

UNIVERSITÀ CATTOLICA DEL SACRO CUORE

Sede di Piacenza

Dottorato di ricerca per il Sistema Agro-alimentare

Ph.D. in Agro-Food System

Ciclo XXXVII

S.S.D. IUS/12



UNIVERSITÀ
CATTOLICA
del Sacro Cuore

Fiscal policies for the sustainable development of the agri-food companies

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Anno Accademico 2023/2024

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Academic Year 2023/2024

I can do all this through him who gives me strength

Philippians 4:13

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Acknowledgements

First, I would like to thank God because He has strengthened me and given me the patience to complete this journey. Next, I would like to thank Professor Allena Marco, who gave me this fantastic opportunity. He is a source of inspiration, and I will always be grateful to him; Andrea Purpura, who motivated me and always gave me proper advice; and Molinaroli Arianna, for her solidarity in sharing this path together. I would like to thank all the other PhD students, particularly Giacomo M. and Veronica V., with whom I started this journey and who have always encouraged and supported me (as well as their beautiful families). Giacomo is a source of inspiration and taught me several values, such as listening to others and being more patient. Veronica is a source of joy and a real friend. Other PhD students that I would like to thank are Marina C., Andrea M., Sara T., Matteo C., and Claudia G. for their support and kindness. I would like to thank my parents G. and M. Barnea, fundamental people, who taught me the most essential values in life, such as family, faith, and, among many other values, that of constantly fighting for what you love and never ceasing to learn something good from any experience or person. I would also like to thank my spiritual father Fanurie, whom God introduced me to on this path, and even though he knows nothing about tax law, he gave me the strength to believe in myself more and the ability to be more courageous no matter what happens. I would also like to thank my grandmother Elena, my cousins, relatives and friends. Among them, I remember, in particular, Giuseppina B. (who taught me how to be more optimistic in life despite her disability and cancer that now afflicts her), Georgiana T., Ana-Maria R. and Dorin R., Giulia B. and Emanuele, Paola B. and Sam, Alina C. and Madalin I., Lucia L., Margherita P., Ida F., Elena C., Daniela B., Francesco T., Laura, Anna L. and Matteo C., Greta D.B. and Lorenzo, Noemi A. and Gianluca F., Marco F. and Guenda G., Claudio B. and Alina S., Vito and Cosetta, Niccolò and Lucy, Stefano L., Giovanni G., Alberto M. and Ilaria G., Mimosa B., Chiara P. and Michele R., George M., Beatrice M., Daria C., Mihaela C. and Marius C, Father Iurie Ursachi and his beautiful family, Mihai and Mariana, Alexandra S., Loredana S., Amalia and David Barnea, Alex T. and Coralia, my godfather C. Toporas and godmother L. Toporas, Raluca C. and Alessandro, Bart, Mina, Seba, and all the other people who helped me, even with a smile, to realise this goal.

Abstract

Air pollution and climate change are driving a surge in natural disasters, making it imperative for the EU and all Member States to take decisive action. The Green Deal represents a bold and ambitious set of measures to tackle climate change head-on. At its core, the initiative is committed to reducing greenhouse gas emissions and fostering cutting-edge research and innovation to protect Europe's natural environment. Central to the proposal is the introduction of targeted measures to provide tax incentives for businesses that embrace environmentally sustainable practices. This approach seeks to establish a strong link between environmental rights and sustainable development, underlining the crucial role of fiscal incentives for eco-friendly resources. By offering preferential taxation for renewable energies, the EU aims to strike an essential balance between the ongoing climate crisis and the availability of natural resources. Moreover, the EU advocates for enhanced resilience of natural resources and aims to minimise and repurpose waste generated by production and consumption activities. This strategy integrates economic growth with environmental preservation and emphasises the pivotal role of sustainability in agrifood companies, encouraging the production of sustainable products through the responsible reuse of materials. Taxation is positioned as a strategic tool to promote environmental sustainability in alignment with international guidelines and to integrate the circular economy into national legislation, particularly within the agri-food sector. The primary objective is to facilitate environmentally conscious production within the agrifood sector, empowering it to compete effectively with more polluting alternatives and emerge as the preferred choice for entrepreneurs. Taxation plays a significant role in facilitating the sector's investment in eco-innovation. Tax legislation comprises a set of regulations and procedures intended to systematically govern environmentally conscious companies and sustainable forms of consumption, ensuring sustainable economic development and fostering new economic initiatives. The focus is on evaluating the current role of sustainability within the agrifood sector, with particular emphasis on its impact on land and water exploitation, biodiversity, and the environmental footprint of intensive livestock farming and agro-industrial production. The European Parliament has called on Member States to take

necessary measures to prevent the depletion of food resources, promote the exploration of new solutions in these areas, and discourage the wasteful production of still-usable goods. In conjunction with digitalisation, sustainability plays a crucial role in steering the development of the agrifood sector and may prove instrumental in navigating the crisis induced by the pandemic. The rise in natural disasters can be attributed to air pollution and climate change. The EU's Green Deal is a comprehensive set of measures aimed at addressing climate change. This initiative focuses on reducing greenhouse gas emissions and promoting advanced research and innovation to protect Europe's natural environment. One of the key proposals is the introduction of tailored measures to provide tax incentives for businesses that adopt environmentally sustainable practices.

This thesis aims first to analyse the main features of the Italian agricultural tax system, after outlining the features of the Italian tax system and its sources. It will then go into the merits of sustainable development and the circular economy, both at a European and national level, analysing a whole series of measures implemented to protect the environment, reduce waste, and, in particular, the incentives available to companies for the green transition. A careful analysis of the Italian, European and international legal system will be carried out, thanks to the opinions of doctrine and jurisprudential pronouncements, in order to outline a common thread that can accompany the understanding of the most recent topics on sustainability in taxation and the most appropriate business strategies possible, in the light of existing legislation. In Italy, there are several key policies and frameworks related to sustainable development such as, for example, the National Strategy for Sustainable Development (NSSD), which is the implementation tool for the UN 2030 Agenda and the national integrated energy and climate plan, PNIEC, which pursues the achievement of climate and energy outcomes by 2030, such as the reduction of CO₂ emissions, energy efficiency and renewable energy. There are economic and financial policies, articulated through budget laws and the Economic and Financial Document (Documento di Economia e Finanza - DEF), which guide fiscal decision-making. In addition to these, there are also green agricultural policies promoted through incentives and regulations to support organic farming, reduce pesticides and harmful chemical fertilisers.

The Ministry of Ecological Transition was established in 2021 with the aim of energy transition and environmental sustainability. This ministry coordinates policies to reduce greenhouse gas emissions and promotes the use of renewable energy.

Circular economy initiatives, including laws and plans dedicated to implementing a circular economy, addressing crucial areas such as waste management, energy use and climate

action. The Green Economy Act supports the use of recycled materials and the adoption of sustainable business practices.

Together, these elements work synergistically to promote sustainable development through regulatory flexibility, economic strategies, environmental sustainability and active community engagement.

Introduction

Purpose of the thesis. Taxation is a tool to disincentivise polluting behaviour, promote environmentally virtuous behaviour and promote sustainable development in agricultural companies. The way in which agricultural activities are carried out has a significant influence on the transition of economic systems towards sustainable development models. The taxation of agricultural enterprises has wider interests than mere taxation. There is a tension between a promotional dimension of taxation and revenue objectives, combined with the need to ensure continuity in the tax structures of a rapidly changing sector. Fiscal policies are a strategic instrument for promoting environmental sustainability under international guidelines, as well as a tool for pushing the circular economy into national legislation.

This research aims to take account of the consequences of the evolution of the tax system, in accordance to sustainability, having as background the agrifood companies. The scope of the research is also to examine tax policies as an incentive or deterrence tool to understand better their role and how they can best evolve.

Socio-environmental issues have now become an integral part of the aims of agricultural policy and the Italian agrifood sector has seen a growth between 2016 and 2020 in agrifood startups with new sustainable solutions. Especially in 2020 there was an increase of new companies proposing circular economy solutions, pursuing one or more of the Sustainable Development Goals (SDGs) set by the UN Agenda 2030¹. The starting points of this research is precisely the concepts of circular economy and sustainable development, which are well established among the principles governing the intervention policies of our country and the European Union. The great theme of sustainability also includes, in particular, world food waste that is acquiring increasingly significant dimensions. An attempt to resolve or mitigate this waste would have important results in terms of the circular economy. In this context, the tax system plays an important role in encouraging procedures and behaviour aimed at solving and reducing these wastes. Food waste is an ethical, economic and environmental issue that is part of the great theme of sustainability and the circularity of resources.

¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

Therefore, the aim is to make a green oriented production possible within the agri-food sector, in such a way as it can effectively compete with the one polluting and capable of becoming a desirable choice for entrepreneurs. Taxation can play an important role by allowing this sector to invest in eco-innovation. The project aims, therefore, at identifying the possible lines of action in the perspective of tax reform oriented to the environmental sustainability of agri-food companies. The tax legislation is able to offer a set of rules to regulate, in a systematic way, green-oriented companies and all forms of consumption that can ensure sustainable economic development, be environmentally friendly, and be capable of creating new economic initiatives. In this context, the role of taxation, in general, can be expressed in the following terms: disincentive function with *ad hoc* taxation ("polluter pays" principle ex Art. 191 TFEU); promotional function with facilities for productive activities and use of virtuous goods (incentives for the use of by-products); function of discriminating the taxable wealth qualitatively by enhancing the production methods and/or the destinations of profits in particularly green-oriented purposes; rewarding with an *ad hoc* taxation the lower consumption of resources, recycling and the least environmental impact. The aim is to analyse the current role of sustainability within the agrifood sector, which is a relevant focus for the implications on land and water exploitation, on biodiversity and the environmental impact of intensive livestock farming and agro-industrial production. Being sustainable for an agrifood company means creating the right balance between the economic aspect and respect for the environment. In this research we will also examine the maxi-plan presented by the EU commission on 14th July 2021 with the tools for zero CO₂ emissions by 2050 and the reduction by 55% by 2030. This plan is based on the development of a new growth strategy towards a decarbonised economy. In jurisprudential terms, there have been two sentences against two Member States for climate inaction and a first sentence against a private company. The Hague District Court ordered on 26th May 2021, Royal Dutch Shell plc (RDS) as a holding company of the Shell Group, to reduce the volume of CO₂ emissions from the Group's activities and products by at least 45% by the year 2030. The Maxipiano represents a strategy that can also be used in the context of the agrifood chain, determining possible tax concessions for companies that virtuously recycle the by-products resulting from their production cycle and applying the concept "polluters will pay more". On the national side, looking at the behaviour of the Italian legislator, this research aims at deepening the issues related to the so called "Environmental taxation" and its fundamental importance in the current period, precisely for the construction of a specific regulatory framework that can effectively ensure sustainability and progressively considering the

continuous influence of the European legislator. The aim, therefore, is to find the best ways of developing and possibly reforming taxation in line with sustainable development, especially in the light of the Italian Government's current objective of constitutionalising the principle of sustainable development.

Research methodology. Development of a legal investigation on the topic, starting from the historical, legal, and economic foundations of Italian agricultural taxation and some European legal systems. In-depth examination of critical issues regarding the relationship between tax systems and sustainable development. Thereafter, an analysis of the critical aspects of the tax system with respect to the need to promote sustainable development at the national and European levels and a legal comparison between different European systems. All of these are from the perspective of implementing tax regulations in agricultural taxation in support of sustainable development.

The research methodology involves conducting a theoretical analysis through a literature review to evaluate environmental taxation and conducting a documentary analysis of Italian tax regulations.

In order to find the best eco-fiscal solutions, the aim is to analyse the most innovative legislative, jurisprudential and doctrinal interventions of recent years. The circular economy of the single market, thanks to digital technologies, can strengthen the industrial base of the EU, encouraging business creation and entrepreneurship among Smes through innovative models supported by digital technologies, like big data, blockchain and artificial intelligence, which accelerate not only circularity, but also the dematerialisation of our economy, allowing Europe to reduce its dependence on raw materials.

Research shows new and promising prospects for energy tax policies, as their role in reducing environmental risks can also become a powerful tool for the recovery of the EU economy.

It is carried out, for example, an analysis of Law n. 166/2016, which clarifies some aspects regarding the taxation of foodstuffs, both from the point of view of income taxes and VAT and both from the point of view of excise duties and local taxes.

Afterwards, the Gadda law will be analysed, which aims at reducing waste by transforming it into opportunities to help people in need, limiting the environmental impact due to waste disposal procedures, and acting on the agro-supply chain. The European Parliament has also called on the Member States to take the necessary steps to ensure that the European Union does not lose any of its food resources, in order to prevent the production of products that are still good, and to encourage the search for new solutions in these themes. After that, the

research will proceed with the description of the European legislation on renewable energy. It will specifically reference the sustainability of biofuels and bioliquids, such as Directive 2009/28/EC on the promotion of the use of energy from renewable sources. Similar sustainability requirements are also contained in the Fuel Quality Directive 2009/30/EC, which contains the specifications for petrol and diesel, and the introduction of a mechanism to control and reduce greenhouse gas emissions. Ultimately, it will be necessary to provide some instruments that are at the same time economically efficient, legally unassailable, and consistent with the technical characteristics of "green" goods.

Expected results. Finding out how tax measures can accelerate the climate shift, either by increasing the tax burdens of objectionable behaviour or by providing incentives for desirable behaviour and technical innovation. How taxation can contribute to the identification of new, more sustainable business production models. Starting a process of review and improvement of the taxation of agrifood in order to build a virtuous system able to reward, ensuring a privileged taxation, companies that really create a sustainable value. Effectiveness of these national and EU tax sustainable policies.

- Analysing the issue of the taxation of foodstuffs, on the basis that in recent times there have been numerous national, and Community legislative initiatives dedicated to the management of these goods, all with the aim of reducing waste.
- Providing tax incentives to encourage consumers and producers to adopt sustainable behaviour.
- Achieving the objectives of agrifood startups focused on sustainability, sub-species fight against food waste: transition to more responsible production and consumption systems, sustainable and inclusive economic growth.

Ultimately, it should be noted that alongside the phenomenon of digitalisation, sustainability is precisely the card to play today and, in the years to come, for the development of the agri-food sector, and this could be decisive in escaping the crisis caused by the pandemic.

Chapter one

Italian tax system in Agriculture

- 1.1 Sources of law in the Italian agricultural tax system
- 1.2 Introduction to Taxation in Italy
- 1.3 The Italian tax system in Agriculture
- 1.4 The Value Added Tax (VAT) system applicable to agricultural enterprises in Italy

Keywords: *Italian tax system; agricultural taxation; tax law; VAT; sources of law; tax system; agricultural taxes*

1.1 Sources of law in the Italian agricultural tax system

The Constitution is the most important source of law in any legal system. It establishes the basic rules for creating laws, including tax laws.

The Italian Constitution contains several provisions and principles related to tax law². The most important constitutional principles in matters of taxation can be found in articles 23 and 53 of the Italian Constitution: reservation of the law and ability to pay principle³. Article 23 requires that “No personal or financial obligations may be imposed on any person except by law”. The legal reserve principle is typical of liberal democracies, embodied in the Brocard *nullum tributum sine lege*, or, according to the Anglo-Saxon expression, no taxation without representation. The principle of reservation is thought to have originated from the Magna Carta of 1215, where English nobles limited King John's taxing power by requiring their consent for new taxes. This principle acted as a check on the unchecked use of regulatory power, protecting certain social classes from potential abuses by the sovereign. This article finds its historical precedent in Article 30 of the Statuto Albertino, which stated that ‘No tax may be imposed or levied unless it has been permitted by the Chambers and sanctioned by the King’.

Today, while the context is more complex, Article 23 of the Constitution retains this function, safeguarding personal wealth and emphasizing the need for coordination between general interests and consent to taxation. It should be specified that the reservation under Article 23 of the Constitution is relative and not absolute because the rules on tax matters can also take root in a regulation, i.e. in a source secondary to the law⁴. The article refers to any act with the power of law, including ordinary law decree-laws and legislative decrees. It is considered a relative reservation because the legislator can delegate the regulation of the subject matter to lower-ranking sources. However, the law must always contain a minimum content, which includes tax presumption, taxable persons, principles for determining rates, and penalties. The current reservation of laws aims to strengthen the legality principle in relation to fundamental individual and community values and interests⁵.

² See Gaspare Falsitta, *Manuale di diritto tributario, Parte Generale*, XII ed., 2023, pp. 42 et seq.

³ Mazzocchi, S., *Lineamenti di diritto tributario*, 2015, Giuffrè

⁴ Beghin, M., *Diritto tributario*, 2020, CEDAM, pp. 77-81

⁵ Carinci A., Tassani T., *Manuale di diritto tributario*, terza edizione, 2020, p. 44

The problem of the minimum content of a law in order for it to be considered compliant with the principle of legality has been resolved by the jurisprudence of the Constitutional Court, which has affirmed that Article 23 envisages only a relative reservation of the law in the sense that it is not necessary for the law to regulate the tax in detail in all its various aspects and moments, as long as it clearly defines the essential elements that characterise the individual tax cases, so as to avoid possible arbitrary application of the tax by the taxing body⁶.

Article 53 of the Italian Constitution consists of the ability to pay principle. This implies that every person shall contribute to public expenditure according to their capability in relation to the principle of solidarity established by Article 2 of the Constitution. A contributory capacity must be effective and current, meaning it needs to demonstrate the ability to contribute to public expenditure in a tangible way at the present moment when the levy is to be made⁷.

The principle of economic and social solidarity (Article 2 of the Italian Constitution) and the principle of equality (Article 3 paragraph 2 of the Constitution) are considered the general axiological basis of the tax regulations. Article 53 also deals with another fundamental issue from the point of view of Italian tax law: the progressivity of taxation. The tax system shall be progressive, meaning that the remuneration proportion (the tax rate) must be lower for those on lower incomes and higher for those on high emoluments. Therefore, not the tax alone, but the tax system as a whole is inspired by the criteria of progressivity, since the Italian tax system also aims to redistribute wealth in addition to financing the State⁸.

Two other articles of the Constitution concern tax law and should be mentioned. Article 75, paragraph 2 of the Constitution, excludes the abrogative referendum on tax laws. Based on the second paragraph of Article 75 of the Constitution, therefore, tax laws, budget laws, amnesty and pardon laws, laws authorising the ratification of international treaties, as well as the others identified by constitutional jurisprudence, are all hypotheses of legislative acts endowed with a passive force, i.e. a capacity to resist repeal, greater than that normally attributed to other ordinary legislative acts.

⁶ Manzoni, I., Vanz, G., *Il diritto tributario, Profili teorici e sistematici*, G. Giappichelli Editore – Torino, 2007, pp. 27-29; Corte cost. nn. 4/1957, 30/1957, 47/1957, 36/1959, 51/1960, 48/1961, 2/1962, 64/1965, 67/1973.

⁷ Orsi C., *Compendio di diritto tributario, riferimenti dottrinali e giurisprudenziali*, Maggioli Editore, 2017, pp. 15-16;

⁸ Gerla, L., *Compendio di diritto tributario*, VI Ed. 2013, Maggioli Editore, pp.15-23

In support of the principle of a balanced budget, the reformed third paragraph of Article 81 stipulates that every law, including the budget law, that imposes new or increased burdens shall provide the means to meet them. Constitutional principles concerning tax matters have three effects. They serve as both theoretical and legal prerequisites for the structuring of tax matters through subsequent regulation; they fulfil a primarily preceptive function in that they define principles and constraints that the ordinary legislature must respect; they fulfil a programmatic function in that they indicate the lines of development of tax matters⁹.

Another article useful for the purposes of this research is Article 9 of the Italian Constitution. In particular, in paragraph 3, the Republic shall protect the environment, also for the benefit of future generations. In this sense, the Italian Constitution is future-oriented, and it protects environmental and ecological interests from the perspective of future generations¹⁰. Following the 2022 constitutional reform of Articles 9 and 41, enacted through Law No. 1/2022, it is clear that the new provisions assign responsibilities to both the ordinary legislator and the tax legislator. They are required to implement measures that encourage economic activities aimed at enhancing environmental protection in terms of income production and outcomes. This approach is in line with recent sustainable initiatives by the UN and the European Union. The last paragraph of Article 41 specifies that the law will create the necessary programs and controls to ensure that both public and private economic activities are directed and coordinated towards social and environmental objectives.

The recent legislative reform amending Article 9 of the Constitution aims to include environmental protection as one of the fundamental principles of the legal system. Additionally, the revised wording of Article 41 of the Constitution incorporates the term "environment" as a constraint on economic initiatives and recognizes environmental protection as one of the goals that entrepreneurial activities should pursue. Article 41 of the Constitution presents a framework that allows for the recognition of the environment both as a limit on business activities and as a purpose of those activities¹¹.

It is also essential to consider specific national laws that regulate the subject matter. In the hierarchy of the sources of law, the system moves from constitutional sources to secondary sources, i.e., laws. When considering tax law, the TUIR (Testo Unico delle Imposte sui

⁹ Purpura, A., *Introduction to the Italian Tax System in Agriculture*, a Course organised by the Agrisystem Doctoral School on the Agro-food system, 2022.

¹⁰ D'Aloia, A., *New Constitutional Keywords: reasoning about future and sustainability*, in Comelli, A., Allena, M., *Ecological Transition and Environmental Taxation*, Giuffrè, Milano, 2023, p. 10-11

¹¹ Mendola, D., *La natura ancepitale della finanza pubblica. La tax green e le agevolazioni fiscali per investimenti ecocompatibili*, IUS, Tributario, Giuffrè, April 2022; Logroscino, P., *Economia e ambiente nel "tempo della Costituzione"*, Riv. di diritto pubblico italiano, comparato, europeo, 29/2022.

Redditi n. 917/1986), unified text of the registration tax (Testo Unico dell'Imposta sul Registro DPR n. 131/1986) and the Statute of Taxpayers' Rights immediately come to mind. The Statute of the Rights of the Taxpayer (Law No. 212 of 27 July 2000) was introduced precisely to implement the constitutional principles which are located in articles 2, 3, 23, 53, and 97 of the Italian Constitution, particularly the principles of democracy and transparency in the tax system¹². It helps to improve the relationship between the tax authorities and citizens. Article 2 of the Statute establishes transparency: tax laws and other acts having the force of law must be clear and transparent, tax laws must have an index, and law referrals should be explicit¹³. With specific regard to the agricultural sector, the Presidential Decree No. 633 of 26 October 1972 on VAT and the Civil Code, which defines the agricultural entrepreneur in Article 2135 of the Civil Code, come into consideration.

In addition to national legislation, there is also supranational legislation, and the primacy of this legislation has been derived through interpretation by the Court of Justice of the European Union¹⁴. This is divided into primary and secondary legislation.

The former is the set of legal norms that supplement the European legal order and consists of the set of treaties by which the Member States ceded part of their national sovereignty to realise the goals of supranational integration pursued by the European Union's legal system. The general principles of European law that condition the interpretation and application of primary legislation must also be considered in this context. Secondary legislation, on the other hand, performs a complementary function to primary legislation and is constituted under Article 288 TFEU (ex 249 EC) by the instruments to produce secondary legislation with binding effects, i.e. the directive the regulation and the decision¹⁵.

Secondary law comprises also recommendations and decisions. Regulations, directives and decisions have a binding effect and according to article 289 TFEU they constitute legislative acts and their ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council on a proposal from the Commission¹⁶.

In summary, EU law comprises the following key components:

¹² (2014). Fairness and Taxation. <https://core.ac.uk/download/491243242.pdf>

¹³ See Toscano, F., *Statuto dei diritti del contribuente e tutela dell'interesse fiscale, analisi dell'evoluzione dottrinale e giurisprudenziale*, G. Giappichelli Editore, Torino, 2007

¹⁴ Judgment of the European Court of Justice, 15 July 1964. - Flaminio Costa v E.N.E.L. - Case 6/64

¹⁵ Pistone, P., *Diritto tributario europeo*, G. Giappichelli-Editore, 2022, pp. 10-31

¹⁶ Terra, Ben, Kajus, Julie, *A guide to the European VAT Directives, Introduction to European VAT 2010*, IBFD, pp. 20-69

1. EU Treaties: This category includes the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and the accession treaties, along with the protocols annexed to these treaties and the Charter of Fundamental Rights (CFR).

2. Acts of EU Institutions: These consist of regulations, directives, and decisions, which can be further classified as:

- Legislative acts
- Delegated acts
- Implementing acts
- Individual decisions

3. Judgments of the European Court of Justice (ECJ): This includes the case law and general principles of EU law.

EU Tax Legislative Powers: Articles 113 and 115 of the TFEU grant the EU the authority to legislate on tax matters beyond just generating revenue for the EU or Member States (MSs). The EU Council of Finance Ministers can:

1. Adopt directives and regulations.
2. Vote unanimously based on Commission proposals.
3. Harmonize MSs' tax laws.
4. Act only to ensure the internal market functions and prevent competition distortion.

At the moment harmonized Taxes are VAT, Directive 2006/112/EC, Excise Duties, Directive 2020/262/EU, Energy products/electricity: Directive 2003/96/EU, Alcohol: Directives 92/83-84/EEC, Manufactured tobacco: Directive 2011/64/EC, Heavy Vehicles and Infrastructure Charges: Directive 1999/62/EC, Contributions to Capital Companies: Directive 2008/7/EC.

The Non-Harmonized Taxes are income taxes (with some exemptions for specific transactions), property taxes, non-harmonized indirect taxes (e.g., vehicle taxes)¹⁷.

Articles 28-37 TFEU and 110-113 TFEU are especially important in European indirect tax law¹⁸.

¹⁷ Traversa, Enrico, *Relations between EU law and Member States law in the area of tax legislation*, SUSEET, Summer School of European Environmental Taxation, Naples, 2022.

¹⁸ LexUriServ.do Consolidated version of the treaty on the functioning of the European Union, Official Journal of the European Union

1.2 Introduction to Taxation in Italy

In this big-picture perspective, once the sources of law are clearly described, the Italian tax system can be analysed in more detailed and concrete terms. In Italy, the government raises revenue through two types of taxes, direct and indirect taxes. Direct taxes affect a direct manifestation of ability to pay and the others an indirect manifestation¹⁹.

1. Direct taxes are levied directly on wealth, whether it is already present (such as property and assets) or is generated over time (through income). The regulatory source for Italian direct taxes is the Testo Unico delle imposte sui redditi (or TUIR, Presidential Decree 917/1986). Italy's primary direct tax revenue source is IRPEF, a personal income tax representing about 40% of the Italian tax revenue alone. This personal income tax is fundamental because it guarantees ample revenue to the Treasury and affects many individuals.
2. Indirect taxes: these taxes impact wealth when consumed or transferred. Among indirect taxes, the most well-known is VAT (value-added tax), whose rules derive from the European Union, as does that of customs duties. VAT is levied at a proportional rate on goods and services supplied by entrepreneurs and professionals and passed on to the final consumer. VAT, or Value Added Tax, affects the wealth of individuals since it is indirectly reflected in their consumption and produces about 27% of the total revenue alone²⁰.

The current tax system consists of two taxes that affect income produced by individuals and collective entities.

The "income taxes" are IRPEF, a personal income tax at a graduated rate, and IRES, a corporate income tax at 24%. People residing in Italy must pay personal tax income tax (IRPEF) on both regular and occasional income. This system is composed of six categories of income. Category 1, for example, consists of Income from real estate properties (agriculture, forestry, and other property, including income from buildings).

¹⁹ Tesaurò F., *Istituzioni di diritto tributario* - parte generale, 2017, p. 103 et seq.

²⁰ See Uricchio, A. F., *Manuale di diritto tributario*, Cacucci Editore, 2020

The tax basis is the total income from six categories, and taxable income for each category is determined by specific rules.²¹ Every person shall contribute to public expenditure according to his/her capacity, and the taxation system shall be based on the abovementioned progression criteria. The central tax in the Italian tax system is the first one, i.e. IRPEF, which was introduced in 1971 with the Enabling Act No. 825/1971. This tax realises the personalisation of the levy, recognising relevance to facts concerning the personal and family situations of the taxpayer and implements the progressivity referred to in Article 53 of the Italian Constitution.

The initial purpose of the personal income tax (IRPEF) was to realise the programmatic goals outlined in the Constitution (Art. 53), which links taxation to the ability to pay principle of citizens and supports the principle of progressive taxation. In this context, the significance of IRPEF within the direct taxation system was evident, considering all taxpayers' incomes and characterised by its exclusive personal nature, association with the state, and progressive framework.

However, in recent decades, IRPEF has diminished in both centrality and importance due to a gradual erosion. This decline can largely be attributed to the emergence of proportional forms of substitute taxation, particularly concerning income from financial and real estate sources and income generated from business and self-employment that falls under the so-called "flat tax." These alternative forms of taxation operate outside personal and progressive taxation. The essential characteristics of this tax are:

- It is a general tax because it affects all taxpayers' income.
- It is a personal tax considering the taxpayer's economic and social situation, subjectively considering personal, family charges affecting the determination of taxable income, in the form of deductible charges, Article 10 TUIR, or the quantification of tax, in the form of tax deductions, Articles 15, 16, 16 bis TUIR.
- It is a progressive tax; consequently, the rate increases as the tax base increases, either through the system of increasing rates applied by income brackets, Article 11 TUIR, or through the provision of tax deductions capable of achieving a similar no-tax-zone effect, in the presence of income from employment, self-employment and 'minor' companies: Article 13 TUIR.

²¹ Andersen, F. G., Asheim, L. J., Mittenzwei, K., & Veggeland, F. (2002). *Taxation of Agriculture in selected countries*. Study of The United States, Canada, Australia, Germany, United Kingdom, Ireland, France, Switzerland and Italy with relevance to the WTO

- It is a periodic tax and is therefore also characterised by periodicity. Pursuant to Article 7 TUIR, IRPEF is due for each calendar year, which constitutes the reference tax period, to each of which an autonomous tax liability corresponds²².

Article 1 of the TUIR (introduced by Presidential Decree No. 917/1986) states that the prerequisite for the tax is the possession of income, falling into one of the categories established by law.

The constituent elements of the tax prerequisite are, therefore, the following: possession of income, the circumstance that such income may be manifested in the form of money or in kind, the traceability of the income to one of the categories identified in Article 6 TUIR.

The corporate income tax (IRES) rate is 24%, and the entities liable to pay IRES are the following:

- companies limited by shares and limited partnerships limited by shares, limited liability companies, cooperative societies and mutual insurance companies, European companies (EC Regulation No. 2157/2001) and European cooperative societies (EC Regulation No. 1435/2003) resident in Italy.
- public and private entities resident in Italy, including consortia, trusts, collective investment undertakings and non-commercial entities (non-profit organisations);
- companies of all types, including trusts, not resident in Italy, for income generated in Italy only.

It is noteworthy that among the three central taxes, only IRPEF has a progressive increase in rates as income increases, while IRES and indirect taxes are not progressive, thus partially disregarding the constitutional principle of progressivity.

Reforms, including the most recent 2023 fiscal reform, must be considered in this legal analysis of the Italian tax system. Laws constantly evolve as society evolves, and numerous reforms have led to the current tax system. Law n. 111 of 2023 has given the Government the authority to reform the tax system in Italy. The law outlines principles and general guidelines that the Government must follow while implementing these reforms.

The primary objective of these guidelines is to prevent, combat, and reduce tax evasion and avoidance, along with achieving many other goals.

One of the key highlights of the reform is the revision of corporate taxation. The enabling act offers relief for companies, such as reducing the IRES tax rate on profits made from

²² Santamaria, B., Santamaria, M., *Manuale di diritto tributario*, CEDAM, 2023, pp. 7-8.

investments, qualified new recruitments, and stable employee profit-sharing schemes²³. To receive the tax reduction, the funds must be used within two years following the tax reduction period, and the amount must correspond, wholly or partly, to the income earned in that period.

For VAT holders and SMEs, a two-year preventive arrangement will be introduced. The tax authorities will calculate the amounts due for income tax purposes for the following two years. Those who accept this arrangement will not receive any Irpef disputes and will be sure of the amounts to be paid.

Corporate tax transparency is not only an indication of a company's contribution to the countries and communities in which it operates but also a testimony to its values. This reform aligns with the European Union's sustainability objectives and policies. Indeed, the EU Commission characterises the fiscal lever as one of the main instruments of performance of the so-called "green transition" strategy to pursue the objectives of the European Green Deal. The fight against evasion and avoidance is essential to achieve the overall goals of sustainable development. Combating tax evasion and avoidance is, in fact, closely linked to corporate transparency and, consequently, to sustainability. Sustainable development requires a fair and efficient tax system and companies' commitment to transparency.

Two new taxes are established in the tax landscape: the plastic packaging tax and the tax on the consumption of sweetened soft drinks (known as sugar tax). It is discussed in the legal doctrine that the excise tax model inspires the application structure of the latter and whose nature can be traced back to the category of taxes with a deterrent function, where the levy tends to correct conduct deemed socially detrimental, but the revenue from it is not intended to finance public expenditure allegedly caused by or related to said conduct²⁴.

