CHAPTER 4

The Italian System

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Due to its geographical characteristics combined with a widespread carelessness towards the environment, Italy habitually faces a number of significant risks arising from natural disasters. In consideration of the above, and also in order to deal with the several catastrophic events recently occurred, the State has been forced to introduce various tax and/or financial measures. As to the aforementioned financial measures, Italy usually implements the most appropriate solution necessary from time to time, either to meet the immediate needs of struck populations or to recover and rebuild damaged areas. However, during last years, the Italian Parliament has been trying to provide for a mandatory or voluntary insurance policy, covering damages to properties caused by natural disasters, in order to decrease the relevant emergency costs suffered by the State budget. As to the said tax measures, Italy has always preferred to introduce recovery measures rather than development ones. Anyway, the European Commission has examined several of these aid measures and, in certain circumstances, declared them as not compliant with the relevant EU laws; hence, in these cases, Italy has immediately recovered such undue aids.

* Salvini is author of paragraphs 1, 2, 4, 5, 6; Supino is author of paragraph 3.

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1 INTRODUCTION

Italy has a high risk profile, with reference to hydrogeological, environmental and, in some areas, volcanic risk. It mainly depends on its geographical and geological characteristics and also on a widespread carelessness attitude towards the territory and the environment, which intensifies the negative consequences of natural disasters.

As pointed out in a recent report by the State Forestry Corps (*Corpo Forestale dello Stato*),[1] the number of Italian municipalities located in high-geological risk areas is extraordinarily grown over time, being currently equal to 6,631 (i.e., the 82%); the number of municipalities exposed to seismic risk also increased up to 2893, thus covering the 44% of Italian territory. Moreover, more than 27 million persons are exposed to landslide and seismic risk.

In the light of the above, a significant number of intervention programmes, aimed either at preventing environmental risks or at recovering disasters, has been developed; in addition, only recently, further to some European Commission's remarks, these measures have been framed under a general rule, which also set forth the requirements for a certain measure to be compatible with EU State aid principles.

The aforementioned measures are usually determined on the basis of the nature, the severity and the spread of the disaster and, as more broadly demonstrated below, in some cases they may last for several years. It may nonetheless occur that the new general provision, in outlining in a more detailed way the limits imposed by the EU, will circumscribe the relevant intervention by the Italian legislator. As a result, the said intervention will be reduced (with reference both to the number of addressees and territories and to the amount and duration of the measures).

1. State Forestry Corps, *Forestry Corps: first report on Italian food environment*, 30 November 2012, available at www.corpoforestale.it.

2 CONDITIONS REQUIRED FOR INTRODUCING FINANCIAL MEASURES IN ACCORDANCE WITH EU STATE AID RULES (NOTES)

The aforesaid general provision, which will be only briefly analysed herein[2] – aimed at regulating the compatibility of Italian system with EU State aid principles – is Article 47, Law of 24 December 2012, No. 234.

The provision at stake depicts in details the criteria to be fulfilled by a measure in order to be in compliance with EU State aid provisions. It encompasses all the measures (including tax benefits) addressed to individuals and companies carrying out an economic activity (excluding agriculture) and struck by natural disasters or any other exceptional occurrence.

As known, at the EU level, Article 107 TFEU[3] (which the said Article 47 refers to) is made of three paragraphs. The first one lays down the definition of 'incompatible' State aid, namely any aid (*i*) granted by a Member State or through State resources in any form whatsoever (*ii*) which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods (*iii*) in so far as it affects trade between Member States. The second one provides for cases of de jure derogations to such incompatibility and includes aids '*to make good the damage caused by natural disasters or exceptional occurrences*' (paragraph 2, letter b)). The third one provides for cases of discretionary derogation from the incompatibility criterion.

At the State level, the aforementioned Article 47 clearly provides for the cumulative criteria, which must all be met for a measure to fall under the Article 107, paragraph 2, letter b). These criteria are the following:

(a) the Government should declare that the area where the beneficiary carries on its economic activity is in a state of emergency (in accordance with Article 2, paragraphs 1 and 5, Law of 24 February 1992, No. 225, regulating the National Civil Protection Service);
(b) the damage should be directly caused by the natural disaster (or the exceptional occurrence);
(c) the aid (received from national, regional or local authorities) should not exceed the whole cost of the suffered damage;
(d) the aid, though combined with any other remedies, should not exceed the whole amount of the damage costs, plus the amount of any insurance premiums paid in the current year.

As known, even tax benefits can constitute State aid under Article 107 (with reference either to the general rule – paragraph 1 – or to the exceptions – paragraph 2).

2. For a wider analysis, see CHAPTER 1 *retro*.
3. Article 107 TFEU must be coordinated with the following Article 108, which regulates the procedural rules, otherwise known as enforcement procedures (whit particular reference to the notification of all new aid measures to the European Commission).

