *contravvenzioni*) on the violation of administrative tax regulations rather on the evasion, criminal provisions ended up protecting tax administration's assessment function, more than State assets.

To overcome this phase, where criminal law essentially played a sanctioning role of administrative violations, the Italian legislator changed its course with the introduction of the Legislative Decree No. 74/2000[23], which is very comprehensive and still is the current criminal law framework in tax matters. This statute marks the 'autonomisation' of criminal tax provisions from administrative offences as regards the legal interests protected, that is now centred on the State interest to collect taxes.

The new model of criminal protection against tax evasion revolves around a limited number of serious offences (*delitti*), no longer aimed at sanctioning facts preparatory to evasion, but focused on the tax return. In detail, in the first part of the Legislative Decree No. 74/2000 dedicated to criminal offences, the conducts of filing of fraudulent tax return through the use of invoices (art. 2) or other artifices (art. 3), in order to evade both income tax and VAT, are

[20] The Italian Revenue Agency is the institution aimed at countering tax evasion. It is responsible to collect tax revenues, to provide assistance to taxpayers and to carry out inspections in order to ensure tax compliance.
[21] *Infra*, § 3.2.
[22] For this overview see Cingari, F. (2017). L'evoluzione del sistema penale tributario e i principi costituzionali. In R. Bricchetti, & P. Veneziani (Eds.), *I reati tributari*, vol. XIII, *Trattato teorico pratico di diritto penale* (directed by F.C. Palazzo, & C.E. Paliero). Giappichelli, 1 ff.
[23] Flora, G. (2001). Nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto, a norma dell'art. 9 della legge 25 giugno 1999, n. 205, analisi al d.leg. 10 marzo 2000 n. 74. *Legislazione penale*, 17 ff.

sanctioned. arts. 4 and 5 of the Decree, on the other hand, criminalise respectively false invoicing and tax declaration failure, also in this case aimed at evading income tax and VAT[24]. Indeed, apart from the case of the issuance of invoices or other documents for not-existing operations (art. 8), facts preliminary to evasion – including the attempt (*tentativo*) do not have criminal relevance. As a matter of fact, however, para. 1-*bis* of art. 6 of the Decree, introduced by the Legislative Decree No. 75/2020, ensures that an attempt to commit the criminal offences referred to in arts. 2, 3 and 4 is punishable as a criminal offence, whenever the following conditions are fulfilled: the attempt should have a transnational dimension and it should be committed with the aim to evade VAT for a total of at least 10.000.000 €.

In order to select facts that may really damage State's financial interests, tax thresholds for criminal relevance – with the exception of offences that are considered particularly harmful: e.g., arts. 2 and 8 of the Legislative Decree No. 74/2000 – as well as the fraudulent intention (*dolo specifico di evasione*) are required as structural elements.

It should be added that, alongside this Decree, in the same period the so-called "Statute of the Taxpayer" (*Statuto del contribuente*, Law No. 212/2000)[25] was introduced, which is an essentially extra-criminal statute aimed at regulating relations between citizens and tax authorities on the basis of the principles of loyal collaboration, transparency and trust, meant as measures – alternative to the threat of criminal sanctions – to tackle tax evasion practices.

Regardless, the system briefly outlined does not reached the desired effects in terms of deterrence (entrusted to criminal law provisions) and prevention (entrusted to the loyal collaboration and transparency principles of the "Statute of the Taxpayer"). In the following years, there has been again a strengthening of the repressive approach, with the introduction, in the Legislative Decree No. 74/2000, of new offences merely focused on non-compliance with the tax debt payment's obligation, without fraudulent features nor intention of tax evasion (i.e. failure to pay withholding taxes, provided for by art. 10-*bis*; failure to pay VAT, laid down by art. 10-*ter*; undue compensation, covered by art. 10-*quater*). Moreover, tax thresholds for criminal relevance have been lowered and the confiscation by equivalent has been introduced for almost all tax offences[26]. These amendments meant that the paradigm provided for in the Legislative Decree No. 74/2000 began to focus on tax collection as well, and no longer mainly on tax return.

The complex evolution of the Italian criminal tax system has continued with further legislative interventions in 2015. The Legislative Decree No. 128/2015 started a new path as regards the

[24] See Di Siena, M. (2021, April 29). VIRTEU National Workshop - Italy, Session 1. Video recording at 8:38. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy
[25] See Fantozzi A., & Fedele A. (Eds.) (2005). *Lo Statuto dei diritti del contribuente*. Giuffrè.
[26] D'Avirro, A. (2020). Confisca diretta, per equivalente e "allargata" nei reati tributari. *Rassegna tributaria*, 487 ff.

issue of abuse of law and tax avoidance[27], introducing art. 10-*bis* in the "Statute of the Taxpayer": para. 13 of this provision states that, without prejudice to the application of administrative sanctions, abusive transactions do not give rise to acts with criminal law relevance. Thus, the Legislative Decree No. 128/2015 brought to an end the previous case-law[28] according to which tax avoidance practices may constitute a criminal offence (and, in particular, the offence of unfaithful tax declaration, provided for in art. 4 of the Legislative Decree No. 74/2000, or the offence of failure to submit tax declaration, laid down in art. 5 of the same Legislative Decree No. 74/2000)[29]. In particular, moving from the definition of "evaded tax", provided for by art. 1(f) of the Legislative Decree No. 74/2000 – considered broad enough to include the "avoided tax" – Italian case-law used to attribute criminal relevance to every tax (aggressive) practice expressly provided for by law as a "tax avoidance" operation, whenever committed in order to evade income tax or VAT.

In the light of the above, the result of the reform of 2015 is particularly valuable, as it prevents public prosecutors from assimilating tax avoidance and tax evasion, i.e. practices characterized by a very different degree of seriousness.

The Legislative Decree No. 128/2015 also opened up a new, very important era in the relationships between taxpayers and tax authorities with the introduction of cooperative compliance mechanisms[30] and the *Tax Control Framework – TCF* [31].

Furthermore, the Legislative Decree No. 158/2015[32] has brought changes to the criminal protection model enshrined in the Legislative Decree No. 74/2000, by following three main lines of reform. First, it pursued the general extension of the area of criminal relevance with respect to fraudulent conducts; second, it opted for narrowing down the scope of some tax offences in less serious cases (by raising the thresholds of criminal relevance of the offences set forth by arts. 3, 4 and 5 and by introducing a special cause of non-punishability in relation to specific offense for the payment of the tax debt, *ex* art. 13 of Legislative Decree No. 74/2000); third, it intervened on the patrimonial consequences connected with the commission of the offence (with specific regard to the introduction of art. 12-*bis* of the Legislative Decree No. 74/2000, applicable to every tax offence provided for therein).

[27] Tax avoidance is defined as the "arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow": see OECD, *Glossary of Tax Terms* (*supra* note 10).

[28] See for instance Cass. pen., Sec. II, 28 February 2012, No. 7739, Dolce & Gabbana. On the aforementioned judgement see, *ex multis*, Veneziani, P. (2012). Elusione fiscale, "esterovestizione" e dichiarazione infedele. *Diritto penale e processo*, 863 ff.

[29] Ingrassia, A. (2016). La rilevanza penale dell'elusione: nuovi capitoli di una 'saga (forse non) infinita'. *Le Società*, 495.

[30] Tamburro, V. (2016). Nuove prospettive nel rapporto tra fisco e contribuente: a proposito di una recente collettanea in tema di c.d. "tax assurance". *Diritto e pratica tributaria*, 952-954.

[31] *Infra*, § 3.1.

[32] See Ingrassia A. (2016). *Ragion fiscale vs 'illecito penale personale'. Il sistema penale-tributario dopo il d.lgs. 158/2015*. Maggioli editore.

Law No. 157/2019[33], inspired by the need to strengthen the normative response against tax offences, has been one of the latest major reforms in this area, having been followed by the Legislative Decree No. 75/2020. This Law is based on the following cornerstones: more severe prison sentences, lower thresholds for criminal relevance for almost all offences provided for by the Legislative Decree No. 74/2000, the extension of the so-called "extended confiscation" provided by art. 240-*bis* of the Italian criminal code[34] to some tax offences (art. 12-*ter* of the Legislative Decree No. 74/2000)[35], the introduction of tax offences among the predicate offences (art. 25-*quinquiesdecies*) that entail liability of entities depending on crimes pursuant to Legislative Decree No. 231/2001[36]. This latter is the statute regulating the liability regime of corporate entities, companies and associations, including those which are not bodies corporate, for the commission of crimes (expressly listed by Decree itself) by agents of the entity and in its interest/to its advantage. For this reason, it will be referred to also as 'corporate criminal liability' for descriptive purposes. In fact, although formally labeled as 'administrative', this system has been interpreted by the Italian courts as *substantially criminal*[37], as it provides for very severe sanctions (pecuniary and interdictory) that can be applied directly to entities if also a subjective imputation requirement is met (i.e. the failure to adopt a corporate compliance program by the entity – *organisational fault*)[38].

The failure to include tax offences in the Legislative Decree No. 231/2001 implied that, until recently, the punitive response was directed essentially towards individuals, as corporations could not be held liable directly for such offences. This has therefore hampered for quite a long the emerging of a tax compliance culture within companies, suitable to control the risk of tax crimes. What happened was that the Italian courts tried to sanction nonetheless tax offences by classifying such illicit conducts as money laundering predicate offences[39], as part of a crime junction with fraud[40], as specific crimes underlying organised crime[41], or by 'forcing' the use of the confiscation provided for by the Legislative Decree No. 231/2001[42]. This case-

[33] For a general overview of the reform, see Finocchiaro, S. (2020). In vigore la "riforma fiscale": osservazioni a prima lettura della legge 157/2019 in materia di reati tributari, confisca allargata e responsabilità degli enti. *Sistema penale*, 7 January 2020.
[34] Maugeri, A. M. (2018). La riforma della confisca (d.lgs. 202/2016). Lo statuto della "confisca allargata" *ex* art. 240-*bis* c.p.: spada di Damocle "sine die" sottratta alla prescrizione (dalla l. 161/2017 al d.lgs. n. 21/2018). *Archivio Penale*, 235 ff.
[35] Dell'Osso, A. M. (2020). Corsi e ricorsi nel diritto penaltributario: spunti (critici) sul c.d. decreto fiscale. *Diritto penale e processo*, 323 ff.
[36] For a critical stance on this reform in the corporate criminal liability field, see Bartoli, R. (2020). Responsabilità degli enti e reati tributari: una riforma affetta da sistematica irragionevolezza. *Sistema penale*, 3, 219 ff.
[37] The Italian Supreme Court has defined this form of liability as a *tertium genus* between criminal liability and administrative liability: see Cass. pen., Sezioni Unite, 24 April 2014, No. 38343.
[38] *Infra*, § 2.1.
[39] See among others Cass. pen, Sec. II, 17 November 2009, No. 49427; Cass. pen, Sec., 27 November 2008, No. 1024.
[40] Cass., Sezioni Unite, 28 October 2010, No. 1235.
[41] Cass. pen., Sec. III, 14 November 2007, No. 3052; Cass. pen., Sec. III, 6 July 2005, No. 34678.
[42] Cass., Sezioni Unite, 5 March 2014, No. 10561, *Gubert*. For a comment, see Dell'Osso, A. M. (2014). Confisca diretta e confisca per equivalente nei confronti della persona giuridica per reati tributari commessi dal legale rappresentante: le Sezioni Unite innovano ma non convincono. *Rivista trimestrale diritto penale dell'economia,* 401 ff.

law caused serious concerns, as the Legislative Decree No. 231/2001 establishes the legality principle and only the formal offences expressly listed therein[43] can give rise to this form of 'collective liability'. These problems have now been overcome by the abovementioned reform of 2019.

