



Maltese Italian
Chamber of Commerce
Chamber of Commerce recognised by the Italian Government pursuant to Act number 518 dated 1 July 1979

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Tax Evasion

**The Most Common
Tax Crime**

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principles of the Italian criminal tax
penalty system and identification of the
legal asset protected by the criminal
law



the repression of tax offenses



The task of criminal law is precisely that of protecting legal values that are referred to in the Constitution: this is because the criminal penalty deprives the citizen of his personal freedom, the most important of the rights guaranteed by the Italian Constitution to the individual and, therefore, such action is justified only if the right protected by the penalty is also constitutionally relevant.

The incriminating conduct must be harmful
or at least threatening to the fiscal interest

the tax interest that is the collection of the correct tax



This does not mean that the incriminating conduct cannot be detrimental even to intermediate instrumental values such as, for example, tax transparency.

But if the conduct does not harm the primary right protected, the case will be relevant to the scope of administrative-tax law, but will not give rise to criminal proceedings

The need to determine if the primary right protected by the criminal law is harmed, it is fundamental because in tax matters there is a close correlation between the substantial and procedural data of the determination of the tax and, indeed, the tax is essentially constructed according to its assessment

The assessment function, therefore, is not the primary value protected by the law, but is an intermediate value that is worthy of protection only as instrumental to the offense of the final value represented by the interest in tax collection




the Italian tax penal system has been profoundly revised by legislative decree 74/2000: the identification of the moment in which tax evasion occurs emerges as a decisive element of the legal object of the criminal offenses which is set to protect the tax interest that is the collection of the correct tax.

the system outlined by Legislative Decree 74/2000, in identifying the protected value, limits the punishment only to conduct characterized by the **specific intent to evade taxes**.



Correct identification of the protected value and **willingness to evade taxes**, as they are, the distinctive elements of the criminal investigation compared to the administrative-tax assessment.

the inspiring principles of the Italian criminal-tax penalty system can be summarized as follows:

-  limiting criminal intent only to directly related facts detrimental to fiscal interests, while not criminalizing merely "formal" and "preparatory" acts affecting taxes
-  identify the annual declaration required for income tax or value added purposes, as the moment in which the objective and "definitive" assumption of tax evasion is realized on the tax payer's side
-  limit the punishment only to facts damaging tax interests, stating that formal violations and purely preparatory conduct of evasive behavior do not deserve criminal prosecution

Not all the behaviors that are sanctioned from the taxation and administrative measures incorporate allegations of crime, but only those aimed at tax evasion.

These behaviors are described in the legislative decree 74/2000 that has recently been subjected to an important revision with the legislative decree 158/2015.

On the one hand, new offenses were introduced and, on the other, the previous sanctions were tightened or mitigated: the cases now in force and the related sanctions are as follows:

**Fraudulent declaration
through the use of invoices
or other documents for non-
existent transactions**

**Fraudulent declaration
through other devices**

Unfaithful declaration

Omitted declaration

**Issuance of documents for
non-existent transactions**

**Concealment or destruction
of accounting documents**

Omitted payment of taxes

Undue compensation

Fraudulent subtraction from the payment of taxes

**Fraudulent declaration
through the use of invoices
or other documents for non-
existent transactions
(article 2)**

This criminal conduct occurs every time that the declaration, in addition to being untrue, is "insidious", that is, supported by an accounting or documentary facility that is able to mislead or hinder the subsequent assessment activity by the Financial Administration



the fraudulent declaration is not only "not truthful, but it is insidious because it is supported by an accounting or more generically documented system capable of misleading or hindering the subsequent assessment of the financial administration or in any case to confirm artificially expecting the data contained in it

(Criminal Court of Cassation , Joined Chambers, 7.11.2000 n. 27)

**the use of invoices or other false
documents as they concern non-
existent transactions**

**the indication in the tax return or in
the VAT declaration of fictitious items**

**Fraudulent declaration
through the use of invoices
or other documents for non-
existent transactions
(article 2)**



The active subject of the offense is not only the one who is required to make the declaration, but those *"who participated in creating the fraudulent mechanism to avail themselves of the fictitious tax documentation can also answer the crime"*

(Criminal Court of Cassation 20.11.2016 n. 14815)



**The penalty is imprisonment from
1 year and 6 months to 6 years.**

Fraudulent declaration through other devices (article 3)

The offense is supplemented by the conduct of those who, in order to evade VAT or income tax, in declarations relating to such taxes, indicate active elements for an element lower than the effective one or fictitious items or credits and deemed fictitious.

