

BURDEN OF THE PROOF IN TAX LAW LITIGATION

The burden of proof rule is the decisive rule which shows the judge whom attribute the negative effects in the case he remains in doubt whether a *fact* is true or not.

The burden of the proof will be different in so far as different views on the object and the nature of the judgment in tax law litigation are preferred:

- verification on the due tax (*processo di accertamento*)
 - ➔ burden of proof to the Fiscal Administration
- annulment and substitution of the assessment act (*processo di annullamento – sostituzione*)
 - ➔ burden of proof to the taxpayer
- annulment of the assessment (*processo di annullamento*), which is the radical theory here preferred
 - ➔ the burden of proof does not exist

In fact, following the doctrine of the mere “annulment” (which means that the fiscal litigation is aimed to the pure nullification of the assessment) there is any *fact* in the object of the tax decision the judge is called to statue: so any fact can remains uncertain.

Hence, the adoption of the radical view would imply the radical conclusion that the burden of the proof in such litigation does not exist.