Moreover, the following Legislative Decree No. 75/2020, implementing the PIF Directive in Italy, has further extended the predicate tax crimes that may entail corporate criminal liability, by adding to the already relevant tax offences the crimes of unfaithful tax declaration (art. 4 of the Legislative Decree No. 74/2000), failure to submit a declaration (art. 5 of the Legislative Decree No. 74/2000) and undue compensation (art. 10-*quater* of the Legislative Decree No. 74/2000)[44].

2.2 The Anti-Corruption System

Shifting the focus towards the anti-corruption regime, it is possible to say that until 2012 the law enforcement system in this field has been essentially based on criminal law.

Some delicate affairs of corruption[45] in the early 1990s, involving high-level politicians, had brought to light a situation of widespread or 'systemic' corruption, i.e. an unlawful trade of public functions for private interest to carry out an indefinite series of corrupt behaviours. The first response came from the courts, as provisions of the Italian criminal code[46] had proved inadequate to effectively counter such a broad spectrum of phenomena. National prosecutors made use the offence of 'concussione' (i.e. cases where a public official abuses his/her functions or powers to compel or induce the individual to unduly give or promise money or other benefit – art. 317 of the Italian criminal code, see *infra*) rather than the corruption offence. It is important to highlight that in the case of 'concussione' only the public official was punishable; instead, in this context the private individual – as a victim of the crime – was to some extent pushed to report and provide evidence. Even when corruption was charged, it was given an extensive interpretation, referred not to the performance, by a public

[43] This 'catalogue' is a close list of predicate crimes that may entail corporate liability pursuant to the Legislative Decree 231 of 2001. It is very comprehensive and it has grown over the years, as the predicate offences range from corruption and financial related crime (money laundering, tax crimes etc.) to environmental offences, from organized crime and terrorist offences to computer crimes, and even to offences concerning racism and xenophobia. See Gullo, A. (2020). Considerazioni generali ed evoluzione storica. In G. Lattanzi, & P. Severino (Eds.), *Responsabilità da reato degli enti*, vol. I, *Diritto sostanziale*. Giappichelli, 353 ff.; Piergallini, C. (2010). I reati presupposto della responsabilità dell'ente e l'apparato sanzionatorio. In G. Lattanzi (Ed.), *Reati e responsabilità degli enti. Guida al d.lgs. 8 giugno 2001, n. 231*. Giuffrè, 211 ff.

[44] It should be noted that tax offences introduced by the Legislative Decree No. 75/2020 may give rise to corporate liability only if committed within cross-border systems and in order to evade VAT for at least ten million of euros. These two conditions are not required for (the already existing) tax offences of art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001, introduced by the Law No. 157/2019. On this topic See Piva, D. (2020). Reati tributari e responsabilità dell'ente: una riforma nel (ancorché non di) sistema. *Sistema Penale*, 15 September 2020, 1 ff.

[45] For the background context, Severino, P. (2016). Legalità, prevenzione e repressione nella lotta alla corruzione. *Archivio penale online*, 3, 1 ff.

[46] For an overview of the Italian criminal code provisions at stake, see Romano, M. (2019). *I delitti contro la pubblica amministrazione. I delitti dei pubblici ufficiali. Artt. 314-335-bis Cod. pen: Commentario sistematico* (4th ed.). Giuffrè.

official, of a specific act contrary to the duties of his/her office, but to a more general 'performance of the public function', with a less onerous burden of proof.

Besides these considerations, international inputs played an important role in the reform process that followed. The already mentioned Conventions against corruption that Italy started to sign (OECD, 1997, United Nations, 2003; Council of Europe, 1999) imposed not only that the national provisions should met those standards of protection, but also that Italy should be subject to the related periodic monitoring procedures (e.g. by the Working Group on Bribery, OECD and the GRECO, Council of Europe). In particular, to supranational obligations Italy owes the introduction in its criminal code of the crime of 'international corruption' (art. *322-bis*) and of the confiscation for equivalent of corruption proceeds, as well as the corporate criminal liability regime brought by the abovementioned Legislative Decree No. 231/2001 (corruption has always been included among the predicate crimes)[47].

With the Law No. 190/2012 the Italian public anti-corruption framework was deeply amended[48], as regards the 'traditional' punitive side and even more the preventive one, in this respect marking a totally new direction in the approach to the phenomenon.

About the first line of action[49], the reformed criminal law system was centred on the distinction between the offences of 'concussione' and corruption and, halfway between these two, the new offence of 'undue induction to give or promise a benefit' was introduced. After this reform, (domestic) corruption in particular is twofold, as both the agreement between a private individual and a public official, or a person charged with a public service (art. 320 of the Italian criminal code)[50], for the performance of his/her functions or powers (art. 318 of the Italian criminal code) and the agreement for the performance of any act contrary to the duties of his/her office, or to omit or delay an act ('proper corruption', art. 319 of the Italian criminal code) are criminalised.

As mentioned, the Law No. 190/2012 has introduced the offence of 'undue induction to give or promise a benefit' (art. 319-*quater* of the Italian criminal code). In this case, the public official induces the private individual to unduly give or promise, but the latter would have the option to choose whether to accept such a request and, on the basis of this choice, he/she will be punished (though less severely than the public official) or not. Under the previous

[47] See also *infra*, § 2.1.

[48] For an overview of the main features of the new law, see Mattarella B. G., & Pelissero M. (Eds.) (2013). *La legge anticorruzione*. Giappichelli.

[49] Severino, P. (2013). La nuova legge anticorruzione. *Diritto penale e processo*, 7 ff.

[50] According to art. 357 of the Italian criminal code, a public official is a person who exercises a legislative, judicial or administrative public function, i.e. a function governed by public law rules and characterized by the formation and manifestation of the will of the public administration or by its performance by means of authoritative or certifying powers. Art. 358 of the Italian criminal code defines the person charged with a public service as a person who provides a public service, for this being understood as an activity regulated in the same way as a public function, but characterized by the absence of the powers typical of the latter (excluding the performance of simple orderly tasks or purely material work).

regime only the public official could be held liable for such conduct (pursuant to the already mentioned art. 317 of the Italian criminal code), while after 2012 the offence of 'concussione' applies exclusively to residual cases, where the private individual is forced by the public official.

The system of protection has been completed by the offence of trading in influence (art. 346-*bis* of the Italian criminal code), that relates to an earlier stage, by sanctioning – after further legislative changes in 2019 – whoever, exploiting existing or alleged relations with a public official, accepts money/other benefits (or just their promise) as the price for his/her illicit influence or as remuneration to pay the public official for exercising his/her function in compliance with his/her duties. The Law of 2012 also modified the (abovementioned) provision on international corruption and the offence of private corruption (art. 2635 of the Italian civil code).

Considering the second strand of this reform – the prevention of corruption –, it should be observed that the main innovations are based on administrative measures[51]. The rationale is to promote a change of approach to the problem, asking for a greater cooperation and encouraging an ethic of responsibility among public officials. This goal has been pursued through several important changes, starting with the establishment of ANAC (the National Anti-corruption Authority), a body in charge of drawing up a national anti-corruption plan, to which the single administration, i.e. each municipality must comply. Each administration is required to appoint at the local level a person responsible for the prevention of corruption who has the task of adopting a local plan (called three-year plan for the prevention of corruption) and enforcing transparency measures. ANAC supervises the actual application and effectiveness of the measures taken by the public administration (meant in a broad sense, therefore including State-controlled enterprises) in this area, with powers of inspection and sanction. Over the years, the role of the Authority has greatly developed, as it now plays a major role in supervising public contracts and procurements and carries an intense regulatory activity.

After this structural reform, the Italian legislator enacted further legislative provisions.

As regards the preventive side, following the Law 190/2012 requirements of transparency for public authorities have been implemented (Legislative Decree. No. 33/2013) and in 2016 Italy has adopted a Law called FOIA – Freedom of Information Act (Legislative Decree No. 97/2016) which allows public access to public administration's documents. Additionally, a new code of conduct for public servants has been introduced, likewise rules on protection of whistleblowers in the public sector (later extended to the private sector with the Law No. 179/2017)[52], an articulated regulation on conferring tasks and incompatibility of offices as

[51] See Cantone, R. (2018). Il contrasto alla corruzione. Il modello italiano. *Diritto penale contemporaneo*, 2 October 2018, 1 ff.
[52] *Infra*, § 3.3.

well as a pantouflage prohibition (in order to avoid the mixing of politics and administration, and conflicts of interest), provisions on ineligibility and prohibition to hold elective offices after being criminally convicted for certain offences (*delitti non colposi*).

However, it is the criminal law field that has been again significantly affected. Further amendments, providing essentially for increase of punishment, have been brought by the Law No. 69/2015, but especially the last step of this regulatory evolution requires to be mentioned: namely, Law No. 3/2019 (called "bribe-destroyer law", *Spazzacorrotti*)[53], which has brought changes on both the Italian criminal code and the Legislative Decree No. 231/2001 on corporate criminal liability. Regarding the first aspect, as far as individuals are concerned the Law has amended the statute of limitations; it has broadened the definition of 'foreign public official' and modified art. 322-*bis* of the Italian criminal code; it has made possible – for all cases provided for by art. 2635 of the Italian civil code – to prosecute private corruption *ex officio*, confirming other modifications to the provision already made in 2017; it has introduced a special cause of non-punishability in cases of voluntary self-disclosure; it has increased collateral sanctions (*pene accessorie*) in the event of conviction for crimes against the public administration, as well as main sanctions for specific offences.