The fraudulent conduct is concrete in something different from the use of fiscal documents: for example **the realization of transactions simulated objectively or subjectively; accounting for assets that are lower than the effective amount or fictitious assets or credits and deemed fictitious; the use of false documents other than invoices; the adoption of fraudulent means suitable to hinder the assessment and to mislead the financial administration**

Fraudulent declaration through other devices (article 3)



use of accounts and / or deposits to be artificial in places other than those in which the taxpayer is based or abroad, while he has ruled out that it could constitute an artifice

Fraudulent declaration through other devices (article 3)

the giurisprudence has ruled out that it could constitute an artifice

the "**dividend stripping**" by which a foreign company constitutes a usufruct on the shares owned by it relating to a subsidiary resident in favor of another resident company, by making an undue deduction of the tax credit

(see Court of Pordenone 12.07.1997 n.125; Public Prosecutor Court of Ivrea 5.05.1997;
Public Prosecutor Court of Udine 3.01.1996)

the "**dividend washing**", by which two companies are subjected to tax on legal entities which bought equity securities a few days before the detachment of the coupons; subsequently the acquiring company collects dividends and records the tax credit and immediately resells the shares to the first company that had sold it to it

(Court of Roma 25.03.1999)



Fraudulent declaration through other devices (article 3)



The penalty is imprisonment from
1 year and 6 months to 6 years.

threshold of punishment

There is a criminal liability if the tax evaded (tax or VAT) is more than 30,000.00 euros and if the total amount of the assets removed from taxation, also by specifying fictitious passive items, is more than 5% of 'total amount of the assets shown in the declaration or, in any case, more than 1,500,000 euro, or, if the total amount of credits and false tax is more than 5% of the tax itself or in any case to 30,000 euro.

Unfaithful declaration (article 4)



The crime of unfaithful declaration occurs when, in order to evade the VAT or income tax, in one of the declarations relating to such taxes, active elements are indicated for an amount lower than the actual amount or claiming non-existent liabilities.

The law identifies the border between the criminal offense and the administrative offense: **all conduct that does not fall within the provision of the law will not have criminal, but only administrative consequences**

**The penalty is imprisonment from
1 year to 3 years.**

threshold of punishment

The rule provides for a double punishment threshold: in fact, the conduct becomes criminal if the tax evaded is higher than 150,000 euros and if the total amount of the assets removed from taxation, including by indicating non-existent passive elements, is higher than 10% of the amount of the active assets indicated or in any case higher than 3,000,000 euros

Omitted declaration (article 5)

The provision sanctions the behavior of those who, in order to evade VAT or income tax, do not present, even if obliged, one of the declarations relating to said taxes and the tax evaded, with reference to each of the individual taxes, is more than 50,000.00 euros



The penalty is imprisonment from
1 year 6 months to 4 years.

threshold of punishment

The rule provides a punishment threshold: in fact, the conduct becomes criminal if the tax evaded is higher than 50,000 euros

Issuance of documents for non-existent transactions (article 8)

This crime is committed when a subject, in order to allow third parties to avoid the tax, issues documents relating to non-existent transactions.



The subject issuing non-existent invoices is punished because it acts in order to allow third parties to evade taxes on income or added value

(Criminal Court of Cassation 22.11.2001 n. 45448)



**The penalty is imprisonment from
1 year 6 months to 6 years.**

**Omitted payment of taxes
(article 10bis and 10ter)**

omitted payment by the withholding of the withholding tax for an amount **exceeding 150,000 euros** for each tax period

omitted payment of the VAT due on the basis of the annual declaration for an amount **exceeding 250,000 euros** for each period is omitted of tax



**The penalty is imprisonment from
6 months to 2 years.**

Undue compensation (article 10quater)

The crime in question is punished differently depending on the type of credit used unduly in compensation for the tax due



threshold of punishment

if not due and above € 50,000 the penalty is
imprisonment from 6 months to 2 years

if non-existent and above € 50,000 the penalty is
imprisonment from one year and 6 months to 6 years

