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**TAX MORALE AS DETERMINING FACTOR IN IMPROVING THE
EFFECTIVENESS OF THE TAX ADMINISTRATION”**

Subtopic 1.2:

**“METHODOLOGIES FOR MEASURING TAX MORALE WITHIN THE TAX
ADMINISTRATIONS”**

**Finance Guard
Italy**

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1. The Italian Constitution

The characters of ethics are found in the Constitution, in its rules there is the lay translation of normative ethics addressed both to the legislator and the citizen, inspired by the principles of the first and by motivating the profound reasons of the latter's participation in national society.

The ethics of the citizen are contained in the duties prescribed by the Italian Constitution and, complementary to the rights, they represent the support to the political community.

Generally speaking, the word "duty" is meant to indicate the unfavorable position of a subject on whom the law imposes a conduct to the benefit of another subject¹.

The constitutional duties, defined as "imperative" as no one can be exempted from their observance, go even beyond such a restrictive definition because they represent in reality the foundation of a pacific and constructive cohabitation and translate into collective situations of mutual and reciprocal benefit.

1.1. The duties of the citizens.

The parameterization of the rules of ethical provisions for the citizen are to be sought inside the constitutional provisions, particularly in the so-called "imperative duties". Such duties are called "imperative" because no one can be exempted from their observance; the key to the interpretation of all constitutional duties is laid down in art. 2 of the Constitution (which, as mentioned before, imposes imperative duties of political, economic and social solidarity).

Other duties, which also contribute to preserving peaceful cohabitation and social and economic development, are stated in the form of the so-called "civic" duties, that are intimately associated with the duties and are part of the individual requirements needed to belong to the established community and to its government.

1.2. The duty of loyalty to the Republic and observance of the laws².

Loyalty means "constant compliance with loyalty granted by others or with a commitment freely undertaken"³.

The duty of loyalty to the Republic and of observance of laws implies absolute loyalty to the founding principles of the republican State and the consequent observance of the provisions of the Constitution and the laws.

Loyalty to the Republic is intended also as loyalty to the Institutions that represent the State and that fulfill their responsibilities in the form and limitations provided for by the Constitution.

¹ The word duty, both as a noun and as a verb, derives from the Latin word *debere*, composed of *de* that stands for from and *habere*, that means have, with the associated meaning of get, obtain something from someone that will have to be returned.

² Art. 54, Const. "*All citizens have to duty to be loyal to the Republic and to observe its laws. The citizens holding public assignments have to duty to fulfill them with discipline and honor, pledging allegiance in the cases provided by the law*".

³ Devoto G. e Oli G.C., "Vocabolario della lingua italiana 2009", Le Monnier, 2008;

Loyalty to the Republic is therefore intended as a constitutional duty of juridical respect for the fundamental principles of the constitutional system on the one hand and the whole range of public institutions on the other, in terms both of their essential data and their functioning, as they are elements that are necessary for the system to pursue its pre-established constitutional objectives. In other words, the duty of loyalty implies an undeletable link of each citizen with the principles at the basis of the Constitution and also with public institutions founded by the Constitution.

Indeed, the duty of loyalty expresses the duty of political solidarity stated in art. 2 of the Constitution: this means that an intimate or spiritual agreement with certain values or idealistic principles is not imposed on the citizens, but, through the legal prescription of certain material conducts (as observance of the law), a way to preserve the necessary conditions and the constituent elements of the political community, is formulated.

1.3 The duty of contributing to public expenditure⁴.

The duty of the citizen to contribute to public expenditure is comprised in the range of economic solidarity duties.

According to authoritative scholars, art. 53 of the Constitution "... first of all plays a civil rights protection role, in limiting contribution to public expenses to facts that are a sign of "taxpaying capacity", that is to say economically assessable"⁵. Furthermore, art. 53 of the Constitution is a "specification of the duties of social solidarity"⁶: indeed, the duty to contribute to public expenses is independent of the fact that the taxpayer receives more or less what he expects of the State in terms of public services.

This same interpretation pattern should also include reference to the progressivity principle. Art. 53, when read in the light of the principles established by art. 2, has identified the substantial reason of the tax responsibility in the duty that binds to common good the possibilities of every subject belonging to a community.

On the other hand, the duty to contribute to public expenses on the basis of taxpaying capacity represents the application of a justice criterion according to which capacity governs application of the tax, whereas need is the basis for the service provided by the State. In other words, in dividing the debt among the citizens there is no measure that can be determined in relation to the public service rendered to each individual, but only the identification of a goal of common interest that favors progress of the whole community.