Also, on a procedural level, the use of 'trojan' virus, as investigative instrument, has been expanded and the regulation of undercover operations (art. 9, Law No. 146/2006) has been extended to some crimes against the public administration. With these latest measures, the 2019 reform shows an increasingly and very debated convergence between the anti-corruption regime and the existent specific model to fight against organised crime (highlighted also by the extension of preventive measures – *misure di prevenzione*, provided for by the Legislative Decree No. 159/2011 – to the suspects of having committed offences against the public administration by criminal association).

As regards the Legislative Decree No. 231/2001, the most relevant changes refer to the inclusion of the trading in influence (as amended by Law No. 3/2019) among the predicate offences of corporate criminal liability, the increase of both pecuniary and interdictory sanctions for the entities (with a special and more severe regime, different from that ordinarily provided for all other predicate crimes), and the introduction of a benefit for cooperation – although it could be questioned whether it is a real bonus, as interdictory sanctions are not excluded, their duration being reduced within the 'ordinary limits' set by art. 13 of the Decree[54].

The already mentioned Law Decree No. 75/2020 – that implemented the PIF Directive in Italy and modified the national legislation on tax crimes – has brought innovations also with

[53] See Flick, G. M. (2019). Le novelle su corruzione e dintorni: dal dire al fare o viceversa?. *Cassazione penale*, 3430 ff.; Mongillo, V. (2019) La legge "spazzacorrotti": ultimo approdo del diritto penale emergenziale nel cantiere permanente dell'anticorruzione. *Diritto penale contemporaneo*, 5, 231 ff.
[54] See § 2.6.

reference to some offences against the public administration, including corruption. Besides a few amendments to the Italian criminal code concerning individuals, the 'catalogue' of the predicate offences provided for by the Legislative Decree No. 231/2001 has been extended, with the introduction of specific cases of embezzlement as well as the offence of abuse of office (as recently amended by the Law No. 120/2020), but only if they affect EU financial interests.

Given this overview and as a link to the next step of this investigation, it has now become clear to what extent the two regimes governing tax crime and corruption in Italy are formally distinct and how they show very different characteristics. To test if it is possible to identify further areas of interaction for the emergence of 'fiscal corruption', the topics outlined so far will be now be examined and framed within specific areas of action.

3. The Italian Regulatory Framework. A General Overview

3.1 Prevention

In the area of individual liability in tax matters, the Italian national legal system has oriented its approach towards a preventive model through the adoption of the "Statute of the Taxpayer" in 2000. As already mentioned[55], this framework requires both the financial administration and taxpayers to be compliant with the principles of transparency and fair cooperation. This regime favoured the subsequent adoption of different legislative instruments, aimed at increasing the level of prevention concerning tax offences and fiscal illicit conducts, as, for instance, the advance tax ruling (*interpello*) and the voluntary disclosure model.

The advance tax ruling allows taxpayers to orient their tax behaviour by submitting formal queries to *Agenzia delle Entrate*. There are different types of advance tax rulings:

- with the ordinary ruling, taxpayers may request clarifications on the application of tax provisions with specific features: their interpretation should be objectively uncertain; the provisions should be related to national (and not local) taxes; the provisions should be applicable to real (not merely hypothetical) cases;
- through the probatory ruling, taxpayers aim at obtaining the opinion by *Agenzia delle Entrate* about the fulfilment of the conditions laid down by law for the adoption of specific tax regimes;

[55] *Supra*, § 1.1.

- with the anti-abuse ruling, taxpayers may verify if, according to *Agenzia delle Entrate*, a certain future transaction may be considered as abusive, hence administratively punishable;
- through the anti-avoidance ruling, taxpayers – by proving that a certain future transaction would not have tax avoidance effects – may require the disapplication of a certain tax provision that (for transactions of the same nature of the one that the taxpayer aims at realising) limits deductions or tax credits or tax benefits.

Moreover, the "voluntary disclosure" model allows taxpayers to write off their capital previously unlawfully transferred abroad and to bring it back to Italy, without criminal consequences. However, the aforementioned legislative instrument failed to live up to the expectations. The main reason should be found in the fact that the Italian legislator did not prevent the application of the "preventive confiscation"[56] against individuals opting for this procedure: hence, considering the risk that assets brought back to Italy would be subject to this measure, the number of taxpayers that voluntary disclosed their capital remains low.

With reference to corporations, the Italian legal system has been equipped with an effective tax evasion preventive system with the abovementioned Legislative Decree No. 128/2015. Thanks to OECD recommendations[57], in fact, Italy adopted a cooperative compliance model (specific for tax compliance) in order to measure and monitor large corporations' tax risk assessment and fiscal compliance. Cooperative compliance model aims at preventing the commission of tax offences, providing the corporations with a tax compliance culture, facilitating voluntary disclosure, inhibiting litigation and increasing a corporate social responsibility culture.

Nevertheless, this model shows some limitations. At present, only large corporations (mostly multinationals), meeting specific requirements can access to the cooperative compliance regime, while for smaller companies being 'tax compliant' is linked with no similar benefits nor incentives, therefore entirely voluntary[58].

As seen, thanks to the Law No. 157/2019 and the Legislative Decree No. 75/2020, the prevention system has been strengthened with the introduction of corporate criminal liability for some tax offences (art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001)[59]. However, neither before nor after the entry into force of the Law No. 157/2019, a system of

[56] See *infra*, § 2.5.
[57] OECD (2013). *Cooperative Compliance: A Framework. From Enhanced Relationship to Co-operation Compliance*, available at https://www.oecd.org/publications/co-operative-compliance-a-framework-9789264200852-en.htm
[58] *Infra*, § 3.1.
[59] See Severino, P. (2020). L'inserimento dei reati tributati nel d.lgs. 231/2001. Tra osservazioni *de jure condito* e prospettive *de jure condendo*. Atti del Webinar ''Tax compliance, responsabilità degli enti e reati tributari. Una riflessione alla luce della legge n. 157/2019". *Sistema penale*, 21 July 2020, 126 ff.

connection between 'tax compliance' and 'criminal compliance' legislation has been envisaged[60].

Moving to the anti-corruption legal framework, since the Law No. 190/2012 the Italian legislator has made the public administration responsible for a proactive approach in the fight against corruption. As mentioned, first this has been done through the establishment of ANAC, a national agency with powers of coordination and enforcement of the anti-corruption law in the public sector, including the procurement area.

The various innovations implemented since that moment have concerned, depending on the case, both entities – i.e. each public administration – and individuals.

First, the introduction of the three-year plan for the prevention of corruption should be highlighted. As already explained, each public administration must draw a 'local' plan to identify measures to prevent the risk of corruption, taking into account the national anti-corruption plan made by ANAC. Furthermore, transparency has been strongly enhanced with the Legislative Decree. No. 33/2013 and the abovementioned FOIA – Freedom of Information Act, which implies for public authorities the obligation to disclose various data, strengthening the right of access to them for citizens as a widespread mean to prevent corruption.

In addition, among the relevant measures it is possible to mention the articulated regulations on conferring tasks and incompatibility of offices as well as a pantouflage prohibition, the adoption of a code of conduct for public servants, the introduction of mechanisms to protect whistleblowers in the public sector, the provision of innovative forms of collaborative control (*vigilanza collaborativa*) in the procurement area, the implementation of specific measures pursuant to art. 32 of Decree Law No. 90/2014 (*Misure straordinarie di gestione, sostegno e monitoraggio di imprese nell'ambito della prevenzione della corruzione*).

On a more general level, as anticipated and contrary to what has happened in the case of tax offences, the link between the Legislative Decree No. 231/2001 on corporate criminal liability and corruption has always been very strong: the Decree was introduced in 2001 to fulfil international obligations imposed by the various international conventions signed by Italy, and corruption offences were immediately included in the list of predicate crimes (art. 25, amended according to the several anti-corruption reforms that have followed over the years). The Legislative Decree No. 231/2001 shows a very complex set of sanctions; however, it is crucial also in terms of prevention because the imputation mechanism of corporate liability is based on the organisational fault, i.e. the failure to adopt and effectively implement compliance programs designed to prevent crimes from occurring within the organisation.

In this respect, particularly in the field of corruption well-established preventive measures and best practices – often convergent in public and private sectors – have been developed,

[60] See § 3.1.

what makes this area ideal for generally testing the functioning of compliance programs set up by entities[61]. However, it seems also useful to point out that, once public prosecutors choose to prosecute entities, the latter will have no possibility of avoiding the criminal proceedings through pre-trial diversion mechanisms. Indeed, unlike other jurisdictions, negotiated settlements (such as deferred prosecution agreements) are not provided for in the Italian system.

3.2 Investigation

In Italy, as far as investigation and search of evidence in criminal matters are concerned, activities are carried out similarly with regard to individuals and entities. Tax crime and corruption prosecutions are conducted by a public prosecutor, who also supervises the investigation; police are referred to as 'judicial police' when acting as agents of the public prosecutor.

The main difference has to be found in the fact that, for individuals to be held criminally liable, the *mens rea* requirements legally established for the specific offence charged should be met (in this respect, both tax and corruption offences are intentional offences); while, according to the Legislative Decree No. 231/2001, entities may be held liable for the commission of crimes by their agents and in their interest/ to their advantage on the basis of the already mentioned 'organisational fault' requirement.

As regards the specificities[62], tax investigations are basically entrusted to *Guardia di Finanza* (a special police force falling under the Ministry of the Economy and Finance, which also cooperates with ANAC for the prevention and investigation in corruption matters) and to special groups of *Carabinieri* (military police force with general competence in the field of public security).

If the fiscal debt amount does not exceed specific thresholds provided for by relevant criminal law provisions (as, for example, the ones laid down by arts. 4-5 of the Legislative Decree No. 74/2000) and if the conduct cannot be considered as fraudulent, *de facto* the only aim of the investigations is to ascertain if an administrative sanction can be applied.

Investigations carried on by *Guardia di Finanza* are almost always subsequent to an initial fiscal assessment by the financial administration. However, in the most complex cases, e.g. where tax crimes are linked to other criminal offences (money laundering, organised crime,

[61] In general on this topic, see Manacorda, S. & Centonze F. (2014). *Preventing Corporate Corruption. The Anti-Bribery Compliance Model*. Springer.

[62] OECD (2016). *Italy's Tax Administration. A Review of Institutional and Governance Aspects*, available at https://www.oecd.org/tax/administration/italy-tax-administration-a-review-of-institutional-and-governance-aspects.pdf.

corruption, etc.), the initiative is usually taken not by the financial administration, but by the public prosecutor's office[63].

With reference to the legislation on the prevention of corruption in the public sector, it has already been highlighted that ANAC has significant powers of inspection and access to databases to verify that obliged parties (i.e. the public administration meant in a broad sense, including State-controlled enterprises)[64] comply with relevant requirements and regulations, in terms, for example, of drafting the three-year anti-corruption plan and dealing with whistleblower reporting channels and data publication.

