



VIRTEU National Workshop focused on Italy

29th of April 2021 – Session I

The video recordings of the research event are available at:

www.corporatecrime.co.uk/virteu-national-workshop-italy

Costantino Grasso:

Welcome to the national workshop for the VIRTEU research project where we will be focusing on the Italian jurisdiction. I'm Dr. Costantino Grasso, I work as Associate Professor in Business and Law at the Manchester Law School. I am also the principal investigator of the research project. I'd like to thank all participants for getting involved in this extremely important event, [which is] obviously important in the context of the research project. VIRTEU is a multidisciplinary international research project financed by the EU. It aims to explore interconnections between tax crimes and corruption with the intent to reveal in-depth relations between fraudulent and corrupt practices in the area of taxation.

In order to achieve the research objectives, VIRTEU has planned a series of activities such as; background research which was carried out to collect and analyze all essential information that constitute the project's foundation, interactions with the project's experts including both our national leading experts and research associates, a series of roundtables, seminars, and other events aimed at discussing the issues relevant for the research project. And finally, the organization of national workshops - just like the one we are about to begin today, which are aimed at obtaining essential feedback on the research outcomes. Furthermore, we are preparing online questionnaires for professional experts in the subject matter which we will send to you at some point over the course of the next few weeks.

Today's workshop serves a great purpose for the research project's framework. Through a series of questions, members of the National Expert Panel will be called upon to provide critical evaluations based on their professional experience about the relation between tax crimes and corruption. The discussion will aim at shedding light on systemic weaknesses within the context of contrasting such criminal phenomena from a legal and practical perspective. Given the lack of time and how important it is to cover all research objectives, and also to avoid running over-time, I'd like to ask that everyone make an effort to limit their answer time to one or two minutes tops.

On that note, I would like to specify that it won't be necessary to offer the description of the regulatory framework. The work of our Italian National Leading Expert, Professor Antonio Gullo will fill in those gaps. If necessary, you may reference the relevant piece of regulation and you can always send us relevant supporting material which we will review in the context of research. For that very reason, I'd like to ask that you provide precise and concise answers in order to offer the necessary critical analysis to tackle and identify specific issues addressed in the questions. During the actual debate, it won't be necessary for all experts to contribute



to each and every question. Please only intervene if you believe it is important to share your knowledge and professional experience.

The discussion will be divided into two parts lasting roughly 45 minutes each. The first part - the first six questions will be moderated by the project's co-investigator, Dr. Lorenzo Pasculli, Associate Head for Research at Coventry Law School. I, on the other hand, will take on the second part of the discussion; from question number seven to question number twelve. Now I'd like to introduce our panel of national experts in alphabetical order, and I would like to thank them again; Dr. Samuel Bolis, Lieutenant Colonel of the *Guardia di Finanza* (Tax Police), Attorney Marco Di Siena, Partner at *Chiomenti Law Firm*, Dr. Pietro Molino, Deputy Prosecutor General at the Italian Supreme Court, and attorney Fabrizio Reggiani, Partner at the *Severino Penalisti Associati*.

In order to make the experience even more valuable, we invited another panel of experts associated with the research project who will interact with the national experts for the mere purpose of stimulating and supplementing the discussion. I shall go ahead and introduce the panel of experts associated with the project - again, in alphabetical order. I'll start with Professor Antonio Gullo - who is currently absent but should simply be late, full professor of Criminal Law at the University of LUISS Guido Carli, Dr. Pietro Maria Sabella Postdoctoral Researcher in Criminal Law at the University of LUISS Guido Carli, Dr. Rossella Sabia Postdoctoral Researcher in Criminal Law at the University of LUISS Guido Carli, Dr. Pietro Sorbello, Lieutenant Colonel of the Guardia di Finanza (Tax Police), and Dr. Donato Voza, Research Associate at the Center for Financial and Corporate Integrity of Coventry University and PROTAX Researcher. Dr. Laura Valli, member of the Italian National Anti-Corruption Authority, was also supposed to participate but she has informed me that they scheduled her in a meeting at half past four. So, she will try to join us towards the end of the workshop.

Project Experts, unlike members of the National Experts' panel, won't actively participate in the discussion but they can get involved by asking National Experts some additional questions when needed. This way we will be able to enrich the discussion whilst abiding by the time restrictions we have set ourselves. Basically, after the analysis of each research objective, the moderator will ask Project Experts if they wish to intervene. I can see that we already received some questions and thank you for that, some are really interesting. In these cases, we will invite the expert that posed the question to share it with everyone else.

A final note on GDPR, I'd like to thank all of you who have already provided us with the signed Filming and Photography Consent Form. Anyway, your participation in today's session entails your implicit consent to the publication of recordings - as well as extracts of it, on websites, online platforms, and social networks used by the research project or by third parties with whom we have established a partnership. I'll now give the floor to Dr. Pasculli who shall begin the debate.

