

Separation of Powers

-- Questionnaire --

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ITALY

1. Relationship between the Parliament and the Tax Authorities: The influence of the tax authorities on tax legislation

1.1. Does your Government have legislative competence on tax matters?

The Italian Constitution recognizes legislative competence to the Government. However it is necessary to distinguish between a legislative competence and normative power, which is referred to those acts which have the form of a law but are subordinate to the law. According to articles 76 and 77 of the Italian Constitution the Government has the power to issue acts which have the same power of laws. In particular, art.76 of the Const. provides that the Parliament can delegate the legislative power to the Government. In this case the Parliament defines the principles and the criteria which the Government has to follow and the act of the Government is called “legislative decree”. The legislative decree is largely used in the Italian system so that extremely technical and complicated subjects, such as the tax matters, are competence of a technical authority. However this procedure causes an excessive interference of the Government in the legislative power.

Besides, the Government can adopt, for reasons of necessity and urgency and for a limited period of time, “decree laws” (art.77 Const.) which must be forwarded to the Parliament to be converted into law within maximum 60 days, otherwise they lose their effect from the beginning. Decree laws are often used in the tax field too, and they find their justification in the necessity, for the Government, to intervene rapidly and without notice in some economic fields.

The Government can also issue regulations which have not the same effect of the law and which usually have the form of the ministerial decree and have the function to complete the regulation of a tax. The principle of legality (art.23 Const.) does not admit independent regulations, at least for what concerns the substantial aspects of taxes regulation.

1.2. Does your Government draft tax bills proposals and present them to Parliament?

The activity of the Government in proposing tax bills has different forms. The most simple way of making a proposal to the Parliament is to present a draft legislation in the fiscal field. Art 87 of the Italian Constitution provides that the Government has the initiative of legislation, in other words it can propose new laws which are discussed and voted by the Parliament. In fact the Parliament can ratify or convert the decree law into a law, or totally or partially modifying it. We also have the Finance Act in which the Government can establish extra demands on financial resources, fixing a limit in the public debt and list the estimated revenues (art.81 Const.). The Finance Act must be presented by the Government within the 30 th of September and the Parliament has time to examine it and modify it or amend it within the 31 st of December.

1.3. In case your answer to 1.1. and 1.2. is positive:

1.3.1 Does your Government usually exercise that competence?

In the course of time the Government has used his legislative competence more and more. Legislative decrees are for example used very often in the tax matter. This is because they are thought to be the best instrument in a technical field as the tax one. For this reason the Government is considered to have more attitude than the Parliament and can so adopt more complex laws. However, in the course of time we have witnessed a misuse of this power by the Government, both for political reasons (long times of the Parliamentary works, difficulty in finding the majority) and technical reasons (necessity of introducing continuous modifications in the fiscal discipline and adopt fiscal measurements in short times). We can make the same considerations for what concerns the decree laws. These, in fact, initially used to allow rapid modifications of the fiscal system, finished to be used with excessive frequency, also to obviate the difficulty of finding solid majority in the Parliament (often the Government asks for the conversion of a law decree into law , a vote of confidence. If the Government receives a vote of no confidence from the Parliament, is ousted). Also the regulations in the fiscal field are quite frequent for the necessity to demand to the administration to issue acts which integrate parts of the tax laws or regulate technical details.

1.3.2 Does your Parliament passively accept the draft bills provided by tax authorities or does it discuss them in detail and introduce changes to them?

The Italian Constitution recognizes to the Government the competence to present draft bills, such as the Finance Act. As any other proposal they must be approved by the Parliament who also

considers possible amendments. It must be observed, however, that as the Government has the majority in the Parliament, the proposals made by the Government are more easily approved than those presented by others. Besides the Government, because of the particular technicality of the fiscal subject, and also because the fiscal matters have a crucial position in the political tendency, has a fundamental role in the legislative initiative. The law decrees must be immediately transmitted to the Parliament which must meet to examine it and decide whether to convert it into a law or not, eventually modifying it, but necessarily within 60 days, otherwise the law decrees lose its effect from the beginning.

1.4. How does the literature in your country and your domestic Courts interpret the situation as you described it in 1.3. ?