ANAC does not have prosecutorial powers – it could be considered as a sort of administrative independent authority – but, on the basis of memoranda of understanding, it cooperates and exchanges documents and information with national public prosecutors.

As far as criminal offences against the public administration are concerned, national prosecutor's offices (especially those of medium/large size) rely on specialised working groups to investigate such crimes, as well as those that can be linked to corruption. Moreover, an agreement between ANAC and the National anti-mafia and counter-terrorism directorate (DNA) has been in place since 2017, to allow DNA to access information available from databases managed by ANAC (*Casellario delle Imprese* and *Banca Dati Nazionale dei Contratti Pubblici*).

Regarding investigative measures that can be used in corruption proceedings, it should be noted that, as mentioned, the recent Law No. 3/2019 has made it possible – in investigations related to offences against the public administration punishable by a maximum sanction of no less than five years' imprisonment – to intercept by means of the abovementioned 'trojan virus' and to carry out undercover operations. In this sense, such regulatory choices end up, to some extent, making the model for combating corruption closer to that concerning organised crime. As already highlighted, this has been further enhanced by the extension of the preventive measures provided for by the Legislative Decree No. 159/2011 to the suspects of having committed offences against the public administration by criminal association.

[63] About investigation in tax crimes, see Reggiani, F. (2021, April 29). VIRTEU National Workshop - Italy, Session 1. Video recording at 41:16. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy

[64] As discussed *supra*, § 1.2.

3.3 Enforcement

Alongside criminal law enforcement, which is entrusted to criminal courts (following public prosecutor's initiative), a broader range of non-criminal enforcement actions should be mentioned and further analysed.

For instance, as far as tax law enforcement is concerned, corporations are key actors and the cooperation between private and public sectors has increasingly gained importance[65]. In fact, the cooperative compliance mechanism, established with the aforementioned Legislative Decree No. 128/2015, provides for a continuous dialogue between taxpayers and tax administration, aimed at ensuring the application of tax legislation by entities in a context of fulfilment of tax obligations that would not require the application of any type of sanction.

This system certainly needs, on the one hand, a greater 'professionalisation' of the authorities involved (in the first instance, *Agenzia delle Entrate* and *Guardia di Finanza*), and, on the other hand, a re-organisation of tax corporate governance within corporations, e.g. by providing specific responsibilities to the board of auditors (*collegio sindacale*) and to the supervisory body (*organismo di vigilanz*a).

With regard to the anti-corruption field, it should be noted that the law enforcement action equally relies on a strong public-private partnership. Indeed, the compliance with relevant anti-corruption provisions is primarily entrusted to each public administration, which is required to fulfil the various obligations imposed by the Law 190/2012.

In this respect, ANAC plays an essential coordinating role which – together with its investigative, supervisory and sanctioning powers – it carries out to guide public administration and public employees in the concrete application of the anti-corruption legislation. It is important to stress that ANAC has published a large number of guidelines and recommendations that – even if non-binding – provide to the actors involved fundamental indicators for the interpretation of the rules on the prevention of corruption.

On the private side, the anti-corruption enforcement is connected with the rules laid down in the Legislative Decree No. 231/2001, and especially with the implementation of adequate preventive compliance programs by entities and corporations. As seen[66], there is a strong 'genetic' link between the Legislative Decree No. 231/2001 and corruption, but clearly the consideration about the importance of corporate compliance and internal controls is far more general; since tax offences are now listed in the Decree as predicate offences, the preventive actions undertaken by corporations will be more and more relevant also in enforcing – from this specific perspective – tax regulations.

[65] On public-private cooperation see Gullo A., Militello V., & Rafaraci T. (2021). *I nuovi volti del sistema penale. Fra cooperazione pubblico-privato e meccanismi di integrazione fra* hard law *e* soft law. Giuffrè.
[66] *Supra* § 2.1.

3.4 Sanctions

The current tax system of sanctions raises different concerns, as it may lead to a cumulation of criminal and formally administrative – but substantially criminal – sanctions, both against individuals and entities, hence being in strong tension with the *ne bis in idem* principle.

In fact, the sanctions provided, simultaneously, for individuals, in case of conviction, are administrative pecuniary sanctions (the relevant provisions are laid down by the Legislative Decrees No. 471, 472 and 473 of 1997) and criminal sanction of imprisonment (provided for by the Legislative Decree No. 74/2000).

Despite the provision of art. 19 of the Legislative Decree No. 74/2000 about the 'principle of speciality' between administrative and criminal tax sanctions, there are still several shortcomings, due to the frequent application to individuals of both administrative (but substantially criminal) and strictly criminal sanctions by judges, not fully consistent with the *ne bis in idem* principle[67].

Nevertheless, as far as individual liability for illicit tax practices is concerned, no tension with the *ne bis in idem* principle may materialise whenever taxpayers are not natural persons. In fact, premised that the precondition for a violation of this principle is the applicability to the same subject of multiple sanctions for an *idem factum*, it is necessary to stress that, if an employee or a representative or a director of an entity, with or without legal personality, in the exercise of its functions or duties, commits a fact sanctioned as an administrative violation and as a tax offence, he/she will be subject to the criminal sanction (according to art. 19, par. 1, of the Legislative Decree No. 74/2000), while only the entity will be administratively sanctioned (according to art. 19, par. 2, of the Legislative Decree No. 74/2000, in case of entities without legal personality, and according to art. 7, Law Decree No. 269/2003, in case of legal persons).

It is also worth pointing out that if tax evasion practices are the result of a tax strategy picked up not by the direct author of the offence, but by a tax advisor (for example, a lawyer, as well as an accountant), therefore a hypothesis of collusion is configurable. It can assume criminal relevance both as material conspiracy (*id est*, for example, the endorsement of conformity issued by tax advisor for unfaithful declarations)[68] and moral conspiracy (this category does not include neutral and professional consultations, but only tax advices consisting, on one hand, in a customer-oriented illustration of the benefits of a certain tax offence and, on the other hand, simultaneously, in an incitement of the customer to commit the aforementioned offence), provided for by art. 110 of the Italian criminal code.

[67] See Cass., Sezioni Unite, 28 March 2013, No. 37424 and 37425.
[68] Cass. pen., Sec. III, 13 March 2019, No. 19672; Cass. pen., Sec. III, 2 July 2020, No. 26089.

On this point, however, it should be said that if the tax consultant's activity materialises in the predisposition and the commercialisation of serial tax evasion models, the "qualified complicity", at the basis of the aggravating circumstance set out in paragraph 3 of Article 13-*bis* of the Legislative Decree 74/2000, could be applicable in *lieu* of art. 110 of the Italian criminal code[69].

The double-track sanctioning regime, already in force for individuals, has been 'reproduced' for entities by the abovementioned 2019 and 2020 reforms[70], through the introduction of corporate criminal liability for tax crimes. In fact, after the commission, by an *intraneus*, of certain tax crimes in the interest or for the benefit of entities, the latter are subject to the application of not only the sanctions envisaged by the Legislative Decree No. 231/2001, but also the sanctions provided for by art. 11 of the Legislative Decree No. 472/1997 (for entities without legal personality) or by art. 7 of the Decree Law No. 269/2003 (for entities with legal personality).

As a result, the Italian legislative system currently presents a double-track prosecuting and sanctioning model which applies both to individuals and to entities[71].

Another relevant issue concerning tax sanctioning system may be found (even before the double-sanctioning risk itself) in the relationship between tax administrative proceedings and criminal trials[72]: given the reciprocal autonomy between them (provided for by arts. 3 and 479 of the Italian criminal procedural code and by art. 20 of the Legislative Decree No. 74/2000), a certain tax practice may be considered, at the same time, a tax offence by criminal law judges, but not relevant from an administrative point of view (or vice versa), therefore being in tension with the principle of foreseeability and coherence of domestic legal system.

From a different viewpoint, with regard to the anti-corruption legislation, after the reform brought by the Law No. 190/2012, ANAC may impose administrative sanctions related, for example, to the failure to draw the plan for the prevention of corruption or to set whistleblowers reporting channels[73].

Moreover, Law No. 190/2012 provides for a direct liability (at managerial and disciplinary level) of the person responsible for the prevention of corruption in public entities, when a corruption offence is committed within his/her administration and it is ascertained by a final court decision. In order to avoid this form of liability, the same Law of 2012 establishes a sort

[69] Lucev, R. (2021). *Struttura del reato tributario.* In L. Salvini, & F. Cagnola (Eds.), *Manuale professionale di diritto penale tributario*. Giappichelli. 238.
[70] Law No. 157/2019 and Legislative Decree No. 75/2020.
[71] For a detailed analysis of the issues related to entities' sanctioning system see *infra*, § 3.2.
[72] About the relationship between proceedings and investigative instruments, see Bolis, S. (2021, April 29). VIRTEU National Workshop - Italy, Session 1. Video recording at 40:19. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy
[73] *Infra*, § 3.3.

of 'defence' for the person responsible for the prevention of corruption, namely the fact that he/she has drawn the anti-corruption plan before the commission of the offence and he/she has supervised its functioning. In the event of repeated violations of the measures provided for in the plan, the person responsible for the prevention of corruption may use the defence of having informed the competent offices about the preventive measures to be taken and the supervision on them, to avoid managerial and disciplinary liability.

In addition, the financial administration is required to adopt such anti-corruption measures, and the person responsible for the prevention of corruption is therefore a key figure in this context as well.

As far as individuals are concerned, the commission of corruption offences not only entails the application of the main criminal sanctions set forth by the Italian criminal code (sanctions that have been increased several times in recent years), but it is also linked to a large number of collateral sanctions (*pene accessorie*) and other measures regarding the offender, pursuant to Law No. 3/2019. Reference is made especially to the disqualification from public office and the inability to make contracts with the public administration (depending on the case, they may be permanent or temporary) and, from a different perspective, to the definitive stop of the statute of limitations after a first instance judgement, as well as to the introduction of corruption offences among those that prevent (*reati ostativi*) the granting of prison benefits (as, for example, releases on temporary licence or diversion programmes).

Speaking about entities and corporations, if all the required conditions are met, the commission of corruption offences may entail the applicability of the severe (pecuniary and especially interdictory) sanctions provided for by the Legislative Decree No. 231/2001[74].

Moreover, art. 25, para. 5 of the Decree of 2001 states that, for the commission of corruption offences, the duration of disqualification sanctions (from the disqualification from exercising the activity to the suspension of licences and authorisations, etc.) goes well beyond the ordinary duration established for all the other predicate offences. This is a clear (and, in a systemic dimension, questionable) example of how the Italian legislator provides a special and very tough regime for corruption.

[74] Gullo A. (2020). I reati contro la Pubblica Amministrazione e a tutela dell'autorità giudiziaria. In G. Lattanzi, & P. Severino (Eds.), *Responsabilità da reato degli enti*, vol. I, *Diritto sostanziale*. Giappichelli, 423 ff.

