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ENVIRONMENTAL TAXATION IN ITALIAN FISCAL FEDERALISM

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1. Premise

In recent years the emergence of a strong interest in environmental taxation, internationally and locally has been witnessed; with increasing concentration on its utility in protective policies and environmental restoration. In response to growing pressure to fulfill environmental objectives from the EU and international community, as well as local and national organizations, member countries have introduced fiscal mechanisms at various levels of government that can facilitate and oblige professionals to behave in a more environmentally responsible manner.

A federalist perspective focuses on the legal debate of environmental taxation in three areas:

a) Definition of the concept of environmental tax.
b) Justification of environmental tax and its practicability.
c) Potential development in the Italian system of fiscal federalism.

With regard to point *sub* a), from an economic perspective we should note that a 'blanket' environmental tax has yet to be defined. According to Eurostat, the problem is the collection of a tax which is composed of a physical unit that has a proven negative impact on the environment. A lawyer identifies an environmental tax levy with the purpose to configure a tangible unit that determines environmental damage. Under that definition, one should wonder whether the tangible unit formed (for example the use of scarce environmental resources or the production of polluting gases) is consistent with the constitutional principle of the ability to pay.

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As for the issue of environmental taxation in Italian fiscal federalism, while the protection of the environment ranks among the exclusive protection of the government (Art. 117, 2 co., Lett. s Constitution), the structure of regional and local finance can also consider, under certain conditions, the creation of environmental levies.

In accordance with the principles contained in the Law for the implementation of Italian fiscal federalism (L. 5.5.2009, n. 42), the regions would be free to initiate a plan for the establishment of a regional law related to local authorities on tax matters to permit them to develop an independent plan according to the objectives and purposes sought after. For example, environmental taxation, which is not specifically present in the Legislative Decree no. 14.3.2011, No 23 (provisions relating to municipal fiscal federalism), could find a proper place here.

It is clear that interventions (including taxation) regarding the subject of environmental protection, made by Regions using their "legislative" competences (as the residual tax in art. 117.4 co. Constitution) must still be carried out in compliance with the levels of protection of the environmental "value" set by the government nationwide. In addition, regional and local tax instruments could fail - for the principles of territoriality and continence - in situations of environmental policies designed to cope with ecological problems that cross borders. It would be appropriate to take action on a broader scale through multilateral agreements[1].

2. The definition of environmental tax

Following community development, including acts of soft law, one considers the word environmental in a "strict" manner. The tax features are a direct causal relationship between its assumption and the polluting unit (improper use of the environment, consumption of an environmental resource or a source of energy, production of emissions) that can produce irreversible damage to the environment. The non sustainable deterioration can not be counteracted by taxes because other remedies (e.g., criminal sanctions) which represent a deterrent to the practice of malicious activities are necessary.

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1 On these profiles, please refer to the acute observations of Gallo, *Profili critici della tassazione ambientale,* in AA. VV., L'imposizione ambientale nel quadro del nuovo federalismo fiscale, (di L. Antonini), cit., 3 ss., profiles of critical environmental taxation, in AA. VV., The environmental taxation in the new fiscal federalism, (eds L. Antonini), cit., 3 ff.

It is important to understand the ratio of the causal relationship. A tax falls into the category of environmental levies only if it comes from the element that determines the negative effects on the ecosystem creating a rationalization of environmental taxation in force in other UE[2] countries.

The source of pollution that creates damage becomes part of the taxation. The structural perspective therefore enhances the expense of the functional perspective. These are taxes that directly affect the emission of noise and pollutant gases, (e.g. excise duties on motor fuels) and become practically an incentive for environmental protection[3].

We can call them taxes "for environmental purposes" and taxes with "indirect environmental function."

Regarding the one with an environmental "aim", one must consider the so-called ban on purpose taxes (Art. 25, Law No. 559/1993 on the General State Accounts). This is a form of the principle of unity for which one cannot differentiate the specific assignment of the tax revenue, converging all of it into one place. From a strictly theoretical point of view, it could be an obstacle for the environmental tax whose revenue is directed towards the financing of an environmental policy.

In realty, as we know, this ban is set by ordinary law, for which a later and special norm can assign a particular destination, legally relevant, to the proceeds of a certain tribute. In fact, when we speak about local finance in relation to certain environmental levies (TARSU, illness, special levy on the landfill, the regional tax on aircraft noise), there is a trend to the introduction of allocation constraints for certain taxes.

Indirect taxes with environmental function can also have a traditional assumption (consumption, income, assets) to which, at the same time, the Legislature imposed the purpose of encouraging or discouraging businesses or the production of goods that benefit the environment. In this segment, one can include, for example, a residence tax foreseen by art. 4 of Legislative Decree no. 23/2011.