In the Italian system the use of the legislative power by the Government is very frequent. The decree laws, for example, allowed only in cases of urgency and necessity, are, for their characteristics, often used in the fiscal field. In the last years, however, this instrument has been largely used, even though the Constitution consider it to be exceptional. According to the literature this excessive use of the decree laws, increases the uncertainty of the legal system. This situation, in fact, emphasizes the problem of the relations between decree laws not converted into laws and those only partially converted, and the fiscal situations which they have been temporally regulating. These critics expressed by the literature, have been accepted in some laws, and in particular in the Taxpayer Statute or Taxpayer Bill of Rights – law n.212 of the 27 July 2002, which contains general principles of the fiscal system (art.1 of the statute). In the statute is provided that “ it is not possible either to levy new taxes by law decree, or to extend taxes to other categories of subjects” (art.4). Art.3 of the Statute has specifically codified in the tax field the principle that measures can't be retroactive. According to the Supreme Court decisions, this means that in the interpretation of the fiscal laws, when two alternative are possible, must be preferred that which do not implies the retroactivity of the fiscal measure less favourable for the taxpayer.

Besides, art.1 of the statute, in order to avoid the introduction of new rules through retroactivity interpretation, provides that in the fiscal matter the adoption of interpretative rules can be disposed only in exceptional cases and with the authority of the Parliament.

So, while the application of the art. 4 has limited the use of the decree law, the utilization of the legislative decrees is still very frequent.

2. The meaning of legal indeterminacy in tax matters

2.1. Is your domestic tax legislation vague, when defining the tax object, tax subject and/or tax base, leaving a large margin for discretion, or, is it, on the contrary, very detailed, avoiding indeterminate concepts?

According to the Italian Constitution (art.23 and 53) fiscal law must define the tax object, the tax subject, so the person who the tax is referred to, the taxable income, and the tax rate, to calculate the amount of taxes which the taxpayer must pay.

Apart from the constitutional principles, the Italian tax laws are so detailed that tend to regulate all the practical situations. Notwithstanding this fact there are many decrees and circulars issued by the fiscal authority and the Fiscal Agency, which make the fiscal rules even more detailed.

2.2. How do you/does the literature in your country evaluate the use of both techniques in tax legislation?

The use of a detailed legislation has been thought to assure more legal certainty and more guarantees for the taxpayer. Since the 80s, the tax laws, which used to be general and abstract, have become more detailed in order to avoid the use of discretionary power by the fiscal authorities and strictly guide the taxpayers' behaviour. As a result of these facts there has been a massive production of detailed rules which referred to practical cases. In the last years, the tendency to avoid this kind of regulation increased in order to give more space to rulings so the taxpayers can ask the administration the correct behaviour to adopt in a particular situation or personal case and when rules are not clear. The fiscal authorities and the taxpayers are always favourable to detailed rules. Literature and judges, instead, prefer law with a traditional structure, so laws which are general and abstract.

2.3. Are there independent domestic Courts obliged to control the Constitutionality of tax legislation?

In the Italian system the control of the Constitutionality of tax legislation is in charge of the Constitutional Court. Also the legislative decrees and the decree laws are subject to this kind of control. The Constitutional Court do not have the power of the initiative in the Constitutional control, even of the fiscal ones. The access to this kind of judgement can start in two different ways: 1) by initiative of a domestic Court (tax Court, civil Court or administrative Court) and it is strictly connected to the solution of a concrete case that the judge must decide on.

2) directly, in case of relation between state laws and regional laws, or rather when the State or a Region believe a State law or a Regional law to be in contrast with the Constitution.

The first procedure is the most common one in the fiscal field.

2.4. Is legal indeterminacy considered to be unconstitutional/ has a tax rule ever been declared unconstitutional due to legal indeterminacy?

Since the criteria to decide whether a tax law is in contrast with the Constitution are the rules and principles contained in the Constitution, a tax law which is indeterminate, so which is not clear or lacks of defining the tax subject, the tax object or the tax base, could be declared unconstitutional. The fiscal laws, however, in the Italian system are very detailed so it is not possible to speak about indeterminacy of the tax legislation. Therefore, the possibility of a tax law to be unconstitutional because of its indeterminacy, is only hypothetical as there are no case law. Different situation is that of those laws which are difficult to interpret.

3. The consequences of legal indeterminacy in tax matters

3.1. In case of legal indeterminacy not considered to be unconstitutional, who has the final word regarding the interpretation of the rule – the tax authorities or the domestic Courts?

As it has been clarified, in the Italian legal system, tax laws are extremely detailed so it's really rare that they are indeterminate. As regards the different problem of the interpretation of complex rules, the Courts have the final word on interpretation, and in particular the Supreme Court, which has to assure the uniformity in the application of the laws. The Constitutional Court, instead, controls the correspondence between the laws and the Constitution.

