



Università
degli Studi
di Ferrara

Dipartimento
di Giurisprudenza

DIRITTO VIRALE

*Collana dei Ricercatori del Dipartimento di Giurisprudenza
dell'Università degli Studi di Ferrara*

Volume III
" Addressing Pandemic:
a Comparative Survey"

Scenari e
interpretazioni
delle norme per
l'emergenza
Coronavirus



**Dipartimento
di Giurisprudenza**

DIRITTO VIRALE

Scenari e interpretazioni delle norme
per l'emergenza Covid-19

Diritto virale – Collana del Dipartimento di Giurisprudenza

Università di Ferrara

Corso Ercole I d'Este, 37 – Ferrara

ISSN

Pubblicato in data 17 maggio 2021

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NEXT GENERATION EU. L'INEFFABILITÀ DELLA CONDIVISIONE DEL DEBITO E IL CONSIGLIO EUROPEO STRAORDINARIO DEL 17-21 LUGLIO 2020.

di **Damiano Censi*** – cnsdmn@unife.it

L'articolo espone gli elementi di fondo di Next Generation EU (NGEU), strumento delineato durante il Consiglio europeo del 17-21 luglio scorso, che innova il quadro della governance economica europea rendendo possibile, per la prima volta, all'Ue di prendere a prestito risorse sul mercato dei capitali per finanziare spese. In particolare, viene analizzato come NGEU possa influire sull'equilibrio che, attualmente, all'interno del percorso di integrazione europea, caratterizza il rapporto tra l'ordinamento dell'Ue e quelli degli Stati membri. In tal senso, quest'ultimo strumento viene posto a sistema con quelli che l'hanno preceduto - concentrandosi su quanti tra essi sono tesi a permettere ai Paesi dell'Unione di accedere a risorse finanziarie a interessi contenuti - evidenziando come, diversamente da questi, NGEU abbia le potenzialità per ridurre le asimmetrie tra gli Stati dell'Ue, facilitando il percorso di convergenza tra le rispettive economie. Da ultimo, si sottolineano gli ostacoli che si prevede possano frapporsi al raggiungimento di tali obiettivi, sia prefigurando l'eventualità che l'esperienza del ricorso al mercato dei capitali da parte dell'Ue si stabilizzi, sia che il percorso di integrazione dell'Ue non imbocchi la strada aperta da Next Generation EU.

SOMMARIO: 1. Il funzionamento. – 2. Portato innovativo e limiti enucleabili alla consolidazione del ricorso al debito. – 3. Obiettivi prefissati e risorse a disposizione.

1. Le origini di *Next Generation EU* (NGEU) (per una [cronistoria](#)) sono da ricercare nell'Eurogruppo del [9 aprile 2020](#), quando, a seguito dello stabilizzarsi della cosiddetta “prima ondata” del virus Covid-19, i capi di Stato dell'area euro diedero inizio a trattative finalizzate a delineare un piano condiviso per affrontare le conseguenze della crisi economico-sanitaria connessa con il virus. Peraltro, le parole utilizzate in tale occasione in riferimento al suddetto strumento, piuttosto generiche, sembravano presupporre una condivisione del debito a livello europeo “[temporary and targeted \(§ 19\)](#) sul modello dei cosiddetti *eurobonds* (invocati a più riprese al manifestarsi dei primi effetti dalla pandemia, dalla dottrina [sia giuridica che economica](#)).

Tuttavia, solamente a luglio 2020, nel corso del più lungo Consiglio europeo del nuovo millennio, è stata data una forma definitiva a quello che allora veniva ancora chiamato *European Recovery Fund*.

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NGEU innova profondamente lo spettro degli strumenti a disposizione delle istituzioni europee che, per la prima volta - qualora si concluda positivamente l'iter legislativo come previsto anche nel [§ A32](#) delle conclusioni del Consiglio - potranno prendere a prestito risorse sul mercato dei capitali per finanziare spese. Si precisa, peraltro, che non tutte le risorse prese a prestito e veicolate nelle modalità di seguito specificate verranno convogliate verso i bilanci dei Paesi membri. Infatti, il Consiglio europeo ha scelto di collegare strettamente il nuovo strumento al Quadro Finanziario Pluriennale (QFP) 2021-2027 ([effettivamente solo una tra le opzioni a disposizione](#)). Questo, da un lato prevedendo specifici programmi all'interno di NGEU che dovrebbero affiancarsi a singole politiche dell'Ue per aumentarne le risorse a disposizione - mentre non sono state incrementate le rispettive attribuzioni finanziarie all'interno del QFP stesso secondo l'[allegato I alle Conclusioni](#) - e dall'altro anticipando la volontà di procedere ad una revisione del sistema delle risorse proprie al fine di recuperare risorse utili a coprire il maggior costo correlato al debito contratto entro il 2058 ([§ A7](#)).

In particolare, NGEU delinea ([§ A19](#)) 6 programmi per un totale di 77,5 miliardi di euro, dei quali ci limitiamo a citare, al fine di esemplificare il loro sovrapporsi alle politiche comunitarie, i 7,5 stanziati al fine di sostenere lo sviluppo rurale nella fase di ripresa dalla crisi economico-sanitaria e i 47,5 destinati ad affiancarsi alla politica di coesione.

In tal senso, anche la normativa relativa al sistema delle risorse proprie viene strutturata in piena aderenza al sistema attualmente vigente (invece di affrontare alcuni degli aspetti oggetto di ampio dibattito in materia, quale sarebbe, ad esempio, una modifica alla procedura legislativa che porti al superamento dell'unanimità, misura [proposta dalla stessa Commissione](#)). Infatti, si prevede che i massimali delle risorse proprie verranno incrementati "in via temporanea di 0,6 punti percentuali al solo scopo di coprire tutte le passività□ dell'Unione risultanti dai prestiti contratti per far fronte alle conseguenze della crisi COVID-19, fino alla cessazione di tali passività□ e al più□ tardi fino al 31 dicembre 2058" ([§ A9](#)).

A tale incremento si dovrebbe sommare l'introduzione di nuove risorse proprie, peraltro già da tempo [al vaglio](#) delle istituzioni europee. La prima, che si attiverà già da gennaio 2021, sarà basata sui rifiuti plastici non riciclati, mentre nel 2023 si è programmata l'introduzione delle, a lungo oggetto di considerazioni e ripensamenti, [carbon tax](#) e [web tax](#).

Tuttavia, il programma di NGEU al quale saranno dedicati più fondi e sul quale i capi di Stato dell'Ue hanno dibattuto più a lungo è il [Recovery and Resilience facility \(RRF\)](#). Tale programma veicolerà 672,5 miliardi di euro di cui 360 miliardi di prestiti e 312,5 miliardi di sovvenzioni.

Rilevante in tal caso è il criterio di ripartizione dei fondi relativi alle sovvenzioni, che, differentemente da quanto previsto da strumenti di intervento precedenti in relazione alla pandemia (a partire dal [SURE](#)), non sarà proporzionale alle quote di RNL, secondo le quali i singoli Stati contribuiscono al bilancio dell'Ue, ma, viceversa, sarà collegato alla misura del PIL pro-capite ed ai livelli di disoccupazioni conseguenti alla crisi, favorendo automaticamente gli Stati maggiormente colpiti dal virus Covid-19 (mentre invece i prestiti verranno erogati proporzionalmente per un massimale corrispondente al 4,7% del PIL dello Stato membro). Le sovvenzioni allocate secondo il suddetto criterio di ripartizione dovranno essere destinate all'implementazione di "piani nazionali per la ripresa e la resilienza" ([§ A18](#)) che indicheranno le riforme e gli investimenti che ogni Stato membro si impegnerà ad implementare, per il periodo 2021-2023. I piani nazionali per la ripresa e la resilienza verranno quindi vagliati dalla Commissione che baserà la sua valutazione sull'aderenza di essi [alle raccomandazioni](#) specifiche per paese predisposte dalla stessa nell'ambito del Semestre europeo. Ogni piano, a sua volta, dovrà prevedere *target* intermedi e finali sulla base del raggiungimento dei quali verranno

autorizzati nel corso del periodo 2021-2023, i pagamenti richiesti dagli Stati membri. Anche in questo caso pertanto, si ripropone un processo già attivo a livello delle istituzioni dell'Ue (quello del Semestre europeo) per il perseguimento degli obiettivi di NGEU.

2. Il portato innovativo di NGEU appare evidente soffermandosi su come esso abbia modificato (o meglio possa potenzialmente modificare) gli equilibri sussistenti tra ordinamenti degli Stati membri e ordinamento dell'Ue, nell'attuale fase del percorso di integrazione europea.

Infatti, la BCE opera da tempo sul mercato secondario acquistando titoli degli Stati membri sia tramite il *Quantitative Easing* che, da ultimo, attraverso il [Pandemic Emergency Purchase Programme](#) (PEPP), che ha la possibilità di superare anche il limite complessivo [per Stato membro attualmente previsto](#) per il QE. A sua volta il [MES](#), istituito da un Trattato esterno all'ordinamento giuridico dell'Ue (per quanto [ad esso "contingente"](#)), è in grado di veicolare circa 700 miliardi, versati pro quota dai Paesi membri, ed accedendo ad una linea di credito del MES, nel solo caso in cui questa venga concessa con le condizionalità sancite dal trattato, si rende possibile l'attivazione delle [OMT](#) da parte della BCE (e conseguentemente l'acquisto di titoli di Stato potenzialmente illimitato da parte della Banca Centrale Europea sul mercato primario).

Pertanto, attualmente molteplici sono gli strumenti a disposizione degli Stati membri, con alto livello di debito, per accedere a linee di credito ad un tasso di interesse più basso di quanto il mercato sia disposto ad offrire. Tuttavia, con l'eccezione del MES - che sconta la necessità di implementare, per accedere alla sua linea di credito, misure correttive che, ai sensi dell'art. 12.1 del MES si avvicinano eccessivamente ad una cessione di sovranità in "bianco" e in ogni caso la cui impostazione, [sancita dal Fiscal Compact](#), è tesa ad un sostanziale contingentamento della spesa pubblica - tali strumenti operano sul mercato secondario dei titoli di Stato e tutti, incluso il MES, portano all'aumento dello *stock* di debito che grava sulle spalle dello Stato membro.

Per tale ragione, attualmente, in rapporto al presentarsi degli effetti di una crisi che colpisce l'economia europea, gli Stati membri con alto livello di debito e bassa credibilità sul mercato dei capitali sono più esposti a *shock* economici e con meno possibilità di [implementare misure anticicliche](#). Infatti, non solo vengono colpiti [più gravemente di altri](#), ma, [al fine di contrastare tali effetti](#), non potendo obbligare le rispettive Banche Centrali ad acquistare i propri titoli di Stato, sono costretti a scegliere tra aumentare il costo e l'ammontare del debito, riducendo ulteriormente la propria capacità di rispondere a crisi future, oppure non spendere quanto necessario [a preservare le proprie economie](#), ampliando esponenzialmente la distanza tra queste e quelle degli altri Stati dell'Ue.

L'inefficacia di misure pro-cicliche e l'erogazione simmetrica di risorse finanziarie nel contrastare la crisi economica del 2008 e la crisi economico-sanitaria attuale non è stata, del resto, rilevata solamente dalla [dottrina economica](#), ma la stessa presidentessa Lagarde ha affermato, [in una recente intervista](#), analizzando le misure tese a contrastare gli effetti della crisi conseguente al virus Covid-19, che: "lo sforzo è stato eccessivamente asimmetrico. A seconda dei Paesi, spazia dal 2% al 40% del Pil, se si sommano gli aiuti diretti e le garanzie. I Paesi economicamente più indeboliti, che a volte sono i più colpiti dal virus, non hanno margini di manovra di bilancio che permettano lo sforzo necessario a risollevare le loro economie. La soluzione è dunque un piano europeo di rilancio di bilancio rapido, solido, per ristabilire la simmetria fra i Paesi nell'uscita dalla crisi. Per chiarezza, questo piano deve avvantaggiare di più gli Stati che ne hanno più bisogno. Fornire quest'aiuto collettivo è nell'interesse di ciascuno dei Paesi". Si consideri anche che nella stessa intervista la presidente della BCE afferma esplicitamente che il PEPP non è utile a tale scopo.

Per tale ragione, sia parte della dottrina giuridica che di quella economica hanno da tempo esplorato la possibilità di pervenire ad una condivisione dell'emissione del debito a livello europeo chiamata a volte [blue bond](#), altre [stabilitybond](#) altre [eurobills](#), e da ultimo "[coronabond](#)". I cosiddetti *eurobonds*, come già detto, sono stati riproposti in molteplici fasi del processo di integrazione europea senza che si pervenisse in alcun caso alla loro [formalizzazione](#), scontratasi sempre con il *niet* dei Paesi con un'alta credibilità sul mercato dei capitali all'assumersi la responsabilità, ed il costo, del salvataggio di quelli privi del medesimo *rating*.

Peraltro, concentrandosi sulla Germania, tra i paesi sopra citati, [la Corte di Karlsruhe ha da tempo sottolineato](#) come, in ogni caso, qualsiasi ulteriore approfondimento dell'integrazione europea, in particolare nell'ambito della condivisione della responsabilità e delle garanzie sui titoli di Stato, possa avvenire solamente stante l'implementazione di profonde riforme giuridico-istituzionali, tese ad affrontare, in particolare, [il deficit democratico dell'Unione europea](#). Non solo, nell'ultima sentenza in materia, in relazione al caso [Weiss](#), il *Bundesverfassungsgericht*, concentrandosi sul rispetto del principio di proporzionalità, ha affermato che qualunque programma di acquisto di titoli di Stato a livello europeo che non preveda una stretta condizionalità e una valutazione delle sue conseguenze economiche, viola tale principio e di conseguenza l'art. 5 del TUE ed il principio di attribuzione. Tali rilievi sono coerenti, peraltro, con una giurisprudenza ormai consolidata del Tribunale federale costituzionale tedesco, [ma non solo](#), che, in riferimento agli strumenti succedutisi nell'ambito della *governance* economica europea di ultima generazione, ha rilevato a più riprese come quest'ultimi abbiano determinato la compressione della capacità dei cittadini tedeschi di controllare le finanze del proprio Stato e ha conseguentemente posto in discussione la loro piena compatibilità con gli equilibri sanciti dai Trattati fondamentali. Strumenti avallati, pertanto, in ragione della loro temporaneità ed eccezionalità, oltre che della loro [efficacia nello stabilizzare il sistema economico europeo](#). Viceversa, come sottolinea la stessa Corte di *Karlsruhe*, il perdurare di tali alterazioni agli equilibri sanciti dai Trattati comporterebbe un sostanziale trasferimento di competenze dagli Stati membri verso gli organi dell'Ue, trasferimento che non può nascere da ragioni di natura pratica ed emergenziale e difetterebbe, in ogni caso, di legittimazione democratica qualora fosse guidato dalla Commissione europea.

NGEU, permettendo alle istituzioni europee di accedere direttamente a prestiti sul mercato dei capitali, si espone pienamente alle censure sopra riportate, che richiedono che qualsiasi riforma della *governance* economica che approfondisca ulteriormente il percorso di integrazione europea - ed in particolare l'interdipendenza (data anche dalle garanzie condivise sul debito) tra le economie degli Stati membri - debba necessariamente essere operata attraverso una modifica dei Trattati fondamentali. Questo in ragione, peraltro, della, tuttora vigente, separazione tra politica economica e monetaria sancita dal Trattato di Maastricht e confermata dal Trattato di Lisbona.

I rilievi sopra riportati gettano un'ombra oscura sulla possibilità che le previsioni contenute nel *Recovery and Resilience facility* possano essere riproposte, ed anzi ampliate quantitativamente nel prossimo futuro anche [nel caso quest'ultimo venga approvato dal Parlamento europeo](#), dando ulteriore rilevanza a quanto analizzato al paragrafo successivo, ovvero se NGEU sia attualmente in grado di consolidare la convergenza delle economie degli Stati membri, imprimendo una spinta anticiclica alle economie più provate tra quelle, in particolare, dell'area euro.

3. Se, dunque, attraverso il QE, il PEPP ed il MES agli Stati facenti parte dell'Uem è garantita la possibilità di approvvigionarsi sul mercato dei capitali, si è precedentemente esposto,

come ciò che necessitano gli Stati con alto livello di debito e bassa credibilità su tali mercati, è uno strumento che permetta in situazioni di crisi economica, di procedere ad un incremento della spesa per investimenti e della spesa pubblica in generale, innescando ciò che Keynes nella “Teoria generale dell'occupazione, dell'interesse e della moneta” - (1936), Torino, 2017, 435-444 - denominava, “effetto moltiplicatore”, e contrastando quindi i limiti costituiti da un lato dall'impossibilità di stampare moneta e dall'altro dal dover competere in un'unica [area monetaria con economie più performanti](#). In altre parole, a tali Stati occorre uno strumento che riduca le asimmetrie tra le economie dell'Ue permettendo, appunto, investimenti di tipo keynesiano e che impedisca, allo stesso tempo, che per operare quest'ultimi gli Stati membri con un debito largamente superiore al proprio PIL (Italia, Spagna, Portogallo, ovviamente Grecia ed in parte Belgio e Francia) vedano un incremento fuori controllo del proprio debito (a qualunque titolo contratto). Parallelamente, questo porterà a limitare la possibilità del ripresentarsi di *shock* economici asimmetrici.

In tal senso, ed in relazione alla crisi in corso, il limite più rilevante del [Recovery and Resilience facility](#), è il legame tra le sue dimensioni, i 312,5 miliardi di sovvenzioni (ovvero le risorse in grado di ottemperare agli obiettivi sopra richiamati che costituiscono una somma corrispondente al 3% del PIL dell'Ue), - per visualizzare l'ordine di grandezza della sfida da affrontare si pensi che in relazione alla crisi del 2008, complessivamente più limitata dell'attuale, l'amministrazione [Obama stanziò 1600 miliardi di dollari](#) - e i tempi di erogazione dei fondi suddetti.

Infatti, le somme sopra riportate, sarebbero in sé stesse in grado di determinare un impatto rilevante qualora impiegate nel pieno della crisi al fine, oltre che di operare investimenti a lungo termine, di limitare l'impatto della stessa sul tessuto economico, tuttavia la possibilità di operare in tal senso si riduce rilevantemente qualora tali fondi vengano impiegati successivamente alla crisi stessa. In tal caso, dovendo fronteggiare il pieno dispiegarsi delle conseguenze economico-sociali connesse con il virus Covid-19, l'effetto “moltiplicatore” delle risorse sopra riportate si rivelerebbe [fortemente ridotto](#). Orbene, le prime risorse finanziarie relative all'RRF è previsto che vengano pagate solo nel 2021 e solo per il 10% del totale stanziato (§ A17). Peraltro, l'erogazione per *step* dei fondi del RRF delinea chiaramente la differenza più rilevante tra gli strumenti denominati *eurobonds* e l'accordo raggiunto durante il Consiglio europeo del luglio scorso. Mentre i primi, infatti, garantirebbero un controllo politico-economico vicendevole tra i Paesi membri, stante il livello di interdipendenza conseguente all'emissione comune e alla possibilità di vincolare parte dei titoli di ogni Stato membro alla valutazione che il mercato ha del comportamento tenuto dallo stesso - si veda la proposta denominata [blue bond](#) -, il secondo affida alla Commissione, attraverso la valutazione dei piani nazionali per la ripresa e la resilienza, l'erogazione o meno dei fondi agli Stati membri in relazione ai molteplici *step* che dovrebbero seguire la prima *tranche* (Commissione che ha del resto già enucleato [le linee guida su dove ed in che modo dovranno essere spesi i soldi erogati](#)). Mentre i primi permetterebbero pertanto allo stesso tempo l'istituzione di [un controllo più efficace](#) e meno invasivo delle prerogative dello Stato membro, NGEU incorre potenzialmente negli stessi rilievi, che già posti al MES, individuano come incompatibile con l'ordinamento di diversi tra gli Stati membri la sottoscrizione di proposte di riforma che presuppongano l'adesione ad uno specifico paradigma socio-economico che contrasti potenzialmente con le rispettive [“costituzioni economiche”](#).

In ogni caso, già in relazione agli *eurobonds* [ampia dottrina giuridica](#), e non solo il *Bundesverfassungsgericht*, aveva sottolineato la necessità di un previo ripensamento della *governance* economica europea, non potendo configurarsi tale riforma come pienamente compatibile con la separazione tra gestione della politica monetaria ed economica attualmente vigente a livello

europeo. Peraltro, nel caso di NGEU, si deve rilevare come, qualora quest'ultimo non prevedesse il regime di condizionalità già richiamato in relazione al controllo operato dalla Commissione sui piani nazionali per la ripresa e la resilienza, non rispetterebbe i prerequisiti che secondo la Corte di Karlsruhe possono, e devono, rendere legittima [qualsiasi condivisione di risorse a livello europeo che impegni anche le garanzie e le finanze tedesche](#).

Se da un lato *Next Generation UE* apporta nuove risorse, e di nuovo tipo, alle istituzioni europee e agli Stati membri - pur non essendo chiaro se esse saranno sufficienti a rispondere alle sfide che questi devono affrontare, ed in particolare ad impedire che agli stessi, dall'appartenenza all'Unione economica e monetaria conseguano asimmetrie eccessive -, dall'altro aggrava il livello di incertezza sul futuro della nave, che sempre in mezzo al guado, si trova sotto la spinta di un nuovo carburante, senza che la ciurma abbia scelto né a quale regole affidarsi per gestire il cambio delle sue condizioni e la piena in arrivo, né [dove approdare](#).



LA PANDEMIA E L'UNITA' NAZIONALE: IL RUOLO DEL PRESIDENTE DELLA REPUBBLICA

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*Nello scritto si sottolinea come le dichiarazioni del Capo dello Stato durante la pandemia abbiano avuto la funzione di richiamare l'opinione pubblica e - soprattutto - i decisori politici all'esigenza di preservare la coesione territoriale e l'equilibrio tra i poteri. Da ciò emerge l'importanza che in Italia continua a rivestire una Presidenza della Repubblica *super partes*, con una funzione di moderazione e di stimolo nei confronti degli altri poteri (secondo quanto affermato dalla sentenza costituzionale n. 1/2013).*

SOMMARIO: 1. L'unità nazionale nelle dichiarazioni del Capo dello Stato. – 2. La «sostanziale unità morale» degli italiani. – 3. La (auspicata) coesione territoriale e l'(auspicato) armonico funzionamento dei poteri. – 4. Il (segnalato) pericolo di distorsioni procedurali nella produzione del diritto e il ruolo delle Camere. – 5. Osservazioni conclusive sulla forma di governo alla prova della pandemia.

1. Una riflessione sul tema dell'unità nazionale alla prova della pandemia evoca necessariamente il ruolo svolto in questa drammatica circostanza dal Presidente della Repubblica, le cui dichiarazioni si sono rivelate cruciali e determinanti sotto diversi aspetti. In primo luogo, per il rilievo conferito al *sentimento* dell'unità nazionale e alla sua stessa definizione¹; in secondo luogo, per il richiamo forte all'esigenza di una risposta collaborativa dello Stato e del sistema delle autonomie (soprattutto regionali) alle complesse questioni poste dall'emergenza sanitaria²; ancora, per la presa di posizione in tema di correttezza dei procedimenti decisionali seguiti per fronteggiare l'emergenza, con la valorizzazione del ruolo del Parlamento³.

2. Nel discorso pronunciato in occasione della festa del 2 giugno, Mattarella ha parlato della «sostanziale *unità morale*» degli italiani come «vero cemento che ha fatto nascere e tenuto insieme

¹ Intervento del Presidente della Repubblica Sergio Mattarella in occasione del “Concerto dedicato alle vittime del coronavirus” nel 74° anniversario della Festa nazionale della Repubblica, Giardini del Quirinale, 1° giugno 2020, in www.quirinale.it.

² Si vedano, in particolare, le dichiarazioni sull'emergenza coronavirus del 5 marzo e del 27 marzo 2020, in www.quirinale.it.

³ Dichiarazione del 27 marzo 2020, cit.

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la Repubblica» e che ancora oggi ci fa sentire «legati da un *comune destino*». E' interessante il riferimento all'ambito *morale*, che allude a fattori di ordine sociale e culturale, a «qualcosa che viene prima della politica e che segna il suo limite», al «sentirsi responsabili l'uno dell'altro. Un ambiente sociale con l'altro. Tutti parte di una stessa storia. Di uno stesso popolo». Un «sentimento profondo», un legame di responsabilità reciproca che ha precise ricadute in termini giuridici: solidarietà, eguaglianza, garanzia dei diritti fondamentali, inderogabilità dei doveri costituzionali. Si tratta - per usare le parole di Vassalli a commento di una famosa sentenza del 1966, che proprio di «sentimento nazionale» si era occupata⁴ - di quelle «esigenze permanenti della comunità» che costituiscono «un bene permanente, superiore ed irrinunciabile (...) dello Stato democratico italiano»⁵.

3. Il 27 marzo precedente, nella dichiarazione già ricordata, il Capo dello Stato aveva auspicato che le risposte alla crisi potessero «essere il frutto di un impegno comune, fra tutti: soggetti politici, di maggioranza e di opposizione, soggetti sociali, governo dei territori. Unità e coesione sociale sono indispensabili in questa condizione»⁶. Com'è noto, la Corte costituzionale ha precisato che la rappresentanza dell'unità nazionale affidata dalla Costituzione al Capo dello Stato (art. 87, comma 1) è rappresentanza sia «dell'unità territoriale dello Stato» sia - e soprattutto - «della coesione e dell'armonico funzionamento dei poteri, politici e di garanzia, che compongono l'assetto costituzionale della Repubblica». Una funzione, dunque, di «equilibrio costituzionale», dal cui mantenimento «dipende la concreta possibilità di tutelare i diritti fondamentali, che in quell'equilibrio trovano la loro garanzia generale e preliminare»⁷.

Quanto al profilo della coesione territoriale, non vi è dubbio che il richiamo presidenziale sia stato implicitamente motivato anche dalla situazione confusa venutasi a creare nei rapporti tra lo Stato e le autonomie territoriali, in particolare le Regioni, con una incertezza di competenze tradottasi in una produzione normativa confusa (si pensi alle tante ordinanze in ambito regionale e locale), caratterizzata da conflitti e sovrapposizioni con la normazione statale che hanno determinato scarsa efficienza, tensioni politiche talora assai aspre e un senso di smarrimento nell'opinione pubblica, frastornata anche da un notevole caos comunicativo. Lo stesso tema, peraltro, era già stato affrontato nella precedente dichiarazione del 5 marzo, nella quale si legge: «Alla cabina di regia costituita dal Governo spetta assumere - in maniera univoca - le necessarie decisioni di collaborazione con le Regioni, coordinando le varie competenze e responsabilità. *Vanno, quindi, evitate iniziative particolari che si discostino dalle indicazioni assunte nella sede di coordinamento*». Si è insomma confermata, in un momento tanto difficile, l'esistenza di un problema generale di dislocazione dei poteri, da superare attraverso l'identificazione di adeguate sedi e formule cooperative e, forse, anche tramite la revisione dell'assetto complessivo delle autonomie territoriali, per correggerne le più vistose incoerenze.

⁴ Si tratta della decisione della Corte costituzionale n. 87/1966, nella cui motivazione il sentimento nazionale - seppur ancora oggetto di un'interpretazione tradizionalista (esso corrisponde, infatti, «al modo di sentire della maggioranza della Nazione e contribuisce al senso di unità etnica e sociale dello Stato») - viene nettamente distinto dal «nazionalismo politico», con il quale non può essere confuso.

⁵ G. Vassalli, *Propaganda "sovversiva" e sentimento nazionale*, in *Giur. cost.*, 1966, 1104.

⁶ Di grande rilievo, su questi temi, anche la relazione della Presidente Marta Cartabia sull'attività della Corte costituzionale nel 2019 (28 aprile 2020, in www.cortecostituzionale.it), secondo cui, nel frangente dell'emergenza, «se c'è un principio costituzionale che merita particolare enfasi e particolare attenzione è proprio quello della "leale collaborazione" - il risvolto istituzionale della solidarietà - su cui anche la giurisprudenza della Corte costituzionale non si stanca di ritornare, affinché l'azione e le energie di tutta la comunità nazionale convergano verso un unico, condiviso obiettivo» (18-19).

⁷ Sentenza n. 1/2013. Nella motivazione di questa pronuncia vi è una particolare insistenza proprio sul tema dell'*equilibrio costituzionale*, del quale il Presidente della Repubblica è supremo garante. Le sue sono funzioni *di equilibrio e di raccordo* all'interno del sistema costituzionale, fondato sulla separazione e sull'integrazione dei poteri dello Stato.

4. Nella dichiarazione del 27 marzo vi è poi uno specifico passaggio relativo alle distorsioni subite dal sistema delle fonti nella gestione di questa complessa situazione. Laddove, infatti, si afferma che le rigorose ma indispensabili misure sono state adottate «con norme di legge», norme, quindi, «sottoposte all'esame del Parlamento», si cerca di chiudere la polemica sull'uso ampio e del tutto inedito dei DPCM: atti dall'incerta natura giuridica, che accentrano il potere di decisione nelle mani del Presidente del Consiglio, escludendo il Parlamento (oltre che lo stesso governo nella sua collegialità) e sottraendosi al controllo del Capo dello Stato – oltre che, eventualmente, della Corte costituzionale (in quanto atti privi di forza di legge). A questo indiscutibile *vulnus* costituzionale si è inteso porre rimedio attraverso il decreto legge n. 19 del 25 marzo 2020, destinato a dare un fondamento giuridico più solido alle misure fino a quel momento adottate e a regolamentare l'uso dei DPCM. Proprio a ciò si riferiscono le affermazioni del Presidente della Repubblica appena ricordate, delle quali si trova un riflesso nell'informativa svolta al Senato il 27 marzo dal Presidente del Consiglio, secondo il quale il decreto legge n. 19 ha «trasferito in fonte di rango primario, tipizzandole, le misure di contenimento da adottare per contrastare i rischi derivanti dalla diffusione del virus» e ha introdotto «una più puntuale regolamentazione dell'iter procedimentale di adozione dei DPCM, prevedendo, tra l'altro, l'immediata trasmissione dei provvedimenti emanati ai Presidenti delle Camere» nonché il vincolo, per lo stesso Presidente del Consiglio o per il Ministro da lui delegato, di riferire ogni quindici giorni alle Camere sulle misure adottate⁸. Nella legge di conversione n. 35 del 2020 si è affinata ulteriormente la procedura, stabilendo che il governo debba illustrare preventivamente alle Camere il contenuto dei provvedimenti da adottare, *al fine di tenere conto degli indirizzi dalle stesse formulate*⁹. Si tratta, è chiaro, di uno strumento comunque insufficiente, restando la strada maestra quella del decreto legge, pensato proprio per i casi straordinari (cioè imprevedibili) di necessità e urgenza, che reclamano una risposta normativa immediata, senza emarginare il ruolo del Parlamento (in particolare quando si tratti, come nel caso di specie, di prevedere significative limitazioni dei diritti fondamentali, protetti dalla riserva assoluta di legge). E tuttavia non vi è dubbio che la «magistratura d'influenza» del Capo dello Stato abbia avuto il merito di far emergere l'esigenza costituzionale di valorizzare il ruolo dell'organo rappresentativo (che, peraltro, non può certo essere relegato in un ambito «consultivo»).