In this case, the related revenue will finance interventions in the field of tourism, maintenance, use and recovery of cultural heritage, but also related public utilities. However, although the norm refers to the use of the revenue, the violation by the local authority does not

2 Perrone Capano, *L'imposizione e l'ambiente,* Trattato di Diritto tributario, (by A. Amatucci), Annuario, Padova, 2001, 121 ss.

3 On these profiles cfr., Esposito De Falco, *I tributi ambientali a livello regionale in armonia con i principi comunitari,* in Innovazione e diritto, 2006, 87 ss.

determine any legal consequence, at most, it can create problems for the accountability of the public body.

Taxes for environmental aims are different from those of indirect environmental purposes as their function produces taxation. In the norm, introduced for the first time, with the financial decree of 2007 (LN 296/2006), the return of the tribute is expected in case of failure to complete the work by the local authority.

In economic studies, the possibility of an environmental tax has been created thanks to Pigou, who defined it in the 1920s, as a tax imposed by the polluter based on an estimate of the damage done or external cost[4].

For economists, in order to set an effective environmental tax reform it is necessary to achieve a "double dividend", according to which environmental taxes should lead to a gain in improving the quality of life and environment procured by the change in prices or the tax increase, in addition to a further advantage consisting in the re-use of the additional revenue coming from them[5]. The aim would be to reduce tax distortions that create a high tax burden[6].

Surely, even in economic terms, the introduction of environmental taxes could orient towards federalism, taking into account the needs of the territory and exploiting its resources. Specifically, local authorities, with

4 The theory is illustrated in the book: *Economics of Welfare,* VI ed., Londra, 1932, italian translation done by M. Einaudi, *Economia del benessere,* Turin, 1968. For a legal reconstruction of the environmental tax in pigouviana perspective, v.: F. Amatucci, *Le fondamenta costituzionali dell'imposta ambientale,* Naples, 1993, 11 ss.

5 On the topic v.: Majocchi, *La tassazione ambientale nella prospettiva del Documento di previsione Economica e Finanziaria,* in Minestrini – De Benetti (by), Taxation Environmental Development. Delegation to the Government for the introduction of incentives for environmental purposes with sustainable economic and employment development...., Roma, 1999, 15, according to which "Taxes on pollution have, therefore, an important attraction: they allow not only to protect the environment, but can advantageously also replace other sources of income that harm the economy".

6 The prevailing doctrine that has dealt with the issue of environmental taxation believes that it can also be used as an instrument of employment promotion; if one considers, in fact, that the use of labor resources is inadequate in respect of the excess of natural resources used , environmental taxation, shifting the tax burden from individuals to the environment, would help reverse this trend. This would achieve the double dividend of environmental protection and increased employment.

Regarding this we put off to: Gallo – Marchetti, *I presupposti della tassazione ambientale,* in Rass. trib., 1999, 115; Marchetti, *Tassa, imposta, corrispettivo o tributo ambientale,* in Fin. Loc., 2004, 31.

environmental taxes could support and finance maintenance and preservation or contain the deficit.

3. The constituional justification of environmental tax

We must now address the problem of the physical unit that causes environmental damage may be taken into consideration on a tax basis according to the principle of the ability to pay.

Practically, one must wonder how to justify a tax levy, from a constitutional point of view, for goods of primary interest, that do not indicate a present and concrete[7] wealth.

Consider the case of polluting emissions: they definitely affect the environment but it is difficult to recognize a correlation between them and well-being.

The compatibility between the EU principle of "who pollutes pays[8] "and capacity to pay is easier if one adheres to the minority thesis of which Article. 53 of the Constitution which is merely a fair and reasonable criteria that requires the identification of different positions of individual taxpayers, in which you can connect, in the *an* and the *quantum,* the public expense[9].

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7 Regarding this we should underline a decision of european judges about Tarsu for which the principle of "who pollutes pays" is incompatibile with the adoption of tax systems on the production of waste based on the taxpayer's income. (CGE 17.7.2009, causa C-254/08).

8 For the doctrine that regards the principle v.: Meli, *The origino f the principle "who pollutes pays" and its welcoming on behalf of the european community,* in Riv. giur. ambiente, 1989, 217 Tarantini, *Il principio "chi inquina paga" tra fonti comunitarie e competenze regionali,* in Riv. giur. ambiente, 1990, 728.

