SOCIAL ENTERPRISE AND DUTY TO CONTRIBUTE

Alessandro Giovannini
Professor of Tax Law at the University of Siena (Italy)

Título

Empresa social y el deber de contribuir

Resumen

La economía social ha sido desde hace tiempo objeto de estudio desde el punto de vista fiscal. En este ámbito, las cuestiones más espinosas se refieren al gravamen de la renta que las entidades del tercer sector derivan del ejercicio de actividades comerciales. Las preguntas a las que la investigación intenta dar respuesta son dos: ¿puede el deber de contribuir cumplirse con el desarrollo de actividades solidarias, como pueden definirse aquellas prestadas por estos entes? ¿Puede el principio de capacidad contributiva considerarse complementado con los beneficios obtenidos del estado por los servicios que prestan? Para responder adecuadamente, este estudio parte de una nueva y más amplia lectura del principio de capacidad contributiva del artículo 53 de la Constitución [italiana], retomando los estudios más recientes aceptados por el Tribunal Constitucional en la Sentencia núm. 72 de 2022, a la luz de la cual es también posible resolver la cuestión de los contra-límites constitucionales que pueden oponerse a posibles censuras de la Unión Europea a la legislación nacional centradas en la prohibición de ayudas de estado.

Palabras clave

Actividades sociales, tercer sector, actividad empresarial, actividad comercial, tributación, impuesto sobre sociedades, capacidad económica, artículo 53 de la Constitución económica, medidas de apoyo, contra-límites constitucionales, ayudas de estado

Abstract

The social economy has long been the subject of study also from a fiscal point of view. In this context, the thorniest issues pertain to the taxation of income that third sector entities derive from the exercise of commercial activities. The questions to which the firm intends to answer are two: can the contributory duty be fulfilled by carrying out solidarity activities, how can those provided by these bodies be defined? Can the principle of ability to pay be considered supplemented by the benefits obtained by the state for

the services they provide? To respond adequately, a new letter of the principle of ability to pay is proposed as per Article 53 of the Constitution, taking up the most recent studies accepted by the Constitutional Court in sentence n. 72 of 2022, in the light of which it is also possible to resolve the issue of constitutional counter-limits enforceable against any complaints from the E.U. on the ban on state aid.

Keywords

Social activities, third sector, business activity, commercial activity, taxation, corporate tax, ability to pay, Article 53 of the Constitution, concessions, constitutional counter-limits, state aid

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SUMARIO

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1. The third sector and 19th century models of taxation. Introduction and delimitation of the research

The social economy has also long been the subject of study from a fiscal point of view[1]. In this field, the thorniest issues concern the taxation of income that third sector entities derive from the exercise of commercial activities. The solution traditionally chosen has been to subject it to tax, contrasting it with income that is not commercial or rather commercial, but occasional or from activities aimed at members.

Even with some openness of the 1997 legislation on «o.n.l.u.s.», for third sector entities commerciality has always brought with it taxation, on the assumption, although not positively proven, that a different regime within commerciality itself and thus different from that of companies *tout court* would have distorted competition and violated tax equality[2].

To these reasons must be added another one, which over time has become a *refrain* that is no longer critically verified, to such a rigid extent that it has managed to shape even the 2017 code of the third sector for entities other than social enterprises. This: business income is modelled on the category of commercial activities *ex* Article 2195 Civil Code, and since, for personal taxes, commerciality characterises all economic activities that are not agricultural or professional, any income from economic activities other than these cannot but be qualified as commercial[3]. Therefore, taxation can only be stopped if such activities are carried out by entities constituted in a form other than joint stock companies or if they are carried out by companies adhering to the regulatory

1 The literature on social economy in general is vast. I will just mention S. ZAMAGNI, L'*economia del bene comune,* Rome, 2007; L. BECCHETTI, *La felicità sostenibile. Economia della responsabilità sociale,* Rome, 2005. Among tax experts, see L. CASTALDI, *Gli enti non commerciali nelle imposte sui redditi*, Turin, 1999; A.M. PROTO, *La fiscalità degli enti non societari*, Turin, 2003; more recently G. BOLETTO, *Le imprese del terzo settore nel sistema di imposizione dei redditi: tra sussidiarietà orizzontale e concorrenza*, Milan 2020.

2 In these terms, in fact, the problem was posed years ago for the favourable tax regime of production and work cooperatives, which was then resolved with the correct re-evaluation, also by the EU Court of Justice, of article 45 of the Constitution and with ad *hoc* regulatory interventions. See F. PEPE, *La fiscalità delle cooperative. Riparto dei carichi pubblici e scopo mutualistico*, Milan, 2009.

3 Article 55 of the Consolidated Income Tax Law (TUIR) –and earlier Article 51 of d.P.R. No. 597 of 1973– identifies hypotheses of income produced by non-commercial activities for the purposes of Article 2195 of the Civil Code, but these are entirely marginal hypotheses. If desired, see A. GIOVANNINI, *La nozione di imprenditore*, in *Giurisprudenza sistematica diritto tributario*, directed by F. Tesauro, vol. I, t. 2, Turin, 1994. The fundamental contributions of A. FANTOZZI, *Imprenditore e impresa nelle imposte sui redditi e nell'IVA*, Milan, 1982, and M. POLANO, *Attività commerciali e impresa nel diritto tributario*, Padua, 1984, cannot but be recalled. It is to be hoped, as I wrote in *Impresa commerciale e lucro nelle imposte sui redditi e nell'I.V.A.,* in *Riv. dir. trib*., 2012, I, 467 ff., and then in *Il re fisco è nudo,* Milano, 2016, 157 and 158, that the income categories as they were delivered

statute of the social enterprise, and only if they are *formally* «de-commercialised» by specific provisions[4].

Those reasons and this way of conceiving the taxation of economic activities have run their course[5]. The single, ordinary or general model of the taxation of business activities and the model of the «form» of the chosen entity, with regulatory exceptions and counter- exceptions, are no longer adequate to represent the developments of the interpretation of Article 53 of the Constitution, which has also been received by the Constitutional Court, as I will write in the following pages. But neither are they adequate to represent the constitutional regulation reformed by Constitutional Law No. 3 of 2001, with horizontal subsidiarity at its centre, which was followed by EU and national legislation on social enterprise and even earlier that on so-called *benefit societies*[6]. Nor do they show themselves to be more suited to the changed structural conditions of the new economies, which are difficult to compress in the 19th-century scheme of commerciality[7], and even less so to the changed needs of public finance, now nailed to the *Procrustean* bed of debt and therefore greatly weakened on the *welfare* front.