As a consequence, the European Commission still has to verify that such benefits do not exceed the limits imposed by the Treaty.[4]

The aids granted by Italy in case of natural catastrophes have frequently been under scrutiny of the European Commission. In fact, as will be widely shown in the following paragraphs, Italy has often introduced tax benefits in case of natural disasters and the European Commission has opened formal investigation procedures at various times, in order to verify that the conditions laid down in Articles 107-108 TFEU were fulfilled (as well as in Article 107, paragraph 3, TFEU, about the development of certain economic activities or of certain economic areas). In some cases, the Commission has decided that the measures were not compatible with EU rules and has ordered their immediate recovery.

3 FINANCIAL MEASURES

With reference to the Italian system, there are not any general laws on the management, prevention and mitigation of natural disasters. Specific interventions are usually provided case by case, either to meet the immediate needs of struck population or to recover and reconstruct damaged areas.

Normally, when a natural disaster has to be tackled through extraordinary powers because of its extent and intensity, the Council of Ministers, on the proposal of the President of the Council of Ministers or either of the Minister for the coordination of Civil Protection, declares the state of emergency – and specifies its duration – with reference to the area struck by the catastrophic event (and revokes the same state of emergency when it ends). For example, at the date of July 2014, twenty states of emergency occur in Italy because of meteorological events, floods and landslides (fourteen), earthquakes (two) and environmental emergency (four).

After a first phase of intervention – through emergency ordinances – the Government, basing on the assessment of the catastrophe extent, earmarks financial resources (through Law Decrees) to face the emergency and to start the reconstruction of the affected areas.

Further arrangements – to integrate such resources and to better plan the recovery and the development of struck territories – are typically discussed when the Parliament approves the annual *Stability Law*, i.e. the ordinary legislative instrument for granting additional funding to be reflected in the State Budget.

Moreover, a specific Fund (The Fund for Civil Protection) may be used – through emergency ordinances – to cover the costs arising from major disasters. The main purpose of the Fund is to finance the Civil Protection System and it is fed by contributions set by law (the said *Stability Law*, indeed).

4. EU law does not provide for detailed rules about the Commission's assessment, except the (very general) Articles 107 and 108 TFEU. Only two particular disciplines are further detailed, respectively applicable to agriculture (see European Commission, *Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013*, in *Official Journal of the European Union*, no. C 319 of 27.12.2006, pp. 1 et seq.) and to fisheries and aquaculture (see European Commission, *Guidelines for the examination of State aids to fisheries and aquaculture*, in *Official Journal of the European Union*, no. C 84 of 3.4.2008, pp. 10 et seq.).

One of the main features of Italian procedure in case of natural disasters is the high bureaucratic complexity, due to the fragmentation and overlap of responsibilities between the different levels of government. Thus, financial interventions are, in most cases, very onerous and long-lasting.

Just consider these few examples: in order to meet certain seismic events occurred in the Regions of Basilicata and Campania in 1980, 1981 and 1982, the Government has taken measures, for the first time, ten years after the events, with Law of 23 January 1992, No. 32, and then again with Law of 27 December 2006, No. 296. Over twenty years after the disasters; this last Law has also provided for some financial measures addressed to Regions of Umbria and Marche, which had been struck by seismic events ten years earlier, in September 1997; and yet, for the earthquake of Belice (1968), currently (forty-five years after that event) the Government still continues to earmark financial resources aimed at recovering that territory (most recently, the Law of 24 December 2012, No. 228, so-called *Stability Law 2013*, has set a contribution of EUR 10 million) and yet another Special Commission for the Belice reconstruction has been recently set up.

3.1 Introduction of Mandatory (or Voluntary) Insurance for Natural Disaster Damages

Particularly interesting are some regulatory and legal programmes aimed at covering financial costs arising from natural disasters and minimizing their burden on the State budget as well, through preventive measures.

The data provided by a recent Report of the National Association of Home Builders (ANCE) and of the Center of Economic, Sociological and Market Researches (CRESME)[5] show that the whole cost of the damages caused by earthquakes, landslides and floods from 1944 to 2012 – revalued according to 2011 ISTAT[6] index – amounts to more than EUR 240 billion (about EUR 3.5 billion per year). It is easy to understand why Italy has always (and variously) attempted to distribute these huge costs between the public and private sectors.

Chiefly, the legislator tried to introduce a mandatory or voluntary insurance (different law proposals have been under debate, indeed) against any risks for property depending on natural disasters. For years now, Italian Parliament has tried to approve such a measure, but all the proposals have always been opposed and have never found concrete and final execution.

Already in 1999, the Government tried (in vain) to introduce the mandatory insurance against risks from natural disasters, through Article 38, Bill of Law of 11 March 1999, No. 5809 (*Measures of investments, delegation to the Government to reform the employment incentives and the discipline regulating the National Institute for Insurance against Accidents at Work and the National Welfare and Assistance for Workers in the field of Entertainment, as well as provisions for the reorganisation of*

5. ANCE-CRESME, *Lo stato del territorio italiano 2012. Insediamento e rischio sismico e idrologico*, Rome, October 2012, available at www.camera.it/temiap/temi16/CRESME_rischiosismico.pdf.
6. ISTAT stands for Italian National Institute of Statistics.

social security institutions). The attempt failed, but it was repeated again when the Finance Bill for 2004 was discussed (Article 40). Even this second proposal was not definitively approved, due to both the obstruction of some associations[7] and the disapproval of the Italian Competition Authority.[8] The latter highlighted that such a measure could compromise the free competition in the insurance market, even at the expense of consumers: it warned against the natural tightening of the demand, since consumers would have been induced to accept the conditions – even if very severe – offered by insurance companies; moreover, law would have established in details the content of such insurance contracts, compromising the EU competition. Not to mention, as even underlined by the Competition Authority, that such provisions could violate EU freedoms of establishment and to provide services, to the detriment of insurance companies established in other Member States.