3.5 Recoveries

Currently, tax income revenue recovering takes place in different ways. With regard to the Italian legislation, it is possible to identify the following types of recovery:

- the payment by taxpayers of the pecuniary sanction due to the tax administration for breaches of tax provisions, as resulting from the notification of charges at the end of the tax assessment phase;
- the implementation of the cooperative compliance regime[75], which guarantees an immediate recovery of a certain amount of the tax debt of the largest corporations admitted to this cooperative regime by *Agenzia delle Entrate*;
- voluntary disclosure, which aims at encouraging the return of capitals previously illegally transferred abroad by taxpayers;
- confiscation, which enables the recovery of enormous sums of money[76].

In particular, after the commission of tax crimes, different types of confiscation[77] shall be applicable to individuals:

- the confiscation provided by art. 12-*bis* of the Legislative Decree No. 74 of 2000, a security measure applicable in case of individual's conviction, affecting the product or profit of tax offences ('direct confiscation') or assets of an equal value ('equivalent value confiscation'). This confiscation is inapplicable with respect to the amount of tax debt that taxpayers undertake to pay to the tax administration;
- the 'preventive confiscation'[78], provided for by art. 24 of the Legislative Decree No. 159/2011, applicable *ante delictum* to socially dangerous taxpayers. The preventive confiscation concerns assets of (presumed) illicit origin and – after the declaration of unconstitutionality of art. 16 of the Legislative Decree No. 159/2011, in so far as it established the applicability of preventive seizure and confiscation, respectively provided for by arts. 20 and 24 of the same Legislative Decree, to the subjects described by art. 1, par. 1(a) of the Decree (which refers to individuals who, on the basis of factual evidence, may be regarded as habitual offenders)[79] –, as far as tax crimes are concerned, it is now applicable against individuals who, on account of their behaviour and lifestyle and on the basis of factual evidence, may be regarded as

[75] See § 4.1.

[76] The topic has been covered during the VIRTEU National Workshop for Italy, see see Bolis, S. (2021, April 29). VIRTEU National Workshop - Italy, Session 1. Video recording at 47:19. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy.

[77] See D'Avirro, A (2020). Confisca diretta, per equivalente e "allargata" nei reati tributari (*supra* note 26), 487 ff.

[78] Maugeri, A. M. (2015). La lotta all'evasione fiscale tra confisca di prevenzione ed autoriciclaggio. La confisca dei proventi dell'evasione fiscale o dei redditi leciti non dichiarati fiscalmente?. *Diritto penale contemporaneo – Rivista Trimestrale*, 4, 207 ff.

[79] Corte Cost., 27 February 2019, No. 24.

habitually living, even in part, of tax evasion proceeds, i.e. cases described by art. 1, par. 1(b) of the Decree;

- the 'extended confiscation', applicable in case of conviction for certain tax crimes (and only if predetermined thresholds are exceeded) and provided for by art. 12-*ter* of the Legislative Decree No. 74 of 2000. Assets and goods owned by individuals whose value is disproportionate compared to the declared income may be subject to this confiscation, if the owner fails to prove their lawful origin[80].

Confiscation is also applicable to entities[81]. In fact, if one of the tax predicate offences provided for by art. 25-*quinquiesdecies* of the Legislative Decree No. 231 of 2001 is committed[82], legal entities would be subject to a type of confiscation provided for by the Legislative Decree No. 231/2001 and expressly considered as a 'sanction'. According to art. 19 of the Legislative Decree No. 231 of 2001, in case of conviction, proceeds and profits of the offence are always confiscated from the body ('direct confiscation') and, if the direct confiscation of proceeds and profits is not possible, assets of an equivalent value, if existent, may be confiscated ('equivalent value confiscation'). As a precautionary measure, pursuant to art. 53 of the Decree, it is possible to order the seizure of assets (*sequestro dei beni*) from the legal person to ensure the possibility of subsequently applying confiscation. Moreover, it should be added that art. 6, para. 5 of the Legislative Decree No. 231 of 2001 establishes also a form of recovery – different form the abovementioned confiscation/sanction – as the proceeds obtained by entities from predicate offences are always confiscated (even when the entity will not be held liable).

As regards problematic points, in general terms it remains uncertain whether considering as 'recoveries' some regulatory instruments that – during the tax proceeding and until the opening of the criminal trial – the financial administration uses to recover part of the tax credit not correctly declared by taxpayers. These instruments are:

- a kind of 'remission of debt' (*saldo e stralcio*, provided for by Law No. 145/2018) for taxpayers in economic difficulty, through which the financial administration can take back a part of the total amount of the debt, shortening a residual part;

[80] D'Avirro, A (2020). Confisca diretta, per equivalente e "allargata" nei reati tributari (*supra* note 26), 495-497. For views on the extended confiscation in the tax crime sector, see Di Siena, M. (2021, April 29). VIRTEU National Workshop - Italy, Session 2. Video recording at 51:27. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy.

[81] On the problems emerged in this area before the introduction of tax crimes among the '231' predicate offences, see Romano, M. (2015). Confisca, responsabilità degli enti, reati tributari. *Rivista italiana di diritto e procedura penale*, 1674 ff.

[82] The reference is to the offences of: filing of fraudulent tax return through the use of invoices (art. 2) or other artifices (art. 3), unfaithful tax declaration (art. 4), failure to submit tax declaration (art. 5), issuance of invoices or other documents for non-existing operations (art. 8), destruction or concealment of accounting statements (art. 10), undue compensation (art. 10-quater), fraudulent subtraction to tax payment (art. 11).

- tax shields (the last one given by the Law No. 25/2010), that allows the administration to take back part of the unpaid fiscal credit but, at the same time, to inhibit the criminal trial opening, even in case of a committed tax offence by the taxpayer.

Regarding corruption, the legislative provisions on asset recovery that can be activated against the individual who has committed a corruption offence are significantly structured. On the one hand, direct confiscation as well as 'equivalent value confiscation' of the proceeds deriving from the offence previously committed is always ordered against such person.

In addition to this ordinary form of confiscation, in the case of the commission of corruption offences listed therein, the 'extended confiscation' pursuant to art. 240-*bis* of the Italian criminal code (*confisca in casi particolari*) is also applicable. This measure refers to the case of money, assets and other utilities whose origins the convicted person is unable to justify, having their ownership (even through a third party) or their availability for a value that is disproportionate to his/her income or occupation. This provision of the criminal code has a direct link with the tax field, as it clarifies that the legitimate origins of the assets cannot be justified on the assumption that the money used to purchase them is the result of tax evasion, unless the tax obligation was extinguished through compliance with the law.

Furthermore, as far as recoveries related to corruption are concerned, against the person who is believed to be habitually living of proceeds from corruption, as well as against the person suspected of being part of a criminal association with the purpose of committing corruption offences (this second case, only after the introduction of letter i-*bis*) of art. 4 of the Legislative Decree No. 159/2011, by art. 1, par. 1(d) of the Law No. 161/2017) it is possible to apply the preventive seizure and confiscation referred to in arts. 20 and 24 of the Legislative Decree No. 159/2011, already described with specific regard to tax offences.

In the area of corporate criminal liability for corruption offences, as seen, the general abovementioned regime already described with reference for tax offences applies.

3.6 Remedies

As regards tax matters, offenders can remedy their unlawful conduct (with relevance to the administrative or criminal law perspective) through two different mechanisms provided by Italian legislation: active repentance (*ravvedimento operoso*) and a cause of non-punishability for the payment of the tax debt.

Active repentance is provided for by art. 13 of the Legislative Decree No. 472/1997. By spontaneously repairing the illicit committed, before the violation's assessment by the financial administration or before the enactment of any kind of inspective activities, taxpayers can avoid the imposition of administrative tax sanctions. In practice, active repentance consists in the regularisation of fiscal behaviour through the payment of a reduced pecuniary sanction calculated on the basis of the time taken by taxpayers for being compliant. The

aforementioned administrative pecuniary sanction is imposed at the end of the tax proceeding with an administrative act issued by the financial administration.

The cause of non-punishability, instead, is a remedy laid down by art. 13 of Legislative Decree No. 74/2000 which states that tax crimes regulated in arts. 2, 3, 4 and 5 of the Legislative Decree No. 74/2000[83] shall not be punishable if the offender fully pays the debt, including sanctions and interest, before having formal knowledge of the beginning of any administrative investigation or criminal proceeding (art. 13, para. 2, Legislative Decree No. 74/2000). Moreover, according to art. 13, tax offences provided in arts. 10-*bis*, 10-*ter* and 10-*quater*, para. 1 of the Legislative Decree No. 74/2000[84] are not punishable if, before the beginning of the trial, taxpayers pay off tax debts, including administrative sanctions and interest, through the full payment of the amounts due, also as a result of special conciliatory procedures (art. 13, para. 1, Legislative Decree No. 74/2000).

The introduction of tax offences as corporate liability's predicate crimes has made clear the importance of rethinking the conformation of the principle of autonomy of liability of the entities, as well as reflecting on providing a renewed system of corporate non-punishability.

The principle of autonomy of liability of entities is set forth by art. 8 of the Legislative Decree No. 231/2001, which states that the corporate liability can be affirmed even if a) the perpetrator of the offence has not been identified or is not prosecutable, or b) the offence is extinguished for a reason other than an amnesty. The traceability to art. 8 of the Legislative Decree No. 231/2001 of the cases of exemption from punishment provided for individuals – and, therefore, the irrelevance of these hypothesis for entities – emerges if one considers the Italian settled case-law on the exemption from punishment provided by art. 131-*bis* of the Italian criminal code – given that this case-law confirms, in these cases, the existence of corporate liability[85].

As far as the aforementioned cause of non-punishability laid down by art. 13 of the Legislative Decree No. 74/2000, it has to be noticed that, as a result of the existence and maintenance of the principle of autonomy provided by art. 8 of the Legislative Decree No. 231/2001, even in case of non-punishability of individuals, as regulated, indeed, by art. 13 of the Legislative

[83] The reference is to the following offences: filing of fraudulent tax return through the use of invoices (art. 2) or other artifices (art. 3), unfaithful tax declaration (art. 4), failure to submit tax declaration (art. 5). It has to be noticed that the exemption from punishment provided for by art. 13 of the Legislative Decree No. 74/2000 has been extended to the offences of filing of fraudulent tax return through the use of invoices (art. 2) or other artifices (art. 3) by Law 157/2019, *id est* the same Law that has increased the penalties laid down for these two offences, thus revealing the instrumentality of the repressive provisions to the exclusive interest of tax collection. See Crepaldi, R. (2020). Il volto repressivo del diritto penal-tributario: sanzione e perdono come strumenti di esazione. *Le Società*, 8-9, 1026 ff.