Then there is another factor, not less important, that makes it necessary to rethink taxation models in general and even more so those applicable to the third sector. It is the issue of poverty, with increasing inequalities[8] and the

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to us by the reform of the 1970s will be overcome, as they are now inadequate to represent the organisation and structure of modern economic activities, including professional activities, leading to differences in regimes that can no longer be justified. The topic has recently been taken up again, with comments that can be shared in light of the planned tax reform, by M. BASILAVECCHIA and A. PACE, *I nuovi confini tra le categorie di reddito*, in *Rass. trib*., 2022, 21 ff. and by C. SACCHETTO, *Redditi di lavoro autonomo e disegno di legge delega di riforma tributaria, ivi,* 2022, 58 ff.

4 If an economic activity is carried out in the form of a joint stock company and, as of 2017, the company does not adhere to the regulatory statute of the social enterprise, any income, from whatever source, is to be considered as business income (Article 81, T.U.I.R.). Legislative Decree No. 112 of 3 July 2017, instead, provides that a social enterprise also constituted in the form of a joint stock company may carry out commercial activities without this giving rise to taxation on the corresponding income. The coeval Legislative Decree No. 117 (Code of the third sector), dedicated to entities other than social enterprises, instead, distinguishes, taking up the categories mentioned, between commercial entities and non-commercial entities and, within these, between commercial and non-commercial activities. A regulatory skein that is not only poorly written but also difficult to rationalise and even more difficult to apply.

5 Most recently, with a systematic view, L. CARPENTIERI, *Un sistema fiscale in bilico tra tra tassazioni punitive per settori economici e categorie di contribuenti e nuovi tentativi di discriminazione qualitativa: la navigazione «a vista» della Corte costituzionale*, in *Saggi in ricordo di Augusto Fantozzi,* Pisa, 2020, 324 ff.

6 I refer to Article 1, Paragraph 376, Law No. 208 of 2015. See most recently G. A. RESCIO, *L'oggetto della società* benefit, in *Riv. dir. civ.*, 2022, 462 ff.

7 The origin of commerciality as a category first in civil law and then in taxation has ancient roots and is influenced by

very precise social, economic and even political conditions, like the wording of Article 2195 of the Civil Code. See R. TETI, *Un diritto per gli imprenditori. Il diritto commerciale dalle codificazioni ottocentesche al Codice civile del 1942*, Rome, 2018, and G. B. PORTALE, *Lezioni pisane di diritto commerciale*, edited by F. Barachini, Pisa, 2014.

8 See C. CROUCH, *Combattere la postdemocrazia,* transl. it. edited by M. Cupellaro, Rome-Bari, 2020; T. PIKETTY, *Una breve storia dell'uguaglianza*, transl. it. edited by S. Arecco, Milan, 2021.

needs of the «poor people», as Giorgio La Pira wrote in 1950[9]. It is a question, and it was also a question in La Pira's thought, of invoking not compassionate charity, but the constitutional bond of solidarity, the founding principle of the legal system and even before that of community coexistence. In other words, to anchor oneself to *fraternité,* which with the French revolution became a general «*sentiment républicain*», a value no longer the prerogative of morality, religion and the good heart, but belonging to law as a principle, which from that historical contingency has reached as far as modern constitutions, to our Article 2 of the Republican Constitution[10].

On these assumptions, the questions that need to be answered are twofold: can the duty to contribute be discharged by the performance of solidarity activities, as those performed by third sector organisations can be defined? Can the principle of contributory capacity be considered supplemented by the benefits obtained from the state for the services they provide?

2. Contributive capacity and the relationship of economically relevant utility in a new reading of Article 53 of the Constitution

I start from this last question. The principle of contributive capacity expresses a criterion for the distribution of public burdens, historically considered the most appropriate for this purpose. Up to this point, no questions arise, unanimous doctrine and jurisprudence converge[11]. From here on, however, the difficulties of interpretation of the distribution criterion begin. The one we are interested in addressing concerns the identification of a concept capable of unitarily defining the criterion of apportionment, so as to give a secure roof to the multiform economic dimensions expressed by modernity, including those of the social economy.

As I have had the opportunity to write in other occasions[12], I believe that by putting traditional theoretical schemes in the background and looking at public

9 I am referring to «*L'attesa della povera gente*» and «*La difesa della povera gente*», which in that year LA PIRA published in
Social Chronicles.

10 M.C. BLAIS, *La solidarietà. Storia di un'idea*, transl. it. edited by B. Magni, Milan, 2021, 38 ff.

11 The doctrine is unanimous on this point. Both those who link Article 53 of the Constitution to an «unlimited» guarantee function for the taxpayer and those who reject such an approach and therefore reduce it only to a criterion of apportionment, agree on this aspect. *Ex multis,* E. DE MITA, *Capacità contributiva*, in *Digesto comm.*, II, Turin, 1987; F. MOSCHETTI, *Il principio di capacità contributiva, espressione di un sistema di valori che informa il rapporto tra singolo e comunità,* in *Diritto tributario e Corte costituzionale,* Naples, 2007, 39 ss.; F. GALLO, *Nuove espressioni di capacità contributiva*, in *Rass. trib.*, 2015, 771 ss.; ID., *Il diritto e l'economia. Costituzione, cittadini e partecipazione,* ivi, 2016, 287 ff.; ID. *Il futuro non è un vicolo cieco*, Palermo 2019, 36 ff.; F. BATISTONI FERRARA, *Capacità contributiva,* in *Enc. dir.,* Aggiornamento, Milano, III, 1999, 346; ANTONINI, *Dovere tributario, interesse fiscale e diritti costituzionali,* Milano, 1996; G. GAFFURI, *Capacità contributiva*, in *Diz. dir. pub.*, directed by S. Cassese, II, Milano, 2006; A. FEDELE, Diritto tributario, in *Diz. dir. pub.* FEDELE, *Diritto tributario, Principi*, in *Enc. dir., Annali,* II, Milano, 2008, 453; G. FALSITTA, *Storia veridica, in base ai lavori preparatori, della inclusione del principio di capacità contributiva nella Costituzione,* in *Riv. dir. trib. ,* 2009, I, 97; if desired, see A. GIOVANNINI, *Il diritto tributario per princìpi*, Milan, 2014, 2022, 21, where there are further bibliographical references. For the Constitutional Court, see, among others, Sentence No. 156 of 21 May 2001.

12 Recently in *Per princìpi,* Turin, 2022, 25 ff.

finance as a unitary entity, constituted as it is by incoming and outgoing financial resources, i.e. by taxes and expenditure, the solution can be found in the very reality being analysed.