Alternatively to the introduction[9] – so far failed – of a mandatory insurance to cover the risks from natural disasters, Italy also tried to encourage a voluntary insurance for the same risks.

In 2004, with Law of 30 December 2004, No. 311, a special Guarantee Fund was set up,[10] in order to (*i*) allow the introduction of a voluntary insurance to cover risks from natural disasters on buildings,[11] (*ii*) set up a special reinsurance company and (*iii*) support a Consortium (or an insurance companies union) intended to cover damages caused by natural disasters. The same statute provided for the issue – never happened – of an implementing regulation (to mainly rule the Fund and the said reinsurance company).

Finally, Law Decree of 15 May 2012, No. 59 (*Urgent measures for the reorganization of the Civil Protection*), tried again to implement the system already thought in 2004, introducing (at Article 2) a special voluntary buildings insurance to cover the risks from natural disasters. To encourage the spread of such insurance coverage, a subsequent implementing regulation would have extended de jure the coverage of private buildings insurances to risks arising for natural disasters; the same regulation would have introduced tax incentives, through facilitation regimes related to such

7. The model has always been criticized by some associations – ANIA (National Association of Insurance Commissioners), ANCI (National Association of Italian Municipalities), Confedilizia (Italian Confederation of Property Owners) and the National Council of Consumers and Users – for several reasons, related to the interests of both insurance companies and consumers.
8. Firstly, the Authority issued the Decision of 12 April 1999 (AS 168), with respect to the compulsory insurance against risks from natural disasters provided for in Article 38 of the abovementioned Bill of Law of 11 March 1999, No. 5809; later, it issued a new Decision on 20 November 2003 (AS 270), on the said Article 40, Finance Bill for 2004.
9. Even later, when the Finance Bill for 2007 (Law of 27 December 2006, No. 296) was discussed, the legislator tried to extend '*to the risks arising from natural disasters all insurances against any kind of damage to private buildings*', in order to '*ensure adequate, timely and consistent levels of satisfaction of the needs to repair and reconstruct private houses damaged or destroyed by natural disasters*' (author's translation). The amendment was not approved and the proposal never came into force.
10. Committed to the Concessionaire of public insurance services (CONSAP S.p.A.).
11. An important innovation was the said reinsurance company. In fact, the law provided for a special mechanism (the insurance companies should have subscribed a percentage of the new reinsurance company share capital), aimed at '*increasing the capacity of the reinsurance market*' (author's translation).

insurances, e.g. the deductibility of all – or part of – the premium paid for the purpose of personal income tax, company income tax and insurance tax.

In respect of the rule's *rationale* – aimed to relieve the State of heavy restructuring costs – the same regulation would have also provided for the – whole or partial – exclusion of the State from recovering damages suffered by buildings mentioned in the said insurance contracts.

Even this attempt was a failure, since the aforementioned Article 2 was repealed by Law of 12 July 2012, No. 100 (such Law was issued in order to convert the Decree, indeed).

Nevertheless, Italian legislature still tries to introduce a new insurance system to cover the risks arising from natural catastrophes.

Among the latest attempts, it is important to mention the Bill of Law of 15 March 2013, No. 279 (Delegation to the Government for the regulation of the insurance to cover the risks from natural disasters), which proposes a mixed public-private model. According to such proposal, the risks arising from natural disasters should be suffered by domestic insurers up to a certain amount and by the public sector for the surplus. To protect the insurance companies, a reinsurance system should be implemented. This proposal was fully different from the previous ones and faced the problem under a new approach; in fact, it suggested a prevention systems involving either the private sector or the State and exploiting the financial capacity of the internal and international markets (even through the reinsurance mechanism). Anyway, despite all those good intentions, the proposal was never discussed.

Again, on 16 June 2013, the new Bill of Law No. 881 has been proposed and assigned to the Senate on 11 October 2013 (*Establishment of compulsory insurance against the risks related to natural disasters, as well of a Fund for the safety and energy efficiency of buildings*). The proposal provided for a mandatory insurance against natural disasters, including earthquakes, landslides and floods, and set up a Fund for structural safety and energy efficiency of building, which could be fed by a part of the required insurance premium. Even this Bill of Law aimed at lightening (at least partially) the burden of public charges arising from natural disasters.

3.2 Financial Resources Provided by the Central Government and Regions

With reference to the financial resources earmarked to face emergencies, it is important to remark that Article 5, paragraphs 5-*quater* and 5-*quinquies*, Law of 24 February 1992, No. 225 had provided for a mechanism to re-finance Regions struck by natural disasters. The mechanism could be activated if the regional budget was not able to cover the damages costs.