It is worth mentioning the tax deductions related to the realisation of interventions to improve the energy efficiency of buildings or for the realisation of interventions to reduce the seismic risk of buildings in areas characterised by danger. IRPEF deductions have also been made permanent concerning interventions to achieve energy savings, in particular the installation of systems that use renewable energy sources. The use of the tax instrument as an incentive to the adoption of determined behaviour by society in favour of the environment and citizens towards certain consumption is thus noted. In particular, we refer to two

²³ Guerra, R. C., *La nuova IRES a due velocità e la sua razionalizzazione*, in Tomassini, A., (ed. by), Giuffrè Francis Lefebvre, 2023

²⁴ Aulenta, M., *Ambiente: piccoli tributi crescono*, in *Rivista di Diritto Finanziario e Scienza delle Finanze*, fasc.1, 1st march 2020

institutions introduced into our legal system with the Budget Law for 2020, the sugar tax and the plastic tax.

The sugar tax is a tax on the consumption of beverages with added sugars established in Article 1, paragraphs 661-676 of Law No. 160 of 23 December 2019. This tax, like the plastic tax, has been repeatedly postponed, and these postponements have been justified by the need not to introduce economic burdens in a period already severely affected by the consequences of COVID-19²⁵.

The implementation of these taxes serves to either deter or incentivize specific consumer behaviours aimed at achieving environmental goals, as exemplified by the plastic tax, or social objectives, such as the sugar tax.

Furthermore, these fiscal measures promote technological innovation in green technologies, as well as the advancement of renewable energy sources and efforts towards decarbonization²⁶. Worldwide plastic production is 20 times higher than in the 1960s and is estimated to quadruple by 2050 if the same level of growth is maintained²⁷. With the introduction of the plastic tax, an environmental factor is involved in the tax, linking at least three elements.

First, the physical unit that causes harm to the environment (plastic), then the requirement for the tax to be applied (the use of the polluting material), and finally the calculation of the taxable amount (based on the quantity of single-use plastic sold)²⁸. The plastic tax, aimed at protecting human health and the environment, raises concerns about its fairness and the possibility of double taxation. Critics argue that the current legislation for the Italian plastic tax does not consider that some businesses have no choice but to use virgin plastic instead of recycled plastic. This tax overlaps with the existing environmental tax on plastic packaging recycling, potentially resulting in double taxation and causing more financial strain on businesses.

²⁵ Falsitta G., *Manuale di diritto tributario – parte speciale*, 2021, p. 1281 op. cit; art. 16-bis del TUIR; art. 14 DL 4 giugno 2013, n. 63, come modificato dall'art. 1 della legge 27 dicembre 2019, n. 160

²⁶ Acerbi, F., Lio, M., *La fiscalità fattore di sostenibilità ESG: good tax governance e ruolo delle Funzioni fiscali delle imprese*, il Fisco n. 12/2023, pp 1155-1163

²⁷ Corasaniti, G., *La Plastic Tax tra principi costituzionali, disciplina interna e compatibilità con l'ordinamento UE*, in *Politiche fiscali e green economy: tendenze evolutive della transizione ecologica*, ed. by Martis, M., Edizioni Scientifiche Italiane, Napoli, 2023, p. 139; Muratori, A., *La plastic tax, dopo liti e revisioni, è ora legge dello stato: ma è utile, o no?*, in *Ambiente e Sviluppo*, 2020, p. 7

²⁸ M. Allena, A. Purpura, A. Molinaroli, *Fiscalità indiretta e ambiente: la “Plastic Tax”*, Workshop organised by the Catholic University of the Sacred Heart, 28 April 2022; art. 1, paragraphs 634-652, L. 27 Dicembre 2019, n. 160

Therefore, there are valid reasons for postponing the implementation of the plastic tax until a complete reassessment of the tax is conducted²⁹. Numerous points of criticism arise with regard to the plastic tax, as there is a risk that this instrument will not be suitable for achieving its goals and that it will be reduced to revenue collection and result in damage to the sector's production chain. The objectives pursued by the legislator through the introduction of the plastic tax could equally well be achieved without the use of a tax levy. Plastic packaging is already subject to an environmental levy set by CONAI, which affects most single-use products³⁰.

In matter of food waste there is the Gadda Law 166 of 2016. The legislation places particular emphasis on food donation, pursuing actions and objectives defined by the principles of the circular economy. One of its aims is to reduce environmental impact and prevent waste. The legislation introduces the concept of surplus and wasted food for the first time in the Italian legal framework, as set forth in Article 2(c). This law introduces significant simplifications with regard to documentation requirements. It streamlines the procedure with the objective of increasing donations. Donated products are not subject to direct taxation, thus enabling the deduction of incurred costs. Similarly, for VAT purposes, donated products are regarded as destroyed, thereby precluding the imposition of tax and enabling the deduction of VAT on purchases³¹.

²⁹ Allena M., *Plastic tax Italia rinviata al 2026. Gli impatti su imprese e ambiente*, We Wealth, 2024

³⁰ Corasaniti, G., *La Plastic Tax tra principi costituzionali, disciplina interna e compatibilità con l'ordinamento UE*, in *Politiche fiscali e green economy: tendenze evolutive della transizione ecologica*, ed. by Martis, M., Edizioni Scientifiche Italiane, Napoli, 2023, p. 152; Muratori, A., *La plastic tax, dopo liti e revisioni, è ora legge dello stato: ma è utile, o no?*, in *Ambiente e Sviluppo*, 2020, p. 11; This is the contribution for the operation of the consortium, which is legitimised by Article 41(2)(h) of Legislative Decree No 22 of 5 February 1997

³¹ Nastri, M., P., *La riduzione degli sprechi alimentari nella transizione verso l'economia circolare*, *Diritto e pratica tributaria internazionale*, n. 4, October 2019, p. 1015

1.3 The Italian Tax System in Agriculture

The agri-food supply chain is the leading economic sector in our country, and evidence shows some encouraging results in sustainable development. This testifies to an increasing focus on the management of risks and opportunities arising from global changes³². The tax laws in the agribusiness system cover the regulations related to taxes in the agriculture and food sectors. This area of law is crucial for ensuring the proper functioning of the agribusiness market, providing tax fairness, incentives for sustainable production, and consumer protection.

Taxation of agricultural enterprises has generally always received favourable treatment by the tax legislature which over the years has introduced various concessions for the agricultural sector, underlining the desire to give it substantial privileged legal treatment³³. The agricultural sector is the beneficiary of a favourable tax regime in which the optional flat-rate scheme reserved for collective entities on the one hand and a system of income determination on a cadastral basis, on the other hand, coexist, with also a VAT regulation aimed at facilitating taxpayers engaged in agricultural activities³⁴. This treatment assumes that agriculture is an activity exposed to unforeseen and unpredictable weather factors and carries out land conservation. Farmers and agribusinesses often benefit from preferential tax treatment. For instance, in Italy, there are reduced VAT rates for essential agricultural and food products and tax incentives for organic and sustainable production.

Agribusinesses are subject to direct taxes such as IRPEF (Personal Income Tax) for individual producers and IRES (Corporate Income Tax) for businesses, as well as indirect taxes like VAT (Value Added Tax). Those operating internationally must comply with the tax regulations of their countries, which involves managing double taxation and adhering to

³² *La sfida della sostenibilità per la filiera agroalimentare italiana* | CDP

³³ C. Fontana, *La fiscalità dell'impresa agricola*, Giappichelli, Torino, 2017, p.33; In this sense, it is also considered the final report of the Study Group on Tax Erosion, of the Ministry of Economy and Finance, 22 November 2011 and Article 2 of Law 23/2014, which has, in effect, delegated the Government to reform the cadastre, with a view to revising the now obsolete cadastral values.

³⁴ See C. Fontana in *Studi di diritto tributario*, ed. by F. Tesauero, *La fiscalità delle imprese agricole*, G. Giappichelli Editore Torino, 2017 p. 23

international tax agreements. Within the European Union, the Common Agricultural Policies (CAP) significantly influence the tax regime of the agribusiness sector, harmonising tax regulations among member states through directives and regulations and committing most of the resources of the European budget³⁵.

From the point of view of the national legislation, in particular, for IRPEF purposes, Articles 32 to 34 of the Consolidated Income Tax Law (TUIR), pursuant to Presidential Decree no. 917/1986, contain the specific discipline of agrarian income, which applies to agricultural activities (such as the cultivation of the land, forestry and animal breeding) to related agricultural activities, such as the handling, preservation, processing, marketing, valorisation, even if not carried out on the land, of agricultural products obtained mainly from the cultivation of the land or forest or from animal breeding, with reference to the assets identified by the Ministerial Decree of 13 February 2015.

In the context of business income, pertinent legislation is outlined in Title II of the T.U. pertaining to IRES and specific regulations for individuals and partnerships set forth in Title I of the T.U. relating to IRPEF. Within the framework of the T.U., self-employment activities give rise to four distinct legal scenarios, with a particular focus on two cases: income derived from agrarian activities and income derived from business activities. Article 55 governs income derived from business activities and additionally categorizes income generated from engaging in agricultural activities under Article 32 as business income³⁶.

Income from agricultural activities is determined based on cadastral values. The procedures for applying the special regime for agricultural companies were established by Ministerial Decree No. 213/2007. This special regime, which allows income to be determined based on cadastral values (as per Article 32 of TUIR), applies to partnerships (snc - sas), limited liability companies (srl), and cooperative societies that qualify as agricultural companies under Article 2 of Legislative Decree no. 99/2004. The option to calculate income according to Article 32 TUIR has been available since the 2007 Finance Act (Law No. 296/2006)³⁷.

³⁵ Fontana C., *La fiscalità delle imprese agricole*, G. Giappichelli-Torino, 2017, p. 46; Nugent, N., *Governo e politiche dell'Unione europea*, vol. III, Bologna, 2008, p. 110; Ingrosso, M., Fiorentino, S., *I tributi nella giurisprudenza delle Corti. Profili applicativi degli istituti tributari tra giudice nazionale e giudice comunitario*, Napoli, 2015, p. 19

³⁶ Zizzo G., *L'imposta sul reddito delle società*, in *Manuale di diritto Tributario, parte speciale*, Falsitta, G., ed. by, CEDAM, p. 289

³⁷ Napoli G., *Gli aspetti fiscali delle imprese agricole tra novità e criticità*, in *Formazione Professionale Continua Unificata per i Commercialisti*, 2023
https://www.fpcu.it/App_Common/Files/FilesEventi/793026/Gli%20aspetti%20fiscali%20delle%20imprese%20agricole-min.pdf

As mentioned, the agrarian income regime determines income based on Article 34 of the TUIR through the application of valuation rates.

The legitimacy of 'lump-sum', 'synthetic' or 'inductive' methods of quantifying the taxable base and, above all, of the land income determination system appears uncertain. In fact, aiming at 'average' criteria referable to the 'mass' and not to the 'person', seem to conflict with the requirement of effectiveness that should characterise the ability to pay principle referable to the person. In the determination of property income, an abstract taxation criterion is employed, whereby the individual concrete tax relationships are renewed on an annual basis without the necessity for further concrete taxation³⁸.

In order to facilitate the agricultural sector, the Italian State introduced a number of favourable regulations from the year 2015 until the 2017 Budget Law.

The State, through tax legislation, has adapted to the evolution and development of farms, expanding the favourable regulations for the agricultural sector. With the 2017 Budget Law, a provision was introduced that abolishes the payment of IRPEF on land income for the three-year period 2017-2019 for direct cultivators and professional farmers.

According to statements by the head of government and the Ministry of Agricultural Policy, this measure aims to reduce the tax burden on farmers, in recognition of the specificity of the activity under consideration, which, in doing business, produces common good, as well as environmental, landscape and cultural benefits³⁹. These individuals, therefore, in addition to not paying IRPEF for three financial years, will not pay IRAP either, because the 2016 Stability Law repealed it, and they will not pay IMU, because it too was repealed. Moreover, if they operate sectors, such as the dairy sector, they will in fact not even pay VAT, because, thanks to the system of the flat rate of this tax, the VAT rate on purchases has been set at the same rate as that on sales⁴⁰.

More specifically, paragraph 44 of the Sole Article of the Budget Law for 2017 (Law No. 232/2016) stipulates that, for the three-year period 2017-2019, 9. Income derived from land by those engaged in agriculture on a full-time basis, whether as owners or tenants, is exempt from taxation. This includes income from direct cultivation and from agricultural entrepreneurs registered with the social security system. In the case of IAPs, the aforementioned provision makes reference to Article 1 of Legislative Decree No. 99/2004.

³⁸ Allorio, A., *Diritto processuale tributario*, IV ed., Torino, 1969, p. 82

³⁹ Fontana, C. *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017

⁴⁰ See Miele, A., *La fiscalità dell'impresa agricola*, CEDAM, 2020

It should be noted that, in addition to natural persons, this article also encompasses, under certain conditions, partnerships, corporations and cooperatives.

Paragraphs 70 to 72 of the Stability Law for 2016 (Law No. 208/2015) provided a general exemption from IRAP for all individuals engaged in agricultural activities who were already paying the tax at a reduced rate. The amendment, as a consequence of the stipulations set forth in the aforementioned paragraph 72, is to be implemented with effect from the subsequent tax period, as of 31 December 2015. Consequently, all solar entities are to be subject to the change from 2016 onwards.

From the perspective of legislative technique, the amendment was enacted by the repeal of subparagraph (d) of Article 3, paragraph 1. Legislative Decree No. 446/1997 was amended by the introduction of a new subparagraph (c-bis) in Article 2, which identifies the subjects not affected by the tax. Furthermore, Article 45, paragraph 1, of Legislative Decree No. 446/1997 was repealed, which had set the IRAP rate for entities operating in the agricultural sector, as well as for small-scale fishing cooperatives and their consortia, at 1.90 percent, as referenced in Article 10 of Presidential Decree No. 601/1973.

The Italian taxation on incomes in the agricultural sector is based on the cadastral criterion introduced more than two centuries ago, and it is regulated by Presidential Decree No. 917/1986 (TUIR)⁴¹. It can be observed that for the purposes of direct taxation, the income from agricultural activity must be determined not analytically, but according to the rules of the cadastral law. Tax law follows different methods in determining the of the tax base and it stipulates that the income of land is determined with the cadastral system, a system that provides the ordinary average income and not the actual income of the estates⁴². The object of land taxation is "a categorized and standardized wealth" that is the result of cadastral estimation and not the actual profitability of the agricultural activity.

Income taxation is based on the cadastral value and, as stipulated in Circular No. 50/E of 2010 issued by the Agenzia delle Entrate, such taxation must align with the actual business activities undertaken by the company. It is essential to note that a company that fulfils the formal requirements can be categorised as an agricultural company and, consequently, avail itself of the special preferential taxation of income based on the cadastral value⁴³.

The first income category consists of land income, identified by the legislator as income inherent in land and buildings located in the territory of the State, which are or must be

⁴¹Majo, A. D. (2012). *Taxation on Incomes in Italian Agriculture*. QA - Rivista Dell'Associazione Rossi-Doria. <https://econpapers.repec.org/RePEc:rar:journl:0245>

⁴² De Mita, E., *Principi di diritto tributario*, Giuffrè, 2011, p. 26

⁴³ Comm. Trib. prov. Emilia-Romagna Forlì, Sez. I, Sentenza, 18/10/2021, n. 207

registered, with attribution of annuity, in the land cadastre or in the urban building cadastre⁴⁴. The relevant rules for personal income tax purposes are in Articles 25 to 43 of the TUIR⁴⁵. Taxation on a cadastral basis applies to natural persons, limited liability companies and non-commercial entities. Companies, on the other hand, as a general rule, only produce business income, with the consequence that the total income of the latter and of commercial entities from whatever source, is in any case business income determined according to the rules governing that income category (Art. 81 TUIR). May opt for the taxation of income on a cadastral basis for partnerships, limited liability companies and cooperative societies, which qualify as agricultural companies pursuant to Article 2 of Legislative Decree No. 99 of March 29, 2004, i.e., companies that exclusively carry out the activities the agricultural activities specified in Article 2135 of the Civil Code.⁴⁶

There are provisions for determining a flat-rate income for companies engaged in agricultural activities. This regime is mandatory for sole proprietorships engaged in agricultural activities (Art. 32 of the Consolidated Text), optional for sole proprietorships engaged in breeding activities above certain limits (Art. 56, para. 5 of the Consolidated Text), and for other agricultural activities (Art. 56-bis of the Consolidated Text).

Partnerships, limited liability companies, and cooperative societies that meet the requirements of agricultural companies can also choose to be taxed under Article 32 (Art. 1, paras. 1093-1096, of Law No. 296 of 2006)⁴⁷.

In other words, income deriving from farming and related activities pursuant to Article 2135 of the Italian Civil Code is taxed according to a flat-rate system, as can be deduced from Article 32 of Presidential Decree No. 917 of 22 December 1986 (the so-called TUIR), which defines agrarian income as the part of the average ordinary income of land attributable to the working capital and organisational labour employed, within the limits of the land's potential, in the exercise of agricultural activities on it. Even for this type of income, therefore, if we consider the criterion established by Article 34 of the same Consolidation Act, we disregard the identification of the actual income in order to resort to a presumed average income calculated on a lump-sum basis with reference to parcels of land, quantifying the yield, both

⁴⁴ See Pensieri, S., Sezione III *Le categorie reddituali: 1 i redditi fondiari*, in *Manuale di diritto tributario* ed. by Falsitta Gaspare, p. 155 et seq., CEDAM 2018.

⁴⁵ In article 25 of the TUIR, land income is defined as “income from land and buildings located in the territory of the State which is or must be registered, with attribution of rent, in the land register or in the urban building register”.

⁴⁶ Tesaro F., *Istituzioni di diritto tributario*, 2-parte speciale, 2016, Utet Giuridica, p. 39 and on.

⁴⁷ Contrino, A., Della Valle, E., Marcheselli, A., Marelli, E., Marini, G., Messina, S. M., Trivellini, M., *Fondamenti di diritto tributario*, 2021, p. 240

in relation to the labour factor and the capital factor the entire agricultural matter has been brought back to the cadastral approach⁴⁸.

One question arises on this point. Is the cadastral system suitable for representing the agricultural sector's ability to pay principle⁴⁹? Such a method of determining land income has led to various doubts about its constitutionality in light of the principle of the effectiveness of the ability to pay under Article 53 of the Constitution⁵⁰.

There's a historical question about the constitutional legitimacy of land income as taxable income. Land income is an ordinary average income. "Average" because it is calculated from an average of several years to an entire production cycle, reflecting crop rotation and the favourable or unfavourable events of the years, so that these offset each other. "Ordinary" because it belongs to "a farmer of normal ability to apply production techniques generally adopted in the area, neither more advanced nor more backward than others". The tax base is not the real wealth produced, but the abstract capacity of the land to produce it.

This seemed at odds with the principle that the ability to pay in the Italian system must be personal, actual, real. It was all brought before the Constitutional Court under the profile of violation of the principles of ability to pay, equality and reservation of law. The Constitutional Court, however, legitimised the cadastral system with its ruling of 31 March 1965 no. 16, stating that if the object of taxation is a productive thing, the taxable base is the aptitude of the good to produce an income, not the real income: it is the productivity, not the product. This system encourages a congruous use of the good and favours the fulfilment of obligations of economic solidarity⁵¹.

However, this entails grounds for conflict with the current tax system, which has evolved from real to personal taxation.

In light of these considerations, the cadastral system appears illegitimate and inadequate to represent the evolution of agricultural technology. Not only does this lead to the legitimate avoidance of taxation of actual income over land income, but it also encourages elusive practices. The possibility of exempt income and the lack of assessments may, in fact, induce the masking of entrepreneurial income as land income.

⁴⁸ See Di Marzio, F., Giordano, R., *Impresa agricola e fisco*, Giuffrè, 2022, pp.4-5;

Picciaredda, F., *Redditi fondiari* (dir. Trib.), 2016, <https://iris.unica.it/retrieve/e2f56ed5-5357-3eaf-e053-3a05fe0a5d97/Redditi%20fondiari%20%5Bdir.%20trib.%5D%20in%20%2522Diritto%20on%20line%2522%202016.pdf>

⁴⁹ Nichetti, B., *Il principio di capacità contributiva nell'imposizione catastale del sistema agricolo: effetti della separazione tra reddito agrario e reddito dominicale*, introdotta dall'IMU, Riv. dir. trib., fasc.4, 2013, p. 351

⁵⁰ Carinci A., Tassani T., *Manuale di diritto tributario*, 2022, p. 137 e ss. Op.cit.

⁵¹ See Muleo, S., *Impresa agraria ed imposizione reddituale* in *Saggi di diritto tributario*, Collana diretta da Miccinesi Marco, Tabet Giuliano, Tesoro Francesco, Giuffrè Editore, 2005, p.132 e ss

IMU, introduced by Article 13 of Law Decree 201/2011, converted into Law 214/2011, as from the 2012 tax period, is also part of this context and it has rebuilt the Cadastral system, through the division between agrarian income and farmland income (which will be subject to capital levy). Therefore, agrarian income is now closer to the real taxable capacity of the farmer. As long as there is no revision of the relevant valuations, however, the tax treatment of the agricultural sector will remain unbalanced in a patrimonial sense.

In 2012, the new property tax IMU (Imposta municipale propria) replaced the Italian Council Tax (ICI). The standard 0.8% rate applies to most other properties in Italy. The rate is fixed by the municipality that can change this rate by 0.2%, by issuing local regulations. Starting in 2016, direct cultivators and professional agricultural entrepreneurs who are registered in the Agricultural Register are no longer required to pay IMU for the agricultural land they own and manage. Additionally, IRAP on agricultural land has also been cancelled since 2016⁵². More specifically, as from the 1st of January 2016, pursuant Article 1 paragraph 70 of Law No. 208/2015, are exempted from paying IRAP entities that carry out agricultural activities within the meaning of Article 32 TUIR, those referred to Article 8 of Legislative Decree No. 227/2001, as well as cooperatives and consortia referred to in Article 10 of Presidential Decree No. 601/1973⁵³. As of 2016, agricultural land, including uncultivated land owned and managed by direct cultivators and professional agricultural entrepreneurs registered in the agricultural register, regardless of their location, is exempt from paying IMU⁵⁴.

Article 1(758) of Law 160/2019 exempts agricultural land from the tax:

- owned and managed by direct farmers and agricultural entrepreneurs professional farmers within the meaning of Article 1 of Legislative Decree no. 99 of 29 March 2004, enrolled in the agricultural social security system, including the agricultural enterprises referred to in Article 1(3) of the abovementioned Legislative Decree No 99 of 2004 regardless of their location;
- located in the municipalities of the smaller islands listed in Annex A to Law No 448 of 28 December 2001
- of unalterable agro-forestry and pastoral use, with collective ownership that is not visible and non-deductible;

⁵² Falsitta, G., *Manuale di diritto tributario – Parte speciale*, 2021, p. 169 e ss; Decreto crescita art. 16 ter, d.l. 30 April 2019 n. 34; Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, p. 33

⁵³ Fontana C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore- Torino, 2017, p. 91;

⁵⁴ Macalli, M., *Le esenzioni IMU*, Key Editore, 2023, p. 86

- located in the mountain and hill areas defined in accordance with Article 15 of Law No 984 of 27 December 1977, on the basis of the criteria laid down in the Ministry of Finance Circular No 9 of 14 June 1993, published in the Ordinary Supplement to the Ordinary Supplement No 53 to Official Gazette No 141 of 18 June 1993⁵⁵.

As mentioned before, the 2017 Budget Law stipulates that, within the three-year period spanning 2017 to 2019, the dominical and agrarian incomes of direct cultivators and professional agricultural entrepreneurs (IAPs) will not be included in the calculation of the Irpef taxable base (c.44)⁵⁶. The exemption was subsequently extended on an annual basis, extending up to and including 2023. However, it has not been renewed for the year 2024, but in response to public outcry, an amendment was introduced during the legislative process, resulting in the Milleproroghe decree, which provides tax relief for agricultural activities. In summary, the income derived from agriculture and land ownership by those engaged in farming and agricultural business is exempt from taxation up to a value of EUR 10,000, with a 50% reduction in taxation applied for amounts exceeding this threshold up to a value of EUR 15,000. Agricultural companies that have elected to be taxed under the special regime based on cadastral findings are not eligible for the relief. The relief is currently limited to a two-year period, spanning 2024 to 2025. The special regime for determining taxable income for agricultural companies was introduced, as mentioned above, by Law no. 296/06 ('2007 Finance Act'), article 1 par. 1093, and it was then repealed in 2013, only to be reinstated by Article 1 paragraph 36 of Law no. 14/13 ('2014 Stability Act'). Under this scheme, both partnerships (snc – sas), limited liability companies and cooperatives that qualify as agricultural companies pursuant to art. 2 of Legislative Decree no. 99/2004 may opt for the determination of income on a facilitated regime according to the cadastral basis (pursuant to art. 32 TUIR).

It is required that the companies listed above meet both of the formal requirements necessary to be considered 'agricultural companies' for civil law purposes (i.e. exclusivity of the company object and the caption 'agricultural company' in the company name or denomination⁵⁷. The same option is also granted to partnerships and limited liability companies set up by agricultural entrepreneurs that engage exclusively in the handling, preservation, processing, marketing and valorisation of agricultural products sold by their

⁵⁵ Vecchione, G., Trevisi, S., Tronelli, M., E., *Imposta Municipale Propria (IMU)*, in *Impresa agricola e fisco*, ed. by, Di Marzio, F., Giordano, R., Giuffrè, Milano, 2022, p. 537

⁵⁶ Fontana, C., *La fiscalità delle imprese agricole*, op. cit. p. 92 et seq.

⁵⁷ Di Marzio, F., Giordano, R., *Impresa agricola e fisco*, Giuffrè, 2022, pp. 300-301

partners, who may opt to determine their income by applying the 25% coefficient to their revenues.

More specifically, income from agriculture and forestry is defined as income from real estate properties and determined by registered assigned yields (cadastral basis) and not based on actual yields or income generated. Yields in the land register are estimated as approximative values of land and buildings and are very low. This shows the preferential tax treatment for agriculture and forestry⁵⁸.

In principle, real estate income belongs to the person who has the right to use the estate and not to the owner (if these are different persons).

Tax on incomes of legal persons (Corporate income tax - IRES) is a state tax. The basis of assessment is total net income from companies and other legal persons. There are some exceptions from the tax liability, e.g. incomes of agricultural cooperatives, small-scale fisheries cooperatives, or labour and production co-operatives under certain conditions.

Under Article 55 of the TUIR, business income is derived from commercial activities. The Tax Legislator considers commercial activity more extensively than the same notion in civil law (i.e. art. 2195 Civil Code). The actual inquiry into the nature of the business (whether commercial or not) is to be sought only when a natural person carries out such activity. For companies (both partnerships and corporations), a formal criterion based on the mere legal form prevails. This means such entities always produce business income, regardless of the actual activity carried out and described for the corporate purpose.

IRAP is the regional tax on production activities that is levied on the net production value of enterprises within a region. IRAP (Imposta Regionale sulle Attività Produttive) was introduced by Legislative Decree No. 446 on December 15, 1997, and has undergone several amendments since then. This tax was levied on the added value, net of depreciation, realised by companies engaged in the production of goods or the provision of services within the region. Enterprises operating in the agricultural sector were liable for the payment of this regional tax on their income, with the exception of agricultural producers who were covered by the VAT exemption scheme, provided they did not waive it. The taxable base of the undertaking was determined on the basis of its legal nature, and the cases covered by the law

⁵⁸ Andersen, F. G., Asheim, L. J., Mittenzwei, K., & Veggeland, F. (2002). *Taxation of Agriculture in selected countries. Study of The United States, Canada, Australia, Germany, United Kingdom, Ireland, France, Switzerland and Italy with relevance to the WTO*

included capital companies and agricultural cooperatives, general and limited partnerships, and agricultural undertakings constituted by sole proprietorships or simple companies⁵⁹.

This tax is imposed on the net value of production resulting from independently organized activities within the regions, which are aimed at the production or exchange of goods or the provision of services⁶⁰. Revenue from the tax is distributed between the state and the regions. The Stability Law of 2016 eliminated the regional tax on productive activities for most farmers.

Sale and transfer of agricultural land ownership is subject to Registration tax (Imposta di registro), Mortgage tax (Imposta Ipotecaria), Cadastral tax (Imposta catastale) and Stamp duty (Imposta di bollo).

The average registration tax rate is 15% reduced to 9% if the buyer is a farmer or a professional armer enrolled in the registries of agricultural pension funds. Farmers or experienced farmers pay EUR 50 for cadastral and EUR 50 registration taxes and are exempt from stamp duty.

Looking at the normative Italian references on this subject is essential for a better overall view. The definition of the agricultural entrepreneur is given in art. 2135 c.c., which specifies the agricultural activities exercised. Article 2135 of the Civil Code, as amended by Article 1 of Legislative Decree No. 228/2001, defines agricultural entrepreneurs as those who carry out land cultivation, forestry, animal husbandry and related activities⁶¹. The 1942 definition of the agricultural entrepreneur was completely changed with the 2001 reform, and the article was rewritten to introduce a new figure of the agricultural entrepreneur that would come as close as possible to the European model.

⁵⁹ Castiglione, E., Borriello, R., ed by, *AGRICOLTURA e FISCO*, ISMEA (with the contribution of the Ministry of Agriculture and Forestry), February 2003, pp. 13-22.

⁶⁰ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, p. 86; for a general overview of the tax see Carriolo, F., *Irap e piccole imprese: beni strumentali e organizzazione*, in PMI, 2016, IV, p. 10; Fanelli, R., *Irap e imposte dirette*, Milano, 2014; Procopio, M., *L'Imposta Regionale sulle Attività Produttive*, in Dir. Prat. Trib., 2008, III; Schiavolin, R., *L'imposta regionale sulle attività produttive: profili sistematici*, Milano, 2007; Della Valle E., *Irap. Non scontano l'Irap i professionisti dotati di mezzi strumentali minimi*, in Corr. Trib., 2007, p. 891 et seq.; Bodrito, A., *Decidendo sul presupposto Irap per i professionisti la Suprema Corte demanda ai giudici di merito la valutazione del caso concreto*, in GT- Riv. giur. Trib. 2007, p. 403; Marongiu, G., *Proposte per un'equa applicazione dell'Irap ai lavoratori autonomi*, in GT- Riv. giur. Trib., 2007, p. 472; Corasaniti, G., *IRAP: gli elementi della fattispecie imponibile, la giustificazione costituzionale e la graduale abrogazione*, in Dir. Prat. Trib., 2001, VI, p. 1097; Lupi, R., *L'Irap tra giustificazioni costituzionali e problemi applicativi*, in Rass. Trib. 1997, p. 1410.

⁶¹ Portale, R., Portale, A., *IVA, Imposta sul valore aggiunto. Tutte le novità in materia di IVA. Commento articolo per articolo del DPR n. 633/1972 e D.L. n. 331/1993*, Giuffrè, 2023, p. 121

The legislative changes that have gradually transformed agricultural enterprises have been driven by the necessity to align agrarian enterprise with a market economy⁶². The need to adapt the figure of the agricultural entrepreneur finds its source in the fact that the European Union provides subsidies through the CAP⁶³. This legislative decree 228/2001 in fact promotes organic and sustainable agriculture, with environmentally friendly policies.

The article 2135 c.c. states that an agricultural entrepreneur exercises land cultivation, forestry, animal husbandry, and related activities and must be interpreted in the light of the provisions of Article 1(1094) of the 2007 Finance Act.

On the other hand, the requirements for qualification as an agricultural company are laid down in Art. 2 of Legislative Decree 99/2004.

In consequence of the amendments introduced in 2001, the Civil Code defines an agricultural entrepreneur as a person engaged in activities related to agriculture. In comparison with the formulations that preceded it, the current wording of the rule has the effect of significantly extending the range of activities that are directly related to agricultural activities, thereby realigning the legal datum with the changes that have occurred in the economic sphere. Indeed, in recent years, the exploitation of renewable energy has become an integral part of agricultural activity. The deployment of photovoltaics and the dimensions of certain wind turbines present challenges in the classification of these activities as either commercial or agricultural. In contrast, the utilisation of biomass is readily associated with agricultural practices. The open-ended formulation of the code provision introduces ambiguity regarding the categorisation of agricultural activities, particularly in the context of tax regulations. This is evident in the classification of income derived from these activities, which may be designated as agrarian income or business income.

The production of electricity through photovoltaic plants provides an illustrative example of this issue, as it demonstrates the limitations of legal categories in comprehending complex and rapidly evolving phenomena. An initial solution was provided by Law 266/2005, the 2006 Finance Act, which specified that the production of these forms of energy by agricultural entrepreneurs constitutes a connected activity pursuant to Article 2135, paragraph 3, of the Civil Code, and is considered to be the production of agrarian income. This intervention proved inadequate in resolving the doubts that had been raised, as it shifted the focus to the quantitative and financial aspects of the issue, leading to the verification of

⁶² Bevivino, G., *Le attività agricole*, in Di Marzio, F., Giordano, R., ed. by, *Impresa agricola e fisco*, Giuffrè, 2022, p. 13; Cossu, M., *L'impresa agricola tra diritto agrario e diritto commerciale*, in RSDE, 2016, pp. 77 et seq.