From this perspective, it seems to me that it can be said that the first paragraph of Article 53 of the Constitution requires only that the elements subject to taxation have economic relevance and that the contribution to the expenditure falls on the «entity» that realised them or to which they are otherwise referable[13].

The objective profile of the criterion, therefore, can be made to coincide with a relationship between tax and factual matter having as its object an economically appreciable result. A concept, this, that can be summarised, to give it a good name for use, in the «economically relevant utility relationship».

As a first approximation, one might observe that like this it merely puts the «old» relationship between subjects and economic activities, i.e. the relationship between the subjective and objective profile of taxation, into new words.

Not so. In order to grasp the peculiarity of the «economically relevant utility relationship», it is necessary to take a step forward and try an evolutionary reading of the constitutional norm. The step consists in placing the emphasis on the noun «relationship» and in re-evaluating, as I have already hinted at, public expenditure, i.e. the other side of taxation, present in Article 53 as a teleological element of contribution, but also in Article 81, paragraph 3, which links the law of expenditure to the «means» to support it. Thus and at the same time enhancing the individual constitutional principles placed to safeguard collective legal goods (from work to health, from the environment to culture), in the light of which the principle of contributory capacity should be read.

In this perspective, the utility relationship is not exhausted in the relations between subject and activity, but shifts and broadens to include the relations between activity and the economic effects it produces externally. Effects that, precisely due to their derivation from the activity, can then integrate, by virtue of the procedure of normative construction, the taxable event within which the activity itself is already one of the components.

The external relations to look at, in general terms, are of two types. The first consists of the prejudice suffered by public finances as a result of the taxpayer's execrable behaviour. It is, therefore, a negative utility relationship[14]. The second takes the form of an advantage received by those same finances, this time linked to the virtuous conduct of the taxpayer or to his/her functional acti-

13 See extensively F. GALLO, most recently in *Il futuro non è un vicolo cieco*, loc. cit.

14 To give an example, if an oil industry or a steel plant does not install filters to purify production water, it does something that contributes to the destruction of the environment, to the increase in carcinogenic diseases or dermatological afflictions. It reflects negatively, prospectively, on public finances, as well as on the lives of men and women, because it leads to an exponential increase in healthcare costs and costs to reduce pollution. The «not doing», then, acquires public economic significance: the «not done» by the taxpayer (not installing the filters) impoverishes the community,

vity to the satisfaction of general needs. It is, therefore, a relationship of positive utility, in which the collective benefit becomes an element of distinction[15].

The economic force of the tax event may thus also derive from elements initially external to it, but which, as mentioned, once brought within it by the regulatory construction process, contribute to establishing it. And this happens, paritcularly, when an activity produces consequences that spill over to the community in terms of costs or benefits[16].

An apportionment criterion structured on such a type of relationship is like an open window on the economy and public finance, on society and the needs of individuals who are held in mutual solidaristic bond, without the need for «an uninterrupted, laborious, almost always late updating» of the concepts to be applied to the tumultuous progress of the legislature[17].

3. Solidarity as an individual duty and as a mission of the Republic: for a «wolf-free» cohabitation

The conceptual mould in which to cast the wax of the utility relationship is that of solidarity. And the legal mould can only be Article 2 of the Constitution, in the light of which to read Article 4, paragraph 2, Article 118, paragraph 4, and finally Article 53, paragraph 1, of the Constitution.

The solidarity I am referring to is not the paternalistic one of an ethical nature, as I emphasised at the outset. It is that of the social, political, economic

contributes to destroying one of its vital assets, instead of protecting it. The fact, from private, becomes public. Related to this impoverishment, in the example, is, to an extent not coincidental, the enrichment of the oil industry or the steelworks due to the cost savings of «not doing» (not having installed the filters), which in itself has economic significance. This fact, however, can also be taxed in a dimension other than the individual dimension of expenditure savings, i.e. in the collective dimension: for the economic effects it determines on public finance in terms of increased expenditure, since the marginal social cost, here, exceeds the cost saved by the private individual.

15 This is the case, precisely, of social activities carried out by third sector organisations, according to the regulation of Article 5 of Legislative Decree No. 117 of 2017, and Article 2 of Legislative Decree No. 112 of 2017.

16 The outcome of the proposed interpretation finds support in the judgment of the Supreme Court of the United States of America of 28 June 2012, 11-398, *Department of Health and Human Services et al. v. Florida et al* (in *federalismi.it*, No. 14, 2012). The Court, with this decision, declared legitimate the *tax* that mechanically affected those who did not take out the compulsory health insurance arranged by the Obama administration to protect the weaker segments of the population, a measure that the College excluded from the sanctioning ones and brought back, instead, to taxation: it is the «sharing of social responsibility», said the supreme College, that becomes an objectively relevant element and, for this reason, economically assessable on a fiscal level. The Court's discourse, although having as its object a negative or omissive conduct of the taxpayer, seems to fit like a glove for our purposes too: the «sharing of social responsibility» can also be seen as public benefits. Externality consequent to the activities, precisely, of third sector entities, which, on the one hand and as also indicated by our Constitutional Court in its Judgment No. 72 of 2022 meet collective needs predetermined or agreed upon with the public administration (Article 55 of the Code of the third sector) and, on the other hand, obligatorily reinvest all the fruits of their commercial activity in the same activity, thus targeting them to social sharing.

17 I quote Stefano Rodotà's words on the interpretation of the principle of solidarity (S. RODOTÀ, *Solidarietà*, Roma-Bari, 2016,104). Solidarity that of the duty to contribute is a presupposition and foundation, as will be further clarified in the next paragraph.

duty of each individual, it is that which requires one to contribute with one's work to the common good, and it is that which the Republic has taken upon itself and which it is called upon to realise with its fiscal policies of income and expenditure[18].

As Marie-Claude Blais writes in the aforementioned work, if solidarity is the history of an idea, the one it brings out into the open today represents the overcoming of the Plautian idea *homo homini lupus, non homo*[19], and the hopefully definitive burial of the Hobbesian theory that starts from Plautus and ultimately returns to him: *bellum omnium contra omnes*[20].

The idea of the subjugating and coercive power of the state, which in Hobbes himself finds its most evolved theorisation, but which also persists in the Age of Enlightenment and moulds conceptions that reach the threshold of the present day, also wanes in the tax perspective in favour of solidarity and the «treasure chest of values» that has become concrete in the Charter of 1948[21]. And not because the State abandons power and its exercise, but because it finds its measure and limit in the rights of justice, which are the direct expression of solidarity. And because it is solidarity itself, and solidarity alone, that justifies the duty to contribute, as the Constitutional Court made clear in unequivocal terms in its Judgment No. 288 of 2019 and repeated in Judgment No. 121 of 2021[22].