Hence the link to social and political solidarity and the imperative duty to pay taxes, considering that this is related to the actual survival possibilities of the same community.

⁴ Art. 53, Const. "Everyone shall contribute to public expenditure according to their taxpaying capacity. The tax system is based on the criterion of progressiveness."

⁵ Così Raffaello Lupi in: *Diritto Tributario*, parte generale, quinta edizione, Giuffrè Editore, Roma 1998 pag. 17.

⁶ Cfr. Raffaello Lupi, op. cit.

Lastly, the ethical meaning of the provision surfaces also in the combination of the taxpaying capacity principle with the general tax equality principle (art. 3 Const.), on the basis of which the provision differentiates the tax treatment by taking into account only the economic facts and positions (so the tax law will treat in the same way the economic facts that express the same taxpaying capacities, and differently those that identify different taxpaying capacities).

1.4 The ethical minimum.

We have noted how the legal system has the aim of regulating relations between individuals and with the subjects placed above them.

This regulation takes place under rules of various level dictated by the legislator. Sometimes these rules are exclusively “inventions” of the legislators (for example: one cannot drive without a license); in other instances they are based on sub-layers of various nature (ethical, natural, religious, customs) that the legislator acquires as a whole or in part.

The observance of legal rules by the members of society can be due to their obligatory nature (and so by fear of consequent penalties), or by spontaneous compliance with rules of other nature, among which those suggested by ethics, in the perspective of a correct choice between good and evil.

The citizen that limits himself to a mere, even if punctual, observance of legal rules has his conduct inspired by a standard that could be regarded as the “ethical minimum”.

The good citizen though does not simply comply with the norms, but he also acts in order to pursue good, cultivate social life and search for truth.

Respect for life, nature and other members, the search for truth and, above all, living to achieve good and repudiate evil, goes well beyond the mere observance of the rules stated in the legal system.

It follows that to put into practice the ethical rules, that is those that go beyond mere compliance with legal provisions, entails sacrifice.

2. Ethics in the Guardia di Finanza.

The ethics of the Guardia di Finanza is the result of the particular legal status of the Corps' members, which is not comparable to the other armed forces and police forces or to the civilian officials and employees of the Italian State.

In order to identify the system of values and criteria that must inspire and guide the finanzieri in their duty and, in general, in their acts, one must understand the goals of the duties performed by the Guardia di Finanza, and comprehend its institutional identity, which is necessary to understand and share the particular responsibilities and to direct their conduct in accordance with the institutional goals.

The starting points of these reflections are given by the institutional mission of the Corps and the analysis of the Supreme Court ruling no. 70 of 25 March 1976.

2.1 The mission of the Guardia di Finanza.⁷

The Guardia di Finanza Corps is a police force that fulfills a general responsibility in economic and financial matters on the basis of particular powers conferred by law. It is placed under the direct authority of the Economy and Finance Minister.

It is also **an integral part of the armed forces of the State and police** forces and has the following tasks:

- prevent, search for and report financial evasions and violations;
- conduct surveillance at sea for financial law enforcement purposes and contribute to the services of maritime police, assistance and signaling;
- enforce regulations of political and economic nature within the limits established by the single laws;
- contribute to the political and military defense of the frontiers and take part in military actions in case of war;
- participate in maintaining public law and order;
- perform other surveillance and protection duties that are assigned to it by the law.

2.2 Comments on the interests being protected: the financial interests of the State and economic public order.

As noted, the Guardia di Finanza's priority mission is economic and financial law enforcement, which differs from security police tasks which concern public order and safety and are assigned to "general" Police Forces, and from the tasks performed by the civil Administrations operating in the tax field; this difference allows to introduce and define the concept of economic public order.

"Economic order", effectively defines the "good functioning of the national economic system intended as a very vast area in which interests of various nature meet and clash, many of which deserve energetic protection"⁸.

Therefore "economic public order" ultimately can mean "the good functioning of the national economic system (composed of enterprises, consumers and also the State, which in turn, intervenes with different roles and methods)", intended as a very vast area in which interests of various nature meet and clash, "having exclusively or mainly public relevance and, as such, placed under the sole oversight and protection of public entities/institutions or concessionaire subjects and safeguarded by statutory penalties that, in order to be applied, do not require to be balanced with private interests."⁹

⁷ Law 23.04.1959, no. 189 and d.lgs. 19.03.2001, no. 68;

⁸ Pedrazzi, "Economia pubblica, industria e commercio (delitti contro)", in Enc. Diritto pag. 278 e seguenti;

⁹ Ferraro Angelo, "Globalizzazione, criminalità e sicurezza economica", op. cit.