9 In this way v.: Fedele, *prime osservazioni in materia di Irap,* in Riv. dir. trib., 1998, I, 472 ss.; Gallo, *Ratio e struttura dell'Irap,* in Rass. trib., 1998, 627 ss.; Id., *Profili critici della tassazione ambientale,* cit., 303; Del Federico, *Tasse, tributi paracommutativi e prezzi pubblici,* Torino, 2000, 102 ss., who underlined that "from the comparison between the solidarity concept of the capacity to pay and the rationalist conception, an articulated framework of mechanisms of competition to public expenditure can be enucleated. In this perspective, the solidarity tax, also called "contributing taxes" (or better redistributive), would be characterized by the achievement of general goals, rectius by the funding of indivisible services; it is in essence direct or indirect taxes, which by their nature are essentially redistributive purposes; for such taxes a fair and rational allotment criteria could be only the economic capacity of "solidarity". By contrast, the semichangeable taxes would be characterized by a specific legally

According to this reconstruction, the solidarity component is compressed and the principle of equality is enhanced, as a fundamental element of art. 53, 1 co., considered applicable norm to all taxes.

From this point of view, the Community principle, unlike the apparently immediate intention of direct attribution of responsibility to who pollutes, detects pollution as discouraging, by motivating the polluters to reduce pollution. It would work, even before redistributive reasons, by virtue of a preventive function; it should act as a criterion for the regulation of costs , assigning some of the costs to polluters for collective measures to clean up, according to the necessary economic principle of "internalization" of environmental costs arising from polluting activities. [10].

In particular, if the principle of equality requires that anyone who causes injury to the social community must compensate for that injury, the environmental tax is certainly an appropriate tool to meet this principle. It is in fact attributed to the subject that, producing emissions, provokes damage to be "compensated". The criterion of apportionment would be made, in this case, by a principle that takes into account the relationship between emissions and the damage sustained by the community, without trying to quantify its cost and without setting a direct correlation with the work of rehabilitation due to the public body[11].

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relevant correlation between public activity and responsibility or advantage of the taxpayer; in principle, where the responsibility or the advantage are found we will have taxes, where, conversely, we have for the taxpayer as a member of a qualified community we'll have contributions; for fair and reasonable apportionment criterion of semichangable taxes there could only be individual accountability for public spending caused specifically, or for the need to compensate for the advantage that the taxpayer receives from the completion of a public service or the enjoyment of public facility".

10 As we said the principle "who polpute pays" found recognition from the european comunity for the economic needs of operators to support the costs of pollution produced, and that they are efficient; this to avoid that these costs are sustained ony by the government, directly or through the granting of aids that would favor industries of some countries (or regions) and not of others, creating in this way unjustified positions of advantage at a competitive level (in this way Meli, *The origins of "who pollutes pays" and its acceptance on behalf of the EU,* cit., 218; Butti, Italian law and the principle *"who pollutes pays"*, in Riv. giur. amb., 1990, 411).

11 The "who pollutes pays" principle has assumed the character of economic

The measurability of the economic condition represented by the pollutant should therefore be guaranteed, not by direct exploitation of the issue (actually impossible), but the determination of the disadvantages that it can bring to the environment in terms of comparison with other environmentally friendly emissions.

Therefore, we can say that in relation to environmental taxes, a policy of fair and reasonable apportionment may be discerned in the Community principle "who pollutes pays" , which has clear points of contact with the typical criteria of (paracommutativi) taxes, and with the principle of individual accountability for public spending.

It is clear, however, that, as in studies sponsored by the EU and more widely in academic theories [12], the environmental connotation of imposition is particularly suited to the environmental tax imposed on consumption. For these taxes, where a discipline of environmental justification emerges, the ratio of collection will be more redistributive (which must be justified by the economic capacity of solidarity), while the compensation of an environmental cost, in such cases will focus on the tax allotment criteria "who pollutes pays"[13].

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efficiency, inherent need for a rational management of ecological resources: the negative externalities caused by environmentally harmful activities, are on one third or on the generality of associates a cost able to inhibit the efficient allocation of resources and economic operators will have to bear the costs effectively. The need to internalize these costs, contained in the European principle, seems to lead to a contraction of the possible facilitative tools, which, while respecting the principle of reasonableness, should apply only to cases in which the consequent reduction in the levy can be justified under Articles. 3:53 On the subject of tax break in environmental tax v.: Selicato, *La tassazione ambientale tra la ricerca di nuovi indici di ricchezza e la coerenza dei sistemi fiscali, in* Riv. dir. trib. int., 2004, 257; Id., *Profili teorici e lineamenti evolutivi degli strumenti agevolativi a carattere fiscale e non fiscale,* Ibidem, 2004, 411; Alfano, *Agevolazioni fiscali in materia ambientale e vincoli dell'Unione europea,* in Rass. trib., 2011, 328 ss.; Id., *Tassazione ambientale. Profili interni ed europei*, Torino, 2012.