Let us be clear, I do not intend to make solidarity a «tyrant» principle that absorbs and suffocates every other principle. The Constitution does not allow this since, through individual freedoms, especially those of an economic nature, it entrenches subjective rights of primary importance that from the outside limit and regulate it. As I have had occasion to write on several occasions, I am firmly convinced, in fact, that solidarity must stop in front of the freedoms of «those who have the most» in order to maintain the legitimate diversity of assets that pre-exist taxation itself, albeit with a modular reduction dictated by the system of the progressiveness of taxation referred to in the second paragraph of Article

18 S. RODOTÀ, *Solidarity,* Rome-Bari, 2016, 49 ff.

19 PLAUTO, *Asinaria,* II, 4, 88.

20 T. HOBBES, *De cive*, 1, 12-13.

21 Paolo Grossi's pages, from which I have taken the effective expression «treasure chest of values», on power and legality offer a clarifying reconstruction on these aspects. See P. GROSSI, *Oltre la legalità*, Roma-Bari, 2020, *passim*, but especially 68 ff.

22 «It must be observed», the Court wrote in Judgment No. 288, «that in the Constitution the tax duty, understood as a contribution to public expenses on the basis of one's ability to pay, can be qualified as an imperative duty of solidarity not only because the tax levy is essential –as old conceptions that exhausted it in the paradigm of duties of subjection held– to the life of the State, but above all because it is preordained to financing the system of constitutional rights, which require large amounts of resources to become effective: both social rights ... and most civil rights. It is in fact from such a link, also by virtue of the redistributive function of taxation and the functional connection with Article 3, second paragraph, of the Constitution, that the tax duty can be traced back to the chrism of non-derogation referred to in Article 2 of the Constitution». In the literature, the theme was taken up by the same author of the judgment with further arguments, equally convincing. See L. ANTONINI, *La felicità pubblica tra diritti inviolabili e doveri inderogabili,* Modena, 2022.

53 of the Constitution[23]. Nor do I intend to overestimate or assign to public spending thaumaturgic functions or envisage spending free of controls and limitations. On the contrary, it is my deep-seated idea that spending has precise constitutional constraints also in the area of constitutional legitimacy checks of the relative laws, and that those who contribute to it with the payment of taxes are the bearers of the subjective right to the rational allocation of resources[24].

What I want to argue here is something else. Solidarity is a multifaceted concept, which also plays a multifaceted constitutional role. It is like a bridge connecting several constitutional norms. Thus, on the one hand, it links social, political and economic duties to the attainment of the freedoms of «the have-nots»; on the other hand, it makes the redistribution of wealth through spending one of the instruments that the state can and must use to make those freedoms effective; on yet another hand, it links duties, freedoms and spending to horizontal subsidiarity so that associated citizens also perform activities of general interest together with or instead of the state and give substance to solidaristic duties by directly redistributing wealth through the provision of services in socially relevant areas.

It is in this multifaceted nature of solidarity that the duty to contribute to public expenditure is rooted and that, precisely because of this multifaceted nature, allows one to look at taxation as an instrument not only for raising revenue, but also for spending, for redistribution, including that entrusted directly to the care of private individuals and their initiatives.

This is why the ratio of economically relevant utility, as a criterion of distribution, is itself a bridge, indeed it is part of that same bridge which from Article 2 passes through Article 53 to then reach and connect the law to reality, fulfilling its needs in the sharing of social responsibility.

4. Solidarity activity, the economy of caresses and collective benefit as «coins» of fulfilment of the duty to contribute

With respect to the activities of the third sector, therefore, it is the individual and collective benefit produced by them, supplemented by the prohibition on the distribution of profits, that conquers the reconstructive stage in deference, precisely, to Article 2 Constitution[25]. And it conquers it in a dual guise: as an integrative element of the distribution criterion and as a qualifying element of the satisfactory activity of the duty to contribute.

23 Constitutional rules on economic and property freedoms, in fact, limit the expansion of solidarity to
protection of the corresponding rights of those who possess them prior to taxation. In the economy of our argument, however, this aspect can only be mentioned, especially to avoid conceptual misunderstandings. I have written about it, if further analysis is desired, most recently in *Per principi,* cit., 53 ff., 213 ff.

24 I also addressed these aspects most recently in *Per Principles,* loc. cit.

25 The absence of subjective profit, and thus the obligation to reinvest profits in the same or similar social activities, is itself a collective benefit, in addition to the benefit generated by public expenditure savings.

The activities of the third sector, as already written, provide a double public benefit: they ensure the service that the state would otherwise have to perform directly, i.e. they strengthen mutuality in a spirit of mutual cooperative exchange between individuals; they relieve the state of the related costs[26].

The benefits for the recipients of the services are not only the material ones, assessable in their economic tangibility, but include the moral ones, spiritual one might say, which only seemingly have no value. It is «the economy of cares», this, to borrow the effective expression of Claude Steiner[27], which is not only a «care of the soul» for the recipients of services, but also a benefit for the community. It is an *oeconomy,* indeed.

This justifies the assumption of this bundle of external utilities, including the constraint of reinvestment of profits in the same activity or in further socially useful activities, as a filling element of the tax event and defining element of the distribution criterion, which for third sector entities ends up by coinciding, precisely, with the benefits brought to all and everyone, as well as to public finances[28].

In legal terms, it is by no means far-fetched to bring this type of benefit, too, under Article 2, first alinea, of our Constitution and Articles 1 and 3 of the Charter of Fundamental Rights of the European Union, adopted in Nice in 2000, since, even in their immateriality, contribute most significantly to giving substance to the «inviolable rights of man» and thus to his dignity, which is the substance and prerequisite of rights[29].