[84] The relevant offences are: failure to pay withholding taxes (art. 10-*bis*), failure to pay VAT (art. 10-*ter*), undue compensation (art. 10-*quater*).

[85] See Cass. pen., Sec. III, 17 November 2017, no. 9072; Cass. pen., Sec. III, 23 January 2019, no. 11518. On these issues see also Scaroina, E. (2020). Prospettive di razionalizzazione della disciplina dell'oblazione nel sistema della responsabilità da reato degli enti tra premialità e non punibilità. *Diritto penale contemporaneo – Rivista trimestrale*, 2, 191 ff.

Decree No. 74/2000, the punishability of the legal entity under art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001 remains, therefore posing several issues. First of all, it violates the general principle of coherence of the domestic legal system, since, while the tax offence loses its relevance with respect to its author, the punishability of the entity for an illicit based on the same tax offence remains intact[86]. Secondly, this regime determines a detrimental conflict of interests between individuals and entities, *de facto* hindering the applicability of the exemption from punishment: in fact, on one hand, individuals have not enough liquidity to fully pay tax debt in order to become non-punishable according to art. 13 of the Legislative Decree No. 74/2000; on the other hand, entities, as the real beneficiaries of tax evasion – given the principle established by art. 8 of the Legislative Decree No. 231/2001 – are not encouraged to pay the tax debt, thus incriminating themselves without excluding their own liability.

Nevertheless, it has to be added that remedial conducts and the late adoption of compliance programs are not entirely irrelevant, as they may lead to several benefits (as discussed *infra*).

On the other hand, in the area of anti-corruption, there are various tools to promote the collaboration, reintegration and reparation after the commission of the offense, both by individuals and entities/corporations.

With respect to natural persons, it is possible to recall, as main examples, the mitigating circumstance referred to in art. 323-*bis* of the Italian criminal code for the person who, among other things, provides evidence of criminal offences, identifies the offenders and allows the seizure profits; the new cause of non-punishability (art. 323-*ter* of the criminal code) introduced by Law No. 3/2019, for the person who voluntarily reports the fact and indicates further elements to provide evidence and to identify the offenders (it is required that the utility gained is made available to authorities, that the disclosure occurs before the person has knowledge of the investigations against him/her and, in any case, within four months from the commission of the fact); the new monetary compensation pursuant to art. 322-*quater* of the criminal code, consisting in the payment of a sum – equal to the proceeds of crime – by way of financial compensation to the administration injured by the conduct of the public official, without prejudice to the right to compensation for damages. This latter provision indeed causes also significant problems of coordination with the aforementioned regimes of confiscation for the offences against the public administration.

As anticipated, remedial conducts as well as the (re)construction of compliance and internal control systems, in particular through the late adoption of compliance programs, may grant access to reward measures to legal entities. In this field, benefits are linked with restorative

[86] Veneziani, P. (2020). Problemi attuali in tema di responsabilità dell'ente da reato tributario. *Cassazione Penale*, 3105; Bartoli, R. (2020). Responsabilità degli enti e reati tributari: una riforma affetta da sistematica irragionevolezza (*supra* note 36), 228; Ingrassia, A. (2020). Il bastone (di cartapesta) e la carota (avvelenata): iniezioni di irrazionalità nel sistema penale tributario. *Diritto penale e processo*, 314-315.

conducts carried out by entities/corporations after the commission of a predicate offence. In fact, although not specifically connected only with corruption – as they are generally applicable for all the predicate offences listed in the Legislative Decree 231/2001 – the remedial actions undertaken in the corporate context may lead to several benefits, such as the exclusion of interdictory/disqualification sanctions (art. 17), the suspension and revocation of any precautionary measures ordered (arts. 49 and 50), the possibility of requesting the suspension of the trial in order to carry out the reparative conduct referred to in art. 17 and take advantage of the related benefits, if the entity proves that it was unable to carry them out earlier (art. 65), the conversion of any disqualification sanction imposed into a pecuniary sanction (art. 78), the reduction of any pecuniary sanction imposed (art. 12).

Moreover, it should be underlined that such 'general' reward measures are much more attractive than those specifically introduced in 2019 for corruption offences. If the entity takes remedial actions after the commission of corruption offences – by preventing the criminal activity from leading to further consequences, providing evidence, adopting a compliance program – the new para. 5-*bis*, art. 25 of the Legislative Decree No. 231/2001, provides for a 'discount' that actually allows disqualification sanctions to be applied according to their 'normal' duration (set by art. 13 of the Decree), instead of the much longer duration now established for corruption offences following the 2019 reform.

4. Select Research Topics

4.1 Corporate Prevention of Tax Crimes

As in the punitive legislation, the preventive measures are modelled on the basis of a double-track strategy involving the cooperative compliance laid down by the Legislative Decree No. 128/2015 and the implementation, within corporations, of compliance programs designed to prevent the commission of the tax offences referred to in art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001.

With the approval of the Legislative Decree No. 128/2015, the cooperative compliance principles established by the OECD in its 2013 Report[87] have been transposed into Italian national law[88]. As mentioned, the cooperative compliance scheme grants an enhanced cooperation between businesses and the tax administration for the prevention of tax violations and disputes, by increasing the level of certainty as far as the most relevant tax issues are concerned.

[87] OECD (2013). *Cooperative Compliance: A Framework* (*supra* note 57).
[88] See Amatucci F. (2015). L'adeguamento dell'ordinamento tributario nazionale alle linee guida dell'OCSE e dell'UE in materia di lotta alla pianificazione fiscale aggressiva. *Rivista trimestrale di diritto tributario*, 3 ff.

The cooperative compliance program is open to business taxpayers meeting specific requirements. First of all, to access the cooperative compliance program, businesses should be:

- large companies (resident and non-resident entities having a permanent establishment in Italy with a total turnover or operating revenues exceeding 10 billion euros; resident and non-resident entities having a permanent establishment in Italy with a total turnover or operating revenues equal to at least 1 billion euros, which applied for the pilot project launched in 2013);
- or entities granting execution to the opinion of *Agenzia delle Entrate* in response to the advance ruling on new investments, notwithstanding threshold of turnover or revenues.

Moreover, to be admitted to the cooperative compliance program, businesses should implement an effective Tax Control Framework, i.e. a comprehensive tool to detect, measure, manage and control tax risk.

In order to encourage companies to adhere to cooperative compliance, it is provided that corporate taxpayers admitted to the program benefit from different advantages: for example, fast track ruling for the application of tax provisions since the receipt of request or the integration of documents, tax sanctions reduction, no guarantees required to obtain refunds of direct and indirect taxes.[89]

As seen, besides the implementation of efficient TCFs, the prevention of corporate tax offences is based on the effective implementation, within corporations, of compliance programs in order to prevent the commission of the tax offences provided by art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001.

In order to appreciate the importance of compliance programs in the corporate liability sphere, it should be noted that, according to Italian law, corporate liability pursuant to the Legislative Decree No. 231/2001 depends on the existence of specific objective and subjective requirements. For the objective requirements to be satisfied, as anticipated it is necessary that qualified individuals[90] commit one of the offences referred to in the Decree in the interest or to the advantage of the corporation; while as far as subjective criteria are concerned, a corporation could be held liable only in case of organisational fault, which occurs whenever the entity has not adopted and efficiently enacted, prior to commission of the offence, compliance programs able to prevent offences of the type occurred[91].

[89] Melillo, C. (2015). «Regime di adempimento collaborativo» e monitoraggio del rischio fiscale: incentivi, semplificazioni e oneri. *Diritto e pratica tributaria*, 973 ff.
[90] According to art. 5 of the Legislative Decree No. 231/2001, directors or persons subject to their control or supervision.
[91] See § 2.1.

Although both TCFs and compliance programs aim, in fact, at providing the corporation with a system for the detection, measurement, management and control of tax non-compliance risk, they are not comparable and they intersect only partially.

First of all, they pursue a different objective. While the TCF implementation by the entity is aimed at preventing any kind of tax risk, the scope of the compliance program is narrower, since it is intended to prevent only the commission of tax offences expressly provided for in art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001 as predicate offences. Secondly, while compliance programs' efficient implementation requires the existence of a fully independent supervisory board (*organismo di vigilanza*), the cooperative compliance regime does not ask for such a requirement. Thirdly, differently from what is provided for compliance programs by the Legislative Decree No. 231/2001, the inclusion of specific provisions concerning whistleblowing's encouragement and protection is not required within the TCF.

Nevertheless, although the TCF and the compliance program differ from each other, it is very likely that the positive evaluation of TCF by *Agenzia delle Entrate* and the consequent admission of a corporation to the cooperative compliance program will be taken into account by national judges when ascertaining corporate liability for one of the offences referred to in art. 25-*quinquiesdecies* of Legislative Decree No. 231/2001[92]. For this reason, the current legal (in particular, dimensional) requirements could be removed, and, therefore, *Agenzia delle Entrate* could be provided with more (economic and personal) resources in order to be able to interact with all the corporate taxpayers interested in joining cooperative compliance.

Also, since there is no provision for a strict coordination between admission to the cooperative compliance program regulated by the Legislative Decree No. 128/2015 and the corporate liability regime laid down in the Legislative Decree No. 231/2001, an express provision that recognises TCF implementation by corporations and their admission to the cooperative compliance program as productive of beneficial effects also with respect to corporate liability for tax offences pursuant to Legislative Decree No. 231/2001 might be considered.

[92] Comando generale della Guardia di Finanza. (2020). *Modifiche alla disciplina dei reati tributari e della responsabilità amministrativa degli enti* (Circolare n. 216816 del 1.9.2020), 16.

4.2 *Ne Bis in Idem* Principle and the Double-Track System

The commission of tax offences may entail the imposition on corporations of two kinds of sanctions: administrative tax sanctions and sanctions pursuant to the Legislative Decree No. 231/2001, depending on the commission of the (newly introduced) predicate tax crimes.[93]

The administrative tax sanctions are referred to in art. 11 of the Legislative Decree No. 472/1997 and in art. 7 of the Decree Law No. 269/2003 (converted – with amendments – into the Law No. 326/2003), depending on whether the entity has legal personality or not.

According to art. 11 of Legislative Decree No. 472/1997, if a tax violation is committed by an employee or a representative or director of a company, association or body, with or without legal personality, in the exercise of its functions or duties, the body in whose interest the author of the violation acted is jointly obliged to pay a sum equal to the sanction imposed, without prejudice to right of recourse (*regresso*).

Art. 7 of Decree Law No. 269/2003, applicable to legal entities, provides that the administrative sanctions relating to tax violations committed by the entities themselves shall be borne exclusively by the legal entity.