12 Gallo – Marchetti, *I presupposti della tassazione ambientale,* cit., 116-117.

13 Regarding the relevance of the principle "who pollute pays" in the tax filed we refer to Verrigni, *La rilevanza del principio comunitario "chi inquina paga" nei tributi ambientali,* in Rass. trib., 2003, 1614 ss.; Selicato, *Imposizione fiscale e principio "chi inquina paga",* in Rass. trib., 2005, 1157-1170; Imparato, *Proporzionalità, ragionevolezza e capacità contributiva. Il principio "chi inquina paga" tra eguaglianza formale e sostanziale,* in AA. VV., *Federalismo fiscale tra diritto ed economia,* (a cura di A. Cerri, G. Galeotti, P. Stancati), Roma, 2009, 325 ss.; Cipollina, *Fiscalità ambientale nella prospettiva del federalismo fiscale,* in AA. VV., *L'imposizione ambientale nel quadro del nuovo federalismo fiscale,* cit., 96-104.

However, on the basis of Article 191 Treaty TFEU (ex art. 174 EC), it is believed that the principle "who pollutes pays" should be applied to all taxes with environmental characteristics and not necessarily to only environmental taxes.

We wonder, however, whether this principle is directly binding on Member countries and on the Regions which want to introduce environmental taxes, given that Article. 191 of the Treaty refers to the Union's policy on the environment.

The problem definitely does not arise from those taxes that come from Community directives (e.g. Directive on Waste - 2006/12/EC, Art. 15), since in this case the national or regional implementation should take into account the principle "who pollutes pays" indicated by the Treaty and in Community legislation.

The major difficulty is that environmental tax may not be regulated at a Community level but can be freely established by the government or the Regions.

With regard to our laws, Article. 117, 1 constitution, states that the legislative power of the government and the regions should be exercised in accordance with the Constitution and the constraints derived from Community law and international obligations[14].

In tax, as well as environmental matters, one of the community constraints could be represented by the principle "who pollutes pays" which is the underpinning of EU policy on the environment [15] and follows the European

14 Regarding the constitutionalization of comunity principles through art. 117 Cost., see.: Pinelli, I limiti generali alla potestà legislativa statale e regionale e i rapporti con l'ordinamento internazionale e con l'ordinamento comunitario, in Foro it., V, 2001, 194; Carinci, *Autonomia tributaria delle Regioni e vincoli del Trattato dell'Unione europea,* in Rass. trib., 2004, 1201; Id., *I vincoli comunitari all'autonomia tributaria di Regioni ed enti locali,* in AA. VV., *L'autonomia tributaria delle Regioni e degli enti locali tra Corte costituzionale (sentenza n. 102/2008 e ordinanza n. 103/2008) e disegno di legge delega (a cura di V. Ficari), Quaderni Riv. dir. trib., 2009, 75 ss.* .

15 Precisely through the European Union's policies, of which the one regarding the environment, ex art. 174 del Trattato CE (art. 191 TFUE), "*founded on the principles of precaution and preventive action, on the principle of the correction, as a priority at source, environmental damage, and also the principle "who pollutes pays*", European law sets some principles that, not only characterize a specific intervention, but at the same time must be observed where taxation contributes to the implementation of these policies. For a thorough analysis of European taxation in relation to the general principles with regard to environmental policy, see: Del Federico, *Tutela del*

principle of deference, which assumes general and binding relevance on all Member countries, even if they operate in areas of environmental matters that are not covered by specific Community action[16].

To this we should add that the principle "who pollutes pays" has been incorporated into our law through the Environmental Code (Legislative Decree no. 3.4.2006, No. 152) whose art. 3-b[17], provides that "*environmental, natural ecosystems and cultural heritage protection must be guaranteed by all public and private bodies.... by means of appropriate action regarding principles of precautionary, preventive action, with priority to the source, of environmental damage, and to the principle of "who pollutes pays" that, pursuant to art. 174, paragraph 2 of the European Union Treaty, the governing Community environmental policy*".

4. The possible development of environmental taxation in the implementation of fiscal federalism

We have seen that from a constitutional point of view, environmental protection ranks among the exclusive aims of the government (Art. 117, 2 co., Letter s Constitution); however the matter[18] is not interpreted in an objectively, but in a functional sense. Through the transfiguration of the "matter" in a "value" to the realization of which the government and the regions take part in according to a sharing of responsibilities, taking into account the principle of continence that implements a spatial delimitation and the principle of territoriality which is the bond of content for their "own" regional and local taxes.