5. Quali insegnamenti trarre da questa vicenda? In primo luogo, l'importanza che in Italia continua a rivestire una Presidenza della Repubblica neutrale, *al di fuori* dei tradizionali poteri dello Stato e *al di sopra* di tutte le parti politiche¹⁰, con una funzione di moderazione e di stimolo nei confronti degli altri poteri. Nessuna fuoriuscita, dunque, dal parlamentarismo, in favore di fantasiose e pericolose ipotesi presidenziali o semipresidenziali. E la massima considerazione e riconoscenza, per quanto mi riguarda, verso un Presidente della Repubblica che respinge con nettezza ogni lettura delle figura e delle funzioni presidenziali «difforme da quanto previsto e indicato, con chiarezza, dalla Costituzione», ritenendo di avere il preciso dovere di non diminuire e di non ampliare la sfera di compiti affidatagli dalla Carta fondamentale e dalla legge: «Non esistono motivazioni contingenti che

⁸ Informativa del Presidente del Consiglio Giuseppe Conte al Senato della Repubblica in merito all'emergenza Covid-19, 27 marzo 2020 (in www.governo.it).

⁹ Art. 2, comma 1, nel quale si precisa tuttavia che «ove ciò non sia possibile, per ragioni di urgenza connesse alla natura delle misure da adottare», il Presidente del Consiglio dei ministri o il Ministro da lui delegato riferisce alle Camere «ai sensi del comma 5, secondo periodo», attraverso una semplice *comunicazione* quindicinale sulle misure adottate.

¹⁰ Corte costituzionale, sentenza n. 1/2013.

possano giustificare l'alterazione della attribuzione dei compiti operata dalla Costituzione: qualunque arbitrio compiuto in nome di presunte buone ragioni aprirebbe ad altri arbitri, per cattive ragioni»¹¹.

In secondo luogo, la necessità di un parlamentarismo razionalizzato che, rendendo più fluida ed efficace la decisione politica, consenta di assicurare un assetto collaborativo tra i poteri, preservando anche la correttezza delle procedure di produzione del diritto. E' evidente che un primo, decisivo elemento di razionalizzazione deriverebbe dalla riforma del bicameralismo paritario, con una sola Camera che accorda e revoca la fiducia. Ma ci muoviamo qui nel campo "minato" delle riforme costituzionali, sempre molto difficili da realizzare. Se il contesto politico consentisse comunque un confronto serio e non pretestuosamente conflittuale, si potrebbero intanto immaginare interventi sul diritto parlamentare, ad esempio *differenziando* per quanto possibile, anche attraverso regole convenzionali, il ruolo delle due Camere, laddove il disegno costituzionale lo consenta. Così il Senato, a fronte di un ridimensionamento procedurale nell'ambito della funzione legislativa (attraverso la riduzione, nelle norme regolamentari, del suo potere di emendamento nelle procedure di deliberazione «in seconda battuta»¹²), potrebbe "specializzarsi" nelle attività conoscitive e di indirizzo, in particolare in determinate materie (politiche europee, valutazione delle politiche pubbliche, anche nelle loro ricadute sui territori, ecc.). La stessa utilizzazione delle commissioni monocamerali d'inchiesta potrebbe coinvolgere, nei due rami del Parlamento, materie diverse, in un'ottica – appunto – di "specializzazione" funzionale¹³.

Si potrebbe ragionare anche sulla possibilità di introdurre in via regolamentare la procedura del voto "a data certa", che la riforma costituzionale respinta dal voto popolare nel dicembre 2016 aveva delineato nei suoi tratti essenziali, pur lasciando irrisolti non pochi problemi. E' uno di quei punti "di confine" tra Costituzione e regolamento che suscita perplessità, trattandosi di un istituto che conferisce al governo un importante potere di condizionamento dell'ordine del giorno delle Camere, e che dunque andrebbe progettato con grande cautela. Credo però che potrebbe trattarsi di una scelta percorribile¹⁴, se divenisse parte di uno "scambio virtuoso" con una serie di limitazioni in tema di conversione dei decreti legge e di maxi emendamenti, nella prospettiva di assicurare all'esecutivo poteri efficaci di decisione attraverso una modalità prevista e regolata dalle fonti parlamentari, anziché attraverso l'abuso di altri mezzi, come oggi accade.

Tutto questo, lo ripeto, esige un contesto politico di collaborazione tra maggioranza e opposizioni per la definizione delle regole del gioco, che al momento sembra lontanissimo. Ed esige, soprattutto, il superamento di quel devastante sentimento anti-rappresentativo e antiparlamentare che funesta ormai da anni la nostra vita pubblica, e che sta per trovare compimento nel referendum costituzionale del prossimo settembre sulla drastica riduzione del numero dei deputati e dei senatori. Una riforma «senza alcuna visione di sistema»¹⁵, che, se non accompagnata da un nuovo sistema elettorale capace di compensare il sacrificio imposto alla rappresentanza, rischia di abbattersi come un macigno sulle nostre istituzioni.

¹¹ Intervento del Presidente della Repubblica Sergio Mattarella in occasione della cerimonia commemorativa del quarantesimo anniversario dell'uccisione di Nicola Giacumbi, Girolamo Minervini, Guido Galli, Mario Amato e Gaetano Costa e del trentennale dell'omicidio di Rosario Livatino, Palazzo del Quirinale, 18 giugno 2020, in www.quirinale.it.

¹² R. Bin, *Una Costituzione applicata ma non attuata*, in G. Brunelli, G. Cazzetta (a cura di), *Dalla Costituzione "inattuata" alla Costituzione "inattuale"? Potere costituente e riforme costituzionali nell'Italia repubblicana*, Milano, Giuffrè, 2013, 332.

¹³ Su questi e altri possibili interventi rinvio a G. Brunelli, *Lo "spazio" dei regolamenti parlamentari nelle riforme istituzionali*, in *Osservatorio sulle fonti*, n. 2/2017, spec. 6 ss.

¹⁴ In questo senso vedi L. Violante, *Il Parlamento depotenziato*, *La Repubblica*, 28 giugno 2020.

¹⁵ C. Mirabelli, *Il Parlamento non diventi un costo da abbattere*, *Il Messaggero*, 29 giugno 2020.



PROPOSTE PER L'INTRODUZIONE DI UN REGIME CBI (CITIZENSHIP BY INVESTMENT) IN ITALIA

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Il perdurare della pandemia e la costante necessità di reperire risorse finanziarie impone scelte di fiscalità straordinaria. La presente proposta è finalizzata a suggerire l'introduzione di un meccanismo di citizenship by investment: vale a dire un percorso attraverso il quale possa essere possibile concedere cittadinanza italiana a soggetti stranieri ad elevata redditività (o patrimonializzazione) che si impegnino a una presenza economica qualificata sul territorio della penisola, e a prescindere dalla loro effettiva presenza fisica. La proposta ha cura di esaminare le criticità già sottolineate da parte della Commissione europea nei confronti di regimi analoghi già in vigore in altri paesi dell'UE suggerendo correttivi tali da rendere il progetto sostenibile e compatibile con il diritto eurounitario.

SOMMARIO: 1. Lo “stato dell’arte” dell’economia italiana ai tempi de Coronavirus – 2. La proposta – 3. L’attuale disciplina sull’acquisto della cittadinanza – 4. Il quadro di riferimento – 5. Le criticità evidenziate dall’Unione europea – 6. I possibili rimedi in chiave “de iure condendo” – 7. Considerazioni conclusive.

1. Lo “stato dell’arte” dell’economia italiana ai tempi de Coronavirus. La recente approvazione da parte del Consiglio dei Ministri del quarto decreto cd. “ristori”¹⁶ e del contestuale scostamento bilancio con il consenso del Parlamento¹⁷ hanno portato all’attenzione la necessità di prospettare nuove modalità di reperimento di risorse finanziarie, in grado di far fronte ai costi della pandemia. D’altro canto, le misure prospettate in ambito europeo sino ad oggi sono tutte orientate (comprensibilmente) al lato spesa pubblica, e non a quello delle entrate¹⁸.

Dal punto di vista dei *policy makers*, le pur interessanti proposte avanzate in merito al rafforzamento delle risorse proprie dell’Unione e a una cd. “euroimposta” sono ancora in fase di dibattito, e una loro concreta attuazione pare molto improbabile: ciò vale sia per le diverse forme di *Web tax* che di *Financial transaction tax*, delle quali pure si era prospettata l’attribuzione all’Unione.

L’Italia ha visto il debito pubblico aumentare progressivamente, con un deperimento del medesimo sia dal punto di vista quantitativo che qualitativo. Nel primo senso va osservato come

¹⁶ L’approvazione è avvenuta in data 29 novembre 2020.

¹⁷ 26 novembre 2020.

¹⁸ Una sintesi degli interventi che si sono succeduti sul lato della spesa è rinvenibile in M. GREGGI, *Un progetto Manhattan per la fiscalità post Covid*, in *Diritto virale*, 2020, I, p. 61.

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i rilievi più recenti¹⁹ portino l'ammontare del medesimo a lambire circa il 160% del prodotto interno lordo (dato certamente non mitigato, nella sua gravità, dalla contestuale caduta anche di questo secondo indicatore). Dal punto di vista qualitativo il deperimento si evidenzia nella misura in cui è sempre più importante il ruolo giocato dalla Banca Centrale europea (sia pure indiretto) nelle aste pubbliche dei titoli di stato nell'ottica di un contenimento della progressiva disgregazione della finanza pubblica. Insomma l'Italia vede aumentare il suo debito pubblico, e lo vede aumentare solo grazie a un ruolo attivo che l'Istituzione di Francoforte ha giocato e continua a giocare sui mercati, al limite del suo mandato²⁰.

Ne consegue che, se non nel breve periodo, almeno in quello medio lungo (non appena gli esiti infausti della pandemia cominceranno auspicabilmente a scemare) tornerà ad insistere sugli stati membri dell'area Euro, e sull'Italia in particolare, la necessità di far convergere i conti pubblici verso le soglie sulle quali si era convenuto all'atto dell'introduzione della moneta comune. Allo stato, un traguardo al di là di ogni più rosea prospettiva per il sistema-paese Italia.

Si tratta quindi di ripensare sin da ora il quadro complessivo dell'imposizione fiscale italiana, attraverso un intervento di ampio respiro che possa garantire Entrate pubbliche crescenti salvaguardando al contempo la spiccata crescita del sistema paese.

Fra le nuove misure di fiscalità straordinaria, in quanto dettata ancora dalla crisi e dalla necessità di un rientro da quest'ultima, un particolare interesse dovrebbe essere dedicato a quelle che possono coniugare un incremento del prelievo significativo per l'erario con una tendenziale piena sostenibilità per il tessuto economico interno. Non risponde a queste esigenze la prospettata introduzione di un prelievo cd. "patrimoniale" a regime diverso di quello attuale²¹. Per quanto certamente in grado di garantire gettito, finirebbe per avere un effetto di spiazzamento sulle scelte di investimento (e di consumo) dei privati cittadini, contribuendo a deprimere ulteriormente la produzione interna della ricchezza.

Questa condizione risulta essere rispettata soltanto qualora a versare nuove imposte siano soggetti non già appartenenti al territorio dello Stato e sottoposti la sua potestà impositiva e invece scelgono di assoggettarsi in ragione di interesse e di opportunità²².

Da questo punto di vista, e nonostante le polemiche emerse in una fase iniziale della sua attuazione, la nuova disciplina dedicata alle persone ad alto reddito che decidono di trasferire la propria residenza in Italia è stata caratterizzata da un indiscusso successo dal punto di vista quantitativo come peraltro risulta confermato dalla stessa Agenzia delle Entrate²³.

Quella misura è stata particolarmente interessante dal punto di vista economico perché ha coniugato esigenze di crescita con un sia pur lieve incremento del prelievo statale. Nonostante la natura capitaria, infatti, il prelievo ha fatto sì che numerosi soggetti ad alto reddito trasferissero la propria residenza in Italia e venissero a vivere quindi nel nostro paese generando economie di scala e un effetto moltiplicatore dell'investimento da questi ultimi realizzato.

¹⁹ F. DAVERI, La sostenibilità del debito italiano prima e dopo il 2020, su lavoce.info. La Nota di aggiornamento al Documento di economia e finanza (NADEF) 2020 cifra il rapporto a un tendenziale 158%.

²⁰ Il *Pandemic Emergency Purchase Programme*, PEPP, della banca centrale, approvato il 18 marzo 2020 Ha fissato in 750 miliardi il massimale di titoli acquistabili in ragione del deterioramento degli indicatori di finanza pubblica europei. L'ammontare è poi stato aumentato di altri 600 miliardi il 4 giugno 2020, come [rileva](#) la Banca centrale europea.

²¹ Emendamento Ac 2790-bis presentato alla legge di bilancio per il 2021 in corso di approvazione alla data odierna.

²² Oppure non si tratti di una imposta cd. "universale" allo stato non prospettabile (T. PIKETTY, *Il Capitale nel XXI Secolo*, Milano, 2014, p. 813).

²³ Nel solo 2019 circa 421 soggetti si sono avvalsi del regime di cui all'art. 24 *bis* del testo unico n.917/86, secondo quanto riportato dalla stampa divulgativa (la Repubblica) il 127 agosto 2020, che richiama dati dell'Agenzia delle Entrate.

D'altro canto la scarsità del gettito garantito ha avuto riguardo ai redditi esteri e non a quelli italiani, ed è comunque più accettabile rispetto alla situazione precedente. Senza questa misura è ragionevole ritenere che quelle persone (ora, neo contribuenti) non si sarebbero mai trasferite in Italia.

2. La proposta. L'Italia può introdurre norme che concedono la cittadinanza nel nostro Paese al rispetto di determinate condizioni di natura eminentemente, ancorché non esclusivamente, finanziaria e tributaria.

In questo senso si potrebbe attribuire cittadinanza italiana dopo pochi anni (1 o 2) a quel soggetto che investa nel nostro paese in titoli di stato a lunga scadenza un ammontare significativo di risorse finanziarie nell'ordine di 5 milioni di euro, impegnandosi a mantenere l'investimento per un periodo non inferiore a 20 anni, e unitamente in quello stesso periodo di tempo sia assoggettato una forma di prelievo di natura capitaria analoga quella attualmente vigente nell'ambito dell'articolo 24 *bis* del Testo unico n. 917 del 86 indipendentemente dalla sua effettiva residenza.

Unitamente a queste condizioni, che potrebbero essere definite di cornice, dovranno poi esserne rispettate altre essenzialmente vocate a garantire la tutela della sicurezza nazionale ed europea, avuto riguardo all'identità del soggetto che intende avvalersi di questo regime: in particolare per quanto riguarda l'ordine pubblico il contrasto al terrorismo internazionale e la lotta al riciclaggio. Il ruolo attivo delle molteplici (e dinamiche) associazioni degli italiani all'estero potrebbe giocare un ruolo determinante nell'avvicinamento del soggetto non residente al nostro paese, senza la necessità di trasferirsi effettivamente in Italia.

L'effettiva residenza di questo soggetto nel territorio dello Stato italiano nel corso del ventennio potrebbe poi essere modulata in modo tale da garantire alla persona interessata il conseguimento della cittadinanza nonostante una permanenza nel territorio della penisola che, ancorché effettiva, potrà essere ridotta a periodi di tempo significativi ma non determinanti per la persona che intende avvalersene.

La proposta, così formulata, dovrebbe essere di sicuro interesse per soggetti a forte redditività provenienti magari da regioni lontane dall'Unione europea poiché attraverso l'acquisto della cittadinanza italiana questi riuscirebbero anche ad acquisire la cittadinanza europea con tutto ciò che ne consegue.

Dal punto di vista italiano una norma di questo tipo riuscirebbe ad intercettare due esigenze particolarmente sentite nel momento attuale: da un lato quella di incrementare il gettito fiscale su base sostanzialmente spontanea, coinvolgendo soggetti che altrimenti sarebbero rimasti estranei rispetto a questa dinamica del prelievo. Dall'altro lato il vincolo al finanziamento dello Stato mediante acquisto di titoli di debito dovrebbe garantire un radicamento affettivo e prolungato, quantomeno di natura finanziaria, garantendo quindi un nesso fra "nuovo cittadino" e territorio italiano.

3. L'attuale disciplina sull'acquisto della cittadinanza. La cittadinanza potrebbe essere conseguita anche in un periodo di tempo più ravvicinato, ferma restando la necessità di garantire per tutta la durata dell'operazione l'impegno sui titoli di debito pubblico italiano.

Il tema della cittadinanza, e del suo acquisto in Italia, è da lungo tempo dibattuto nelle aule parlamentari con esiti ancora del tutto incerti. Com'è noto, allo stato attuale la Repubblica Italiana prevede diverse modalità attraverso le quali la cittadinanza possa essere acquisita, molte di queste fanno riferimento allo status dei genitori del soggetto che aspira a essere cittadino italiano: si tratta del cosiddetto *ius sanguinis* in base al quale è italiano il figlio di italiani. Per converso l'Italia non

ha ancora accettato, o quantomeno non intende accettare, un'applicazione estensiva dello *ius soli* come invece accade in altri paesi dell'area OCSE. Senza volersi addentrare all'interno di questo dibattito è però utile ricordare in questo caso che la legge n. 91 del 1992, all'art. 9 disciplina ancora oggi quelle che sono le modalità più rilevanti attraverso le quali la cittadinanza possa essere acquisita.

Fra queste, quella che qui risulta essere di maggiore interesse è l'ipotesi prevista alla lettera *f*) del co. 1 del medesimo articolo laddove dispone che la cittadinanza italiana possa essere attribuita allo straniero che risiede legalmente da almeno dieci anni nel territorio della Repubblica. Oltre a questa condizione attuale ne vanno rispettate altre, come ad esempio la conoscenza della lingua italiana in ragione delle disposizioni introdotte con il d.l. n 113 del 4 ottobre 2018.

Al di là degli aspetti specifici attinenti all'ordine pubblico, che qui non interessano in quanto dovrebbero essere mantenuti anche nella proposta che si viene a formulare, va osservato come già in questo momento storico la cittadinanza possa diventare una variabile dipendente a seconda della presenza nel territorio dello stato da parte dell'individuo aspirante cittadino.

È già riconosciuto quindi, all'interno del nostro sistema, il principio secondo il quale la cittadinanza possa essere attribuita a chi permane in una situazione fattuale di rapporto qualificato con il territorio dello Stato. È chiaro che la presenza a cui fa riferimento la norma del 1992 è di natura sostanziale: quasi derivante da un contatto sociale continuo e costante con il tessuto italiano nel quale l'immigrato si trova ad operare, e naturalmente con la popolazione residente in Italia.

Sappiamo però oggi che nell'ambito del diritto tributario questa correlazione, questo nesso di collegamento fra territorio ed individuo, può essere declinato anche in modalità diverse, e del tutto innovative. In altre parole la presenza di un soggetto all'interno del territorio dello Stato oggi può essere desunta dal punto di vista fiscale anche della presenza sul medesimo di interessi economici di rapporti sociali ed i contatti che prescindono dalla rigorosa presenza fisica dell'individuo.

A maggior ragione oggi in una situazione di pandemia globale che limita gli spostamenti delle persone e che di per sé minimizza qualsiasi forma di contatto il tema dell'appartenenza inteso in modo tradizionale (cioè fra individuo nella sua fisicità e territorio nonché fra individuo e comunità) deve essere radicalmente ripensato.

Questa proposta, avanzata con finalità tributarie e di gettito per l'erario, altro non finisce che per essere se non il tentativo di anticipare una tendenza in corso dal punto di vista sociologico (il tema delle nuove appartenenze, la progressiva rimozione dei confini) in una logica di promozione delle esigenze finanziarie statali.

In estrema sintesi, e con un ragionevole grado di approssimazione, si può così ritenere che se da un lato già oggi la Repubblica Italiana concede la cittadinanza a chi permane legalmente per 10 anni sul territorio dello Stato, allora tale cittadinanza può essere attribuita anche a chi, per un periodo di tempo parimenti lungo, se non maggiore, mantiene sullo stato e nello stato il centro di significativi rapporti economici finanziari: particolarmente importanti nell'interesse reciproco poiché concorre con le proprie risorse economiche all'interesse erariale. Investendo queste ultime, infatti, garantisce allo stato la possibilità di assolvere alle sue funzioni. Questa conclusione viene ulteriormente rafforzata dalla situazione particolare della finanza pubblica italiana che viene classificata secondo le Agenzie di *Rating* più autorevoli come appartenente a una fascia di poco superiore ai paesi di fatto in insolvenza²⁴. I titoli di Stato italiano dal punto di vista formale,

²⁴ Ad esempio *Moody's* ha confermato il 26 novembre scorso il rating Baa3 per l'Italia, con *outlook* stabile (<https://www.moodys.com/credit-ratings/Italy-Government-of-credit-rating-423690?>).

tralasciando per un momento il salvifico intervento della Banca Centrale Europea, sono di poco considerati i migliori rispetto ai titoli cosiddetti spazzatura.

Ecco che allora se un soggetto straniero nonostante una cornice di riferimento di finanza pubblica degradata e nel rischio di un possibile *default* italiano, se non addirittura di un'uscita involontaria dall'area dell'Euro è disponibile a investire nella rinascita del nostro paese un quantitativo particolarmente importante di risorse finanziarie si può concludere nel senso che la sua appartenenza allo stato (se non ancora al suo territorio) è in *re ipsa* se non addirittura maggiore rispetto ad altri soggetti che pure aspirano alla cittadinanza ma che per le più diverse ragioni, magari indipendenti dalla loro volontà, non riescono a contribuire in modo fattivo come nuovi cittadini

4. Il quadro di riferimento. Attualmente all'interno dell'Unione europea soltanto tre paesi vendono meccanismi che correlano l'attribuzione di cittadinanza ha forme di investimento particolare, o a regimi tributari speciali, su base volontaria. Questi paesi sono la Bulgaria, Cipro e Malta: nei confronti degli ultimi due, invero, da pochi giorni è stata avviata una procedura d'infrazione da parte della Commissione europea²⁵ in ragione delle modalità attraverso le quali la cittadinanza viene effettivamente assegnata, e soprattutto per la scarsità di controlli correlata alla procedura medesima.

Va subito osservato come anche l'Italia abbia già correlato, in passato, meccanismi di attribuzione di visto agevolati nei confronti di soggetti che trasferiscono la propria residenza nella penisola, nel quadro di regimi tributari di cd. "attrazione". È il caso già menzionato in premessa del regime fiscale riservato ai soggetti ad elevato reddito che si trasferiscono in Italia, e che intendono avvalersi della tassazione capitaria così come introdotta all'art. 24 *bis* del Testo unico 917/86²⁶.

La proposta che qui si formula, tuttavia, non si colloca esclusivamente nel solco dell'articolo 24 *bis*, anche se con essa può vivere, in alcune ipotesi, quasi in un rapporto di simbiosi se si pensa a un neo residente che intenda trasferire la propria residenza in Italia e accedere contemporaneamente al regime fiscale di agevolazione per i neo-residenti (che in questo caso sarebbero anche neo cittadini).

Mentre la norma vigente correla l'applicazione del regime fiscale agevolato all'assegnazione di visto, e conseguentemente la possibilità di risiedere nel territorio dello Stato, la proposta che qui formula invece auspica un radicamento maggiore tra il soggetto ad elevato reddito che si trasferisce nel nostro paese e l'ordinamento giuridico italiano.

Mentre il sistema attualmente vigente si caratterizza per una durata comunque limitata nel tempo ancorché di ampio respiro, quello che qui si propone deve caratterizzarsi per una durata tempo indeterminato, dato il rapporto fra cittadinanza e diritti della persona che informa l'ordinamento costituzionale del nostro Paese.

Tralasciando per ora gli aspetti correlati all'ordine pubblico e alla sicurezza, che verranno trattati successivamente, si può osservare come i tre regimi attualmente in vigore abbiano riscosso sicuramente l'interesse da parte di soggetti non residenti, e abbiano determinato un beneficio non trascurabile per le casse dei tre piccoli paesi coinvolti. Alcuni di questi regimi, soprattutto quello maltese, sono stati limitati tuttavia a poche centinaia di individui in ragione delle dimensioni modeste del paese di accoglienza, ma è intuibile l'effetto moltiplicatore determinato dalla cittadinanza che si potrebbe determinare nei confronti del soggetto interessato. Sarebbe, in altri

²⁵ La violazione è stata contestata alla luce degli articoli 4 (co. 3) e 20 del trattato sul funzionamento dell'Unione europea nei confronti di Malta e Cipro il 20 ottobre 2020 (si veda il comunicato della Commissione IP/20/1925).

²⁶ Introdotto dall'art. 1, co. 152 l. 232/16.

termini, proprio la cittadinanza a spingere quel radicamento sul territorio in ragione delle diverse (ulteriori) opportunità offerte. In questo caso, in sintesi, proprio la cittadinanza dovrebbe diventerà in chiave prospettica un catalizzatore dell'effettiva residenza.

Per quanto non sia qui di interesse un'analisi puntuale dei diversi regimi, può essere comunque utile verificare i requisiti previsti dalle legislazioni dei diversi paesi²⁷, anche nell'ottica di modulare la proposta italiana in una dimensione competitiva dal punto di vista finanziario e al contempo interessante per il nostro Paese. Infatti, ferma restando l'uguaglianza della cittadinanza europea, quella italiana rispetto alla maltese, alla bulgara e alla cipriota sarebbe comunque in grado di garantire utilità superiori come appunto quella di appartenere all'ordinamento giuridico italiano e di concorrere magari un futuro alle scelte più importanti per il nostro paese in un'ottica inclusiva e di accoglienza sulla quale al giorno d'oggi numerosi *stakeholders* insistono.

La Bulgaria²⁸ prevede diversi meccanismi di attribuzione della cittadinanza sulla scorta delle disposizioni dell'ordinamento interno, ma quello che suscita interesse qui appartiene alla procedura di cosiddetto *fast-tracking*. Esso impone all'aspirante cittadino bulgaro un investimento non inferiore a € 1.000.000 nel territorio del paese, ma non richiede ulteriori requisiti, come ad esempio la conoscenza dell'ordinamento e degli usi e dei costumi bulgari oltre che della lingua nazionale.

Cipro²⁹ invece, per conseguire cittadinanza, ha già fissato la soglia dell'investimento a € 2.000.000, ma la associa alla necessità di acquistare proprietà residenziali all'interno dell'isola per radicare anche dal punto di vista fattuale l'aspirante cittadino cipriota al territorio del paese.

Infine, Malta³⁰ impone il rispetto di diverse condizioni contemporaneamente: innanzitutto un contributo di € 650.000 al fondo di investimento nazionale, congiuntamente ad altri investimenti nella stessa Repubblica per € 150.000, nonché da ultimo l'acquisto di una proprietà immobiliare per le stesse finalità indicate nel caso cipriota.

Al di là dei parametri quantitativi e dell'ammontare dell'investimento, emerge come in nessuno dei tre paesi sia necessaria la residenza effettiva dell'aspirante cittadino, e che in molti casi, soprattutto in quello maltese, l'assolvimento degli adempimenti burocratici possa essere eseguito anche dall'estero o attraverso un proprio rappresentante nel territorio del paese. Solo recentemente, e in seguito a pressioni di natura politica da parte della Commissione europea, il governo maltese ha temperato il suo meccanismo di concessione della cittadinanza imponendo a soggetto interessato di comprovare la propria residenza in Malta, attraverso elementi documentali come ad esempio le carte d'imbarco degli aerei presi per arrivare sull'isola o la propria appartenenza a circoli centri sociali o altre comunità isolate³¹.

Nonostante questo apparente irrigidimento dei requisiti di natura sostanziale i regimi qui in analisi non sono scampati alla procedura di infrazione di cui si è fatto riferimento in precedenza per le criticità che li contraddistinguono³².

In questo senso va osservato che la concessione dei permessi di residenza a soggetti di paesi terzi sia come tali che come investitori all'interno di un singolo stato non è regolata dal diritto dell'Unione europea. Dal canto suo anche la concessione della cittadinanza di un paese non viene disciplinata dal diritto europeo per quanto, com'è noto, l'appartenenza a un paese

²⁷ Le informazioni di rilievo sono state acquisite dal *Report from the Commission to the European parliament, the Council, the European economic and social committee and the committee of regions* COM(2019) 12 *final* del 23 gennaio 2019. Nel prosieguo della presente scheda a questo documento si farà semplicemente riferimento come al "Rapporto".

²⁸ Rapporto, p. 12.

²⁹ Rapporto, p. 12.

³⁰ Rapporto, p. 11.

³¹ Rapporto, p. 6.

³² Si veda la nota 11.

dell'unione reca con sé l'appartenenza all'Unione stessa con tutti diritti e vantaggi che da ciò scaturiscono.

Proprio l'assenza di armonizzazione e della fragilità della base giuridica per un intervento da parte dell'Unione ha permesso a diversi paesi di adottare forme di cittadinanza condizionati a investimenti, o al versamento di imposte speciali o *una tantum*. Sul punto va osservato che la corrente procedura in infrazione si basa su due articoli del trattato come il 4 e il 22 (rispettivamente la "*sincere cooperation*" fra stati e la "*integrity of the status of EU citizenship*").

La procedura di infrazione attualmente coltivata da parte della Commissione europea si fonda dunque sul principio di proporzionalità e di ragionevolezza nell'esercizio delle prerogative sovrane di ogni singolo paese. Sostiene infatti la Commissione che se da un lato un paese dell'Unione è libero di modulare l'assegnazione della cittadinanza in base a principi, valori e tradizioni che fanno parte dell'ordinamento giuridico nazionale, dall'altro lato va comunque osservato come l'appartenenza all'Unione imponga di concedere la cittadinanza in base a condizioni che siano tutto sommato ragionevoli, e come tali sintomatiche di un'effettiva appartenenza della persona all'ordinamento di riferimento.