In this case, pursuant to the said paragraph 5-*quater*, the President of the Region may increase – within the limits established by law – the taxes, the additional tax rates or the regional tax rates, as well as further raise the regional tax provided by Article 17,

paragraph 1, Legislative Decree of 21 December 1990, No. 398 (the regional tax on motor gasoline) up to a maximum of five cents per litre over the maximum allowed by laws. This additional revenue had to cover all the '*expenses related to the emergency*' and all '*charges arising from the same emergency*',[12] including all the costs of Corps involved in facing the event, even if such Corps were managed by the State (and not by the Region itself).

Pursuant to the following paragraph 5-*quinquies*, the Region may use the resources of the National Civil Protection Fund only if (*i*) the aforementioned tax increases were inadequate or (*ii*) the State Government (with extremely discretionary assessment) had declared the 'national relevance' of the emergency. The Fund had to be correspondingly and compulsorily reintegrated through the revenues arising from excise taxes on petrol and diesel used as fuel.[13]

In other words, the combined provisions of paragraphs 5-*quater* and 5-*quinques* allowed the Regions to use State resources (i.e., the said Fund) only after having increased the aforementioned taxes, unless the State itself declared the 'national importance' of the emergency (in which case, the Region could direct use State resources); anyway, Regions had to cover costs related to certain State Corps, without managing them.

These provisions have been submitted to the Italian Constitutional Court (hereinafter, ICC) by numerous interested Regions,[14] for suspected violation of constitutional principles, first of all Article 119 of the Italian Constitution (hereinafter, IC). The ICC ruled that the said Article 119 IC was violated, indeed, from several points of view.[15]

In detail, a State law shall not oblige Regions to approve tax increases under their jurisdiction as condition to benefit from the National Fund of Civil Protection (in contrast with the principle of 'regional autonomy of entry') nor force them to finance State Corps – such as the Service of Civil Protection – involved in the emergency (in contrast with the so-called *principle of regional autonomy of expenditure*). Likewise, Article 119, paragraph 4, IC, was violated, since it requires that Regions revenues and functions are linked to each other; under the said provisions, on the contrary, the State held itself the function of Civil Protection, but the Regions was required to suffer the related costs.

After the constitutionality ruling, the two paragraphs 5-*quarter* and 5-*quinquies* have been modified. Pursuant to the current provisions, in case of emergencies Regions can only increase one regional tax (i.e., the aforesaid regional tax on motor gasoline) but they can benefit from the Civil Protection Fund to meet all the expenses arising from the natural disasters, even if such a tax increase is not approved.

12. Author's translation.
13. The excise on petrol is a traditional Italian method to cover the costs of such events; now, it is even expressly mentioned in the provision, as aimed to feed the Fund in case of unexpected expenses borne by the Ministry of Economy (including expenses caused by natural damages).
14. Regions of Liguria, Basilicata, Puglia, Marche, Abruzzo and Toscana.
15. ICC, 16 February 2012, No. 22.

4 GENERAL TAX PROVISIONS

With reference to the tax legislation, the framework of Italian tax rules on natural disasters is composed of some general provisions and other special ones, issued in relation to specific catastrophic events. Among the general rules, it is important to mention, and more thoroughly analyse, those involving:

- the suspension or deferral of terms related to tax and contribution obligations in favour of people and companies struck by exceptional events (Article 9, Law of 27 July 2000, No. 212 and Article 5, paragraph 5-*ter*, Law of 24 February 1992, No. 225);
- the deductibility of taxes and contributions, even in case of suspension of payment, in derogation of the cash method (Article 36, paragraph 32, Law Decree of 4 July 2006, No. 223);
- the deductibility of donations and the non-taxation of supplies of goods addressed to people affected by public disasters (Article 27, Law of 13 May 1999, No. 133).

4.1 The Deferral of Terms Related to Tax and Contribution Obligations in Favour of People and Companies Struck by Exceptional Events

Until 2009, there were not any tax provisions suspending or deferring terms for tax compliance during emergencies caused by natural disasters, than the gap was frequently filled through Article 9, Law of 27 July 2000, No. 212.

This last provision allows the Minister of Finance, through a decree to be published in the Official Gazette, to suspend such terms '*in case the fulfillment of tax obligations is timely prevented by force majeure*' or even to defer them '*for taxpayers struck by exceptional and unpredictable events*'.[16]

The latitude of Article 9 is very broad, since it allows the Minister to adopt such measures in case of general '*impediments caused by force majeure*' or equally indeterminate '*exceptional and unforeseeable events*'.[17] Not infrequently, however, the Ministry of Finance has exercised this power of suspension or deferral in case of natural disasters.[18]

Only in 2009, with Law Decree of 30 December 2009, No. 195 – which modified Article 5, Law 24 February 1992, No. 225, by adding the new paragraph 5-*ter* – the deferral of payments specifically operating in case of catastrophic events was introduced.