Territoriality includes the allocation of tax requirements (Art. 2, 2 co.,

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contribuente ed integrazione giuridica europea, Milano, 2010, 58-60.

16 Such orientation has been endorsed also by legitimate law , Cass. pen., 4.2.1993, in Dir. giur. agr. 1994, 292. With specific reference to "who pollute pays", administrative law believes that such principle is fundamental both for environmental comunity law, and for the specific "financial comunity environmental law", (see ad es. T.A.R. Lombardia Milano, sez. I, 5.4.1994, n. 267, in Riv. giur. amb. 1995, 347).

17 Inserted by the decree. 16.1.2008, n. 4.

18 This subject/value is linked with some concurrent legislation subjects (art. 117, 3 co., Cost.), and especially to "health protection", to "territorial government" and to "valorization of cultural and environmental heritage".

Lett. Q), L. No 42/2009), identifying regional expertise in a residual way and ensuring a kind of "preemption" [19] in the selection of tax matters.

In this way, the financial and fiscal autonomy of local authorities can be instrumental for environmental policies, especially in cases where pollution sources are limited to the territory.

As we have already seen, the fact that taxation concerns the protection of the environment, as an asset of the legislative jurisdiction, is not an obstacle to regional legislative actions under Article. 117, 4 co. Constitution, which establishes to the regions the right of taxation that the State has not exercised, pursuant to art. 117, 2 co., Lett.*e*) of the Constitution.

Therefore one can set up regional and local ecological taxes, which have as their premise polluting events produced constantly in their territory. It is clear that in accordance with the principles contained in the enabling act: a) the basis chosen by the region must not duplicate state taxes, and its forecast will have to meet the criteria of appropriateness, proportionality and consistency, b) fundamental principles of coordination fixed by the government will have to be respected c) a real connection of these taxes with the territory and the regional or local interest must exist.

Examples of regional environmental taxes existing in our system are: the contribution introduced by the region of Tuscany, the extraction from quarry of materials for industrial use, which affects the owner of the quarry and is compared to the amount and quality of the extracted materials (Article 15 , regional Law 78/1998), [20]; the Piedmont municipal contribution to reprocessing, treatment and reuse of animal waste, in addition to a special levy on the deposit on landfill of solid waste[21].

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19 Del Federico, *Orientamenti di politica legislativa regionale in materia di tributi locali,* in Fin. loc., 2003, 512.

20 Specifically, art. 15, 3 co., L. Tuscany Region. 78/1998, says that*: "For the extraction of materials for industrial, construction and civil works, ... The owner must pay a contribution to the City in relation to the amount and quality of materials extracted, pursuant to the unit amounts established annually by the Regional ...".*

21 Also the Constitutional court intervened (ruling 20.11.2009, n. 309) for an alleged unconstitutionality of the municipal contribution as it would overlap the special levy on the deposit in landfill of solid waste provisions of art. 3, paragraphs 24, 25, 26 and 28 of the Law of 28 December 1995, no 549. In this case, the regional legislature would have identified a specific form of contribution in the field of local governance and environmental protection in full harmony with the principles of national tax. However, after ruling, the contribution was repealed by the art. 21 of the Law of the Piedmont Region No 28 of 2008, for which the acts were a matter for court.

It is clear that the region may determine in addition to environmental taxes, taxes with environmental indirect functions. Think of tourist and environmental taxes on non-residents, set up by the Sardinia Region and the Autonomous Province of Bolzano (South Tyrol LR, 29.8.1976, n. 10), with the criterion of justifiable compensation for the environmental concept of externalities and considered constitutionally legitimate by the Constitutional Court ruling no 102/2008 (the Sardinian tax was suppressed by the Regional Finance Act 2009).

The Law 42/2009 allows both the State, without any conditions, and regions, with specific indicated limits, to establish regional and local environmental taxes both in the proper and functional way.

However, the enactment of the decree on municipal federalism (Legislative Decree no. 23/2011), reaffirms the leading role of the country legislature against the regional one, in fact, the state law suppresses pre-existing taxes, and creates new ones, putting limits on the autonomy of the local legislation and defining the discipline of local revenue, leaving integration on behalf of the local body very little space.

Not only in relation to Art. 119 of the Constitution (which provides the opportunity for the local authority to "establish and institute" local taxes) but also in relation to art. 52, D. Lgs. 15.12.1997, No 446, we see a decrease of the discretional area of the local authority[22].

In addition, from the decree on regional federalism, (Legislative Decree no. 6.5.2011, n. 68) the will of the legislator to establish a greater connection between tax revenues and territory emerges, achievable through the sharing of state taxes (which most directly is affected by the taxation present in each region).