The sanctions arising from the commission of tax predicate crimes are regulated by the new art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001. As already explained[94], this Decree regulates corporate liability linked to the commission of the offences expressly provided for by the Decree itself, by specific qualified individuals in the interest/ to the advantage of the entity. After ascertaining that all the aforementioned requirements are met, the Decree establishes various sanctions: pecuniary sanctions, interdictory sanctions/disqualification, confiscation and the publication of the conviction judgement.

Therefore, it is necessary to question whether the resulting duplication of procedures and sanctions violates the prohibition of double jeopardy laid down in art. 4 of Protocol No. 7 of the European Convention on Human Rights and in art. 50 of the Charter of Fundamental Rights of the European Union.

First, it is necessary to say that in the light of the classification of the offence under national law, the real nature of the offence and the degree of severity of the sanction (Engel criteria), both sanctions, despite formally administrative – as this is the 'label' also for the liability

[93] Tripodi, A. F. (2020). L'ente nel doppio binario punitivo. Note sulla configurazione metaindividuale dei doppi binari sanzionatori. *Sistema penale*, 28 December 2020, 9 ff.; Lanzi, A., & Aldrovandi, P. (2020), *Diritto penale tributario*. Cedam, 304-305; Santoriello, C. (2017). I reati tributari nella responsabilità da reato degli enti collettivi: ovvero dell'opportunità di configurare la responsabilità amministrativa delle società anche in caso di commissione di reati fiscali. *Archivio penale*, 1, 82 ff.

[94] *Supra*, § 2.1.

provided for by the Decree No. 231/2001 – should be assimilated to the notion of "criminal charge", given their punitive nature.

The criminal nature of the administrative tax sanctions can be inferred from the principles developed by supranational case-law. In the Nykanen v. Finland judgement (European Court of Human Rights, Fourth Section, NYKÄNEN v. FINLAND, Application No. 11828/11), for example, the European Court of Human Rights held that "proceedings involving tax surcharges are criminal also for the purpose of art. 4 of Protocol No. 7".

Similarly, the sanctions laid down in the Legislative Decree No. 231/2001, although formally 'administrative', appear to have a substantially criminal nature. In the Thyssenkrupp judgement (Cass. pen, Sezioni Unite, 18 September 2014, No. 38343), the Italian Supreme Court stated that corporate liability laid down by the Legislative Decree No. 231/2001 represents a *tertium genus* of liability, not strictly criminal nor administrative, but also that the existence of a close connection and many similarities between corporate liability provided by the Legislative Decree and criminal liability cannot be denied.

Due to the essentially criminal nature of both the abovementioned sanctions that could be imposed to the entity, the question is whether double sanctions (administrative sanctions as well as those depending on the commission of tax predicate offences) are compatible with the *ne bis in idem* principle.

While according to the Grande Stevens judgement (European Court of Human Rights, Second Section, GRANDE STEVENS v. ITALY, Application no. 18640/10)[95] the current corporate liability framework for tax offences should be considered contrary to the principles of the ECHR and therefore subject to a declaration of unconstitutionality under art. 117 of the Italian Constitution, in the light of the overruling imposed by A and B v. Norway, this conclusion is no longer so obvious as no duplication of trial or punishment pursuant to art. 4 of Protocol No. 7 can be configured if the dual proceedings are "sufficiently closely connected in substance and in time"[96].

To be compatible with the principle of *ne bis in idem*, since sufficiently closely connected in substance, the double proceedings:

- should pursue complementary purposes;
- should be foreseeable consequences of the same fact;

[95] Flick, G. M. (2014). Reati fiscali, principio di legalità e "ne bis in idem": variazioni italiane su un tema europeo. *Rassegna tributaria*, 939 ff.

[96] D'Avirro, M., & Giglioli, M., (2017). La compatibilità del sistema sanzionatorio tributario con il principio del *ne bis in idem* di matrice europea: un problema ignorato dal legislatore del 2015 e non ancora risolto. La sentenza della Corte EDU (Grande Camera), 15 novembre 2016, A. e B. c. Norvegia. In M. Giglioli, A. D'Avirro, & M. D'Avirro (Eds.), *Reati tributari e sistema normativo europeo*. Wolters Kluwer, 675 ff. See also Amatucci, F. (2017). Doppio binario e "connessione sufficiente" tra procedimento tributario e penale. *Rivista trimestrale di diritto tributario*, 271 ff.

- should be characterised by an effective interaction between *Agenzia delle Entrate* and prosecutors so as to avoid any duplication in evidence collection and assessment;
- should ensure that the overall amount of sanctions imposed in the end is proportionate.

For the double proceedings to be compatible with the principle of *ne bis in idem*, since sufficiently closely connected in time, it is sufficient that the person who committed the fact is not subject to a regime of uncertainty.

First of all, in the light of the principles set out in the A and B v. Norway judgement, the twofold corporate liability framework for tax offences may be considered compatible with the principle of *ne bis in idem*, assuming that at the basis of the proceedings there is no a real identity of facts[97].

Preliminarily, as opposed to the exclusive or joint corporate liability provided by art. 11 of the Legislative Decree No. 472/1997 and art. 7 of the Law Decree No. 269/2003, not every tax violation could give rise to the corporate liability laid down in art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001, since it implies the prior commission of only one of the tax criminal offences there expressly mentioned.

Furthermore, it should be stressed that, while administrative corporate liability is *ipso facto* built around the fiscal position of the entity, corporate liability regulated by the Legislative Decree No. 231/2001 is based on its organisational fault. Therefore, the commission alone of one of the tax crimes provided by art. 25-*quinquiesdecies* of the Legislative Decree No. 231/2001 is not sufficient for corporate liability to arise, since all the subjective and objective requirements laid down by the Decree should be ascertained.

Secondly, even admitting that the offences at the basis of both proceedings would constitute an *idem factum*, since tax violations and predicate tax crimes share a common ground[98], the principle of *ne bis in idem* may, however, be considered respected, if:

- the duplication of the proceedings is foreseeable;
- the administrative proceedings (and sanctions) and the proceedings (and sanctions) laid down by the Legislative Decree No. 231/2001 pursue complementary purposes – deterrent and compensatory, the first, mainly re-educational and reparative, the second;
- there is an adequate interaction between the competent authorities;

[97] Piva, D. (2020). Reati tributari e responsabilità dell'ente (*supra* note 44), 278; Tripodi, A. F. (2020). L'ente nel doppio binario punitivo (*supra* note 93), 13-18.

[98] This thesis is advocated by Bellacosa, M. (2020). L'inserimento dei reati tributari nel "sistema 231": dal rischio di bis in idem alla implementazione del modello organizzativo. *Sistema pen*ale, 7, 139; Dell'Osso, A.M. (2020). Corsi e ricorsi nel diritto penal-tributario (*supra* note 35), 330; Ielo, P. (2020). Responsabilità degli enti e reati tributari. *La responsabilità amministrativa delle società e degli enti*, 1, 18.

- the proportionality of the overall sanctioning system is ensured by the direct applicability by domestic judges, in the sentencing phase, of art. 50 of the Charter of Fundamental Rights of the European Union, which – indirectly – imposes the principle of proportionality between the seriousness of the fact and the overall level of the applicable sanctions (see the principles, established in the matter of market abuse – but extensible to tax offences – Cass. pen., Sec. V, 15 April 2019, No. 39999).

If no one doubts of the foreseeability of the duplication of proceedings, the complementary nature of the purposes pursued by the two proceedings, the adequacy of the interaction between the competent authorities and the proportionality of the overall sanctioning system are discussed. As far as the latter is concerned, it is worth stressing that, according to some scholars, for the principle of *ne bis in idem* to be respected, the Italian legislator might introduce a new provision, modelled after art. 187-*terdecies* of the Legislative Decree No. 58/1998 (concerning market abuse offences)[99], but related to tax offences, thus expressly imposing to the competent authorities to take into account, at the end of the proceedings which become final last, the sanction imposed at the end of the proceedings which become final first[100].

4.3 Whistleblowing

Besides an effective TCF and an adequate compliance program, according to the Italian legal framework corporate tax offences prevention strategy should be based on the implementation of an effective whistleblowing regime within the entity.

The Italian regime on whistleblowing is quite complex, as it is anchored to different provisions, depending on whether the entity at stake is public or private.

With specific regard to public entities, as mentioned before, Law No. 190/2012 introduced art. 54-*bis* of the Legislative Decree No. 165/2001 which provides, *inter alia*, that:

- any public employee who, in the interest of the integrity of the public administration, reports to the person responsible for the prevention of corruption and transparency or to ANAC[101] or to the ordinary judicial or to the Court of Auditors illegal conduct of which

[99] According to art. 187-*terdecies* of the Legislative Decree No. 58/1998, "When, for the same offence a pecuniary administrative sanction pursuant to Article 187-*septies*, or a judicial sanction or criminal administrative sanction, has been imposed on the offender, the author of the infringement or the entity: a) the judicial authority or CONSOB [the public authority responsible for regulating Italian financial markets] shall take into account, when issuing sanctions within the scope of its competence, any punitive measures already imposed; b) the collection of the pecuniary penalty, criminal pecuniary sanction or administrative pecuniary sanction shall be limited to the part exceeding that collected by the administrative or judicial authority respectively".

[100] Ielo, P. (2020). Responsabilità degli enti e reati tributari (*supra* note 98) 20; Bartoli, R. (2020). Responsabilità degli enti e reati tributari: una riforma affetta da sistematica irragionevolezza (*supra* note 36), 226.

[101] ANAC (2019). *Quarto rapporto annuale sul whistleblowing*, available at https://www.anticorruzione.it/-/presentazione-del-4%C2%B0-rapporto-annuale-sul-whistleblowing?p_p_id=com_liferay_journal_web_portlet_JournalPortlet.

he/she has become aware by virtue of his/her office may not be sanctioned, downgraded, fired, transferred or subjected to any other measure having direct or indirect negative effects on his working conditions by reason of the report, otherwise ANAC shall apply pecuniary administrative sanctions;

- ANAC, having consulted the Italian Data Protection Authority, shall adopt specific guidelines for the submission and management of reports, which should be based on the use of computerised methods and cryptographic tools to protect the secrecy of the whistleblowers' identity and the content of alerts and related documents;
- no protection is guaranteed to whistleblowers if, through their reports, they committed criminal offences;
- the public entity has the burden of proving that the discriminatory measures adopted against whistleblowers are due to reasons totally beyond reports[102].