16. Author's translation.
17. Author's translation.
18. For example, this occurred when the 'tornado' that hit the Region of Lombardia on 7 July 2001 and also in occasion of the Etna's eruption in Sicily, in the same year. Again, the Ministry of Economy and Finance has exercised this power after several floods occurred in the provinces of Avellino, Caserta, Naples and Salerno in August and September 2001, after an earthquake hit the province of Campobasso on 31 October 2002, an after the devastating earthquake struck the province of L'Aquila on 6 April 2009.

The new rule allows taxpayers struck by the catastrophic event to suspend or defer the deadline for tax payments and contributions and, by operating specifically '*in relation to a declaration of a state of emergency*',[19] such rule looks like a special provision in comparison with the broader Article 9, Law of 27 July 2000, No. 212 (however, although this special rule has entered into force, the said Article 9 continues to be mentioned by Ministerial Decrees regulating the deferral of terms for performing procedural and/or substantive tax obligations, even in case of natural disasters).[20]

Pursuant to paragraph 5-*ter*, the deadline to pay any taxes (as well as social security contributions and premiums for mandatory insurance against accidents and occupational diseases) is deferred, up to six months, for individuals (and companies) struck by the natural disaster.

The extraordinary measure must be adopted through a law (in order to ensure an adequate financial coverage), while its further details are regulated by a subsequent Decree issued by the Ministry of Economy and Finance, in accordance with the Presidency of the Council of Ministers and with the Ministry of Labour and Social Policy as well (with regard to contribution payments). It can exclusively be addressed to people and companies struck by the calamity and directly damaged by it. The withholding agents may be included among the beneficiaries of such measures only when the damage is such as to prevent their ordinary withholding obligations (and still, of course, the duty to pay the amounts they have already withheld).

4.2 The Deductibility of Taxes and Contributions, Even in Case of Suspension of Payment, in Derogation of the Cash Method

Still in order to facilitate taxpayers struck by natural disasters, Article 36, paragraph 32, Law Decree of 4 July 2006, No. 223, establishes that, even if the terms to pay contributions are suspended because of a public calamity, taxpayers are allowed to deduct such amounts from income taxes, as if they had been actually paid.

Under this rule, taxpayers affected by catastrophic events do not lose such benefit (even if the deduction, as a rule, should be made at the time of the payment, on the basis of the cash principle) even though they have not paid these charges yet, and this is made possible by the suspension granted. In other words, in case of catastrophic events such amounts become deductible on the basis of the so-called *accrual-basis principle* (*principio di competenza*) – and regardless of their outlay – even if they are commonly deductible when they are paid – under the so-called *cash-basis principle* (*principio di cassa*). Obviously, the subsequent payment cannot be deducted from the tax base, in order to avoid – comes by itself – a double deduction of the same amount.

19. Author's translation.
20. See, for example, Italian Ministry of Economy and Finance, Decree of 1 June 2012, which suspended the tax compliance deadline for taxpayers affected by the earthquake of 20 May 2012 occurred in the provinces of Bologna, Ferrara, Modena, Reggio Emilia, Mantua and Rovigo. Similarly, see Italian Ministry of Economy and Finance, Decree of 30 November 2013, which ordered the same suspension in favour of the taxpayers affected by the floods that hit Region of Sardinia in November 2013.

As is clearly explained in the Illustrative Report of the Government related to the said Article 36, the aforementioned exception to the cash-basis principle was introduced in order to enhance the substantive purposes of the deferral of terms, as well as to ensure greater financial availability to taxpayers affected by the natural disasters.

This *rationale* has also guided the Italian Tax Authorities (hereinafter, ITAs) that, questioned about the correct interpretation of the provision,[21] has explained that the 'accrual' deductibility of contributions is not compulsory but can be chosen by the taxpayer; in fact, the compulsory application of this rule, in certain cases, may even damage taxpayers (so counteracting the legislative aims). It is the case of professionals who realize losses in the year when catastrophic events occur – and, not infrequently, because of the same events – that cannot be carried forward;[22] in such cases, the (compulsory) deduction of unpaid contributions in compliance with the accrual-basis principle may even result, in fact, a disadvantage to the same taxpayer who should benefit from them.

4.3 The Deductibility of Donations Addressed to Territories Struck by Natural Disasters and the Tax Exemption for the Supply of Goods to People Affected by Public Disasters

According to Article 27, paragraph 1, Law of 13 May 1999, No. 133, 'cash donations in favour of people affected by events of public disaster or other extraordinary events, even if occurred in other States, made through foundations, associations, committees and bodies'[23] (identified by ad hoc Decrees issued by the Prefects of the Provinces – as specified by Article 27, paragraph 4 – and by the President of the Council of Ministers in case of events occurred abroad) are deductible from business income.[24]

The provision establishes two (cumulative) conditions required to benefit from the deduction provided for therein; namely the donations must be made:

(a) through specific entities identified by the said decrees;
(b) in favour of people affected by public disasters or other extraordinary events.