Qualora la cittadinanza venga attribuita non per effettiva, concreta e attuale appartenenza all'ordinamento giuridico³³, ma soltanto per motivi di natura finanziaria e fiscale ciò potrebbe andare a collidere con il diritto dell'Unione e appunto giustificare una procedura di infrazione: come appunto sta accadendo nel caso di specie in cui si lamenta una esternalità negativa, o se si preferisce una *drittwirkung* di questi modelli di cittadinanza sugli altri paesi non coinvolti ma pur sempre parte della casa comune europea.

Quello che però va altresì osservato è che a essere censurato dalla Commissione non è ogni forma di assegnazione della cittadinanza in base ad investimenti, ma soltanto quelle modalità concretamente attuate dai tre paesi in esame, che indubbiamente si contraddistinguono per particolari criticità e per una discrezionalità troppo elevata da parte degli organismi competenti.

La proposta che si avanza dunque è quella di immaginare schemi di attribuzione della cittadinanza in base investimenti che siano proporzionali, ragionevoli e in ultima analisi compatibili con il diritto dell'Unione europea. Ciò è possibile qualora si ponga mente alle censure che sono state specificamente sollevate dagli organismi europei nei casi in esame e si prospetti un regime italiano immune da tali vulnerabilità.

5. Le criticità evidenziate dall'Unione europea. Nei suoi *Report* più recenti la Commissione europea non si è dimostrata in linea di principio assolutamente contraria a quei sistemi che condizionano la concessione della cittadinanza a particolari forme di prelievo tributario, o di erogazione di risorse finanziarie da parte del soggetto interessato.

Certamente la Commissione ha confermato, sulla scorta di un'importante giurisprudenza della Corte Internazionale di Giustizia³⁴, che la concessione della cittadinanza dovrebbe essere garantita sulla base di una connessione effettiva e concreta fra l'individuo e lo stato in questione: concetto molto simile a quello che nel diritto tributario internazionale viene definito come del *Genuine nexus*. Evidente però che siffatta connessione possa essere apprezzata in modo diverso da ogni singolo stato: i principi divergenti dello *ius soli* e dello *ius sanguinis* ne sono conferma.

Più radicale è stata invece la risposta del Parlamento europeo e del Presidente della Commissione, che hanno rimarcato l'idea secondo la quale la cittadinanza (europea) non è "in

³³ Corte di giustizia UE, Sentenza *Rottmann* del 2 marzo 2010, C-135/08, EU:C:2010:104, § 51

³⁴ Corte internazionale di giustizia, 6 aprile 1955, *Nottebohm*, in *ICJ Reports* 1955, p. 4

vendita³⁵, e che il regime della sua concessione (o di residenza e mediante investimento - RBI) violano spirito del Trattato e i principi fondamentali della casa comune europea.

Quest'ultima è tuttavia una posizione che, per quanto autorevole, assume i connotati di una petizione di principio politica, e quindi in questo contesto di minor rilievo rispetto alle censure che sul piano giuridico sono state avanzate dalla Commissione nell'ambito delle sue procedure di infrazione. Per quanto il testo della lettera inviata ai due Governi cui si fatto riferimento in precedenza non sia ancora stata resa pubblica, è possibile desumere i profili di criticità del regime di cittadinanza attraverso investimento dal *report* della Commissione citato in precedenza (e dai successivi comunicati stampa) che nella prospettiva italiana è particolarmente utile, nella misura in cui individua quelle clausole che sono ritenute, a torto o a ragione, dalla Commissione come incompatibili con il diritto dell'Unione europea, i disinnescando le quali con ogni probabilità è possibile accedere al suddetto regime nella piena compatibilità del diritto UE.

Il primo pericolo avvertito dalla Commissione europea è quello correlato alla straordinaria discrezionalità³⁶ degli stati membri hanno nell'ambito delle procedure sottoposte a scrutinio. Essi possono concedere la cittadinanza a fronte di situazioni, fatti o rapporti che non sono codificati necessariamente *ex ante*, ma che sono demandati a valutazione delle autorità politiche sulla base del caso concreto, Si tratta di un criterio che per quanto radicato in numerosi ordinamenti, come quello italiano, può in linea di principio collidere con le esigenze di sicurezza europee qualora i soggetti interessati dalla attribuzione della cittadinanza non siano opportunamente verificati dalle forze di polizia.

La seconda criticità evidenziata attiene alla mancanza di un adeguato scambio di informazioni tra i diversi paesi dell'Unione Europea³⁷ nel momento in cui si apprestano a concedere permessi soggiorno o cittadinanza: questa mancanza di comunicazione può diventare ingiustamente vantaggiosa per determinati soggetti potenzialmente interessati perché potrebbero attivare in parallelo diverse richieste di cittadinanza sulla base delle distinte legislazioni nazionali e realizzare una sorta di *citizenship shopping* alla luce del minor rigore delle procedure di controllo in particolar modo per quanto concerne l'origine dei capitali posseduti.

Si tratterebbe in realtà di una criticità abbastanza ovviabile nella misura in cui lo stato richiesto notificchi subito a tutti gli altri che la procedura è in corso³⁸, e permetta dunque la verifica, incrociata e contestuale, di tutti i requisiti di sicurezza sia attraverso i modelli previsti dalla convenzione di Schengen che da quelli basati sugli altri accordi fra i diversi paesi dell'Unione. Particolarmente importanti poi nel caso di concessione del visto di soggiorno sono i controlli *ex post* in base ai quali dovrebbe diventare fondamentale per il paese richiesto, il verificare la permanenza dei requisiti che hanno dato origine alla concessione del permesso stesso.

Il terzo e più significativo profilo di criticità attiene al controllo dei capitali impiegati per l'acquisto della cittadinanza³⁹ e alle ovvie necessità di contrasto ai fenomeni di riciclaggio all'interno dell'Unione europea e fra l'Unione europea e i Paesi terzi. È evidente che anche in questo caso attività di controllo di particolare rigore dovrebbero essere esigibili da parte delle autorità interessate: con un tratto originale tuttavia. In questo caso la normativa antiriciclaggio

³⁵ Letterale in questo senso la Presidente della Commissione Von Der Leyen nel suo primo [discorso](#) sullo stato dell'Unione (16 settembre 2020, reperibile sul sito) nel quale ha espressamente affermato che: "Breaches of the rule of law cannot be tolerated. I will continue to defend it and the integrity of our European institutions. Be it about the primacy of European law, the freedom of the press, the independence of the judiciary or *the sale of golden passports*. European values are not for sale" (corsivo aggiunto dall'autore).

³⁶ Rapporto, p. 12.

³⁷ Rapporto, p. 13 e p. 21.

³⁸ Rapporto, p. 17.

³⁹ Rapporto, p. 16.

non dovrebbe trovare applicazione⁴⁰, come di consueto a soggetti intermediari finanziari, ma anche ad enti pubblici demandati della concessione alla cittadinanza, e che ricevono i fondi da parte del soggetto interessato. Allo stato attuale la normativa antiriciclaggio non si applica questi ultimi, e quindi dovrebbero essere necessari interventi di adattamento per ovviare a questa lacuna. Si tratta tutto sommato di una necessità di coordinamento che la stessa Commissione europea ha fatto propria, con parole analoghe a queste, nel suo rapporto.

La quarta criticità rilevata dalla Commissione Europea concerne il rischio di elusione di norme imperative europee, e di abuso del diritto di cittadinanza. In questo contesto, è stato osservato, a fruire della nuova cittadinanza concessa in base all'investimento potrebbero essere persone fisiche interessate in realtà esercitare all'interno dell'Unione europea attività e funzioni riservate esclusivamente ai cittadini per questioni di tutela dell'ordine pubblico o per altre ragioni sulla base del caso concreto. Da ultimo, non può essere trascurato il ruolo politico che i neo cittadini potrebbero assumere nello stato d'accoglienza.

Infine, e solo in ultima istanza, la Commissione europea menziona anche i profili fiscali e la loro correlazione con la cittadinanza concessa attraverso l'investimento. In questa prospettiva l'approccio della Commissione è in realtà bivalente, e non così ostile come si potrebbe pensare a una prima lettura. Va infatti osservato come la medesima Commissione neghi il fatto che la concessione della cittadinanza attraverso investimento costituisca necessariamente prodromo a forme di elusione fiscale internazionale o di pianificazione tributaria aggressiva⁴¹. Confessa altresì che nell'analisi portata avanti sino ad ora dagli organi eurounitari gli aspetti di natura fiscale siano stati sostanzialmente trascurati⁴². Di per certo la Commissione auspica una forma di notifica e di condivisione delle informazioni tra diversi paesi, analoga a quella già in vigore e radicata sul *Common reporting standard* che riguarda in realtà sino ad ora le imprese e le società commerciali.

Il sistema di *Common reporting standard* potrebbe essere utile anche per le persone fisiche che acquisiscono la cittadinanza, onde per mettere agli altri paesi di monitorizzare con maggiore attenzione i flussi dei nuovi cittadini o di nuovi residenti i paesi di origine e infine la specifica attività condotta all'interno del vecchio continente⁴³.

La Commissione auspica, qualora i modelli di cittadinanza attraverso investimento trovino conferma all'interno di più paesi dell'Unione europea, che di queste legislazioni si interessi il gruppo di lavoro dedicato il Codice di condotta sulla concorrenza fiscale dannosa e la tassazione delle imprese⁴⁴. Come è noto, il codice di condotta trova tradizionale applicazione però soltanto per le attività economiche, ed è vocato a scongiurare comportamenti singoli paesi che adottino misure fiscali di attrazione, o distorsivi del mercato, i quali pur non andando a confliggere in maniera immediata e diretta con il Trattato o con la legislazione secondaria dell'Unione (in questo caso basterebbe la tradizionale procedura di infrazione attivata dalla Commissione) tradiscono i principi e i valori sul quali l'Unione europea e la libera concorrenza si fondano: sul punto com'noto da letteratura e ampia.

I protocolli di concessione della cittadinanza potrebbero ben essere disciplinati, e soprattutto monitorizzati, da parte di un soggetto analogo al Gruppo di lavoro (se non addirittura dallo stesso) individuando nel *soft law* regole che razionalizzino la concessione della residenza mediante investimento, ferma restando la validità di questo istituto in termini generali.

⁴⁰ Oltre ad essa, naturalmente, il sistema delle cd. direttive "DAC" ove applicabili.

⁴¹ Rapporto, p. 16 e in particolare il § 4.1.4.

⁴² Rapporto, p. 16 testualmente "The study did not look at the tax aspects of such schemes".

⁴³ Rapporto, p. 14.

⁴⁴ Rapporto, p. 18.

Il punto tuttavia che qui preme sottolineare con particolare interesse è quello secondo il quale la Commissione europea nell'ambito dei suoi rapporti non manifesta mai in alcun caso una chiusura in linea di principio ai sistemi di cittadinanza attraverso l'investimento o di tassazione agevolata, in una logica di attrazione di nuovi cittadini.

Questi meccanismi dunque non sono ontologicamente incompatibili con il diritto eurounitario, ma lo diventano soltanto qualora lo stato nel caso di specie li utilizzi in maniera distorta o senza delle garanzie minimali che permetteranno la contestuale tutela di altri principi fondamentali dell'Unione europea: primo fra tutti quello della sicurezza pubblica degli altri paesi.

Una via italiana alla cittadinanza attraverso investimento, o alla cittadinanza attraverso il regime fiscale privilegiato, è dunque possibile se è attuata nel rispetto di principi di proporzionalità e di ragionevolezza, è in modo tale da non manifestare quelle cinque criticità messe in luce dalla Commissione europea nel suo rapporto e dal Parlamento nella sua mozione.

6- I possibili rimedi in chiave "de iure condendo". Il modello italiano di cittadinanza ottenuta attraverso gli investimenti dovrebbe muovere da tre principi cardine, la cui concreta implementazione dovrebbe essere tale da disinnescare le possibili criticità con il diritto dell'Unione europea si tratta di: (I) coerenza, (II) trasparenza e (III) appartenenza.

(I) Il criterio di trasparenza dovrebbe imporre di concedere la cittadinanza secondo il nuovo modello soltanto a persone fisiche di cui sia nota la ricchezza, le sue origini e comunque che si impegnano a una *disclosure* piena e incondizionata al momento di attivazione della procedura, nonché per i cinque anni precedenti. L'Italia dal canto suo si dovrebbe impegnare a notificare quantomeno unilateralmente agli altri Stati membri dell'Unione, sia in quanto tali sia come membri dei meccanismi di sicurezza interna europei, i dati più rilevanti delle persone che intendono accedere alla nuova cittadinanza, nonché da ultimo a tenere conto delle osservazioni degli altri stati in merito alle possibili conseguenze in chiave di sicurezza interna, di lotta al terrorismo e al riciclaggio dei capitali. Dovrebbe essere altresì previsto un meccanismo di concessione anticipato da una sorta di contraddittorio in cui vengano compiutamente analizzate le diverse posizioni e le diverse voci. Quello che infatti è caduto sotto la scure della Commissione, se si pone mente ai regimi attualmente in vigore, non è tanto la loro attuazione, quanto piuttosto la straordinaria disinvoltura attraverso le quali i paesi sopra menzionati, Cipro e Malta, hanno proceduto al concedere cittadinanza anche a soggetti apparentemente di dubbia compatibilità con le esigenze di tutela dell'ordine pubblico e della sicurezza. Da questo punto di vista un paese come l'Italia, che intende attivare questo meccanismo, ma nel rispetto della sicurezza dei *partner* europei e nella piena coerenza con i principi di lotta al riciclaggio, dovrebbe semplicemente impegnare le proprie amministrazioni pubbliche interne agli obblighi di *disclosure* che già insistono sugli intermediari finanziari che operano nei settori di competenza in merito al contrasto del riciclaggio.

(II) Il criterio di coerenza imporrebbe di considerare questo nuovo regime non già come un biglietto di ingresso nell'Unione europea, un pagamento oppure un impegno finanziario da sostenere *una tantum* per poter acquisire la cittadinanza ma dovrebbe essere accompagnato dall'applicazione di un analogo regime fiscale che sega, per così dire, il nuovo cittadino nei primi anni di appartenenza al nuovo paese. Ad esempio si potrebbe prevedere l'applicazione di un regime di tassazione forfettaria, indipendentemente dalla residenza del soggetto in questione in un altro stato in base alla convenzione contro doppie imposizioni vigente. Insomma il neo cittadino, anche se effettivamente residente all'estero dovrebbe versare le imposte in Italia in maniera forfettaria o comunque agevolata senza l'applicazione della convenzione contro doppie imposizioni. Questo naturalmente determinerebbe un aggravio di prelievo nei confronti del

medesimo, ma restituirebbe coerenza alla sua scelta: quella di appartenere, se non altro dal punto di vista economico finanziario (e tributario) al nostro paese.

(III) Da ultimo il tema dell'appartenenza dovrebbe essere declinato se non altro nella sua componente economica. In questo senso si misura forse il salto culturale che questa proposta intende avanzare. Per molti decenni, se non forse per secoli, l'appartenenza di un soggetto a un ordinamento è stata misurata esclusivamente su criteri fattuali di presenza materiale, fisica, sul territorio di un paese (se non sullo *ius sanguinis*). Già da ora però in molti casi alla presenza fisica di una persona nel territorio di diversi paesi dell'Unione non si associa un sentimento di appartenenza, o un *idem sentire* condiviso con il resto della popolazione: i recenti e notori fatti di cronaca ne sono esempio. Lo scenario attuale costituisce il precipitato di scelte politiche dei diversi paesi, e fra di essi anche dell'Italia, che in questo contesto ovviamente non si intende minimamente contestare, ma semplicemente portare alle logiche conseguenze, accettando come cittadini persone che non hanno compiuto un percorso plurale e culturale tale da renderli effettivamente italiani (relativamente recente è ad esempio l'obbligo di una conoscenza basilare della lingua italiana), ma che comunque hanno radicato nel territorio del nostro paese interessi, determinanti impegni economici e una parte significativa del proprio matrimonio, accettando conseguentemente il rischio che le difficoltà finanziarie del nostro paese diventino in ultima analisi anche le loro.

È piuttosto evidente che così ragionando il concetto di cittadinanza si trovi svalutato, secondo i criteri tradizionali, ma è anche altrettanto vero che non si tratta di uno scostamento significativo rispetto a quanto non lo sia già attualmente: in più, però, questo regime potrebbe concorrere a far trovare un sollievo alle esigenze finanziarie nazionali, senza ulteriori aggravati per i soggetti già localizzati nel territorio dello Stato e per i cittadini italiani.

7 -. Considerazioni conclusive. La proposta qui avanzata prende le mosse da una situazione fattuale nota a tutti: lo stato di crisi profonda della finanza pubblica italiana, e le difficoltà nel reperimento di risorse economiche e finanziarie per far fronte alle esigenze dello stato sociale nella battaglia contro la pandemia, che non siano l'accensione di un nuovo e ulteriore debito pubblico fintantoché la Banca centrale europea continuerà a garantire mercato ai titoli di stato europei.

Si tratta di una proposta che prende le mosse dalla legislazione già vigente in tema di nuovi residenti al elevato reddito (*High net worth individuals*) e le conseguenti agevolazioni per il conseguimento del visto d'ingresso nel nostro paese correlati a quella norma tributaria, e che la porta alle sue estreme conseguenze.

Dal punto di vista politico si inserisce tra quegli orientamenti che intendono portare al centro dell'agenda italiana il tema della cittadinanza, ampliando i presupposti di concessione e agevolando in questo modo l'integrazione dei nuovi cittadini nel territorio del nostro paese, venendo al contempo incontro alle esigenze dell'immigrazione e alla mobilità delle popolazioni: anche questi noti a tutti.

Ciò che è diverso, nella proposta qui avanzata è l'identificazione dei potenziali beneficiari del nuovo regime di appartenenza allo stato, che si intendono individuare nelle persone a reddito elevato ed elevatissimo interessate a conseguire la cittadinanza italiana, e di conseguenza anche quella europea.

In questo modo si coniugherebbero al contempo la tutela dei nuovi migranti (o aspiranti tali) ed esigenze finanziarie dello Stato.

Chi avanza questa proposta è consapevole dello scetticismo e della sfiducia con i quali la Commissione europea guarda questi modelli di concessione della cittadinanza, e del fatto che

attualmente è pendente una procedura di infrazione nei confronti di due paesi dell'Unione europea⁴⁵ che stanno già facendo uso di una soluzione di questo tipo. È tuttavia altrettanto sicuro del fatto che le criticità messe in luce dalla Commissione europea possono essere scongiurate attraverso un'implementazione di un regime compatibile con il diritto euro unitario che eviti gli eccessi stigmatizzati da Bruxelles e che renda dunque il modello di "Cittadinanza attraverso investimenti" sostenibile, sicuro e nell'interesse fiscale dello Stato. Si tratta dunque di uno strumento da considerare per garantire ulteriori risorse finanziarie nella gravissima situazione economica in cui versò il paese in considerazione dell'impatto pandemico.

⁴⁵ Si veda la nota 11.



REFLECTION ON CHINESE FISCAL (TAX) COUNTERMEASURES AGAINST EPIDEMIC OF COVID-19

di Yan He*

Abstract: COVID-19 epidemic has been a challenge for the world. China based on the experience in SARS, responded rapidly, and issued a broad range of fiscal countermeasures to achieve multiple aims. The fiscal countermeasures can be understood better under Chinese political, economic and cultural background, especially a centralized and high mobilization ability system. The measures mainly achieved the primary goals, but there is still room to improve, which includes the improvement of the current fiscal laws. For the challenges in the near future, China will use more tax cut and saving government expenditure to overcome.

Introduction:

At the end of 2019, a then unknown new pneumonia/virus was detected in Wuhan, which developed into a pandemic in an astonishing short of time. The whole world suffered and changed. The exact economic and social influence of the pandemic will be a research project which can only be carried out maybe after decades.

Based on the experience of countering SARS, China responded to the COVID-19 rapidly. Even before the lockdown of Wuhan on January 24th, fiscal countermeasures were taken. With the development of the epidemic of COVID-19, more countermeasures were adopted to achieve different aims. At early stage of the epidemic, fiscal measures aimed at providing medical treatment and preventing the spread of the virus. Right followed, was to encourage the supply of anti-epidemic related goods and materials, to encourage donation, and to relieve the most suffered businesses. Before the pandemic was declared by WHO, most policies aimed at restoring economy were released.

In China, COVID-19 is more or less under control. There were small scale out-breaks firstly in June in Beijing, originated from the Xinfadi wholesale market, then from the end of 2020 among a number of cities. The country also passed the challenge of Spring Festival holiday. The economy is recovering, normal life almost back, with high cost and sacrifice of international mobility. Statistics from National Bureau of Statistics of China show that, China's Gross Domestic Product(GDP) in 2020 reached RMB 101,598.6 billion yuan, and on a comparable basis, an

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Acknowledgement: The research has been done in the framework of the academic agreement between University of Ferrara and the Capital University of Economics and Business. Sincere thanks to professor Marco Greggi in University of Ferrara for the coordination work, and the inspiration on the direction of the research. Thanks to professor Weng Wuyao in China University of political Science and Law for the reflection thoughts upon preliminary reading of the paper. All mistakes on author's responsibility.

increase of 2.3% over the prior year. Although there was a 6.8% of GDP drop in the first season, the second season realised a growth of 3.2%, followed by 4.9%, 6.5% increase in the next two seasons.⁴⁶

Why does China contain the virus so effectively and rapidly? To which degree do the fiscal countermeasures contributed the battle against the virus and the recovery of the economy? With the accessibility of vaccines in more and more countries, restoring of the economy and social order is paralleled with tackling the virus. Although it is too early to do an overall assessment of fiscal/tax measures, it is necessary to do some review and reflection, which may help to make is clearer as to what can be done next.

Fiscal measures in COVID-19 or other healthy catastrophes have been studied by Chinese legal community. As to the fiscal law issues brought or inspired firstly by SARS and most recently COVID-19, Chinese academic research covered a comparatively narrow range of topics. The main focus is on the fiscal relationship in dealing with public emergencies (included public health emergencies) between central and local governments, especially on how to legalize the allocation of power and duties along with the expenditure responsibility.⁴⁷ Chinese literature on the study of fiscal measures mainly fell into the discipline of economics. The economic effectiveness of fiscal countermeasures should be assessed, while at the same time, the legality of the countermeasures, protection of fundamental rights, and fair allocation of public risk/burden, should always be addressed and reflected. The paper tries to introduce the fiscal countermeasures China have adopted, the back ground to understand their features, with an effort to do a preliminary assessment of the legality, efficiency, etc.⁴⁸

1 Overall Fiscal Countermeasures by Chinese Government against COVID-19

Chinese economy has slowed down before COVID-19. The attack from the virus added the difficulty of economy. At the first stage of the epidemic, production and business was suspended, mobility stopped, with certain industries, particularly tourism, hotel, transportation, catering and film topped in the suffer list. However, not all businesses have the same fate.

⁴⁶ See the National Bureau of Statistics, *National Economy Stably Recovered, the Main Goals Achieved Better Than Expected in 2020* (2020国民经济稳定恢复 主要目标完成好于预期), available at http://www.stats.gov.cn/tjsj/zxfb/202101/t20210118_1812423.html, visited on Feb.15th,2021.

⁴⁷ See, e.g., Jie Ji, *Research on the Legalization of Emergency Financial Expenditure in the Post-epidemic Period* (后疫情时代应急财政支出法治化研究), in *Journal of Beijing Institute of Technology(Social Sciences Edition)* (北京理工大学学报(社会科学版)), primary internet published version(which means no volume/page number is assigned yet), available at <https://doi.org/10.15918/j.jbitss1009-3370.2022.3943>.

Scholars also noticed the huge size of government emergency procurement, where current law only offered broad instructions, intended to design a legislation improvement. See, Xiaoping Zhang, *Legalization of Chinese Emergency Procurement: Experience and Suggestion* (我国紧急采购的法治化: 经验与建议), in *Law and Economy* (财经法学), No.3,2020.

Government issued consumption voucher is comparatively new to the people in mainland China. Some Chinese local governments issued consumption vouchers as an economic booming measure. When no specific law gives regulation basis for the government consumption vouchers, professor studied the rules and principles should be followed based on the nature and category of the vouchers. See, Wei Xiong, *Legal Review on Issuing Rules of Consumption Vouchers By China's Local Governments Against the COVID-19 Pandemic* (新冠肺炎疫情背景下政府消费券发放规则的法律检视), in *Wuhan University Journal(Philosophy & Social Science)* (武汉大学学报(哲学社会科学版)), Vol.73 No.5,2020.

⁴⁸ For the purpose of this paper, mainly those related to tax and government expenditure related measures are taken into consideration.

According to a questionnaire by Chinese economists in early February 2020, 59.1% of Chinese companies estimated over 20% drop of business income for year 2020, while 31.9% estimated over 50% drop. There is disequilibrium as to the adverse influence of COVID-19: the bigger business income size is, the less degree of adverse influence would suffer.⁴⁹ The conclusion seems commonly recognized by international community. Beside the disequilibrium which deserve different treatments, Hubei province need to have special attention——Hubei was in the heart of the COVID-19 attack, during the lockdown of its capital city Wuhan, the GDP almost dropped to 0.

To contain the virus, recover economy, Chinese governments responded in multiple directions, among which, fiscal/tax measures are of great importance. Subject to the current legal framework, almost all the epidemic countermeasures are made by respective ministries or institutions as to enforce the relative decisions/plans/resolutions of the CPC and State Council. Some local governments also adopted measures under their respective competences. The current fiscal measures were mainly released in early February, including tax incentives, state aids and subsidies, with the aims to secure supply, to support life and employment, to mitigate the adverse impact and boosting economy. As to the public cost on virus control and money needed, financial arrangements were made to distribute the burden between central and local governments. Of course the countermeasures are not limited to what are introduced in this article, there are some formal or informal policies taken by the administrative departments, judicial departments, to secure business, employments, avoid insolvency, etc. With the change of epidemic situation, the policies will be adjusted, as OECD observed, the new ones will be brought forward. The new adjustments and new policies are not covered either.

Sustain medical treatment: Assure no COVID-19 patient barred from medical treatment because of affordability. The medical cost of COVID-19 patients⁵⁰ not covered by social insurance or social assistance, is borne by government. Medical staff and persons who work on virus control are given additional allowance, with individual tax exempted.

Support for necessary supply: Provide finance support and tax preferences to specified companies which produces virus control related goods, materials, services and life necessities, including state subsidy on loan interest, special loan from the central bank to certain national and local banks for re-loan. Special favorite tax policy will be introduced later.

Social assistance for the poor: Broad the coverage of current social assistance system, and to take into the people who suffered difficulty because of COVID-19. Some local governments decided to temporarily extend the utmost months of unemployment insurance benefits and extend its coverage. Students who or whose family suffered from COVID-19 are given financial assistance.

Resumption of business: Special concern is given to small and minor businesses, with more accessibility to the Inclusive Financial System, waive and suspend of social insurance contributions, and more tax/government fee cut and tax incentives. The social insurance and tax countermeasures will be introduced later.

In 31th December 2020, China declared the free COVID-19 vaccine for all nationals, the burden will be on medical insurance fund and government. During the battle of the virus, some

⁴⁹ See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock* :

Evidence from Two Waves of Questionnaire on SMEs(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析), in *Management World(管理世界)*, N.4,2020,pp.14-15.

⁵⁰ Include those suspected cases.

cities carried out mass nucleic acid test for residents, as a method to identify patients to stop the spread of virus, with the cost on government. For the mandatory centering quarantine cost, there is no legal arrangement,⁵¹ people who were quarantined in hotels bear some part of the cost, with the portion differs from place to place.

2 Focus on the Tax Countermeasures

Most of the tax countermeasures are released by the Finance Ministry together with SAT, which is a common practice in China. At the first stage of the epidemic, tax countermeasures focused on virus control, and the second stage on recovering. The tax measures take effect retroactively as of 1st Jan.2020, and end on 31th Dec.2020(unless extended)⁵². The retroactive application would have an effect to waiver the taxes already due, relieving liquidity pressure of businesses.

Support for necessary supply: Favorite tax policy for the specified companies which produce certain emergent virus control related goods (manufacturers of key emergency supplies) to improve liquidity: (1)the relevant equipment newly purchased by manufacturers of key emergency supplies for the purpose of expanding production capacities is allowed to be deducted on a one-off basis for the purpose of enterprise income tax, (2) the 2020 new incremented excess input VAT credit may be refunded in full amount on a monthly basis.⁵³

VAT exemption for certain goods and service: (1)the transport service of key emergency supplies for the prevention and control of the COVID-19 is exempted from VAT, (2) the supply of public transportation services and living services⁵⁴, and daily necessities express delivery services for residents is exempted from VAT. Exempt tariff, VAT, and exercise tax for imported materials by government health departments which are directly used for the prevention and control of COVID-19.

Encourage donation by granting full deduction and tax exemption: According to Chinese tax law, donations can be deducted for income tax purpose only when made through government recognized public welfare social organizations or the people's governments at or above the county level and their departments or other state organs,⁵⁵ and subject to limitation based on a percentage of taxable income. To encourage donation for countering COVID-19, full deduction is granted, and the materials directly donated to the hospitals undertaking the tasks of prevention and treatment of COVID-19 are allowed to be deducted in full amount too. For the donation of goods which is deemed as taxable supply, VAT exemption is granted (and other taxes due exempted too). The scope of tax-exempt imports is appropriately expanded to donated materials which are used for prevention and control of COVID-19.

⁵¹ Ar.41 of the Law of Infectious Diseases, states that, "During the period of isolation, the people's governments that take isolation measures shall guarantee the daily necessities of the persons under isolation; and if such persons have their own units, the units, which they belong to, shall not stop the payment of their wages during the period of isolation." But we can't read from the article that, government should bear the cost.

⁵² At the time this article was finished, no formal announcement about whether and which tax measures would be extended.

⁵³ Before 2018, the excess input VAT can only be transferred forward for future credit. In 2018, refund was granted to certain industries as a economy boost measure. From 1st April, 2019, refund policy is applied universally, on a 6 month basis and subject to strict requirements.

⁵⁴ Living service as a VAT taxable service item, refers to the various services provided to meet the needs of urban and rural residents in daily life. Including cultural and sports services, education and medical services, tourism and entertainment services, catering and accommodation services, daily services for residents and other living services

⁵⁵ Which means, direct donation to donatee is not permitted to deduct before tax.