⁶³ Miele, A., *La fiscalità dell'impresa agricola*, CEDAM, June 2020

the predominance of the principal agricultural activity. In light of these considerations, the Revenue Agency issued Circular No. 32/E of 6 July 2009, which provided three alternative criteria to be applied in instances where the 200 kW franchise is exceeded. In such cases, the presumption is that the income in question belongs to the category of agrarian income⁶⁴. Agrarian income can be understood as the income generated by agricultural entrepreneurs, whether they are landowners or tenants. In contrast, dominical income is ascribed to the individual holding ownership rights over the land, such as through dominical ownership, emphyteusis, usufruct, or other real rights. This income is fundamentally linked to the land's inherent fertility and the fixed capital invested in it, consequently benefiting the landowner. On the other hand, agrarian income reflects the portion of the land's output that compensates for the working capital and the management involved in agricultural operations. This income is attributed to the individual actively responsible for organizing and conducting agricultural activities, which may not necessarily align with the landowner⁶⁵.

Article 2135 of the Civil Code is referred to in Article 32 of the TUIR (Testo Unico delle imposte sui redditi, Presidential Decree No. 633 of 22 December 1986) and the notion of agricultural activity contained therein is similar. Article 32 states that, for the purposes of direct taxation, agricultural activities are considered to be the cultivation of land, forestry, the production of plants with fixed or mobile structures, animal breeding, and activities directed to the handling, preservation, processing, marketing, and valorisation of agricultural products⁶⁶. The income from agriculture is the income generated from agricultural activities on the land. It is calculated using specific valuation rates for each type of land, and it doesn't consider the actual expenses and income from the agricultural activity⁶⁷.

Land income (Articles 25 to 43 TUIR) is income inherent in land and buildings located in the territory of the State, registered in the C.T. or C.F. with attribution of an annuity. , i.e., income about the ownership of land and buildings by non-entrepreneurs concerns all land

⁶⁴ Selicato, G., *La fiscalità dell'agricoltura in Italia: proposte, de iure condendo, per un concorso dei sistemi rurali al perseguimento degli obiettivi di neutralità climatica*, in Uricchio, A., F., Seicato, G., ed. by, *Green Deal e prospettive di riforma della tassazione ambientale*, 2022, CACUCCI EDITORE, pp. 369-376; Mogorovich, S., *Chiarezza per l'impresa agricola che produce energia fotovoltaica*, in Agr. 2015, VI, 7, et seq.; Gaggero A., *Categoria catastale dei parchi eolici ed elementi da computare nella determinazione della relativa rendita*, in Dir. Prat. Trib. 2013, II, 263 et seq; Del Vaglio M., *Ancora sui criteri di attribuzione della rendita catastale delle centrali elettriche alimentate da fonte eolica*, in Riv. Telematica dir. Trib., 24 April 2020.

⁶⁵ La Rosa, S., *Principi di diritto tributario*, III ed., G. Giappichelli Editore – Torino, 2009, pp. 64-65

⁶⁶ Interdonato, M., *L'impresa agricola e il sostegno comunitario all'agricoltura*, *Trattamento tributario*, Padova, CEDAM, 2006, pp. 11 et seq.

⁶⁷ Falsitta, G., *Manuale di diritto tributario - Parte speciale*, XIII Ed., 2021, CEDAM, (op.cit.), p. 169 et seq.

and buildings located in the state's territory that are - or are to be - registered with attribution of annuity in the land cadastral or urban building cadastral.

Land income is divided into: land incomes determined based on cadastral findings and which in turn are divided into agrarian income and dominical income and income from buildings, determined differently depending on whether the buildings are rented or not. In both cases, the taxation system of average ordinary continuing income is used for income from land and from buildings.

Sunday income (Article 27 of the TUIR) represents the Sunday component of the average ordinary income derived from the land through the pursuit of agricultural activities as outlined in Article 32 of the TUIR. The nature of this income has been a subject of significant doctrinal debate. Some argue that it is an asset income, whereas others contend that the production of income is contingent upon the utilisation of the property in question⁶⁸.

The option to tax the income under Article 32 of the TUIR has been available since the 2007 Finance Act (Law 296/2006). The modalities for the application of the facilitated regime for agricultural companies were set out in Ministerial Decree No. 213/2007.

The single-use consumption tax on manufactured goods (plastic tax) and the tax on sweetened soft drinks (sugar tax) have an effective date of 1 January 2024, as introduced by Budget Law 2020 and postponed⁶⁹.

In conclusion, several critical points of reflection emerged from this analysis on the compatibility between the ability to pay principle and agricultural taxation which is all based on a choice by the legislator to facilitate the special nature of activities in the agricultural sector. On the other hand, the reservation of law is in line with all legislation on agricultural taxation that establishes the principles and regulates the criteria to be followed by secondary sources.

⁶⁸ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, op. cit. pp. 124-125; Boria, P., *Le categorie di reddito*, in Russo, P., ed by, *Manuale di diritto tributario*, p. 315

⁶⁹ ITALY - 2023 budget law measures impact MNEs with Italian operations - BDO. <https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-65-february-2023/italy-2023-budget-law-measures-impact-mnes-with-italian-operations>

1.4 The Value Added Tax (VAT) system applicable to agricultural enterprises in Italy

VAT, introduced in Italy by Presidential Decree No. 633/1972 is a general consumption tax and a proportional tax, since its amount depends on the product between the price of the good and the relative rate, regardless of the number of steps the good undergoes during the production-distribution process. It applies to supplies of goods and to supplies of services performed in the territory of the state, in the exercise of business or the arts and professions and to imports by anyone⁷⁰. It is a general consumption tax which, in its theoretical model, only affects the increase in value that a good or service acquires at each economic step (the added value, in fact), from the production stage until the consumption stage of the good or service itself. It represents, therefore, a cost only for the final consumer, i.e. for those who cannot exercise their right to deduct. Consequently, the fact expressive of economic capacity that, pursuant to Article 53 of the Constitution, justifies the levy is the consumption of goods or services, and the final consumers of those goods or services are the subjects to whom the contributory attitude affected by the tax refers. This is the economic basis of VAT that emerges from EU directives and from the case law of the EU Court of Justice, which has repeatedly confirmed the nature of VAT as a tax on consumption⁷¹. The regulation of VAT, essentially provided for by Presidential Decree 633/1972, has many regulatory anomalies due to the inclusion of new provisions and the fact that some provisions of European Directive 2006/112/EC need to be correctly transposed or have been ignored. Specifically, for example, Article 6 Paragraph 3 of Presidential Decree 633/1972, which, according to the directive, should have deferred to the payment, not the performance (operative event) of the service, but only its collectability. If there were precedence to the detriment of the taxpayer, the person ceasing activity would have to invoice with VAT all the services even if only performed, whereas case law has found a compromise solution, according to which the chargeable event arises on completion of the service but remains latent, to then become chargeable upon collection of the consideration, even if the VAT registration had already

⁷⁰ Article 1 Presidential Decree 633/72

⁷¹ Mencarelli, S., Scalesse, R. R., Tinelli, G., *Introduzione allo studio giuridico dell'Imposta sul Valore Aggiunto*, G. Giappichelli Editore – Torino, 2012, pp. 13-14; Micheli, *Corso di diritto tributario*, Torino, 1980, 563; Perrone, Capano, *L'imposta sul valore aggiunto*, Napoli, 1977; Sammartino-Coppa, *Valore aggiunto (imposta sul)*, in *Nss. Dig. app. VII*, Torino, 1987, 1058; Bosello, *L'imposta sul valore aggiunto. Aspetti giuridici*, Bologna, 1979; Lupi, *Imposta sul valore aggiunto*, in *Enc. Giur. Treccani*, Roma, 1988, vol. XVI; Cecamore, *Valore aggiunto (imposta sul)*, in *Dig., IV, XVI*, Torino, 1999, 355; Giorgi, *Imposta sul valore aggiunto*, in *Enc. Dir., app. Milano*, 2007, vol. VII, 351;

been closed⁷². Article 7 of Delegated Law No. 111 of 9 August 2023 is in the process of aligning the VAT legislation, mainly contained in Presidential Decree No. 633/1972, with the superordinate EU regulations (Dir. 2006/112/EU, EU Regulation 282/2011). The following changes are proposed in Article 7. The rationalisation of the number and extent of the current VAT rate, aimed at standardising the treatment applicable to similar goods and services. It is proposed to limit the application of the deductibility pro-rata to goods used both for transactions giving rise to a right of deduction and for those not giving rise to such a right, in order to strengthen the connection between the right of deduction and the actual usability of the goods. In the cultural sector, it is proposed to reduce the VAT rate on the importation of works of art and to extend the reduced rate to the supply of works of art, antiques or collectors' items, in order to stimulate trade and the market. Furthermore, with regard to the VAT grouping institute, Article 11 of the VAT Directive leaves the Member States ample room for transposition. Italy, like Germany, has chosen to adopt a compulsory application of the VAT group if the conditions laid down in the Directive are met⁷³.

In Italy there is a preferential VAT regime in agriculture⁷⁴. A particular agricultural scheme has been in place since the implementation of the tax. In the absence of any special provisions, the standard practice would be for the value added tax (VAT) collected on sales to exceed that paid on purchases. In such cases, the excess VAT would have to be paid to the treasury. However, under the special scheme, farmers were not required to make any payment, and the excess VAT was, in fact, a subsidy⁷⁵.

The current VAT legislation provides for certain special regimes designed to facilitate persons carrying out activities that are considered economically marginal. The most relevant of these, due to the particularities of application and of the number of taxpayers involved, is the regime reserved for the agricultural sector by Articles 34 and 34 bis of Presidential Decree No 633 of 26 October 1972. For agricultural producers, the deduction under Article 19 of the Presidential Decree above mentioned is forfeited by applying to the taxable amount of the supplies the compensation percentages established for groups of products by Decree of the Ministry of Finance, in agreement with the Minister for Agricultural Policy⁷⁶. The

⁷² Rizzardi, R., *I principi di riforma in materia di IVA*, in ed by Tomassini A., *Riforma fiscale*, Giuffrè. 2023, pp. 149-150; Cass., SS.UU., 21 april 2016, n. 8059

⁷³ Iaselli, G., Madera, M.T., *La legge delega. Le novità IVA in tema di operazioni esenti, aliquote e detrazioni* in Tomassini, A., ed by, *Riforma fiscale*, Giuffrè Fancis Lefebvre, Milano, 2023, pp. 152-157; Directive - 2008/9 - EN - EUR-Lex. <https://eur-lex.europa.eu/eli/dir/2008/9/oj>

⁷⁴ Article 25 of the Sixth Directive 77/388/EEC of the Council of 17 May 1977

⁷⁵ Castiglione, E., Borriello, R., *AGRICOLTURA e FISCO*, op. cit. p. 22

⁷⁶ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore – Torino, 2017, p 343; Greggi, M., *Presupposto soggettivo e inesistenza nel sistema d'imposta sul valore aggiunto*, Milano, 2013; Id., *Il principio*

Article 34 of Presidential Decree 633/1972 provides, in a nutshell, that farmers may adopt one of the following regimes. A special regime that is the natural regime for agricultural producers who, not being able to apply the exemption regime, carry out supplies of products listed in table A part I annexed to Presidential Decree 633/1972. The opportunity to leverage the special VAT scheme for agricultural producers hinges on meeting several critical criteria, both objective and subjective. It is important to consider the nature of the agricultural activity, and the methods employed in its execution.

Equally significant is the legal status of the economic operator potentially affected by the tax. Broadly speaking, the framework governing VAT-relevant transactions is outlined in Articles 2 and 3 of Presidential Decree No. 633/1972. These provisions clearly define the categories of goods and services subject to this tax regime, beginning with a general overview and followed by specific instances of inclusion and exclusion, thereby offering a comprehensive guide for compliance and benefits⁷⁷.

There are two other regimes besides the special regime, namely the exemption regime and the ordinary regime.

The exemption regime is the natural regime for agricultural producers who generated a turnover not exceeding €7,000 during the previous calendar year consisting of at least two-thirds of the products referred to in Table A, Part I annexed to Presidential Decree 633/1972 (agricultural products)⁷⁸. These agricultural producers are exempt from paying the tax and from all related documents and accounting obligations.

Lastly, the ordinary regime is an optional regime that applies by an express option of the agricultural producer⁷⁹.

With specific regard to the special scheme, according to Legislative Decree No. 313/1997, VAT on supplies made by agricultural producers is to be calculated normally, while the tax to be deducted is determined by applying to the taxable base of the said supplies the

d'inerenza nel sistema sul valore aggiunto: profili nazionali e comunitari, Ospedaletto (Pi), 2012; Lupi, R., voce *Imposta sul valore aggiunto (IVA)*, in *Enc. Giur. Treccani*, XVI Roma, 1997; Bosello, F., *L'imposta sul valore aggiunto. Aspetti giuridici*, Bologna, 1979; Gallo, F., *Profili di una teoria dell'imposta sul valore aggiunto. Aspetti giuridici*, Bologna, 1974; Fantozzi, A., *Presupposto e soggetti passivi dell'imposta sul valore aggiunto*, in *Dir. Prat. Trib.*, 1972, I, p. 728; From a Community perspective, Boria, P., *Diritto tributario europeo*, Milano, 2015, p. 337; Basilavecchia, M., *L'evoluzione della politica fiscale nell'Unione Europea*, in *Riv. trib.* 2009, I, p. 361; Di Pietro A. (ed by), *Lo stato della fiscalità nell'Unione europea: l'esperienza e l'efficacia dell'armonizzazione*, Roma, 2003, I, p. 1; D.M. 12 of May 1992, D.M. 30 December 1997 and D.M. 23 of December 2005

⁷⁷ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore – Torino, 2017, p. 348-349

⁷⁸ The turnover limit within which the exemption scheme for agricultural producers operates was introduced by Article 2(31) of Decree-Law No. 286 of 24 November 2006, which intervened on the sixth paragraph of Article 34 of Presidential Decree No. 633/1972

⁷⁹ In general for the three regimes see Di Marzio, F., Giordano, R., *Impresa agricola e fisco*, Giuffrè, 2022, pp. 351-352; Fonana C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, pp. 343-376

compensation percentages indicated in the table attached to Presidential Decree No. 633/1972.

The special scheme is characterised by the possibility of waiving the deduction of VAT paid on purchases of goods and services and imports made in the exercise of agricultural activity, granted by Article 34, co. 1, of Presidential Decree No. 633/1972⁸⁰. In other words, what characterizes the special scheme is, therefore, essentially the possibility to forfeit the deduction of VAT paid on purchases of goods and services and on imports made in the exercise of agricultural activity, granted by Article 34, co. 1 of Presidential Decree No. 633/1972⁸¹.

Article 34(2) delineates the specific category of agricultural producers who are eligible for inclusion in the aforementioned special scheme. The term "agricultural producers" is defined in Article 2135 of the Civil Code as any individual or entity engaged in activities related to agriculture. This encompasses a diverse range of entities, including corporations, cooperatives, partnerships, sole proprietorships, natural persons, public or private entities, and foreign companies with a presence in Italy engaged in agricultural activities. Additionally, the scheme encompasses those engaged in freshwater fishing, fish farming, mussel farming, oyster farming, and the cultivation of molluscs and crustaceans, as well as frog farming.⁸² The text in force as of 1 January 2002 (subsequent to the amendments introduced by Article 9(10) of Law No. 448 of 28 December 2001) states that, in accordance with Article 34 of the VAT decree, the following individuals and entities are considered to be agricultural producers.

Those engaged in activities outlined in Article 2135 of the Civil Code, as well as those involved in freshwater fishing, fish farming, mussel farming, oyster farming, the cultivation of other molluscs and crustaceans, and frog farming.

This encompasses agricultural intervention agencies, or other entities acting on their behalf, supplying products in accordance with EU regulations on the common organisation of the market in these products.

⁸⁰ Purpura Andrea, *Introduction to the Italian Tax System in Agriculture*, a Course organised by the Agrisystem Doctoral School on the Agro-food system, 2022; Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, pp. 363; Fanelli, R., *Esclusa da IVA la cessione di un terreno agricolo divenuto edificabile? - Il commento*, in Corr. trib., 2017, I, p.47

⁸¹ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore – Torino, 2017, p. 363; Pastore-A, G., De Rinaldis, A., *Regimi speciali IVA*, Assago, 2007, p. 81

⁸² Tosoni, G. P., *Agricoltura e fisco*, Il Sole24ORE, 2003, p. 27

Cooperatives, their consortia, associations and their constituted and recognised unions, which engage in the supply of goods produced by their members, associates or participants, in their original state or after handling or processing.

This encompasses bodies that are legally obliged to facilitate collective sales of goods on behalf of producers, including those that have undergone handling or processing. This also includes any organisations that operate on behalf of producers who are subject to the provisions of the special scheme.

Regarding the supply of the agricultural and fish products provided for in Table A, first part, annexed to Presidential Decree No. 633 made by agricultural producers (see Article 34 of Presidential Decree No. 633 for the relevant definition), the deduction of VAT on purchases is forfeited by applying to the taxable amount of such supplies the compensation percentages established, by product group, by Ministerial Decree of 23 December 2005, unless an option for the ordinary regime is chosen.

The 2016 Stability Law provided for the agricultural sector to increase the compensation percentages applicable both to certain products of the dairy sector, to an extent not exceeding 10%, and to live animals of the bovine and porcine species, to an extent not exceeding 7.7% and 8%, respectively, Art. 1 Paragraph 908, l. 208/2015⁸³.

⁸³ Falsitta, G., *Manuale di diritto tributario - parte speciale*, cit. CEDAM, 2021, pp. 1001-1004

Chapter two

Sustainability and Taxation Across Europe

2.1 Tax systems across Europe

2.2 Key concepts of international tax law and the unanimity rule in tax matters

2.3 VAT and Agriculture

2.4 How tax policies support sustainability in the European Union

2.5 Tax sustainability in the EU compared to an international context: an overview of disciplinary practices as implemented in various jurisdictions

Keywords: *EU tax systems; sustainability in the EU; fiscal policies; the unanimity rule; VAT and agriculture; fiscal policies for sustainable development*

2.1 Tax systems across Europe

Different tax systems characterise the European Union in the various member states, hence the constant efforts to harmonise these systems over time. Standard features of European Tax Systems are income tax, value-added Tax (VAT), corporate tax, social security contributions, and property tax. Income tax is often progressive, the rates of VAT vary by country, businesses are subject to corporate taxes, contributions to social security are very common and used to fund services such as healthcare and pensions, and many countries levy taxes on property ownership.

The creation of the European common market was the first and most important step in European tax harmonisation, which reached a turning point with eliminating customs duties between member states⁸⁴. Since 1992, the harmonisation of indirect taxation has evolved decisively with the introduction of the new excise and intra-community value-added tax systems based on the abolition of fiscal and customs borders and the abolition of customs controls at borders between the Member States⁸⁵. The European Union does not have its tax system and does not have general competence for taxes, but it can adopt provisions aimed at harmonising the laws of the member states on indirect taxes.

So, in other words, the European Union has no power of taxation, and the financing of the European public budget is not coercive, as is the case for the tax function at the national level. European budget and, in other words its own resources, is fed by a complex of ‘derived’ revenues, including customs duties on trade with third countries, a share of national value-added tax (VAT) revenues collected in the Member States, agricultural levies, a tax on plastic-recycled, a contribution from the Member States concerning their gross domestic product.

Tax instruments can increase the funding resources for incentive policies⁸⁶. The activity of collecting resources is not associated with mechanisms for verifying the use of resources and thus with political accountability, as there is no direct relationship between the European institutions and taxpayers, between whom state intermediation necessarily intervenes: resources are thus collected for the functioning of the Union, but purely by way of

⁸⁴ See Regulatory references such as the resolution of Messina of 1955 and the Treaty of Rome of 1957

⁸⁵ *ARMONIZZAZIONE FISCALE_Ceriani.doc* (*astrid-online.it*)

⁸⁶ Costanzo, L., with a presentation entitled *Environmental policies in the European Union* at SUSEET (Summer School in European Environmental Taxation, 2022, University of Naples Federico II) make some considerations about funding resources of the European Union to implement incentive policies and refers to Council Regulation 2021/768.

contributions. The revenues are fed by rules that give the Union credit rights vis-à-vis the states rather than by tax law relations. This is a phenomenon of financial ‘self-sufficiency’, based on receipts that have the character of ‘derived’ resources, respecting the origin of which it is not possible to exercise any mechanism of political responsibility typical of tax relations, least of all that based on the well-known no taxation without representation rule⁸⁷. For a better overview, authoritative legal doctrine points out that the European Union does not have a tax system of its own and does not have general competence in tax matters. In this sense, there are no aims in the rules to procure real EU revenues but rather to ensure compatibility between the tax rules of the EU member states and EU law⁸⁸. Once again, reference is made to tax harmonisation in this context, and this is also an essential subject in the matter of tax evasion/elusion because harmonising taxation rules across the European Union can effectively fight these phenomena.

The European Union, as mentioned above, has proposed regulations to harmonise the tax laws of member states in various areas, such as value-added tax (VAT)⁸⁹, corporate taxes and directives against tax evasion. In the former case, measures are taken to prevent unfair competition between member states, secondly, about VAT, common rules for the treatment of VAT. There are measures against tax fraud and, finally, legislation is adopted to facilitate the exchange of information between member states and reduce opportunities for tax avoidance.

One relevant document is the EU Code of Conduct Group (Business Taxation), which aims to combat tax evasion and harmful tax practices⁹⁰. The Code is considered an informal, pre-legal guiding instrument within EU soft law regarding legal status. Additionally, the Group's working method in implementing the Code is an open method of coordination, serving as a process of soft governance⁹¹.

Technically, the term 'tax harmonisation' defines the process of building a tax regulatory system of a homogeneous nature in the different Member States, in compliance with Article 113 TFEU, which specifically provides for the European Union to adopt provisions for the harmonisation of Member States' rules in the indirect taxation area⁹². This provision aims to

⁸⁷ See Buzzacchi C., *La solidarietà finanziaria nel contesto dell'Unione Europea*, 2022, p. 58

⁸⁸ Tesaurò F. *Istituzioni di diritto tributario*, 1 – parte generale, 2017, p. 82 e ss.

⁸⁹ Directive - 2006/112 - EN - VAT directive - EUR-Lex ([europa.eu](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0112))

⁹⁰ Code of Conduct Group (Business Taxation) <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>

⁹¹ Nouwen M. F., *Inside the EU Code of Conduct Group: 20 Years of Tackling Harmful Tax Competition*, IBFD, 2021

⁹² Article 113 Treaty on the Functioning of the European Union (ex-Article 93 TEC): “The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European

achieve a form of harmonisation of legislation on turnover taxes, consumption taxes, excise duties and other indirect taxes to the extent necessary to ensure the establishment and functioning of the internal market⁹³. The internal market operates smoothly, for example, thanks to the Anti-Tax Avoidance Directive (ATAD) because it outlines measures to tackle tax avoidance practices that affect the functioning of the internal market and ensure the prevention of tax avoidance and tax evasion.

Harmonisation of national laws is not expressly provided for direct taxes in the Treaty. Still, the European Union may also intervene in direct taxes, based on the power to approximate the laws of the Member States, provided for in Articles 114 and 115 of the Treaty on the Functioning of the European Union⁹⁴. In doctrine, there are two strands with two different conceptions of harmonisation. A first strand diversifies the concept of harmonisation from that of approximation, giving each a distinct legal and economic meaning. The second strand, on the other hand, identifies the concepts of approximation, harmonisation and coordination, and all other similar terms in the founding treaty as being equivalent. As reasonably observed, apart from the different Italian doctrinal conceptions of tax harmonisation, it seems superfluous to define this dynamic concept unambiguously. Its pace and breadth depend on the manner in which the process of economic integration to which it relates takes place⁹⁵.

Member States are free to decide on the economic policy they consider most appropriate and to spread the tax burden as they see fit across the various factors of production. Nonetheless, Member States must exercise this competence following Union law. Then, Member States are not allowed to take measures that support companies or production in a way that goes against the principle of free competition, including giving preferential tax treatment. State

Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition”

⁹³ Lancia, R., *L'Unione europea e il diritto tributario: brevi riflessioni sugli ambiziosi progetti rimasti incompiuti e sulle regole alla base del procedimento unionale*, Istituzioni del federalismo, 3.2021, Saggi e Articoli Lancia.pdf (regione.emilia-romagna.it)

⁹⁴ Lang, M., Pistone, P., Schuch, J., Staringer, C., *Introduction to European Tax Law on Direct Taxation*, IV ed, Vienna, 2015

⁹⁵ Quadri, S., *Armonizzazione fiscale europea*, G. Giappichelli Editore, Torino, 2003, pp. 35-37; Comelli, A., *L'armonizzazione fiscale e lo strumento della direttiva comunitaria in relazione al sistema dell'IVA*, Diritto e pratica tributaria, 1998, pp. 1590 et seq; Stammati, *Commento all'art. 99 del Trattato istitutivo*, in Commentario CEE ed by Quadri, Monaco, Trabucchi, p. 780 et seq; Puglisi, *Ravvicinamento delle legislazioni*, in Pennacchini, Monaco, Ferrari Bravo, Puglisi, *Manuale di diritto comunitario*, Torino, 1984, I, p. 299; Russo-Cordeiro Guerra, *L'armonizzazione fiscale nella Comunità europea*, in Rassegna tributaria, I, 1990, p. 629 et seq; Pita, *La armonizacion tributaria en America latina*, in Diritto e pratica tributaria, III, 1998, p. 358.

aid⁹⁶ can also include tax subsidies, such as tax credits, rules that allow for the delayed payment of taxes, or rules that eliminate or lessen the usual tax burden. These aids also include tax concessions which, while not constituting an outlay for the State, also place the beneficiaries in a more favourable financial situation than other taxpayers⁹⁷. However, there are exemptions to the prohibition of State aids in the Treaty in the areas of agriculture, fisheries, transport, culture, national security.⁹⁸ In other words, article 107 of the TFEU prescribes that State aids, as defined in that provision, are forbidden within the internal market. However, there are derogations from this prohibition; derogations are restrictively interpreted⁹⁹. Article 107(2)(a) expressly provides for aid to make good the damage caused by natural disasters or other exceptional occurrences. This, in particular, can be considered a very close option for agricultural companies. Aid for natural disasters also includes aid for the agricultural sector, in connection with adverse natural events that may affect production and harvests. Only economic disadvantages directly caused by exceptional events or natural disasters may be compensated for through the various forms of aid, with the amount limited to the damage suffered, in order to avoid inappropriate enrichment. There must also be a close link between the damage caused by these events and state aid¹⁰⁰.

One example of derogation is the Regulation (EU) 2022/2472 of 14 December 2022 that provides *a) aid in favour of micro, small and medium sized enterprises (SMEs): active in the agricultural sector, i.e. in primary agricultural production, processing of agricultural products and marketing of agricultural products, with the exception of Articles 14, 15, 16, 18, 23 and 25 to 31, which apply only to SMEs active in primary agricultural production.*

European Union law guarantees the free exercise of economic activities within the internal market: all obstacles to free movement and free competition on Community territory are therefore prohibited as a matter of principle. (TFEU, art. 34, 35). Fiscal barriers are not exempt from this prohibition and the exercise of fiscal powers by a Member State must not result in the creation of barriers to the free exercise of economic activities within the internal market.

⁹⁶ Articles 107 and 108 of the TFEU regulate State Aid

⁹⁷ Fontana, C., *Gli aiuti di Stato di natura fiscale*, G. Giappichelli Editore – Torino, 2012, pp. 27-30; Judgment of the Court of 15 March 1994, Banco de Crédito Industrial SA, now Banco Exterior de España SA v Ayuntamiento de Valencia. Case C-387/92, *European Court Reports 1994 I-00877*

⁹⁸ Tesauro, F., *Istituzioni di diritto tributario*, 2- parte speciale, 2016, UTET Giuridica, p. 369 e ss.

⁹⁹ https://competition-policy.ec.europa.eu/state-aid_en

¹⁰⁰ Tesauro, G., Ingrosso, M., ed by, *Agevolazioni fiscali e aiuti di Stato*, Jovene Editore, 2009, pp. 249-254; Decision No 2005/919/CE; European Commission in a letter of 7 June 2005 also included heavy snowfall and storm surges among natural disasters.

This principle of exercising retained tax powers in accordance with the primary law of the European Union was first affirmed in the so-called *Avoir fiscal* judgment of 24 January 1986 (ECJ, 28 January 1986, Case C-270/83, *Commission v France*) before being enshrined, almost ten years later, in the *Schumacker* judgment (ECJ, 14 February 1995, Case C-279/93, *Schumacker*). As a matter of principle, all tax restrictions on free movement and all state aid in the form of tax are prohibited¹⁰¹.

Once the Italian tax system has been analysed in the first chapter, it can be observed that other countries also have a progressive tax system, which is one of the common features of European Tax Systems. Most member states impose income tax on individuals and businesses often progressively. Income tax rates in Portugal are progressive, increasing as income rises. The applicable rate depends on the taxable income, determined after deducting eligible expenses and allowances and there's a global taxation for residents. Also, in Germany income tax is calculated progressively and a progressive income tax system characterizes it with rates ranging from 0% to 45%. This means that as income increases, the tax rate also increases, and higher earners pay a large percentage. The VAT rate is 19% with a reduced rate of 7% for certain goods and services. Concerning EC law and the German legal system, it should be noticed that the most relevant legislation in the present context is one on the federal level. It is up to the federal legislator to bring the German tax system in line with the EC law requirements, including standards set by primary law and also secondary law, in particular directives¹⁰². The principle of ability to pay, according to which everyone is to be taxed according to his or her ability to pay, also applies in this system, and there is also a land tax, one of the oldest taxes in the system, the subject of which is land located within a municipality. In this respect, a distinction is made between agricultural land, forest land and other land. As a rule, this land tax is to be levied on the income of the land; however, it will not be levied according to the income identified as actual, but on the expected income, and as a real tax, the land tax is levied on municipalities¹⁰³. In Germany, there are no specific environmental taxes as a separate category. Instead, environmental considerations are integrated into indirect taxes (such as consumption taxes) and direct taxes

¹⁰¹ Périn-Dureau, A., *Précis de droit fiscal international et de l'Union Européenne*, LexisNexis, 2022 in Chapter 2, Negative integration - p. 311

¹⁰² Cordewener, A., *Germany*, in Brokelind, C., ed. by, *Towards a Homogeneous EC Direct Tax Law*, IBFD, 2007, p. 147.

¹⁰³ Birk Dieter, *Diritto tributario Tedesco*, traduced by De Mita Enrico, Giuffrè Editore, Milano, 2006 (Original title Dr. Dieter Birk, *Steuerecht*, 5., neu bearbeitete Auflage, 2002, C.F. Muller Verlag, Huthig GmbH & Co. KG, Heidelberg, pp. 13-23.

(like income taxes, trade tax, and corporate income tax) to incentivise environmentally friendly behaviour.

There are subsidies, and 42 new grants have been introduced. The most significant new grants include the Federal Grant for climate-efficient buildings (BEG), as well as grants for the purchase of commercial vehicles and buses with alternative climate-friendly drive systems¹⁰⁴. For example, in Germany and Austria a very reliable plastic waste recycling ecosystem has been created in which SMEs play an instrumental role¹⁰⁵.

In the context of plastic taxation within the EU and an increasingly environmentally conscious future, Article 2(1)(c) of Council Decision 2020/2053/EU, Euratom, outlines that revenue generated from a uniform levy on the weight of non-recycled plastic packaging waste produced by each Member State qualifies as own resources for the EU budget. This uniform levy is set at EUR 0.80 per kilogram. The EU plastic tax requires a payment of €0.80 per kilogram for plastic packaging waste that is not recycled. In comparison, the Italian plastic tax applies to the consumption of MACSI and is not solely focused on packaging waste. Moreover, the EU provision is directed at Member States, while the national regulation specifically targets individual resident operators¹⁰⁶.

¹⁰⁴ Trüe, C., Scholz, L., *The EU Green Deal and its Implementation*, Nomos eLibrary, 2023, p. 107-112. *The EU Green Deal and its Implementation (nomos-elibrary.de)*

¹⁰⁵ Donato, F., *Il business della sostenibilità*, FrancoAngeli, Milano, 2023, p. 48

¹⁰⁶ Fabio, M., Marrocco, A., *Plastic Tax: quali impatti per le imprese a pochi mesi dall'entrata in vigore*, - Studio Associato, KPMG - International Trade & Customs services, in Ipsa Quotidiano, 22/09/2021, p. 32

2.2 Key Concepts of International Tax Law and the unanimity rule in tax matters

The primary function of international tax law is to define the taxing powers of individual states in relation to foreign entities and transactions. It sets limits on the ability of individual states to tax foreign elements. International tax law primarily deals with cases involving foreigners, non-residents, and international transactions that are outside the scope of individual state systems. In the context of cross-border transactions, it is vital to first identify the applicable domestic tax rules. Once these have been established, one must consider the relevant international laws pertaining to the specific cross-border transaction.