In the administrative fields, so in the out of Court procedures, complex cases can originate ruling procedures which are decided by the Fiscal Authorities.

3.2. Is there a Constitutional basis for either the tax authorities or the domestic Courts having the final word on interpretation of indeterminate legal rules?

The duty to guarantee the exact observance, the uniformity in the interpretation of laws and the unity of the national legal system is competence of the Supreme Court. This principle is not in the Constitution but is expressed in national laws. However, it is a principle generally accepted by the Italian legal order because it is strictly linked with the art.111 of the Constitution which provides about the judicial role.

3.3. Is legal indeterminacy normally fulfilled by regulations, administrative rulings and/or case law?

The tax laws have the characteristic to be extremely detailed. However, if they contain elements which make them difficult to interpret and to apply, the fiscal authorities can issue regulations and administrative rulings. As regards regulations, those which have the function of completing and integrate the fiscal matters are usually provided by the law.

3.4. Are administrative rulings binding to the taxpayer and/or the Courts?

As concerns the administrative rulings we can make the following distinction: we have acts of income tax assessment which are issued by the fiscal authority in its relation with the taxpayers. They are simply administrative acts which the taxpayers can appeal in front of a tax Court. If the assessment act is not referred to a Court, it becomes definitive and binds both taxpayer and judges. There are then circulars and resolutions, which are acts usually coming from the central office of the fiscal authority and represent the so called “interpretation of the administration”. Circulars and resolutions are not legal sources so they are binding neither for the taxpayer, nor for the Courts. Circulars have the function to comment in general a specific law, whereas resolutions are decisions of the administration on specific practical cases. In other words circulars are internal acts of the administration and they have the scope to give directive to the fiscal offices. In the Italian system the interpretation of the laws is in charge of the Courts, which can (but it is not compulsory), follow the decisions, the circulars or the resolutions of the fiscal authorities. These acts are not binding for the taxpayers too, and they remain free to act differently. In some cases, however, the law provides that administrative rulings are binding for the taxpayer. This happens, for example, for rulings issued according to the art. 11 of the taxpayer’s Charter. It is a ruling which, as said in art. 11, par.2, of the statute is binding only for the taxpayer who applied for the ruling and only for that case.

4. Relationship between the Tax Administration and the Domestic Tax Courts:

4.1. Do your domestic Courts control application of tax law by your Tax Administration?

Yes, Italian Courts can control the application of tax law by the Italian tax administration. Italian Courts are called to control the application of tax law by tax administration when the taxpayer challenges a fiscal act complaining the unsuccessful or not correct application of a specific tax rule. In this case the Court will judge if the Tax Administration, carrying out its powers, has

applied or not the tax law. For example, the taxpayer can ask the annulment of the notice of fiscal assessment for lack of motivation (art. 7 of L. 212/2000 so called “taxpayer’s charter”).

The Court can decide both about profiles concerning the conformity of the act to substantial norms (the duty of justification, the time-limit, the correct preliminary investigation, etc.) and about the merits of the fiscal claims (if the tax is due or not, if the rules concerning the depreciations or the rules concerning the accrual or the cash basis have been applied correctly or not).

4.2. Do your domestic Courts, in their case law, take into account rulings and binding information emerging from your Tax Administration?

Yes, in their case law, domestic Courts take into account rulings and binding information emerging from Tax Administration, even if Courts are not obliged to observe them.

The decisions issued by the Tax Administration can be divided in *circulars, rulings and binding information*, that can be included in the general class of the *resolutions*. Both resolutions and rulings (or binding information) are decisions of the administration concerning practical cases that can be requested to the Central office by the taxpayer or by the local offices, but only rulings and binding informations are referred to a typical and specific legal regime.

For what concern the *circulars*, usually, after a new law has been adopted, the Tax Administration issues acts for the interpretation of the new law. Therefore, circulars have the function to comment in general a specific law. They are internal acts of the administration. They aren’t legal sources, therefore they have binding force neither for the Courts nor for taxpayers. They have only the scope to give directive to the fiscal offices. They cannot be contrary to laws, decree laws, legislative decrees and regulations.

If the Tax Administration changes the given interpretation of a law, the legitimate expectation of the taxpayer is protected. In fact it is provided that if the taxpayer has had a certain behaviour following the interpretation of the Tax Administration and then this interpretation changes Art. 10 of Taxpayer’s Charter provided that the taxpayer cannot be penalized and interests cannot be requested to the taxpayer that has followed the interpretation of the Tax Administration.