To safeguard economic public order there are a number of Agencies and oversight bodies (with which the Corps cooperates), which however have responsibilities that are different from typical inspection or police actions; the Guardia di Finanza is the only police force having a general responsibility in economic and financial matters.

2.3 References to the military values system.

General notes.

In history and international law the military present a close and prevailing association with the use of armed force during conflicts, whereas this aspect does not prevail any longer in internal law.

Infact, in our Country (this happens also in other states) internal law entrusts the military with other shared tasks of direct and indirect support and assistance in maintaining public law and order, and often also to the benefit of populations hit by natural disasters.

These activities are not exactly associated with combat, but, as they are performed by armed forces, they fall within the definition of the term “military”.

So, to speak about military ethics is to include in a single definition not only what pertains to the use of armed force in an armed conflict, which is historically a strictly military matter, but also aspects which pertain to the other activities that today are the institutional responsibility of the military.

That being stated, rather than speaking about “military” ethics, perhaps today it is more appropriate to speak about ethics “of the military”, defined as a set of values and principles that inspire and guide the single members of the armed forces in discharging their institutional duties; they include the traditional “military” task of employing the armed force but also other shared duties that are normally performed by non military bodies.

2.4 Public ethics

So, in addition to every citizen’s duty to be loyal to the Republic and to obey its Constitution and laws (article 54, first paragraph, of the Constitution), there are the duty to fulfill ones responsibilities with discipline and honor, by taking an oath in the cases provided for by the law (article 54, second paragraph, of the Constitution), the duty to be at the exclusive service of the Nation (article 98 of the Constitution), the duty to ensure the good functioning and impartiality of administration (article 97 of the Constitution).

The actual implementation of these principles goes through the comprehension and overcoming of situations of potential incompatibility deriving from the possible overlapping of the private sphere and the service sphere and of administration and politics.

To overcome the first problem, it is required, through the solemn promise of the oath, to pledge to be at the “exclusive” service of the Nation; in the second case, in addition to the pledge required through the oath, the Constitution expressly provides for the possibility to set limitations, for certain categories of public employees and officials, to join political parties.

This public function represents the fundamental structure on which to define, by virtue of its peculiarities, the military public function which, precisely in the wording of the oath required of service members, shows profiles of specialty compared with the function established for public servants.

The latter, in particular, gives an oath with the following wording: «I swear allegiance to the Republic, to loyally abide by the Constitution and the laws of the State, to fulfill the duties of my office in the interest of the Administration for the public good» (article 2, D.P.R. 19.04.2001, n. 253).

Whereas the members of the military swear their oath reciting: “I swear allegiance to the Italian Republic, to abide by the Constitution and the laws and to fulfill with discipline and honor all the duties of my status for the defense of the Homeland and the safeguard of the free institutions.” (Article 2, Law 11.07.1978, n. 382)

The essence of the difference lies in the particular juridical effect, and not just ethical, resulting from the oath given which, unlike other public officials and employees, goes as far as establishing the duty to expose oneself, if necessary, also to the risk of sacrificing one’s life by virtue of the purpose of one’s activity (article 9 of the Regulations of Military Discipline).

In the case of military personnel, the duty to expose oneself, if necessary, to the risk of sacrificing one’s life, undoubtedly does not amount to the duty of sacrificing it, but anyhow entails a commitment, this time entirely within the secular horizon of the law which, having it become normal to accept the possibility of the sacrifice, characterizes in terms of absolute peculiarity this function compared with that of the other public servants and binds it, legally, manifestly and indissolubly to the concept of common good.

The legal emphasis of the pledge made through the oath, set forth in article 9 of the Regulations of Military Discipline, extends the duty to operate not just with total allegiance to the Republican institutions but, most of all, with discipline and honor, with sense of responsibility and conscious participation and, more, “...sparing no physical, moral and intellectual energies ...”.

Such an extent, intensity and depth of the duty to discharge one’s “...institutional tasks...” characterizes the military public function not just in its original and priority dimension, namely the legitimate use of military force, but also, and “by right”, in all its other forms of expression.

In a context thus outlined, the problem of the accurate compliance with the legal duty of sacrificing one’s physical, moral and intellectual energies for the Country and braving, if necessary, also the risk of sacrificing one’s life, does not present itself any longer in terms of

(ethical or juridical) justification, but rather of internalization of this juridical duty in such terms as to have its fulfillment become so immediate and “instinctive” as to appear as the result of an independent and innermost conviction that it is necessary.