Contributive capacity as a criterion for the distribution of social economy entities, then, lies precisely in these benefits –tangible and intangible, individual and therefore collective– produced by their activities and supported by the restriction that the profits be allocated to identical purposes or solidarity activities. A specific, peculiar contributive capacity, one could perhaps say with distribution effects *ad excludendum.*

In this reconstruction, the function of benefits does not end in the area now examined. It goes further, since they make it possible to qualify the activity from

26 The entities referred to, to quote the Constitutional Court's Judgment No. 131 of 2020, show «a specific attitude for participating together with public entities in the realisation of the general interest». In literature, *ex multis,* T. TASSANI, *Tutela dei diritti essenziali e imposizione fiscale tra sussidiarietà verticale e orizzontale*, in AA.VV., *La finanza pubblica italiana*, edited by C. Guerra and A. Zanardi, Bologna 2009, 303; A. PERRONE, *Sussidiarietà e fiscalità: un nuovo modo di concepire il concorso alle spese pubbliche*, in *Riv. dir. trib.* 2017, 437; M. MISCALI, *La fiscalità del Terzo settore: dall'agno- sticismo legislativo al «diritto costituzionale della sussidiarietà fiscale»*, in G. Zizzo (ed.), *La fiscalità del terzo settore,* cit., 49; F. GALLO, *Il diritto e l'economia,* cit., 307; ID., *Le ragioni del Fisco. Etica e giustizia nella tassazione*, Bologna 2011, and ID., *Il futuro non è un vicolo cieco,* cit., 79; L. GORI, *Terzo settore e Costituzione*, Turin, 2022, *passim*, but especially 188 ff.

27 C. STEINER, *La fola dei caldomorbidi*, transl. it. edited by C. Chiesa, Bologna, 2009.

28 However, Giovanni Moro is right when he denounces the slabbering and abuses of the third sector. Slabbering and abuses, admitted and tolerated by the same legislation, which have ultimately penalised and continue to penalise the true, authentic *non-profit sector.* G. MORO, *Contro il non profit,* Rome-Bari, 2014.

29 Among the many contributions, the Quaderno della Corte costituzionale, *La dignità dell'uomo quale principio costituzionale (The Dignity of Man as a Constitutional Principle),* edited by M. Bellocci and P. Passaglia, Rome, 2007, seems worthy of special mention.

which they derive as a way of fulfilling the duty to pay contributions[30]. It is the benefits, in fact, in the twofold dimension indicated above, that qualify the activity as being in the general interest and make it an instrument of fulfilment of that solidaristic obligation. They are the «currency» of payment.

5. The contribution from the «bottom», work for the community and the Constitutional Court Judgment No. 72 of 15 March 2022

The Constitutional Court came to this conclusion in its Judgment No. 72 of 15 March 2022. The Court stated that such activities are a «new and indirect form of contribution to public expenditure» because they are in the general interest and because they are carried out with the constraint of «reinvestment of profits in activities geared to a social function».

The Judgement is important because, on the one hand, it picks up on the theoretical impulses for revising the interpretation of Article 53 Constitution, which had already appeared in the literature[31], and on the other hand, it sanctions in unequivocal terms the connection between the fulfilment of duty to contribute and development of private activities, albeit and only because they are characterised by solidaristic elements[32].

30 L. ANTONINI, *Sussidiarietà fiscale,* Milan 2005, 109, 121. A trace of this reasoning can already be found in G.A. MICHELI, *Profili critici in materia di potestà di imposizione,* in *Riv. dir. sc. fin.*, 1964, I, 28, and its development in F. MOSCHETTI, *Il principio di capacità contributiva, espressione di un sistema di valori,* already cited, 39. Also A. GIOVANNINI, *Enti del terzo settore: linee sistematiche di riforma*, in *Rass. trib*., 2009, 246.

31 There are two dates that symbolically mark the beginning of the process of re-reading Article 53 of the Constitution. The first is that of the introduction of IRAP with the Legislative Decree No. 446 of 15 December 1997, and of the Constitutional Court's Judgment No. 156 of 21 May 2001, which declared the non-illegality of the tax; the second is that of the reform of Title V of the Constitution and with it of Article 118, by Constitutional Law No. 3 of 18 October 2001, which declared that the tax was not unlawful. In different ways and with different motivations, on different aspects and for different occasions, tax experts and constitutionalists concurrently felt the need to give the principle an outfit that conformed to the new requirements, dictated not only by the changed regulatory conditions, but also by the new economic realities and the new needs of public finance that were opening up on the horizon of the third millennium. See F. GALLO, *L'imposta regionale sulle attività produttive e il principio di capacità contributiva,* in *Giur. Comm.,* I, 2002, 131 ff; ID., *Etica, fisco e diritti di proprietà*, in *Rass. trib*., 2008, 11; L. PALADIN, *Il principio di uguaglianza tributaria nella giurisprudenza costituzionale italiana*, in *Riv., dir. trib. ,* 1997, I, 305; F. BATISTONI FERRARA, *Capacità contributiva, cit.,* 346; ID., *L'Irap è un'imposta incostituzionale?,* in *Riv. dir. trib.,* 2000, I, 95; A. FEDELE, *La funzione sociale e la capacità contributiva nella costituzione italiana*, in *Diritto tributario e Corte Costituzionale,* Naples, 2007, 11; L. ANTONINI, *Sussidiarietà fiscale*, cit., 122, and, if desired, see A. GIOVANNINI, *Enti del terzo settore: linee sistematiche di riforma*, loc. cit., as well as, also for further bibliographical references, ID., *Il diritto tributario per princìpi*, Milan 2014, 21, 217.

32 A warning, so to speak, is to be found in the Judgment No. 131 of 2020. The third sector, the Court states, is characterised by showing «a specific aptitude for participating together with public subjects in the realisation of the general interest [...] and with article 118, paragraph four, the intention was to overcome the idea that only the action of the public system is intrinsically suitable for carrying out activities of general interest and it was recognised that such activities can also be pursued by an autonomous initiative of citizens». See *retro,* in this journal, 2020, 1449, with a note by G. ARENA, *L'amministrazione condivisa ed i suoi sviluppi nel rapporto con cittadini ed enti del Terzo Settore*. Moreover, on this Judgment, see E. ROSSI, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, in *Forum costituzionale*, 3, 2020; L. GORI, *Gli effetti giuridici «a lungo raggio» della sentenza n. 131 del 2020 della Corte costituzionale*, in *Impresa sociale,* 3, 2020.

As the Court states, the duty to contribute can be met, rather than with a pecuniary obligation and the payment of a sum of money, by carrying out activities that are subsidiary to those of the public sector, perhaps shared with the bodies that hold the functions (Article 55 Code of the third sector)[33] , and by allocating all profits, even if of a commercial nature, to the pursuit of public benefits.

It is therefore the contribution «from the bottom», that made through work for the community, that takes shape and substance. It is solidarity work that defines the terms of the tax relationship and extinguishes the duty to contribute. And it is again solidarity work, as a participatory form of economic democracy and management of public affairs, that defines the allocation of resources, allowing the two cylinders of solidarity to be filled contextually: that of contribution and that of redistribution[34].