This involves examining whether the income generated by these commercial or financial flows is regulated under double taxation conventions, commonly referred to as tax treaties, which function as bilateral instruments of international law. It is necessary to determine if both the source state and the residence state are parties to a tax treaty. If they are, one should review the specific provisions of that treaty. Furthermore, it is important for EU Member States to consider the constraints that their membership in this supranational institution imposes on tax matters¹⁰⁷.

The most important sources of international tax law are, as mentioned above, international conventions, which serve as legal agreements between sovereign subjects and are designed to eliminate international double taxation. These conventions have characteristics similar to both private contracts and public legal acts¹⁰⁸. In November 2017, the new OECD Model Double Taxation Convention was approved, which implemented the guidelines of the BEPS project, and in Article 25, a mutual agreement procedure and an arbitration procedure are included for the resolution of interpretative issues and cases of double taxation for which the application of other provisions of the Convention does not allow for a solution¹⁰⁹. The OECD BEPS project has made significant advancements, but some stakeholders question its transparency and inclusivity. In order to gain and retain legitimacy, transparency, clear communication and visibility the UN and its tax committee should consider communicating the benefits of initiatives such as fairness, reduced tax evasion, addressing global

¹⁰⁷ AA. VV., *Manuale di fiscalità internazionale*, Wolters Kluwer, may 2022, p. 39; Comunidad Andina, Decisión 578 (Régimen para evitar la Doble Tributación y Prevenir la Evasión Fiscal), del 4 maggio 2004

¹⁰⁸ Santamaria M., *Fiscalità internazionale*, Giuffrè Editore, 2009, p. 128-129 e p. 172 e ss.

¹⁰⁹ Valente P., *Il nuovo Modello OCSE di Convenzione contro le doppie imposizioni: profili di novità*, Il Fisco 6/2018, 564.

inequalities. Other actions it may take are building partnerships with influential organizations like BRICS and the European Parliament for support and visibility, expanding its presence in multinational organizations to engage stakeholders, facilitating the transfer of tax collectors between countries for transparency and compliance and so on¹¹⁰.

As the world becomes increasingly interconnected, it's crucial to consider international factors when developing tax policies. Given the global nature of climate change, our efforts to address it must also be global. While agreements like the Paris Agreement are significant, their impact depends on their integration into consistent national tax laws. This is particularly important for achieving many of the Sustainable Development Goals, especially SDG 17. From a tax policy perspective, one area where legal coordination is essential is in determining how to allocate the right to tax between different states. For income tax purposes, the resident and source principle can allocate tax revenue to different states based on whether a company or individual is resident within a particular state's territory or if the income is derived from a source within that territory. The OECD Model Tax Convention and the network of bilateral and multilateral tax treaties between different states exemplify how international coordination through legal cooperation is achieved. The primary motivation behind this cooperation is economic, with the aim of avoiding double taxation and unintentional double non-taxation of income¹¹¹.

Also in the context of international law, there is of course the phenomenon of tax evasion. International tax avoidance occurs when a taxpayer engages in cross-border transactions to exploit variations in tax calculation methods and rates across different countries, as well as the tax benefits provided by Double Taxation Agreements (DTAs). Multinational taxpayers often use legal structures in different jurisdictions as part of a practice known as "treaty shopping" to capitalize on these differences and benefits¹¹².

Another key aspect is the unanimity rule to which tax matters are subject. Competition, on the other hand, is subject to qualified majority rule. For votes on tax matters, there is in fact a unanimity rule for Council voting, although in recent years there has been much debate on the subject and a proposal to abolish this rule in favour of qualified majority voting. The European Commission has emphasised the need for qualified majority voting for the

¹¹⁰ Gaspar Ndabi, Stanislas Boschmans, *The Rise of the United Nations Committees, Shaping International Tax policies*, June 2024 at the 16th Greit Lisbon Summer Course-Eu and International Tax Recent Developments.

¹¹¹ *Tax Sustainability in an EU and International Context*, edited by Cécile Brokelind, and Thiel, Servaas van, IBFD Publications USA, Incorporated, 2020. ProQuest Ebook Central, <https://ebookcentral-proquest-com.ezproxy.unicatt.it/lib/unicatt-ebooks/detail.action?docID=6236200>.

¹¹² Holmes, K., *International Tax Policy and Double Tax Treaties*, IBFD, 2014, p. 369

adoption of tax measures with the primary objective of environmental protection and having a direct and significant effect on the environment¹¹³. The European Commission in one of its Communications¹¹⁴ shows two major sets of arguments in favour of a shift from the unanimity rule for tax harmonization to the qualified majority rule. The latter will assure a more competitive and stronger unique market and it is a call for coordination, as a condition of survival of national sovereignty in the context of free movement and multilateralism¹¹⁵. Thus, decision-making in tax matters is based on the unanimity criterion and the EU has no power to create new resources, nor to decide on their amount and use, regardless of the agreement of all member states. It is emphasised in doctrine that the European Union is not able to intervene promptly and extensively in the definition of tax rules due to the principle of unanimity that must be observed for Council deliberations on tax decisions. It assumes a role limited to the identification of principles of general application that can meet with the unanimous consent of each Member State¹¹⁶.

The European Commission's recent proposals to introduce majority voting in tax matters are probably motivated by the current stalemate in the Council due to internal divisions between governments, and by the fact that the attempt to circumvent the principle of unanimity through the system of enhanced cooperation in tax matters has run aground due to the clauses governing the latter, which make them unsuitable for the purpose. On the other hand, as far as revenue is concerned, Article 311 TFEU stipulates that the system of own resources shall be decided by the Council unanimously, after consulting the European Parliament, and that this decision shall then be approved by the individual Member States in accordance with their respective constitutional rules. In addition to the fact that in this procedure the representative body of the citizens - the European Parliament - is only consulted, each

¹¹³ Selicato, P., *Impresa europea e fisco: il nodo dell'integrazione*, International Tax Law Review, 2010, pp. 545-558; European Commission, Supplementary Contribution of the Commission for the Intergovernmental Conference on Institutional Reform. Qualified majority voting for single market aspects in the areas of taxation and social security, com (2000) 114 final. The intention of submitting a contribution concerning the extension of qualified majority voting in the fields of taxation and social security was expressed in the opinion Institutional reform in the service of enlargement - Opinion of the Commission pursuant to Article 48 of the Treaty on European Union for the meeting of a Conference of Representatives of the Governments of the Member States on an amendment of the Treaties, 26 January 2000; Benigna, M., *L'allargamento dell'Unione Europea ed i meccanismi di decisione in materia fiscale*, Riv. dir. trib. int., 2000, n. 3, p. 281

¹¹⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL Towards a more efficient and democratic decision making in EU tax.

¹¹⁵ Considerations made by Dourado, A., P., The Commission Proposal to Replace Unanimity with a Qualified Majority in the Case of Tax Matters, 47 Intertax 341 (2019).

¹¹⁶ Boria, P., *Diritto tributario europeo*, Giuffr  Editore, 2010, p. 416

government thus retains the right of veto on the issue of resources transferred and then used from the EU budget¹¹⁷.

2.3 VAT and Agriculture

VAT, which is common in all member states, albeit at different rates, is worthy of further study and attention. Value added tax is a tax of Euro-Union source. The cardinal principles in value added taxation are that of neutrality and prohibition of double taxation, which contribute to the harmonization of this tax¹¹⁸. Value added taxation (VAT) is probably the area of tax law that has achieved the greatest degree of harmonisation in the internal market. Indeed, it is governed by a comprehensive system of rules, mainly contained in the VAT Directive 2006/112/EC. The common system of value added taxation established by the VAT Directive and its subsequent amendments contains numerous special schemes aimed at ensuring the proper functioning of the system, even in the presence of special needs such as, for example, in the case of agricultural producers (articles 295-305)¹¹⁹.

The legal basis for this preferential scheme for agriculture is to be found in Article 25 of Council Directive 77/388/EEC of 17 May 1977, under which Member States are expressly authorised to apply a flat-rate scheme to agricultural producers, for whom the normal VAT scheme would be too burdensome, in order to offset the burden of VAT paid on purchases of goods and services. This is further regulated in Articles 295 to 305 of Directive 2006/112/EC of 28 November 2006¹²⁰.

In the context of value-added tax, the international guidelines endorsed by the OECD primarily advocate for taxation at the point of consumption. This approach is based on the interpretation of value-added taxes as consumption taxes. In other words, the wealth affected by VAT is the portion of income devoted to consumption. This tax applies to the consumption of goods and services in the European Union, and each member state has its own VAT rate, which may vary depending on the good and service.

¹¹⁷ Lionello, L., Rossolillo, G., *Cosa significa creare una capacità fiscale europea e perché è così importante per il processo di integrazione?* Il Federalista, 2019

¹¹⁸ Pistone, P., *Diritto tributario europeo*, III ed., Giappichelli, 2022, p.19

¹¹⁹ Pistone, P., *Diritto tributario europeo*, G. Giappichelli-Editore, Torino, ed. III, 2022, pp. 322-342

¹²⁰ Fontana, Chiara, *La fiscalità delle imprese agricole*, G. Giappichelli Editore, Torino, 2017, p. 344

Rates generally vary from 17% to 27%, and VAT rules are regulated at EU level to simplify trade and prevent tax fraud. In other terms, Value-added tax (VAT) is a tax of Euro-Union source. The EU has established a common framework for VAT through the VAT Directive 2006/112/EC of 28 November 2006, which harmonises the rules and rates among member states. Each country can set its own VAT rates but must adhere to minimum standards. The wealth affected by VAT (the object of the tax) is the portion of income devoted to consumption. In agriculture, a preferential VAT regime is applied. The preferential VAT regime encompasses specific rules and reduced rates applied to agricultural products and services to support farmers and promote the agricultural sector. Standard features across all countries include lower VAT rates on basic agricultural products and exemptions from VAT for certain agricultural activities. Additionally, some VAT regimes incentivise practices such as organic farming and environmentally friendly production through reduced tax rates or other fiscal benefits.

The preferential scheme intended for agriculture finds its legal basis in Article 25 of the Sixth Directive 77/388/EEC of the Council of 17 May 1977. This disposition authorises, expressly, the member states to apply to agricultural producers, for whom being subject to the standard VAT regime proves too burdensome, a flat-rate scheme designed to offset the burden of VAT paid on purchases of goods and services.

This first provision was followed by the regulations introduced by articles 295 to 305, of Directive 2006/112/EC of November 28, 2006¹²¹. In the analysis of VAT, it is interesting to consider a court case of the European Court of Justice that touches on the principles of legality and effectiveness. The principle of legal certainty ensures that laws are predictable, stable, clear, and accessible and ensures the ability to understand the rights and obligations under the EU law. In fact, it promotes the rule of law, enhances trust in legal institutions and protects individual rights. The Court of Justice of the European Union (CJEU) interprets EU law and ensures that it is applied consistently across member states, thus reinforcing legal certainty.

EU law does not establish a time limit within which the right of the tax authorities to assess VAT is time-barred and, a fortiori, does not specify the circumstances in which such a time limit should be suspended. Member States have to lay down and apply rules on limitation periods about the right of tax authorities to assess VAT, including procedures for suspending or interrupting this period. Member States must exercise this competence in a manner

¹²¹ Purpura, A., *Introduction to the Italian Tax System in Agriculture*, a Course organised by the Agrisystem Doctoral School on the Agro-food system, 2022

consistent with EU law, which requires the establishment of reasonable time limits that protect both the taxable person and the authority concerned¹²². In agriculture, the European Union (EU) introduced a particular flat-rate scheme for farmers. Under this scheme, farmers could apply a flat rate to their sales to taxable processing firms and add that amount to the invoice accompanying their supplies.

The rate represented the effective VAT rate on the total taxable inputs of the exempt agricultural sector. Farmers were allowed to keep the calculated amount as compensation for the VAT on their inputs, while agro-processing firms could deduct it from the VAT on their sales. Alternatively, processing firms could deduct a similar presumptively determined amount from their VAT on sales, which they were assumed to pay out to farmers. This scheme aimed to cancel out the VAT on farm inputs on average but not necessarily on a farm-by-farm or product-by-product basis.

In agriculture, the European Union (EU) introduced a particular flat-rate scheme for farmers. Under this scheme, farmers could apply a flat rate to their sales to taxable processing firms and add that amount to the invoice accompanying their supplies. The rate represented the effective VAT rate on the total taxable inputs of the exempt agricultural sector. Farmers were allowed to keep the calculated amount as compensation for the VAT on their inputs, while agro-processing firms could deduct it from the VAT on their sales. Alternatively, processing firms could deduct a similar presumptively determined amount from their VAT on sales, which they were assumed to pay out to farmers. This scheme aimed to cancel out the VAT on farm inputs on average but not necessarily on a farm-by-farm or product-by-product basis¹²³.

Should the principles of legal certainty and effectiveness, which are part of European Union law, be interpreted as not precluding national legislation, such as Paragraph 164(5) of az adózás rendjéről szóló 2003. évi XCII. törvény (Law No. XCII of 2003 establishing the Fiscal Procedure Code; hereinafter ‘Old Code’), which does not allow the court to exercise any discretion, and the practice based on that law according to which the prescription of actions is not subject to any limitation period?

The principles of legal certainty and effectiveness of European Union law must be interpreted as not precluding legislation of a Member State and administrative practice relating thereto under which, in the field of value added tax, the period within which the tax

¹²² Papis Almansa, M., G. Beretta, G., *and pending cases on VAT*, The 16th GREIT Lisbon Summer Course, EU & International tax recent developments, June 2024; C-615/21, Napfény-Toll

¹²³ Cnossen, S., *VAT and agriculture: lessons from Europe*, in Int. Tax Public Finance 25, 519–551 (2018)

authority's right to assess that tax is time-barred is suspended for the entire duration of judicial review, irrespective of the number of times the administrative tax procedure has had to be repeated following such reviews and without limitation as to the cumulative duration of the suspensions of that time-limit, including where the court ruling on a decision of the tax authority in question, adopted in the course of a repeat procedure, following an earlier judicial decision, finds that that tax authority has not complied with the guidelines set out in that judicial decision¹²⁴.

To conclude, in an overall view of the European Union tax system, authoritative legal doctrine hypothesises the need for a European tax. Although the tax law of the European Union does not yet provide for a European tax to finance the budget of the European Union, it is to be hoped that this will happen as soon as possible¹²⁵. An implementation of such a tax at the EU level could help enhance the fiscal capacity of the European Union, allowing it to fund shared priorities and key EU programs, such as the Green Deal, which aims to promote sustainability and climate change. However, member states may hesitate to let European Union control their national tax systems because this might threaten state sovereignty. Currently the area of taxation with the highest level of harmonization is value-added tax and customs duties.

2.4 How tax policies support sustainability in the European Union

The European Union has seen taxation as an important and supportive tool in the context of production models inspired by the circular economy, affecting the costs for energy, raw materials and waste¹²⁶. The European institutions are committed to promoting the ecological transition and supporting the energy transition to renewable sources, The need for a conversion of energy sources and policies to reduce polluting emissions also involve important fiscal interventions. The problem has arisen in recent years of using the fiscal lever

¹²⁴ ECJ, Sect. V, 13 July 2023, C 615/21, Napfény-Toll Kft.

¹²⁵ Maitrot de la Motte, A., *Droit fiscal de l'Union européenne, Collection droit de l'Union européenne dirigée par Fabrice Picod*, 3e edition, 2022, p. 927

¹²⁶ Martis, M., *Tassazione ambientale, sostenibilità ed economia circolare*, in *Politiche Fiscali e green economy*, Edizioni Scientifiche Italiane, Napoli, 2023, p. 2020; Bagliani, M., Pietta, A., Bonati, S., *Il cambiamento climatico in prospettiva geografica. Aspetti fisici, impatti, politiche*, Bologna, 2020, passim.

in an environmental function¹²⁷. The key aspects of European sustainability tax policies are introducing environmental taxes to incentivise environmentally friendly behaviour, the promotion of financing and investment in renewable energy, and tax incentives for companies that adopt sustainable practices or invest in green technologies. In accordance with Regulation (EU) No 691/2011 on European environmental economics, an environmental tax is defined as a tax whose tax base is a physical unit of something that has a proven, specific negative impact on the environment. Furthermore, the European Statistics Authority (ESA) 2010 defines a tax as a tax. European statistics distinguish four different environmental tax categories: energy taxes, transport taxes, pollution taxes, and resources taxes¹²⁸. The subject of taxation related to environmental protection was already raised in the European Commission's Communication No. 2008/C, in OJ c-82 of 1 April 2008, 1 and a Regulation redesigned the categories of aid compatible with the common market. In Regulation No. 800/2008, in fact, the Commission introduced a comprehensive block exemption regulation, i.e. those measures that are declared compatible with the common market. The original ten categories of exempt aid become twenty-six, and among these is aid for environmental protection. A reversal of perspective began to take place, from environmental protection entrusted to the introduction of fiscal instruments, environmental taxes, according to the Pigouvian model to the different types of aid allowed for the same purpose through reductions and exemptions from such taxes¹²⁹. The earliest proponent of environmental taxation was the British economist Arthur Cecil Pigou, who, in his 1920 work, *The Economics of Welfare*, drew attention to the indirect costs associated with industrial and domestic smoke emissions in Manchester, England¹³⁰.

Afterwards, regulatory developments in the European Union regarding sustainable development and the circular economy will be analysed. In 2001, the European Union introduced its first strategy for sustainable development¹³¹. Specifically, there is a reference in the Treaty on the Functioning of the European Union that came into force in 2009. The

¹²⁷ Logozzo, M., *Le nuove accise sui prodotti energetici alla luce della politica ambientale UE*, Tomassini, A., *Riforma fiscale*, ed by, Giuffrè, 2023, p. 237-238; Salvini, L., *La tassazione dell'energia*, AA.VV., *Una nuova politica economica e tributaria per l'Unione Europea*, Roma, 2022, 187 ss.

¹²⁸ Vega, Mocoora, I., *Environmental Taxation in the Reformed Current System of Own Resources*, in Uricchio, A., F., Selicato, G., ed by, *Green Deal e prospettive di riforma della tassazione ambientale*, op. cit., p. 119

¹²⁹ Tesauro, G., Ingrosso, M., *Agevolazioni fiscali e aiuti di Stato*, op. cit. pp. 747-754

¹³⁰ Roodman, D. M., *La ricchezza naturale delle nazioni, come orientare il mercato a favore dell'ambiente*, Edizioni Ambiente, 1998/ *The Natural Wealth of Nations. Harnessing the Market for the Environment*, by Worldwatch Institute, Washington D.C., USA, 1998. p. 83

¹³¹ <https://eur-lex.europa.eu/EN/legal-content/summary/strategy-for-sustainable-development.html>

European Union is responsible for environmental policy, whose areas of action include air and water pollution, waste management and climate change.

Article 11 of the TFEU also provides for the principle of integration, which is a direct corollary of the principle of sustainable development¹³². Instead, the circular economy and resource efficiency have Articles 191 to 193 TFEU as their legal basis in the European Union. Even earlier, in 2003, the European Energy Taxation Directive introduced standard rules on what products are subject to taxation when they are taxed, and what exemptions are permitted and in 2007, sustainable development and climate change became a priority; in fact, the EU was granted legal personality and, consequently, the power to conclude international agreements¹³³. The European Commission made proposals with its Communication of 25 September 2014 “Towards a Circular Economy: Programme for a Zero-Waste Europe”, aimed at promoting recycling and reuse of materials in the Member States, developing the principle of prevention and precaution through the modification of waste treatment and production processes.

The UN World Summit on Sustainable Development was held in Johannesburg in August 2002 and to prepare for the meeting, the European Council met in March to give the Union the priority task of giving its sustainable development policy a global dimension. The objectives were to reach 0.7 per cent of GNP as soon as possible in the area of official development assistance, the conservation and sustainable management of natural and environmental resources, international environmental governance and capacity-building and technological cooperation¹³⁴.

Then, in December 2015, the European Commission itself adopted an ambitious circular economy package consisting of an EU action plan with measures covering the entire life cycle of products: from design, sourcing, production and consumption to waste management and the market for secondary raw materials.¹³⁵ Reduction of waste and recycling can be considered as substantial contributions to reducing EU greenhouse gases and attaining renewable resources goals. The European Commission marked a way for Europe which is more resource efficient. According to this roadmap the objective for 2020 is to use waste as

¹³² V. Corte giust., Grande Sezione, 11 settembre 2012, Nomarchiaki Aftodioikisi Aitolokarnanias e a. c. Ypourgos Perivallontos, Chorotaxias kai Dimosion ergon e a., C-43/10, ECLI:EU:C:2012:560, with a note by Gaudiosi, F., *L'applicazione del principio di sviluppo sostenibile attraverso la giurisprudenza dell'Unione Europea: il caso del fiume Acheelos*, in *OpinioJuris*, 1 April 2020

¹³³ Treaty of Lisbon signed in Lisbon in 2007 and entry into force in 2009

¹³⁴ Del Giudice, M., Casertano, A., *Lineamenti di diritto fiscale dell'Unione Europea*, Laurus Robuffo, 2009, p. 104

¹³⁵ Uricchio, A., *I tributi ambientali e la fiscalità circolare*, *Diritto e Pratica Tributaria*, fasc. 5/2017

a resource and to reduce waste of every citizen. Only non recyclable materials may be used as an energy resource and no waste should be landfilled. A variety of directives came into force to fulfil those goals¹³⁶.

This progress strengthened the EU's role on the global environmental front, pioneering by promoting the European Green Deal and adopting the European Climate Regulation. Climate change was the main driver behind these initiatives, and questions were often raised as to whether the EU was prepared to become the first climate-neutral continent by 2050.

European Parliament's resolution of 15 January 2020 on the European Green Deal called for an ambitious new action plan for the circular economy to reduce the overall environmental and resource footprint of EU production and consumption while providing strong incentives for innovation, sustainable businesses and markets for climate-neutral and non-toxic circular products. The Green Deal transcends a purely European project; it aims to promote the implementation of UN initiatives, such as the Paris Agreement and the 2030 Agenda, by positioning the European Union as a leader in the ecological transition. This approach serves as a model for countries around the globe to pursue similar environmental objectives¹³⁷. It emphasised the strong interaction between climate action and the circular economy and called for establishing an EU-wide target for resource efficiency. The harshest criticism has been the overly ambitious targets and the need to revise them to fit reality. To reduce the risks of disasters due to climate change, the European Union has increasingly got to the heart of the matter by integrating sustainable development goals into its policies as a priority¹³⁸. An important tool made available by the Green New Deal is subsidized financing, which supports research, development, and innovation in ecological and circular business practices. This financing includes non-repayable grants or interest subsidies for projects focused on topics such as decarbonization, circular economy, reduction in plastic use, urban regeneration, sustainable tourism, and risk mitigation and adaptation to climate change.

The European Parliament is also committed to implementing the Sustainable Development Goals, defining concrete results by 2030 and establishing mechanisms to monitor

¹³⁶ Nerudova, D., Dobranschi, M., Litzman, M., Rozmahel, P., *Tax Policy and Tools for Keeping Sustainable Economy and Society in the EU*, in Brokelind C., Va Thiel, S., *Tax Sustainability in an Eu and International Context*, IBFD, 2020, p. 82

¹³⁷ Mazzearella, M., *L'interesse alla tutela del clima e le iniziative internazionali ed europee per contrastare il cambiamento climatico*, Riv. Trim. di diritto Pubblico, fasc. n. 3/2024, p. 735; E. Chiti, *Introduction to the Symposium: Managing the Ecological Transition of the European Union*, in Riv. quadrim. dir. amb., 2021, 1, 10-11

¹³⁸ Reflections of the European Commission in a document entitled *Towards a more sustainable Europe by 2030*, January, 2019

progress¹³⁹. The environment is a matter of shared competence between the European Union and the member states (Art. 4 TFEU). Article 191 of the TFEU states that EU policy on the environment should strive for a high level of protection while considering the different situations in the various regions of the Union.

This policy is based on the precautionary principle, the principle of taking preventive action, the principle that environmental damage should be rectified at its source as a priority, and the polluter pays principle. According to Article 192 TFEU, the Council may adopt provisions primarily of a fiscal nature¹⁴⁰. The aforementioned principle is acknowledged by various levels of authority, commencing with the EU Treaty (art. 174, paragraph 2), which was incorporated as part of the Single European Act of 1987. According to this principle, community action in environmental affairs should be guided by the principles of precaution, preventive measures, source-based priority correction of environmental damage, and the 'polluter pays' principle¹⁴¹.

A turning point for sustainability occurred on 14 July 2023, when the European Commission presented a package of proposals called 'Fit for 55'¹⁴² to follow up on the Green New Deal. As European legislation advances, European climate law is becoming increasingly dominant. Member states still have some flexibility and areas of regulation in climate protection law. However, this flexibility is likely to diminish over time. The European Commission, through its EU climate package 'Fit for 55', emphasizes that the planned targets can only be met through the measures outlined in the package.

The Commission aims to strengthen and expand the emissions trading system, increase funding for climate protection, and raise the share of renewable energy to 40 percent by 2030. Additionally, it plans to set more ambitious energy efficiency guidelines. At the same time, tax law and the new border adjustment for CO₂ emissions will play significant roles, and efforts to bolster international climate protection must be increased¹⁴³. It consists of 12 legislative instruments, which will be applied in various sectors and will be geared towards providing the necessary acceleration in reducing greenhouse gas emissions in the coming

¹³⁹ Resolution on the Annual Strategic Report, European Parliament, 2019

¹⁴⁰ Tesauro, F., *Istituzioni di diritto tributario*, 2 - parte speciale, 2016, p. 374 et. seq.

¹⁴¹ Miele, A., *La fiscalità dell'impresa agricola*, CEDAM, June 2020

¹⁴² *Fit for 55, le misure verdi dell'Ue. La tassazione dell'energia si ristruttura* | *FiscoOggi.it* M. T. Monteduro, *cambiamenti climatici e politiche fiscali: impatti sociali ed effetti economici del pacchetto europeo "fit for 55"*, *Rivista di diritto finanziario e Scienza delle Finanze*, fasc. 4, 2021, p. 447

¹⁴³ Frenz, Walter, *Nachhaltigkeitswende durch das EU-Klimapaket Fit for 55 nach der Klimakonferenz von Glasgow*, ed. By Trüe, C., Scholz, L., *The EU Green Deal and its Implementation*, Nomos eLibrary, 2023, pp. 19-20 *The EU Green Deal and its Implementation (nomos-elibrary.de)*

decades. The European Commission's package also includes several measures to align fiscal policies with the objectives of the Green Deal¹⁴⁴. Present and past patterns of resource exploitation have led to high levels of pollution, environmental degradation and depletion of natural resources.

EU waste policy has traditionally focused on environmentally sustainable waste management. The Roadmap to a Resource-Efficient Europe and the Circular Economy Package have laid the foundation for the transformation of the EU economy into a sustainable one. As part of the European Green Deal, the Circular Economy Action Plan (CEAP) sets a future-oriented agenda for a cleaner and more competitive Union.

This new Circular Economy Action Plan for a Cleaner and More Competitive Europe was published on 11 March 2020 and is one of the pillars of the European Green Deal. It announces initiatives throughout the life cycle of products, focusing, for example, on their design, promoting the circular economy process and sustainable consumption, and aiming to ensure that the resources used remain in the EU economy for as long as possible¹⁴⁵. The Green Deal is a roadmap with various measures to achieve more efficient use of resources through the transition to a clean and circular economy. It also focuses on restoring biodiversity and combating pollution beyond just climate protection. Ultimately, it is about transitioning to an environmental economy. To achieve this, significant investments are needed. The Green Deal outlines how these investments can be financed and how a just and inclusive transition can be successful¹⁴⁶.

Following the economic crisis caused by the Covid-19 pandemic, in July 2020 the European executive set up a recovery programme, the Next Generation EU (NGEU), also known as the Recovery Fund, to promote a big recovery of the European economy under the banner of ecological transition and digitalisation. The financial envelope of the plan is EUR 750 billion, with 37% of the funds allocated to support climate action. To receive its share of public funds under the NGEU, each Member State had to draw up a 'National Recovery and Resilience Plan' (NRP) and submit it for approval by Brussels. The NRP provides for the disbursement of funds through three main instruments:

¹⁴⁴ *Il-Green-Deal-europeo.pdf (eurojus.it)*

¹⁴⁵ *Politica ambientale: principi generali e quadro di riferimento | Note tematiche sull'Unione europea | Parlamento Europeo (europa.eu)*

¹⁴⁶ Trüe, C., Scholz, L., *The EU Green Deal and its Implementation*, Nomos eLibrary, 2023, p. 21 *The EU Green Deal and its Implementation (nomos-elibrary.de)*

- non-repayable resources, i.e. no obligation to repay the amount disbursed and its interest to the issuing body;
- tax benefits in the form of tax credits: expenses can be deducted, at different percentages depending on the case, from the taxes to be paid to the tax authorities.
- subsidised loans, i.e. loans offered at a lower interest rate than the market rate.

It is precisely in Component 1 of Mission 2 of the NRP 'Sustainable Agriculture and Circular Economy' that the set of investments and reforms aim, on the one hand, to improve waste management and the circular economy and, on the other hand, to develop a more sustainable agricultural and food supply chain, reducing environmental impact.

In this context, we consider the EU Directive No. 904 of 5 June 2019, through which the European Union imposes an obligation of result on Member States, namely, to take the necessary measures to achieve an ambitious and lasting reduction in the consumption of single-use plastic products. The Italian tax on plastic packaging, which will enter into force in July 2026, aligns with this Directive¹⁴⁷. There is also EU Regulation 2023/955¹⁴⁸ of the European Parliament and of the Council which establishes a Social Climate Fund to meet the costs of the green transition and ensure its sustainability. The SCF - Social Climate Fund is part of the 'Fit for 55' legislative package, which aims to realise the European Green Deal goals of reducing greenhouse gas emissions by 55% compared to 1990 levels by 2030. Therefore, the European Green Deal aims to make the European continent climate neutral by 2050¹⁴⁹. Another recent and important piece of legislation is EU Regulation 2023/956 of the Parliament and of the Council of 10 May 2023, which establishes a carbon adjustment mechanism at the European Union's borders (CBAM). This regulation is directed at products with high carbon content, specifically those exhibiting substantial embedded CO₂ emissions at the import stage.

It serves as a crucial element of the EU's environmental policy, as it is not intended to be protectionist. Instead, it promotes international cooperation aimed at making meaningful strides toward decarbonization and, consequently, reducing greenhouse gas emissions. This

¹⁴⁷ M. Aulenta, *Ambiente: piccoli tributi crescono*, in *Rivista di Diritto Finanziario e Scienza delle Finanze*, fasc.1, 1st march 2020

¹⁴⁸ Paragraph (16) of the regulation clarifies that the Fund should be established to financially support Member States in their policies to mitigate the social impact of the introduction of emissions trading for buildings and road transport on vulnerable households, vulnerable micro-enterprises and vulnerable transport users

¹⁴⁹ Mercuri, G., *Strategie europee per mitigare il cambiamento climatico: dalla tassazione del lavoro a quella dell'inquinamento*, *Riv. di Diritto Tributario*, 2023

framework significantly contributes to the reduction of pollution emissions, even beyond the geographical and political boundaries of the Union¹⁵⁰.

2024 is the year of the new sustainability reporting governed by the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD) and the Sustainability Reporting Standards (ESRS), issued by the European Financial Reporting Advisory (EFRAG) and effective as of 1 January under Delegated Regulation (EU) 2023/2772 (Delegated Regulation). The standards are designed to be interoperable with the GRI Standards, consistent with the recommendations of the Financial Stability Board's Task Force on Climate-Related Financial Disclosures (TCFD) and will reflect the disclosure requirements issued by the EU Green Taxonomy and the Corporate Sustainability Due Diligence Directive (CSDD)¹⁵¹. This directive will come into force on 25 July 2024 and Member states must incorporate it into their national laws by 26 July 2026.

It requires companies to take responsibility for sustainability transformed the practice of sustainability reporting by integrating it into companies' financial statements¹⁵². As a result, it introduces new obligations for large companies operating in any of the member states, concerning their negative impacts on human rights and the environment, as well as the sanctions for violations¹⁵³. The EU Directive (EU) 2022/2464 of 14 December 2022 on Corporate Sustainability Reporting (CSRD) should be an opportunity for a healthy standardisation in tax sustainability reporting.

The current reporting framework on the tax variable is characterised by the proliferation of frameworks, rating questionnaires and indices through which the growing demand for data and information radiates from civil society representatives, rating companies and investors. The lack of standardisation both on the content and on the publication methods of reporting requires operators to make an effort of adjustment and compliance and, simultaneously, makes it complex for analysts to find and compare data.