Even with regard to this provision, the ITAs adopted a *rationale*-oriented interpretation, on the basis of the Government report which points out that such logic is to '*bring aids to people affected by public calamities*'.[25] In fact, the ITAs clarified that

21. See Italian Tax Authorities, Resolution of 18 February 2011, No. 17/E.
22. See Article 84, Presidential Decree of 22 December 1986, No. 917 (so-called *Income Tax Consolidated Act*, ITCA).
23. Author's translation.
24. See President of the Council of Ministers, Decree of 20 June 2000, which specifies that such entities are: '*a) non-profit entities* ex *art. 10 of Legislative Decree of December 4, 1997, n. 460; b) international organizations which Italy is a member of; c) other foundations, associations, committees and bodies, constituted through public or private deed, aimed to provide humanitarian interventions in favor of populations affected by disaster or other public extraordinary events; d) federal, state and local government, public non-economic entities; e) associations and unions*'. [Author's translation]
25. Author's translation.

also 'indirect aids' – such as contributions to support the research and development of enterprises located in the territories affected by the natural disasters – have a positive, direct and immediate effect on businesses and workers struck by the event: for this reason, also such 'indirect aids' may be deducted under the said Article 27.[26]

Finally, it should be remarked that the same Article 27 provides, at paragraph 2, a benefit in case of free transfers of goods: if such transfers are directed to people and businesses struck by natural calamities, they are '*not considered intended for purposes extraneous from the business purpose, according Articles 53, paragraph 2, and 54, paragraph 1, letter d), of the Income Consolidated Tax Act, approved by Decree of the President of the Republic on 22 December 1986, n. 917*'.[27]

5 SPECIAL TAX RULES: A 'CASE-BY-CASE' APPROACH

In addition to the general measures described above, which are abstractly applicable to all disaster cases, the Italian legislator frequently faces natural calamities with special provisions directly related to the single episodes. Not infrequently, however, the rules designed and issued for specific events are applied again in case of new similar cases.

The following subparagraphs will analyse some of those ad hoc rules enacted with reference to specific catastrophic events (and therefore different from the above mentioned general provisions).

5.1 The Non-taxation of Re-invested Business Income and Self-Employment Income, Provided for by Article 4, Law No. 383/2001 (So-Called *Tremonti-bis*)

Pursuant to Article 5-*sexies*, Law Decree of 24 December 2002, No. 282, added by Law of 21 February 2003, No. 27 (which converted the Decree), the tax exemption for re-invested business income and self-employment income provided by Article 4, Law of 18 October 2001, No. 383 (so-called *Tremonti-bis*) was extended,[28] only for investments made in the municipalities affected by some natural disasters.[29]

With reference to real estate investments, the extension concerned the investments made until the third tax year following the one in progress at the date of 25 October 2001 and, in any event, those made before 31 July 2004.

26. See Italian Tax Authorities, Resolution of 25 September 2013, No. 58/E.
27. Author's translation.
28. The extension was granted until the second tax year following the one in progress at the date of 25 October 2001, limited to investments made up to 31 July 2003.
29. The municipality of Modica (Presidency of the Council of Ministers, Decree of 29 November 2002), the municipalities included in the provinces of Catania (Presidency of the Council of Ministers, Decree of 29 October 2002), Campobasso and Vibo Valentia (Presidency of the Council of Ministers, Decree of 31 October 2002), Foggia (Presidency of the Council of Ministers, Decree of 8 November 2002), Pistoia, Lucca, Cuneo and Turin (Presidency of the Council of Ministers, Decree of 29 November 2002) and the municipalities included in the regions of Piemonte, Liguria, Lombardia, Veneto, Friuli Venezia Giulia and Emilia Romagna (Presidency of the Council of Ministers, Decree of 29 November 2002), in which any evacuation order or traffic banning order was issued before 31 December 2002.

To sum up, this benefit consisted of a tax relief on 50% of the whole investments in new capital goods (made from 1 July 2001 and exceeding the average of investments made in the five previous tax periods) with an option to exclude from the average calculation the period in which the highest investment had been made. This provision applied to companies, entrepreneurs and professionals, who may deduct an extraordinary negative component from the income tax base.

The extension was addressed to all taxpayers established in the municipalities affected by the disaster and not only to those directly harmed by the event. In fact, as also clarified by the ITAs,[30] the law had to be interpreted from an objective perspective, i.e. related to all operational offices located in municipalities for which the state of emergency had been declared (by decree issued by the President of the Council of Ministers) and in which any evacuation orders or traffic-banning orders had been issues. Thus, the ITAs refused the (opposite) subjective perspective, in which case the measure would have concerned only directly struck taxpayers.

Anyway, this extension was short-lived.

Shortly after its entry into force, the European Commission, through its Decision issued on 20 October 2004, decided that it was incompatible with the EU State aid rules, since the aid was not related (or at least relatable) to the actual damages suffered by taxpayers who could receive the benefit.[31] As a consequence, the Commission ordered the recovery of the aid, up to the amount that was not justified by a '*clear and direct link between the natural disasters in question and the State aid intended to recover the damage*'.

After the Commission's decision, the Article 24, Law of 25 January 2006, No. 29 (i.e., the so-called '*Community Law' for 2005*) ordered the recovery of such undue aid.