6. The non-taxation of the social profit from commercial activities as an ordinary tax regime. The lack of income features in social profit

These are the reasons that justify the legislative choice not to tax the profits of social enterprises from commercial sources or not to tax the profits of entities other than the social enterprise within the limits of the non-commercial or episodic commercial nature of their activities[35].

The Constitutional Court, in its Judgment No. 72 already referred to, qualifies as «facilitation measures» the tax reduction rules dictated by Legislative Decree No. 112 of 3 July 2017 for social enterprises, and by the coeval Legislative Decree No. 117 for entities other than social enterprises. In this way, it evokes a category that in tax law takes on derogatory connotations with respect to another category deemed general, which in the case cannot but coincide with the tax system of the commercial enterprise *tout court* (Article 55 T.U.I.R. and Article 2195 of the Civil Code)[36].

33 G. ARENA, *Introduzione all'amministrazione condivisa*, in *Studi parlamentari e di politica costituzionale*, 117-118, 1997,
29. On shared administration also Corte Cost., Judgment No. 131 of 2020, already cited.

34 It occurs to me that this is perhaps how the request to give concrete form to the principle of solidarity that has long been posed by doctrine and even more so, and even earlier made, by the «society of needs» begins to be satisfied. The reflections of F.D. BUSNELLI, *Il principio di solidarietà e «l'attesa della povera gente»*, in *Persona e mercato*, 2013, 101, remain topical and full of meaning, even bitter.

35 I refer to Article 18 of Legislative Decree No. 112, for social enterprise, and Article 79 of Legislative Decree No. 117, for bodies other than social enterprise, already mentioned. On these regulations, see CASTALDI, *La disciplina fiscale dell'impresa sociale. Spunti di sistema?*, in *Analisi giuridica dell'economia*, 2018, 175; L. GORI, *Terzo settore e Costituzione*, cit., 196. Let us also recall A. GIOVANNINI, *Terzo settore: il profitto sociale come nuovo genere di ricchezza*, in *Riv. dir. trib*., 2022, I, 29.

36 L. CASTALDI, *op. ult. cit.,* 181, speaks of norms that assume «connotations and colours typical of exclusionary norms in the proper sense». In problematic terms L. GORI, *op. ult. cit.,* 198. In the aftermath of the 1997 reform of the ONLUS, expresses himself in terms of facilitation discipline F. BATISTONI FERRARA, *La disciplina tributaria degli enti non commerciali*, in L. Bruscuglia and E. Rossi (eds.),

I do not share this approach, and I do not share it for substantive reasons, not for mere qualifying formalism. Reasoning in purely fiscal terms, the tax regimes of social enterprises (Article 18 Legislative Decree No. 112) and other entities (Article 79 Legislative Decree No. 117) are all based on the absence, within the wealth produced by them, of certain elements implicitly assumed in the notion of «possession of income» dictated by Article 1 of the T.U.I.R. Although the wealth referred to is certainly to be considered «new», according to the Quartian definition of income understood as the «product of an energy or productive force» that is added to the previous one[37], it lacks both the «selfish» character as a reflection of the source that generates it, and its potential referability to a natural person as the final subject of enjoyment[38]. In social enterprises and other entities, in fact, these two characteristics are excluded *ope legis*[39].

The fact that that wealth is produced in the form and manner typical of enterprises, therefore, ceases to come into consideration. And it ceases not because there is no commerciality or market underlying its production, or because it is not «novel», but because, as just said, absence of the egoistic character in its possession and absence of potential referability to a natural person make it an autonomous category which *naturaliter* lies outside the income dimension and therefore, in this specific dimension, outside Article 53 of the Constitution[40].

Terzo settore e nuove categorie giuridiche: le organizzazioni non lucrative di utilità sociale, Milan 2000, 151. The literature on tax benefits is very vast, I will only refer to S. LA ROSA, *Esenzioni ed agevolazioni tributarie*, in *Enc. giur. Treccani*, Roma, 1989; ID., *Le agevolazioni fiscali,* in A. Amatucci (ed.), *Trattato di diritto tributario,* Padova, 1994, I, 401; F. FICHERA, *Le agevolazioni fiscali,* Padova, 1992; M. BASILAVECCHIA, *Agevolazioni, esenzioni ed esclusioni fiscali (dir. trib.)*, in *Enc. Dir.,* Agg. V, 2002, 48; F. BATISTONI FERRARA, *Agevolazioni ed esenzioni fiscali, in* S. Cassese (ed.), *Diz. dir. pubbl.*, I, 2006, 175; A. PACE, *Tax concessions. Forme di tutela e schemi processuali*, Turin, 2012.

37 O. QUARTA, *Commentary on the Law on the Tax on Mobile Wealth,* II, Milan 1902, 113, which laid the scientific foundations for the construction of the concept of income as it has arrived to the present day. Extensive references to Quarta's thought can also be found in E. VANONI, *Osservazioni sul concetto di reddito in finanza* (1932), now in *Opere giuridiche*, II, Milano 1962, 351.

38 The fact that the Consolidated Income Tax Law provides for hypotheses, moreover marginal, of taxation of income from estates «without a subject» is not sufficient argument to disprove what has been said so far. Certainly, in the case of the estate in rem or the so-called blind *trust there is* no natural person identified or identifiable from the outset to whom the possession of the income can be referred, but there is only in very limited circumstances and only because, at the given moment, there is no objective possibility of finding a subject who is the final recipient of the income itself, not as a legislative choice to amputate the relationship, always and in any case, between the «selfish» possession of the income and the natural person. As for the taxation of legal persons, the problem can now be considered outdated, since it is common ground that it is a taxation that is anticipated and sometimes provisional with respect to the taxation that will sooner or later be imposed on natural persons at the end of the chain of holding the shares or quotas.

39 In addition to the identity of the social aims, the absence of subjective profit, as mentioned several times, is a characteristic shared by all ETS. For those qualified as social enterprises, however, this character is attenuated, as there may be entities that, constituted in the form of a commercial company, admit an albeit limited profit-making purpose in favour of their members (Art. 3(3) of Legislative Decree No. 112). The reasoning set forth herein assumes, for the sake of simplicity, that the distribution prohibition has no exceptions. The relaxation of the prohibition, in fact, having very limited tax consequences (Art. 18(2)), does not change it in substance, even if this relaxation of the distribution prohibition may perhaps lend itself to EU censure in relation to Art. 107 TFEU. See on the prohibition of subjective profit, albeit with different approaches, G.D. MOSCO, *L'impresa non speculativa*, in *Giur. comm.*, 2017, 221, and G. CONTE, *L'impresa responsabile,* Milan 2018, 141.