**Fraudulent subtraction
from the payment of taxes
(article 11)**

6 months to 4 years imprisonment is foreseen for those who, **in order not to pay income taxes for a total amount exceeding 50,000 euros**, take fraudulent acts on their own or others' property, suitable for rendering inactive the procedure of coercive collection.



threshold of punishment

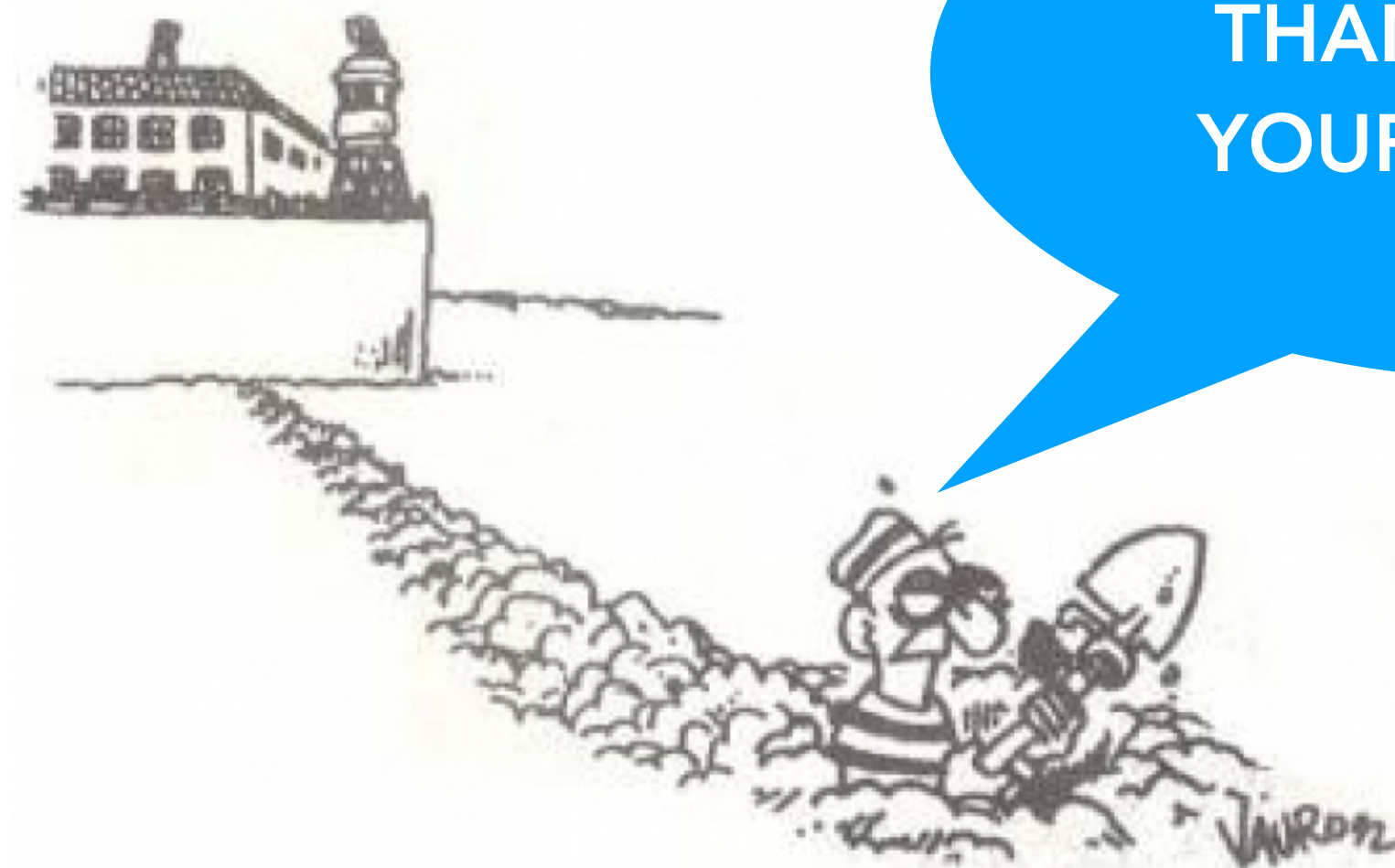
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