5.2 The Tax Amnesty Pursuant to Article 9, Paragraph 17, Law No. 289/2002

After several earthquakes occurred in Sicily in 1990,[32] tax and contributions payments were suspended. Afterwards, the regulation that was supposed to reintroduce the payment terms was never issued; therefore, twelve years later (in 2002, with Law No. 289), the legislator introduced the possibility for taxpayers who had not paid yet (in force of the aforementioned suspension) to spontaneously pay a defined amount (i.e., the 10% of taxes originally due) in exchange for forgiveness of the tax liability.

According to Article 9, paragraph 17 of the abovementioned Law, taxpayers had to pay – by 16 April 2003 – the 10% of the total amount due for each tax (net of payments already made). In this way, applicant taxpayers entered in a 'safe harbour'

30. See Italian Tax Authorities, Resolution of 20 March 2003, No. 67/E.
31. European Commission, *Decision of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002*, No. 2005/315/EC, in *Official Journal of the European Union*, no. L 100 of 20.4.2005, pp. 46 et seq.
32. The same measures were again granted for the floods occurred in northern and central Italy in 1994, which hit 257 towns in Piedmont, Lombardy, Emilia-Romagna, Liguria, Tuscany and Veneto.

against future tax assessments for the tax years object of the tax amnesty (even with reference to administrative tax penalties), with benefits under criminal law too.

Subsequently, the provision was modified (with many consequences, which will be described below), with reference both to the payment deadline and to the amount due. In fact, the Article 3-*quater*, paragraph 2, Law Decree of 28 December 2006, No. 300, converted with amendments by Law of 26 February 2007, No. 17, deferred the payment deadline to 31 December 2007 and established that a higher percentage (30%) of the tax due had to be paid. A few months later, Article 36-*bis*, paragraph 1, Law Decree of 31 December 2007, No. 248, still deferred the same deadline to 31 March 2008 and reduced the lump sum due (again to 10%).

However, the enormous delay of the legislator (12 years!) caused several negative consequences.

In fact, in the meantime some taxpayers had already paid the outstanding taxes (by choosing not to suspend their terms) for an amount equal to the total (100%) of their dues. When the new provision was introduced – i.e., twelve years after the event – these taxpayers requested the refund of the amounts exceeding the 10% provided for in the said Article 9, paragraph 17; they assumed that such rule allowed taxpayers either to pay the said 10% (in case they had not paid yet), or to have reimbursed the exceed 90% (in case they had already paid the whole). In other words, according to this interpretation, the provision of Law No. 289/2002 was not a mere *procedural* rule (i.e., exclusively aimed at regulating a tax procedure), but it had *substantive* effects: namely, it has introduced *ex post* (after the payment), upon the taxpayers who had already paid, the right of being reimbursed for the amount exceeding the 10%.

Such interpretation was not accepted by the ITAs; however, it was endorsed by the Italian Supreme Court (hereinafter, ISC), for the first time in 2007[33] and then again in other judgments.[34] Thus, the ISC clarified that taxpayers struck by the earthquake occurred in 1990 – who had fully paid the taxes due – had acquired the right to be reimbursed (for the amounts paid over the said threshold of 10%), according Law No. 289/2002.

Anyway, after the ISC decision many questions arose, some of which are still unresolved.

Many doubts arose with regard to the procedure to apply in order to ask for the refund; according to the Supreme Court, taxpayers should apply the procedure provided by Article 21, paragraph 2, Legislative Decree of 31 December 1992, No. 546 (and not the different one provided by Article 38, Presidential Decree of 29 September

33. See ISC, Tax Chamber, 1 October 2007, No. 20641. The ISC relied on constitutional issues (including the reference to the principles of social solidarity and equality laid down in Articles 2-3 IC), as well as on the wording, since the provision title explained that the mechanism essentially consisted in an '*automatic settlement*'.
34. See, among the most important decisions: ISC, Sixth Civil Chamber – Subsection L, order of 9 March 2012, No. 3832; ISC, Sixth Civil Chamber – Subsection T, order of 13 June 2012, No. 9687; ISC, Sixth Civil Chamber – Subsection T, order of 11 December 2012, No. 22507; ISC, Tax Chamber, 20 December 2012, No. 23589; ISC, Sixth Civil Chamber – Subsection T, order of 2 May 2013, No. 10242; ISC, Tax Chamber, 31 May 2013, No. 13760.

1972, No. 602, regulating only some specific reimbursement cases). The said Article 21, by regulating all the requests of reimbursement that are not regulated elsewhere, should apply because of the 'peculiar genesis' of such right to refund – i.e., the paid taxes had become unlawful further to a supervening law.

Many other doubts arose with regard to the expiring date to ask for the reimbursement and, above all, to the initial moment from which such expiring period ran (so-called *dies a quo*).

Referring to the said Article 21, it became clear that such period was two years long (the mentioned Article 38, on the contrary, provided a different timing); anyway, the *dies a quo* remained ambiguous. In fact, pursuant to Article 21 the initial moment is the '*date of payment*' or, if later, the '*day when the right to be reimbursed arises*': this latter provision, applicable to the present case, generated lots of uncertainties.