The discipline of regional income "not" from partnership remains in limbo. On the one hand public taxes become explicitly private, without changing their actual identity. These are regional taxes that already exist, as listed in Art. 8, 1 co., Leg. No 68/2011, however, they are susceptible to be deleted from each region. On the other hand, it is expected that all other taxes of the Regions "*recognized by the present law*" operate in a different sense, describing them as "their products" and repeating the clause that shall not affect the regulatory power of suppression of tax.

There is no longer any reference to its own tax, art. 11, 1 co., Legislative Decree no. 68/2011, providing the required revenue in compensation

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22 To better under stand the law on municipal federalism in a constitutional view refer to: Basilavecchia, *Il Fisco municipale rispetta i vincoli costituzionali,* in Corr. trib., 2011, 1105 ss.

from the government. It indicates the possibility of the latter to intervene in matters which should be reserved to the authority of the regional tax legislation (on which the Government should not have coordination powers): the intervention of the taxable and tax rates for additional taxes, and their derivatives[23] can be suggested.

5. The current framework in light of recent municipal and federal decrees on the initial autonomy of regions

Among the possible developments of environmental taxation in relation to the implementation of fiscal federalism, we must verify what the regions and local authorities will be able to do. Among the taxes that will take on an environmental value in the Legislative Decree no. 23/2011, the resident tax (Art. 4) and the tribute of purpose is included (Article 6).

In compliance with the provisions of art. 12, 1 co., Lett. d) L. No 42/2009, the capitals of provinces, the Union of Municipalities and also to the municipalities with tourism or art may establish, by resolution of the Council, a resident tax at the expense of those who stay in facilities located on its territory.

The levy will be applied according to criteria of appropriateness in proportion to the price paid to the facilities. The measure can be determined up to a maximum of 5 euro per night. Revenue from the levy is to finance interventions in the field of tourism, maintenance, use and recovery of cultural heritage, local environment and related public utilities. The tax can replace all or part of any charges imposed on tourist buses for driving and parking in municipal areas.

Article. 4, Legislative Decree no. 23/2011, refers to a special decree - which was supposed to be issued within 60 following days - identifying how to implement residence tax. Municipalities with the regulation to be adopted pursuant to art. 52, Legislative Decree no. 446/1997, may have further applications and criteria for exemptions and reductions for particular circumstances or for certain periods of time. In any case it gives the local authority the possibility to exercise its regulatory power even in case of the non-issuing of a ministerial decree.

In this case, if the municipalities adopted the tax measures envisaged

23 For thoughts regarding regional federalism refer to: Basilavecchia, *Fisco delle Regioni e vincoli costituzionali,* in Corr. trib. 2011, 1929 ss.

without complying with a general framework, very different implementation policies could generate in the area, resulting in possible conflicts if inconsistencies with the ministerial decree issued later arise.

In literature, it has been highlighted that a tax on tourist flows can be traced in various European experiences, proving, generally, if the proceeds will be used for the implementation of infrastructures and public services which also tourists[24]benefit from.

In terms of tourist tax, the one established by art. 5 of Sardinia Region law 29.5.2007 should be noted. No 2: a tribute that the municipalities included, assigning the proceeds "to be placed in the field of sustainable tourism with particular reference to the improvement of services for tourists and the use of environmental resources".

This levy was applied to non-residents who were lodging, including private homes, to the extent of 1 or 2 euro per day. [25] The payment of the tax must be paid by the owner of the accommodation or by the manager, both obliged to provide within 48 hours after the id of the guests.

As only non-residents were subject to the tax within the region, constitutionality legitimacy was alleged for a breach of Article. 3 of the Constitution, but the Court[26] rejected the allegations of illegitimacy, noting that non-residents, "as a result of the lodging, necessarily benefit both from local and regional public services, both cultural and environmental heritage

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24 Regrding these profiles refer to: SCANU, *La tassazione sui flussi turistici tra fiscalità locale e competitività: alcune esperienze europee a confronto,* in Riv. dir. trib., 2009, 355, who states that "precisely in a commutative and improving the quality of tourism logic that we can achieve the virtuous aim of sustainable taxation that prevents discursive effects on tourism demand"; VERRIGNI, *La nuova imposta di soggiorno ed i primi orientamenti della giurisprudenza,* in Riv. it. dir. tur., 2012, 69 ss.; PICCIAREDDA – PEDDIS, *Individuazione del presupposto del tributo di soggiorno, principi di sistema e principi fondamentali di coordinamento,* in AA. VV., *L'autonomia tributaria delle Regioni,* cit., 53 ss.

25 All residents of Sardinia, minors, were exempt from tax, those who undertake periods of study or vocational training courses, employees and self-employment all documented.