¹⁵⁰ Comelli, A., *Profili europei della tassazione ambientale*, in *Politiche fiscali e green economy*, ed. by Martis, M., Ed. Scientifiche Italiane, 2023, p. 27; Artisei, L., *The UE carbon border tax. A sustainable market-based instrument or an obstacle to the free trade of goods?* E-journal Amministrazione in cammino, 16th of December 2021, p. 1 et seq.; Comelli, A., *La tassazione ambientale nella prospettiva europea, oltre la crisi economica e sanitaria innescata dal Covid-19*, Dir. Prat. Trib., 2022, pp- 800 et seq., Id., *Setting a price for carbon to achieve carbon neutrality in the European Union*, in H. Ashiabor, J.E. Milne, M. Skou Andersen, ed. by, *Environmental Taxation in the Pandemic Era*, pp. 26 et seq.

¹⁵¹ *Corporate Sustainability Reporting Directive: il nuovo reporting di sostenibilità (altalex.com)*

¹⁵² Dalla Via, N., *Il reporting di sostenibilità: gli indicatori delle PMI non quotate*, Controllo di Gestione, n. 3/2024, p.5

¹⁵³ Dzafic A., *Corporate sustainability due diligence directive: analisi preliminare dei nuovi obblighi*, in *Pratica Fiscale e Professionale*, n. 37, 30 settembre 2024, p. 29

On the other hand, the directive's aim is precisely to make available ESG information effective and comparable. In Italy, for example, the legislative decree transposing the CSRD will be issued in June 2024, with optional and mandatory provisions for SMEs regarding sustainability. With its implementation, there will be a revolution in corporate governance. Sustainability also comes in the due diligence processes, with the publication of a climate transition plan and the identification of liability for damages caused by the failure to implement due diligence. The sustainable finance table Efrag is moving toward broadening the basis of operation of sustainability reports also to unlisted entities. The directive provides for the adoption of simplified standards by 2028, while the orientation is to extend the adoption to unlisted entities as well. Member States, including Italy, have to transpose the CSRD into national legislation by 6 July 2024; in fact, the gradual implementation of the CSRD and ESRS will start on 1 January 2025 when the first companies will start publishing sustainability reports (covering the financial year 2024) under the new regime. The CSRD will replace the current Non-Financial Statement (DNF) governed by the Non-Financial Reporting Directive (NFRD), implemented in Italy by Legislative Decree No. 254 of 30 December 2016.

Sustainability reporting is a cornerstone of the Action Plan on Sustainable Finance, which is changing and will gradually change the approach of companies to sustainability towards a broad category of financial (e.g. investors, banks, insurance companies) and non-financial (e.g. workforce, communities first and foremost) stakeholders.

Recently, it has emerged that SMEs perceive certain benefits associated with sustainability reporting. These include corporate reputation and the improvement of internal processes and also the improvement of corporate risk management are perceived as particularly important. This thus highlights how it is perceived by SMEs that the sustainability reporting process does not only pertain to the communication dimension, but also has a management impact and among the business development paths identified was that of reconfiguring management control processes from an ESG perspective¹⁵⁴.

In promoting sustainability, the governments of the various member states play an essential role. A national government is therefore a key player and must promote paths aimed at industrial investments compatible with the objectives of environmental sustainability and

¹⁵⁴ See Paternostro, S., Costanza, F., *Controllo di gestione e nuova direttiva sulla rendicontazione della sostenibilità*, *Controllo di Gestione*, n.3/2024, p. 30; These considerations are based on a study conducted in 2021 by the Forum for Sustainable Finance in cooperation with ALTIS (Cattolica University of Milan).

regeneration of territories. This is where the power of public finance comes in to sanction harmful conduct, requiring the ‘polluting’ party to repair environmental damage.

On the other hand, the government exercises a reward function that recognizes tax breaks, mostly tax credits, in favour of companies that invest in environmentally friendly machinery. For these reasons, public finance has a dual function that is not limited to the levying of taxes but extends to the recognition of tax breaks¹⁵⁵. In the panorama of European countries, the German taxation system is observed concerning sustainability. Several countries have implemented comprehensive green tax reforms, e.g. Denmark, Finland, Germany, the Netherlands, and Sweden (OECD, 2001), but Germany is one of the most sustainable industrial countries. Many companies are committing to their social responsibility. Germany is one of the world's most sustainable industrialised nations. The country does particularly well concern growth, employment, social security and environmental protection. The German Supply Chain Due Diligence Act, which came into force on 1 January 2023, commits large companies to ensure compliance with ethical, social and environmental requirements throughout the entire supply chain and not only within their business. The state of implementation of climate mitigation measures in Germany can be summarised as follows. The national climate goal has been achieved for the year 2020, and the implementation of measures is still ongoing; the ambitious reduction of GHGs will continue. The Climate Change Act had its first monitoring process in 2021 for 2020 sector targets. Only the buildings sector exceeded its budget by 2 million tons of CO₂ equivalent, leading to an immediate action program implemented in July 2021. In the agricultural sector in terms of economic instruments and food policies, there is a taxation of harmful products and shift/reduction of subsidies such as for example pesticide tax, meat tax, protein tax, nitrogen-surplus or/and mineral fertiliser tax, reduction of environmentally harmful subsidies, shift from land-based subsidies to payment for environmental protection¹⁵⁶.

In France, there is the Anti-waste and Circular Economy Law adopted in 2020 that encourages firms across various sectors, municipalities, and citizens to eliminate waste and adopt more circular practices and also the reparability index introduced in January 2021 to promote repair in production. Unless expressly exempted, all properties built on French territory are subject to the land tax. There are two land taxes, depending on the case, one on unbuilt property and one tax on unbuilt property. The taxpayer may obtain relief in the case

¹⁵⁵ Mendola, D., *La natura ancipite della finanza pubblica. La tax green e le agevolazioni fiscali per investimenti ecocompatibili*, IUS, Giuffrè, 2022

¹⁵⁶ Schlegelmilch, Kai, *Green tax reform and carbon pricing mainly in Germany*, Forum Ökologisch-Soziale, Marktwirtschaft (FÖS), Green Budget Germany (GBG), SUSEET, Naples, 2022

of, for example, loss of crops in the field (hailstorm, frost, fire) or in the case of loss of livestock due to epizootia¹⁵⁷.

Another French law on business, the *devoir de vigilance* of 27 March 2017, concerns the additional liability of companies for conduct prejudicial to certain rights, specifically those relating to the human rights of workers. In response to this legislation, several other countries have introduced similar measures. These include the Dutch child labour due diligence initiative, the Norwegian decent work initiative with the Transparency Act, and the German law of 16 June 2021 introducing supply chain due diligence obligations regarding human rights and compliance with environmental standards¹⁵⁸.

Progress in this direction is also being made in Spain. There was a recent approval of Law 7/2022 of 8 April, which implies circularity that requires prioritising more sustainable and environmentally friendly consumption. The use of taxation to combat climate change and pollution reappears as a tool that unexpectedly encourages circular economy strategies along with the discussion on how to tackle climate change and the public finance crisis. The tax measures adopted are the tax on non-reusable plastic containers and the tax on landfilling and incineration of waste¹⁵⁹. An interesting issue discussed in Spain is the compatibility of environmental taxes with the principle of the ability to pay, considering the flexibility with which this principle has been interpreted by the Spanish Constitutional Court. With regard to extra-fiscal taxes, the Court is much more permissive in accepting a violation of the principle of contributory capacity as a criterion or measure to quantify the tax burden. In this debate, some have argued that pollution constitutes a manifestation of contributive capacity¹⁶⁰.

It is also interesting to have a look at some of the Trends in EU Direct Tax Directives¹⁶¹. Before analysing these trends, a brief introduction must be made concerning the sources of secondary law of the European Union such as regulations, directives, decisions and

¹⁵⁷ Grosclaude Jacques, Marchessou Philippe, *Diritto tributario francese. Le imposte – Le procedure*, traduced by De Mita Enrico, Giuffrè Editore, Milano, 2006, pp. 386-391; original title Jacques Grosclaude – Philippe Marchessou, *Droit fiscal général*, Editions Dalloz, 2003; *Procédures fiscales*, Editions Dalloz, 2001.

¹⁵⁸ Caterino, D., *Fattori economici e sociali della sostenibilità. Doveri di diligenza e (nuova) responsabilità delle imprese*, in Buonfrate, A., Uricchio, A., F., ed. by, *Trattato breve di diritto dello sviluppo sostenibile*, CEDAM, August 2023, p. 392

¹⁵⁹ García, Paton, Gemma, *Circular economy and tax implications in the Spanish experience*, Universidad de Castilla-La Mancha, SUSEET, Naples, 2022

¹⁶⁰ Martínez, Francisco, David, Adame, *La transizione ecologica nel sistema tributario: l'esperienza spagnola*, in Martis, M., ed. by, *Politiche fiscali e green economy*, Edizioni Scientifiche Italiane, 2023, p. 231; Judgment No. 182/2021, 26 October, Spanish Constitutional Court; Judgment 289/2000, 30 November, FJ 6

¹⁶¹ Korving, J., *The proposal of Directives in EU Direct Taxes - THE 16 th Greit Lisbon Summer Course - Eu & International Tax Recent Developments*, 2024

recommendations (article 288 TFUE) and the implication of these sources in tax law. Regulations have general application and direct effect. Regulations are binding in their entirety and directly applicable in all Member States. An EU Member State does not need to adapt its domestic legislation.

A directive has a general effect, but no immediate direct effect. It requires EU Member States to amend their domestic law. Under circumstances, a taxpayer can directly appeal to a right in a directive, if the directive was not implemented in time, in full or incorrectly. A Decision has no general effect, but only applies to a specified individual or legal person (e.g. state aid)¹⁶². One of the trends, in other words the general direction in which something is developing or changing, is the standardization of norms.

Harmonization is not a synonym for unification and its legal basis can be found in articles 114, 115 and 116 TFUE. Article 114 TFEU shows an ordinary procedure, but paragraph 2 specifies that it is “not for ‘fiscal provisions’ (see C-338/01, *Commission v Council*). Regarding article 115 TFEU, there must be unanimity in Council and the consultation of European Parliament. Article 116 TFEU shows a political instrument. Juncker (2018): Four steps towards QMV Moscovici (June 2019): no legal basis for direct tax harmonisation. Von der Leyen (July 2019): Suggestion for using ‘clauses allowing QMV’ on tax matters. There is also an influence of international developments on EU Directives such as Anti-Tax Avoidance Directive, DAC6, Pillar Two, Public Country-by-country Reporting, Transfer Pricing¹⁶³. Fiscal harmonisation is a general denomination designating a continuum of situations, going from the “fiscal unification (or equalisation)” of tax rates and bases, as well as of the procedures for tax collection all the way to the mere “fiscal co-ordination”, which entails the concerted co-existence of the fiscal regimes of different states in those cases where there are grounds for conflict or a joint action is required, so that the fiscal systems pursue the same goals and the national fiscal authorities co-operate in order to avoid the occurrence of “negative externalities”. According to certain perspectives, neither fiscal unification nor simple fiscal coordination is deemed appropriate for the current stage of economic integration within the EU. Fiscal unification lacks a legal basis due to the limited provisions of the EC Treaty in fiscal matters, as well as the principle of subsidiarity.

Moreover, it lacks economic rationality in the absence of unified economic policies at the Community level. Conversely, simple fiscal coordination aligns with a level of economic

¹⁶² Raganelli, B., *European Union Law and Institutions*, a Course organised by Univ. degli studi di Roma Tor Vergata

¹⁶³ Korving, J., *The proposal of Directives in EU Direct Taxes - The 16 Th Greit Lisbon Summer Course - Eu & International Tax Recent Developments*, op. cit. 2024

and political integration that is less advanced than the EU's current status. This approach is incapable of ensuring the desired fiscal neutrality¹⁶⁴.

On 17 January 2023, Parliament approved its negotiating position for talks with EU governments on new legislation to revise EU procedures and control measures for waste shipments. The revised legislation should better protect the environment and human health, taking full advantage of the opportunities offered by waste to achieve the EU's goal of a circular and zero-pollution economy. Parliament called for the creation of an EU risk-based screening mechanism to guide EU countries in carrying out inspections to prevent and detect illegal waste shipments.

The Sustainable Finance Disclosure Regulation (SFDR) introduces the definition of sustainable investment into the European legal system and is characterised by two essential elements: 1) that the economic activity of the company contributes to one of the environmental or social objectives as identified in EU regulation, without, at the same time, doing significant harm to any of those objectives; 2) that the company itself operates following good governance practices, as a minimum guarantee of safeguarding a sustainable economic activity.

2.5 Tax sustainability in the EU compared to an international context: an overview of disciplinary practices as implemented in various jurisdictions

Our planet's resources are running out and considering the growth in the number of people in the world (there are currently 8.2 billion in total by mid-2024), in some more developed parts of the earth attention has turned to reducing waste to a minimum and trying to think of future generations as well, respecting the environment as much as possible. In today's globalised world, it is imperative to incorporate international perspectives when shaping fiscal policies. Climate change is a global issue that requires an international approach to fight it and agreements, e.g. the Paris Agreement, should be turned into concrete solutions by national laws¹⁶⁵. Institutions at the international level have been actively addressing this, starting with the UN, OECD, and the European Union.

¹⁶⁴ Negrescu, Dragoș; Comănescu, Anton (2007): *Fiscal harmonisation trends in the European Union: Challenges for Romania, Strategy and Policy Studies* (SPOS), No. 2007,5, European Institute of Romania, Bucharest

Jean-Philippe Chetcuti: *The Process of Corporate Tax Harmonisation in the EC*, 2001, p.2-4,5/8

¹⁶⁵ Brokelind, C., van Thiel, S., *Tax Sustainability in an EU and International Context*, IBFD Publications USA, Incorporated, 2020

The European orientation is that of the National Recovery and Resilience Plan (NRP), in Mission 2 entitled 'Green Revolution and Ecological Transition', for which EUR 2.1 billion is allocated to improve the capacity for efficient and sustainable waste management and the circular economy paradigm, in line with the objectives of the European Action Plan. Therefore, the global paradigm of reference for all companies is the circular economy, which generates environmental, social and economic benefits.

Extend the life of products, reduce mining, and reuse/recycle raw materials to alter nature's cycles as little as possible while respecting the environment. The main economic and social actors that can promote sustainable production are companies. Environmental policies are incorporated into economic and fiscal initiatives, producing fiscal sustainability worldwide. Therefore, fiscal policies promote sustainable business practices to steer the business fabric towards a greener economy. In the 1980s and 1990s, the idea of using taxation to hold polluters accountable for their environmental impact began to gain traction.

Nordic countries were among the first to implement environmental taxes, and the EU issued a White Paper on growth, competitiveness, and employment, which included recommendations for environmental tax policies for its member states. This initiative, known as the Green Tax Reform or Environmental Tax Reform (ETR), gained international attention and was adopted by other countries outside the EU, with support from the UN and the Organisation for Economic Cooperation and Development (OECD)¹⁶⁶.

Sustainable development must be understood as an evolving concept without being devoid of legal value since its statements have normative value and are incorporated into the formal sources of international law¹⁶⁷. Scholars push for a holistic approach to sustainability that implies a holistic view of the environment, society and economy. The authoritative doctrine holds that inclusive and Effective International Tax Cooperation – should be based on a more holistic approach, strengthening taxation for sustainable development¹⁶⁸. The 2021 Report of the Secretary-General, “Our Common Agenda”, calls for strengthened global cooperation and inclusive, networked, and effective multilateralism. Among the tools available to the international community to achieve a safer, better and more sustainable future, the Secretary-

¹⁶⁶ Borrego A.C., Abreu R., Carreira F.A., Caetano F., Vasconcelos A.L., *Environmental Taxation on the Agri-Food Sector and the Farm to Fork Strategy: The Portuguese Case*. Sustainability 2023, 15, 12124.

¹⁶⁷ Barral, V., *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, Eur J Int Law, (2012), 23 (2): 377-400. - V. V. Barral, *Le développement durable en droit international: essai sur les incidences juridique d'un concept évolutif*. Thèse de doctorat, Institut Universitaire Européen, 2007, p. 93.

¹⁶⁸ Resolution adopted by the General Assembly on 30 December 2022, 77/244 (CARLA DE PIETRO – GREIT)

General highlights a strengthened international tax cooperation for sustainable development, improved digital collaboration, and the broader inclusion of women and youth¹⁶⁹.

International and multilateral cooperation is needed and should support a social and economic system based on decent work, women's rights, and universal social protection floors while mobilising the required international and domestic resources to fund them.

Considering the US experience, It should be emphasised that a dominant role with regard to early environmental policies has historically been played by the US system, as it had to deal with environmental issues earlier than other systems. From the 1960s until the early 1990s, the US made a significant contribution to the drafting of international climate agreements, as many of the principles endorsed by the 1992 Rio Declaration on Environment and Development had already been affirmed in US legislation¹⁷⁰.

In more recent times, the Inflation Reduction Act (IRA) was passed by the 117th United States Congress and signed into law by President Joe Biden on August 16, 2022. This law invests into domestic energy production while promoting clean energy. The US government introduced in the Inflation Reduction Act 2022, the production tax credit, as a tax credit equal to 10% of the production cost of strategic minerals in renewable energy generation processes¹⁷¹. Subtitle D (Energy Security) includes measures aimed at reducing US CO₂ emissions by 40% by 2030.

It proposes allocating USD 369 billion to businesses and citizens through various funding programs. These programs include credits for developing renewable energy facilities (solar and wind) for low-income communities and individuals, as well as for implementing carbon capture systems. The funding and facilities are overseen by the Federal Department of Energy. Another aspect of the plan focuses on fuels, providing incentives for the production of alternative fuels (such as biodiesel and renewable diesel) and offering tax credits to airlines that use sustainable fuel. Tax credits are also introduced for the production of clean hydrogen. The third funding initiative involves economic incentives for private individuals

¹⁶⁹ *Taxation and the SDGs | Financing for Sustainable Development Office (un.org)*

¹⁷⁰ Bonomo, Annamaria, *Green Deal europeo e misure attuative nella prospettiva della transizione ecologica*, in Buonfrate, A., Uricchio, A., ed by, *Trattato breve di diritto dello sviluppo sostenibile*, CEDAM, 2023, pp. 353-354; Several important environmental statutes were enacted in the United States between 1969 and 1976, including, to name a few, the National Environmental policy Act (NEPA) in 1969, the Clean Air Act and Clean Water Act in 1977, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In 1970, the Environmental Protection Agency, a US federal agency, was established; Resoconto della Conferenza delle Nazioni Unite sull'Ambiente e lo Sviluppo, Rio de Janeiro, 3-14 June 1992, vol. I, (Publication of the United Nations, Sales No. E.93.1.8.) Resolution 1, annexe 1.

¹⁷¹ See Acerbis, F., Lio, M., *La fiscalità fattore di sostenibilità ESG: good tax governance e ruolo delle Funzioni fiscali delle imprese*, Il Fisco, 12/2023

to promote energy efficiency¹⁷². The Inflation Reduction Act prompted the European Commission to propose the Green Deal Industrial Plan in January 2023 as a regulatory response. This plan builds on past European initiatives and complements the European Green Deal and REPowerEU efforts.

The Green Industrial Plan aims to enhance the competitiveness of the zero-emission industry and facilitate a quicker transition to climate neutrality¹⁷³. While the Communication on the European Green Deal has generated legislative action that has already taken its first steps and that seems capable, despite the energy crisis that has occurred, of laying the foundations for the ecological transition and decarbonisation policies, the US Green New Deal is encountering much resistance in the Senate and is struggling to materialise in legislative acts that would ensure its implementation. However, there is a trend towards greater integration of sustainability into fiscal policies. For example, federal laws in the United States on environmental issues are numerous, including the National Environmental Policy Act (NEPA). There are also regulations, such as the Environmental Protection Act and the Clean Water Act, as well as policies that incentivise using renewable energy or tax credits to install solar wind turbines.

In its recent report "Taxing energy use 2019: Using taxes for climate action,"¹⁷⁴ the OECD analyses energy taxation in 43 countries worldwide. The report highlights that most CO₂ emissions from energy consumption are not subject to taxation in the surveyed economies, which does not promote the shift to cleaner energy sources.

Apart from emissions from road transport, which only account for 15% of global emissions, the rest of CO₂ production is not taxed. These countries' current energy taxation structure fails to create effective incentives for businesses to invest in cleaner production and does not encourage consumers to optimise their energy consumption. Energy taxes rarely differentiate between different sources, which hinders efforts to reduce emissions.

The report shows that countries with higher taxes on fossil fuels tend to have less carbon-intensive energy use. The lack of effective price signals puts environmentally friendly companies at a competitive disadvantage compared to polluting ones, leading to continued investment in polluting technologies. While some countries have shown increased attention

¹⁷² Marchetti B., *Le politiche di decarbonizzazione statunitensi tra il Green New Deal e la giurisprudenza della Corte Suprema*, in Riv. della Regolazione dei Mercati, Giappichelli, 2023

¹⁷³ Ciotti L., *L'unione Europea di fronte all'Inflation Reduction Act Americano*, 14 marzo 2023, *L'Unione europea di fronte all'Inflation Reduction Act americano* | Università Cattolica del Sacro Cuore (unicatt.it)

¹⁷⁴ <https://www.oecd-ilibrary.org/docserver/9789264232334-3-en.pdf?expires=1728052694&id=id&accname=guest&checksum=62EEE85EAADD8CF20EDFA2336D924772>

to environmental issues in their policies, the OECD concludes that significant efforts are still needed. The report emphasises the necessity to rethink energy taxation to strengthen carbon price signals.

This would encourage citizens and companies to consider the climate costs of their actions, leading to reduced consumption of carbon-intensive goods and services, and gradual support for low-emission activities. Additionally, it suggests that companies adopting clean technology may improve their competitive position relative to polluting companies¹⁷⁵. OECD has a database with a definition of environmentally-related taxes: Environmentally-related taxes increase the cost of polluting products or activities, discouraging their consumption and production –regardless of whether this was the intended purpose of the tax¹⁷⁶. It is becoming increasingly evident that we need to reallocate resources from traditional fossil fuel industries to new green technologies. This reallocation will depend on the condition that investing in renewables becomes cheaper over time compared to producing or importing fossil fuels.

Many economists argue that implementing a carbon price is crucial for driving this resource shift. In Europe, the Emission Trading System (ETS), a cap-and-trade scheme, is expected to be the primary instrument for promoting this transition, gradually extending to all sectors of the economy¹⁷⁷.

It has been shown how, in some cases, tax legislation can be used to support sustainability goals. One initial step should be eliminating regulations that openly encourage environmentally harmful behaviour. Additionally, addressing sustainability considerations in tax law requires a certain level of specificity and distinction.

It is important to remember that while pursuing sustainability is essential, the main goal of tax law is always to generate revenue. When tax law is designed to achieve other goals, it can deviate from the ideal of a simple and fair tax system based on the ability-to-pay principle¹⁷⁸. These considerations by authoritative doctrine provide food for thought for an in-depth examination of the compatibility of these environmental taxes with the principle of

¹⁷⁵ Moratti S., *Green Deal Europeo: nuove prospettive per la fiscalità dell'energia nelle politiche di gestione dei rischi climatici*, in Riv. di diritto finanziario e scienza delle finanze, LXXIX, 4, I, 439-463, 2020
Oecd, *Taxing Energy Use 2019: Using Taxes for Climate Action*, Oecd Publishing, Paris, 2019

¹⁷⁶ Considerations shown by Ravazzi Douvan Aldo in the presentation entitled *Environmental Fiscal Reform in Times of Crisis* at SUSEET-Summer School of European Environmental Taxation, University of Naples Federico II, 2022

¹⁷⁷ Majocchi A. *Carbon pricing e la politica dell'unione europea*, Riv. di Diritto Finanziario e Scienza delle Finanze, fasc. 1, 1 March 2022

¹⁷⁸ Workshop "Steuerrecht und Nachhaltigkeit - Realität, Illusion oder bisher verpasste Chance" – Christoph Horstmann, 2023 *Nachhaltigkeit und Prinzipien des Steuerrechts (rechtundnachhaltigkeit.de)*

contributory capacity. More specifically, to verify whether the levy resulting from environmental damage is of a fiscal nature. If a compensatory or punitive nature is attributed to environmental taxation, the problem of compliance with Article 53 of the Constitution has no reason to exist because the principle of contributory capacity does not apply. This solution is the one favoured by some Italian scholars of the subject¹⁷⁹. On the other hand, other authors have taken the opposite view, according to whom the environmental and economic levy must be qualified as a tax and believe that the imposition of an ecological tax does not necessarily violate the principle of the ability to pay. This thesis is based on the principle that it is correct that the person who, by polluting, discharges a cost (negative environmental externality) on the community is obliged to make good the damage caused by compensating for it through the payment of an economic sum¹⁸⁰.

In accordance with the tenets of authoritative doctrine, environmental taxation represents an exemplification of the principle of contributive capacity. Green taxes evince an aptitude to contribute to public expenditure, as delineated in Article 53, paragraph 1 of the Constitution. This is largely derived from economic activities that engender negative externalities towards the ecosystem or the utilisation or production of pollutants as a prerequisite¹⁸¹.

In contrast, the domain of local environmental taxation encompasses a multitude of perspectives and issues, collectively laying the groundwork for a more comprehensive and structured framework. This framework is not constrained by the limitations of the current Italian system, which predominantly relies on property taxation, a strategy that is increasingly untenable in the context of declining property values. In particular, in view of the initiatives of other countries, including the United States, New Zealand, Germany, Spain and Sweden, the objective is to innovate the local taxation system, shifting the focus to the sustainable regeneration of territories and a responsible use of urban resources. It is worth

¹⁷⁹ G. Falsitta, *Considerazioni conclusive*, in Studi in onore di Gaspare Falsitta, Beghin, Moschetti, Schiavolin, Tosi, Zizzo, ed. by, Padua, 2012, p. 271 et seq.; I. Manzoni, G. Vanz, *Il diritto tributario. Profili teorici e sistematici*, Torino, Giappichelli, 2007

¹⁸⁰ Grignani A., *Le comunità di energia rinnovabile: utile risorsa per il contrasto alla comunità energetica*, Ambiente & Sviluppo, 2/2022; Barabino, P., *La fiscalità dei certificati verdi tra natura e forma di circolazione*, in *Rivista Trimestrale di Diritto Tributario*, n. 4/2013, pp. 767-797

¹⁸¹ Letizia, L., *The (complicated) introduction of a carbon tax among the new fiscal measures to protect the environment in the EU*, in Uricchio, A., F., Selicato, G., ed. by, *Green Deal e prospettive di riforma della tassazione ambientale*, Cacucci Editore, p. 178; Gallo, F., Marchetti, F., *I presupposti della tassazione ambientale*, in *Rassegna tributaria*, 1/1999, 115-148; Selicato, P., *La tassazione ambientale: nuovi indici di ricchezza, razionalità del prelievo e principi dell'ordinamento comunitario*, in *International Tax Law Review*, 2-3/2004, 257-304; Marchetti, F., *Tassa, imposta, corrispettivo o tributo ambientale?*, in *La finanza locale*, 3/2004, 31-54; Dadone, A., Lupi, R., *I tributi ambientali come collegamento tra "esternalità negative" e manifestazioni di ricchezza*, in *Dialoghi tributari*, 2/2013, 132-144; Peverini, L., *I tributi ambientali*, in Salvini, L., Melis, G., (eds.), *L'evoluzione del sistema fiscale e il principio di capacità contributiva*, Padua, 2014, 719-761.

noting the recent introduction of tax deductions for building renovations and eco-bonuses. In New Zealand, for instance, the Minimisation Act has been enacted, introducing landfill taxes that affect the landfilling of waste in a manner not greatly dissimilar from the Italian eco-tax. Some countries, such as Estonia and New Zealand, have introduced a tax on cattle flatulence as part of a strategy to reduce land use in cattle breeding, water consumption and the emission of greenhouse gases of animal origin. The use of so-called sin taxes at the local level is also a topic of considerable debate. Sin taxes are understood to be those state or local taxes on the consumption of certain goods deemed harmful to society and individuals. These include alcoholic beverages, soft drugs, tobacco, and gambling. These taxes are established to contribute to public spending with disincentive purposes. This is achieved by increasing the price of the goods in question and lowering or containing demand. In some American cities and counties, sin tax funds are used to expand infrastructure, while in Sweden, they are used to help people suffering from gambling disorders. In contrast, circular taxation serves to counteract environmental disregard through taxation, and has a dual function. On the one hand, it disincentivises waste and environmental damage, promoting individual and community responsibility¹⁸².

The power of environmental taxes is best illustrated by the Dutch Water Pollution Tax Act of the 1970s. It is one of the best and earliest examples of environmental taxation, with charges levied on the emission of pollutants into the waters of canals, rivers and lakes, which encouraged companies to reduce these pollutants. The demand for pollution control equipment encouraged manufacturers to develop more sophisticated products, triggering a process of innovation that drove down costs and made the country a world leader in this market¹⁸³.

¹⁸² See Uricchio, A., F., *La fiscalità ambientale locale tra problemi e prospettive*, in Uricchio, A., F., Selicato, G., *Green Deal e prospettive di riforma della tassazione ambientale*, Cacucci Editore, 2022, op. cit. pp. 3-21; Tarantino, A., *Rigenerazione sostenibile e consumo di suolo. Best practice per la salvaguardia delle aree urbane e periurbane*, Bari, 2020, p. 77, 79, 112; Griffith, R., Neshheim, L., O'Connel, M., *Sin taxes in differentiated product oligopoly: an application to the butter and margarine market*, in CeMMAP Working paper, 2010, n. 37; Gallo, F., *Etica fiscal e fisco etico*, in NEΩTEPA, 2015, p. 6.

¹⁸³ Roodman, D. M., *La ricchezza naturale delle nazioni, come orientare il mercato a favore dell'ambiente*, Edizioni Ambiente, 1998/ *The Natural Wealth of Nations. Harnessing the Market for the Environment*, by Worldwatch Institute, Washington D.C., USA, 1998. (op. cit.), p. 85

Chapter three

Fiscal profiles for the sustainable development of the agri-food companies

3.1 Agri-food sector towards sustainable patterns

3.2 Circular economy: the benefits of the circular economy for business

3.3 Critical issues in the tax system in promoting sustainable development

3.4 Effectiveness of these national and EU tax policies

Keywords: *sustainable development; circular economy; agri-food business; fiscal measures; sustainability; environmental taxation*

3.1 Agri-food Italian sector towards sustainable patterns

Italian legislation has been integrated with the new universal model of sustainable development. Italy transposed the UN vote on the 2030 Agenda with the approval of the so-called environmental connection to the 2016 Stability Law, delegating to the government the task of drawing up action plans to achieve the 17 Sustainable Development Goals by 2030. The content of the provisions of Law No. 221/2015 reveals a renewed legislative approach to environmental protection based on the circular economy, climate neutrality and energy efficiency, and the protection and measurement of natural capital. These are all objectives to be implemented preferably by means of corporate social responsibility instruments, e.g. EMAS and EU Ecolabel management systems, or by the valorisation of circular-type measurement such as Life Cycle Costing, or, again, through forms of public-private collaboration (green procurement) or rewarding technical specifications (minimum environmental criteria governed by GPP provisions)¹⁸⁴.

There are a significant number of small and medium-sized enterprises in Italy, in fact they make up the majority of enterprises. Many of these are part of the agricultural sector. Sustainability is not reserved for multinationals, but revolutionary achievements in the field of sustainability have also been recorded in the SME sector, which, according to the European Union, represent the backbone of the European economy, employing around 100 million people, accounting for more than half of Europe's GDP and playing a key role in the creation of added value in every sector of the economy¹⁸⁵.

Let's explore how sustainability policies are implemented in this area. The original function of the tax system is to procure economic resources for the State and public bodies to be able to perform the functions entrusted to them, but over time another function has been added, namely that of favouring or discouraging the performance of certain economic activities in certain areas and that of directing the behaviour of citizens and their consumption¹⁸⁶. An efficient and equitable tax system can encourage sustainable agricultural practices and enhance the global competitiveness of agribusinesses. Tax regulations should ensure fairness

¹⁸⁴ Buonfrate, A., *Principi del nuovo diritto dello sviluppo sostenibile*, CEDAM, 2020, pp.49-51

¹⁸⁵ Donato, F., *Il business della sostenibilità*, FrancoAngeli, Milano, 2023, pp. 46-47; *Internal Market, Industry, Entrepreneurship and SMEs*, http://ec.europa.eu/growth/smes_en.

¹⁸⁶ Falsitta, G., *Manuale di diritto tributario – parte speciale*, CEDAM, 2021, p. 1237

between small and large producers while avoiding market distortions. Tax incentives can help improve rural areas by enhancing infrastructure and services.