Well, under the ISC's perspective – as shown above – the abovementioned Article 9, paragraph 17, has introduced a new right to refund; as a consequence, the day when such rule had come into force (i.e., 1 January 2003) should have been the '*day when the right to be reimbursed arises*',[35] under the mentioned Article 21. It comes by itself that the two years (i.e., the expiring period) should have run starting from that date.

Anyway, what about those requests (lots of them, as expected) that were submitted after the 2007 decision of the ISC, when the two-year period running from 1 January 2003 had widely expired?

The answer to this question was provided through a particular interpretation of the law changes – mentioned above – occurred in 2006 and 2007, which had not only delayed the deadline, but also modified the amount due. Therefore, it was said that such new laws had introduced new rights to refund.

Even according to the case law,[36] such extensions had not merely deferred the deadline (as such, without any constitutive effects) but, conversely, they had granted to the taxpayers a brand new right to obtain a reimbursement of the sums paid in excess.[37] As a consequence – it is pretty easy to say – the expiring period had to be (re)computed starting from the date when such disciplines had entered into force (in 2007 and, again, in 2008).

This opinion was initially endorsed also by the ISC; anyway, in some other cases the same Court reached the opposite solution, i.e., that the 2006 and 2007 laws had introduced mere *procedural* changes, as such unable to (re)grant the right to refund (and, consequently, to start a new expiring period to submit the refund request).

Finally, a recent ISC order of 2014[38] referred such contrast to the Grand Chamber, in order to obtain a definitive solution.

35. Author's translation.
36. See Tax Court of First Instance of Catania, Seventeenth Chamber, 20 June 2013, No. 219.
37. The main argument to support this thesis was the correlative modification of the amount due, firstly fixed at 30% and then further reduced to 10%. This circumstance would have betrayed the intention of the legislature to re-introduce (twice) a new right to refund and not simply to 'revive' the old one provided for by the former Article 9, Law No. 289/2002.
38. See ISC, Tax Chamber, 30 July 2014, No. 17369.

So far, some of the purely 'domestic' on the abovementioned provisions have been described and certain EU law issues (with particular reference to the State aid principles) concerning the same provisions will be briefly pointed out below.[39]

In this respect, following a request of information submitted by the Tribunal of Cuneo,[40] the European Commission started a formal investigation procedure in order to verify that the conditions laid down in Articles 107 and 108 TFEU were fulfilled: in fact, such provisions had been implemented without being (previously) notified (so violating Article 108 TFEU). With a letter of 17 October 2012, the European Commission decided that the un-notified measures infringed Article 108 TFEU; anyway, the same Commission still has to assess whether such measures fall within the exceptions in Article 107, paragraph 2, letter b).[41]

If the Commission does not consider such an exemption applicable to the present case, Italy will have the daunting task of recovering all the disbursed aid.

6 CONCLUSIONS

As clearly arises from the various laws in the field of natural disasters, in Italy the public sector deals with the consequences of catastrophic events, handles the emergency, provides for the reconstruction of damaged areas and bears all the relevant costs, triggering a significant impact on the public budget, because of both more expenses (i.e., due to direct financing) and less entries (i.e., due to tax benefits).

The involvement of the private sector is negligible – and, in some cases, totally absent – and all the numerous attempts to share such costs, at least partially, between the public sector and the private market – especially insurance and finance markets – have always failed.

The Italian system certainly complies with the constitutional principle of social solidarity; nevertheless, Italy could not ignore and deny the negative consequences, first of all the enormity (and perpetuity) charges that the public sector has to suffer (as mentioned above, more than EUR 240 billion in the last seventy years), accompanied to the even more dramatic consequences arising in the event that such situation occurs in a historical moment like the current one, when State's budget – as well as the regional ones – need a significant spending restraint.

The huge burden of costs related to natural disasters requires a urgent change, which cannot be postponed anymore; the system needs a rehash, in order to involve (at least partially) the insurance and financial markets, without neglecting in any case the constitutional principles (primarily, the social solidarity one). Without any doubts, such a makeover would be in the position of easing the burden born by the public sector, as well as of empowering the individuals' responsibility, encouraging *a priori*

39. See also C. Buccico, *I benefici fiscali per le aree colpite da calamità naturali*, in *Diritto e Pratica Tributaria*, vol. 84, no. 5/2013, Part I, pp. 1095 et seq.
40. Tribunal of Cuneo, order of 18 February 2011.
41. See European Commission, *Aiuto di Stato SA.33083 (2012/C) (ex 2012/NN) e Aiuto di Stato SA.35083 (2012/C) (ex 2012/NN) – Italia – Agevolazioni fiscali e contributive connesse a calamità naturali e Agevolazioni fiscali e contributive connesse al terremoto in Abruzzo del 2009 (concernenti tutti i settori esclusa l'agricoltura)*, C(2012) 7128 final, Brussels, 17 October 2012.

the implementation of preventive measures and, thus, triggering a sort of 'virtuous circle', able to limit the negative consequences of disasters and, as an effect, lowering the subsequent emergency costs.