26 Ruling, 15.4.2008, n. 102. In doctrine v.: Ficari, *Sviluppo del turismo, ambiente e tassazione locale,* in Rass. trib., 2008, 963 ss.; PETRILLO, *Tributi, nuove entrate locali e loro controversa natura giuridica,* in AA. VV., *Il nuovo sistema fiscale degli enti locali,* (by F. Amatucci), Torino, 2008, 88, that shows that in this way the consultation has opened the way for the reintroduction of a residence tax, which would allow municipalities to a more flexible instrument in relation to the selection of individuals who are responsible for funding and distribution of the relative tax burden.

of Sardinia, without contributing either to the funding of the first, nor the protection of the second with the taxes."

Article. 2, 14 co., Sardinia Region Law 14.5.2009, n. 1 (finance law for 2009) ordered the suppression of the tax.

But, beyond this specific case, taxation of tourism activities is very much debated, partly because the "economic theory has clearly shown the negative externalities associated with tourism and, more generally, the local presence of numerous non-residents"[27].

Another tax burden that will take on an environmental connotation is represented by the the aim of the tax (di scopo) on the basis of art. 6, Legislative Decree no. 23/2011.

Environmental taxes are different than taxes with environmental indirect function as their function produces taxable effects because in the discipline introduced for the first time, with the financial decree of 2007, (Law No. 296/2006) the taxpayer may seek reimbursement of payments made in case of failure to complete the work by the local authority.

A purpose Tax is characterized by the close link between sacrifice asked for and achievement of it in order to guarantee a substantial sharing on behalf of the citizens empowered to control the work of the administrators.

This form of tax is already foreseen in the Enabling Act (Article 12, 1 co., Lett. *d),* L. No 42/2009), governed by the Decree on municipal federalism, of which Article. 6 makes changes to the legislation introduced in 2006, which are: **a)** the identification of additional public works, **b)** increasing, up to ten years, the maximum duration of the tax; **c)** the possibility of the tax proceeds to fund the full amount of the expenditure of public works.

In addition to the Government, the Regions, as part of its legislative powers in matters of taxation, may introduce new taxes for municipalities, provinces and metropolitan cities in its territory, specifying the scope of autonomy granted to local authorities (Art. 12, 1 co., Lett. *g),* L. No 42/2009).

The purpose tax is foreseen also for the Provinces (art. 12, 1 co., Lett. S), L. cit.), with reference to specific institutional goals.

It is therefore possible to introduce new "selective"taxes, with proceeds earmarked for specific environmental purposes.

Pending full implementation of fiscal federalism, the municipalities may already set up, with its rules, specific taxes for some purposes in paragraph 149 of the L. No 296/2006, including: work for urban public transport, road

27 Buratti, *Ragioni e limiti dell'imposizione sui "non residenti",* in Federalismo fiscale, 2008, 207 ss.

works, with the exclusion of ordinary and extraordinary maintenance of existing works, particularly significant works of urban design and decoration of most places, works of resettlement of land for parks and gardens, construction of public car parks, conservation of artistic or architectural possessions. The tax payable for a maximum period of 5 years, in relation to the same public work, is determined by applying to the ICI (tax on real estate) the 0.5 per thousand[28].

With the exemption of property tax in favor of the main residence of the taxpayer, it has brought a contraction in revenues reflecting also on the purpose tax that is configured as an additional property tax.

As for tax related to waste management art. 14, 7 co., Legislative Decree no. 23/2011, foresees the opportunity for municipalities to continue to apply the regulations on Tarsu or Tia, notwithstanding the possibility of adopting the new fee foreseen in art. 238, Legislative Decree no. 152/2006 (Environmental Code)[29], which has set new criteria for determining the fee,

28 About 20 municipalities instituted the purpose tax, mostly for the realization of school construction (on www.finanze.it).

29 Regarding the legal nature of the environmental code, the Legislator intervened with the disposition in art. 14, 33 co., D.L. n. 78/2010, converted with modifications L. n. 122/2010, according to which the dispositions of art. 238, D.Lgs. n. 152/2006, are interpreted in the sense that the nature of the fee provided for therein and is not about taxes and the relative controversies, arising after the decree, are under the jurisdiction of ordinary courts. This interpretation has caused much perplexity as it is a collection that presents the same structural characteristics and application of the fee provided for by Legislative Decree. n. 22/1997 (v.: Circ. Dip. Fin. 3/2010 according to which municipalities can, starting from 2011, institute the fee foreseen by leg. decree. n. 152/2006, determining it on the basis of tecnica criteria that discipline the construction of the fee of which at art. 49, decree. n. 22/1997) for which, the Constitutional courst in the ruling n. 238/2009, defining the legal contrast that was created around the legal nature of the TIA (regarding the same Cass. SU 8313/2010, Ord. Cass. 14903/2010) confirmed its tax nature. The Constitutional Court also confirmed that the adoption of a tax burden in waste management is not contrary to the Community law principle "who pollutes pays" that does not necessarily require the application of a fee. To this we should add that the Court of Justice in its decision in Case C-254/08, cit., enshrined the principle that national governments can not impose the choice of the tool to achieve the goal that may be of a fee or of fiscal nature, for which a tax is compatible with the amountof waste produced, through the combination of the surface of the buildings occupied. While the introduction of income criteria as part of the tax on waste, leading to the charge for certain categories of taxpayers are not representative of the potential