40 It may be that for economics this wealth is income, but for law such a qualification is not decisive. What is income for the economy is not necessarily so for law. And this wealth is not so for Art. 1 of the T.U.I.R. because it

We are, in essence, dealing with a new kind of wealth for tax law, which takes up and incorporates the normative characteristics of the third sector and which we can conventionally call «social profit».

This is why the different taxation is not the expression of a facilitating regulation or based on a qualitative differentiation of income, but of an autonomous system centred on its own characteristics and that, for this, allows it to qualify as ordinary. In other words, as in civil law[41], also in tax law the third sector is reproductive of a general regulatory statute, not derogatory or special.

7. Social enterprises and different entities: disparity or different treatment of profits equally lacking income features?

Compared to civil law, there is something more in tax law. In this area it is the regulatory statute of the social enterprise that embodies the ordinary category of reference with the detaxation of the entire profit from the business activity. It is to it, the statute, that one can and must look at as a real tax system organised on a separate basis from that of enterprises not belonging to the third sector. It is it, in fact, that fully expresses the constitutional principles discussed so far and that fully represents the development of fiscal solidarity in the form of the subsidiarity of expenditure, but also of the relationship of collaboration of each person in the performance of «an activity or function that contributes to the material or spiritual progress of society» (Article 4, paragraph 2, Constitution).

Therefore, if the ordinary tax discipline lies in Article 18 of Legislative Decree No. 112, that reserved for entities other than social enterprises contained in Article 79 of Legislative Decree No. 117 is to be considered derogatory. Hence the doubt as to whether this provision complies with the principles of reasonableness, consistency, congruity and non-contradiction (Art. 3 of the Constitution), as well as the principle of solidarity (Arts. 2 and 118 of the Constitution). For the activities subject to Article 79, indeed, the system is undoubtedly unfavorable and therefore hardly justifiable from the point of view of equality, but it is also so from the point of view of solidarity, the exercise of which is necessarily subject to limitations due to the intervention of the tax lever, limitations that cannot be justified even by resorting to third-party parameters of comparison.

I put it differently. If the founding elements of all third sector entities are the pursuit of interests of general relevance and the prohibition of profit distribution, the derogation, to be legitimate, would have to concern wealth with specific or different characteristics, or wealth that is even structurally identical but which, once taxed, becomes available. On the other hand, if this does not hap-

41 This point is clarified by M.V. DE GIORGI, *La scelta degli enti: riconoscimento civilistico e/o registrazione speciale?* , in *Enti del Primo Libro e del Terzo settore,* Pisa 2021, 123, and earlier, ID., *La riforma del Terzo settore e diritto civile*, in *Ianus*, 17, 2018, 132, in whose opinion the reform «does not exhibit (...) a law that can be thought of as «special» (in the sense that it is fed with the ordinary one)». It no longer constitutes a special part of the ordinary civil law, but rather a true legal system endowed with «autonomous and organic logic». Similarly, among constitutionalists, L. GORI, *Terzo settore e Costituzione*, cited above.

pen, and indeed, as noted above, if the wealth produced always lacks the selfish character of its possession and the possibility of its final destination to a natural person, the difference in treatment ends up being rooted only in the *form*, i.e. the adherence of the individual entity to one regulatory statute rather than another, without, however, adherence to one or the other entailing diversification of those very constituent elements of the profit. The difference in tax treatment, therefore, is inevitably transformed into inequality[42].

It does not escape me, of course, that the choice of the normative statute to which the entity wishes to belong is relevant for other important aspects of its life[43], but not for those constituting the tax event. Nor does it escape me that the legislature may differentiate taxation even in the face of structurally identical cases. But it is also common knowledge that differentiation, to be said to be legitimate, precisely because it is linked to identical cases, must respond to further constitutional interests that are capable of justifying it, at the risk of its transformation into disparity and into an unreasonably limiting measure of the solidaristic expression of social sharing. Interests that, in my opinion, are not discernible in the complex and chaotic regulation of 2017.

I cannot say what the orientation of the Constitutional Court might be if it were asked to do so. What I can say is that the system put in place by Decree No. 117, by re-proposing the cumbersome categories of commerciality and non-commerciality, is not only unfair with respect to that of social enterprises, but also unsuitable to guarantee the third sector, taken up in all its facets, the necessary driving force to emancipate itself as a true pillar of the welfare state and welfare work in the century of «debtor states»[44].

8. Constitutional counter-limits and state aid: the Constitutional Court's early reply

I conclude with the question of the counter-limits to which the Constitutional Court could resort if it were asked the question of the conformity of the different tax regimes with the prohibition of State aid (Article 107 TFEU).

I have dealt with the subject on another occasion and do not intend to repeat considerations already made. I will only recall that on that occasion I hoped that the Court, if called upon to rule on the issue, would consider the possibility of

42 It could be critically observed that non-commercial entities other than those of the third sector continue to remain subject to the rules of the T.U.I.R. and therefore that for them the taxation in the form of IRe.S. continues to affect the income drawn from their commercial activities. But the observation, reread, turns out to be a blunt weapon. In fact, the associative entities that do not adhere to the rules established by the laws of 2017 place themselves outside the third sector and therefore, since they do not have to submit to the regimes established for adherent entities, including the control regimes, they integrate a hypothesis that is not even susceptible of entering into the procedure of the normative *tertium comparationis*.

43 Think, for instance, of profiles related to administrative law, publicity rules or accounting rules.

44 I borrow the expression used by W. STREECK, *Tempo guadagnato. La crisi rinviata del capacitassimo democratico,* transl. it. edited by B. Anceschi, Milan, 2013, to describe the crisis of the fiscal sovereignty of states as traditionally understood until the last few five-years periods of the 20th century and the birth, precisely, of debtor states.

activating the counter-limits. I wrote that the tax rules on social enterprise, responding to fundamental principles of the domestic legal system, could not in fact be restricted by supranational or supranational sources[45].

In its Judgment No. 72, the Court has indicated, in a sort of anticipated reply to possible doubts of legitimacy rooted in EU law, what its orientation might be, framing the regulation of third sector entities in Articles 2 and 3 of the Constitution. It noted that their distinguishing features are «the pursuit of the common good, the carrying out of activities in the general interest without pursuing subjective profit-making aims, and subjection to a public registration system and strict controls». This roots, the Judgment continues, «this system in a *dimension that pertains to the fundamental principles of* our Constitution, as *an expression of a social pluralism aimed at pursuing solidarity*, which Article 2 of the Constitution places among the *founding values of the legal system*, and at *contributing to the substantial equality* that allows the development of the personality, to which the second paragraph of Article 3 of the Constitution refers» (emphasis added).