Lorenzo Pasculli:

Thank you, Costa. Thank you everybody. Given the time constraints, we'll start with the first question which touches upon a phenomenological research objective with a particular focus on the ways in which crimes are committed, especially those of tax fraud, including transnational ones. The purpose of this question is to explore and understand how the phenomenon of tax crime occurs both in the judicial context and in practice.

We shall focus on our jurisdiction, i.e., the Italian one, and we will focus on translational criminal schemes taking into account also those relatively complex practices such as, for example, certain VAT frauds. The first sub-question that follows this broader question - I feel a little like Corrado [*Corrado was a famous Italian entertainer*], I don't know if you remember him - is: which conducts and practices are qualified as tax crimes in Italy? I'd like for someone to give us a list of practices or conducts that are properly defined as tax offenses under Italian law.

Marco Di Siena:

Well, I could try - Marco Di Siena. It might be a good ice-breaker - In relation to direct taxes and VAT (because we also have the whole department of customs and excise duty-related offenses which we shall set aside for the time being) the main types of conduct can be ascribed to two main areas; declaratory offenses which include fraudulent declarations using either invoices for non-existent transactions and/or other tricks, and fictitious or omitted declarations.

We then have another type of offense which consists in the so-called 'collateral offenses' - if we wish to define them as such - which relates to the omitted payment of taxes characterized by a certain fraudulence, which may be the omitted payment of certified deductions as well as the omitted payment of VAT or the use of undue tax credits. We then have fraudulent withholding of taxes and an offense which is in fact forgery for tax suppression, namely the destruction or concealment of accounting records. This is quite a comprehensive framework.

Lorenzo Pasculli:

It would appear to me that the answer was perfectly systematic and within the chronological range we set ourselves. So, if no one has anything to add, and I see that everyone seems to be okay... Dr. Bolis, please, go ahead.

Samuel Bolis:

In relation to the Italian territory, which is undoubtedly larger compared to other countries, we should take into consideration certain local characteristics highlighting their specific traits. I operate in Comasco, near Lombardy, which lies right next to the Swiss border. The phenomena linked to tax fraud falls into two main categories.

Firstly, the carousel frauds which we all know by definition, particularly pertinent to my area because of the logistics applied to importing goods from an extra-EU country or an internal transit from other Central or Eastern European countries from their territory of first entry of goods in the EU or entry to the territory for intra-EU transactions. Therefore, the proximity to Switzerland allows for the setting up of “hidden permanent (business) establishments” that operate abroad - predominantly in Switzerland but are attracted by the Italian territory for tax purposes. Criminally relevant behaviors refer to the use of invoices for non-existent transactions or submission of fraudulent tax returns; Articles two and three touch upon carousel VAT fraud, and Article five which mentions the setting up of hidden permanent (business) establishments.

Lorenzo Pasculli:

Thank you, Dr. Bolis, that was a great answer. Actually, you already answered the second question which focuses more on the criminal aspects rather than on the legal framework. So, we now aim to steer the conversation away from the law and speak about the practice.

What types of tax crimes are more frequently perpetrated in Italy? Dr. Bolis has already given us pieces of information on a specific area. Does anyone want to add something in relation to other parts of the country and/or the national territory? Otherwise, we shall proceed with the rest of the questions.

Pietro Molino:

I can contribute with a perspective that comes from my expertise. I work at the Supreme Court, and I could speak about the percentage of such crimes. Surely, the group [of offenses] that the attorney referred to (failure to pay taxes) undoubtedly represents a large chunk of the Supreme Court's workload - e.g., unpaid VAT, withholding taxes and so on. This topic makes up for a very large area of case law; it particularly relates to the work carried out by the third section of the Court, which focuses on tax crimes. Whilst clearly the other offenses, because of the challenges arising from the ascertainment of facts and their prosecution, can result in an outcome that does not necessarily involve the Supreme Court. So, I can confirm that there is a certain prevalence of this type of crime.

Lorenzo Pasculli:

Excellent and timely, thank you. I believe that Attorney Reggiani would like to intervene.

Fabrizio Reggiani:

I would like to build up on what has been said so far by my colleagues. I can add information about the diachronic evolution that I observed in my professional experience. On one hand,

in the last decade, we witnessed - due to the increase in convictions for economic crimes resulting from the financial crisis, an increase in the crimes mentioned by Judge Molino. These crimes are thereby connected to the failure to pay taxes for a tax debt relating to a tax return that has already been filed.