Art. 10 of Taxpayer’s Charter can be applied also to the Tax Administration *resolutions, rulings and binding information*.

In the Italian legal system there are different kinds of tax rulings, as the ruling ex art. 21 L. 413/1991, ruling ex art. 11 Law. 212/2000, ruling ex art. 37 bis (8), DPR 600/73.

Usually the rulings have binding force only for the Tax Administration and never for the Courts and the taxpayer (ruling ex art. 11 Law. 212/2000 and art. 37 bis (8) DPR 600/73). In some cases the ruling can have binding force also for the taxpayer, as in the ruling ex art. 21 L. 413/91

providing that the ruling has binding force only for the scope of the specific fiscal relationship and that if the taxpayer doesn't operate in conformity with the ruling, the taxpayer has the burden of proof. Finally, there is the binding tariff information of the custom administration (CE Reg. n. 2913/92) that bounds all these subjects.

4.3. Does your Tax Administration take into account the domestic Courts case law and/or the ECJ case law when applying the law?

Yes, the Italian Tax Administration takes into account the domestic Courts and the ECJ case law when applying the law.

With reference to domestic Courts case law, it is necessary to say that the Tax Administration is not obliged to take into account principles decided in precedent judgments when applying the law, because they bind only subjects interested in the case and only for what concerns that specific case. Anyway when an established case law is developed, the Tax Administration, usually, follows it. It is not the same for what concerns the ECJ case law. In fact, the ECJ decisions have an important role for the interpretation and application of tax law. The ECJ preliminary ruling for the interpretation of European principles, is binding for the specific case and it must be followed for all cases concerning the same legal issue. Consequently the Tax Administration is obliged to take into account the ECJ case law when applying the law.

It is important to say that in the past the Tax Administration as a rule didn't take into account the ECJ case law, but in the last twenty years the situation has changed.

4.4. Is there a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts?

No, in Italy there isn't a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts.

In fact, in the interpretation of the law, both domestic Courts and Tax Administration must observe the normal rules of interpretation as they are imposed by the Italian legal system.

Anyway, while Courts are never obliged to follow the interpretation given by the Tax Administration, because it are not binding for third parties, the Tax Administration, instead, is obliged to follow the interpretation given in the final decision, at least for what concerns the specific case. For other similar cases the Tax Administration is not obliged to follow the Court case law, but, usually, when an established case law is developed the Tax Administration follows it. In

these cases, often the Tax Administration issues a circular concerning the interpretation of the law.

4.5. Is your Tax Administration legally bound to the decisions of supreme Courts and/or the ECJ?

Generally speaking the Tax Administration is legally bound to the decisions of domestic supreme Courts and to the decisions of the ECJ.

With reference to domestic Supreme Courts, in Italy there is the Supreme Court of Cassazione that is entitled to control the application of fiscal law and the Constitutional Court that is entitled to control the compatibility of (fiscal) law with constitutional standards.

With reference to the decision of Supreme Court of Cassazione, the Tax Administration is legally bound to the decisions of the Supreme Court only if it is party to the suit. Only in this case the Tax Administration is obliged to take into account the decision of the Supreme Court when applying the law, but usually when an established case law is developed, the Tax Administration uses to follow it.

With reference to Constitutional Court's decisions the Tax Administration is legally bound to observe the Constitutional Court's decisions in general. In fact the declaration of unconstitutionality is binding not only for future events, but also for events happened in the past. Anyway, the declaration of unconstitutionality is not binding for active and passive subject position object of final judgments or non contestable acts.

With reference to the decisions of ECJ the preliminary ruling for the interpretation of European principle, is binding for the specific case and it must be followed for all cases concerning the same legal issue. It means that the decisions of ECJ are recognized as legal source of domestic law and consequently Courts, private citizen and Tax Administration are legally bound to these decisions.

4.6. Does your Tax Administration circumvent your domestic Courts' case law?

No, usually Tax Administration doesn't circumvent Italian domestic Court's case law.

As a rule, final decisions are binding only for the party to a suit; consequently, the Tax Administration as well as the taxpayer is obliged to enforce the decision. Therefore, Court's decisions are followed by Tax Administration, but sometimes, when a case law against Tax Administration develops, the Tax Administration tries to obtain positive changes in the law.

5. Relationship between different legal sources (legal pluralism):

5.1. How do your Parliament, Tax Administration and Courts react before the

different legal sources in tax matter (tax treaties and other treaties, EC Treaty, secondary law and soft law)?