Recover aid for suffered industries and small business: Mainly through VAT and enterprise income tax, estate related taxes, and some administrative fees. Because (1) VAT. From January 1, 2020, to December 31, 2020, taxpayers are exempted from VAT on film projection services. From 1st March 2020, to 31st May 31 2020 (later was extended to the end of 2020), as for small-scale VAT taxpayers in Hubei province, the supplies which VAT imposition rate of 3%⁵⁶ apply shall be exempt from VAT. As for a small-scale VAT taxpayer in a province, autonomous region or municipality directly under the Central Government other than Hubei province, the supplies which the VAT rate of 3% apply shall be reduced to 1%. (2) Enterprise income tax. Companies in transportation, catering, accommodation, tourism and film, the lost occurred in 2020, the utmost transferrable (afterwards) term is extended from 5 years to 8 years. (3) House property tax and urban land use tax. Unlike VAT and income tax, no business activity, no tax due, the tax obligation of house property tax and urban land tax continues even during the closure of business, which can be an extra threat on finance liquidity. For temporary exemption of these two taxes, authority belongs to provincial governments, the range, degree and term of exemption thus differ from province to province. Mainly speaking, the exemption aimed at those suffered great loss and small businesses. (4) Social insurance contribution cut. The Ministry of Human Resources and Social Security, which in charge of social insurances, according to the decision of the State Council, issued notice in February then again in June, setting that local government may decide to offer full waiver of no more than 5 month social insurance contribution⁵⁷ (employers' share) for middle and small size companies, half waiver of no more than 3 month for big companies, and temporary suspend for difficult employers, starting from February. The term of waiver was doubled in June. For Hubei province, the full waiver policy also applies to big companies.

Although China has a uniform Social Insurances Law and fund manage system, social insurance systems are not unified in national level, with policies and fund units being independent in province level and even in city level. Local governments have some room as to the degree this social insurance waiver policy may apply. The fact is, almost all the local governments enforced the policy, and offered further social insurance cut by lowering down the rate or basis for 2020. Social insurance burden is high for companies, especially those labor-intensive companies. According to a study, for middle and small size businesses, because of COVID-19, salary and social insurance contribution account to 58.4% of expenditure pressure, while rent accounts for 17.5%.⁵⁸ Voice to lower down this public burden has long been heard, but little was done before the Tax and Fee Cut Policy from 2018. Because of some historic reasons, and the recent aging

⁵⁶ A simplified imposition rate on sale which input is not permitted to credit. This kind of VAT imposition rates, 1%, 3%, or other, apply to small-scale VAT taxpayers mainly, and to certain items of general VAT payers.

⁵⁷ There are five social insurances and one housing fund in China. The Social Insurance Law of PRC set 5 social insurance, basic pension insurance, unemployment insurance, work-related injury insurance, basic medical insurance and maternity insurance. The first three are on the list of the cut policy. Arrangements also made as for basic medical insurance and the housing fund.

The basis of contributions are salary of employee, with the burden mainly split between employer and employee. Social insurance contributions are mandatory, while housing fund is de facto not mandatory. The over-all of this 5-insurance and 1-fund burden on business amount at least 20% of the salary expenditure.

⁵⁸ See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock* :

Evidence from Two Waves of Questionnaire on SMEs(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析), in *Management World(管理世界)*, N.4,2020,P15.

trend, basic pension insurance and medical insurance has been under pressure, narrowing the room for contribution fee cut.

Policies aimed at expand export and encourage domestic market are also issued.

The VAT refund rate upon export is raised for certain products. The VAT imposition rate on sale of second hand vehicles reduced from 2% to 0.5%, effective from 1st May 2020 to 31st December 2023. The policy of exempt Vehicle Purchase Tax on new energy vehicles is extended to 2022. Domestic market gained special attention and high expectation from the top leader level as economic growth engine for the years to come.

Tax administrative arrangements: Tax return filling is extended for difficult tax payers. For small profit companies, the prepayment of enterprise income tax from May to December is permitted to suspend to the first file term in 2021. The same rule applies for the individual income tax of sole traders. To avoid person contact, more e-tax arrangements are launched, from e-registration, e-filing to the application for Mutual Consultation Procedures by Chinese resident taxpayers. SAT published an inclusive list of items which may be done online. SAT also published a policy instruction, for the convenience of taxpayers, as to all the applicable tax incentives for countering COVID-19.

3 the Features of Chinese Practice

Countries around the world shared some common fiscal/tax tools as summarized by OECD,⁵⁹ but of course the measures would reflect the economics, social, political and even cultural aspects of the country. In China, maybe it is the unique political system, above all, make them more impressive.

3.1 tax cut, more tax cut

Tax incentives, and tax cut policies are frequently used for dealing with emergencies events, to boost market faith. Generally speaking, compared the fiscal countermeasures that taken for SARS, the Chinese government responded faster, and devoted much more government expenditure. Similar tax incentives were taken in COVID-19, though the degree, range differ, and differences also lie in the fact that in 2016, business tax was abolished and transformed into VAT.

Chinese scholar observed that, unlike in the United States, government aid in emergency events is provided in multiple forms, mainly through insurance and loan, while Chinese depends more on government budget and resources. On the contrary, tax incentives policies are comparatively more complicated in China.⁶⁰ The government budget and resources were mainly put into the control and prevention of the virus, vaccines, that is the health part, and less on business support, with the later mainly targeted by tax incentives.

Tax cut policies have been used for encourage market faith too. From 2018, to counter the economic slowdown and to build confidence to economy, China launched a new round of tax cut(and administrative fee cut) policy, that is Tax and Fee Cut Policy. Intensive tax incentives have been made, with middle/small size businesses as main benefiter. VAT basic rate lowered from 17% to 16% in May 2018, then further to 13% from April 2019, and VAT simplified

⁵⁹ OECD (2020), *Tax and fiscal policy in response to the Coronavirus crisis: Strengthening confidence and resilience*, OECD Policy Responses to Coronavirus (COVID-19), OECD Publishing, Paris, <https://doi.org/10.1787/60f640a8-en>.p5.

⁶⁰ Xuedan Zhang, Zhanxia Wu, *Building a Fiscal Governance System to Meet the Needs of Emergency Management with Chinese Characteristics*(构建适应中国特色应急管理需求的财政治理体系), in *Public Finance Research* (财政研究), N.4, 2020. p.28.

imposition rates are lowered substantially too. The mandatory threshold for General VAT Taxpayer registration was raised to RMB 5 million yuan⁶¹ of annual VAT taxable sale amount. ⁶² For enterprise income tax, the threshold for small enterprises raised too, to cover more small businesses for whom favorite tax rates and policies are offered.

In 2020, the State Council declared to increase tax and fee cut again, because of COVID-19. The tax and fee cut amounts to RMB 2.6 trillion yuan in 2020.⁶³ Some of the tax countermeasures for COVID-19 can be considered as a continue of the 2018 Tax and Fee Cut Policy. At the same time, Tax and Fee Cut Policy to some degree limited the possibility and also the necessity of the former.

China also face the budget pressure, especially for local governments, just like most of other countries, from the adverse impact of COVID-19 on economy and expanded expenditure. When some countries try to find new tax revenue or raise tax rate, Chinese government are more determined to depend on government debt,⁶⁴ and cutting government expenditure to work through the difficulties. What is more, during the session of NPC in March this year held in Beijing, the State Council announced more tax cuts policies for small business. As reported, China will continue to implement proactive fiscal policies and prudent monetary policies in 2021 amid efforts to maintain the necessary support for economic recovery.⁶⁵ According to the minister of MoF, Mr. Liu, the institutional tax and fee cut policy adopted recent years will continue, while the temporary ones which were introduced in 2020 will exit slowly.

3.2 Centralized (commanding) system and high mobilization ability

Why Chinese government can be so effective and rapid to contain COVID-19? The centralized and unified leadership of CPC, the unique political system, the exist economic achievement, and Chinese culture, as part of the so-called Chinese Institution Superiority are the

⁶¹ Comparing before, 500,000 RMB for industrial business, and 800,000 RMB for commercial business.

⁶² For the common consideration of lowering administrative cost, a threshold for VAT is adopted by China, as other countries. Beside this, China use another mechanism: the taxpayers in VAT in China are divided into two categories: the first is the General VAT taxpayer, for whom, the input credit mechanism applies, based on the Special VAT Invoice administrative system, and the VAT rate is higher(not necessary higher burden of tax because of the right to credit input VAT). The second category is Small-Scale VAT Taxpayer, for who, a simplified imposition rule applied. That is, the Small-Scale Taxpayers apply a much lower VAT Imposition rate, and the input VAT is not permitted to credit, the VAT as to Small-Scale Taxpayers is more like a business tax, with the difference is, the purchaser from Small-Scale Taxpayers may credit the VAT input.

The division based on two criteria: the annual VAT taxable sale amount, and the ability account ability. Taxpayer may choice to apply to register as General VAT Taxpayer if have account ability even if the sale amount is below the threshold. The taxpayer have to register as General VAT Taxpayer if the sale amount is over the threshold.

During the tax cut actions, the two type of thresholds (for VAT liability and for General VAT Taxpayer) have been used as a tax incentive method.

⁶³ See Report on the Implementation of China's Fiscal Policies in 2020 by MoF, available at http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305_3666406.htm, visited on 7th, March, 2021.

⁶⁴ The deficit-to-GDP ratio in 2020 was projected at more than 3.6 percent (a raise from 2.8 percent), with a deficit increase of one trillion yuan over last year. One trillion yuan of special government bonds for covid-19 control were issued in June 2020. These were extraordinary measures for an unusual time. The deficit-to-GDP ratio in 2021 is set at 3.2, no new special government bond will be issued. See Report on the Implementation of China's Fiscal Policies in 2020 by MoF, available at http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305_3666406.htm, visited on 7th, March, 2021.

⁶⁵ See Xinhua news, *China's proactive fiscal policy to be more targeted*. <http://www.chinadaily.com.cn/a/202101/01/WS5fef24dba31024ad0ba9ffcc.html>, visited on 6th, March, 2021.

main reasons, some commented in an official media.⁶⁶ Others attributed the success to the centralized power model, highly activated social resources, a co-work mechanism, along with other reasons.⁶⁷

Public health might fall into the jurisdiction of local governments in a federal system. One can't deny that, the response to such a pandemic like COVID-19, a centralized system or otherwise well designed coordination mechanism (especially executive one) are necessary. The worldwide experiences show that, among countries that successfully dealt with the first wave of the COVID-19 pandemic, there are examples of both centralized and decentralized approaches.⁶⁸ Chinese experience mainly belongs to the first approach. And unlike in most countries, where it is the executive branch of the government who works on centralized coordination mechanism, China depends more on a political coordination mechanism.

How does this happen? The leadership role of CPC, and emergency response pattern is the key answer as to how this centralized system works. The whole COVID-19 control is directed by an ad hoc CPC Workgroup, under the leadership of Politburo Standing Committee, which is the top power of CPC. At the same time, the State Council established an ad hoc Joint Mechanism to assure good departments coordination. Unlike the battle against SARS, H1N1, when the role of CPC in the national emergency command system was indirect leader, in COVID-19, the role changed into direct leader,⁶⁹ which is a reflection of the enhancement of CPC's leadership started from the 18th CPC national congress in 2012. The emergency response pattern then works this way: Workgroup (composed of important ministers) study and decide on important issues (give response instruction), Joint Mechanism in charge of coordination of all the related government departments and local governments (both horizontally and vertically). The fiscal and tax policies issued by the MoF, SAT, can be considered as an enforcement of the instructions from the Workgroup.⁷⁰ The mechanism assured a rapid and effective respond, which is vital especially in the early stages of the epidemic.

During what OECD might call it phase 3&4, that is the stage when attention should be given to economic recovering and restoring of public finances,⁷¹ a similar path was followed. Political Bureau of CPC Central Committee in a meeting on 17th, April, 2020 stressed the so called 6-priorities (六保) of the task of the country, to be specific, ensure security in job, basic

⁶⁶ Jiahua Wu, *The Scale and Speed of Anti-epidemic Shows China's Institutional Superiority* (抗疫规模和速度彰显中国制度优势), in 红旗文稿, N.5, 2020, p7.

⁶⁷ See Feng Guo, *Discussion on the Construction of Law System of Epidemic Prevention and Control in China* (构建我国疫情防控法律体系的探讨), in Law and Economy (财经法学), N.3, 2020, pp10-11.

⁶⁸ de Biase, P. and S. Dougherty (2021), *Federalism and public health decentralisation in the time of COVID-19*, OECD Working Papers on Fiscal Federalism, No. 33, OECD Publishing, Paris, <https://doi.org/10.1787/b78ec8bb-en>, p6. It summarized that, Countries employed different solutions to align multiple levels of government in implementing responses to tackle the pandemic. Three that are worth highlighting are executive federalism, use of centres of government, and state-of-emergency laws.

⁶⁹ Kaibin Zhang, *Development of the National Emergency Command System: Comparative Case Studies of the SARS, H1N1 and COVID-19* (国家应急指挥体制的“变”与“不变”——基于“非典”、甲流感、新冠肺炎疫情的案例比较研究), in *Administrative Law Review* (行政法学研究), No.3, 2020.

⁷⁰ See the supra note, Kaibin Zhang, pp.21-22.

⁷¹ See OECD (2020), *Tax and fiscal policy in response to the Coronavirus crisis: Strengthening confidence and resilience*, OECD Policy Responses to Coronavirus (COVID-19), OECD Publishing, Paris, <https://doi.org/10.1787/60f640a8-en>, pp9-11.

living needs, operations of market entities, food and energy security, stable industrial and supply chains, and the normal functioning of primary-level governments. Fiscal policies were arranged by respective departments to ensure 6-priorities be executed.

The Chinese system has great mobilization ability. Chinese scholar rightly pointed out, as China likened the COVID-19 epidemic prevention and control as People's War⁷², it is not an infectious diseases prevention and control in legal sense, but a full-perspective mobilization from political, economic, social and cultural dimensions.⁷³ If without unified will, culture embodied collectivism, and cultural respect from Chinese people toward being-alive (willing to restrict freedom for the prevention of threat to life), no matter how compulsive the government was, it would never maintain so inclusive social order. Beside patriotism and national attitude to life, the elaborate organization system of the CPC, and feeling of mission and duty of ordinary CPC members also make the mobilization possible.

When the country is lack of a formal coordination system, centralization of course can bring fiscal pressure on local governments, especially when fiscal-federalism is part of the central-local government relationship.⁷⁴ Fiscal measures were produced from central government, though local governments do have some room to issue their own policies. Many local governments, like Wuhan, tried to issue consumption coupons to boost economy. However, the fiscal measure (including tax and fee cut policies) from central government means more expenditure(also tax expenditure) obligation on local governments. Considering the fiscal pressure of local governments, the two trillion yuan raised through extra debt ratio and specific treasury bond will be transferred in full to local governments. To work with it, a special transfer payment mechanism will be set up to ensure that funds go straight to prefecture and county level governments(instead of go through provincial governments). When releasing fiscal pressure of local governments, other possible problems need to be dealt with, inter alia, how to make sure the efficiency of transfer payment, how to make sure the fairness between local governments. In a legal perspective, a law based framework for fiscal central-local government relationship is in urgent need.

4 Primary Assessment of the Fiscal Countermeasures

4.1 the effect of the countermeasures

In a study carried out in the middle of February,2020, among the companies under survey, 73.8% did not enjoy tax benefits, 9.0% deferred payment of enterprise income tax, 4.6% extended tax-loss carryforward term, 4.1% and 3.5% enjoyed VAT and enterprise income tax

⁷² Xi Jinping name the fight against the COVID-19 as a people's war, proclaiming "firmly rely on the people to resolutely win the war against epidemic prevention and control," and "extensively mobilize and depend on the masses." Win the People's War of Epidemic Prevention and Control with one heart and one mind.

⁷³ Bin Xu, *the Cost of Rights:Analyze on Citizn Rights in the Prevention and Control of Epidemic: Take China's Countermeasures in COVID-19 as Example*(权利的成本：疫情防控中的公民权利辨析：以中国新冠肺炎抗疫措施为例), in *Human Rights*(人权), No.3,2020.P79.

⁷⁴ The current system is more like a combination of political centralism and fiscal federalism. From 1993, a fiscal reform was carried out, and the tax revenue was shared between central government and local governments. But for the past three decades, more fiscal power was transferred to central government, while expenditure obligation stays in or goes to local governments. It was called asymmetric decentralization—expenditure remains decentralized with revenue being recentralized. The asymmetric decentralization is believed have contributed to the economic prosperity, but negative consequences such as increased socioeconomic inequalities. See, Alfred M.Wu, *Economic Miracle and Upward Accountability: A Preliminary Evaluation of the Chinese Style of Fiscal Decentralization*, in *Asian Review of Public Administration*, Vol.23m Nos.1&2,2012.pp.104-121.

deduction, while only 3.1% enjoyed the deduction of property tax and urban land tax. The bigger size the company is, the higher percentage of enjoying the deferral of tax. Among the companies which have less than 50 employees, or less than 5 million annual business income, the percentage of those enjoy no tax benefit is as high as 78.3%. What is more, government beneficial policies are better landed in state-owned companies than private-owned companies.⁷⁵ The possible reasons for the outcome, according to the study, include that: the survey was carried less than 2 weeks after the policies produced, some policies need further details for enforcement, some tax benefit require approval/check which need some time. And also, in early February, normal work did not completely resumed yet.⁷⁶ Although there is limitation on the study considering the timing, the fact that fiscal countermeasures have a kind of tardy nature should be taken into consideration. Another empirical study carried out in March in Hunan province, got a similar conclusion. It found that, generally speaking, the fiscal support measures cushioned the attack of COVID-19 on business expectation, and state-owned companies are more sensitive to social insurance cut policies and finance support, while private-owned companies are more benefited from tax incentives.⁷⁷ The question why so many small businesses, which are the main target of the fiscal countermeasures, did not enjoyed fiscal support measures at the early stage, the second study on March seems offer some sense for that. Some small businesses benefited less from social insurance fee cut, mainly because they had not paid the due part of social insurance contributions before.⁷⁸ The story would be the same as for some tax incentives—they would have no/little effect on most small businesses since under the current tax system, those small business are already exempted from tax. For those small businesses, current fiscal measures won't do much help.

The study also found that, the fiscal measures have more positive effect on companies in no-key-epidemic areas, than those in key epidemic areas, where resumption of businesses were constrained by virus containment measures.⁷⁹ The finding is more inspiring considering that, local leaders tend to take stricter containments in the try to control the virus in a shorter time. If it is agreed that, fiscal countermeasure by central government have a re-distribution effect, what about the redistribution effect of containment measures? For different businesses, industries, and professions, might be impacted differently by containment (especially extra containments). As far as observed, Chinese fiscal countermeasures did not take much into consideration the businesses/individuals that are suffered from government containment measures. If, how, and to what degree the business/individuals who suffered from government containment measures should be compensated, is worthy of further discussion. As to the author, it is about how to

⁷⁵ See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock : Evidence from Two Waves of Questionnaire on SMEs*(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析), in *Management World*(管理世界), N.4,2020,P19.

⁷⁶ See the supra note, Wuxiang Zhu and others, p.20-21.

⁷⁷ Youth Project Group of Hunan Branch of the State Treasury, *Impact of COVID-19 Epidemic, Fiscal and Financial Support Policy and Enterprise Development Expectation: Based on the Empirical Study of the Investigation on 1907 enterprises in Hunan province*(新冠肺炎疫情冲击、财税金融支持政策与企业发展预期——基于湖南1907家企业调查数据的实证分析), in *Finance Economy*(金融经济),N.12, 2020, p79.

⁷⁸ See the supra note, Youth Project Group of Hunan Branch of the State Treasury, p.79.

⁷⁹ See the supra note, Youth Project Group of Hunan Branch of the State Treasury, p.79.

allocate public risk among the society, or even around the world. If ability to pay should be followed? Or some other principles should be followed?⁸⁰

4.2 The legality of countermeasures

The legality of fiscal measures are questioned even by economics,⁸¹ and some suggest vest in local government more power to decide tax countermeasure policies during emergency event.⁸² As to legality, the tax countermeasures during COVID-19 were not more lack of legality compared with the practices in normal times, for all the countermeasures were issued by MoF and SAT as in normal times. Chinese tax law has been criticized for lack of legality, formally and substantially. Consider, as an example, the highest legal source of VAT is an administrative regulation issued by the State Council, under a vague authorization from the National People's Congress(NPC) in 1985. Most tax incentive policies are made by Finance Ministry together with the State Administration of Taxation(SAT), subject to a internal approval from the State Council. The top leaders are determined to solve this problem, and efforts are on the way by enacting taxes including VAT. However, response to emergencies has been considered deserve some special treatments in a legal system. So before questioning the legality of fiscal measures, maybe firstly, a glance to the legal framework of containing public health emergencies is needed.

The limit of law and legal method seems allow, no matter how unreluctantly, *necessi tas legem non habet*, while countries have been making efforts to put crisis governance under rule of law. As to fiscal countermeasures, rapidness and flexibility is always fatal to the effectiveness, when the same effectiveness may only be assured by its legality and due process. So we need to put fiscal countermeasures under a legal framework, and from that legal framework to reflect how they works.

The main legal framework is composed of Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases (Law of Infectious Diseases)⁸³, the Emergency Response Law of the People's Republic of China(Emergency Response Law),⁸⁴ and Regulation on Responses to Public Health Emergencies(Public Health Emergencies Regulation).⁸⁵

Law of Infectious Diseases sets the main legal basis of state aid for medical treatment to people with financial difficulties, with authorization to health and finance ministries to set down details.⁸⁶ Public Health Emergencies Regulation requires government to do the budget arrangement for public emergencies, give allowances and subsidies for medical and health

⁸⁰ Chinese scholar introduced the idea of right to social compensation, inspired by German's practice. The free medical treatment for COVID-19 patients would be legalized by the idea. See Yu Lou, *On the Right to social compensation*(论社会补偿权), in Law Science(法学), No.2,2021, pp.89-107. But here the possible compensation for the lost suffered from containment measures seems fall out of coverage of this right. In Chinese legal system, no direct applicable law can be found yet.

⁸¹ Yanfeng Bai and Yining Tang, *Comparative Research on Chinese Fiscal and Tax Policies in Response to Public Health Emergencies*(中国应对突发公共卫生事件财税政策的对比研究), in Economic Theory and Business Management (经济理论与经济管理),No.7,2020, p.28.

⁸² See the supra note.Xuedan Zhang, p.31.

⁸³ First promulgated in 1989, revised in August 2004, with a newest amendment in 2013.

⁸⁴ The laws on war, emergency, emergency response which made before SARS were considered incomplete. China started legislation on emergency response from SARS.

⁸⁵ It is an administrative regulation issued by the State Council in May 2003.

⁸⁶ Art 62.

personnel.⁸⁷ During COVID-19, free medical treatment was not limited to those in difficulties, as prescribed by Law of Infectious Diseases. The medical cost uncovered by social medical insurance fund was mainly paid by central government, and finally on the burden of taxpayers. The expenditure side of fiscal countermeasures, beside the aforementioned laws, is governed by Budget Law. Since budget law works mainly through procedural control mechanism, no illegality can be found in it. However, legitimacy of universal free medical treatment seems not be questioned by Chinese scholars. As written before, containing COVID-19 is a people's war, the society needs confidence, the government needs support.

COVID-19 epidemic, as a public health incident, together with natural disaster, accidental disaster, safety incident, are four type of emergency incidents governed by the Emergency Response Law. The law aimed to vest the government with necessary power to prevent, control public emergencies incidents efficiently, and to limit and regulate those powers.⁸⁸ The law is considered inenforcible because of broad wording.⁸⁹ It does offer some guidances for the allocation of responsibilities among different levels and departments of government, and give general legality for government controlling methods. For, the division of jurisdiction(or in another way, responsibility) and expenditure, which reflects the central-local government relationship, has been an practical issue and aslo academic topic—as intorduced before, Chinese state power follows centralism, but the legal relationship between central and local government is ignored by Constitution of PRC or other constitutional laws. Scholar summarized Chinese practice as *de facto federalism*.⁹⁰ The State Council made some efforts to make reforms, and to set down clearer rules. According to a circular, the central government has the responsibility for expenditure related to national or inter-regional epidemic controls.⁹¹ It was not fully abided in COVID-19, for some of the expenditure was on local government. Maybe further clarification is needed as to what kind of expenditure should be considered as related to national or inter-regional epidemic controls.

Emergency Response Law was supposed to answer the legality question, but it went short of the expectation. When in the draft stage, the law was initially name State of Emergency Law(紧急状态法), then State of Emergency and Emergency Management Law(突发事件和紧急状态处置法), finally the current name. The reason for enacting a State of Emergency Law, was because the China realized the necessity for the grant of power for government to take some measures which are not part of the legal system for normal situations, and the need to prevent

⁸⁷ Art.6&9.

⁸⁸ See, Kangtai Cao, then director of Legislative Affairs Office of the State Council of the People's Republic of China, the note on the draft bill of Emergency Response Law of the People's Republic of China(关于《中华人民共和国突发事件应对法(草案)》的说明), in Bulletins of the Standing Committee of the National People's Congress,(全国人民代表大会常务委员会公报) No.6,2007,pp544-545.

⁸⁹ See An Yu, *the Enforcement Problem of Emergency Response Law(《突发事件应对法》的实施问题)*, in *Theoretical Horizon(理论视野)*, No.4,2009.pp44-46.

⁹⁰ See Yongnian Zheng, *De Facto Federalism in China: Reforms and Dynamics of Central-Local Relations*, by World Scientific Publishing,2007.

⁹¹ Circular of the General Office of the State Council on Issuing the Reform Plan for the Division of Fiscal Powers and Expenditure Responsibilities between the Central and Local Governments in the Field of Medical and Health Care(国务院办公厅关于印发医疗卫生领域中央与地方财政事权和支出责任划分改革方案的通知,国办发〔2018〕67号)

such power from being abused. During the battling with SARS, a lot of quarantine and expropriation measures were adopted, which then were lack of a legal basis. The drafters soon realized that, the declare of emergency, and the “extraordinary” power of the government granted after the declaration of emergency situations (other than normal power that from in normal legal system⁹²) is not enough to tackle emergency events. How to respond to emergency events, will more focus on firstly how to prevents emergency events, how to take different countermeasures with the development of such events, which cannot be put in the name of “State of Emergency Law”. So, the name of the draft bill was changed to State of Emergency and Emergency Management Law, then into the current name. With the changing of name, the purpose and content of the law changed accordingly, leading to the loss of its original goal, which left the power/legality for outside ordinary law is still missing to a great degree.⁹³

It should be better for the Emergency Response Law after future revision, to design a mechanism, under which, extraordinary fiscal/tax measures can be triggered automatically from the time of declaration of emergent state. The legality problem will be solved, together with the tardy nature of fiscal measures be overcome. What is more, predictability can be assured, which will bring stability and efficiency.

4.3 efficiency, equality and proportionality

In SARS, the fiscal efficiency was criticized.⁹⁴ The efficiency of the economic recovering policies during COVID-19 is to be assessed in the future. Until now, the fiscal measures on encouraging medical treatment, donation, increasing material supply, restarting business meet the goals. Though discussions on how to improve the fiscal response policies are on the way too. Efficiency, should not limited to economic efficiency, if the countermeasures have other effect, for example, boost the faith of the society, mobilize social resources, it is applaudable. The problem of course is that, sometimes it is hard to weight between the cost and the gain, and maybe more should be put under reasonable discretion and due process.

Equality and proportionality of fiscal measures are essential too. It is normal to ask, why a certain sector, industries, type of taxpayers is supported or given tax benefits, while the rest are not? And if the measure can meet the goal or not. How the technical details of the policies were discussed and determined, are unknown to the public. Some would be curious, like why film projection services got the VAT exemption treatment, while other sectors not.

In state of public emergency, rapid response from the government is essential, which will require unusual power granted to government. As to fiscal countermeasure, the most important one is to arrange fund and necessary resources toward the most needed areas, to save and maintain lives. When attention is focused on emergency, the rest might be easily ignored. In the early stage of the virus, medical materials were in terrible shortage, leading to no COVID-19 patients who also need urgent care in Wuhan were “squeezed out” from hospitals. Cautious

⁹² Here means the laws/rules for states or situation other than state of emergency.

⁹³ See, Hongchao Lin, Liangheng Kong, *On Reformulating China's Legal System of Emergency State——Revisiting Emergency Response Law*(论我国紧急状态法制的重构——从反思《突发事件应对法》切入), Journal of Shanghai University(Social Sciences)(上海大学学报(社会科学版)), No.5, 2020.at pp133-136.

⁹⁴ The research group of “SARS and Government Public Policy” in the Public Policy Research Center of Dongbei University of Finance & Economics, *The constructure of government input system in emergent public events: start from SARS crisis*(突发性公共事件中的政府投入体系建设), in Review of Economic Research(经济研究参考), N.49, 2003, p.19.

reflection should be given as to if there is over-input from government part. For, the fiscal over-input on the epidemic would unavoidably infected other roles of the government. Or it can be put in another way: with less money, the government will not be able to offer other necessary public goods and services. From what Cass R. Sunstein will say, less rights will be protected, for every right, negative or positive, actually all have a cost in the form of tax. To overcome the revenue pressure, the Chinese government decided to do a saving finance in 2021, avoiding unnecessary meetings, business travels of the central government and so on. If so much portion of government expenditure would be saved or refrained from spending in the future, one can't stop to ask, why it was not avoided in the past? Was there a waste for the past years on those areas?

As to tax incentives, different taxes have their own function area based on their nature. The current tax incentives taken by China covered a wide range of taxes, from VAT, exercise tax, enterprise income tax, etc., the obligation of which is based on taxpayer's turnover or profit. As was argued by some Chinese scholar, for the lockdown businesses, exemption of VAT or enterprise income tax is meaningless. On the contrary, taxes like property tax is more like a fixed cost, to relieve the suffered business, better to expand property tax and urban land tax exemption.⁹⁵

Disaster has always provided opportunity to improve in human history. COVID-19 provides good opportunity for fiscal legal system too. As was pointed out, the problems of Chinese fiscal system exposed and made worse by COVID-19, requires further improvement and reform of the system itself.⁹⁶ Reform and Open has never stopped in contemporary China. The current fiscal and taxation system was originally set in the end of 1993. 2008 witnessed an important reform of the enterprise income tax system, followed the transformation of VAT in 2009. From 2014, a so-called new round of fiscal and taxation system reform started formally, with three main goals: improve budget administrative system, improve taxation system, build a proper central-local fiscal relationship. As to the tax reform, a fairer and more robust tax system will be good foundation for the sustainable development of economy and society.⁹⁷ The leader of Communist Party of China (CPC), in its suggestion for the 14th 5-year-plan of national economic and social development, proposed a *dual circulation development pattern*, to specify, development depends mainly on domestic circle of economy, and domestic and international circulations mutually reinforcing.⁹⁸ Fiscal system need to be adjusted accordingly too.