With specific regard to private entities, art. 2 of Law No. 179/2017 introduced paragraphs 2-*bis*, 2-*ter* and 2-*quater* of art. 6 of Legislative Decree No. 231/2001. According to the newly introduced provisions, the compliance program should provide for:

- one or more channels enabling employees, heads of the corporate functions, corporate bodies to submit detailed reports about any event which may give rise to corporate liability pursuant to the Legislative Decree No. 231/2001, of which they have become aware by virtue of their office. A computerised reporting channel should be guaranteed in order to protect the secrecy of reporters' identity;
- any discriminatory measure against the reporter for reasons related, directly or indirectly, to the report is prohibited and, if adopted, is invalid;
- disciplinary sanctions in case of violations of whistleblowers' protection measures or in case of intentional or grossly negligent reports that turn out to be unfounded;
- the private entity has the burden of proving that the discriminatory measures adopted against whistleblowers are due to reasons other than the report.

The current whistleblowing's regime within private entities, already capable of fostering whistleblowing practices, is about to be changed by the implementation of the Directive EU/2019/1937 [103] which asks the Italian legislator to make, *inter alia*, the following amendments, both for the public and private sectors, at least with respect to the breaches of

[102] Special emphasis has been given to the importance of this protection during the *VIRTEU Roundtable "Whistleblowing, Reporting and Auditing in the Area of Taxation"*, held on 26 February 2021.
[103] See Della Bella, A. (2019). La direttiva europea sul whistleblowing: come cambia la tutela per chi segnala illeciti nel contesto lavorativo. *Sistema penale*, 6 December 2019.

Union Law provided by art. 2 of the Directive (which also encompasses tax offences, as "breaches affecting the financial interests of the Union"):

- protection should be granted by the Italian legislator to a wider range of individuals, namely: workers; self-employers; shareholders and persons belonging to the administrative, management or supervisory body; volunteers and paid or unpaid trainees; persons working under the supervision and direction of contractors, subcontractors and suppliers; facilitators, third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues or relatives of the reporting persons and legal entities that the reporting persons own, work for or are otherwise connected with in a work-related context;
- three different reporting channels should be imposed to entities: internal, external, public disclosure. Therefore, within private entities with fifty or more workers the whistleblowers' protection should go beyond the Legislative Decree No. 231/2001. In particular, with specific regard to the necessary implementation of external reporting channels, the Italian legislator should designate the authorities competent to receive, give feedback and follow up on reports. The main question to be addressed is if ANAC should intervene also in the private sector and, as far as tax offences are concerned, if this role should be attributed to *Agenzia delle Entrate*.

5. Undue influence and institutional challenges in Italy

Part of the VIRTEU project was to identify potential cases that may be symptomatic of undue influence on the political decision-making process. The following table includes issues relevant to Italy that deserve to be further investigated.

Table 1. ***Potential cases of undue influence and Institutional challenge in Italy***

The practice of limiting the scope of the criminalization of tax evasion practices	Unlawful conducts in tax sector are adequately punished both at administrative level (Legislative Decree No. 472/1997) and at criminal level (Legislative Decree No. 74/2000 and subsequent amendments). More recently, with the Legislative Decree No. 157/2019, the criminal liability of legal entities has been introduced for a large part of tax offences. A fundamental issue for the future is the promotion of a higher alignment between tax proceedings and criminal judgments in terms of gathering and sharing of evidence and investigation results for the assessment of liability.

The adoption of legal instruments favourable to tax evaders (e.g., tax amnesties and forms of negotiated resolutions).	The overall regulatory instability in the tax sector might not facilitate good practice by taxpayers. The adoption of instruments such as tax amnesties can be counterproductive to the diffusion of a tax culture and facilitate tax evaders' pursuit of illegal conduct [104] [See also *VIRTEU National Workshop Italy (Session 1)*, 00:18:52]. Other regulatory instruments, such as "voluntary disclosure", could benefit of a more effective implementation and coordination with the overall tax regime.
The continued reluctance to adopt effective transparency regimes	In recent years, the Italian system has been characterised by the implementation of transparency regimes both within public administrations (e.g. Legislative Decree. No. 33/2013 and FOIA) as well as in the tax sector, to ensure fair cooperation between legal entities and tax authorities (*Agenzia delle Entrate*). Following the anti-corruption reform of 2012, the national Anti-corruption Authority (ANAC) also monitors compliance with transparency regulations. At the same time, in the tax sector, the implementation of new tools, such as the Tax Control Framework, facilitate transparency of relations between the financial administration and the companies. A greater transparency should be promoted at European and international level. Some kind of transactions, such as international transfer pricing, show how an effective transparency regime must be achieved at supranational level.
Deregulation, exceptionalism, and potential harmful tax practices adopted by national states competing against each other	Domestic fraud risks remain in particular in sectors where tax legislation is affected by complexity and therefore its interpretation could be difficult both for individuals and legal entities.

[104] See Di Siena, M. (2021, April 29). VIRTEU National Workshop - Italy, Session 1. Video recording at 18:52. Retrieved from https://www.corporatecrime.co.uk/virteu-national-workshop-italy

Revolving door practices, unethical lobbying and undue influences on the political decision-making process, and other potential institutional challenges	Lobbying as such is not regulated under Italian law at national level. However, under criminal law, since 2012, the offence of influence peddling has been introduced, punishing unlawful conduct related to the improper exploitation of relationships with public officials to obtain unfair advantages. About the issues concerning the so called phenomenon of "revolving doors", art. 53, para. 16-*ter* of Legislative Decree No. 165/2001 and the Guidelines on Codes of Conduct for public administrations delivered by ANAC (approved by Resolution No. 177 of 19 February 2020) regulate and under certain circumstances prohibits job assignment, by private entities, to those who have served in public administrations (so-called *pantouflage* prohibition).
Adoption of a high level of complexity in regulation, or imposition of procedural burdens or other obstacles to investigations and enforcement.	Despite several reforms, there is still a high degree of complexity in Italian regulation in the areas considered in this research, including procedural rules (e.g. those governing the use of documental evidence both in tax proceedings and criminal proceedings). From a different viewpoint, the value of compliance programs as tools to avoid corporate liability is not fully recognised, in practice, by domestic courts. The Italian corporate *ex crimine* liability regime could benefit from the provision of more effective rewarding mechanisms, taking stock of the experience of other jurisdictions in this field (e.g. pre-trial diversion).
Any other potential symptom of undue influence on the political decision-making process.	N/A

6. Conclusion

At the end of this analysis, it is now possible to underline some of the main characteristics of the Italian legal system as to draw basic indications, useful also in the perspective of the evolution of this research.

The first part of the report outlined 'fiscal corruption', observed as a phenomenon, with the objective of verifying whether and to what extent this notion could shed light on the interrelations between tax evasion and corruption also in Italy.

The analysis of the domestic regulatory framework, in the two areas in question, has shown how, in a legal system inspired by the principle of legality, crimes that pertain to the sphere of tax and those that pertain to the area of corruption represent two structurally distinct contexts. Ultimately, in the Italian panorama, it is not possible to frame fiscal corruption as a legal concept. However, as said, the phenomena that can be referred to this notion are multifaceted and reveal the instrumentality that corruption and tax evasion can have in relation to one another, both with reference to individuals and entities.

A first aspect of interest that emerges from the research is, therefore, linked to the importance of a 'working definition' such as that of fiscal corruption – which, as mentioned, is already present in the literature – which allows for the capture of a vast range of interactions between corruptions and tax evasion and for greater attention and more effective responses to a number of potential criminogenic situations.

In the search for aspects of interference between tax crimes and corruption, a review of the regimes for combating these two phenomena in the Italian legal system has been carried out. These are complex regulations, which over time have highlighted problems of interpretation and practical enforcement – and indeed the analysis highlighted that, as far as repression is concerned, in both sectors the Italian legislator intervened many times, touching up and tightening the 'arsenal' of sanctions as well as introducing new types of crime.

This shows that both areas are considered of primary importance in the choices of criminal policy of the national legislator, and they have also been a major determinant in the relationship of trust between the State and its citizens. On the other hand, even the names chosen for some reforms ("handcuffs to the evaders", "bribe-destroyer law"), undoubtedly having an effect on the public opinion, are a symptom of how the options of criminalization in these areas have often been driven by considerations other than the mere need to repress certain crimes.

The similarities between the tax crimes and corruption sectors also extend to other aspects of the strategy of the Italian legislator, and reference is made especially to the change of

perspective – as we have seen, traditionally based on criminal law – which in more recent times has been seen in both cases.

Alongside the punitive approach, it has been observed how Italy decided to focus decisively also on a robust preventive legislation. The comparison between the two bodies of rules has also brought out a further interesting element of convergence: i.e. the role played by the public sector, and in particular by the tax administration and by the national Anti-Corruption Authority, in the implementation of a fruitful partnership with the private sector.

This dialogue takes place, on the one hand, through the preparation of guidelines and through procedures, so to speak, of "preventive" or "early" confrontation between the public and the private – contexts in which the underlying phenomena ("maladministration", "tax risk") are considered by the authorities in broad terms, well beyond the boundary of criminal relevance –; and on the other hand, in the enhancement of compliance measures.

This last theme is of particular importance for legal entities: in the tax sector the main reference is the "cooperative compliance" regime, introduced to provide a "preferential" path for large companies (at least for an initial trial period) which demonstrate the ability to manage their relationship with tax authorities in a transparent manner, through the adoption of the Tax Control Framework. In this context, the tax administration must, among other things, proceed to assess objectively the management and control system of the taxpayer, with a possible proposal on the measures to be taken to admit the entity to the cooperative compliance regime. This is similar to what, for example, ANAC does with "collaborative supervision" in the field of procurement.

The points of contact relate in the anti-corruption system to the fact that the adequate internal organization becomes a factor in helping to combat corruption in the public sector, similarly to what has been already achieved in the private sector through the compliance programmes provided for in Legislative Decree No. 231. In fact, the anti-corruption system in the public sector and the ANAC guidelines also interact with the compliance programmes adopted in the private sector.

Moreover, with the recent introduction of tax crimes among the predicate crimes of the corporate liability provided for by the Legislative Decree No. 231 of 2001, the two sectors at stake are seeing convergence in this respect as well.

The evaluation conducted in this report has made it possible to highlight many common features – not at all taken for granted and, as far as we know, still unexplored in the literature – regarding the relationship between tax crimes and corruption.

If, even in the absence of a legal meaning of fiscal corruption in the Italian system, it has been possible to find elements of synergy in the strategy adopted by the Italian legislator to combat tax crimes and corruption – always formally regulated separately at the domestic level – this

seems to be a sign of the validity of the initial research question; and a starting point to further deepen the convergence and the entanglements between corruption and tax crimes. Indeed, only by understanding the phenomena, will it be possible to identify effective solutions to the challenges they pose.

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Manchester Metropolitan University

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The project explores the interconnections between tax crimes and corruption to unravel the intimate relationships that exist between fraudulent and corrupt practices in the area of taxation with a focus on VAT fraud, which poses a direct threat to the European Union's financial interests.

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