In the Italian legal system there is a strong transposition of international and European legal source by Parliament, Tax Administration and Courts (more by high Courts then Courts of first instance). Art. 117 of Italian constitution, as changed in the 2001, provides that “*legislative power belongs to the State and the Regions in accordance with the constitution and within the limits set by European Union law and international obligation*”. It means that the Italian Constitution expressly provides that domestic law (and fiscal law too) must be conform both to domestic constitution and to EC Treaty rules (no all academic commentators agree with this theory).

For what concerns the implementation of the different legal sources in tax matter, EC Treaty tax rules, as well as other international tax treaties, need to be implemented through an ordinary law authorizing the ratification of the convention.

For what concerns the secondary Community legislation the procedure of ratification is not necessary. The secondary legislation requires national acts, as laws, that the specific European act requires. In particular European *regulations* is directly applicable; *directives* need a domestic act to be implemented.

In Italy the topic concerning the legislative and administrative transposition of European law, in the past has been problematic. To remedy this situation has been introduced the yearly European law that includes all the measures necessary for the implementation of European acts and/or ECJ decisions.

5.2. How is the hierarchy of different tax legal source recognized by the constitution and the different domestic powers (Parliament, Tax Administration and Courts)?

Italy has a rigid constitution with the following hierarchy of legal source.

At the highest level there are the Constitution and the constitutional laws, included rules concerning the regions with special statutes. Tax provisions included in these laws are binding for laws of lower status and they are considered constitutional standard for the review of legality.

Between laws included in the highest level and those included in the lowest level there are legal acts in which are inserted reinforcement clauses, for example the Taxpayer’s Charter (L. 212/2000).

Because of the legality principle (Art. 23 Const.) in the Italian legal system laws, legislative decrees and decree laws are considered primary legal sources.

Domestic regulations are included in the secondary legal sources. They are legislative acts of the public administration and can be introduced by the State or local authority. It is provided that the

regulation is subordinated to constitutional and ordinary law, but it is predominant on the regulations of local authorities.

Art. 1 of preliminary rules of Italian civil code provides “experience” as legal source. Because of art. 23 of Italian Constitution, the Tax Administration experience is not relevant for the establishment of the law. Consequently the only field where “tax experience” has importance is the international tax system.

In the hierarchy of tax legal sources European laws are located in a level higher than domestic law. Consequently in the case of a conflict between a Community law provision and a national provision the former takes precedence over the latter.

5.3. Does the taxpayer have access to different legal remedies that assure him/her effective protection of his/her rights granted by tax treaties, EC law and domestic law, or are those legal remedies in fact limited to protection of rights granted by domestic law?

Yes, usually the taxpayer has access to different legal remedies that assure him/her effective protection of rights granted by tax treaties, EC law and domestic law.

If, for the solution of a pending case before a domestic Court, it is necessary to start a preliminary ruling on the interpretation or the validity of the rule, the domestic Court can decide *incidenter tantum*, or, on the base of art. 234 EC Treaty can start a preliminary ruling procedure before the ECJ. For sure, the preliminary ruling for interpretative issues is very important for the protection of taxpayers’ rights violated by the infringement of European law. In fact, when taxes contrary to European law affect the taxpayer, he/she has a personal direct and current interest to contest the tax levy through the appeal of the fiscal act or the reimbursement action.

The practice shows that while Supreme Courts pay attention to European fiscal issues, the same cannot be said for the first instance tax Courts (Commissione provinciale e regionale). In fact the last ones don’t pay much attention to European fiscal rules. This behavior, probably, comes from the fiscal judge’s *status* and from the lack of impartiality of fiscal judge compared with the Ministry of Economic.

While the rights provided by EC treaty find an effective protection in the Italian legal system, Italian Courts are reluctant to apply principles provided by the ECHR to the fiscal matter. Actually, through the reception of them by the ECJ, those principles come inside the European legislation and from it, in some way, they come inside the national legal systems and are beginning to be applied in all fields of law (included tax law) and also in the field of administrative action, as well as in the field of fiscal action (but always with many difficulties).

As it has been said, the Italian Finance Courts and often those of the other European States are reluctant to apply the principles expressed by the ECHR also in the field of taxation. Besides, the European Court has traditionally been very cautious in extending to the field of taxation the guarantees offered by the European Convention of Human Rights.