Several grants and tax incentives promote sustainable development and innovation in the agribusiness sector. For instance, there are deductions for investments in green technologies and funds for agricultural research. Agricultural cooperatives are eligible for specific tax breaks to encourage producer collaboration and resource-sharing. Climate change and air pollution are the main causes of increased natural disasters. The EU is fighting climate change through an ambitious package of measures named the Green Deal. Climate action is the heart of this package, from investing in cutting-edge research and innovation to cutting greenhouse gas emissions in order to preserve Europe's natural environment¹⁸⁷. The Green Deal is the EU's main new growth strategy to move the EU economy towards a sustainable economic model. The EU Commission formally announced the European Green Deal on 11th December 2019, which summarised the commitment in facing the climate and environmental issues, transforming the EU economy to reach a sustainable future. The turning point of European environmental policy is represented by "deeply transformative" reforms that promote the efficient use of resources in the context of a circular economy, reducing pollution and restoring biodiversity¹⁸⁸. During the years, the EU has focused on finding new environmentally friendly energy sources, to overcome the progressive depletion of traditional ones, as well as on balancing the effects of the international economic crisis. That is the background to the idea of adopting *ad hoc* measures that ensure "ecological" tax discounts to those who choose policies of recovery and respect for the environment as part of their business plan. In the construction of a link between the right to the environment and sustainable development, alongside the idea that technological progress must never be slowed down, there is also the importance of fiscal incentives in favour of the so-called green resources. In this sense we are looking for a synthesis between environmental rights and economic initiatives and this lies precisely in the differentiation of tax systems.

By way of example, there are green measures, with a lower VAT rate based on the object of the activity or the subjective assumption, the production of environmentally friendly goods or services through the corporate instruments of social enterprises, benefit companies or the

¹⁸⁷ EU enacts "2050 Climate Neutrality" law - ESG Professionals Network. <https://www.esgprofessionalsnetwork.com/eu-enacts-2050-climate-neutrality-law/>

¹⁸⁸ Mercader-Moyano, P., Porras-Pereira, P., & Levinton, C. (2021). *Circular Economy and Regenerative Sustainability in Emergency Housing: Eco-Efficient Prototype Design for Subaşı Refugee Camp in Turkey*. Sustainability, 13(14), 8100.

financing of environmental purposes through crowdfunding. Several rulings deal with tax measures that promote the use of renewable energy sources.

These regulations concern VAT exemptions or tax breaks for installing solar panels and wind turbines. On 11 March 2020, the European Commission adopted a new Circular Economy Action Plan for a cleaner and more competitive EU¹⁸⁹. The plan aims to provide a strategic framework for the transition to the circular economy and encourage Member States to adopt or update their national circular economy strategies, plans, and measures.

The tax system, as a rule, corresponds to the economic policy objectives of the Italian Country, which, in the agricultural field, are enshrined in the Constitution and the Treaties binding the Member States of the European Union.

European agricultural policy is outlined in Articles 38 and 44 TFEU and, more specifically, the Common Agricultural Policy (CAP 2021-2027)¹⁹⁰. The Common Agricultural Policy has long held a priority place among the sectoral policies of the European Union. This is because it represents the most integrated part of it and because it commits most of the resources of the European budget¹⁹¹. It is provided for in article 32, par.4, of the Treaty of Rome and it is built around the following objectives: combating climate change, protecting the environment, safeguarding the landscape and biodiversity, developing dynamic rural areas, and protecting the quality of food and health. Based on these premises, the link between income support and environmental measures through cross-compliance and green direct payments shall be strengthened and rural development support shall be provided to ensure that environmental practices and investments are economically sustainable for farmers.

The increasing consumption of natural resources has progressively brought the economic system closer to that of the environment. The Circular Economy is fundamental in a sustainable development that combines economic and environmental needs. It takes up a model that promotes a process of transforming goods at the end of their life cycles, based on minimizing waste and reducing the exploitation of raw materials and energy.

This type of economy adopts a regenerative approach in which products are designed to have a long life and be reused, renewed, regenerated and finally recycled. Environmental taxation aims to reorganise the market, steering it towards sustainable development and stimulating

¹⁸⁹ *Circular economy – the main destination of EU export of waste*. <https://wmsb.edu.pl/circular-economy-the-main-destination-of-eu-export-of-waste/>

¹⁹⁰ https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-glance_it

¹⁹¹ Fontana, C., *La fiscalità delle imprese agricole*, G. Giappichelli Editore, 2017, p. 46; Nugent, N., *Governo e politiche dell'Unione Europea*, vol. III, Bologna, 2008, p. 110; Ingrosso, M., Fiorentino, S., *I tributi nella giurisprudenza delle corti. Profili applicativi degli istituti tributari tra giudice nazionale e giudice comunitario*, Napoli, 2015, p. 19.

the circular economy. In the 1990s, the European Commission contributed to the establishment of the concept of an environmental tax applicable in the European context. In fact, it stipulated that for a tax or levy to be considered environmental, the taxable amount must be a physical unit of something of which there is scientific certainty that its consumption, or its release into the environment, entails negative effects on the ecosystem¹⁹².

The EU also promotes increased resilience of natural resources and aims at reducing and reusing waste generated by productive and consumption activities which are considered and used as a resource for further production and consumption cycles, combining economic growth and environmental protection. In this sense, sustainability also fits into the context of agrifood companies with the aim of creating sustainable products, designed with a view to the virtuous reusing of materials. Therefore, taxation is a strategic instrument for promoting environmental sustainability in accordance with international guidelines, as well as a tool for pushing the circular economy into national legislation.

The United Nations conducted the first sustainability studies immediately after the 1992 Conference on Environment and Development in Rio, Brazil. The term "sustainable development" represents a significant political value in contemporary international environmental and developmental relations. It implies an ongoing process of interaction rather than a definitive end goal. The interrelationship between development and the environment is clearly articulated in Principle 4 of the 1992 Rio Declaration: "To achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." This principle emphasizes the necessity of integrating environmental considerations into the development framework¹⁹³. Even earlier, in Italy, Aurelio Peccei, founder of the Club of Rome in 1968, reflected on the limits and contradictions of uncoordinated economic growth at the global level and on the environmental impact of human activities.

In the Club's first report, "The Limits of Development" (1972), he questioned the myth of uncontrolled progress, arguing that the pace of population growth and the exploitation of

¹⁹² Miele A., *La fiscalità delle imprese agricole*, CEDAM, 2020; Amatucci A., *L'imposizione e l'ambiente*, in *Trattato di Diritto Tributario*, 1994

¹⁹³ Beyerlin, Ulrich, *Sustainable Development*, Max Planck Encyclopedias of International Law [MPIL]Oxford Public International Law (<http://opil.ouplaw.com>). (c) Oxford University Press, 2023

natural resources within 100 years would lead to the collapse of the production system and the global ecological disaster¹⁹⁴.

Then followed the work of the OECD, which adopted the theoretical reference scheme "Pressure, State, Response" to represent relations between environments. The OECD defines sustainability in the agri-food sector as agriculture that aims not to alter the environmental balance by exploiting resources and production techniques.

In essence, the OECD proposes that agriculture has three fundamental pillars:

- The sustainability of resources
- The economic sustainability of operators
- The sustainability of operators' health

The concept of sustainability has been introduced by Directive 2003/87/EC of the European Parliament, and it has been modified several times to reduce emissions by 40% by 2030, considering cost-effectiveness and economic efficiency criteria¹⁹⁵. This directive establishes a program for trading greenhouse gas emission allowances to incentivize reductions in emissions¹⁹⁶. The theme is then explored further by the 2030 UN Agenda for Sustainable Development and the Paris Agreement on Climate Change¹⁹⁷.

The EU is committed to this 2030 Agenda adopted on 25 September 2015 by the UN General Assembly. Sustainable Development Goal 12.3, for example, aims to reduce global food waste at retail and consumption levels by 50% by 2030 and to decrease food losses along supply chains, including losses during primary production, transport, and storage¹⁹⁸. On October 2, 2017, the Italian government ratified the national strategy for sustainable development (SNSvS), aligning it with the United Nations' Sustainable Development Goals (SDGs). The SNSvS seeks to integrate the principles of the 2030 Agenda into Italy's social, economic, and political landscape while on the European Union level it is included in the European Green Deal¹⁹⁹. According to UN estimates, the world population will increase

¹⁹⁴ Prestamburgo, S., & Prestamburgo, M. (2016). *Agricultural Business Strategy: Theory and Methods for Cost-Effectiveness Investment Analysis in Agro-Energy Production*. Energies. <https://doi.org/10.3390/en9040273>

¹⁹⁵ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=252447&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1475>

¹⁹⁶ Weishaar, S. (2020). *EU Emissions Trading: Its Regulatory Evolution and the Role of the Court*. <https://core.ac.uk/download/370412277.pdf>

¹⁹⁷ Cossu, M., *Sostenibilità e mercati: la sostenibilità ambientale dell'impresa dai mercati reali ai mercati finanziari*, in Banca Borsa Titoli di Credito, fasc.4, 1 august 2023, p. 558; On the subject has also been written by Mazzarella, M., *L'interesse alla tutela del clima e le iniziative internazionali ed europee per contrastare il cambiamento climatico*, Riv. Trim. di Diritto Pubblico, fasc. n. 3/2024, p. 735

¹⁹⁸ <http://www.globalgoals.org/> and <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

¹⁹⁹ Martis, Marcella, *Tassazione ambientale, sostenibilità ed economia circolare*, Edizioni Scientifiche Italiane, Napoli, 2023, pp. 208-209

from 7.3 billion to 9.7 billion in 2050, so reducing food waste is also essential in reducing world hunger and feeding a growing world population.

The survival of farmers depends on marketing their produce at fair conditions and remunerative prices, so, first and foremost, product losses require the CAP to provide adequate tools to combat such volatility. Significant emphasis is also placed on the fact that food wastage at the production stage can be caused by the deterioration of our production apparatus due to the degradation of the soil, biodiversity and all natural resources and that this should increasingly be considered in the future evolution of agriculture and the CAP.

On the other hand, until a few months ago, the Commission did not conduct any study to determine the impact of the various reforms on the volume of agricultural production and its effect on food waste, which is why a European Parliament resolution calls on it to integrate the issue of food waste into the future design and implementation of the CAP (as reflected in the Resolution of 16/05/2017). The work examines the dynamics, outlining the importance of strategic regulation in the context of reference, and suggests careful consideration of the premises, reasons and consequences of such regulation as a method of intervention, the potential of which does not yet seem to have been fully understood, most recently in the national sphere.²⁰⁰

Adopting sustainable policies is nowadays a prerogative for companies. Sustainability discussions go beyond environment and climate, covering responsible remuneration, diversity, and the organisation's data privacy. Being sustainable for an agri-food company means creating the right balance between the economic aspect (long-term company livelihood), respect for the environment (avoiding pollution and global warming), and social well-being (respect for people, not only as consumers but also as workers).

A growing number of consumers who are more conscious about their choices are now paying closer attention to the entire supply chain - from production to final purchase. They tend to prefer products from economic and production activities that respect the environment and human resources. The quality/price ratio is no longer the only factor influencing purchasing decisions. Instead, the decision to buy is now based on a variety of values the company represents, especially concerning how the product is manufactured. Consumers are concerned about whether the company has violated workers' rights or contributed to environmental pollution while producing the product.

²⁰⁰ Maccioni, G., *Spreco Alimentare e sviluppo sostenibile*, XV World Congresso of Agricultural Law, 2018

Responsible tax management is a crucial ESG topic. ESG criteria are the basic principles of corporate sustainability. Sustainable companies are adopting transparent and clear tax strategies in line with their environmental, social and governance (ESG) agenda.

To increase transparency standards, companies are opting for the GRI - Global Reporting Initiative standard for fiscal management reporting and the World Economic Forum's International Business Council (IBC) guidelines (Stakeholder Capitalism Metrics). External stakeholders are interested in tax policy behaviour, and the levels of responsibility companies adopt in the event of tax avoidance or aggressive tax strategies. This is a crucial element for the legitimacy of companies to operate and is an increasingly important issue for shareholders, investors, institutions, and all stakeholders²⁰¹.

Corporate sustainability is closely linked to Corporate Social Responsibility (CSR). In 2001, the EU Commission introduced CSR in its Green Paper, which was defined as the voluntary integration of social and environmental concerns in a company's operations and its relationships with its stakeholders.

Moreover, the 2030 Agenda for Sustainable Development is a crucial path to which institutions, organisations, individuals, and companies are called upon to contribute. On 25 September 2015, the UN General Assembly passed by consensus Resolution 70/1 entitled Transforming our world: the 2030 Agenda for Sustainable Development, deciding to re-launch the international community's commitment²⁰².

²⁰¹ See Luison, Carlo, *Sostenibilità in azienda: la tassazione come parte essenziale dell'agenda ESG*, in Environmental, Social and Governance, IPSOA Quotidiano, August 2021

²⁰² Ingravallo, I, *Lineamenti del nuovo diritto internazionale dello sviluppo sostenibile*, p. 287, in Buonfrate, A, Uricchio, A., ed. by, *Trattato breve di diritto dello sviluppo sostenibile*, CEDAM, 07/2023; Encyclical letter *laudato si'* of the holy father francis on care for our common home; M. Montini e F. Volpe, *Sustainable Development Goals: "molto rumore per nulla?"*, in *Rivista Giuridica dell'Ambiente*, vol. XXX:3, 2015, pp. 489-496

Sustainability, in addition to its three declinations, can be seen in correlation with a list of 17 SDGs and 169 time-bound targets that world leaders have endorsed²⁰³.



The 17 UN Sustainable Development Goals

It is essential to analyse the highlights of sustainability in a general sense, particularly the corporate one.

Environmental Sustainability in general concerns the fight against climate change by creating sustainable production and consumption patterns.

Corporate environmental sustainability is based on the 'Environmental' criteria, which consider how a company contributes to the fight against climate change. A sustainable company is, in fact, an environmentally friendly company that takes virtuous actions such as the following:

- circular economy solutions;
- reduction and prevention of pollution;

²⁰³ See *Tax Sustainability in an EU and International Context*, edited by Cécile Brokelind, and Thiel, Servaas van, IBFD Publications USA, Incorporated, pp 22-35, 2020. ProQuest Ebook Central, <https://ebookcentral-proquest-com.ezproxy.unicatt.it/lib/unicatt-ebooks/detail.action?docID=6236200>.

- using renewable energy;
- reduction of environmental impact;
- containing water consumption and the Planet's other resources;
- carefully disposition of waste;

Social Sustainability in general concerns the fight against poverty, create sustainable cities by providing education and health care.

Corporate social sustainability is based on 'social' criteria, which relate to how the company refers to the social fabric in which it operates. The objective is to adopt a corporate development model that positively impacts the community. Hence, a company that is attentive to social sustainability will care about issues such as:

- workers' rights;
- work safety and health conditions;
- equality and social justice;
- the well-being and inclusion of the people working in the company.

Economic sustainability in general is based on the creation of growth and jobs and the sustainable development of industry.

Corporate economic sustainability refers to the criteria of 'Governance', which analyses how a company is administered and the ethics of the decisions made. A sustainable company is, in fact, a company that can produce value for the community, the organisation and all stakeholders affected by the company's activities, acting ethically to produce profits. To achieve this, a sustainable company:

- invests in innovation, technology, digitalisation and research;
- pays its staff and suppliers adequately;
- has a fair pricing policy;

- favours certified and local raw materials;
- contributes to the development of the local economy;
- produces valuable products and services that improve the lives of consumers.

There are currently a number of instruments that implement the circular economy in practice, such as carbon credits and sustainability credits. These are green investments through which companies choose to reduce their environmental impact from a circular economy perspective.

More focused on agriculture, SDG 2 seeks to end hunger, achieve food security and improved nutrition and promote sustainable agriculture. The five more detailed objectives refer to ending hunger (2.1.) and malnutrition (2.2.), doubling the agricultural productivity and incomes of small-scale food producers (2.3.), sustainable food production systems that increase productivity and production and help maintain ecosystems (2.4.), and maintaining genetic diversity (2.5). Ways that are mentioned to help achieve these objectives include increasing commodity investment (in rural infrastructure, agricultural research and technology, gene banks) (2a), correcting trade restrictions and distortions (export subsidies) (2b) and ensuring the proper functioning of food commodity markets to limit extreme food price volatility (2.c.). Researchers have looked at possible targeted subsidies for sustainable agriculture. It has been suggested to introduce taxes on certain chemical fertilizers and pesticides because they pose a potential risk to human health, other life forms and the environment, and because nitrogen and phosphorus contaminate water sources and cause soil degradation, which in turn might decrease land productivity. Tax policy design for sustainable agriculture should eliminate trade-distorting subsidies whether on exports or on domestic production and should tax the use of certain chemical fertilizers and pesticides²⁰⁴.

²⁰⁴ Van Thiel, S., *Sustainable Taxes for Sustainable Development*, in Brokelind, C., Van Thiel, S., ed by, *Tax Sustainability in an EU and International Context*, IBFD, 2020, pp.24-28; Tax Policy Tools vs. Sustainable Development of Agriculture in Poland; UNDP (2017): Taxes on Pesticides and Chemical Fertilizers, available at https://www.undp.org/content/dam/sdfinance/doc/Taxes%20on%20pesticides%20and%20chemical%20fertilizers%20_%20UNDP.pdf; Davis, R., *Financing Solutions for Sustainable Development: Taxes on Pesticides and Chemical Fertilizers*, January 2017

3.2 Circular economy: the benefits of the circular economy for business

In many countries, there are tax credits or tax deductions for companies that invest in circular economy technologies. VAT rates are also reduced for products made from recycled, repaired, or reconditioned materials. An increasing number of companies have realised how sustainable finance can, in the long term, generate importance in economic terms, in terms of reputation and customer loyalty, and in terms of interest from possible investors. Adopting a sustainable financial approach means orienting the company's strategic and operational choices based on ethical, environmental and social criteria. What is socially responsible investment? Created in 2016, the SRI label is a government label that allows you to invest in savings vehicles that include environmental, social and governance principles in their management. These are the extra-financial ESG criteria.

Global ESG-oriented sustainable investments by companies are growing steadily and in 2018 exceeded \$30 trillion, a 68% increase since 2014 and ten times more than in 2004. This rapid growth is precisely based on the Socially Responsible Investment SRI movement, which has been around for much longer. Unlike SRIs, which are based on ethical and moral criteria using a negative approach, such as not investing in alcohol, tobacco, firearms, ESG investments are based on the assumption that ESG factors have real financial relevance²⁰⁵. In terms of SRI, the absence of an appropriate methodology or controls in the selection process on extra-financial aspects, which could be described as Greenwashing, leads to a reputational risk. The image of the promoter of socially responsible investment could be permanently tarnished in the event of a scandal, leading to economic sanctions on the part of the investor²⁰⁶.

At the beginning of the 1990s, several economic theories began to develop and spread, according to which companies, in conducting their business, should focus on improving environmental and social conditions, adopting specific corporate governance policies to this end, and not focusing only on profit. One of the 'pioneers' and main proponents of this new approach was the British economist John Elkington, who summarised the idea of sustainable business in the expression 'Triple Bottom Line' or 'PPP' (Planet, People, Profit).

²⁰⁵ Donato, Federico, *Il business della sostenibilità*. FrancoAngeli, 2023, pp.62-63; *Global Sustainable Investment Review* 2018, Global Sustainable Investment Alliance, 2018, <https://gsi-alliance.org/>.

²⁰⁶ See Kathia Martin-Chenut, René de Quenauon, sous la direction de, *Development durable: mutations ou métamorphoses de la responsabilité?*, Editions A. Pedone, 2016; Matter, Philippe, *Les Responsabilités des promoteurs de l'investissement socialement responsable vis-à-vis de l'investisseur*, p. 163;

The rationale of this theory was to encourage companies to operate in their business environment through strategies and decisions that were able to simultaneously enhance planet, people and profit. The currently trendy corporate management model is based on the ‘Triple Bottom line’ approach, through which companies pursue three main objectives related to environmental protection, social equity and profit (profit, people, planet)²⁰⁷.

Tax policies at various levels, like the EU's Carbon Border Adjustment Mechanism proposal and the OECD's two-pillar solution, significantly influence business decisions. National and international legislators aim to implement long-term fiscal sustainability measures and restore public finances. Therefore, companies must follow transparent and cooperative administrative practices²⁰⁸.

Businesses must plan for corporate sustainability in order to contribute to an effective ecological transition process. Sustainable development implies the assumption of joint responsibility by entrepreneurs, who are required to reconcile economic development with the needs of nature. Every action must be aimed at protecting and improving the quality of the environment and ensuring the judicious use of available resources if it is to be truly sustainable development. It is therefore necessary to carry out a prior assessment of the risk associated with any action to promote development. This reinforces the social role that companies have to play, which implies carrying out a business activity that is not divorced from environmental impact assessment. In this sense, the state must facilitate the enterprise in contributing to the ecological transition process through advantageous taxation²⁰⁹.

In the Italian context, the majority doctrine considers that the legal system provides for a duty on directors to respect the sustainable management of companies, even if from the point of view of positive law, it is noted that there is a balance sheet regulation that fully emphasises sustainability issues only in reference to benefit companies, born on the experience of the United States of America of Benefit Corporations. These companies represent an acknowledgement of the importance of environmental protection in the context of business activity, even though their taxation and determination of the taxable base follows the rules of Chapter II, Section I, TUIR, Article 73, c.1, Lett. A, and can therefore be declined

²⁰⁷ Elkington, John, *Partnerships from cannibals with forks: the triple bottom line of 21st-century business*, John Wiley & Sons, 1999; Ventura L., *Public procurement e sostenibilità. Convergenze trasversali dei sistemi giuridici contemporanei*, Riv. Diritto del commercio internazionale, fasc. 1, 2020.

²⁰⁸ Viola, Ilaria, *Fisco e sostenibilità: le nuove proposte a livello internazionale ed europeo*, Ipsoa, Fisco, Wolters Kluwer, October 2021 *Fisco e sostenibilità: le nuove proposte a livello internazionale ed europeo (ipsoa.it)*

²⁰⁹ Mendola, D., *Il processo di transizione ecologica: la fiscalità agevolativa per gli investimenti ecocompatibili*, IUS, January 2023 (op.cit).

as mutual or profit-making companies²¹⁰. Benefit Societies were introduced into the Italian legal system, the first in Europe, with Law No. 208/2015 (Stability Law) in Article 1, paragraphs 376 to 384. Benefit Societies are highly innovative companies because, as stated in paragraph 376, "in the exercise of an economic activity, in addition to the purpose of distributing its profits, they pursue one or more purposes of common interest and operate in a responsible, sustainable and transparent manner towards persons, communities, territories and the environment, cultural and social goods and activities, bodies and associations and other stakeholders.

These companies mark the alignment of the strategy of those who do business in Italy with a model of sustainable development, in which the need to create value in a compatible and synergic manner with the requirements of respect for the environment and the social demands of greater equality and the rights of individuals and communities is placed at the centre of the company's activities²¹¹.

There has also been talk of creating a premium tax for companies that promote circularity. A circular economy refers to an industrial model that is regenerative by intention, in which products are designed to facilitate reuse, disassembling, restoration, and recycling, allowing a large number of materials to be reused instead of being produced by primary extraction²¹². The circular economy is a system in which all activities, from extraction to production, are structured so that what one person discards becomes a resource for another. In this model, the flow of goods is endless, facilitating a shift towards sustainable growth. This framework aims to replace the conventional consumption-and-waste economy at both global and national levels²¹³.

At the Italian level, there is more and more confirmation that investing in sustainability pays off. In concrete terms, AGRicoltura100, a Confagricoltura and Reale Mutua project that

²¹⁰ Poddighe, A., *Prime riflessioni sul concetto di inerenza*, (op.cit.), pp. 165-169; Rolli, R., *L'impatto dei fattori ESG sull'impresa. Modelli di Governance e nuove responsabilità*, Bologna, 2020; Cerrato, S., A., *Appunti per una via italiana all'ESG. L'impresa costituzionalmente solidale (anche alla luce dei nuovi artt. 9 e 41, c.3, Cost.)*, Analisi Giuridica dell'Economia, 2022, p. 63 e ss., Tombari, U., *Potere e interessi nella grande impresa azionaria*, Milano, 2019;

²¹¹ Linee Guida sul Reporting delle Società Benefit, NIBR, Network Italiano Business Reporting, 2019 - https://www.saracirone.com/wp-content/uploads/2019/04/NIBR_GUIDA-SB_ITA.pdf

²¹² Lanotte A., *EU circular economy plans could cut tax costs for companies*, www.itrinsight.com, October/November 2019

²¹³ Uricchio, F., A., *La costruzione di una società ecologica: il Green New Deal e la fiscalità circolare*, Riv. Di Diritto Agroalimentare, 1/2021, p. 158-159; De Leonardis, F., *Il futuro del diritto ambientale: l'economia circolare*, Relazione tenuta al convegno dell'Associazione italiana di diritto dell'ambiente sul tema, "Il Testo Unico dell'Ambiente a dieci anni dalla sua approvazione"; Id., *I rifiuti: dallo smaltimento alla prevenzione*, in G. Rossi (ed.by), *Diritto dell'ambiente*, Torino, 2015, p. 308; Cavanna, V., *Economia verde, efficienza delle risorse ed Economia Circolare*, Il rapporto "Signals 2014" dell'Agenzia Europea dell'ambiente, in Riv. giur. amb., 2014, 821 ss.

promotes sustainable agriculture, rewards the most sustainable companies in 2024, including one that produces biogas. This is also encouraged by the novelties of the Law 36/2024, in force since 10.4.2024, for young farmers. With particular reference to the circular economy applied to business, it is interesting to report a concrete example of a Sardinian breeding company that has equipped itself with a special plant for the production of an alternative energy source, fuelled by the zootechnical waste produced by pig breeding, thus maximising the value of natural resources within the production system and optimising the life cycle of products according to the circular economy paradigm. It is emphasised that there is a favourable fiscal legislation for the realisation of highly innovative zootechnical initiatives. Starting from Legislative Decree 152 of 2006, with a specific strategy for sustainable development, to the funds allocated to Italy by the Recovery Fund. In fact, in 2021, Italy sent the European Commission the final text of the National Recovery and Resilience Plan, outlining the reforms and investments to be carried out in order to access the Recovery Fund's own financial resources²¹⁴.

At the European level, agriculture finds its crucial support in the CAP 2023-2027, which the European Agricultural Guarantee Fund finances that provides direct support and finances market support measures and the Agricultural Fund for Rural Development, which finances rural on 4 September 2024, The Final Report of the Strategic Dialogue on the future of the EU agriculture²¹⁵ concerning ideas that will guide the work of the European Commission in defining a vision for agriculture and food.

Disclosing non-financial information, such as sustainability and social responsibility, was not regulated for long as no standards existed in the European Union (EU) in terms of sustainable reporting. The EU recognised the lack of conformity of such reports and the missing binding character, resulting in the EU Directive 2014/95/EU. This Directive implies disclosing non-financial information on sustainability, environment, and social aspects. This Directive has been at the heart of the discussion, resulting in a proposal by the European Commission (EC) on 21 April 2021 for a Corporate Sustainability Reporting Directive (CSRD), requiring the assurance of reported information and envisaging the adoption of EU sustainability reporting standards. This directive introduces the European Financial Reporting Standards (EFRS), expanding reporting requirements to cover a wider range of companies, including large corporations and listed SMEs. It aligns reporting standards with a multi-stakeholder approach and tasks the European Financial Reporting Advisory Group

²¹⁴ Martis, M., *Tassazione ambientale, sostenibilità ed economia circolare* (op. cit.), pp. 222-225

²¹⁵ *Strategic Dialogue on the Future of EU Agriculture* (europa.eu)

(EFRAG) with identifying sectoral standards for high-risk sectors²¹⁶. Large and listed companies, except listed micro-companies, must disclose information about the risks and opportunities related to social and environmental issues, as well as the impact of their activities on people and the environment.

This information is important for investors, civil society organizations, consumers, and other stakeholders to evaluate the sustainability performance of these companies. CSRD, together with the new ESRS principles, provides an opportunity, also for SMEs, to report sustainability according to recognised European standards²¹⁷.

Consumers are increasingly demanding sustainability, and for this reason, companies must act responsibly toward both the community and the environment in doing business. It's important to take a comprehensive and full look at the environmental, social, and governance issues impacting companies in order to find strategies to improve their sustainable performances. Sustainable performance of an organization refers to its ability to meet the needs and expectations of customers and other stakeholders on long-term, balanced by an effective management organization, by organization staff awareness, by learning and applying appropriate improvements and innovation. Companies have attracted the attention of investors, politicians and civil society stakeholders because of their potential to provide financial returns and contribute to sustainability and climate-related goals. Indeed, ESG (environmental, social and governance factors) investing has become a leading form of sustainable finance and has moved from the early stages of development into mainstream finance and generally refers to the process of considering ESG factors when making investment decisions.

Non-financial performance measures can serve as leading indicators of future financial performance and can provide information on the impact of the organization on stakeholders and society, on the internal functioning of your company. Non-financial metrics can be used to understand why certain financial results have occurred and what needs to be changed to improve the financial metrics. There are several significant non-financial metrics. In particular, four categories have a significant impact on business performance: corporate reputation, customer influence and value, competitiveness, innovation. All of these non-financial metrics are within the scope of the organization. Therefore, business professionals need to gain more experience in measuring non-financial metrics. The more experience

²¹⁶ Peta, M., Tucci, E., *Sostenibilità in agricoltura: obbligo di rendicontazione ESG e standard settoriali*, FiscoeTasse, 2024

²¹⁷ Bonacchi M., Menicacci L., *Il reporting di sostenibilità alla luce della direttiva CSR: il ruolo della relazione sulla gestione*, in *Controllo di Gestione*, Vol. 2, pp 5-182, 2024

gained, the greater the opportunity to create a wider range of predictive and forward-looking management tools.

The European Parliament with Delegated Regulation (EU) 2023/2772, 22.12.23, adopted the first set of 12 European standards setting out the reporting rules with reference to the company's own operations and business relations along the value chain, upstream and downstream²¹⁸. The sustainability reporting principles to be used by companies to carry out their sustainability reporting are laid down in Annexes I and II to this Regulation²¹⁹ that apply from 1 January 2024.

Specifically, several funding opportunities, such as FEAGA, FEASR, or FSE+, can be found in “Funding & Tender Opportunities” from the point of view of European agricultural enterprises. The new CAP 2023-2027 income support system includes measures to ensure a fairer distribution of financial support for farmers and workers across the EU. It is crucial to guarantee food security in Europe, which is one of the objectives of the Common Agricultural Policy (CAP). The CAP's aim, as defined in Article 39 of the Treaty on the Functioning of the European Union (TFEU), is to uplift farmers' incomes and secure a decent standard of living for them. Although there are still challenges, we remain optimistic about making significant progress in enhancing farm income to align with the EU economy average. Article 39 of the TFEU outlines the specific objectives of the Common Agricultural Policy (CAP), which include production, social and market goals. However, climate change is likely to impact the pursuit of these objectives, threatening the security of supply, market stability, fair living standards for agricultural communities, agricultural productivity levels, and reasonable prices for consumers. Additionally, the European Economic and Social Committee has suggested initiating a discussion on a European Charter of Climate Rights, which would recognize the rights of EU citizens and nature in response to the challenges posed by climate crises. Therefore, climate change is fundamentally a rights issue, one that calls for justice²²⁰.

France passed a law in 2019 to modify its civil and commercial codes to allow companies to consider social and environmental issues more. Consequently, Danone Group introduced the concept of “health through food” to consumers in its corporate bylaws, and the company became purpose driven. In this way, Danone doesn't generate profit only for its shareholders; it generates profit in a way that will benefit the planet, health, and its customers. Despite the

²¹⁸ *Sostenibilità in agricoltura: obbligo di rendicontazione ESG e standard settoriali - FISCOeTASSE.com*

²¹⁹ Article 1 of the Regulation 2023/2772 of the European Union

²²⁰ Carmignani, Sonia, *L'agricoltura resiliente e le sfide della giustizia climatica*, Riv. di Diritto Agroalimentare, 1/2023 pp. 69-75

company's recent commitment to planetary and health issues, an important legal issue shows how negligent it has been over the years. Danone North America and other companies are facing the first significant lawsuit in 2020 in California for polluting waterways, oceans and coasts with millions of tons of plastic packaging. The lawsuit was filed in California State Superior Court in the County of San Mateo alleging violations of the California Consumers Legal Remedies Act, public nuisance, breach of express warranty, defective product liability, negligence, and failure to warn of the harms caused by their plastic packaging.

Although the report describes interesting initiatives such as promoting regenerative agriculture, becoming carbon neutral by 2050 and the fact that 81% of packaging is recycled, reusable and compostable, this company is still facing this lawsuit due to the unconscious use of plastics.

Company ethics, behavior towards its employees or contribute to the local community play an increasingly important role in customer product selection. For this reason, Danone should increase its brand reputation efforts in the coming years to offset the negative consequences of the lawsuit. In particular, an important mission of the Danone Tax Department is to ensure a good defense of the Company by ensuring that all technical questions of the local tax administration are answered in a suitable time. The Danone Tax Department is in charge of following up also on litigation processes initiated locally.

While this legal case is pending, the company has committed to contributing to climate action by reducing plastics and meeting the UN SDGs. The improvement of the sustainability reporting each passing year demonstrates the building of an increasingly sustainable brand, and this will certainly bring reputational benefits.

After the proposal presented by the European Commission on the Green Deal, followed by the CAP Regulations and the implementation of various national NRPs, there have been challenges in implementing a clear and strong green intervention in the primary sector at the European level. One challenge is translating the European guidelines into the plans of individual Member States. Another challenge is the lack of European tax interventions to support these changes, leaving the individual Member States to intervene, not always in a coordinated and effective manner²²¹.

