

Tax Pills

Tax Justice Reform changes ahead for taxpayers and the Revenue Agency

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The step forward, dictated by the Italian *National Recovery and Resilience Plan*, intend to move the fiscal litigations rules of the

Country closer to the international principles of the due process, helping at the same time to advance the entire system in terms of competitiveness and appealing of foreign investors.

The big picture - The reform of justice and tax process, Law no. 130/2022, initiated with the presentation by the government of a common bill by both ministers of Economy and Finance, Daniele Franco, and Justice, Marta Cartabia, is now fully in effect. The regulatory novel, which is helpful for citizens and businesses, implements the objectives of the National Recovery and Resilience Plan, looks at improving the quality of tax rulings and reducing fiscal litigation before the Court of Cassation. To achieve these objectives, the Legislature has revised the pre-existent law guaranteeing more uniform to the rules either on a procedural bases or on an application termes.

The change in detail - Among the new features is the introduction of an autonomous and professional role for the tax judiciary, with 576 tax judges recruited through competition by examinations, while 100 of the current toga judges, 50 from the ordinary judiciary and 50 from other judiciaries, will be able to move permanently and full-time to the special tax jurisdiction. Particularly, on the procedural side, the reform stipulates that low-value disputes are to be assigned to a monocratic judge, while judicial conciliation is to be incentivized. Besides, the ban on testimonial evidence is to be permanently overcome. Also on the agenda is the strengthening of the court of legitimacy, with the creation within the Supreme Court of Cassation of an *ad hoc* new civil section devoted exclusively to the handling of tax disputes. The new scenario will also contemplate a furthermore professionalization.

The changes that most affect the Revenue Agency activities - Law no. 130/2022, related to the tax process reform, provides important developments about the **burden of proof** and **witness evidence** for proceedings started after September 16th, 2022. As far as the Burden of proof is concerned, paragraph 5 bis of the newly reformulated Article 7 of Legislative Decree n. 546/1992, provides that *“the administration shall prove in judgment the breaches disputed with the contested act”* therefore placing the burden of proof on the taxpayer only for fiscal refunds not related to tax assessments. The new Law also provides that the tax Court must annul the tax assessment if the tax Authority does not prove the validity of the grounds for the tax assessment or provides contradictory evidence. This article is in line with *Article 2697 of the Civil code*, which states that the Office must provide timely evidence of the tax assessment. This explicit statement on the rewritten burden of proof principle *de facto* overturns the rule that the burden of proof is always on the taxpayer shoulders redeploying it on the Revenue Agency.

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