5 As an ending: How should Risk be Allocated Among the Society

⁹⁵ Cheng Gu and Zeyu Liu, *the Choice of Fiscal and Tax Policy to Fight COVID-19*(*应对新冠肺炎疫情的财税政策选择*), in *Fiscal Science*(*财政科学*), No.3,2020, p.19.

⁹⁶ See Ming Li, and others, *The Active Fiscal Policy Trend and the Finance-taxation System Reform in China after the Epidemic*(*疫情后我国积极财政政策的走向和财税体制改革任务*), in *Management World*(*管理世界*), No.4,2020.

⁹⁷ The to-be-reformed list of the current tax reform is long. VAT, exercise tax, individual income tax, real property tax are on it. The extension of VAT to provision of services, intangibles, real estate has ended in 2016, and still need systematic reform. Individual Income Tax Law was revised in the end of 2018, with three more income items included into the progressive rate brackets, ability to pay need to be addressed further.

⁹⁸ In plain words, depend on and explore domestic market more. As to China, this strategy is rationalized by an external environment characterized by rising protectionism, trade war, global economic downturn, and a shrinking international market.

Chinese traditional governance model was summarized as “centralized mini-governance model”,⁹⁹ under which, government could be high effectively maintained with low cost. The cost actually was not lowed, but eternized, shared by the society. The same is for containment of COVID-19, or the future public emergency events. The cost was not limited to those government input, but the whole society. The cost of containment was not limited to the money actually payed, but the opportunity cost of the business and people affected.

We are in a world full of risk¹⁰⁰, there are public risk which would threat the whole country or even the world. A well-received fiscal theory in China is, the aim of the fiscal policy reposed to public risks. A bigger question should be asked, how should risk and the cost for containing the risk be allocate among the society, and how can fiscal/tax law do?

⁹⁹ See Philip G. C. Huang, *Centralized Minimalism: Semiformal Governance by Quasi Officials and Dispute Resolution in China*, (集权的简约治理: 中国以准官员和纠纷解决为主的半正式基层行政), Chinese translation published in *Rural China: An International Journal of History and Social Science* (中国乡村研究), 2007(00), pp.1-23.

¹⁰⁰ See Ulrich Beck, *Risikogesellschaft: Auf dem Weg in eine andere Moderne*, the Chinese version 《风险社会：新的现代性之路》 was published in 2018 by Yilin Press.



SURFING ABOVE THE HIGH WAVES OF THE COVID 19: INDONESIAN FISCAL (TAX) COUNTERMEASURES

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The high wave of the Covid 19 pandemic, which had hit several times, prompted a contraction in economic activity, one of which affected the state revenue sector from taxes. In 2019, tax revenue was recorded to have contributed 82.5 percent of total state revenue, where the consequence of this is that public service activities are highly dependent on tax revenue. On the other hand, the sudden wave of the pandemic forces the government to issue mitigation policies to prevent the worst possibility of a pandemic. The Indonesian government did not choose a lockdown policy but chose to handle and control the pandemic with large-scale social restrictions and restrictions on community activities whose implementation was handed over by each region with the permission of the central government. The policy taken by the government is to provide a way for the economy to be able to surf on the coming and going covid pandemic waves. To support the Indonesian economy to be able to surf in the midst of the COVID-19 pandemic, the Indonesian government has also issued policies that encourage the business sector to continue to carry out its business activities, including tax incentive policies, stimulus policies and tax service convenience policies. Meanwhile, for individuals, the government issues policies in the form of social safety nets and tax breaks and convenience of services. This policy taken by the government is under the umbrella of the regulations in lieu of Law Number 1 of 2020 which was later ratified into Law Number 2 of 2020, which aims to provide legal certainty for the government and society regarding the implementation of policies in situations that are not certainly. The issuance of a regulation in lieu of law is in line with the constitution of Article 23 A of the Constitution of the Republic of Indonesia stipulates that taxes and other levies which are forcing for state purposes shall be regulated by law. This paper aims to provide an analysis of the legal framework regarding the Indonesian fiscal countermeasures during the pandemic covid 19. The study conducted using legal research method using a descriptive analysis.

SUMMARY: 1. Context of the study – 2. Discussion: (a) Taxation law principles in Indonesia; (b) Tax Policies in Indonesia in order to be able to surf over The COVID-19 Pandemic; (c) Policy for The Health Sector; (d) Policy for The Business World; (e) Policies for MSME's; (f) New Normal Policy: Sailing to The New Horizon; (g) Tax Performance Challenges; (h) Taxation Omnibus Law – 3. Conclusion

1. Context of The Study

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The Covid case was first announced by the Indonesian Government on March 2nd, 2020. The identification of the first two positive cases in early March were local transmissions and not imported cases. So, it is estimated by some epidemiologists that the Covid 19 has entered Indonesia since the early January 2020¹⁰¹. Since the official announcement of the positive cases, the government quickly decided to implement some policies. Such as, physical distancing, the obligation to wear a mask, enhancing the clean and healthy lifestyle, and the work from home policy. The policy work from home is carried out to prevent the spreading of the virus in offices cluster.

Along with the increasing number of the local cases or local transmission (See Figure 1), there was pressure for the government to implement the lockdown policy as it has been done by several countries. Indonesia government considering various things, one of which was related to the economic reasons. Therefore, the Indonesian government decided not to carry out the policy, yet they applied another one, known as the Large-Scale Social Restrictions (Pembatasan Sosial Berskala Besar/PSBB). This policy is regulated by Government Regulation of the Republic of Indonesia Number 21 of 2020 which was signed by President Joko Widodo on March 31st, 2020. The main principle of the Large-Scale Social Restrictions policy is to restrict certain activities of residents in the area that has an inhabitant being infected with the Corona Virus Disease 2019 (COVID-19). It's aimed to prevent the possible spread of the Corona Virus Disease 2019 (COVID-19)¹⁰². The Guidelines for Implementing the Government Regulations are stated in the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning the Guidelines for the Large-Scale Social Restrictions in the Context of Accelerating the The Control of the Corona Virus Disease 2019 (Covid-19).

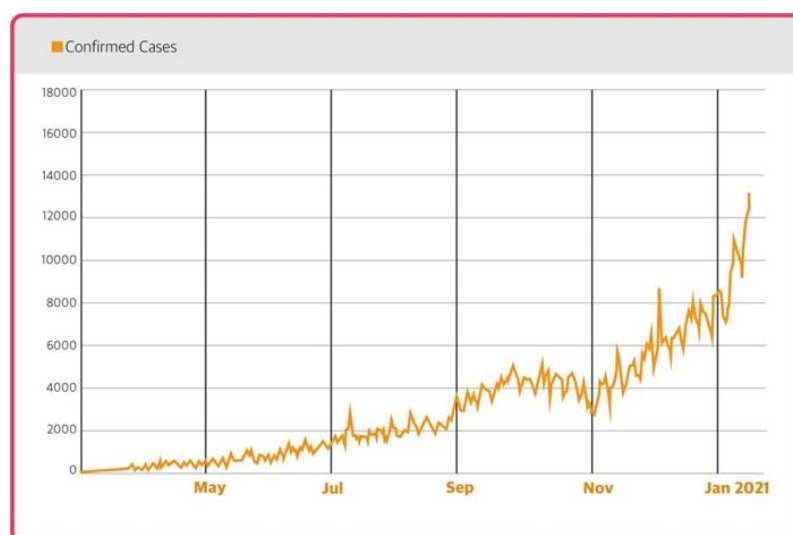


FIGURE 1 DEVELOPMENT OF THE POSITIVE CONFIRMED CASES OF THE COVID-19 PER-DAY

At the beginning of controlling the Covid 19, the Indonesian Government prioritized to handle the economic problems¹⁰³ since it is one of the sectors that severely affected by the pandemic. As the

¹⁰¹ Ellyvon Pranita and Sri Anindiati Nursastri, 'Diumumkan Awal Maret, Ahli: Virus Corona Masuk Indonesia Dari Januari', *Kompas ID*, 2020 <<https://www.kompas.com/sains/read/2020/05/11/130600623/diumumkan-awal-maret-ahli--virus-corona-masuk-indonesia-dari-januari>> [accessed 2 March 2021].

¹⁰² Republik of Indonesia, *PP No. 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (COVID-19) [JDIH BPK RI]*, [https://Peraturan.Bpk.Go.Id/\(LN.2020/NO.91,TLN.NO.6487,JDIH.SETNEG.GO.ID:5HLM.,2020](https://Peraturan.Bpk.Go.Id/(LN.2020/NO.91,TLN.NO.6487,JDIH.SETNEG.GO.ID:5HLM.,2020) <<https://peraturan.bpk.go.id/Home/Details/135059/pp-no-21-tahun-2020>> [accessed 2 March 2021].

¹⁰³ Mutia Fauzia and Bambang P. Jatmiko, 'Sri Mulyani Ungkap Alasan Fokus Tangani Masalah Keuangan Di Awal Pandemi Covid-19', *Kompas ID*, 2020 <<https://money.kompas.com/read/2020/09/16/160800726/sri-mulyani-ungkap-alasan-fokus-tangani-masalah-keuangan-di-awal-pandemi-covid>> [accessed 2 March 2021]; Soraya Novika, 'Sri Mulyani Akui Sempat Fokus Ke Ekonomi Saat Awal Diserang Corona', *Detik.Com*, 2020

condition of the pandemic wave continues to rise, it has significantly affected the economic activities. In addition, the geographic factor and the extent of Indonesia's territory consisting of 17,000 thousand islands and 33 provinces, as well as the population of 267 million people are the considerations for not implementing the lockdown policy. Large-Scale Social Restrictions has become the Governor responsibility, where it is need to take into account the situation in her/his territory. As regulated in article 2 which states that the Large-Scale Social Restrictions policy must be approved by the Health Minister. So that, the Local Government can carry out the Large-Scale Social Restrictions or restrictions on the movement of people. Large-Scale Social Restrictions policy must be based on epidemiological considerations, the extent of the threat, effectiveness, resource support, technical operations, political, economical, social, cultural, defense and security considerations.

The first province to carry out the Large-Scale Social Restrictions policy was Jakarta¹⁰⁴, which becomes the highest affected area. The submission of the Large-Scale Social Restrictions policy in Jakarta was approved by the Minister of Health's Decree on April 7th, 2020. It followed by the Decree of the Governor of Jakarta Number 380 of 2020. The submission of Large-Scale Social Restrictions policy in Jakarta was followed by the West Java and West Sumatra Provinces. By the end of April, there were 3 provinces and 16 districts and cities had submitted and implemented the Large-Scale Social Restrictions policy.¹⁰⁵ However, not all regions in Indonesia had applied the Large-Scale Social Restrictions policy. For instance the city of Semarang in Central Java. They chose to carry out the policy of Restricting Community Activities through the Regulation of the Mayor of Semarang Number 57 of 2020 concerning the Implementation of Restrictions on Community Activities in the context of preventing and controlling the covid in Semarang City. The focus of this policy is to ensure that the economic activities of the society continue to run, yet still in the context of preventing and overcoming the Covid 19.

The efforts of the Indonesian government in managing the impact of the Covid pandemic wave in the health, economic, social and cultural sectors have been going on for almost a year since the first positive cases were announced. However, until the beginning of 2021, the Covid wave was getting higher (See Figure 2). In the second week of January 2020, the total number of confirmed Covid cases in Indonesia had reached 882,418 thousand with an additional number of cases totaling approximately 12,818 cases. The cure rate reached 81.1% or around 737,358 thousand cases, and the death rate was 2.9% or around 25,767 thousand cases.¹⁰⁶

<<https://finance.detik.com/berita-ekonomi-bisnis/d-5175662/sri-mulyani-akui-sempat-fokus-ke-ekonomi-saat-awal-diserang-corona>> [accessed 2 March 2021].

¹⁰⁴ Provinsi Daerah Khusus Ibukota Jakarta, *Peraturan Gubernur (PERGUB) Tentang PELAKSANAAN PEMBATAAN SOSIAL BERSKALA BESAR DALAM PENANGANAN CORONA VIRUS DISEASE 2019 (COVID-19) DI PROVINSI DAERAH KHUSUS IBUKOTA JAKARTA, BERITA DAERAH PROVINSI DKI JAKARTA TAHUN 2020 NOMOR 55003* (Provinsi Daerah Khusus Ibukota Jakarta, 2020) <<https://peraturan.bpk.go.id/Home/Details/152475/pergub-prov-dki-jakarta-no-33-tahun-2020>> [accessed 2 March 2021].

¹⁰⁵ Vincentius Gitiyarko, 'Upaya Dan Kebijakan Pemerintah Indonesia Menangani Covid-19', *Kompas ID*, 2020 <<https://kompaspedia.kompas.id/baca/paparan-topik/upaya-dan-kebijakan-pemerintah-indonesia-menangani-pandemi-covid-19>> [accessed 2 February 2021].

¹⁰⁶ 'Peta Sebaran COVID-19 | Covid19.Go.Id', *Satuan Tugas Penanganan COVID-19*, 2021 <<https://covid19.go.id/peta-sebaran-covid19>> [accessed 2 March 2021].

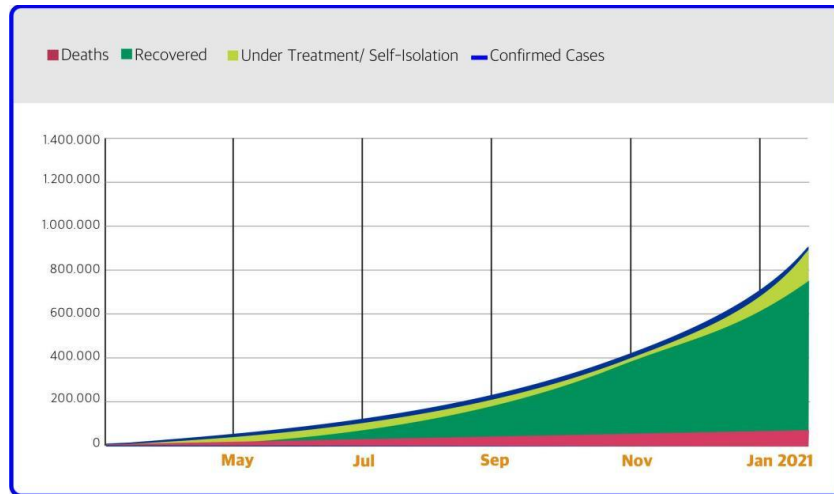


FIGURE 2 NATIONAL TRENDS (DATA ACCUMULATION)

The economic impact of the Covid pandemic wave in Indonesia was getting worst in the second quarter of 2020, it impacted the economic growth fell into 5.32 percent (y on y) (See Figure 3). Several policies taken by the government related to the high rise of the covid pandemic wave, have given the impact in the decreasing of the level of consumption and investment. They caused the economic shocks which leads to a global recession. Investment Coordinating Board recorded (foreign investment and domestic investment) during the second quarter of 2020 amounted to Rp.191.9 trillion, or decreased by 8.9 percent (q-to-q) and decreased by 4.3 percent (y-on-y).¹⁰⁷

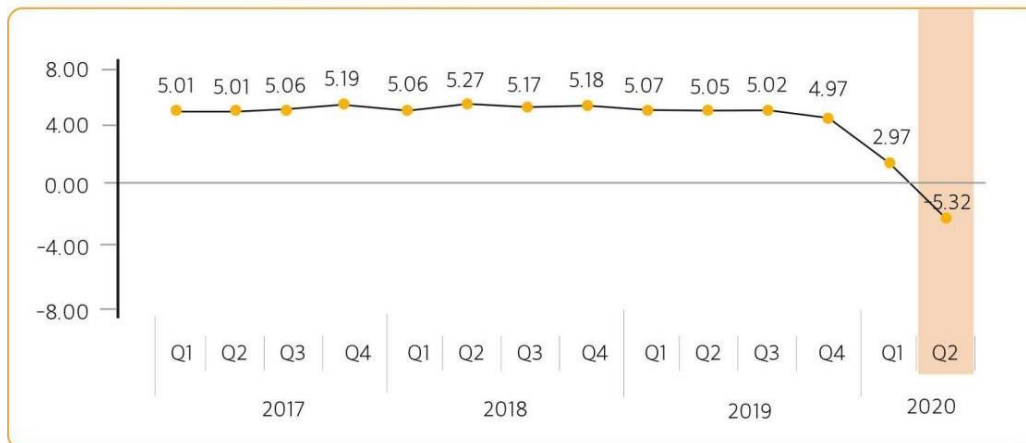


FIGURE 3 Y-ON-Y QUARTERLY GROWTH RATE

¹⁰⁷ *Pertumbuhan Ekonomi Indonesia Triwulan II-2020* (Jakarta, 5 August 2020).

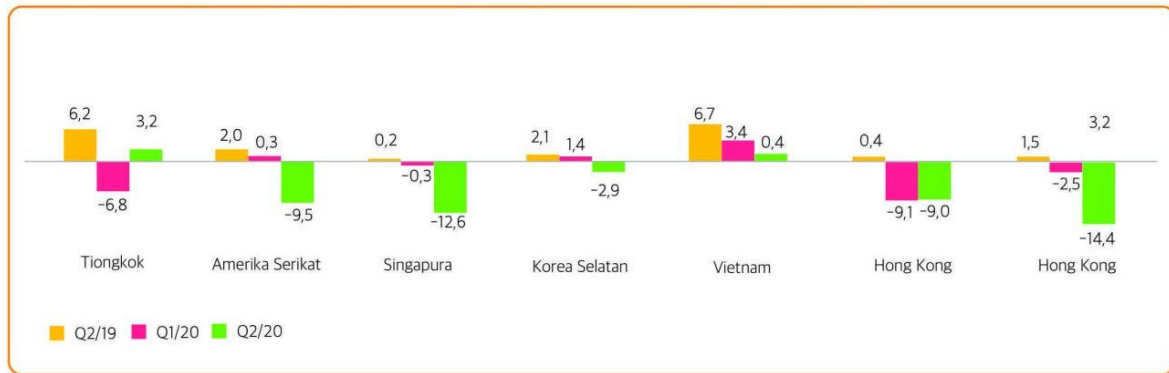


FIGURE 4 THE ECONOMIC GROWTH DEVELOPMENT OF SEVERAL INDONESIAN TRADING PARTNERS (Y-ON-Y)

In the second quarter of 2020, the export and import of goods and services sector also experienced a dynamic up and down in line with the covid pandemic policy. The dynamics in export and import also affected the taxation policies. The non - oil and gas exports contracted in line with the decline of the value and volume of the main commodities. Such as, mineral fuels and electrical equipment / machinery. The oil and gas exports grew in line with the increasing of the volume of the oil and gas exports. Trade of Services contracted in line with the decline of the number of foreign tourists visit Indonesia and the decline of the inflow of the foreign exchange (See Figure 4). The economic growth of Indonesia's main trading partner countries experienced the contraction, except for China. The non-oil and gas imports contracted. The oil and gas imports contracted in line with the decline of the value and volume of the oil and gas imports. The trade of services also contracted in line with the declining of the transportation services for the exports and imports of goods.¹⁰⁸ Various efforts to deal with the impact of the Covid 19 pandemic began to meet the satisfied result in the third Quarter of 2020, where the economic growth rose to minus 3.49% (See Figure 5), slightly better than during the second Quarter of 2020 which was 5.32%.¹⁰⁹



FIGURE 5 INDONESIA'S ECONOMIC GROWTH (Y-ON-Y)

¹⁰⁸ 'Ekonomi Indonesia Triwulan II 2020 Turun 5,32 Persen', *Badan Pusat Statistik Nasional*, 2020 <<https://www.bps.go.id/pressrelease/2020/08/05/1737/-ekonomi-indonesia-triwulan-ii-2020-turun-5-32-persen.html>> [accessed 2 March 2021].

¹⁰⁹ 'Ekonomi Indonesia Triwulan III 2020 Tumbuh 5,05 Persen (q-to-Q)', *Badan Pusat Statistik Nasional*, 2020 <<https://www.bps.go.id/pressrelease/2020/11/05/1738/ekonomi-indonesia-triwulan-iii-2020-tumbuh-5-05-persen--q-to-q-.html>> [accessed 2 March 2021].

The contraction in the economic growth, resulted from the direct impact of the pandemic, as well as the indirect impact of the policies applied to control the pandemic. This impact affected directly both individuals and the business entities. For instance, the Micro, Small, and Medium Enterprise have experienced the decrease in its turnover or profits. Thus, they decided to reduce the number of their employees. According to a study conducted by the Ministry of Manpower, there were 41 percent of companies had experienced a heavy loss, 47 percent quite a loss, 11 percent were affected and only 1 percent could make a profit.¹¹⁰ Fernanda et al¹¹¹ in their research stated that a pandemic is a socio-economic disaster that requires emergency policies to address the existing gap which is getting worse with the pandemic. As a result of criticism of the tax exemptions and privileges enjoyed by the rich, the paper highlights the mitigation measures adopted by Argentina, Brazil, Chile and Uruguay and their impact on debates surrounding progressive tax reform to finance social schemes. All of these countries already have income transfer schemes and, during the pandemic, they have adopted responses related to mitigating the pandemic to the labor sector, one of which is to create job retention schemes and formal worker income schemes.

The conditions for the companies to suffer the losses due to the impact of the rising of the covid wave indeed have affected on individuals. In this case, they were the employees, as well as other individuals and entities connected to the losing business unit. So that, the scale of the economic and social losses were very large. According to the research, the the Micro, Small, and Medium Enterprise was one of the sectors which had a quite heavy impact, where in Indonesia there were 64 million business units and 116 million people who depend on their livelihoods. There are 1,785 cooperatives and 163,713 the Micro, Small, and Medium Enterprise which affected by the corona virus pandemic (Covid-19).¹¹² The business sectors, such as, the food, tourism, creative and entertainment industries were significantly affected. These business fields have been experiencing the stagnation as they were forced to close their businesses. That was because the decreasing of their turnover which significantly occurred as the effect of the policies applied in dealing with the covid. Besides, it also might happen as the result of the changing in the social behaviour of the society.

At the beginning of the first wave of the Covid 19, according to the statement of the Indonesian Minister of Manpower, the total number of the workers affected by the Covid-19 were around 2,084,593 workers. They were from 116,370 companies of both formal and informal sectors.¹¹³ At the end of 2020, around 29 million workers were at risk of losing their jobs. That was caused by the impact of policy due to pandemic situation, which forced them to reduce their working hours.¹¹⁴ The Central Statistics Agency noted that at the end of 2020 there were at least 2.56 million people in Indonesia lost their jobs.¹¹⁵ Therefore, the policy after policy in the economic sector, especially in taxation, continuing to provide

¹¹⁰ Dedi Rahmadi, 'INFOGRAFIS: Dampak Pandemi Covid-19 Terhadap Perusahaan | Merdeka.Com', *Merdeka.Com*, 2020 <<https://www.merdeka.com/peristiwa/infografis-dampak-pandemi-covid-19-terhadap-perusahaan.html>> [accessed 2 March 2021].

¹¹¹ Fernanda Cimini and others, 'Covid-19 Pandemic, Social Mitigation and Taxation: The Open Veins of Inequality in Latin America', *Bulletin of Latin American Research*, 39.S1 (2020), 56–61 <<https://doi.org/10.1111/blar.13213>>.

¹¹² Abdurrahman Firdaus Thaha, 'DAMPAK COVID-19 TERHADAP UMKM DI INDONESIA', *BRAND - Jurnal Ilmiah Manajemen Pemasaran*, 2.1 (2020), 147–53 <<https://ejournals.umma.ac.id/index.php/brand>> [accessed 2 March 2021].

¹¹³ 'Menaker: Badai Pasti Berlalu, Panggil Kembali Pekerja Yang Ter-PHK Nanti', *Indonesia's Ministry of Labour*, 2020 <<https://www.kemnaker.go.id/news/detail/menaker-badai-pasti-berlalu-panggil-kembali-pekerja-yang-ter-phk-nanti>> [accessed 2 March 2021].

¹¹⁴ Agatha Olivia Victoria, '29 Juta Pekerja Terdampak Covid-19: Jam Kerja Berkurang Hingga PHK', *Katadata.Co.Id*, 2020 <https://katadata.co.id/agustiyanti/finansial/5fa39e64a3b0e/29-juta-pekerja-terdampak-covid-19-jam-kerja-berkurang-hingga-phk?__cf_chl_jschl_tk__=aff1e3d7e9f73a9f34a79f8ad75b68d9d15cb945-1614673590-0-ASpMevMPghht32MZZNCRlc5rGa6VEihAfq5abzsfNyotdm3wYr897nHF> [accessed 2 March 2021].

¹¹⁵ Muhammad Hendartyo and Martha Warta Silaban, 'Pandemi Covid-19, BPS Catat 2,56 Juta Orang Jadi Pengangguran - Bisnis Tempo.Co', *Tempo ID*, 2021 <<https://bisnis.tempo.co/read/1432998/pandemi-covid-19-bps-catat-256-juta-orang-jadi-pengangguran>> [accessed 2 March 2021].

stimulus in the form of tax cuts and incentives to drive the economy activities running, especially for the business entities, private businesses, and the individuals.

The Covid wave in Indonesia has not yet fallen, however on November 2nd, 2020, the Government of the Republic of Indonesia passed Law Number 11 of 2020, known as the Omnibus law. It was aimed to encourage the ease in running businesses and fostering a conducive investment climate, tax law is one that is included in the omnibus law arrangement. It is expected to protect and enhance the tax revenue through the increasing of the investment, voluntary compliance, legal certainty, and business climate justice.¹¹⁶

In 2021, the wave of the Covid pandemic is getting higher, while the economy is getting sluggish due to the decreasing of the purchasing power of the society. Taxes, as a means of distributing the welfare, is needed to be readjusted on its policy. So that, the goal on social justice for all Indonesian people could be reached out. What policy does the Indonesian government take on the taxation which can help the individuals and the economic operators to be able to keep surfing on the rise and fall of the covid wave? How far the law policy in taxation will take roles in dealing with the impact of the pandemic (legal implementation of temporary measures and other technical legal implementation issues)?

2. Discussion

A. Taxation law principles

The basic principle of tax is justice, in which the state as the provider of public services has to deliver the social welfare to all its citizen. So that, the welfare can be evenly distributed. Taxes are a source of the state revenue that used to achieve of the national interests. WH. Van den Berge, stated that nation as: "Groupsverband" (organization of groups) with respect to the requirements of the justice has the duty to carry out the public interest.¹¹⁷ The Constitution of the Republic of Indonesia guarantees the collection of taxes by the state was first set the Article 23 paragraph 2 of the 1945 Constitution: "All taxes for the State are based on law". Furthermore, the Article 23 paragraph (2) of the 1945 Indonesian Constitution was amended by the Article 23A of the 1945 RI Constitution which states that: "Taxes and other levies that are compelling for the purpose of the state are regulated by the constitution".

Tax collection is an implementation of democracy, distributing the people's welfare and ensuring that the public rights are fulfilled. Bruno Peter argued that the tax concept cannot be seen solely as a method to collect the state's revenue to support government activities, taxation has a democratic goal to allocate the equal justice for all society and to maintain the economic stability, as well as to stimulate the prosperity.¹¹⁸ Therefore, the tax collection should be balanced with social welfare. Tax Law is a collection of regulations used to regulate the legal relationship between the State (Fiscus) as the tax collectors and the public as the tax payers. This shows that the taxation sector are coping with two legal subjects, the State and the people as tax payers. They are juridically have rights and obligations that regulated by laws and regulations. The existence of the principles that ensoul every tax law is expected to be able to help in carrying out the tax collection properly and appropriately.¹¹⁹ Tax law must have the aspects of justice, both in terms of material and how it is implemented. When the tax justice cannot be carried out through a persuasive approach, the aspect of law enforcement through the examination and investigation is the

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¹¹⁷ Suparnyo, *Hukum Pajak: Suatu Sketsa Asas*, 2nd edn (Semarang: Pustaka Magister, 2012)

<<https://eprints.umk.ac.id/277/>> [accessed 2 March 2021].

¹¹⁸ Mustaqiem, *PERPAJAKAN DALAM KONTEKS TEORI DAN HUKUM PAJAK Di INDONESIA*, ed. by Ibnu Teguh, 1st edn (Yogyakarta: Buku Litera, 2014).

¹¹⁹ Mustaqiem.

best way to be carried out to realize the tax justice. Apart from the issue of the tax justice, the moral application is an important part that must be done by every tax stakeholder.¹²⁰

There are 4 (four) functions of the tax, the budget function, the regulating function, the stability function, and the income redistribution function. The Budget Function (Budgetair) as a source of the state's revenue, taxes serve to support the state's expenditures. To carry out the routine state tasks and the development. The Regulation Function is where the Government can set the economic growth through the tax policy. By the Regulation function, taxes can be used as a means to reach the national goals. For example, in order to drive the investment, both Domestic and Non domestic, it is given various kinds of facilities in the form of tax relief. The Stability function of the existence of taxes, the government has the funds to carry out policies related to the price stability. So that, any inflation can be controlled. The Income redistribution function, taxes collected by the state will be used to support all the public interests, including the development. In this regards, there will be lot of job opportunities which can help to raise the people's income.