But on the other hand [I've observed] the disappearance or decrease of some charges of tax fraud linked to an extended interpretation of some phenomena like the ones under Article 3 - although, there could soon be a new expansion based on the rather recent legislative updates. On the contrary, [we've witnessed] a progressive increase, also emerging from media reports, in relation to the charges of the setting up of concealed permanent (business) establishments based on global models with charges that hover somehow at the border between the hidden permanent (business) establishment, which is a gray area that was explored some years ago within the Philip Morris ruling, and the transfer pricing cases that entail all the definitory issues that may let them fall outside the area of criminalization. So, there has been an evolutionary progression that, in my opinion, has affected the quantitative dimensions of different relevant types of crimes.

Lorenzo Pasculli:

Thank you. Let's move onto the next question: what are the transnational tax crimes that most frequently involve Italy, and likewise, which foreign countries are involved in tax crimes committed in Italy?

If there aren't any responses in particular, Dr. Bolis has already offered an overview so if there are no further comments we can carry on. Maybe we haven't said this enough; you are not obliged to answer every question and not everybody needs to participate. We can move onto the next question: what are the most significant tax offenses in Italy in relation to the overall tax evasion both national and transnational?

Fabio Reggiani:

In my experience, allegations of concealed permanent establishment, even if subsequently deemed to be criminally irrelevant - I referred earlier to transfer pricing and to the whole area of evaluation that is grafted between these two phenomena.

Lorenzo Pasculli:

[To Fabio Reggiani] Thank you. [To the audience] Mr. Di Siena.

Marco Di Siena:

If I may intervene, I agree with the comments made by my colleague. Certainly, charges for failure to submit tax returns relating to tax inversion cases or to the alleged setting up of hidden permanent (business) establishments, are quantitatively speaking the ones that stand



out. However, invoices for non-existent transactions are extremely common, which perhaps is less significant if we look at individual cases, but it is undoubtedly pertinent in the grand scheme of things - in terms of social pathology. This behavior is often adopted in transnational crime cases, for instance in carousel frauds, even the international ones, where their operational means is the issuance of invoices for non-existent transactions, which is a predicate offense.

Lorenzo Pasculli:

Great, thank you all. Now, I would like to hear from the panel of project experts; do you have any further questions on what has been discussed so far? No. Good. Question no. 2 aims at evaluating the complexity of the legal system from both a general standpoint regarding taxation or tax law and from a specific standpoint with an emphasis on the fight against tax crime. So, let's discuss the efficacy and effectiveness of the legal system.

The first [sub]question is; how would you evaluate the general complexity of the Italian tax system? Can this complexity inadvertently facilitate tax evasion, or does it jeopardize the strategies of crime prevention, repression, and control? In the event of an affirmative answer, please specify in which ways and provide examples.

Marco Di Siena:

It is not in my intentions to monopolize the floor; I'd like to mention something that is often taken for granted. The Italian tax system is particularly complex and unstable in the sense that it is subject to significant and often very proximate changes over a period of time. These factors certainly do not help the average taxpayer to be compliant. On the other hand, obviously if the taxpayer has a tendency for pathological behaviors, being a fraudster, the simplicity or the particular complexity of the tax system becomes a substantially irrelevant variable. However, at least not too long ago, the complexity of the Italian tax system as well as the way in which the provisions of some criminal offenses were formulated, in particular when the crime of filing fraudulent tax returns caused the criminalization of conducts [that were] not necessarily fraudulent.

All of this is to say that, in my opinion, a simplification [of the tax system] would theoretically help the general enforcement and compliance strategies. It is also true that, while the tax system is surely complex, [it is also characterized] by a higher number of taxpayers compared to other countries. In Italy, we have a number of VAT registered taxpayers that is significantly higher than the one of other EU countries, and it generates practical difficulties when it comes to crime control strategies and the activities aimed at effectively countering [such crimes] because the sample of people that have to be controlled is particularly large.

Lorenzo Pasculli:

Very interesting. These facts lead us to our second question, so I'd like to invite everyone to join the discussion. The second question is not necessarily about the complexity of the general tax system *per se*, but it is concerned with the complexity of criminal law frameworks related to tax crimes.

Mr. Di Siena has already spoken about how some imprecise legal definitions have led to the criminalization of conducts that would otherwise not necessarily fall into the criminal law sphere. So, how would you evaluate the complexity of the tax crime law system, and what are its effects from either a procedural or substantive standpoint?

Pietro Molino:

I'd like to follow up on that as well as add on the discussion regarding tax crimes to [highlight] yet another element of inconsistency. If we examine the evolution over the years, there wasn't always a clear choice as to whether or not to criminalize the failure to pay taxes. We should remember that there was a time in which the legislator chose not to criminalize them and then precipitously re-thought his decision for reasons as simple as the lack of revenue.

The sign of this uncertainty also reveals itself in the amendments made to the various thresholds of criminalization that are either increased or decreased according to different contingencies. This is another element that doesn't contribute (positively) to the simplification of the overall (tax) legal framework, it actually generates uncertainty in the area of the relevant criminal law. This is the experience we strongly felt throughout the years.