This result, however, cannot be achieved by staying within the dimension, juridical yet narrow, of the fulfillment of a duty in light of a reward-punishment logic.

2.5 Military Discipline.

The term “discipline” derives from the Latin *discere* which means to learn and, in Roman times, used to indicate exercise, training, to learn the military trade. The purpose of the training was that of “...giving the Roman soldier superiority over the barbarian in the course of the battle...”, with consequent benefits also from a psychological standpoint as it reduced the fear of combat.¹⁰

In this sense, **obedience** was considered a consequence, an effect of military training and not a synonym for discipline.

Intended as such, discipline formed an object of devotion and was worshipped with the construction of altars in the encampments.

The current Regulations of Military Discipline (article 2) defines military discipline as the “...conscious compliance with the rules pertaining to the military status in relation with the institutional tasks of the armed Forces and the demands that result from them. It is fundamental rule for the citizens in arms as it constitutes the main factor of cohesion and efficiency ...”¹¹.

¹⁰ Le Bohec Yann, “L’esercito romano. Le armi imperiali da Augusto alla fine del terzo secolo”, op.cit.;

¹¹ In the Regulations of Military Discipline of 1964 (D.P.R. 31.10.1964) military discipline was illustrated in 5, in a structured manner:

- “1. All the duties of the service member derive from a single principle, which is the same upon which the Armed forces are founded, i.e. the necessity in case of necessity of the use of force for the defense of the honor and independence of the Homeland, the institutions and the national laws.
2. The necessity of the use of force requires the unification of all the individual wills comprising the armed Forces, under the supreme will of the one in command: unity of action and efforts, unity of guidance and command.
This results in, first of all, the necessity of subordination, chain of reporting whereby from the supreme commander one moves down to the private; and then of obedience to superior orders, basis for any military system. In subordination and obedience truly lies the essence of military discipline. To have the latter stable and secure when the need comes, it is necessary to maintain it at all times with the same vigor.
5. In the discharge of their task, in peace and war, service members are differentiated according to the scale of responsibility; but, in discipline, all are equal before duty and danger. The various individual operations are all therefore harmonized and coordinated to an end: and such a cooperation in agreement engenders the confidence of each in their own selves and their peers, subordinates and superiors.
6. To the unity of action and efforts powerfully contributes the morale of the troops, i.e. the agreement of wills and sentiments which results, in all members of the armed Forces in general and of each corps in particular, from the common objective aimed at, from the belief in its greatness and relevance, and from the race which inspires all Corps to its achievement. Herein lies the great importance of *esprit de Corps* as an element of strength.
7. For the armed Forces to be established, exist and operate, a prerequisite condition is, in any time and place, order.
8. Also the duties shared with other citizens acquire in the member of the military a particular vigor, the same being able to enforce and uphold the laws by force.
9. In the exact and conscientious discharge of these duties, not for fear of punishment or hope of reward, but for innermost belief in their intrinsic necessity consists discipline. It is due to discipline that the armed Forces acquire soul and life, and form a solidly established whole; whereas, without it, there would be nothing but a band of men, which would collapse under the first impact.
10. Discipline must become an habit which, kept by the citizen upon returning to civilian life, always informs his conduct with sentiments of orderliness, solidarity and duty.

The definition given by the current Regulations of Military Discipline has the virtue of steering the notion of discipline towards a search for specific professionalism to be accomplished, however, in a particular organizational context, characterized by the hierarchical-functional model, where the "order" is the operational tool governing the activity, as functional to an unique purpose: the legitimate use of the armed force.

The precise reference to "...conscious compliance..." moreover emphasizes the need for an active, qualified and propositional contribution of all military personnel, each at their own level.

It follows that, today, the essence of military discipline no longer resides as a priority in **subordination** and **obedience** (articles 4, 5, 25 and 26 Regulations of Military Discipline). Instead, they have become an instrument for and a consequence of the service activity ordinarily performed, yet consciously and responsibly executing the duties which must characterize the action of the organization in order to achieve the institutional aims.

Professional preparation and namely **training**, comprehension and acceptance of the rules of functioning of the military structure and responsible integration within the same, allow to increase one's self confidence and acquire that strength of spirit and determination which build the necessary **courage** to fulfill ever with "honor" one's duties also in the cases when it appears difficult to take a stand.