Furthermore, there are some requirements in collecting taxes. Such as, the awareness of a fair tax collection and law based procedure. The tax collection should not distract the economical activities. The tax collection must be efficient and its collection system must be simple.¹²¹ In this pandemic situation, these five conditions must be taken into account in taking stages of the tax policy. So that, it can be fair, effective, efficient and beneficial. According to Adam Smith in *Wealth of Nation*, for a fair tax regulations, there are four conditions that must be fulfilled. It called The Four Canons of Adam Smith or often called The Four Maxime, which include Equality and equity, Certainty, Convenience of payment, and Economic of collection. The Equality and equity means equation and justice, where the tax laws always provide the equal treatment to people who are in the same condition. The tax collection carried out by the state must be in accordance with the economic ability (income) of the tax payers. The state must not act discriminatively against the tax payers. Tax law should provide legal certainty to the tax payers about the tax payment date, their rights and obligations, etc. In this regard, the tax law should not contain any ambiguous interpretation. The Convenience of payment is that the tax must be collected at the exact time. This relates to the capability of the tax payers on paying the tax. The due date of each tax payer is different according to their capability on paying the taxes. The Economic of collection is the condition where the tax law should consider the ratio (balance) between the costs collection / the collection with the results of the tax itself. So, it is expected that there will be no negative tax results where the costs spent for the tax collection is higher than the amount of the taxes collected.¹²²

The juridical principle of all tax collection must be based on law. Hiba Hafiz, et.al¹²³, analyse the major legislative and other policy initiatives that are being proposed and enacted to manage the economic and financial aspects of the COVID-19 crisis by examining these initiatives through the lens of these three policy priorities. They are outlining three important, interrelated policy concerns that demand increasing attention and that will need to be addressed by regulators managing the pandemic and its economic and social fallout. The policy that being analysed are social Insurance, broader economic and systemic risk management, and spatio-behavioral management. These three policy concerns may come in tension with one another given the distinctive behavioural agenda and crisis backdrop against which policy decisions must be made. The confluence of these three policy considerations make the COVID-19 crisis truly unique from the standpoint of economic and financial regulation. In order to protect the domestic production, the government sets high import duties for the foreign products.

¹²⁰ Mustaqiem.

¹²¹ Mustaqiem.

¹²² Rochmat Soemitro, *Pengantar Singkat Hukum Pajak*, 1st edn (Malang: Eresco, 1992) <<https://onsearch.id/Record/IOS2875.slims-33171>> [accessed 2 March 2021].

¹²³ Hiba Hafiz and others, 'Regulating in Pandemic: Evaluating Economic and Financial Policy Responses to the Coronavirus Crisis', *SSRN Electronic Journal*, 2020 <<https://doi.org/10.2139/ssrn.3555980>>.

B. Tax Policies in Indonesia : Surfing over The High Waves COVID-19 Pandemic

At the beginning of the Covid pandemic, the Indonesian Government responded it by focusing on mitigating the economic impacts which are considered to have a very wide-scale impact on the people's lives. To ensure the legal certainty in making policies, the Indonesian issued the Government Regulation in Lieu of Law Number 1 Year 2020, Concerning The State Financial Policy and Financial System Stability for Controlling the Corona Virus Disease 2019 (Covid-19) Pandemic and / or in the Context of Facing Threats Which Endanger the National Economy and / or Financial System Stability. Later it ratified becomes the Act o Number 2 of 2020. Followed some countries that applied temporary policies to mitigate the economic impact of the pandemic. However, they only used technical instruments since they considered that the pandemic will not be permanent. According to the paper issued by the legal department of the International Monetary Fund (IMF) in the "Special Series on Tax Law Design Issues to Respond to COVID-19"¹²⁴, it contains the stages of legal policy that must be implemented in response to the Covid pandemic without changing the existing tax laws. It suggested to use of secondary legal instruments or administrative arrangements, because it is necessary to anticipate the impact of the legal policies taken during the post-pademic period. The use of secondary instruments is more effective and providing legal certainty in the technical implementation.

Since the policy taken are related to the substantial tax liability or “if the policy taken is not in accordance with the existing laws”, requires a legal instrument that can provide a solution, including anticipating post-pandemic changes. In this case, the Indonesian Government carry out the Government Regulation in Lieu of Law, where it is govern under Article 22 paragraph 1 of the 1945 Constitution of the Republic of Indonesia.¹²⁵ Based on the provisions of the Article 22 paragraph (2) of the Indonesia Constitutions, Government Regulation in Lieu of Law Number 1 Year 2020 has been approved by the House of Representatives to be later ratified into the Law Number 1 Year 2020. The broader economic implications are considered to be the deceleration of the national economic growth, the degression of the state revenues, and an the escalation of the state spending. Therefore, the Indonesian Government needs to save the health care and the national economy by focusing public spending on health, social safety nets, as well as the economic recovery. This includes the business world and the affected communities. The State financial and fiscal policy’s responses are needed to deal with the risk of the pandemic. For instance, the escalation of the expenditure to mitigate the health risks, public safety, and maintain the business activities. The pressure on the financial sector will affect the Government Budget, particularly in the public spending. The decline in the state revenues and the global economic uncertainty require policies and extraordinary movements in the field of state finances, one of which is taxation.¹²⁶

Some of the recommended policies are the tax relaxation, postponement for the tax payment, tax incentives, suspension of tax court proceedings, and suspension of fines or other penalties. The policies must be designed effectively and meets the rules and regulations that exist during a crisis. Based on the statement of the Minister of Finance, the stimulus that has been conveyed to the entire business world and individual. The state budget will cover the needs of health, social and economic sectors, all of which

¹²⁴ Christophe Waerzeggers, Cory Hillier, and Irving Aw, ‘Tax Law Design Considerations When Implementing Responses to the COVID-19 Crisis’, 2.March (2020), 19–20 <<https://www.imf.org/~media/Files/Publications/covid19-special-notes/special-series-on-covid-19-tax-law-design-considerations-when-implementing-responses.ashx>>.

¹²⁵ Ali Marwan Hsb, ‘Kegentingan Yang Memaksa Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (COMPPELLING CIRCUMSTANCES OF THE ENACTMENT GOVERNMENT REGULATION IN LIEU OF LAW)’, *Jurnal Legislasi Indonesia*, 14.01 (2017), 109–22 <<https://doi.org/10.31219/osf.io/4cuh3>>.

¹²⁶ *Undang-Undang (UU) Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) Dan/Atau Dalam Rangka Menghadapi Ancaman Yang Membahayakan Perekonomian Nasional Dan/Atau Stabilitas Sistem Keuangan Menjadi Undang-Undang, Republic of Indonesia* (Cabinet Secretariat of Indonesia, 2020) <<https://peraturan.bpk.go.id/Home/Details/137323/uu-no-2-tahun-2020>> [accessed 2 March 2021].

experience the impacts. Such as, the domino effects definitely influence the financial sector. Furthermore, Ministry of Finance launch stimulus / policies to reduce the enormous impact of the Covid-19, where all shocks cannot be absorbed by the state budget. Therefore, the state budget is focused to support the social resilience of the community. So that the impact of the pandemic does not cause any bankruptcy or massive damages. The needs for extraordinary policies by the Government to reduce the impact of the spread of the Covid-19 virus in Indonesia has made it necessary to establish a legal ground. So that, the implementation of these policies does not cause problems during the post-pandemic period. In other words, the instrument created can be used to surf over the waves of the Covid 19 pandemic. The government's commitment to maintain the sustainability of state finances shown by the the efforts in managing the fiscal as well as the state revenue, prudent debt management and improving the performance of the budget absorption. This is directed for the implementation of the state budget as it can provide optimal and equitable benefits for all levels of the society.¹²⁷

In managing the covid 19 wave which continues to rise, many countries have issued extensive economic stimuli which include the fiscal stimulus, monetary stimulus, and the financial sector. This fiscal stimulus includes the escalation improvemen budget for health, unconditional cash transfer, and assistance to the business sector (tax postponement and loan guarantees). Additionally, low- and middle-income countries should prioritize public money creation over foreign borrowing. Experience shows that the cost of servicing foreign debt diverts resources from public services and can undermine fundamental economic, social and cultural rights, such as the rights to clean water, sanitation, basic education and health care¹²⁸. The monetary and financial sector stimuli include the deflation of the interest rates, quantitative easing, postponement and easing of the credit payments, as well as providing the loan facilities.¹²⁹ The fiscal stimulus of the Indonesian government in the form of assistance to the business sector includes the health sector, the business world, and the middle class.

C. Tax Policy in the Health Sector

The government encourages the availability of goods such as personal protective equipment and medicines needed in coping with the COVID-19 outbreak by providing value added tax facilities which are not collected or borne by the government. These facilities are provided to the government intitutions / agencies , referral hospitals, and other parties appointed to assist the handling of the COVID-19 outbreak for the import, acquisition and utilization of goods and services.¹³⁰ The items needed for handling the COVID-19 outbreak include medicines, vaccines, laboratory equipment, detection equipment, personal protective equipment, equipment for patient care, and other supporting equipment. Meanwhile, the services needed in the context of handling the COVID-19 outbreak include construction services, consulting services, engineering, and rental service management, and other supporting services.

In addition to the value added tax (VAT) incentives, to help accelerate the handling of the COVID19 outbreak, the government also provides exemptions from collecting or cutting the income taxes as follows:

- a. The Article 22 : for imports and purchases of goods as mentioned above carried out by the government instances / agencies, the referral hospitals, and other parties appointed to assist in handling the COVID-19 outbreak;

¹²⁷ 'Pemerintah Waspada Dampak Pandemi Covid-19 Terhadap Ekonomi Indonesia', *Kementerian Keuangan Republik Indonesia* (Jakarta, 17 April 2020).

¹²⁸ Takondwa Chimowa, Stephen Hall, and Bernadette O'Hare, 'Public Money Creation to Maintain Fundamental Human Rights during the COVID-19 Pandemic', *Health and Human Rights*, 22.1 (2020), 395–97.

¹²⁹ *Stimulus Fiskal* (Jakarta, 28 March 2020)

<<https://www.kemenkeu.go.id/media/14874/stimulusekonominegara.pdf>> [accessed 2 March 2021].

¹³⁰ 'FASILITAS PAJAK UNTUK Mendukung Ketersediaan Obat, Alat Kesehatan dan Jasa yang Diperlukan dalam Rangka Penanganan COVID-19', *Kementerian Keuangan* (Jakarta, 11 April 2020)

<<https://www.kemenkeu.go.id/media/14914/sp-15-fasilitas-pajak-produk-covid-19.pdf>> [accessed 2 March 2021].

- b. The Exemption facility of the Import duty, excise, Value Added Tax (VAT) / Sales Tax on Luxury Goods, and the Income Tax Article 22 on imported goods for handling COVID-19. Minister of Finance Regulation Number 34/2020 as amended by the Minister of Finance Regulation Number 83/2020 which has been amended by the Minister of Finance Regulation Number 149/2020;
- c. The Article 21: for the income received by individual domestic taxpayers as the compensation given by the government instances / agencies, referral hospitals, or other designated parties for services needed in the context of handling the COVID-19 outbreak;
- d. The Article 23: for the income received by the domestic corporate taxpayers and permanent businesses as the compensation given by the government instances / agencies, referral hospitals, or other parties appointed for technical, management, or other services required in the context of handling the epidemic of COVID-19.

1. Government Regulation in Lieu of Law Number 1 of 2020 on State Finance Policy and Financial System Stability for the Handling of Corona Virus Disease 2019 (COVID-19) and/or in the Framework of Dealing with Threats Endangering National Economy and/or Financial System Stability.
2. Presidential Decree Number 11 of 2020 on the Declaration of Coronavirus Disease 2019 as Public Health Emergency.
3. Government Regulation Number 29 of 2020 on Income Tax Facilities to Address Corona Virus Disease (Covid-19).
4. Minister of Finance Regulation Number 34/PMK.04/2020 on the duty/customs and tax facilities for goods imported for the purpose of combating the COVID-19 pandemic.
5. Minister of Finance Regulation Number 38/2020 concerning Implementation of State Financial Policies for Handling the COVID-19 Pandemic
6. Minister of Finance Regulation Number 31/2020 concerning Additional Incentives for Companies Receiving Bonded Zone Facilities
7. Minister of Finance Regulation Number 107/2020 Concerning Implementation Mechanisms and Accountability for Government-Borne Taxes in Handling the COVID-19 Pandemic
8. Minister of Finance Regulation Number No. 19 / PMK.07 / 2020 concerning Distribution and Use of Profit Sharing Funds, General Allocation Funds, and Regional Incentive Funds for the 2020 Fiscal Year in the Context of Combating Corona Virus Disease 2019 (COVID-19)

Regarding, the pharmaceutical industry for the production of vaccines and / or drugs for the import or acquisition of the vaccine and / or drug for handling the COVID-19, the Value Added Tax will be considered as the Government Borne Tax. This regulation will be last until December 2020. The Value Added Tax which become the Government Borne Tax applied to the those receiving the vaccine and / or the drugs for handling the COVID-19 by the pharmaceutical industry will be last until December 2020. There will also be applied the relaxation on the import provisions of medical devices used in handling the COVID-19. The regulation will be in a form of the exemption from distribution permit obligations or Special Access Scheme (SAS).

D. Tax Policy in the Business Sector

The business world is a sector that has been severely affected by this pandemic, where the degression of the economic scale had given a significant domino effect in various sectors. Therefore, the government had passed around 19 Regulations in order to ensure the legal certainty and give facilities in that sector.¹³¹

¹³¹ PP No. 29 Tahun 2020 Tentang Fasilitas Pajak Penghasilan Dalam Rangka Penanganan Corona Virus Disease (Covid-19) [JDIH BPK RI], Republic of Indonesia (Cabinet Secretariat of Indonesia, 2020) <<https://peraturan.bpk.go.id/Home/Details/138977/pp-no-29-tahun-2020>> [accessed 2 March 2021].

1. Government Regulation Number 30 of 2020 concerning Decrease in Income Tax Rates for Domestic Corporate Taxpayers in the Form of Public Companies.
2. Government Regulation No. 29/2020 on Income Tax Facilities in the Effort to Mitigate COVID-19.
3. Minister of Finance Regulation Number 30 of 2020 concerning Amendments to PMK No 57 /PMK.04/2017 concerning Postponement of Excise Payment.
4. Minister of Finance Regulation Number 31 of 2020 concerning Additional Incentives for Companies Recipient of Bonded Zone Facilities.
5. Minister of Finance Regulation No. 34/PMK.04/2020 on the duty/customs and tax facilities for goods imported for the purpose of combating the COVID-19 pandemic.
6. Minister of Finance Regulation Number 38 of 2020 concerning Implementation of State Financial Policies for Handling the COVID-19 Pandemic.
7. Minister of Finance Regulation Number 48 of 2020 concerning Procedures for Appointment of Collectors, Collection and Deposit, as well as Reporting Value Added Tax on Utilization of Intangible Taxable Goods and / or Taxable Services from Outside the Customs Area within the Customs Area through Trade Through the System Electronic.
8. Minister of Finance Regulation Number 45 of 2020 concerning Procedures for Submitting a Certificate of Origin or Invoice Declaration along with Complementary Customs Documents of Research Certificate of Origin in the Context of Imposing Import Duty Tariffs on Imported Goods Based on International Agreements or Agreements During the Covid-19 Pandemic
9. Minister of Finance Regulation Number 83 of 2020 Amendment to PMK No. 34 / Pmk.04 / 2020 concerning the Granting of Customs and / or Excise Facilities as well as Taxation on Imported Goods for the Purposes of Handling the COVID-19 Pandemic.
10. Minister of Finance Regulation Number 86 of 2020 concerning Tax Incentives for Taxpayers Affected by the Covid-19 Pandemic.
11. Minister of Finance Regulation Number 98 of 2020 concerning Government Guarantee Procedures for Corporate Business Actors through the Designated Guarantee Business Entity in the Context of Implementing the National Economic Recovery Program (PEN).
12. Minister of Finance Regulation Number 104 of 2020 concerning Fund Placement in the Context of Implementing the National Economic Recovery Program (PEN).
13. Minister of Finance Regulation Number 107 of 2020 concerning Implementation Mechanisms and Accountability for Government-Borne Taxes in the context of Handling the COVID-19 Pandemic.
14. Minister of Finance Regulation Number 110 of 2020 concerning Amendments to PMK 86/2020 concerning Tax Incentives for Taxpayers Affected by the Covid-19 Pandemic.
15. Minister of Finance Regulation Number 118 of 2020 concerning Government Investment in the Context of the National Economic Recovery Program.
16. Minister of Finance Regulation Number 134 of 2020 concerning Government Borne Import Duty on the Import of Goods and Materials to Produce Goods and / or Services by Certain Industry Sectors Affected by the COVID-19 Pandemic.
17. Minister of Finance Regulation Number 137 of 2020 concerning the Determination of Zero Rupiah Tariff for the Issuance of Certificate of Origin that Applies to the Ministry of Trade Due to the COVID-19 Pandemic.
18. Minister of Finance Regulation Number 143 of 2020 concerning the Granting of Tax Facilities for Goods and Services Needed in the Context of Handling the COVID-19 Pandemic and the Extension of the Enforcement of Income Tax Facilities based on Government Regulation No. 29 of 2020 concerning Income Tax Facilities in the Context of Handling COVID-19.
19. Minister of Finance Regulation Number 149 of 2020 concerning the Second Amendment to PMK 34/2020 concerning the Granting of Customs and / or Excise Facilities as well as Taxation on Imported Goods for the Purposes of Handling the COVID-19 Pandemic.

The Indonesian Government also providing Government-borne import duty incentives (BM DTP) on raw materials imported by 33 industrial sectors affected by the Covid-19 pandemic with varying BM DTP ceilings will be last up to December 31st, 2020. The detail explanation can be seen on the Minister of Finance Regulation (PMK) Number 134 / PMK.010 / 2020. This incentive for the imported goods is intended to support the handling of the Covid. Then, it is expected to encourage the escalation

in exports. There are several policies provided by the Indonesian government, one of which is to give away for free the services on the issuance of the certificate of origin (SKA) for all exporters. This regulation will be carried out on October 1st, to December 31st, 2020. The SKA is one of the documents used to access the trade preference facilities. So that, the domestic exporters can get the benefit from the tax deductions of their products entering certain markets of countries which apply the free agreements.

- a. The Income Tax (PPh) 21 is borne by the government for the 1,189 certain industrial sectors, companies with Ease of Import for Export Purposes facility, and companies in bonded zones.
- b. The Exemption of the Income Tax (PPh) 22 on imports for 721 certain industrial fields, companies with Ease of Import for Export Purposes facility, and companies in bonded zones.
- c. The reduction in the Income Tax (PPh) 25 installments from 30% to 50% for the 1,013 certain industrial sectors, companies, the convenience of the Import for Export Purposes, and companies in bonded areas
- d. The Value Added Tax refunds are accelerated for the 716 certain industrial sectors, companies for the convenience of the import for export purposes, and companies in bonded areas whose VAT overpayments are at maximum of Rp. 5 billion.

Moreover, the Government has also developed the National Logistics Ecosystem (NLE). It is a platform that facilitates the collaboration in information systems between the government and the private instances for the simplification and synchronization of the flow of information and documents in export / import activities at ports, and trade / distribution activities of the domestic goods through the data sharing, business process implications, and the elimination of repetitions, as well as duplications. This aims to improve and accelerate the export-import process services (See Table 1 and 2).

TABLE 1 BONDED ZONE (KB)

	Previously	Currently
Products Selling To The Local	The quota limitation of 50% of the export proceeds	Being allowed without reducing the current year's sales quota
Physical Inspection	Random, based on the risk management, is done directly by the officer while the self-service is only allowed for the self-bonded areas companies	Selective, utilizing the information technology, and if the area is designated as in Large-Scale Social Restrictions, then the bonded storage place can be given the independent service
Income <ul style="list-style-type: none"> - Disinfectant - Face Mask - PPE - Measuring tool body temperature and/or - Other stuff for handling Covid-19 	Paying the Import Duty, and the general import provisions is applied	The postponement of the Import Duty and the import tax as long as it is used in the Bonded Zone (KB)

TABLE 2 THE SIMPLICITY IN IMPORT ACTIVITIES

The Export Purposes (KITE)		
	Previously	Currently
The entry of the local goods in order to be processed for the export purposes	Subjected to the VAT or the sales tax on luxury goods (PPnBM)	Not subjected to the Large-Scale Social Restrictions or the sales tax on luxury goods (PPnBM)
The submission of the products to be processed/ combined with the Bonded Zone/Ease of Import for Export Purposes Small and Medium Enterprises products	Not allowed	Allowed
The selling of the products to the local	The exemption of the Ease of Import for Export Purposes is not allowed. The Ease of Import for Export Purposes Small and Medium Enterprises is only allowed as much as 25%	The exemption of the Ease of Import for Export Purposes and the Ease of Import for Export Purposes Small and Medium Enterprises are allowed as much as 50% and the export value of the previous year
The submission of the products for handling the COVID-19 disaster	Unregulated	The exemption of the Ease of Import for Export Purposes and the Ease of Import for Export Purposes Small and Medium Enterprises are allowed to submit the products for the COVID-19 disaster management to the government or those who are allowed to the exemption of the Import Duty and import tax in the country without reducing the local sales quota

E. Tax Policies and Micro Small and Medium Enterprises (MSME's)

Meanwhile, specifically for the MSME's, the government issued at least 9 regulations that provide the incentives and relaxation. So that, the economic activities in this sector can continue to run their business activities. The forms of policy provided are in the form of tax incentives, soft loans, ease of licensing, and some capital stimulus assistance. The Indonesian Ministry of Cooperatives and SMEs reports that in terms of number of units, MSME's have a share of around 99.99% (62.9 million units) of the total business actors in Indonesia (2017), while large businesses are only 0.01% or around 5400 units. Micro enterprises employ around 107.2 million workers (89.2%). Medium Small Enterprises employ around 5.7 million (4.74%) workers and Medium Enterprises employ 3.73 million (3.11%) workers. Meanwhile, Big Enterprises employs around 3.58 million workers. This means that collectively, MSME's employ around 97% of the national workforce, while large enterprises only employ about 3% of the total national workforce. The business of accommodation and food and beverage provision is a fairly large sector with a portion of 16.93% of MSME's, covering types of businesses in restaurants, restaurants, catering services, food sales centers, cafes etc. Catering businesses that serve the provision of food for events or logistical needs (for example procuring food or snacks for airplanes, trains, ships, etc.) also fall into this category.¹³² This sector experienced a very big shock due to the covid wave and was seriously affected by the pandemic management policy.

1. Minister of Finance Regulation Number 29/2020 Concerning Implementation of Tax Administration Services in Force Majeure Due to the 2019 Corona Virus Disease Pandemic.
2. Minister of Finance Regulation Number 34/2020 Concerning Granting Customs and / or Excise Facilities and Taxation on Imported Goods for Handling the Covid-19 Pandemic.
3. Minister of Finance Regulation Number 38/2020 concerning Implementation of State Financial Policies for Handling the COVID-19 Pandemic.
4. Regulation of the Minister of Finance Number 45/2020 concerning Procedures for Submitting Certificate of Origin or Invoice Declaration along with Complementary Customs Documents of Research Certificate of Origin in the Context of Imposing Import Duty Tariffs on Imported Goods Based on International Agreements or Agreements During the Covid-19 Pandemic.
5. Minister of Finance Regulation Number 65/2020 concerning Procedures for Providing Interest Subsidies / Margin Subsidies for Credit / Financing Micro, Small and Medium Enterprises in the Context of Supporting the Implementation of the National Economic Recovery Program.
6. f. Minister of Finance Regulation Number 85/2020 Concerning Procedures for Providing Interest Subsidies / Margin Subsidies for MSME Credit / Financing in Support of the Implementation of the PEN Program.
7. Minister of Finance Regulation Number 86/2020 Concerning Tax Incentives for Taxpayers Affected by the Covid-19 Pandemic..
8. Minister of Finance Regulation Number 104/2020 concerning Fund Placement in the Context of Implementing the PEN Program.
9. Minister of Finance Regulation Number 110 of 2020 concerning Amendments to PMK 86/2020 concerning Tax Incentives for Taxpayers Affected by the Covid-19 Pandemic

¹³² Potret UMKM Indonesia: Si Kecil yang Berperan Besar, <https://www.ukmindonesia.id/baca-artikel/62>.

TABLE 3 SCHEME THE PROTECTION AND THE RESTORATION OF THE MSME IN THE MIDST OF THE PANDEMIC COVID-19

Scheme	Subject	Form
Social Assistance	The MSME owners who is in poor category and is vulnerable to be affected by the COVID-19	Sign in as the recipient of the social assistance from the government
Tax Incentive	The MSME owners whose turnover is below Rp. 4,8 billion per year	0% of the final Income Tax rate for 6 months (April-September 2020)
Relaxation and Restructuring the MSME Credit	The Loans for MSME	6 months of postponement of the installments and interest subsidies
Special emergency working capital assistance stimulus for the MSME owners affected by the COVID-19	The MSME owners who have never received any financing from the financial institutions and the banking system	Special emergency working capital assistance stimulus for the MSME owners affected by the COVID-19
Business recovery and consolidation	The government through the Ministry, State Enterprise institution, and the regional government act as the buffer for the MSME ecosystem; especially, at the recovery and business consolidation stages after the COVID-19 pandemic	

F. New Normal Policy: Sailing to The New Horizon

One year since the issuance of the tax policy in response to the pandemic, the government has conducted several evaluations. In 2021, the Indonesian Government issued a Macroeconomic Framework (KEM) and the Fiscal Policy Principles (PPKF). Those documents is a form of the accountability for the implementation of the government's obligation to serve the people. This is in line with what is mandated in Article 13 paragraph 1 of the Constitution (UU) Number 17 of 2003 concerning the State Finances and Article 178 paragraph 2 of the Constitution Number 17 of 2014 concerning the People's Consultative Assembly (MPR), People's Representative Council (DPR), Regional Representative Council (DPD), and Regional House of Representatives (DPRD). The documents are used as the material for the Preliminary Discussions in the case of drafting the Financial Note, as well as the Indonesian Proposed Budget (RAPBN) to the House of Representatives (DPR). The KEM PPKF document for 2021 is an initial description as well as a scenario for the direction of the economic and fiscal policy in 2021.¹³³

In 2021, we still faces the same challenges as in 2020. Such as, the global uncertainty, the efforts to improve the quality of the human resources, both in terms of health, education and the prosperity levels. So that, within the future it requires structural reforms to rearrange the allocation of the national economic resources so as to form it more efficient and effective. The policies pursued by the govt in 2020 like , the stipulation of the govt Regulation in lieu of Law (Perppu) No.1 / 2020 and therefore the Presidential Regulation (Perpres) No. 54/2020 as a step to affect the COVID-19 pandemic and maintain the national economic conditions and therefore the economic system stability, become the important bases within the formulation of the economic policy in 2021.

In 2021, the Government will carry out some recovery efforts including fiscal reforms. So that, the fiscal policy 2021 focusing in "Accelerating the Economic Recovery and Strengthening the Reforms". The fiscal policy itself in 2021 directed to stimulate the economy to grow at a high level, as well as the investment and exports, encourage the innovation and strengthen the quality of the human resources, and encourage the national competitiveness, including the structural transformation. The fiscal policy is

¹³³ KERANGKA EKONOMI MAKRO DAN POKOK-POKOK KEBIJAKAN FISKAL TAHUN 2021 (Jakarta, 2021).

also directed to encourage the creation of healthier fiscal management, which is reflected in the optimization of the state revenues, higher quality spending (spending better), and creative, efficient and sustainable financing. Besides, the fiscal policy is also directed to be able to encourage the improvements in the government's financial balance.¹³⁴

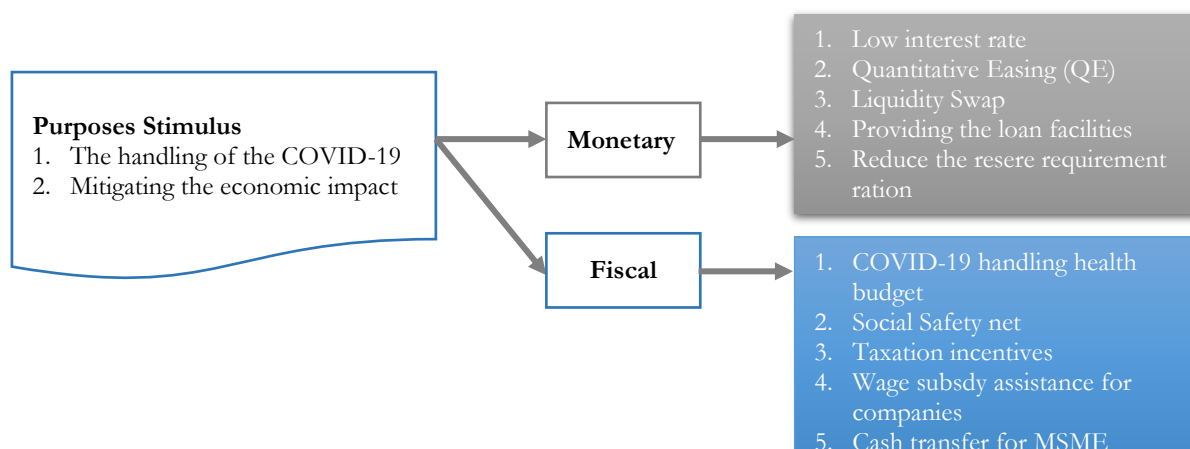


FIGURE 6 FORMS OF STIMULUS FOR HANDLING THE COVID-19 AND ITS IMPACT

The most significant impact of the COVID-19 is estimated to affect the baseline of the state revenue, both in terms of the Taxation and the Non-Tax Revenue. Regarding the tax revenue, it was estimated that in 2020 it would experience a significant decline. The decrease in the tax revenue was caused by several factors, including the following explanations:¹³⁵

1. The changes in the baseline for the tax realization in 2019 and the changes in the macroeconomic assumptions in 2020.
2. The Tax stimulus policies that directly reduce the tax revenues.
3. The Acceleration of the implementation of the Omnibus Law Taxation, e.g. the reducing of the corporate income tax rate from 25 percent to 22 percent.
4. The potential risk of a significant decline in the economic activity in the sectors which become the largest tax contributors.
5. Potential risks of slow economic recovery in 2020.

The tax revenues in 2020 experienced a significant decline. If the average of the tax ratio to the GDP ranges from 10.3 percent in 2014-2019, then in 2020 the tax ratio to the GDP is expected to decline, and only reach around 8.7 percent of the GDP. The Strategy to support the fiscal policy in 2021 is to encourage the national economic recovery process accompanied by the policy reforms, both in terms of the state revenue, state expenditure and financing. The Reform of the state revenue policy is aimed to encourage the mobilization of the state revenue, both in terms of taxation and non-tax revenue. So that, it can improve the investment and the national competitiveness. In terms of the state spending, refocusing on the state expenditure policies is aimed to encourage the more optimal and well-targeted allocation of the state expenditures. From the financing aspect, the policies are directed to support the exploration of the national financial market. So as, it can help to support the involvement of the public and the private sector in financing the national development. The role of the private sector is expected to continue to rise, as it is supported by the provision of the fiscal and non-fiscal incentives by the government.¹³⁶

¹³⁴ *Stimulus Fiskal*.