I may be mistaken, but the position taken by the judges of the Palazzo della Consulta, on the one hand, attempts to close the nascent debate on the compatibility of the tax discipline with the prohibition of aid and thus, albeit unintentionally, ends up by reinforcing the Italian government's «negotiations» with the Commission under article 108 TFEU[46]. On the other hand, on the domestic front, it legitimises such discipline –beyond the question of the possible unequal treatment between social enterprises and other entities mentioned in the previous paragraph– with respect to the tax regime of commercial enterprises properly understood.

In other and concluding words, it is as if the Court –one may venture to believe– had wanted to say that the recent legislation does not introduce any privileges for the third sector, simply implementing the founding dimension of the system reserved for solidarity and substantial equality, which its very activities help to embody.

9. Conclusions on Article 53 of the Constitution and the legislation on the third sector

The observations made so far allow a number of conclusions to be drawn. The first relates to the constitutional dimension, another, more specific, one concerns legislation on the third sector.

The interpretation of Article 53 of the Constitution, also due to the strong impulse of the Constitutional Court, is undergoing significant changes. This progress in thinking is to be welcomed because it allows for accommodating the changing needs of society, the economy and public finance. At least as I understand the ability to pay, in the terms set out in this work, the distribution criterion

45 I wrote this in *Terzo settore: il profitto sociale come nuovo genere di ricchezza, op.* cit., 38 ff.
46 See L. GORI, L'*organizzazione delle libertà sociali e la sua peculiare natura di «controlimite»?,* in *Giur. Cost.*, 2022.

it expresses must necessarily be adapted to the reality that is revealed to our observation also to strengthen its redistributive function. This is an inescapable process.

This does not mean that Art. 53 is an value-free rule, or henceforth becomes one. It does not merely apportion burdens. It is and will continue to be the bearer of a cardinal value of constitutional democracy: justice in taxation that encompasses and expresses its characterising ethos[47].

This value, however, has a circumscribed scope, it does not contain the entire palette of constitutional values, from solidarity to equality, from the right to property to the rights of economic freedom. These values remain «belonging» to the individual norms that express them within the Constitution, without Article 53 becoming an absorbing, almost «tyrannical» norm with respect to them[48]. Instead, what can and must be said is that justice in taxation, as a value expressed in its own right by Article 53, refers to the requirements of effectiveness, realness and timeliness of the tax event and the taxable base. It is in this context that it becomes an autonomous yardstick of interpretation and judgement.

The «new» reading of contributive capacity does not annul these guarantee elements and does not even prejudice the economic and property rights of those who, with their taxes, contribute to public finance. On the contrary, it enhances them because it assumes them to be autonomous elements, external to the ability to pay, as such to be protected, incentivised and strengthened in the balance with the expansive force of solidarity.

The other reflection that I would like to propose in conclusion concerns the legislation on the third sector and is summed up in a wish: to overcome the cumbersome and contradictory regulations of 2017 by launching a revision project. The problems arising from it, in fact, cannot be resolved through interpretation, not even by resorting to constitutionally oriented interpretations. Rather, its rewriting is indispensable, with two essential objectives: to simplify the system and make it consistent with the principles of the legal system and with the reading of Article 53 of the Constitution, also supported by the Constitutional Court; to overcome the distinction between social enterprise and third sector entities other than the latter.

The proposal can be summarised in these simple terms: to provide for an identical taxation regime for all entities belonging to it along the lines of Article 18 of the Legislative Decree No. 112. And thus provide that the fruits drawn from

47 In this respect I partially disagree with Franco Gallo's position that eliminates the guarantee function from Article 53. See F. GALLO, *Il futuro,* cit., 75 ff. The thesis is harshly criticised by F. MOSCHETTI, inter alia in *I principi di giustizia fiscale della Costituzione italiana, per «l'ordinamento giuridico in cammino» dell'Unione europea*, in *Riv. dir. trib. ,* 2010, I, 427 ff., which, however, seems to me to require an excessive «effort» from Article 53, considering it to be the bearer of values that the Constitution instead distributes among different norms in order to allow for a fair and orderly balancing of values, without one of them, norms such as Article 53, becoming prevalent. Like Moschetti, on the guarantee function, G. FALSITTA, *Profili della tutela costituzionale della giustizia tributaria,* in *Giustizia tributaria e tirannia fiscale,* Milan, 2008, 8 ff. and ID., *Natura e funzione dell'imposta*, ivi, 81 ff. and footnotes; G. GAFFURI, *L'attitudine alla contribuzione,* Milan, 1969; E. De Mita, *Il principio di capacità contributiva*, in *Interesse fiscale e tutela del contribuente,* Milan, 2006, 107 ff.

48 This is an expression taken up by the Constitutional Court, Judgments No. 85 of 2013 and No. 5 of 2018, which used it to describe the relationship between rights.

the exercise of commercial activities be considered as company profits, always outside the scope of corporate taxation[49].

I conclude, just as I began, with the words of Giorgio La Pira. «The contemporary State», he wrote in «The Defence of the Poor»[50], recalling Hyacinthe Hering, is «necessarily taking on new tasks that were previously entrusted to private charity. But the word state should not frighten. It is susceptible to wide-ranging analysis: it does not necessarily mean either bumbling bureaucracy or the destruction of all personal, propulsive life. Instead, it can and must mean the organic, rapid, stimulating, integrative intervention of human initiative! It is the new state, with a capital letter if you like: a state proportionate to the current, ever-increasing speed of human action. The State truly made for the human person. You know, there is much to change in the present arteriosclerotic state structure».

What else to say?

49 These amendments, on the other hand, would make it possible to «realign» the system with Delegated Law No. 106 of 2016 and in particular with Article 9 thereof. And in fact, consistent with the rationalisation and simplification purposes set out in the preamble of the same law, this provision does not distinguish the taxation regime according to whether the activities of third-sector entities other than social enterprises or social enterprises are concerned, nor does it draw distinctions on the basis of the legal form taken by the one or the other. The autonomous evidence that the delegating legislator gives to social enterprises (Article 9(1)(*f*)) is only intended to recognise facilitative measures for them to encourage capital investments or to access forms of risk capital raising, not also to differentiate taxation systems.

50 Written in 1950 quoted at the beginning of this work. See *retro*, footnote 8.]