which however refers to, even if in a more ambiguous way, the quantity and quality of the average ordinary waste produced.

With regard to Legislative Decree no. 68/2011, in a nutshell, we report operations with an environmental value art. 8, a co., regarding the transformation into its derivatives of the regional tax concessions on state property of the marine state property expected by January 2013, the regional tax on state concessions for the occupation and use of the treasures unavailable, tax on aircraft noise. The regional excise on petrol will also be abolished.

To this we should add that in the Legislative Decree no. 58/2010, we will have to implement federal state property, among the parameters for the allocation of assets art. 2, 5 co., Letter) foresees environmental enhancement. Under this criterion, the value of the property is made having regard to the physical, morphological, landscape, cultural characteristics of the assets transferred, in order to ensure the development of the territory and the preservation of environmental values[30].

Article. 5 indicates one of the types of state assets to be transferred for free to regions, provinces, municipalities, metropolitan cities, a) property belonging to the marine areas and related zones, b) property belonging to State Water, c) airports of regional interest, d) mines.

It is clear that on such assets regions and local authorities will be able to build and regulate, in accordance with constitutional principles and enabling law, tax levies with environmental characteristics.

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costs of waste production and should be considered contrary to the payment of the Community law "who pollutes pays". This last aspect could pave the way for an alleged incompatibility of the Community ltax foressen by Legislative Decree no. n. 152/2006, since at a tax level,we can also consider income indexes (art. 238, 2 co., D.Lgs. n. 152/2006).

30 The European agreement on Landscape ratified in Italy by Law 9.1.2006, No 1, defines the notion of landscape in a very broad way, laying next to "outstanding landscapes", the landscapes of everyday life and degraded landscapes (art. 2), for which redevelopment is necessary. In this context, the tax could be an effective tool to facilitate restoration of disused sites, maintenance of buildings to maintain urban decorum of the city. On these profiles, please refer to the considerations of Cipollina, *Fiscalità e tutela del paesaggio,* in Riv. dir. fin., 2008, I, 552-572.

6. Conclusions

The development of environmental taxation is configured, at various levels of government, as a catharsis of the tax system, which means a transition from some forms of taxation to others.

The widely prevalent approach is to use environmental objectives for different types of taxes: a) the environmental tax, if there is a correlation between the physical unit that causes adverse effects to the ecosystem and its tax; b) the tax with indirect environmental function in the sense that the environmental element does not become part of the premise, but it is oriented for the purpose of environmental protection, c) tax with environmental purposes that is characterized by the destination of revenues and the fact that the relationship between the IRS and the taxpayer becomes part of the tax structure.

Taking into consideration that environmental taxes and taxes with environmental function already exist in our legal duties (among the regional taxes: vehicle tax, excise on petrol cost, special levy on waste deposit in landfill, additional user fees on public water, public additional tax on the consumption of natural gas, tax on aircraft noise; for provincial tax: car insurance tax, tax on protection of functions, security and urban hygiene, sharing the special levy on the deposit in landfill of solid waste, additional consumption of electricity for industrial use) the environmental requalification of non environmental tax the is also possible. For example IRAP taxes can be modulated based on the environmental performance of enterprises, the achievement of environmental certification and implementation of strategies for reducing their pollution levels. The regional vehicle tax can be reformulated on environmental characteristics of vehicles, therefore more favorable to vehicles powered by electricity or hydrogen. The ICI tax rate on property may vary according to ecological design interventions aimed at energy savings.

Italian fiscal federalism should, therefore, offer new opportunities for action at regional and local levels of government, taking into account critical issues that emerge from the decree on regional federalism, where the State never loses its power to directly discipline regional taxes: both in the case of partnerships, additional tax, and when the tax itself appears more derivative than, actually, "itself".

In any case, the environment could become one of the areas where local and regional sub-statal bodies could develop their own taxation, also in terms of tax advantages.