Lorenzo Pasculli:

[To Pietro Molino] Thank you very much. [To Fabio Reggiani] Attorney Reggiani.

Fabio Reggiani:

Just like my colleague, Di Siena, mentioned earlier, I don't see the lack of clarity as a means that allows the fraudulent evasion of tax payments but rather, I see a criminalization risk [that's] particularly relevant when we refer to the taxation models that concern different countries adopting (legal) notions that are not necessarily harmonized. So, there is a risk that could affect taxpayers in areas that aren't perfectly defined, or (in relation to provisions) that can be interpreted in different ways.

In such problematic cases there should be safeguards consisting in the thorough assessment of the *mens rea*, which should be always characterized by a marked intentional component that is the intent to evade taxes. However, *prima facie*, (the intent) cannot be adequately evaluated. So, there is a criminalization risk that I think constitutes a very delicate aspect of this area of the law, which also carries implications for aspects that are outside of the legal

field, such as the investments that are made in our country, aspects that are often discussed when this matter (is analyzed).

Lorenzo Pasculli:

That's really interesting; maybe we'll follow up on that later because this is a crucial aspect. So, just a minor remark on this aspect of complexity which is actually - minor not in terms of importance but perhaps more pertinent to the practice than theory, is how the complexity can affect the investigation itself, [I mean] how in practice [it affects] how to conduct investigations, how to prosecute, and then possibly the conviction rate because of this complexity, in one way or another. I don't know if anyone would like to add anything, even though Di Siena and Reggiani already answered this question.

Samuel Bolis:

May I say something on this aspect, I would like to point out that the most recent changes in the field of criminal taxation are not coordinated with the rules on criminal proceedings, which have implications for investigations and for the way in which criminal proceedings are conducted. Let me clarify, with regard to the *modus operandi* of countering carousel frauds, which involve a very high number of perpetrators, including front men and *de facto* administrators, and which notoriously see a direction, normally hinged on professionals, in the past the territorial jurisdiction of the investigations was established pursuant to the general principles of criminal law, and linked to the place the related criminal association operated. This means, under the jurisdiction of the court where the prosecution for [the crime provided for by Art.] 416 [of the criminal code] was brought.

Due to the increase of statutory penalties introduced by legislative decree no. 74 of 2000 over the past two or three years, the sanctioning for issuing and using false invoices has also increased in severity which threatens to shift the territorial jurisdiction where, for example, the first issuance of a false invoice can be traced back to a carousel involving the whole of Italy, shifting the jurisdiction from what once was the organizational center of a criminal association. In practice, this could lead to a fragmentation of allegations of criminal conduct, which, however, only if combined together, can lead to an effective enforcement action. This aspect was introduced too late - and here I would like to briefly mention the Taricco's ruling, which as I think was issued by the Court of Justice after noting that, particularly in Italy, a large number of criminal tax investigations for VAT fraud are destined to be thrown out as "time barred" because the limitation period has passed.

Lorenzo Pasculli:

Thank you; that was very clear and essential. I believe Dr. Sorbello would like to add something, is that correct?

Pietro Sorbello:

Yes. Thank you. I wanted to focus on an interesting point and invite the experts for their opinion on the applicability [of the defense of objective situations of uncertainty of the fiscal provisions] to cases in which the regulatory system is deemed to be excessively complex, integrating - especially with regards to criminal liability, those situations where the objective condition of uncertainty on the scope of application of tax regulations, which constitutes grounds for a case that excludes culpability well beyond art. 47(3) [of the Italian criminal code].

This is a topic that I have examined in the past with regards to the criminal relevance of tax avoidance in the perspective of culpability, seeing as in Italy, article 15 [of Legislative Decree no. 74 of 2000] affects culpability, but within the same structure and in the viewpoint of conventional legality. [I've been reviewing it] instead from the standpoint of general characteristics of regulation, particularly, with regards to accessibility and predictability of the consequences. I always wondered - because I could not find it anywhere, how many times has article 15 applied?

Lorenzo Pasculli:

Are there any responses?

Marco Di Siena:

Well, in my experience, if it is of any use at all, article 15 is a very fine regulation in theory, but its practical application is completely unknown. Thus, we are faced with an institution which, as far as I am concerned, except in very rare cases where it is called upon, finds no real application. This, I must say, goes hand in hand with a traditional reluctance both on the part of the financial authorities in general, without any distinction, and on the part of the courts to apply the defense of mistake in the context of taxation. Also, in the area of administrative taxation we have institutes that substantially refer to the mistake as a defense and therefore a cause of disapplication of the sanction. Yet, from both a pragmatic operational point of view of administrative practice and from a jurisprudential point of view, these are institutes that, despite being found in various regulatory frameworks, struggle to find extrinsic and concrete expression - At least, in my experience. I hope to be proved wrong.