However, in its decisions, the European Court of Human Rights, in the course of time, has arrived to recognize the application of the ECHR to the following fiscal matters:

1. fiscal administrative penalties (established and settled case-law);
2. tax allowances (ECHR 26.3.1992, Editions Pèriscope v. France);
3. tax refunds (ECHR 3.10.2003, Buffalo v. Italy; ECHR 22.10.2003, Cabinet Diot v. France; ECHR 22.10.2003, Gras Sayoye v. France) ;
4. pre-emptive right of the Fiscal Authority (ECHR 22.9.1994, Hentrich v. France);

In the decision 21.2.2008 Ravon v. France, the European Court of Human Rights has surprisingly extended the legal protection provided by the European Convention of Human Rights to the tax examination field . In this Case the European Court considered the France tax Law in contrast with the art.6, par.1 of the European Convention of Human Rights, even though, according to the France law, the taxpayer has the right to appeal to the Supreme Court as well as to ask damages.

II

Please answer the following questionnaire, which aims at confirming your answers in I

1. Relationship between the Parliament and the Tax Authorities: The influence of the tax authorities on tax legislation

1.1. Does your Parliament control tax authorities in an efficient way? yes - **no**

1.2. Do tax authorities influence tax legislation to a major degree? yes - **no**

1.3. Does your Parliament:

a) usually accept the bills provided by tax authorities? **yes - no**

b) refuse the bills provided by tax authorities? never - **sometimes - often**

c) improve the bills provided by tax authorities? never - **sometimes - often**

1.4. Is your Parliament able to discuss the bills thoroughly? **yes** - no

1.5. Is there sufficient knowledge of tax law in Parliament? **yes** - no

1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? never - sometimes - **often**

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? never - **sometimes** - often

2. Relationship between the Parliament and the Domestic Tax Courts

2.1. Are there independent (Tax) Courts in your country entitled to control legislation?

Yes, in the Italian legal system the Constitutional Court is entitled to control the compatibility of fiscal law with constitutional standards. Tax Courts (Commissione Tributaria Provinciale, Commissione Tributaria Regionale and Supreme Court of Cassazione) are entitled to control the application of fiscal law.

2.2. If “yes”, do they control tax legislation: 0 *ex ante* or 0 **ex post**?

The control is usually *ex post*, both before Constitutional Court and before tax Courts.

2.3. Are Courts competent to clarify whether a specific written tax rule is compatible with constitutional standards? yes - **no** (only the Constitutional Court is able to clarify if a specific written tax rule is compatible with constitutional standards through the preliminary ruling procedure)

2.4. If a high Court is convinced that a specific tax law violates constitutional standards, is the Court in this case allowed to ignore the law? yes - **no** (even a high Court must introduce a preliminary ruling procedure before the Constitutional Court)

3. Relationship between the Tax Administration and the Domestic Tax Courts

3.1. Are there independent (Tax) Courts in your country, obliged to control your Tax Administration?

No, there isn't a direct control. Tax Courts can control Tax Administration only if taxpayers contest the Tax Administration activity in the application of tax law.

3.2. Are your domestic Courts bound to administrative regulations/orders/rulings, which are issued by tax authorities? yes - **no**

Only regulations are binding for Courts, because within the limits of art. 23 of Italian Constitution (legality principle) they are secondary legal sources that can provide elements of fiscal duties different from constitutive ones (in other words regulations can provide elements different from the taxable event, the tax base and the tax rate).

Courts are not bound to orders and ruling because they are not considered legal sources.

If "no", do the Courts follow them in fact? never - sometimes – **often** - very often

3.3. Are first instance Court decisions on a tax case, normally accepted by the Tax Administration (i.e. do they not try to appeal against the decision)?

never - **sometimes** - often - very often

Please report statistics if available!

3.4. Is a final judicial decision on a single tax case, followed by the Tax Administration not only in this case but also in all other similar cases?

never - sometimes - often - **very often**

3.5. How does the Tax Administration react when it is convinced that the final judicial decision is wrong or not "acceptable" because, e.g., it is too expensive for the public?

a) Does it accept the (from their point of view) wrong decision?

never - **sometimes** - often - very often

b) Does it try in another similar case to convince the Court to decide in a different way?

never - sometimes - often - **very often**

c) Does it try to influence the Parliament to change the law?

never - sometimes - often - **very often**

d) Does it make sure that the Internal Revenue Service will not follow this decision in similar cases?

never - **sometimes** - often - very often

e) Does it try “to hide” such a decision, e.g., not publishing the decision with the result that the Internal Revenue Service does not know this decision?

never - **sometimes** - often - very often

If possible, please add statistics to the answers!