¹³⁵ *KERANGKA EKONOMI MAKRO DAN POKOK-POKOK KEBIJAKAN FISKAL TAHUN 2021* (Jakarta, 2021).

¹³⁶ *KERANGKA EKONOMI MAKRO DAN POKOK-POKOK KEBIJAKAN FISKAL TAHUN 2021* (Jakarta, 2021).

In order to increase the state revenue, particularly the tax acceptance, the government is making the efforts to expand the base of the taxation and improve the tax administration (See Table 4). As an initial stage, the Government will collect the taxes on Trade Through Electronic Systems or more popularly known as the e-commerce. In recent years, the online transactions have developed rapidly and have the potential to replace the conventional markets. For this reason, taxation on Trade Through Electronic Systems is expected to be an important source of the state revenue as it gives the large transaction value in the future. On the other hand, the efforts to increase the tax revenue can also be made from extending the new taxpayers based on the sector and region, and increasing the voluntary compliance of the taxpayers through the effective education and improved services.

TABLE 4 THE INDONESIA’S TAX REFORM

Objectives	Reform	Stages
Enhancing the national economic growth	Providing the incentives right on target	1. Evaluating the insentive given currently (Tax Expenditure) 2. Giving the new insentive selectively
	Reducing the load of the business activities	1. Increasing the EoDB 2. Minimizelizing the unfair taxation 3. Establishing the National Logistic System (NLE) program
Enhancing the state revenue	<ol style="list-style-type: none"> 1. Adding new objects of taxation 2. Adding new subjects of taxation 3. Improving the voluntary compliance of the Tax Payer 4. Implementing the supervision and law enforcement 5. Improving the management and the administration 	<ol style="list-style-type: none"> 1. Increasing the number of the objects of the Value Added Tax (VAT) and Income Tax 2. Increasing the number of the objects of the excise (Extification of the BKC) 3. Implementing the extification of the new tax payer (Based on the sectors and region) 4. Improving a user friendly services based on the technology information 5. Improving the education and an efective public relation 6. Optimizing the use of the data and the risk management in supervision, inspection and law enforcement 7. Developing the use of the artificial intellegence and smart customs 8. Implementing the organizational reforms (probis, IT, database, organization, and HR)

Furthermore, the Government continues to improve the tax management and administration. By the growth of the technology, the use of new, more efficient ways of providing the tax services must be started immediately. Therefore, the improvement of the business processes, information technology, databases (core tax), organization, and the human resources is a part of the tax reform in the long run. These policy are expected to be able to bring changes for a better Indonesia's tax revenues. The optimization of the state revenue is carried out both in terms of the tax revenues and the non-tax revenue. In terms of the taxation, the Government continues to make various efforts to expand the tax base and the improvement of the tax management and administration in order to increase the tax ratio. In addition, the application of the Taxation in Omnibus Law and the provision of various fiscal incentives are expected to be able to encourage the escalation of the investment and the national competitiveness, accelerate the economic recovery after the COVID-19 pandemic, and spur the economic transformation.

G. Tax Performance Challenges

Compared to other countries, the tax ratio in Indonesia is still relatively low. This indicates that there is still a policy and compliance gap in the implementation of the national tax collection. The relatively large amount of the tax exemptions and tax incentives reflected in the tax spending have

influenced the Indonesia's tax ratio achievements in recent years. Besides, the existence of the tax avoidance and a high tendency for the informal activities that have not yet been captured in the tax system are also contributed to the achievement of the tax ratio that is less optimal. It is seen by the growth in the last five years that the tax revenue has grown by an average of 6.2 percent per year. During this period, the highest tax growth occurred in 2018, amounting to 13, 0 percent in line with the high price of the world oil and other mining commodities. In 2019, the taxation growth experienced the worst deceleration, reaching only 1.8 percent or the lowest in the last five years.¹³⁷

The fluctuating performance of the taxation indicates that the tax revenues are strongly influenced by the developments of the domestic economic activity and the performance of the international trade. From the domestic sphere, the growth of the certain economic sectors on which the tax revenues are based will determine the achievement of the tax revenue performance. Besides, the stability of the public consumption also affects the achievement of the tax revenues, particularly the VAT. Meanwhile, from the international trade sphere, the performance of tax revenues is strongly influenced by the dynamics of the import and export of the goods and services. The portion of tax revenue based on import activities is quite large. So that, the amount of the tax revenue is also determined by the fluctuation of the import volume and value, as well as the developments in the domestic and international economy. The performance of the tax revenue in the recent years has also been influenced by various tax policies implemented by the government. The performance of tax administration also directly affects the success of the tax collection in Indonesia. The improvement of the administration system and reinforcement of the tax database have a very significant effect on the supervision and enforcement of the taxpayer compliance.

H. Tax Omnibus Law

Taxation Omnibus Law is a new breakthrough taken by the Government, based on the fact that the tax regulations are often become a disincentive to do the investment. The tariff policy that is less competitive with the other countries, the imposition of the double taxes, and the complex tax administration have created additional costs (cost of funds) borne by the investors. Other than that, the Tax regulations that are often incompatible with the regional taxation regulations have made the investment climate in Indonesia less conducive to the business world. For this reason, the presence of the Tax Omnibus Law is expected to be a breakthrough that is beneficial for the community through the investment in productive sectors that absorb a lot of labor and sectors with high added value. This in turn is expected to be able to boost the national economy. The implementation of the Tax Omnibus Law which is expected to be effective in 2021 will of course have an impact to the state revenues, in this case a decrease in the tax revenues.

I. Concluding Remarks

Indonesian fiscal countermeasures can control the worst possibility of a pandemic with several policies that focus on handling a pandemic in the health sector and handling the impact of a pandemic on the economic sector. The legal framework in making fiscal policy made by the Indonesian government is able to encourage the issuance of a taxation sector policy that is responsive to the Covid 19 pandemic whose graph continues to rise throughout 2020. Existing policies still refer to the tax principles guidelines to avoid legal problems in the future, either for taxpayers and policy makers.

¹³⁷ *KERANGKA EKONOMI MAKRO DAN POKOK-POKOK KEBIJAKAN FISKAL TAHUN 2021* (Jakarta, 2021).



COVID-19 IMPACT ON CHINA'S MACROECONOMY AND POLICY RESPONSE

di **Zhou You*** – yoyopiggy@hotmail.com

Brief abstract: The outbreak of COVID-19 in early 2020 was an external shock to China's economic. This article is composed of two parts. The first part of the article is influences of the Covid-19 on China's macro economy and China's countermeasures, this part expounds COVID-19 can affect China's macroeconomic impact in three stages. The second part of the article is financial and taxation measures taken by China to tackle COVID-19, explains the "priority policies" put forward by the STA of China.

SOMMARIO: 1. Covid-19, giustizia distributiva e anziani. – 2. La giustificazione delle scelte allocative in base al documento SIAARTI. 3. Selezione naturale e ruolo del diritto: suggestioni.

1. I would like to start by briefly reviewing the history of COVID-19's impact.

The outbreak of COVID-19 in early 2020 was another external shock to China's economic and social operation after the SARS pandemic in 2003. At a time China has taken effective measures to deal with the COVID-19 crisis and achieved good success, however the spread of the global pandemic became more and more intense, which has brought greater uncertainty to the recovering of the world economy since the financial crisis in 2008. While accurately studying and judging the short-term and long-term impact of the pandemic on China's macro-economy, and carefully choosing policies to deal with the pandemic, we can also notice the systematic issues on Local governance level, focusing on financial and taxation structures which are unsuitable to combat the pandemic as a key part of restructure on a National level to improve and modernize. In addition, we should also pay attention to the impact of the pandemic on the process of globalization, especially on the globalized specialty, industrial supply chain layout and international public goods supply.

● **Influences of the Covid-19 on China's macro economy and our countermeasures**

before the pandemic, China's economy was shifting from a fast growing stage to a high quality development stage, and in the key period of economic structural adjustment, transformation and growth momentum, the economic growth rate slowed down year by year, and the GDP growth rate dropped from 7.86% in 2012 to 6.75% in 2018, and in 2019 it further dropped to 6.11%.

COVID-19 can affect China's macroeconomic impact in three stages.

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The first stage is characterized by a short - term collapse in demand and supply at the beginning of the pandemic. The impact of the decline in demand is first manifested in the catering, entertainment, tourism, travel and other service industries, while the difficulties of returning work and production will lead to a sharp decline in the supply capacity of many industries.

The second stage is the recovery period, which has been effectively controlled, mainly characterized by the full resumption of work, the rapid recovery of supply capacity after the resumption of workforce, and the rebound of demand caused by compensatory consumption. However, part of the consumption during the crisis period cannot be recovered, including the reduction of consumption that cannot be compensated, and the reduction of consumption caused by the decline of income during this period. At this stage, we need to pay special attention to the fact that in the case of economic growth slowdown, we should avoid the impact of short-term demand decline and other factors leading to the economic downturn, forming a long-term negative impact on the economy.

The third stage is the long-term adjustment stage after the short-term impact and in anticipation of the intermittent outbreak in the future, including the development of automation and remote work access development. The accelerated adjustment of globalized specialty and industrial supply chain layout, and the resulting impact on the process of globalization and regional integration.

From the three stages of macroeconomic response measures, in response to the decline of demand and supply in the first stage, China and the major countries affected by pandemic have issued a large number of emergency measures, including not only tax relief, financial subsidies and credit support with the main goal of improving the survival rate of enterprises, but also greater efforts to deal with the expansion of economic recession risk represented by the substantial interest rate reduction in the United States as a result of expansionary monetary policy.

For China, the core of the second stage macroeconomic response policy is to avoid the short-term impact on the economy causing a long-term effect, so more efforts should be made to “stabilizing demand”. Among them, the financial and taxation policy mainly includes measures such as extending the period of tax reduction and exemption, helping enterprises “recuperate” and expanding fiscal expenditure. In terms of scale, macroeconomic policies should be moderate, they should be based on the target of GDP growth, employment before the outbreak of the pandemic, taking into account the rebound of demand brought by compensatory consumption, the expected adjustment of market and the trend of the world economy. However, the gap between revenue and expenditure caused by expansionary financial and taxation policy to deal with short-term external causes can be solved by temporarily increasing the deficit ratio and issuing additional treasury bonds, which has little impact on long-term fiscal sustainability.

After the end of the pandemic, it is expected that the application of new technologies represented by the digital economy will usher in a new climax. At this point, we should take advantage of the situation and continue to stimulate the vitality of the market and further encourage innovation has the core of reform and development. In addition to deal with the long term effect of the pandemic, It is important to focus on the process of globalization, intensify reform, maximize new development, and accelerate the modernization of national governance system and governance capacity to strive for initiative and turn crisis into opportunity.

2. Financial and taxation measures taken by China to tackle COVID-19

Due to the spread of pandemic around the world has resulted in amplified and accelerated the existing problems which already exists in the world economy. The world economy has seen a deep recession and the economic outlook is full of uncertainty. As a result, the

domestic economies of all countries have been seriously weakened. After the outbreak, some international institutions have substantially lowered their world economic growth expectations. On March 2, 2020, the report of OECD pointed out that public health emergency will cause severe damage to global demand and supply, and the growth rate of the world economy in 2020 will reach the lowest level in nearly a decade.

In 2020, Tax authorities at all levels fully implemented the "priority policies" put forward by the STA of China, the implementation of the "four priorities" focuses on, providing preferential policies which should be effectively implanted, the contactless tax service to be strengthened, the overall situation of data services to be strengthened, and the effort of prevention and the spread of disease. The focus was "the implementation of priority policies should be the key, and as a bases to further tax reduction foundations of 2019. Further implement the detailed tax and fee preferential policies, and through research to refine the 28 Policies to cut taxes and fees to ensure that the policy dividends can reach the main market players with the fastest speed and highest efficiency.

I'd like to finish today's presentation by some numbers.

As the result, in first quarter of 2020, the tax policy and administration measures in China have helped alleviate our customers burden by 318.2 billion Yuan (49 billion USD), which in turn helped them to tide over the current difficult time. The total tax and fee cuts surpassed 2.5 trillion yuan for the whole year 2020 (384.6 billion USD).

For this year, China's economic growth rate target has been set at over 6 percent, Premier Li Keqiang said when presenting the government work report to the annual parliamentary session. Last year China set no specific economic growth target for 2020, because of the pandemic reason. However, in 2020, China not only became the only major economy in the world to achieve positive economic growth (2.3%), but also achieved a historic breakthrough of 100 trillion yuan in GDP.

Our development goals and tasks for the year were accomplished, and major headway has been made in China's reform, opening up, and socialist modernization drive.

During the year, not only China was greatly affected by the pandemic known as COVID-19, We are seeing this pandemic continuously spreading across the world. Not only has it effected out daily lives, it has caused both short-term problems to our global economy and which no doubt changing the long-term course of our economy in every country.

I believe every country would react differently to restoring their economy for the future, with no one solution to resolve the same problem. I thank you for giving me the opportunity to share my views and finding of how China has reacted to restoring domestic economy through financial and taxation policies. I'm sure China will continue to refine its support and policies on the road to rebuild its Macro-economy for the long term, whilst ensuring each step is carefully assessed based on experience, data and innovation as the fundamental foundation.



COMPARATIVE STUDY OF FISCAL AND TAX LAW COUNTERMEASURES AGAINST COVID-19 IN DIFFERENT COUNTRIES

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The outbreak and spread of COVID-19 have caused significant damage to the global economy. As the foundation and key pillar of national governance, finance has a unique role to play in combating the negative impact of the epidemic. The paper uses the international horizontal comparison perspective to sort out and analyze the content of the fiscal countermeasures of China, Germany, the United Kingdom, Australia, Thailand, Canada and the United States in response to COVID-19, and make a further improvement of the mechanism of fiscal countermeasures related to the epidemic in China from three aspects: the categories, the strength and the system of tax policies.

SUMMARY: 1. Summary and Analysis of Chinese Fiscal and Tax Law Countermeasures against COVID-19 – 2. Brief Summary of Other Countries' Fiscal and Tax Law Countermeasures against COVID-19 – 3. Comparative Analysis of Fiscal and Tax law Countermeasures against COVID-19 in Different Countries– 4. Conclusion

The impact of COVID-19 on the world economy is unprecedented and dramatic. From the demand side to the supply side, from domestic to international, and from the local to the overall, the epidemic's shock oscillate back and forth between various sectors and segments, and its impact gradually spread to the entire economic system.

Unlike natural disasters that damage tangible assets, the impact of COVID-19 is more about disrupting the orderliness of social production and business activities. The impact of the epidemic on the economy is first reflected in both the sudden drop in demand in the catering, tourism, passenger transportation and other service sectors, and the lack of supply due to production stagnation. Subsequently, a series of adverse effects are transmitted abroad via the trade sector. Along with deteriorating financial liquidity and deferred investment, depressed demand and supply chain disruptions in overseas markets can further backfire on the domestic economy. At this point, national finance as the foundation and key pillar of national governance plays a crucial role in weakening the negative impact of COVID-19 on the economy.

1. Summary and analyze of Chinese fiscal and tax law countermeasures against COVID-19

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Since the outbreak of COVID-19, the Chinese government has always put the safety and health of the people at the first place, and has taken many fiscal and tax law countermeasures. The following is a summary of the tax policies introduced by the Chinese government to combat COVID-19.

Summary of the Tax Policies Introduced by the Chinese Government to Combat COVID-19				
Policy Targets	Types of Measures	Specific Content	Name of Policy	
For Individuals	Paying Subsidies	Subsidies for the cost of treating patients with COVID-19	《财政部、国家卫生健康委关于新型冠状病毒肺炎疫情防控有关经费保障政策的通知》(财社〔2020〕2号) 《财政部关于进一步做好新型冠状病毒肺炎疫情防控经费保障工作的通知》(财办〔2020〕7号)	
		Work Subsidies for medical personnel and epidemic prevention workers involved in the prevention and control work	《国务院办公厅转发国家卫生健康委、人力资源社会保障部、财政部关于改善一线医务人员工作条件,切实关心医务人员身心健康若干措施的通知》(国办发〔2020〕4号) 《关于全面落实进一步保护关心爱护医务人员若干措施的通知》(国发明电〔2020〕5号) 《国务院应对新型冠状病毒肺炎联防联控机制关于聚焦一线贯彻落实保护关心爱护医务人员措施的通知》(国发明电〔2020〕10号)	
		Preferential tax policies for individual income tax	《财政部、税务总局关于支持新型冠状病毒感染的肺炎疫情防控有关个人所得税政策的公告》(财政部、税务总局公告2020年第10号)	
		Employees affected by the epidemic are eligible for housing fund stage support	《住房和城乡建设部、财政部、中国人民银行关于妥善应对新冠肺炎疫情实施住房公积金阶段性支持政策的通知》(建金〔2020〕23号)	
	Tax Preferential	Ensure all social insurance benefits are paid in full and on time	《人力资源社会保障部、财政部、税务总局关于阶段性减免企业社会保险费的通知》(人社部发〔2020〕11号)	
		Increase interest subsidy support for business start-up loans for individuals and enterprises affected by COVID-19	《财政部关于支持金融强化服务,做好新型冠状病毒肺炎疫情防控工作的通知》(财金〔2020〕3号)	
		Financial Support	Optimize financing guarantee services for enterprises affected by COVID-19	《财政部关于支持金融强化服务,做好新型冠状病毒肺炎疫情防控工作的通知》(财金〔2020〕3号) 《财政部、发展改革委、工业和信息化部、人民银行审计署关于打赢疫情防控阻击战强化疫情防控重点保障企业资金支持的紧急通知》(财金〔2020〕5号) 《财政部办公厅关于加快拨付贴息资金强化疫情防控重点保障企业资金支持的补充通知》(财办金〔2020〕13号)
			Financial support for air transport enterprises	《财政部、民航局关于民航运输企业新冠肺炎疫情防控期间资金支持政策的通知》(财建〔2020〕30号) 《关于印发〈通用航空发展专项资金管理暂行办法〉的通知》(民航发〔2012〕111号)
	For Enterprises	Tax Preferential	Tax incentives for epidemic prevention and control key protection enterprises and enterprises in transportation, catering, accommodation, tourism and other industries affected by the epidemic	《财政部、税务总局关于支持新型冠状病毒感染的肺炎疫情防控有关税收政策的公告》(财政部、税务总局公告2020年第8号)
			Support individual business and small and micro enterprises to resume work and business	《财政部、税务总局关于支持个体工商户复工复业增值税政策的公告》(财政部、税务总局公告2020年第13号)
Tax Preferential		Preferential tax policies to encourage donations from the community	《财政部、税务总局关于支持新型冠状病毒感染的肺炎疫情防控有关捐赠税收政策的公告》(财政部、税务总局公告2020年第9号)	
		Tax exemptions introduced for imported materials donated for epidemic prevention and control	《财政部、海关总署、税务总局关于防控新型冠状病毒感染的肺炎疫情进口物资免税政策的公告》(财政部、海关总署、税务总局公告2020年第6号)	
		Administrative fees and government funds relief policy	《财政部、国家发展改革委关于新型冠状病毒感染的肺炎疫情防控期间免征部分行政事业性收费和政府性基金的公告》(财政部、国家发展改革委公告2020年第11号)	
		Phased reduction of enterprise social insurance premiums	《人力资源社会保障部、财政部、税务总局关于阶段性减免企业社会保险费的通知》(人社部发〔2020〕11号)	
Government Procurement		Government procurement measures to support the resumption of work and production of enterprises	《财政部关于支持企业复工复产做好应对新型冠状病毒感染的肺炎疫情防控所需医疗物资生产供应的通知》(财办〔2020〕8号)	

(Table 1)¹³⁸

By analyzing the above policy elements, it can be summarized that the Chinese government has played its role in combating the COVID-19 with fiscal and tax laws mainly from the following aspects.

First, protect resources for epidemic prevention and control and play the role of government underwriting. During the special period of epidemic prevention and control, financial resources are coordinated and integrated into the medical and health sector through measures such as granting subsidies for the cost of treating patients with the COVID-19 and temporary work subsidies for medical personnel and epidemic prevention workers who participate in the prevention and control work. At the same time, in order to reduce the production and marketing pressure of enterprises, to protect the supply of medical supplies, medical masks, medical anti-clothing and other epidemic prevention and control materials are acquired by the state financial underwriting.

Second, maintain social stability and safeguard people's livelihood and well-being. The government has made great efforts to maintain the basic livelihood and social stability through measures such as support for housing provident funds and phased reduction of social insurance premiums for workers affected by the epidemic and other livelihood-type relief measures to provide important protections for the prevention and control of the epidemic.

Third, encourage enterprises to resume work and production and restore the market trading mechanism. Enterprises are the basic cells of the economy, and maintaining their survival is the key to combating the impact of the epidemic while safeguarding the financial investment of medical resources. Revitalizing enterprises through tax policies is carried out in the following three main paths:

(1) Provide financial support by the Central government. Financing is a key factor in the development of small and medium-sized enterprises. By providing financial support from the central government, optimize the financing guarantee services for enterprises affected by COVID-19, so as to reduce the financing costs of enterprises and ease the financial pressure of business entities during the epidemic.

(2) Expand the scope of corporate tax incentives. Further tax incentives are introduced to reduce the burden of enterprises in the transportation, catering, accommodation and tourism industries, which are the key protection enterprises for epidemic prevention and control and are affected by the epidemic. Besides, support the research and development of epidemic prevention and control products through administrative fees and government fund exemption policies.

(3) Promote government procurement support measures. The internet-based electronic procurement platform promotes the government direct procurement of materials from enterprises to ensure the normal operation of corporate production activities.

Fourth, encourage public welfare donations and show humanistic care. Tax incentives are an important measure to guide enterprises and the public to donate. Stable and standardized tax preferential policies for public welfare donations are an important guarantee to stimulate enterprises to take social responsibility and promote the healthy development of the social charity. To encourage and support the development of public welfare donations related to epidemic prevention and control, the Chinese government has introduced a series of tax preferential policies involving corporate income tax, personal income tax, value-added tax, consumption tax, customs duty, urban maintenance and construction tax, education surcharge,

¹³⁸ Source of information acquisition :

<http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5145868/content.html>

local education surcharge and many other tax types, which highlights the firm attitude of encouraging public welfare donations under the epidemic and helps to form a good culture in the whole society to fight against COVID-19.

Fifth, stimulate the economy and expand demand. Stimulating the demand side is the key to boosting the economy in the post-epidemic era¹³⁹. Increase investment efforts, optimize the investment structure, and focus on making up for the shortcomings in the health care system and basic public services exposed by COVID-19. At the same time, rely on construction projects with high technological content and good market prospects to cultivate new economic growth points. After the basic recovery of domestic economic activities, gradually promote the recovery of foreign trade. Focus on helping export enterprises to resume work and production and helping them to ease their business difficulties.

According to the news released by the Chinese State Administration of Taxation, in the first three quarters of 2020, China's national total new tax cuts and fee reductions amounted to ¥1,783.4 billion. As an early country affected by the epidemic, the Chinese government adopted a series of anti-epidemic tax and fee preferential policies which effectively stopped the spread of the epidemic, helped the smooth operation of the economy and society and played a better international demonstration role.

2. Brief summary of other countries' fiscal and tax law countermeasures against COVID-19

Because COVID-19 is a global problem, other countries are also actively exploring tax treatment options. The following is a review of other countries' tax policies related to COVID 19.

From a global perspective, in order to cope with the epidemic and recover the economy, several countries have introduced active fiscal policies to stimulate the economy, and mostly follow the principle of increasing fiscal spending and reducing the tax burden.

In terms of specific tax preference, a number of countries implement direct tax breaks to regulate the impact of COVID-19 on their economies. In Germany, taxpayers affected by this epidemic have tax breaks if their estimated income is lower this year than last year until December 31¹⁴⁰. The United Kingdom also introduces policies that eliminate customs duties and VAT on certain non-EU pharmaceutical products for national health care providers, and remove the customs duties which up to 12% of the price of goods to facilitate the flow of more important materials to the U.K.¹⁴¹.

Some countries delay or reduce the tax burden incurred by taxpayers by relaxing tax credits, pre-tax deductions and other related policies. Australian government increases the percentage of pre-tax deduction and the limit of loss credit to reduce the actual tax basis of taxpayers and thus reduce the tax burden¹⁴². In addition, Thai government increases to 150% for excess pre-tax deduction for loan interest incurred by small and medium-sized enterprises. And

¹³⁹ 刘安长,“新冠”疫情对我国的经济冲击及财政的对冲政策——“非典”疫情下的对比分析, []:兰州学刊, 2020(04):59-70.

¹⁴⁰ Source of information acquisition :

<https://www.bundesfinanzministerium.de/Web/DE/Themen/Schlaglichter/Corona/VollstaendigeListe/vollstaendige-liste.html>

¹⁴¹ Source of information acquisition : <https://www.gov.uk/coronavirus>

¹⁴² Source of information acquisition : <https://treasury.gov.au/coronavirus/resources>

some enterprise employees' salaries during the severe epidemic can be deducted at 300% of the excess before tax¹⁴³.

Distribute subsidies to increase the real disposable income of taxpayers are also a measure taken by many countries to mitigate the impact of the epidemic. Canada provides special payments for low-and moderate-income households through a tax credit for goods and services and average additional benefits nearly \$ 400 for singles and \$600 for couples¹⁴⁴. The United States government offers tax refunds to residents and taxpayers don't need to go through other process to receive their refund checks. The federal Internal Revenue Service (IRS) determined the amount of the refund based on the "Adjusted Gross Income (AGI)" on the taxpayer's last year tax return, which is effectively a benefit in the form of a tax refund¹⁴⁵.

3. Comparative analysis of fiscal and tax law countermeasures against COVID-19 in different countries

Through comparing China and other countries mentioned above, it can be seen that there are both similarities and differences in the tax policies of countries in response to COVID-19. At the last part, it's a comparative analysis of international tax countermeasures against COVID-19 from three perspectives.

3.1 The categories of tax policies

From the viewpoint of the tax policies of various countries in response to the public health emergencies, especially in response to this epidemic, countries mainly focus on the introduction and implementation of tax preferential policies, involving tax base, tax rate and tax amount preference. The reasons why tax preferential policies are popular in these countries during COVID-19 are related to the consideration of relatively easy to implement tax incentives and directly reduce the tax burden for the taxpayers.

3.2 The strength of tax policies

Looking at the strength of tax policies in response to public health emergencies around the world, it can be seen that tax incentives have generally begun to be spread more vigorously which causes the real income of enterprises and individuals to increase.

Obviously, in many policies, some countries have greater preferential efforts than China, whose desire to reduce the burden of taxpayers and restore the economy is very urgent, such as above-mentioned Thailand. For companies that meet the conditions, employees' salaries during the severe epidemic can be deducted at 300% of the excess before tax. This deduction ratio is very high. In comparison, the Chinese government provides relatively modest fiscal relief to small and medium-sized enterprises. In the context of the Chinese national situation, the Chinese government may also learn a bit from foreign short-term tax incentives of great strength for taxpayers who bear more economic losses and for the purpose of increasing the available funds. According to the situation of different industries affected by the epidemic in different periods, the Chinese government can flexibly and dynamically adjust the strength of tax incentive policies.

3.3 The system of tax policies

From the perspective of systems of tax policy, few countries in the world currently have established an independent emergency response system of tax policy for public health

¹⁴³ Source of information acquisition : <https://www.mof.go.th/th/home>

¹⁴⁴ Source of information acquisition : <https://www.canada.ca/en/department-finance/economic-response-plan.html>

¹⁴⁵ Source of information acquisition : <https://home.treasury.gov/policy-issues/cares>

emergencies. Nowadays, tax policies are more of a fragmented state. Countries introduce temporary tax policies according to the changes of the epidemic situation, but fail to form a systematic system of epidemic tax countermeasures. Although the Chinese government has introduced many effective fiscal and tax law policies, they are still mostly departmental normative documents at the level of policy not at the level of the law, and their effectiveness is relatively low. There is still room for improvement and enhancement in the legal governance of taxation.

Measures of long-term significance to the epidemic can be elevated to law level, approved by the National People's Congress, and stipulated in the corporate income tax law and the personal income tax law. Meanwhile, the State Council can formulate and issue other urgent and emergency policies. Thus, the tax policies related to the epidemic will not be too complicated and fragmented but be more convenient for taxpayers to apply for tax benefits.

4. Conclusion

In summary, both China and other countries around the world have made positive fiscal and tax law responses to COVID-19. As a global challenge, countries need to learn from each other's best experiences, but also make policies that best suit their own national conditions. Through the analysis above we can see that the Chinese government has flexibly used a variety of fiscal and tax law instruments in the current fight against COVID-19, which has better contributed to the macroeconomic recovery and economic development in the epidemic situation. However, at the same time, COVID-19 has also given us an opportunity to review our own fiscal system, which has revealed policy deficiencies that require the joint efforts of generations of fiscal law experts, scholars, and students. We sincerely hope that the epidemic will pass soon and the world will have a better tomorrow.



CHINESE EXPERIENCES ON FISCAL COUNTERMEASURES AGAINST THE EPIDEMIC OF COVID-19 PERSPECTIVE OF PUBLIC FINANCIAL

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Faced with the epidemic of COVID-19, apart from tax countermeasures, in the area of public finance Chinese government acted quickly to pour money into the fields of the medical and economic emergency, providing the subsidies for the in-patients, medical workers and taking the shopping coupons as the main way to recover the economy. Reserve fund was always insufficient and increasing the fiscal debt is nearly the most prominent way that the government can do to cover the expenditure effectively. Transfer payment mechanism also played a key role for the local government to receive the fiscal assistance against the COVID-19. Overall, The Chinese government's rapid and proactive fiscal measures exert a enormous function on controlling the epidemic timely and restoring people's livelihood and macro-economy.

SUMMARY: 1. Introduction – 2. Main aspects of public expenditure (How the government use the funds?) – 3. Sources of fiscal financing to respond to emergencies (How Chinese government collect funds?) – 4. Transfer payments from the central government to the local government. – 5. Conclusion.

1. Introduction. In 2020, Chinese government have confronted with huge financial pressure. According to the data issued by the Financial Ministry of China, China's fiscal revenue decreased 3.9 percent year on year to around 18.29 trillion yuan (about 2.8 trillion U.S. dollars) in 2020, especially from January to February, when the COVID-19 pandemic just outbreak. The general public budget revenue has fallen down by 9.9 percent year compared with the same period last year. By contrast, the data also showed that the country's fiscal spending expanded 2.8 percent year on year to around 24.56 trillion yuan in 2020. More money was put into some crucial areas, with total expenditure on public health rising 15.2 percent from a year earlier to 1.9 trillion yuan. An Extremely high number is that the country's direct spending on the fight against COVID-19 surged 74.9 percent¹⁴⁶.