Lorenzo Pasculli:

That sounds great to me. I think we need to move on because time is running out. You already shared your thoughts on difficulties arising from the normative definitions of the offenses. Meaning that in reality unclear definitions tend to attract non-criminal phenomena to the area of criminal law. And you also talked about investigations. Therefore, we shall proceed - unless project experts have further questions, with our next point. This is a point that touches on several questions, so we can kill two birds with one stone. Here we explore the

articulations and therefore the relationships between the six different types of action adopted in countering tax criminality. This comprises; prevention, investigation, sanctions - so, assessing the administrative and criminal punishment system, recovery of tax credit, and any other remedies such as compensation for loss. So, we aim to see how these systems can facilitate tax crime or undermine the preventive repressive system.

The first question is concerned with non-restrictive prevention, so a legal obligation exists independently from the punitive penal system, i.e., a positive regulatory obligation in comparing institutions to promote non-restrictive preventative measures, for example, information campaigns, education, personnel training. If you think that they do exist, please elaborate. Otherwise, give us perhaps an indication of non-binding guidelines or initiatives spontaneously adopted by the institutions. Anything that could be useful to understand what is the obligatory nature of so-called positive prevention in Italy. From Dr. Molino' expression, I gather [that it is]... Zero [LAUGHS.]

Pietro Molino:

I am not aware of any regulatory obligation [LAUGHS.] But... I am speaking out on a subject I know very little about. I wouldn't know. I think the question should be directed to the Tax Administration to see if there are guidelines, if there are [any] internal administrative provisions... Honestly, I wouldn't know how to answer that. I'll intervene again when we cover the investigations.

Lorenzo Pasculli:

Understood. I think we have Bolis and Di Siena...

Samuel Bolis:

If you will allow me to make an observation, I speak as a member of the tax police, the *Guardia di Finanza*, which, for the past decade, has systematically undertaken and pursued an educational initiative in schools and other academic settings known as the promotion of legality and its various facets, touching upon economic, tax legality, and so on. Hence, systematic meetings in classes for students of all levels; from primary [school] to university, obviously tailoring the content to the different levels.

Lorenzo Pasculli:

This initiative was voluntarily carried out by the police force, but it doesn't abide by judicial obligation.

Samuel Bolis:

No, it is not a legal obligation.

Lorenzo Pasculli:

Ehm... Di Siena, if I'm not mistaken?

Marco Di Siena:

I wanted to add - obviously without taking anything away from what my colleagues from the *Guardia di Finanza* have already shared. We, as a civil law legal system, have started experiencing these forms of [cultural] “persuasion” quite recently. To put it plainly, compared to the systems of Anglo-Saxon origin in which these prevention activities are much more institutionalized, we are late to the game. We have to be honest and it's not a form of criticism; the problem lies in the legal tradition.

As far as I am aware, there are no legal provisions requiring the activation of an actioning protocol that deals with the matters discussed. It is also true, as Colonel Bolis rightly pointed out, that both departments of the financial administration as a whole; that is to say, the financial police (*Guardia di Finanza*) and the revenue agency (*Agenzia delle Entrate*), amongst other tax agencies, have recently been moving in a fairly significant manner on compliance activities or facilitating compliance from this point of view, with initiatives, sometimes at educational institutions and sometimes even of a strategic nature. Therefore, avoiding the immediate imposition of sanctions but trying to encourage spontaneous compliance in order to solicit eventual procedures of voluntary compliance, and so on. However, as I said before, we have come to this pretty late, or at least [our lateness is] in line [with the course] of our legal tradition which surely did not value this kind of action.

Lorenzo Pasculli:

Perfect. Thank you, [that was] extremely clear. I think Dr. Sorbello has a question, we'll come back to it at the end of session if that's okay so that we can delve into other points for now, and perhaps we might even answer the question as we keep debating. Tax leniency procedures, such as tax amnesties, exemptions, tax reductions, payment deferrals, installments, how can these encourage corrupt or fraudulent practices or compromise anti-tax crime strategies? [Pause] If there aren't any responses, we can move on. [To Marco Di Siena] Yes, Dr. Di Siena.

Marco Di Siena:

Yes. Apologies, I didn't want to step over my colleagues' shoes. We are a nation where the history of amnesties is one that I would say goes beyond Republican history. In terms of quantity, we certainly have a long history of amnesties, which are more or less important, characterizing our fiscal history in Italy - post-unification, regardless of the State's system of governance. Of course [amnesties] do not aid compliance because they can generate the

possibly erroneous belief that - apologies for lack of better expression - amnesty will come sooner or later. So, it will be possible to pay less than what it is necessary to objectively pay now. By saying that I don't mean to say that amnesties are technically immoral because I do not give moral judgements, but they certainly tend to guarantee or contribute to a lesser validity of both compliance and law enforcement as a whole.