Any company adhering to GRI standards should utilize GRI 207 to disclose financial information in its sustainability or integrated report²²². Similarly, any organization publicly

²²¹ Grandinetti, M., *La tassazione dei redditi fondiari: una possibile revisione alla luce del trend nazionale ed europeo* in *Diritto e Pratica Tributaria*, n. 6, 1 November 2023, p. 2283

²²² <https://www.globalreporting.org/standards/gri-standards-download-center/>

endorsing the SDGs or the Davos 2020 Manifesto should also do so. Conversely, organizations claiming sustainability without demonstrating fair tax contributions and transparent tax management will increasingly be deemed irresponsible and unsustainable²²³. It is interesting to give a concrete example of the relationship between supply chain and sustainability in the agri-food sector. According to EY's strategy, an integrated approach is needed to make a supply chain more sustainable. It is important to rethink not only the strategy but also the implementation. It should be necessary to adopt a decarbonization and energy transition roadmap, including a Life Cycle Analysis.

Sustainability is a drive for change, for bringing something new to the market and making a difference. Companies that proactively work on this increase their chances of survival.

In other terms, according to Accenture supply chain is the key to winning the battle against

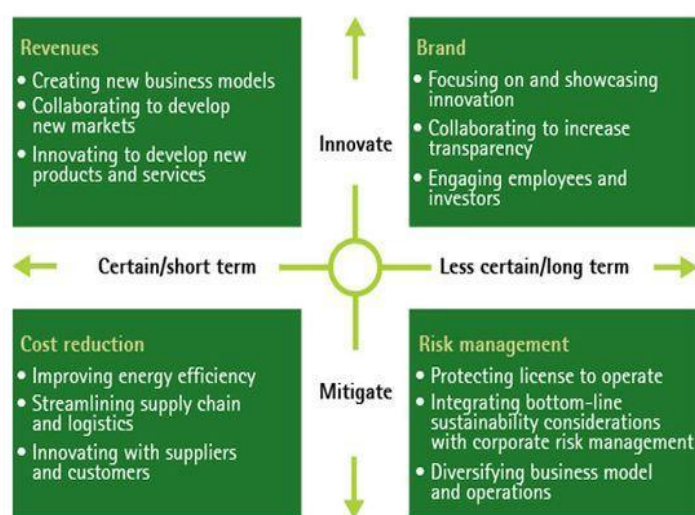


Figure 2 - Why a sustainable chain is good for business.
Accenture

climate change. Indeed, one of the three key priorities for the supply chain is getting to carbon net zero. Danone, for example, is doing its best in this chapter because of the Regenerative Agriculture program which is based on three pillars: protecting soil, empowering a new generation of farmers and promoting animal welfare.

Danone production sites (over 50% of the electricity powering Danone buildings and production sites come from renewable energies), leveraging agriculture to shrink the company's carbon footprint, supporting a new generation of farmers through the transition to a more sustainable practice²²⁴.

The challenges posed by the climate and environmental crisis require a critical evaluation of the entire legal system, including that of tax law.

The basic principles of corporate taxation, supplemented by the damage principle, justify introducing special measures aimed at environmentally sustainable businesses. Therefore, further research into the possibility and effectiveness of a capital and labour cost allowance

²²³ *Sostenibilità in azienda: la tassazione come parte essenziale dell'agenda ESG (ipsoa.it)*

²²⁴ Work carried out as part of the *Sustainability Management* course held by Professor Galli Davide within the Agrisystem doctoral school for the agri-food system

is recommended. By means of such an allowance, the negative effects of a changed balance sheet and cash flow position of sustainable business operations could be counteracted or even turned into a benefit, depending on the amount of the deduction. Such a capital and labour cost allowance would preferably be introduced throughout the European Union via a European directive in order to prevent tax competition between the member states. The alternative may be to introduce a European corporate tax based on the above mechanism, though this may still be a long way off²²⁵.

The Energy & Strategy Group report of the School of Management of the Politecnico di Milano has highlighted the benefits of the circular economy for companies. According to the report, adopting circular economy management practices in the Italian industry would generate around EUR 100 billion annually by 2030.

This refers to almost 4.5 per cent of the national GDP in 2019. The sector that would benefit the most would be the construction industry, where adopting circular economy practices could release EUR 37 billion annually. In the food & beverage sector, the gain would be 20.2 billion per year, and in the automotive industry, 18.2 billion. The other sectors are consumer electronics (12.9 billion), machinery (6.2 billion) and furniture and furnishings (4.5 billion). Furthermore, several studies have shown that adopting sustainability-oriented practices is an increasingly influential factor in consumers' consideration of a brand and their propensity to choose it over competitors.

Circular taxation can reduce consumption and overall use of resources and lead to positive environmental impacts (lower carbon and material footprints), helping transform our linear wasteful economies into efficient circular economies.

Italy, in collaboration with the European Union, has developed a range of incentives and contributions to support companies in their transition towards environmental sustainability. These incentives are available to companies of any size and operating in any market sector. One such incentive is the National Recovery and Resilience Plan (PNRR), which aims to achieve the goals of the Next Generation EU programme. The government's PNRR includes investments and reforms worth EUR 191.5 billion, focusing on three main areas: digitalization, environmental sustainability, and social inclusion.

In the context of the mission of digitisation, innovation, competitiveness and culture, the PNRR states that the tax incentive measures included in the Transition 4.0 Plan constitute a pivotal element of the strategy to enhance the productivity, competitiveness and

²²⁵ Arjen Siegmans, *Climate of the middle, understanding climate change as common challenge*, Wilfried Martens Centre for European Studies and the Wetenschappelijk Instituut voor het CDA, 2020, p. 70

sustainability of Italian companies. A variety of instruments have been established, including the Bonus 4.0, which provides a tax credit for investments in high-tech capital goods. Additionally, a Research and Development Bonus is available for costs incurred in research and development activities aimed at advancing production processes and investments in innovation. Furthermore, tax incentives are available for the photovoltaic sector, whereby the implementation of plants serves as a tool for energy efficiency through the utilisation of the 110% superbonus. These are specific tax measures, but the PNRR foresaw the necessity for a comprehensive reform of the Italian tax system. The fundamental objectives are identified by authoritative doctrine in the following points. Firstly, it is necessary to increase the fight against tax evasion by making control systems more incisive. Secondly, collaboration between tax authorities and taxpayers is necessary by adopting rules that establish trust, dialogue and confrontation. Thirdly, fiscal support for technological innovation, ecological transition and the recovery of companies in crisis is another piece of the puzzle. Finally, it is important to implement a rationalisation and simplification of the tax system and finally the revision of tax justice²²⁶.

The Transition 4.0 program is Italy's new industrial program that offers incentives and tax breaks for manufacturing companies that invest in innovative actions and measures by 31 December 2022. This program grants tax credits to companies that invest in digital capital goods and research and development. Carbon-credit systems allow agricultural producers to earn an extra revenue through selling their surplus of carbon credits to producers who emit higher amounts of greenhouse gases (GHGs). Bando Inail 2023/2024 facilitates companies in investments aimed at improving the health and safety conditions of workers and provides also a specific non-repayable contribution for companies active in the agricultural sector to modernise the agricultural machinery.

The Ministry of Economic Development Decree of 10.02.2022 was published in the Official Gazette on 02.04.2022 and concerns the establishment of an aid scheme to support, throughout the country, innovative and sustainable investments proposed by micro, small and medium-sized enterprises, aimed in particular at favouring:

- technological and digital transformation;
- the transition to the circular economy paradigm;

²²⁶ Allena, M., *Circular Economy and Environmental Taxation PNRR e incentivi fiscali all'economia circolare*, in Uricchio, F., A., Selicato, G., ed. by, *Green Deal e prospettive di riforma della tassazione ambientale*, Atti della II Summer School in Circular Economy and Environmental Taxation, Bari, 17-24 September 2021, pp. 157-169

- energy sustainability²²⁷.

The Finance Ministers and Central Bank Governors achieved significant progress in the field of sustainable finance. They transformed the Sustainable Finance Study Group, which was co-chaired by China and the United States, into a working group that will concentrate on three areas: (i) sustainability reporting, (ii) developing metrics for verifying and classifying the sustainability of investments, and (iii) strengthening the contribution of international financial institutions towards achieving the objectives of the Paris Agreement. To follow up on the European Green Deal, on 14 July, the European Commission presented a package of proposals called 'Fit for 55'²²⁸, consisting of 12 legislative instruments. Decarbonisation is a key of the Agreement and the EU requires financial markets to report on sustainability²²⁹. These instruments will be applied in various sectors and will be geared towards accelerating the reduction of greenhouse gas emissions in the coming decades²³⁰. The legislative proposals combine, among other things, a tightening of the existing EU ETS with its extension to new sectors.

In particular, the new EU ETS puts a price on carbon and lowers the cap on the emissions of certain economic sectors each year. This system has helped reduce emissions from energy production and energy-intensive industries by 42.8% over the past 16 years. The Commission proposes to further reduce the overall emission cap, to increase the annual reduction rate and, in addition, to phase out free emission allowances for aviation by including emissions from maritime transport for the first time. To achieve significant progress in emission reductions in road transport and buildings, a new, separate carbon pricing and emissions trading system is proposed for fossil fuels for road transport and for buildings. The introduction of more ambitious national targets is also envisaged for the sectors covered by the Effort Sharing Regulation, which assigns each Member State enhanced emission reduction targets for buildings, national road and maritime transport, agriculture, waste and small industries. These targets are calibrated to each state's GDP per

²²⁷ See *Economia circolare: contributi fino al 60% Guida al regime di aiuti - FISCOeTASSE.com*

²²⁸ Majocchi A. *Carbon pricing e la politica dell'unione europea*, Riv. di Diritto Finanziario e Scienza delle Finanze, fasc. 1, 1 marzo 2022; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Fit for 55': Delivering the EU's 2030 Climate Target on the way to climate neutrality, Brussels, 14.7.2021 COM(2021) 550

²²⁹ Mollers, Thomas M. J., *European Green Deal: Greenwashing and the Forgotten Good Corporate Citizen as an Investor*, in Columbia Journal of European Law, 2022, pp. 203-206

²³⁰ See Puchol Tur, T., *Analysis of energy taxation in the European Union and Spain*, in Ecological Transition and Environmental Taxation, ed. By. Comelli, A., Allena, M., Giuffrè, 2023, p. 167

capita and capacity, with adjustments made periodically to ensure the correct assessment of costs²³¹.

An application process is available for companies to obtain national funding under the name "New Green Deal" in Italy. This funding provides financial support for research, development, and innovation projects in the context of ecological transition and circular economy. Interested companies can apply for this online funding starting November 17, 2022.

The measure supports companies' projects eligible for subsidised financing from the Revolving Fund for Business Support and Investment in Research (FRI). It also grants to support industrial research activities, experimental development, and industrialisation of small and medium-sized enterprises' research and development results. The intervention is part of the Fund for Sustainable Growth (FCS), which is governed by the decree of 1 December 2021 of the Ministries of Economic Development and Economy and Finance.

The facility supports projects aimed at reducing carbon emissions, promoting circular economy, finding alternatives to plastics, revitalizing cities, promoting sustainable tourism, and addressing climate change risks through adaptation and mitigation.

Companies in industrial, agro-industrial, craft, and industrial services, as well as research centres, are eligible to apply for the New Green Deal. Projects may be submitted individually or jointly.²³²

Tax law within the agribusiness sector is crucial for ensuring its sustainability, competitiveness, and balanced development. Tax policies must be continuously adjusted to address emerging challenges and promote a healthy and sustainable agribusiness system. An important step is given by advantageous taxation. Public finance can also operate through reward measures, in favour of business activities that pursue "green" goals and not only in terms of tax levies. Environmental taxation takes on the function of incentivizing the adoption of virtuous behaviour by the community, resulting in a reduction in harmful conduct. Examples of environmental taxes encompass ETS permits, the removal of tax incentives for diesel utilized in agriculture, an augmented CO₂ tax, and a plastic tax.

This type of taxation induces individual economic operators to evaluate and adopt the tools that cause the least negative impact on the surrounding environment. In fact, the Budget Law 2021 has provided tax "benefits" in favor of companies that use technologies with a low

²³¹ See Monteduro, M., T., *Cambiamenti climatici e politiche fiscali: impatti sociali ed effetti economici del pacchetto europeo "fit for 55"*, Riv. di Diritto Finanziario e Scienza delle Finanze, fasc.4, 1° dicembre 2021, p. 447-448

²³² <https://fondocrescitasostenibile.mcc.it>

environmental impact: this is the case of the so-called “green tax credit,” amounting to 10 percent on purchases made as long as they are related to tools that limit polluting emissions or prove necessary to prevent, reduce and repair the damage caused to the environment by the conduct of business activity. There is also a benefit of 15 percent for green innovation, i.e., 15 percent of eligible expenses up to a maximum limit of two million, so as to support the production system through facilitative treatment of business income²³³.

Law No. 117/2019 has been enacted to facilitate the incorporation of four European Directives and the Circular Economy Action Plan. This legislation will bring about amendments to key national regulations pertaining to environmental protection, specifically the Environmental Code (Legislative Decree no. 152 of 3 April 2006), which covers regulations related to water, packaging, and waste. Additionally, amendments will be made to Legislative Decree no. 36 of 13 January 2003 (concerning the implementation of Directive 1999/31/EC on waste landfill), Legislative Decree no. 209 of 24 June 2003 (pertaining to the implementation of directive 2000/53/EC on vehicles), Legislative Decree no. 188 of 20 November 2008 (implementation of directive 2006/66/CE on batteries), and Legislative Decree no. 49 of 14 March 2014 (implementation of Directive 2012/19/EU). Another important law in this context is the law known as Gadda law n. 166 of August 19, 2016.

This law introduces tax incentives for people who donate products destined to become waste due to their inability to be marketed²³⁴. It is a valid tool for combating food waste, thus a way of encouraging the circular economy and preventing pollution that does not penalise, but rather encourages virtuous behaviour.

The 2016 Stability Law introduced the Collegato Ambientale, a comprehensive set of regulations that incorporates key provisions from the initial EU Communications of 2014-2015. These provisions have been carefully revised to align with our legal system, addressing critical concerns. The Collegato Ambientale actively promotes the adoption of green economy principles and the Circular Economy. Article 32 contains detailed provisions aimed at boosting separate waste collection and recycling efforts.

Notably, it allows separate collection targets to be tailored to the specific needs of each municipality, rather than being dictated by a broader territorial scope. Furthermore, municipalities failing to meet designated percentages of separate waste collection face a direct surcharge of 20 percent on the unique tax for depositing solid waste in landfills, known

²³³ Mendola, D., *Il processo di transizione ecologica: la fiscalità agevolativa per gli investimenti ecocompatibili*, in IUS, Portale delle Materie Giuridiche, 2023

²³⁴ See Zuccarello, A., *Food donations and tax on waste: a way to encourage circular economy and to prevent pollution*, Riv. di diritto Tributario, Pacini Editore, 2024

as the 'ecotax'. There are also provisions for imposing reductions in the special tax for municipalities surpassing certain levels of separate waste collection. Additionally, the calculation of the efficiency of separate waste collection is an annual process, with validation based on guidelines outlined by the Minister for the Environment and the Protection of Land and Sea. Article 45 empowers regions to offer economic incentives aimed at enhancing separate waste collection and reducing the volume of non-recycled waste in municipalities. It also facilitates the implementation of regional waste prevention programs and encourages the promotion of awareness-raising campaigns, or the verification of the coherence of previously approved regional programs.

A great opportunity in the Italian context worthy of mention here is the 5.0 tax credit. Article 38 of Decree-Law No. 19/2024 establishes a tax credit for companies that invest in initiatives aimed at reducing energy consumption, known as the 5.0 credit. This initiative is part of the Transition 5.0 Plan and is in accordance with the "Repower EU Plan." Its primary objective is to facilitate enterprises' digital and energy transition by providing these tax credits. This measure seeks to support the transformation of production processes into an energy-efficient and sustainable model grounded in renewable energy sources. The 5.0 credit can only be cumulated with other facilities financed by national resources. On the other hand, there is no possibility of cumulating the credit with other facilities provided under European Union programmes and instruments²³⁵. With specific regard to farms, in order to access the tax benefit, they can still invest in diesel machines, provided that these replace older generation tractors. This compromise makes it possible to keep machines that are essential for agricultural activity in operation, while pushing for a technological upgrade that reduces environmental impact. This is because the government has recognised the current impossibility of completely replacing diesel engines in the agricultural sector, granting an exception to this rule. To conclude, taxation is a powerful lever to drive more sustainable choices and accelerate the transition to a more sustainable economy. However, existing general taxes should be reduced proportionally to avoid tax evasion and a failure to achieve the purpose of circular taxation itself.

²³⁵ Bonanno G., Santalucia, S., *Piano Transizione 5.0: procedure e aspetti critici di una grande opportunità*, CorriereTributario 11/2024, 947-954

3.3 Critical issues in the tax system in promoting sustainable development

The agribusiness sector is evolving with the introduction of new technologies such as precision agriculture and blockchain for traceability. Fiscal regulations must adapt to these changes to support innovation. There is an essential relationship of dependence between sustainability demands and fiscal policies and pressure to reduce agriculture's environmental impact requires new fiscal measures that incentivize sustainable farming practices. Sustainable development requires a fair and efficient tax system and companies' commitment to transparency. Fiscal levers should have implications related to the requirements of transparency and, secondly, the reasonableness and proportionality of control activities. One important and interesting topic to consider is the principle of equality in tax rules, especially when it comes to favourable rules or tax concessions in different areas. According to established legal doctrine, the legislature typically does not violate this principle when it grants concessions for purposes that are recognized in the Constitution²³⁶. The tax system plays a crucial role in promoting sustainable development, but several critical issues can hinder the effectiveness of tax policies in this area.

Tax incentives for sustainable practices are often not sufficiently attractive or well-structured to stimulate meaningful change. Tax breaks for sustainability can be complex to obtain, unfamiliar, or insufficient in terms of economic benefits.

At a national level, there are issues of lack of transparency and bureaucratic complexity. The tax system's complexity and lack of transparency make it difficult for businesses and citizens to understand and take advantage of sustainability tax breaks. Also, bureaucratic procedures can be burdensome and discourage the adoption of sustainable practices.

Another critical issue concerns the equity and accessibility of incentives. Small and medium-sized enterprises (SMEs) and small-scale farmers may find it more difficult to access tax incentives than large enterprises, creating inequality and hindering widespread inclusion and participation in sustainable development initiatives.

²³⁶ Tesaro F., *Istituzioni di diritto tributario*, p. 74 et seq. UTET giuridica, 2017

One of the major problems that must be analysed is that of tax evasion, which can be combated with more controls and stricter legislation.

Tax evasion is a major critical issue that takes away vital resources to fund sustainable development policies. The agriculture and food sectors are not exempt from illicit practices, which reduces the ability of states to invest in sustainable initiatives.

In addition, regulatory inhomogeneity is also present. Nationally and internationally, there is significant inhomogeneity in tax regulations. This lack of harmonisation can create uncertainty and difficulties for businesses operating in different countries, reducing the effectiveness of tax policies for sustainable development. Related to this problem is also a lack of integration between tax and environmental policy.

Fiscal and environmental policies are often developed separately, with little integration and coordination. This leads to inefficiencies and conflicts between fiscal and environmental sustainability goals. It is essential to understand how to overcome these critical issues and to fully utilise the potential of the tax system in promoting sustainable and resilient development in line with current policies of the European Union²³⁷. In this regard, it is worth considering the "Corporate Sustainability Reporting Directive—CSRD" (Directive 2022/2464), which officially came into force on 5 January 2023 and replaces the previous "Non-Financial Reporting Directive—NFRD" (Directive 2014/95/EU), which was implemented in Italy by Legislative Decree No. 254 of 30 December 2016 and concerns the non-financial reporting obligation for large companies. Considering the limitations and criticalities of the previous directive, i.e. the growing gap between the sustainability information disclosed by companies and the needs of the users for whom this information is intended, the CSRD aims precisely to overcome these limitations.

This directive should be an opportunity for a healthy standardisation in the field of tax reporting in sustainability, in fact it aims to increase the transparency and comparability of information on companies' environmental, social and governance (ESG) performance. The current reporting framework on the tax variable is characterised by the proliferation of frameworks, rating questionnaires and indices through which the growing demand for data and information radiates from civil society representatives, rating companies and investors²³⁸. The lack of standardisation in both the content and publication methods of

²³⁷ Article 3, (3) TUE: *The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*

²³⁸ See Prisco, M., *Corporate Sustainability Reporting Directive: il nuovo reporting di sostenibilità*, SOCIETÀ, BANCA E IMPRESA, Altalex, 2024

reporting requires operators to make an effort of adjustment and compliance. It simultaneously makes it complex for analysts to find and compare data. On the other hand, the directive's aim is precisely to make available effective and comparable ESG information²³⁹.

In this direction, the directive updates and extends the rules for reporting companies' sustainability in line with other Union law rules and internationally recognized reference frameworks. CSRD envisages replacing the term "non-financial" with "sustainability information", as the former implies that the information in question is not financially relevant and may be. Think of the various aspects that characterize the process of economic enhancement, from business model to strategies, from targets to governance, from due diligence activities related to "sustainability matters", adverse impacts, the supply chain and related mitigation actions.

The Directive also covers the broadening of the scope and the introduction of more detailed reporting requirements that include information necessary for understanding the impact of the company's activities on governance aspects, environmental, social and labour issues, respect for human rights and the fight against corruption, with visions, at least formally, prospective and retrospective. All this is also detailed according to the necessary balance where the various factors compete but without precise framework rules²⁴⁰.

Regarding transparency, the Global Reporting Initiative (GRI), an independent international organization, developed one of the world's most widely used standards for sustainability reporting even before the aforementioned directive. GRI's goal is precisely to promote transparency and accountability of organisations regarding their sustainable impact.

Reports based on GRI standards allow for comparing sustainability performance over time and between different organisations. Global standards for sustainability reporting have recently been enhanced by a new information set, 207, dedicated to disclosure on the approach to tax. In the context of financial reporting on sustainability, it is notable that certain countries, including the United Kingdom and Australia, have introduced tax strategy disclosure requirements. Additionally, there is a growing trend among companies to integrate these tax strategy reports into their sustainability reports. This is the route already traversed by sustainability standards, including GRI 207: Taxes. Its introduction in 2019 constituted the inaugural global standard for tax transparency, underscoring the necessity of

²³⁹*Sostenibilità e tassazione, verso una completa rappresentazione della contribuzione fiscale | NT+ Diritto (ilsole24ore.com)*

²⁴⁰ Fimmanò, F., *Art. 41 della Costituzione e valori ESG: esiste davvero una responsabilità sociale dell'impresa?*, *Giurisprudenza Commerciale*, fasc.5, 1 Ottobre 2023, p. 777

integrating taxation as a sustainability theme to achieve the Sustainable Development Goals (SDGs). Its key strength lies in its incorporation of the guiding principles of good tax conduct into a unified, globally applicable reporting standard²⁴¹. Although included among the Topic-specific standards dedicated to the economy, the information required disclosure, from the risk appetite of the company in the tax field as declined within its tax strategy (GRI 207-1), up to more detailed information on taxes paid in the various jurisdictions in which it operates (GRI 207-4) distinguishing between taxes collected (such as withholding taxes on remuneration and remuneration) and those borne (typically taxes on income produced), are also significant on the assessment of the positioning of the company concerning sustainability issues. Standard 207-4 requires companies to disclose their profits in the countries they operate in and contribute to economic and social development through proper tax obligations. Any company that uses GRI standards should utilize GRI 207 to provide financial information in its sustainability report or integrated report. Any organization that has publicly expressed support for the SDGs or the Davos 2020 Manifesto should do the same. Conversely, organizations claiming to be sustainable yet failing to demonstrate how they contribute their fair share of taxes and lacking transparency about their tax management will be increasingly viewed as irresponsible and unsustainable²⁴².

On the other hand, it is essential to implement an adequate system of controls to prevent the misuse of resources aimed at achieving sustainable development goals. Control bodies must be vigilant to prevent a delay or compromise in meeting sustainability standards, which could harm the community in two ways: by depriving resources of companies that could have better utilised them and perpetuating harmful behaviour towards the environment and social development.

However, excesses of rigour that risk thwarting the results of tax incentive policies should be avoided. A recent and significant example is the control activities concerning the use of tax credits granted to facilitate investment and technological innovation.

The activity of incentive recovery and repression of misconduct or fraudulent behaviour should always be based on criteria of reasonableness and proportionality. It should also be borne in mind that in these areas, very often, the application of tax provisions is subject to specific technical requirements, the verification of which normally requires skills that do not belong to the cultural background of tax auditing bodies.

²⁴¹ Menicacci, L., *Tax disclosure e rendicontazione non finanziaria: come comunicare la sostenibilità fiscale*, Controllo di Gestione n.6/2023, p. 17

²⁴² <https://www.ipsoa.it/documents/fisco/imposte-dirette/quotidiano/2021/08/25/sostenibilita-azienda-tassazione-parte-essenziale-agenda-esg>

From the company's perspective, documenting the reliability of the controls and procedures adopted and guaranteeing the reliability of the data disclosed is becoming increasingly fundamental. This must allow stakeholders to assess the company's compliance with sustainability goals correctly.

Given the close relationship between business operations and taxation, it is advisable to adopt a rational approach that includes risk management practices to cover all areas of potential tax risks. These risks may not only relate to tax compliance but also extend to other business functions that may not necessarily be responsible for tax compliance. The most technically appropriate response remains, again, the adoption of a tax control framework that simultaneously ensures the adequate governance of risk and the reliability of publicly disclosed information²⁴³.

Modifying the ability-to-pay principle to include sustainability aspects also touches upon the issue of tax performance 'indicators'. Corresponding indicators of sustainable behaviour should be added to the recognised indicators of income, consumption, and wealth. The more 'qualitative characteristics' are added to the performance principle, the more difficult it will be to harmonise performance and sustainability indicators. The concretisation of these indicators occurs in a space that a free dogmatic construction cannot define but only by decisions of legislative selections.²⁴⁴

From a European perspective, the polluter pays principle²⁴⁵ should also be reconsidered and seen as “who doesn’t pollute pays nothing”²⁴⁶. The “polluter pays” principle requires that the operator whose activity has caused environmental damage or the imminent threat of such damage be held financially liable so as to induce operators to adopt conduct that reduces the risks of environmental damage.²⁴⁷ It should come to an awareness of the operator such that the environment should be respected and no additional taxes paid for pollution because he was careful and thought about the common good.

²⁴³ See Nobile, L., *Sostenibilità e Fisco: la necessità di un percorso comune, Il Ruolo della leva fiscale*, in IPSOA Professionalità Quotidiana, October 2021

²⁴⁴ Horstmann, Christop, *Nachhaltigkeit, Leistungsfähigkeit und Internationales Steuerrecht*, iStR 2022, Heft 10

²⁴⁵ Article 191 of the Treaty on the Functioning of the European Union

²⁴⁶ Giaimis, G., *Ecological Transition and Environmental Taxation*, p. 107-108, Chapter 7 in *Ecological Transition and Environmental Taxation* by Alberto Comelli and Marco Allena, Giuffrè, 2023.

²⁴⁷ Mendola, D., *Il processo di transizione ecologica: la fiscalità agevolativa per gli investimenti ecocompatibili*, in IUS, Il Portale delle Materie Giuridiche, Giuffrè, 2023; Ficari, V. (edited by), *I nuovi elementi di capacità contributiva, L'ambiente*, in “Studi dell’Associazione Italiana dei Professori di Diritto Tributario”, Aracne editrice, 2018, p. 13

As was summarily described above, another critical aspect is tax evasion, and it is worth doing a critical analysis on this topic, in particular, the link between tax evasion and sustainability.

The fight against tax evasion is being intensified through international initiatives such as, for example, the OSCE BEPS project, which aims to combat tax evasion by large multinationals that exploit regulatory loopholes and asymmetries to evade²⁴⁸.

Tax avoidance, or abuse of law, consists of transactions that formally comply with tax rules but realise undue tax advantages. In the context of tax law, tax evasion constitutes a direct violation of tax statutes, while tax avoidance involves the circumvention of these statutes²⁴⁹. Tax avoidance involves actions, transactions, and facts that are interconnected, lacking valid economic reasons. These acts aim to circumvent obligations or prohibitions set by the tax system to receive refunds or reductions in taxes that are otherwise not due²⁵⁰. It involves the legal exploitation of tax laws to one's own advantage. The term tax avoidance tends not to be defined within taxing statutes.²⁵¹

Fight against tax evasion and tax avoidance is essential in achieving global sustainable development and climate goals. Some authors consider that tax avoidance can be better understood when viewed as a sustainability issue. Tax avoidance has the potential to significantly deplete three essential resources that provide value to society. The first, and perhaps the most recognized, is the social commons. Tax avoidance weakens the social commons by depriving public systems of the financial support they need to function effectively. When governments are unable to operate properly, it undermines society's ability to sustain itself. Moreover, tax avoidance also undermines the regulatory commons, which encompasses the shared expectations, norms, and understandings between businesses and the authorities that govern them. Finally, tax avoidance adversely affects what we refer to as the organizational commons-shared spaces within organizations that rely on a foundation of mutual social capital, encompassing trust, honesty, and integrity. From a sustainability perspective, tax avoidance represents not only a social issue but also a challenge for

²⁴⁸ Aciri, M., *Progetto BEPS: quindici elementi per un piano Ocse ben orchestrato*, FiscoOggi, 2013; Melis G., *Manuale di diritto tributario*, G. Giappichelli Editore, 2022 p. 193.

²⁴⁹ Tesaro F., *Istituzioni di diritto tributario, 1- parte generale*, p. 249-258, 2018, UTET Giuridica; Article 10-bis paragraph 1 of the Statute of Taxpayers' Rights.

²⁵⁰ Article 37-bis D.P.R. 600/1973; De Mita, *Principi di diritto tributario*, Giuffrè, 2011, p.28.

²⁵¹ Tooma, R., A., *Legislating Against Tax Avoidance*, IBFD, 2008, p. 12

enterprises. While it may not always be unprofitable, tax avoidance involves significant costs that can diminish a company's overall returns from such practices²⁵².

The president of the UN General Assembly, Volkan Bozkir, gave some important advice: "Financial integrity is essential for the success of the 2030 Agenda. As a global community dedicated to addressing inequality and advancing sustainable development, we must uphold the principles of transparency, good governance, and accountability that we consistently advocate for." Ibrahim Mayaki, Co-Chairman of FACTI and former Prime Minister of Niger, stated that closing the loopholes that allow money laundering, corruption and tax abuse is a crucial step in transforming the global economy for the universal good²⁵³.

Responsible tax conduct is important to achieving the Sustainable Development Goals (SDGs) set by the United Nations. However, according to the OECD, aggressive tax avoidance and evasion practices result in annual government revenue losses ranging from USD 100 to USD 240 billion. Increased corporate tax transparency is crucial for investors to properly assess and judge a company's business strategies and risk management. At the global level, there is increased legislative and regulatory activity to introduce rules on tax transparency for multinationals.

Transparency in corporate taxes reflects a company's contribution to the communities it operates in and its values. Moreover, the issue of value competition and the related public choices of protection and balancing are no longer national. However, Union legislation is significant from the shareholders' point of view²⁵⁴.

The outlook for improvement are many starting from the considerations of this paragraph. A tax reform towards a simplified system would be desirable but difficult to achieve. Making the tax system simpler and more transparent could definitely increase participation in sustainable initiatives. Another key step would be to improve tax incentives for sustainable practices, making them more affordable and beneficial but also, on the other side, to strengthen controls in order to combat tax evasion and ensure that subsidies go toward sustainable activities.

²⁵² Bird, R., Davis-Nozemack, K., *Tax Avoidance as a Sustainability Problem*, Journal of Business Ethics, June 2016

²⁵³ *La lotta all'evasione e all'elusione fiscale è essenziale per raggiungere gli obiettivi globali di sviluppo e climatici - Greenreport: economia ecologica e sviluppo sostenibile*

²⁵⁴ Acerbis, F, Lio, M., *La fiscalità fattore di ESG: good tax governance e ruolo delle Funzioni fiscali delle imprese*, il Fisco, 12/2023, 1155-1163 https://legacyshop.wki.it/documenti/00265141_est.pdf?download=true

Another fundamental pillar in raising awareness among society about the importance of environmental issues and taxes is education. The education about the tax incentives available is necessary to promote sustainable behaviour and to influence entrepreneurial orientation. Last but not least, there is a trend in the business world: some companies are choosing to adopt greenwashing communication strategies aimed at building a deceptively environmentally friendly reputation, pursuing sustainable goals and taking an interest in environmental issues²⁵⁵. In other words, marketing is used to describe an organisation's products, activities or policies as environmentally friendly when they are not and contribute to the unfair competition in the market²⁵⁶. This phenomenon is called *greenwashing* and was revealed in the fourth edition of the Net Zero Report by South Pole, a consultancy specialising in climate projects. The report highlights the shift from excessive communication on environmental issues to total silence on the part of some companies. The EU taxonomy allows financial and non-financial companies to share a common definition of economic activities that can be considered environmentally sustainable. In this way, it plays an important role in helping the EU to increase sustainable investments, creating security for investors, protecting private investors from greenwashing, helping companies to become more climate-friendly and mitigating market fragmentation. Greenwashing, therefore, is countered by the EU taxonomy. Over time, there have been institutional attempts to reduce the impact of greenwashing. One of these is the introduction of the Greenwashing Index, created by the University of Oregon, which allowed the public to upload examples of greenwashing online for later evaluation. Unfortunately, it was last updated in 2012, but it was an interesting idea²⁵⁷

²⁵⁵ Donato, F., *Il business della sostenibilità, uno sguardo post-ideologico alle tematiche ambientali*, FrancoAngeli, 2023, p. 26.