In the action of the Guardia di Finanza, all members of the Corps must bear in mind that their service fulfills an important and sensitive function, namely that of ensuring regular compliance with the law and regulations in the interest of public finance and national economy (article 160 **Guardia di Finanza Service Regulations**, 1959 draft).

The relevant operational ambit, however, often consists of the property of the private subjects being controlled, and it forms the subject matter of the service activity. Not just putting at risk, but often the mere questioning of the extent of the property of a person, sometimes entails causing unforeseen and unforeseeable reactions aimed at modifying or coercing the will of the Guardia di Finanza member, his integrity and his capacity to thoroughly enforce the law, "...because men more quickly forget the death of their father than the loss of their patrimony ..."¹²

Only a constantly practiced military discipline, with its system of values and correlated virtues, made of total allegiance, sense of legality, solid and updated professional preparation, attendant self-confidence and therefore courage, allows to always accomplish one's duty without hesitation.

Thus the armed Forces, expressed by the people, become a school of honor and virtue";

¹² Macchiavelli Nicolo', "The Prince", Einaudi publishing house, 1984, Chapter XVII. The entire period reads as follows: "Nevertheless a prince ought to inspire fear in such a way that, if he does not win love, he avoids hatred; because he can endure very well being feared whilst he is not hated, which will always be as long as he abstains from the property of his citizens and subjects and from their women. But when it is necessary for him to proceed against the life of someone, he must do it on proper justification and for manifest cause, but above all things he must keep his hands off the property of others, because men more quickly forget the death of their father than the loss of their patrimony ;;

The attack against the financial interests of the State, although being a conduct whose negative effects concern the community as a whole, and in particular the less wealthy and the needy, has historically never been experienced and perceived by public imagination as a particularly despicable activity.

When on duty, Guardia di Finanza members must be aware that they confront daily this paradox which involves law, history and culture: their service, on a par with Homeland defense, is essential for the life of the Republic. Still the public imagination does not consider the economic-financial offences that they tackle all that serious, nor the persons committing them all that villainous.

To learn the historical and cultural existence of this paradox and strengthen one's awareness that only by complying with and enforcing the law one is on the "right" side (which by definition can only be the legal side), means to consider the possibility of being "alone" and to be able to overcome the discouragement which may arise when the community fails to appreciate our work.

Gaining an awareness of one's status, achieving an adequate strength of spirit, the clear understanding of the external psychological context, may bring a member of the Guardia di Finanza to appreciate the extraordinary descriptive and expressive power, the meaning itself of the dedication: **"tireless sentinels of the border – the most advanced and the most solitary – always – because this is the command – the oath – the prize."**

2.6 The Oath.

The oath for members of the military is provided for by articles 54, second paragraph, of the Constitution and 2 of Law 382 of 1978.

Historically¹³ the practice of requiring the oath of soldiers dates back to the Roman era and took the name of sacramentum, unlike the official oath of public law which was called ius iurandum.

An obligation of obedience to a chief was undertaken in both cases but, while in the case of the ius iurandum the obligation was founded upon rules of public law, in the case of the sacramentum the obligation had a sacral origin and constituted pledge to obey the imperium of the military commandant which had a sacred origin.

Currently, the ceremony of the military Oath is governed by article 6 of the Regulations of Military Discipline and is described in its execution by article 138 of the Regulations of territorial and defense service.

¹³ Tokmakov Valerij N., "Disciplina militare e la situazione giuridica dei milites nella Roma della prima età Repubblicana", in Tradizione Romana n. 4-2005, from the site www.dirittoestoria.it;

The oath is sworn solemnly, in the presence of the flag and of the commander of the corps. Officers and non-commissioned officers swear an individual oath while the other service members, including the trainees, normally do so collectively.

In military oath ceremonies, both individual and collective, in addition to the flag and the commander of the corps, always present are a representation of hierarchical superiors of the service members who are taking the oath and of members of the Unit with a role of witnesses of sorts.

In the cases of breach of the oath, the maximum status penalty is inflicted, which is the loss of the rank by “demotion”, which constitutes one of the causes of cessation from service.¹⁴

In this sense, therefore, the breach of the commitment undertaken through the oath represents a fact of serious legal relevance, to the point of justifying an expulsion from the military community.¹⁵

¹⁴ See Law 113/1954 for officers; Law 599/1954 for non-commissioned officers; Law 833/1961 for lance-corporals and guardsmen;

¹⁵ Article 3 of the Regulations of Military Discipline of 1964 previously in force stated, at the second paragraph, that, “the oath must be kept at any cost: the oath-breaking service member is covered with shame”..