Lorenzo Pasculli:

Extremely clear. Thank you. Moving on, are tax debtors allowed to pay their debts with non-monetary assets? That means with assets other than money. And if so, what effects could this have on tax crimes?

Samuel Bolis:

Here, I can briefly provide an explanation. Generally, the *datio in solutum* for individual tax obligations aren't allowed in our legal system, except for a few marginal cases of direct taxation and donations where the transfer of artwork is allowed. [The consolidated version of the law concerning inheritance tax] has introduced this provision, but I am not aware of it being widely utilized. However, what is used on a very large scale in Italy, with latent aspects - in my opinion - of compatibility with EU law under different perspectives, is the compensation of tariffs and taxation in the construction sector with the execution of urban development projects to obtain tax deductions relating to taxes owed to local authorities. We are talking about extremely large sums of money that are mostly adjudged at the local level in situations that are often characterized by conflicts of interests and that may lead, on the one hand, to corrupt practices (the Italian case-law is full of examples) and, on the other, to a loss of revenue.

Lorenzo Pasculli:

Thank you, I believe this response to be extremely comprehensive.

Pietro Molino:

I can absolutely confirm the Coronei's point of view about the issue of urban development costs.

Lorenzo Pasculli:

Excellent. For the sake of time, we now have to move on. What are the components that are currently listed amongst suspicious activity reports issued by the tax authorities or other financial organizations to the investigative bodies? Are the components of these reports enough for investigation or do you believe that they should be broader? Otherwise, if you feel they are satisfied, would you say that what we have is good enough right now?

Samuel Bolis:

In my personal experience, having spoken to the members of the judiciary's investigative bodies, I can say that the reports under article 331 of the Code of Criminal Procedure produced by colleagues at the Italian Tax Agency ([which] normally cover situations of evasion consisting in the use of false invoices beyond the criminal relevance threshold) normally require further investigative integration, if nothing else, in order to collect further elements concerning the mens rea. This is something that our colleagues can't carry out because they don't act as Officials of the Judicial Police. They're equipped with a more diminished category of investigative instruments. So, essentially there's a structural deficit.

Lorenzo Pasculli:

Almost structural. Yes. Ehm... [To Fabrizio Reggiani] Attorney Reggiani.

Fabrizio Reggiani:

In my experience, I can say that, when significant investigations are in place, especially over the last few years we have registered a rigorous coordination, even in the initial phase, amongst all bodies involved: the Italian Tax Agency, the Guardia di Finanza as the tax police, but then also the individual agents of the Judicial Police coordinated by the Public Prosecutor's Office. So, often there's a rigorous coordination between the different actors who, during the different phases of the taxation proceedings, are required to carry out the tax audit procedures that merge once again with the Public Prosecutor's investigation activities.

This is to say that in our legal system, which is characterized by a legal separation between proceedings aimed at assessing the administrative liability for non-compliance with tax law and criminal investigations [for tax crimes], in concrete terms we find a close interconnection, at least in the more significant cases, that emerges due to the effect of the outcomes that certain decisions have on the criminal proceedings. So, in line with what Colonel has said earlier, that's what I can draw from my experience in the field.

Lorenzo Pasculli:

Thank you. Let's move onto the final questions which I will combine together, and please, everyone feel free to answer the most relevant questions. [They relate to the] Legal consequences: so, sanctions, recovering of [evaded] taxes, and other possible remedies. In your opinion, what is the effectiveness of these legal consequences, let's use this more general terminology. Feel free to specifically cover penalties. Alternatively, [you could elaborate on] compensation for damages and further solutions or tax recoveries. [To Pietro Molino] Dr. Molino.

Pietro Molino:

Yes. Yes. I apologize, I was on mute... I'll focus on criminal sanctions, which, as the common experience has shown, have proved to have a diminished effectiveness when it comes to their concrete imposition. So, apart from the significant degree of detail characterizing the description of the offense, the criminal sanctions conceived for those offenses appear to be quite vague in relations to all aspects concerning their effectiveness, preventive effects, punitive effects, and dissuasive effects (and in relation to all other functions we want to assign to the criminal sanction). The reason lies in the (limited) social condemnation felt in relation to those offenses.

Let me do a quick digression. When we deal with crime prevention, my perception is that the social condemnation and moral blame felt (and therefore the efficacy that the criminal sanction has) in regard to tax frauds or failure to pay direct taxes is much more significant than the one felt in relation to all those behaviors concerning indirect taxes, which somehow seem to entail a lesser social stigma due to the fact that, from the community's overall perspective, not paying tax obligations that are directly connected to your own income is considered in a different way from the behavior of who tries to get off scot-free for failure to pay VAT tax.