²⁵⁶ Pisani, Tedesco, A., *Strumenti privatistici per la sostenibilità ambientale e sociale*, G. Giappichelli Editore-Torino, 2024, p. 110; definition given by the European Commission in its communication Strategy for Financing the Transition to a Sustainable Economy, Strasbourg, 2021, COM(2021), 390 final, nt.11

²⁵⁷ Donato, F., *Il business della sostenibilità*, FrancoAngeli, 2023, p. 28

3.4 Effectiveness of these national and EU tax policies

Taxation is undoubtedly very important in the context of the ecological transition, the circular economy and the protection of the environment in its various facets, also for the benefit of future generations. The issues related to the need to protect the environment and preserve it from the disastrous effects of the ongoing climate change cannot be solved in an appropriate way, from a fiscal point of view, only through the provision of tax bonuses or tax credits in order to encourage virtuous behaviour on the part of taxpayers²⁵⁸.

The National Strategy for Sustainable Development (NSSD), adopted via CIPE Resolution 108 on December 22, 2017, embodies the principles of the 2030 Agenda and its Sustainable Development Goals (SDGs). It acts as a guiding framework for the formulation, monitoring, and integrated evaluation of related policies. Currently under review, the NSSD is enhancing its essential components by linking target values and indicators to the Strategic Choices and Objectives it encompasses. This initiative is designed to ensure a more robust and effective implementation and monitoring process²⁵⁹.

The traditional linear economy model involves producing, consuming, and discarding goods. In contrast, the circular economy model aims to minimize waste and prolong the life of goods through recycling, reusing, and repairing. Taxation plays a crucial role in promoting the circular economy, as it can either encourage sustainable practices or discourage unsustainable ones. Integrating sustainable economy principles into tax policies can spur innovation, economic growth, and environmental protection. Sustainable development is a widely acknowledged concept in both scientific literature and everyday discourse. It emphasizes the capacity to satisfy present needs without compromising the ability of future generations to meet their own. Achieving this balance necessitates a harmonious integration of economic growth, social inclusion, and environmental protection. Sustainability implies a commitment to enduring support, indicating that development is regarded as successful only if it is sustained over time. This approach requires a long-term perspective that connects

²⁵⁸ Comelli, A., *Profili europei della tassazione ambientale*, in *Politiche fiscali e green economy: tendenze evolutive della transizione ecologica*, ed by Martis, M., Ed. Scientifiche Italiane, 2023, p. 22; Uricchio, A., F., *Le prospettive di riforma della fiscalità ambientale in ambito UE nell'ottica della transizione ecologica e della fiscalità circolare*, in *Riv. dir. Trib. Int.*, 1/2022, 15 et. seq.; Bagliani, M, Pietta, A, Bonati S., *Il cambiamento climatico in prospettiva geografica. Aspetti fisici, impatti, politiche*, Bologna, 2020, *passim*.; Sciancalepore, C., *Cambiamenti climatici e green taxes*, Bari, 2016, *passim*.

²⁵⁹ *Strategia nazionale per l'economia circolare*, Ministero della Transizione ecologica, 2022, p. 28

present circumstances with future outcomes, leveraging science and technology to benefit the natural environment and ensuring that resources are renewed rather than depleted²⁶⁰.

The European Commission emphasises the importance of designing effective risk-reduction strategies to limit future losses caused by extreme weather events. Policy Recommendation 5 for the agriculture sector: redirect premium subsidies to support multi-peril (yield) crop insurance products, offering comprehensive coverage against annual yield variations and extreme weather events. This would increase the opportunity cost of not purchasing more comprehensive coverage and promote risk management among farmers²⁶¹. The next step forward in the circular fiscality vision to influence behaviours is shifting from taxing the individual (person or company) to taxing the action. This passage comes intuitively if explained through the VAT example: charging the goods which pollute, or the ones that are the result of a polluting production process, more than the others²⁶².

At the company level, various taxes can be used to incentivise the circular economy. For example, introducing taxes on CO₂ emissions can encourage companies to invest in more sustainable technologies and reduce their environmental impact.

Carbon-credit systems allow agricultural producers to earn an extra revenue through selling their surplus of carbon credits to producers who emit higher amounts of greenhouse gases (GHGs). Taxes on waste can also spur companies to minimise material usage and adopt more sustainable practices. Additionally, offering tax credits or breaks for companies that recycle or reuse materials can further promote the circular economy. Furthermore, start-ups operating in the circular economy can receive direct incentives during their start-up and growth phases.

Enterprises can now leverage taxation as a competitive advantage by showcasing their positive impact on climate and society through their green tax burden. This serves to indicate advancement in the energy transition and a dedication to achieving zero net emissions.

²⁶⁰ Uricchio, A., *La costruzione della società ecologica: il Green New Deal e la fiscalità circolare*, Riv. Di Diritto Agroalimentare, 1/2021, p. 152; P. A. Pillitu, *Il principio dello sviluppo sostenibile nel diritto ambientale dell'Unione europea*, in P. fois (ed.), *Il principio dello sviluppo sostenibile nel diritto internazionale ed europeo dell'ambiente*, cit., 219; Marzanati, A., *Sustainable development*, in A. Lucarelli- A. Patroni Griffi (ed.), *Studies on the European Constitution. Percorsi e ipotesi*, Naples, 2003, 139 ff; Id., *La fraternità intergenerazionale: lo sviluppo sostenibile*, in A. Marzanati, A. Mattioni (ed.), *La fraternità come principio del diritto pubblico*, Roma, 2007, 127; L. Montini, *Evoluzione, principi e fonti del diritto internazionale dell'ambiente*, in P. Dell'Anno - E. Picozza (ed.), *Trattato del diritto dell'ambiente*, Padova, 2012, I, 37

²⁶¹ Commissione europea, Direzione generale per l'Azione per il clima, Kuik, O., Ruig, L., Persson, M., Benoist, A., et al., *Insurance of weather and climate-related disaster risk: inventory and analysis of mechanisms to support damage prevention in the EU : final report*, Publications Office, 2017, <https://data.europa.eu/doi/10.2834/40222>

²⁶² Giaimis, G., *Circular fiscality and circular economy*, in chapter seven, *A modular system of circular taxation of the book Circular Taxation and Environmental taxation*, op. cit. p. 109

Taxation is increasingly pivotal in driving green and inclusive policies and plays a crucial role in fostering long-term sustainable value creation. Consequently, a deeper comprehension of the interplay between tax practices and ESG (Environmental, Social, and Governance) metrics is imperative²⁶³.

In Italy, there are numerous tax breaks aimed at promoting the circular economy, including specific programs developed by some Italian regions. These programs offer tax measures and local incentives to support start-ups operating in the circular economy field. Moreover, companies implementing circular economy projects can access favourable loans and funds managed by banks or public bodies. Specific sectors, such as companies investing in recycling technology, can also benefit from tax credits to encourage material recycling activities.

Finally, Italy has introduced measures like *ecobonus* and *sismabonus*, which provide tax incentives for energy requalification of buildings and encourage adopting circular economy practices in building renovation, especially in seismic areas. There is also the *Inail* competition 2023/2024 that facilitates companies in investments aimed at improving the health and safety conditions of workers and provides also a specific non-repayable contribution for companies active in the agricultural sector to modernise the agricultural machinery. In this regard, there is a law, No. 160 of 2023, delegating to the Government the revision of the system of incentives to enterprises and provisions for simplifying the related procedures as well as terms of delegation for simplifying controls on economic activities. The Government has two years to adopt the legislative decrees defining an organic system to activate public support through business incentives. Other recent legislative interventions, such as those introduced by the 2018 Budget law, demonstrate a growing awareness of the need for an integrated prevention system that includes more efficient risk reallocation. These measures need to be enhanced and applied on a larger scale to effectively manage various types of risk in line with fiscal responsibility²⁶⁴.

In the field of public policies, the involvement of the government and local authorities is becoming more common through the use of tax expenditure tools, such as tax breaks and exemptions, as well as direct financial payments. The increasing use of tax incentives and similar measures reflects the desire to influence the behaviour of consumers and producers

²⁶³ Menicacci L., *Tax disclosure e rendicontazione non finanziaria: come comunicare la sostenibilità fiscale, Controllo di gestione*, n. 6, 1st of November 2023, p. 14

²⁶⁴ Moratti, S., *The role of taxation in climate-related disaster risk management policies: focus on a more efficient reallocation of risk*, in *Rivista di Diritto Finanziario e Scienza delle Finanze*, fasc.3, 1 September 2018, page. 354

by boosting demand or pursuing specific goals (like those related to environmental change and urban renewal).

This enhances the promotional aspect of taxation, which is valued in addition to the revenue-raising function²⁶⁵. The concept of circular taxation underscores the promotion of a circular economy, wherein waste is taxed, and incentives for recycling, reuse, and prudent public expenditure are instituted. Environmental taxes, encompassing an energy tax and a waste levy, are imposed on activities that have adverse effects on the environment and natural resources. Furthermore, eco-incentives in the form of tax expenditures are employed to stimulate the circular economy, acting as a catalyst for development and efficient resource allocation. As a pivotal element of a reformed taxation framework, environmental taxation operates on two fronts: a 'negative' approach through the taxation of waste or pollution sources and a 'positive' approach by offering tax relief to encourage innovation in products and processes that align with sustainable development²⁶⁶. The tax system's promotional measures must be accompanied by a modern tax system framework that ensures equitable redistribution and fosters economic development. This framework should reinforce processes of social cohesion, integration, and growth while upholding the community's guarantees of market protection and competition²⁶⁷. Neutrality is part of this specific context, and it is an essential concept in taxation and has gained recognition in recent years. According to the principle of tax neutrality, taxes should not change taxpayers' economic or financial position and should not create unfair competition. Tax neutrality means that tax policies should not interfere with competitive market forces, especially in a near-perfect competition where the law values and protects economic freedoms²⁶⁸.

Companies now need to measure their environmental impact, social responsibility, and corporate governance to be considered sustainable. This shift in corporate values requires a change in company culture and organization and adopting a Tax Control Framework (TCF). The TCF is crucial for demonstrating the company's commitment to tax compliance to stakeholders such as banks, financial institutions, investors, and public entities²⁶⁹. Examples of incentives available for companies encompass green bonds, sustainability-linked bonds,

²⁶⁵ Calculi, T., Uricchio F. A., *Le spese fiscali: tra prospettive di codificazione e controllo sulla spesa pubblica*, in *Riv. di Diritto Finanziario e Scienza delle Finanze*, fasc.1, March 2024, p.3

²⁶⁶ Uricchio, A., *I tributi ambientali e la fiscalità circolare*, *Diritto e Pratica Tributaria*, fasc. 5/2017

²⁶⁷ Uricchio, F., A., Aulenta, Selicato, ed by, *La dimensione promozionale del fisco*, Cacucci Editore, 2015

²⁶⁸ Neumark, F., *Principios de la imposición*, IEF, Madrid, 1974, pp 316 and 317; C. Garcia Novoa, *La neutralità fiscale nel finanziamento delle società. Il caso spagnolo*, *Studi Tributari Europei*, 1/2020.

²⁶⁹ Bencistà, G., Nannini Leoni, F., *Estensione alle PMI del Tax Control Framework: nuovo orizzonte nella gestione del rischio fiscale?* *Corriere Tributario*, n. 8-9, 1 agosto 2024, p. 753; Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment.

non-repayable contributions, tax credits, facilitated financing instruments, and the Energy Transition Fund.

Considering many companies in the agri-food sector are small and medium-sized enterprises, SMEs, not listed on regulated markets, it should be pointed out that there are great difficulties in terms of the effectiveness of the sustainable transition process. The application of the CSRD is only optional, and there is a low uptake of economic and fiscal incentives for the transition due, according to the Foundation for Sustainable Development, to the lack of information and the bureaucratic complexity of the procedures. A picture emerges of SMEs alienated from most of the fiscal and financial regulatory incentives launched so far by European and national legislators in the field of ESG sustainability²⁷⁰.

The implementation of global or international 'Pigouvian' taxes could help reduce the negative effects of increased greenhouse gases. Studies show that current taxation on polluting products is too low and does not reflect the environmental and social damage they cause. Coordinated application of a carbon tax could generate fiscal benefits to support environmental, health, and labor initiatives. Additionally, reducing fossil fuel subsidies and providing tax breaks for those struggling with energy costs could help combat energy poverty.

A coordinated tax reform could also incentivize the collective use of renewable energy through the creation of local energy communities²⁷¹.

Carbon taxation is a well-regarded proposal among economists aimed at addressing the issue of mispricing. Carbon pricing is a method of assigning a financial cost to carbon emissions, which helps to internalize the social costs associated with these emissions. By making the cost visible, it influences consumer decisions, as consumers are required to account for the full cost of their consumption. This approach is an example of Pigouvian taxation—the use of taxes to highlight externalities and incorporate their costs into the prices of goods and services²⁷². As a form of "carbon pricing" (refer to Box 2), it entails the imposition of charges on fossil fuel-based energy that correspond to the costs of associated externalities. This

²⁷⁰ Cossu M., *Sostenibilità e mercati: la sostenibilità ambientale dell'impresa dai mercati reali ai mercati finanziari*, Banca Borsa Titoli di Credito, fasc.4, 1 agosto 2023, p. 558

²⁷¹ Villani S., *Spunti per una rivoluzione fiscale che acceleri la transizione ecologica e la riduzione delle disuguaglianze dopo la pandemia da COVID-19*, Rassegna Tributaria, n. 1, 1 January 2021, p. 103; OCSE, *Environmentally Harmful Subsidies: Challenges for Reform*, OCSE Publishing, Parigi, 2005 e OCSE, *Taxing Energy Use 2019: Using Taxes for Climate Action*, OCSE Publishing, Parigi, 2019; T. Falcão, *A Proposition for a Multilateral Carbon Tax Treaty*, International Bureau of Fiscal Documentation (IBFD), Amsterdam, 2019

²⁷² Lyal, Richard, *Carbon Taxation and the European Union*, in Brokelind, Cécile, Van Thiel, S., ed by, *Tax sustainability in an EU and International Context*, IBFD, 2020, pp.321-323.

approach can effectively encourage a reduction in consumption while generating vital revenue. Such revenue could be allocated to decreasing fiscal deficits, investing in infrastructure, or cutting more distortionary taxes, thereby delivering various welfare benefits.

At a global level, the implementation of efficient energy pricing could lead to a 23% reduction in carbon emissions, a 63% decrease in deaths caused by air pollution, and an average revenue increase equivalent to 2.3% of GDP. For low- and middle-income countries (LMICs), the adoption of efficient energy pricing could raise welfare by 5.2% of GDP and generate revenues amounting to 7% of GDP. A composite CTSI (Carbon Taxation Suitability Index) indicator was also constructed using the standards set out in the OECD Guidelines²⁷³.

Environmental taxes serve to encourage businesses to adopt technologies with lower marginal pollution abatement costs, ultimately containing negative externalities in the long term. This enables firms to invest in "green" technology with reduced abatement costs.

Tax breaks are crucial for motivating economic operators to align their behavior with environmental protection goals. Additionally, environmentally friendly concessions can support the growth of small and medium-sized enterprises, which are a cornerstone of the Italian economy and are safeguarded by Law No. 180 of 2011, also known as the Statute of Enterprises. The company should see the environment as an opportunity and not a mere cost, for it can gain advantages from environmentally virtuous behaviour that are greater than the costs involved in such behaviour²⁷⁴.

A prominent example of initiatives supporting the green transition among companies is the rise of atypical renewable electricity supply contracts. These agreements have evolved significantly, first in the United States and then in Europe. By engaging in these contracts, companies can secure access to renewable energy sources, which is increasingly vital in today's environmentally aware market. However, there is some ambiguity regarding the application of Value Added Tax (VAT) to these contracts, creating uncertainty for businesses. Tax authorities have classified these contracts under Article 10(4) of Presidential Decree No. 633/1972, categorising them as exempt transactions. This classification is

²⁷³ Newport Black, S., J., *Carbon Taxation in Developing Countries: Who could and should raise energy taxes now, and how?* Harvard Kennedy School, 1 September 2017, pp. 8-14; Coady et al., "How Large Are Global Fossil Fuel Subsidies?". The average revenues raised across countries is 2.7% of GDP and welfare gains of 2.1%. The higher aggregate figures are due predominantly to the large revenues and welfare benefits in China (9.2% and 10.1% of GDP, respectively)

²⁷⁴ Ficari, V. (edited by), *I nuovi elementi di capacità contributiva, L'ambiente*, in "Studi dell'Associazione Italiana dei Professori di Diritto Tributario", Aracne editrice, 2018, pp. 118, 133, 148.

important for companies, as it serves two essential purposes. First, it allows businesses to manage risks associated with fluctuations in utility prices. Second, it furthers sustainability goals by enabling participants to obtain "green certificates" or Guarantees of Origin (GOs). These certificates provide official verification that the energy used comes from renewable sources, thereby contributing to the transition toward a more sustainable future²⁷⁵.

In the context of innovative Italian SMEs, there are tax incentives for investments in the field of environmental sustainability. Indeed, the favourable tax regime pertains to investments made in the context of start-ups and innovative SMEs, both at the time of their establishment and at a subsequent point in time. The initiatives are intended for two distinct categories of participants: individual promoters of the company, who receive contributions, and investors who intervene after the company has been set up, usually by subscribing to a capital increase through a cash payment. Contributions in kind and contributions not intended to increase the share capital or the share premium reserve are not permitted in order to avoid uncertainties and disputes in determining the benefit. The 2017 Budget Law (Law No. 232 of 11 December 2016) introduced significant amendments with the objective of stabilising and enhancing the effects of the benefit in question as of 2017. The effectiveness of this intervention was contingent upon the authorisation of the European Commission at the request of the Ministry of Economic Development, in order to certify the compatibility of the proposed changes with the rules of the common market²⁷⁶.

²⁷⁵ Vinciguerra, F., Tronconi, A., *Il Virtual Power Purchase Agreement tra obiettivi di hedging e ESG: trattamento ai fini IVA*, il Fisco 39/2024, pp. 3641-3646; risoluzione n. 1/E/2022 Agenzia delle Entrate.

²⁷⁶ Caramia, L., V., *PMI innovative e sostenibilità ambientale: l'attuale assetto della disciplina fiscale italiana*, in Uricchio, A.F., Selicato, G., *Green Deal e prospettive di riforma della tassazione ambientale*, (op.cit.), pp. 484-485; explanatory report to the Ministerial Decree of 30 January 2014;

Conclusions

Some in the doctrine even call for the principle of sustainable development to be elevated to constitutional status²⁷⁷. This underlines once again how sustainable development is at the heart of the national strategic framework in Italy, where environmental protection and the fight against climate change are combined as economic drivers.

To pursue sustainable development goals as effectively as possible, as part of a transition process towards a circular economy, tax instruments are a key element.

The economic instruments in question are represented by environmental taxes, which impose a price to be paid for the pollution produced. These have both disincentive and redistribution effects. Another instrument is the establishment of a new market for tradable pollution permits. This allows polluting agents to exchange the rights they have, corresponding to a pre-established global level of pollution. The aim of this is to stimulate technological innovation. Lastly, subsidies represent a form of financial assistance aimed at encouraging a change in polluting behaviour. However, the economic inefficiency of such measures, as well as their failure to comply with the 'polluter pays' principle, has been demonstrated on numerous occasions²⁷⁸.

As early as July 2000, the Global Compact, a non-binding United Nations initiative, was established to encourage companies and businesses around the world to adopt sustainable policies that observe corporate social responsibility and to publicise the results of actions taken. Initially, nine principles were laid down, which were later expanded to ten in 2004. These principles include the protection of the environment, the combating of discrimination in employment, and the fight of corruption by companies²⁷⁹. This was an important step towards encouraging sustainable business policies.

The European Union itself supports through taxation production models inspired by the circular economy, affecting the costs for energy, raw materials and waste. There are so-called green measures that incentivise non-polluting behaviour or disincentivise polluting behaviour.

Thus, to encourage virtuous behaviour on the part of taxpayers, there are tax incentives such as tax bonuses and tax credits.

²⁷⁷ Buonfrate, A., *Principi del nuovo diritto dello sviluppo sostenibile*, CEDAM, 2020, p.109.

²⁷⁸ Ballarin Denti AA, Grasso M, Pareglio S. *Aspetti biologici ed economici nel rapporto tra inquinamento e ambienti agro-forestali*, in *Economisti Ambientali Italiani*. 1999. pp. 13-30

²⁷⁹ See Donato, Federico, *Il business della sostenibilità*, FrancoAngeli, Milano, 2023, pp. 23-24

Significant advancements have been made regarding legislation and taxation in relation to the sustainability of the agricultural sector. However, it is evident that there is still considerable scope for further progress.

In this context, the term "legislation" refers to the legal frameworks of Italy, the European Union, select European countries, and the United States.

These legislative developments are occurring concurrently with a transformation in European company law, marking a pivotal shift towards greater sustainability.

The CSRD, Corporate Sustainability Reporting Directive, adopted on 14 December 2022, extends the scope of non-financial reporting obligations beyond that already provided for in the European Directive 2014/95/EU. The legislation covers both large unlisted companies and SMEs, except micro-enterprises. This is because the disclosure of sustainability information by corporations effectively implements the European Green Deal and the Sustainable Finance Action Plan²⁸⁰.

Furthermore, Directive (EU) 2024/1760 on companies' duty of care in terms of sustainability is of particular significance. This directive defines companies' obligations, sanctions, and liability in cases of violation. These obligations concern actual and potential negative environmental and human rights impacts.

The European Commission has also adopted new rules for introducing a farm sustainability information network. This database will become operational in 2025. It will incorporate data from the Farm Accountancy Data Network and expand its scope to include farms' income and business activities and information on their environmental and social sustainability performance.

Scientific research substantiates the significant impact of global warming on both human populations and ecosystems. However, the international community has yet to reach a consensus on binding measures to effectively reduce global CO₂ emissions within an adequate timeframe. Governments across all continents cannot address climate change in isolation, even if there is a collective desire to do so.

They require robust partnerships within the global economy. Innovative industrial enterprises have a critical role to play; they possess the capability to set a precedent with socially and ecologically responsible production practices. Furthermore, through their comprehensive service offerings, these companies can facilitate the transition of other

²⁸⁰ Caterino, D., *Fattori economici e sociali della sostenibilità. Doveri di diligenza e (nuova) responsabilità delle imprese*, in Buonfrate, A., Uricchio, A.F., ed. by, *Trattato breve di diritto dello sviluppo sostenibile*, August 2023, op. cit. pp. 378-392.

organizations towards achieving climate neutrality²⁸¹. More climate change mitigation is needed in Europe and around the world.

Carbon pricing in more sectors is crucial, along with the use of revenues to address distributional effects and avoid social hardship, avoid carbon leakage and sustain competitiveness, invest in low-emission technologies and transformations. Interconnection between national action and international cooperation is necessary. Discussing how fiscal measures can contribute to sustainable development is important. (considering harmful subsidies and complementarity of policy measures).

Taxes can be increased or new taxes introduced to accelerate companies' green transition, environmental protection, and other sustainable goals, but methods that do not add to taxpayers' and companies' tax burdens should be considered first.

As has been highlighted on numerous occasions throughout this work, the field of tax law is not insulated from the significant shifts currently taking place in our society. The IRS plays a role in the implementation of strategies that seek to influence the relationship between humanity and the natural world. This is done through the use of promotional leverage and the pursuit of solutions to environmental damage, in light of the growing awareness of the need to protect our planet²⁸².

Additionally, tax measures should avoid distortions of competition and consider the ability to pay principle. That ability to pay should be considered not only at an individual level within national tax systems, but also at the international level between rich and poor countries. At an international level it was argued that border tax adjustments on imports from countries that do not make an effort for climate change should be used²⁸³.

Responsible corporate behaviour is a high priority in global and European policy arenas. A myriad of initiatives from non-state actors have emerged to foster more responsible tax behaviour. Among them are standards on tax governance and reporting (e.g. Global

²⁸¹ Hippe, Alan; Wirsam, Jan, *Nachhaltigkeit und Innovation in internen und externen Unternehmensbeziehungen*, Springer Gabler Wiesbaden, 2023

²⁸² Martis, M., *Tassazione ambientale, sostenibilità ed economia circolare*, (op. cit.), p. 225; Scarascia Mugnozza, S., *Fiscalità ambientale e green economy. Profili evolutivi*, Bari, 2021, p. 271; Uricchio, Selicato, Aulenta, ed by, *La dimensione promozionale del fisco*, Bari, 2015; Selicato, P., *Fisco e ambiente: strumenti per un Governo sostenibile del territorio. Profili teorici e lineamenti evolutivi degli strumenti agevolativi a carattere fiscale e non fiscale per la promozione dello sviluppo sostenibile*, in Riv. dir. Trib. Internaz., 2004, pp. 399 et seq; Uricchio, A. F., *Capacità contributiva e "agenda del terzo millennio: dalla tutela dell'ambiente all'economia circolare, Il diritto costituzionale tributario nella prospettiva del terzo millennio*, ed by, Mastroiacovo, V., Melis, G., Torino, 2022, p. 112

²⁸³ Vanistendael, F., *Reflections on Taxation and the Choice between Development and Sustainability*, in Brokleind, C., Van Thiel, S, ed. By, *Tax Sustainability in an EU and International context*, IBFD, 2020, pp. 69-70.

Reporting Initiative GRI, Accountancy Europe, UNPRI), responsible tax policy, principles and practice (e.g. The B team, CSR Europe, VBDO, Oxfam, Action Aid and Christian Aid), and tax controls and assurance (e.g. Accountancy Europe). Many of these initiatives require firms to report their tax policy publicly, the tax incentives taken and tax payments based on the notion that transparency has a somewhat mythical status and is associated with good governance²⁸⁴.

The literature still provides limited evidence suggesting that environmental taxation benefits the environment and agricultural practices in European countries. However, one study utilized the latest Quantile Moment Regression Method (MMQR), along with other analytical approaches, to examine the major European agricultural economies—namely France, Germany, Italy, and Spain from 1995 to 2020.

The findings affirm the validity of the co-benefit of environmental tax in promoting environmental sustainability and enhancing the value added to agriculture in this group of 'Big Four' economies. This motivates these countries to pursue the goal of carbon neutrality by 2050 persistently. Additionally, the study supports the idea that the use of renewable energy and population density are important factors in achieving carbon neutrality.

Furthermore, the results indicate that environmental quality can be realized in this panel of countries, especially when income growth surpasses a certain threshold, thus confirming the environmental Kuznets curve hypothesis. Most importantly, the findings offer timely policy insights that align with both environmental sustainability and food security in the EU.

In light of these findings, relevant policy options suggest that policymakers in these selected agrarian economies should enhance opportunities for energy transition through a robust environmental tax system. This system should incentivise the availability of credit and investment financing in the agricultural sector²⁸⁵.

Another intriguing initiative is the FairTax project. Researchers from TARC are involved in the project titled "Revisioning the 'Fiscal EU': Fair, Sustainable, and Coordinated Tax and Social Policies." This consortium includes eleven universities from nine different countries, including the University of Exeter. The project aims to develop recommendations for fair and sustainable taxation and social policy reforms that can enhance the economic stability of EU Member States. The results of the FairTax project demonstrate the importance of

²⁸⁴ Sonnerfeld, A., *Towards Sustainable Taxation – Crossing Disciplinary Boundaries to Tackle Tax Avoidance More Effectively*, in Brokelind, C, Van Thiel, S, ed. By, *Tax Sustainability in an EU and International context*, IBFD, 2020, p. 440

²⁸⁵ Alola, A., Mouneke, O., B., Okere, K., Obepka, O., O., *Analysing the co-benefit of environmental tax amidst clean energy development in Europe's largest agrarian economies*, Article in *Journal of Environmental Management*, January 2023

increasing the EU's own resources through the introduction of EU taxes. Taxation provides a forum for the enforcement of rights that might otherwise be subsumed within 'bureaucratic' or 'growth' narratives. Adopting a 'juste retour' approach to taxation risks, in many ways, misunderstanding the role of taxes in the social contract. Given the global importance of ensuring a sustainable future, a bold approach to taxation and citizens' rights is perhaps more urgent than ever²⁸⁶.

Agriculture presents a concrete evolution towards a circular economy. Livestock manure, food and crop waste can be recovered and processed for reuse. In addition to reducing CO₂ emissions and producing natural fertilisers, the entire agricultural production cycle is slowly being revisited and conceived as a renewable resource. According to research by the National Confederation of Craftsmen and Small and Medium-sized Enterprises, CNA, 65% of SMEs have already started to adopt sustainable practices. However, many obstacles remain, from regulatory complexity to lack of incentives. SMEs must embrace sustainable agriculture and the circular economy and do so strategically and consciously. This requires not only investment in new technologies but also a cultural change within companies and society.

From the point of view of Italian legislation, there is Law No 23 of 9 March 2022 on organic farming. Organic production is a global system of agricultural enterprise and food production management based on the preservation of natural resources, biodiversity, environmental protection, food safety and aimed at achieving greenhouse gas emission reduction targets, contributing to the achievement of the 2030 Agenda goals on sustainable development²⁸⁷. Budget Law 2019 No. 145 of 30 December 2018, which contains the 'State Budget for the financial year 2019 and multi-year budget for the three-year period 2019-2021, includes several significant provisions pertaining to environmental matters. A new Article 226-quater on the subject of single-use plastics has been introduced in Legislative Decree No. 152/2006. In order to prevent the production and disposal of waste from single-use plastic products, to encourage the separation of waste for recycling, and to promote the use of environmentally friendly consumer goods, it is established that producers may, on a voluntary basis and on an experimental basis, from 1 January 2019 until 31 December 2023, adopt certain types of behaviour to protect the environment. In accordance with Article 1,

²⁸⁶ Mumford, A., Gunnarsson, A., *Sustainability in EU Tax Law*, Intereconomics, 3/2019

²⁸⁷ Article 7a(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998; 2030 Agenda for Sustainable Development; LAW No 23 of 9 March 2022 - Provisions for the protection, development and competitiveness of agricultural, agri-food and aquaculture production using organic methods.

Paragraph 634 of Law No. 160 of 2019, Budget Law 2020, the Italian legislature has introduced a levy on plastic in the form of an indirect consumption tax. This tax was categorised as an excise duty and was scheduled to take effect immediately; however, it was subsequently postponed until July 2026. Its scope of application extends to so-called MACSIs, although there are still interpretative difficulties concerning the objective and subjective scope of the levy. Indeed, Legislative Decree 196/2021, which implements the Single Use Plastic Directive, must also be considered²⁸⁸.

Additionally, Decree-Law 34 of 2020 introduces significant measures to bolster the economy and provide support to innovative SMEs in particular. Article 38 provides for an allowance for investments in these types of businesses, specifically a deduction equal to 50 per cent of the investment, up to a maximum of EUR 100,000 for innovative start-ups and EUR 300,000 for innovative SMEs, for each tax period. It should be noted that only cash investments are eligible, rather than contributions in kind or payments that do not increase the share capital. This appears to be in line with the recent trends observed in tax legislation, which have been aimed at encouraging collaboration between tax authorities and taxpayers, as well as a consensual model of tax assessment based on the active involvement of the taxpayer²⁸⁹.

At the European level, in addition to the aforementioned Green Deal, which includes measures for sustainable agriculture and the strengthening of the agri-food chain through sustainable practices, there is the European CAP, which provides funding for sustainable farming practices. As a consequence of the Common Agricultural Policy, there is direct aid to farmers and rural development programmes at the national level.

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²⁸⁹ Caramia, L.V., *PMI innovative e sostenibilità ambientale: l'attuale assetto della disciplina fiscale italiana*, in *Green Deal e prospettive di riforma della tassazione ambientale*, op. cit. pp. 486-487; Paparella, F., *Lezioni di diritto tributario*, Milano, 2021, p. 215 et seq; On this subject, see ex multis Gallo, F., *L'enciclopedia del diritto e l'evoluzione del diritto tributario*, in *Giur. Comm.* 2009, p. 553 et seq.; Melis, G., *Lezioni di diritto tributario*, Torino, 2017, p. 256 et seq.; Ragucci, G., *Gli istituti della collaborazione fiscale. Dai comandi e controlli alla Tax Compliance*, Torino, 2018

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