[VAT] is generally or consistently considered as a form of taxation that turns out to be collected as a tax added to an economic circuit in relation to different [commercial] transactions and, as such, it is perceived as [a form of taxation whose relevance] is of less immediate recognition compared to income tax, which everyone has to pay according to his/her own income and assets. Also, since many crimes focus on VAT and indirect taxes, even the efficacy of the sanction, assuming it is imposed, is imposed timely, and actually leads to the imposition of prison terms or fines, and to the recovery [of unpaid taxes], it is perceived as a lesser form of application of criminal punishment.

Lorenzo Pasculli:

Thank you. This is a very thorough answer within the scope of the penalties. Does anyone have any other ideas regarding recovery procedures and systems or other remedies like compensation for damages?

Samuel Bolis:

Well, it's more of a reflection of the renewed coordination between criminal, tax criminal, and tax administrative procedures, as well as in light of the well-known court rulings regarding the principle of ne bis in idem. This situation leads us to point out how the regulations that allow, for example, the revision of negotiated penalty subject to the tax payment of the tax, or of the grounds of exemption set out in Article 13 for total payment of the evaded tax, are certainly effective. Once again, preventive seizure aimed at value-based confiscation is a

solution, for example, in terms of the effectiveness concerning the aggression of the asset corresponding to the evaded taxes.

Allow me to explain in a better way: it often happened that, as a result of rescheduling in the face of the tax debt rescheduling with the Equitalia agency, the taxpayer paid the first installments while the subsequent installments were substantially not respected. This resulted in restarting the administrative or penal procedures in order to recover the debt. With the instrument defined in doctrine as corrective measures, the preventive seizure aimed at value-based confiscation is suspended in the presence of payment by installments and the seizure order that was initially imposed takes effect again. Criminal instruments are certainly the most effective because, for example, the instruments provided for in the administrative tax procedure such as precautionary measures to protect the interests of the public treasury and tax authorities, particularly in the Italian Presidential Decree n° 600, aren't applied to any great extent, according to my experience, and are hardly ever adopted even though the requirements are present.

Lorenzo Pasculli:

Thank you very much. Do you have any other relevant issues [that you'd like to discuss]? Particularly in terms of innovative or alternative remedies, or remedies that perhaps exist in the area of corruption, not necessarily related to taxation, that are lacking in the area of tax crime and could perhaps be imported?

Marco Di Siena:

If I may, it's a very figurative observation. At the risk of being contradicted, I think the criminal tax sanctions system is particularly severe nowadays, at least in terms of the range of the penalties. In the face of potential tax evasion, we have an extremely aggressive punitive response from the legal system. The problem isn't so much the abstractness of the punitive response, but its enforcement, as Dr. Molino observed. Unfortunately, there is a fairly significant gap, and therefore the penalty's effectiveness tends to be limited, even though its function is potentially very invasive.

I'd like to add that most of the effective responses are the result of a form of preventive seizure which, in fact, takes place during the investigation phase and which leads the taxpayer, whenever possible, to necessarily share a settlement with the tax agency. In this way, the taxpayer can also "profit" from criminal advantages such as those Colonel Bolis referred to, such as the extinction of the crime through full payment or, in any case, the use of mitigating circumstances and the possibility of agreeing to a plea bargain.

Lorenzo Pasculli:

That sounds great, thank you very much. We need to move forward. Before we move onto the final question, I think that Dr. Sorbello had a question if it wasn't already answered.

Pietro Sorbello:

An observation: in 2011 it was said that there was no obligation on the part of the tax authorities to promote the need for voluntary disclosure. Dr. Molino mentioned the disvalue; well, we also have a problem of tax gap as well as a gap in the perceived social disvalue, because tax evasion is not considered disgraceful.

In 2011, it's been ten years already, there was an advertisement of the Italian Tax Agency that labeled tax evaders as social parasites. First, there haven't been any more similar initiatives. Second, the remedies for the profile of corruption are much broader than those that are already punitive, because the corrupt person is attracted to the accounting jurisdiction, hence the jurisdiction of the Court of Auditors, where those criminal remedies (value-based confiscation, pecuniary compensation) are applied to, except for damages; compensation for harm to image, unless proven otherwise, is equal to twice the perceived utility. So, there are plenty of very oppressive remedies, [but] I'd say [they're] punitive rather than oppressive, thank you.

Lorenzo Pasculli:

Thank you, Dr. Sorbello. That is an interesting point, especially from a comparative perspective. I believe we now have Donato and Rossella who had two pre-planned questions. Donato you may speak.

Donato Vozza:

Thank you very much, Lorenzo. These are very interesting questions, and the answers are very stimulating as well. My question concerns the issue of investigations, particularly their effectiveness in the fight against VAT fraud. It was asked to establish the beginning of operations of the European Public Prosecutor's Office from June 1, 2021, and I read that the Italian High Council of the Judiciary has chosen 15 out of 20 appointed prosecutors.

So, my question is: what will be the impact of the work of the new European Prosecutor's Office on the fight against tax offenses that affect EU financial interest protection? What do you foresee or what do you expect from the Italian perspective? Thank you.

Pietro Molino:

It's almost impossible to give a precise answer. First of all, the topic of the European Public Prosecutor is one that involves aspects of coordination with individual Prosecution Offices that has yet to be explored. Italy's difficulties in dealing with this type of institution are also

derived from the different types of styles, constraints, and institutional placements between the figure of the Italian Prosecutor compared to others who may have investigative powers in other European countries. There are differences in their constitutional and institutional collaboration, their dependence in some ways on inputs from the executive, something that is totally unknown to our system. And, above all, we still don't know how the coordination and the connection between the investigations of the European Prosecutor, of the single European Prosecutors, will be designed regarding the work that is ordinarily carried out.

This is a topic that still needs to be explored, and certainly the fact that we will soon arrive at a specialization of a dedicated figure for the investigation and the repression of these phenomena, at least as far as the taxation of European interest is concerned, should lead to an improvement in the entire repressive policy, at least according to all expectations. We can reasonably imagine this happening, but the actual repercussions of this historic moment on the practical application is still a theoretical issue. We'll probably be able to give some answers six months from now, but right now it's still theoretical.

Lorenzo Pasculli:

Thank you very much. Rossella, you have the floor.

Rosella Sabia:

Thank you for sharing your interesting experiences and for the opportunity of such exchange of views. If possible, I'd like to emphasize the connections between the two phenomena studied in our research, that is corruption and tax offenses, because the difficulty of carrying out this analysis is also related to the fact that it is not always easy to find data on procedures of interest that highlight these connections.

So, my question is: in your professional experience, how often are these two phenomena, corruption and tax offenses, investigated and prosecuted together? And are these interconnections actually more evident in Italian judicial practice than they may appear from an initial analysis of the legislation? Thank you.

Lorenzo Pasculli:

Since the question is relevant to some of the questions in the second part, I will save it for later and maybe we can address all of them together, thank you Rossella. Let's move on to the last point and then we'll have the break. We're about ten minutes late, but all things considered we're on time. The last question is actually very specific, it concerns vulnerabilities within the most relevant sectors of the economy. I am asking you to identify the three economic sectors that you believe are most vulnerable to criminal phenomena, regarding both tax offenses and corruption. You can think about it and then answer directly or write down your answer in the chat.

Economic sectors are infrastructure, communications, education, energy, fishing and agriculture, finance, health, and hospitality. In short, which three sectors of the Italian economy are most vulnerable to tax offenses and corruption. In addition, I'm asking you to identify their biggest vulnerabilities: for example, if you identify communication, education, and health as the three most vulnerable sectors, I'd like to know what their main vulnerabilities are. If you can, refer to concrete cases and examples as well just to help us contextualize.

Samuel Bolis:

The sectors that are most vulnerable to evasion are finance and infrastructures. I believe the reason is that they're two sectors that move very significant economic interests and, at the same time, require a constant authorization regime by the public administration operators. So, operators maximizing economic interest can lead to the culpability of public actors who are in a position not only to control, but also to authorize and monitor economic activities.

Lorenzo Pasculli:

We missed the first part due to audio issues. So, finance and infrastructure. It's great that you identified vulnerabilities in authorizations and controls as well. Any other comments on different areas or vulnerabilities?

Pietro Molino:

If I may, a sector that is rarely considered as a sector to be promoted but actually has a huge financial impact, is gaming and betting. In this sector, the assumptions of loss of revenue in the form of non-payment of the single national tax are substantial. They're all linked to the fact that subjects who are located in foreign countries can bypass the system that grants public security authorizations and enter the Italian gaming circuit in order to evade the obligation to pay the tax established by the agency.

Lorenzo Pasculli:

Perfect. Very interesting, thank you. If you have any other ideas, please write them down in the chat; we are reaching the conclusion. Are there any questions from the project experts on this area? Pietro.

Pietro Maria Sabella:

Yes. Hello, good evening, I'll get right to it. I have a question regarding the sectors of the economy. It's out of scientific and personal curiosity that has to do with the use of cryptocurrencies and the non-taxation profiles of cryptocurrencies. Since a whole series of tax offenses and money laundering crimes can be perpetrated through these new



instruments, what is the approach in this historic moment? From an operational standpoint, is this sector being addressed in any way?

Lorenzo Pasculli:

No one has answered this question; maybe if something comes up later you can mention it after the break.