¹⁴⁶ See 2020 fiscal revenue and expenditure of China, available at http://gks.mof.gov.cn/tongjishuju/202101/t20210128_3650522.htm, accessed 5th, April 2021.

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During the period of COVID-19 epidemic in China, the fiscal revenue has been greatly reduced, mainly in two aspects: on one hand, the lockdown order has battered traditional physical marketing, resulting in the government's financial resources shrinking. On the other hand, a large number of tax relief policies have been released to relieve the pressure of the public economy. At the same time, the financial expenditure is growing rapidly, and the direct expenditure of COVID-19 control is mainly reflected in the field of medical treatment and economic recovery. So it was urgent for Chinese government to strengthen the public finance to support the health and economic expenditure.

2. Main aspects of public expenditure (how the government use the funds?). In the area of health expenditure, in the early days of COVID-19 epidemic, the government afforded all the Covid-19 medical expenses of patients. All the COVID-19 patients, confirmed or suspected, could receive the fiscal subsidies from state finance for any medical bills not covered by basic medical and serious disease insurance. According to an official report issued by the State Council of China, as of May 31 in 2020, the medical bills of 58,000 in-patients with confirmed infections had been settled by basic medical insurance, with a total expenditure of 1.35 billion yuan and 23,000 yuan per person. The average cost for treating Covid-19 patients in severe condition surpassed 150,000 yuan, and in some critical cases the individual cost exceeded 1 million yuan, all covered by the state.¹⁴⁷ The government also provided subsidies for medical workers participating in Covid-19 prevention and control. For those who do the job of directly contacting the cases of infections, such as diagnosis, treatment, nursing, infection control, case specimen collection, etc., the central finance will give a subsidy of 300 yuan per person per day. For other medical workers who participate in the prevention and control during the epidemic, the subsidy was about 200 yuan per person per day¹⁴⁸.

As more countries announced the implementation of universal vaccination for free, and so does China. The financial fund for vaccination in China comes partly from the general budget fund, partly from the balance of deposits in the Medicare Fund. In every fiscal year, the China's Medical Fund would have some balance and accumulated this part of money year by year. Up to 2020, the accumulated balance reached about 3 trillion yuan and it is time for it to afford such major spending.

In the area of economic emergency, different from the plan of distribution of relief payments to the qualified person like US administration have done recently. Issuance of shopping coupons is the main countermeasure Chinese government took to recover economy. It is designed to stimulate the economy and to encourage the public to consume, a certain amount of money will be deducted when consuming, and the state finance will cover this part of expenditure. Just in Beijing, a total of 39 million government coupons were issued, and the total amount of financial subsidies reached about 800 million yuan. However, shopping coupons are considered not necessarily the best method of care for the needy groups caused by the epidemic¹⁴⁹.

Cash subsidies is not a large-scale fiscal tool for Chinese government to use, some local governments took this policy. To ensure the living standard of fundamental lives, the government

¹⁴⁷ See Fighting Covid-19: China in Action, available at http://english.scio.gov.cn/whitepapers/2020-06/07/content_76135269.htm, accessed 5th, April 2021.

¹⁴⁸ See Notice of the Ministry of Finance and the National Health Committee on the funding guarantee policy for prevention and control of New Coronavirus(No.2 2020), available at http://www.gov.cn/zhengce/zhengceku/2020-01/30/content_5473079.htm, accessed 5th, April 2021.

¹⁴⁹ See Xiongwei, Legal Review on Issuing Rules of Consumption Vouchers By China's Local Governments Against the COVID-19 Pandemic, *Wuhan University Journal(Philosophy & Social Science)*, Vol. 73, No. 5, 2020, 14.

like that of Qishui county in Shandong province distributed the price subsidies for the qualified person, such as the group who apply for the minimum wage and unemployment insurance benefits, totally 4.5 million yuan. In Shanghai, government provided the needy workers a one-time subsidy of 2,000 yuan, totally about 1.27 million yuan. While certain subsidy policy was designed to the epidemic prevention. In Hangzhou, In the Spring Festival period, migrant workers who guaranteed not to return hometown can apply for a cash subsidy of 1000 yuan, aiming to encourage them to stay there, reduce the flow of people during the festival.

3. Sources of fiscal financing to respond to emergencies (how Chinese government collect funds?). The first financing tool is the reserve funds. At the beginning of a fiscal year, when making a budget planning, 1~3 percent of the expenditure in the general public budget shall be set aside as reserve funds¹⁵⁰. Any natural disaster or other emergency occurs, the reserve funds shall be first used to cover the additional expenditure. If the emergency occurs, the government at any level is authorized to use the fund.

According to the China Financial Yearbook in recent three years, the amount of central government's reserve fund was fixed 50 billion yuan in 2015, 2016 and 2017, accounting for 2%, 1.8% and 1.6% of the expenditure in those three years respectively¹⁵¹. With the increase of expenditure, the proportion of fund decreased year by year. For the local government at the provincial level in 2020, the proportion was generally less than 2%, the median of the legal percentage range. Even for the government at the prefecture-level cities, which rank below that of provinces, was generally less than 1.5%. Some cities did not reach the legal minimum percentage, 1%¹⁵², like Jinan and Wuhan. It can be seen that in response to emergencies, there is a problem of insufficient setting of reserve funds in China's fiscal budget, and it has not become the government's main source of financing during the COVID-19 epidemic.

If the reserve funds are inadequate, a government at any level may first allocate funds from other budget accounts to cover the expenditure, and include it in the budget adjustment proposal¹⁵³. Adjusting the budget requires the authorization from the people's congress, who makes the final decision about whether we should use it. The Financial and Economic Affairs Committee of people's congress makes a technical evaluation to the preliminary budget adjustment proposal, which is then submitted to the Standing Committee of the People's Congress¹⁵⁴. In the parliamentary meeting of China in 2020, the government proposed to set its fiscal deficit above 3.6% of gross domestic product(GDP), which is already higher than in recent years. Expanding the scale of debts is the most powerful way for the government to raise funds in response to such a major emergency such as COVID-19 epidemic.

Fear of the possibility of debt crisis from local government, who has issued a large amount of bonds via local government financing vehicles in the past years to raise funds for municipal infrastructure, without strict legal restrictions at that time. While as the implementation of the Budget Law of 2014, the issuance of the local government bonds shall get the approval from the State Council. So even the local government had no full right to issue bonds, in the year of

¹⁵⁰ See Article 69, paragraph 1 of Budget Law of the People's Republic of China (2018 Amendment).

¹⁵¹ See Qiaobin Feng, Emergency Financial Management System Reflected by the COVID-19 Epidemic in China, *Social Governance Review*, Vol. 56, No.12, 39.

¹⁵² See Xinkai Zou, Financial Reserve Fund for Emergency: System Reflection and Type Correction, *Chinese Public Administration*, Vol. 424, No.10, 138.

¹⁵³ See Article 69 paragraph 2 of Budget Law of the People's Republic of China (2018 Amendment).

¹⁵⁴ See Article 69, paragraph 3~7 of Budget Law of the People's Republic of China (2018 Amendment).

2020, the open data of bonds from the local governments reached 3.75 trillion yuan, increased by extremely high 74.4% compared with that of 2019 which had only 2.1 trillion yuan.

Except for the normal bonds, of which the government submit the proposal to congress for review at the beginning of the fiscal year, a new and special bond called “special government bonds for COVID-19 control” was issued to recover the economy triggered by the Covid-19, totally about 1 trillion yuan (about 141 billion US dollars). Different from the ordinary bonds, the special bonds was mainly for pandemic-related spending. Such bonds were issued twice in the history. In the first time, during the Asian financial crisis in the 1990s, China sold 270 billion yuan of special government bonds -- at the time the country’s largest bond issue -- to raise capital for its big state banks and help offset losses from nonperforming assets. The second time was in the 2007, 1.55 trillion yuan of special government bonds were issued to capitalize China Investment Corp.(CIC), the sovereign wealth fund.

A further issue around the bonds is how to “digest” them? When the epidemic just ended in China, a powerful opinion call for that Chinese central bank should buy the government bonds directly, in this way it was argued that “the crowding out effect of the issuance of government bonds to the market can be avoided.”¹⁵⁵ It is known as “monetization of fiscal deficit”. And this fiscal countermeasure also face legal barriers from the Law of People's Bank of China, which prohibited the government from overdrawing the financial budget or from directly subscribing to or acting as sole sales agent for treasury bonds and other government bonds¹⁵⁶. So far, China have not resorted to a "broad irrigation" style stimulus package to revive its economy, nor the so-called monetization of fiscal deficits or negative interest rates that some developed countries are carrying out.

In the face of the financial needs caused by COVID-19, we were trying to solve the problem by issuing bonds and expand the fiscal deficit. For local governments, due to the control of the right to issue bonds, they must obtain the approval of the central government. In addition, in terms of financial sources, they also need to turn to the central government for transfer payment. Generally speaking, the financial power of local governments is limited much.

3. Transfer payments from the central government to the local government. Local government has very limited legal authority to issue their government bonds, while it is far insufficient to use the funds from the local government to pay medical supplies. It is necessary to apply for the assistance from the upper government and the transfer payment mechanism plays a key role for the local administration to cover the expenditure about the COVID-19 in China.

In the general budget at the central level, a specific sub-account called “transfer payments” does this job¹⁵⁷. In 2020, the central government's fiscal transfer payment to local governments has reached 8.4 trillion yuan, increased by 12.8% from the year before. The growth rate is the highest in recent years.

In early time when COVID-19 outbreak in Wuhan, the central government responded quickly to make the special-purpose transfer payment to help the local government to fight against the COVID-19. According to the official documents issued by the Ministry of Finance,

¹⁵⁵ See “Shangxi Liu: Moderate monetization of the fiscal deficit is one of the policy options under certain conditions”, available at <https://new.qq.com/omn/FIN20200/FIN2020051800324100.html>, accessed 5th, April 2021.

¹⁵⁶ See Article 29 of Law of the People's Republic of China on the People's Bank of China (2003 Amendment).

¹⁵⁷ See Article 6 of Budget Law of the People's Republic of China (2018 Amendment).

it just allocated the funds in advance twice, about 4.3 billion yuan¹⁵⁸ and 8 billion yuan¹⁵⁹ respectively. And the Ministry of Finance has specially established a weekly funding system for Hubei Province¹⁶⁰.

In the late stage when the COVID-19 was controlled at the end of April, the expenditure commission had changed from the health emergency to economy emergency. In May of 2020, when the annual parliamentary conference has been held, the prime minister Keqiang Li announced that a new transfer payment mechanism would be established in China, called “special transfer payment”¹⁶¹. Different from the special-purpose transfer payment, the money transferred is not used for a specific purpose, but for the general commission to recover the economy, ensure the living standard of people and help the local government to balance the fiscal deficit. Actually it is a special general-purpose transfer payment. However, compared with ordinary transfer payments, the funds can reach the basic level government straightly, such as city or county, without the approval of the provincial government. It is only needed to be filed to the provincial government and allocated directly. Thus, it can improve the speed of transfer and limit the power of the province government to determine the distribution of the money to the lower-level government. It delivered additional fiscal funds about two trillion yuan (about 299 billion U.S. dollars) to basic level government straightly and in full.

On the whole, China's central government played an extremely important financial role in the COVID-19 epidemic control. In practice, the response from the central government was very rapid, and the funds were allocated in place. However, one of the hidden worries is that local financial autonomy for the local government is limited, resulting in possible low efficiency for the financial use.

4. The division of fiscal responsibilities between the central and local governments. It is not clear about what situation the central government take the whole fiscal responsibility. If the local government received funds from the central level, it will be refunded to the central later? What part of them should be refunded?

After SARS coronavirus in 2003, China establish and improve emergency management system based on territorial principle¹⁶². In other words, if an emergency occurred, the local government should bear the responsibility for fiscal expenditure in principle. As mentioned above, the limited financing authority of local governments can hardly cope with such a major public health emergency. Therefore, under certain circumstances, the central government must assume financial responsibilities that exceed the financial capacity of local governments. This is also one of the contents of China's fiscal reforms in recent years. In 2018, the State Council issued an official document¹⁶³, stipulating that “The basic public health service is clearly defined

¹⁵⁸ See Notice of the Ministry of Finance on the Advance Appropriation of Subsidy Funds for the Prevention and Control of the Epidemic of New COVID-19 in 2020, available at http://sbs.mof.gov.cn/zxzyzf/ggwsfwbzj/202002/t20200211_3468073.htm, accessed 5th, April 2021.

¹⁵⁹ See Notice of the Ministry of Finance on the Advance Appropriation of Subsidy Funds for the Prevention and Control of the Epidemic of New COVID-19 in 2020 (the second batch), available at http://sbs.mof.gov.cn/zxzyzf/ggwsfwbzj/202002/t20200217_3470305.htm, accessed 5th, April 2021.

¹⁶⁰ See supra note 6, 38.

¹⁶¹ See “Establish a special transfer payment mechanism”, available at http://www.gov.cn/xinwen/2020-06/13/content_5519137.htm, accessed 5th, April 2021.

¹⁶² See Article 1.5 (3) of National Overall Emergency Plan for Public Emergencies of 2004 and Article 60 of Law of Prevention and Treatment of Infectious Diseases of China of 2004.

¹⁶³ See Notice of the General Office of the State Council on the Reform Plan for the Division of Financial Affairs and Expenditure Responsibilities between the Central and Local Governments in the field of Medical and Health (No.67 2018).

as the fiscal responsibilities shared by central and local governments", "Major public health services (major public health services such as national or trans-regional prevention and control of major infectious diseases)... are designated as the responsibility of the central finance, which is responsible for the expenditure." It can be seen that from a legal perspective, it is in fact judged whether it constitutes a "national or trans-regional infectious disease" to determine whether the central government should assume responsibility, and then implement transfer payments, or liquidate financial appropriations afterwards. The COVID-19 should undoubtedly be a "major infectious disease", and it seems that the central finance should be responsible.

However, if we study the specific connotation of "major infectious disease" in the law, we cannot get a definite answer. China's Law on Prevention and Treatment of Infectious Diseases has a statutory standards for the levels of infectious diseases¹⁶⁴, but in fact, the Ministry of Finance has formulated a separate standard about the major infectious disease to divide the financial responsibility among the government at different levels. This may provide more flexibility and scientific adjustment space for the government to allocate and transfer funds, but in fact the law does not provide a basis for authorization to the government.

5. Conclusion. In summary, Chinese government had taken very quick and effective steps to control the COVID-19, including the area of public financial law. In the field of public health, the government pays for COVID-19 patients, provides government subsidies for medical workers, and provides free vaccinations. In the economic field, it used shopping coupons rather than cash subsidies, as the main means of stimulating the economy after the epidemic.

The government has guaranteed sufficient financial funds by expanding the scale of ordinary debt and issuing a new government bonds for COVID-19 control. To speed the funds allocation to the local governments, a new special transfer payment mechanism has been established aimed to recover the economy of the cities and counties in China.

Nevertheless, how to map the factor of emergency into the public fiscal rules is a problem globally, we should not rely heavily on the government's post-event response. Maybe highly complex rules are unlikely to get it right, but through this pandemic the direction that we should march on and improve is clearer in China. For example, the laws should provide more certainty about at which levels governments to bear the fiscal responsibilities, and it is still necessary to strengthen fiscal autonomy of local governments, in order to improve their capacity and enthusiasm to respond to unexpected emergencies in the first place.

¹⁶⁴ See Article 3 of Law on Prevention and Treatment of Infectious Diseases (2013 Amendment).



SPANISH EXPERIENCES ON FISCAL COUNTERMEASURES AGAINST COVID-19

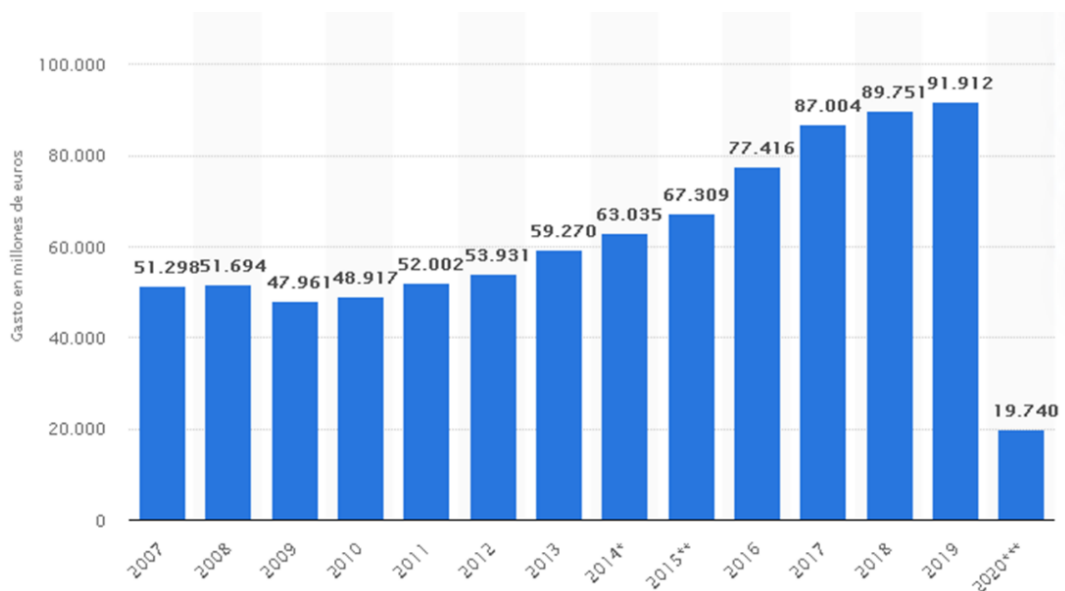
di José Miguel Martín Rodríguez * – jmarrrod1@upo.es

Brief abstract of the paper. The abstract should be of around 7 lines more or less.

SUMMARY: 1. *How the pandemia of COVID-19 is affecting Spanish economy.*- ii. principales medidas tributarias en la normativa española. 1. aplazamientos y ampliaciones de plazos de presentación o pago de obligaciones

1. *How the pandemia of COVID-19 is affecting Spanish economy.* First of all, in order to asses the countermeasures adopted in Spain, we need to undertstand what has been the impact of COVID-19 in our economy. Due to the high dependence of Spanish economy on tourism (it represented 12.4% of GDP in 2019) and other services related, the pandemia effects have been huge. This situation can be understood with a simple glance at this graphic:

Graphic 1. Expenditure of International Tourists in Spain 2007-2020



Source: Statista.com

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Of course, the pandemic of COVID-19, as in other countries, has impacted Spanish economy in many other ways. However, the first data of 2020 are shocking, Spanish Public debt reached 120% of GDP and public deficit shot up to nearly 11%, the highest of the whole European Union¹⁶⁵. Numbers that shattered all the hope of a full recovery from the previous economic and financial crisis.

Graphic 2. Spanish Public Debt and Public Deficit 2012-2020



Source: Expansion.com

Our traditionally high unemployment rates (13,7% at the end of 2019) worsened due to the economic paralysis (16,2%) at the end of 2020, however this increase has been softened by the 1 million workers that are still under Record of Temporary Employment Regulation (in the meantime they are not considered unemployed). Fortunately, part of this cost is been funded by the SURE mechanism (Support to mitigate unemployment risks in an emergency).

Once seen the huge economic impact of COVID-19 in Spanish economy (apart from the dramatic health consequences, of course) we might expect powerful countermeasures in order to reactivate the economy, the work market, etc. We are afraid the reader will be strongly dissatisfied...Not because the short-term countermeasures were irrational or ineffective (we will see that, although there was a bit of chaos, the short-term goals were achieved) but because once we knew the economy would not recover fast enough in 2021, there were no relevant countermeasures in response.

According to this structure, we divide the exposition in two main parts. In the following one we analyse the short-term countermeasures adopted during the first months of the COVID-19 pandemic. In the second part, we will instead assess the decisions adopted with the year 2021 in mind, specially through the Budget for 2021 and its linked laws.

¹⁶⁵ In the short-term it should not be a problem at the European level since ECOFIN approved the 23th of March 2020 the activation of the general escape clause of the Stability and Growth Pact after the proposal of the European Commission three days before [Communication from the Commission to the Council on the activation of the general escape clause of the Stability and Growth Pact, 20th of March 2020, COM(2020) 123 final].

2. Short-term countermeasures adopted in Spain in response to COVID-19 (2020)

In the short-term the fiscal countermeasures adopted during 2020 in Spain to respond to the exceptionality caused by the Covid-19 pandemic were focused mainly on facilitating liquidity for companies and individuals by ensuring deferrals and extension of deadlines in tax matters. The legal instrument has been the Royal Decree-Law (Real Decreto-Ley)¹⁶⁶, a regulation with force of Law that can be approved by the Government itself in special situations (it has to be validated by the Spanish Parliament later). Of course, due to the changing situation and the circumstances, it is understandable that there were many of them in a very short space of time. However, the final feeling is that there was an absolute lack of systematicity in the measures, an absolute amalgamation of successive rules, some of them on similar issues and that, in specific cases, were even published when the deadlines that they intended to modify had not only already been initiated, but were about to end. The usual chaos of the tax system surpassed itself.

As we said, the main objectives pursued by these initial provisions (2020) were to avoid the liquidity problems of companies and individuals, to solve difficulties in fulfilling formal and material obligations, to adapt self-liquidations and payments to economic reality and, to a lesser extent, to approve tax benefits that help the health system or some specific sectors, like cinema.

This is the list of Royal Decree-Law (RDL) approved during 2020 in the tax field:

RD 7/2020 - 12th March
 RDL 8/2020 - 17th March
 RDL 11/2020 - 31st March
 RDL 14/2020 – 14 th April
 RDL 15/2020 - 21th April
 RDL 17/2020 - 5th May
 RDL 19/2020 - 26th May
 RDL 34/2020 - 17th November
 RDL 35/2020 - 22nd December

The first fiscal countermeasure approved (RD 7/2020 - 12th March) was an automatic deferment (under request) of the payments of all tax settlements whose filing period will end between that date and the 30th of May (six months, with no interest during the first four months). Since the goal of this regulation was to protect SME, only professional and businesses whose turnover in 2019 had not exceeded EUR 6 million¹⁶⁷ could ask for this deferral. Moreover, the maximum amount of the deferral was EUR 30,000.

One month later, the RDL 14/2020 – 14th April – established the suspension of deadlines and the deferral of tax debts due between its publication date and 20th of May 2020. In essence, it was an automatic moratorium applied on all tax debts, without request. It was strongly claimed by companies and tax advisors, since the quarterly payment period of VAT, as well as the

¹⁶⁶ Art. 86 of Spanish Constitution:

1. "In cases of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws (...).
 2. The decree-laws must be submitted forthwith to the Congress of Deputies (...) They must be debated and voted upon in their entirety within thirty days after their promulgation.(...)
- (...)

¹⁶⁷ Exactly 6,010,121,04 euros. The Spanish conversion of pesetas into Euro was too literal and almost 20 years later most amounts are still this chaotic...

fractional payments of CIT, was opened until 20th of April. Its direct effect was to defer both, the formal obligation to file declarations and the material payment until 20th of May. Again, its application was only intended for SME, so only subjects whose volume of operations was less than EUR 600,000 could benefit from this automatic deferral¹⁶⁸. As we noted above, one of the critics to this measure (whose need is not in dispute) is that its publication occurred 14 days after the start of the period of payment of several of the debts that it was supposed to defer (1st of April most of them).

Regarding procedural deadlines the original RD 463/2020 of 14 March on the declaration of the alarm status determined the general suspension and interruption of deadlines for the processing of procedures of public sector entities. However, it expressly excluded the tax matters. It was the RDL 8/2020 – 17th March- (art. 33) the one that first dealt with the extension of procedural deadlines in the tax field.

First, extending the payment period up to 30th May 2020 for all the tax liquidations that were sent by the Administration (art. 62.2 of Spanish General Tax Law) and those under final notice (art. 62.5) when they were not due before the publication of RDL 8/2020. Also all the tax deferrals already approved that had to be paid in this period (until 30th May) would be also extended. Finally, it excluded this two months and a half from the time limits of all tax procedures including the appeal at the economic-administrative courts.

Two weeks later, the RDL 11/2020 - 31st March completed this regulation approving that this suspension of time limits also covers the maximum revision period (*prescripción*) of tax obligations at all levels (national, regional and local administrations), as well as all public obligations, except those of Social Security.

Finally, the RDL 19/2020 – 26 th May – introduced changes in the declaration of CIT with a solution to those companies that could not approved the final annual accounts since there were no shareholder meetings (in fact RDL 8/2020, allowed this extension to their approval). Since it was common that companies would not have them by the 1st of July (start date for the submission of CIT), this RDL admit the presentation with the provisional accounting, if the final version differs, the company would submit a supplementary self-assessment until 30 November (surprisingly, in this case the default interest would apply)

Another short-term measures were related to the fractioned payments of CIT and PIT (regarding economic activities). Article 40 of Spanish Law of CIT¹⁶⁹ contains two different possibilities for calculating fractioned payments. The one in paragraph 2 is calculated on the basis of the full quota of the last tax period whose declaration period was due. Paragraph 3, on the other hand, does allow the fractioned payment to be calculated on the basis of the actual profit of the first 3, 9 or 11 months of the year. Since this second method is fairer in this pandemic time RDL 15/2020 – 21st April- allowed companies to choose it although the time to exercise the option had already finished (only companies under EUR 6 million of net turnover). Moreover, this option is not binding for the following years, as it used to be.

A similar provision was introduced for the fractioned payments of economic activities in PIT. Many business were applying the special “objective estimation method”, which calculate the tax base using different parameters (n° of employers, surface of the premises, etc.) but not the actual profit of the activity. Again, it admitted a non-binding change to the simplified estimation method, which is based on the actual income and expenses of the activity during the year.

¹⁶⁸ An objective exception was also made since this deferral would not apply to taxes under the EU Customs Code, i.e. tariffs and customs duties.

¹⁶⁹ Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.

In VAT, RDL 15/2020 introduced two very specific measures. The first one was directly related to COVID-19 crisis: a special 0% rate for deliveries, intra-UE acquisitions and imports of certain health goods (masks, hand sanitizer, etc.) provided that the recipients are public law entities, clinics or hospitals or private entities of a social nature. The second, however tried to solve a long-term discussion: the reduction of the VAT rate of electronic books, newspapers and magazines to 4%, the same as the physical ones¹⁷⁰.

The last relevant short-term measure (RDL 17/2020, 5th May) was the increasing of the percentage of deduction for donations to non-profit entities in PIT by 5% (up to 80% for the first 150 euros, 35% for the rest, and 40% total when in the previous financial year it had already donated more than 150 euros). Most of the tax incentives to specific cultural and sport activities were also extended one year (e.g. tax incentives linked to the postponed Tokyo Olympic Games). This RDL also establishes the only tax measure related to a specific economic sector by improving the deduction of CIT on audiovisual and film productions.

These were the main fiscal countermeasures of Spain during 2020, the first and hardest year of the pandemic crisis. Of course, the Government announced billions of direct aid, exactly EUR 60 billion. However, if we go further this political statements, we realise 80% of them were nothing but “official credit lines with reduced interests” and 18% was the expenditure on the Record of Temporary Employment Regulation.... The real economy, the sectors badly hit by the pandemic (restauration, tourism, etc.) did receive less than a tiny lifeline for surviving this “perfect storm” in the short-term.

3. Mid-term countermeasures – The Budget for 2021

Up to the end of 2020 we might have thought that Spain did not act more decisively in the short-term because it was expecting a fast recovery from the crisis. However, the unavoidable delay in the vaccines postponed any hope and, at the time of this paper, we still do not know if Spain will receive a significant number of international tourists (the water for its thirsty economy). Appart from the arrival of the EU aid package, we might expect then several ambitious measures in the Budget for 2021 (A Budget for a country with a 11% public deficit and more than 15% of unemployment rate).

First of all we must recall that Spanish Government at the moment is a left-wing coalition of two parties that is supported in the Parliament by other left-wing and regional parties. This is relevant to understand the tax measures included in the Budget for 2021, which are more related to the compliance of a political agreement than to the situation of Spanish economy.

One of the main worries of this coalition was the situation of the housing rentals (with increasing prices, specially in big cities). Among the possible measures it was discussed the instauration of rental price limits in this big cities. However, the only measure included in the Budget for 2021 was the deduction as expense for the landlord of any agreed reduction in rentals and a forced reduction of 50% in business rentals (during 6 months), that will be applied when they are owned by public entities or when the landlord owns more than 10 premises.

In PIT, according to the left-wing coalition pact, the only measure was the increase of marginal rates applied over EUR 300,000 of general income (salaries, rentals, business income, etc.) to 47% (+2%) and to savings income (interest, dividends, etc.) over EUR 200,000 to 26% (+3%).

¹⁷⁰Regarding this conflict see: MACARRO OSUNA, J. M., «Non-reduced rates for e-books: Has the ECJ allowed an infraction of fiscal neutrality?», *International VAT Monitor*, Vol. 27, nº 4, 2016, pp. 249-253.

Table 1. Spanish PIT marginal rates (2021)

General Base			Savings Base		
From	to	Rate	From	to	Rate
0	12,450	19%	0	6,000	19%
12,450	20,200	24%	6,000	50,000	21%
20,200	35,200	30%	50,000	200,000	23%
35,200	60,000	37%	200,000	onwards	26%
60,000	300,000	45%			
300,000	onwards	47%			

In this same line, the highest marginal rate of Wealth Tax (for wealth over EUR 10,6 million) was increased 1%, up to 3,5%. The last tax measure was the application of the normal VAT rate (21%) instead of the reduced rate (10%) to sweetened soft drinks.

That is all. A bit of make-up to accomplish with political agreements but very little relevant fiscal countermeasures in response to a tough year, one year in which Spain is still suffering the effects of the pandemics way more than other European economies. This situation required ambitious measures for a faster economic recovery in the short-term, and ambitious tax reforms to solve the huge problem of fiscal revenues and public deficit and debt in the mid-long term. None of them seem to be in the political agenda at Spain¹⁷¹.

4. Finally, a Package of direct aid for business. Is it too late?

Maybe it was part of the mentality of the left-wing government in Spain but too much time has passed until the first direct aid package for business was approved. There have been other measures, that is true, but they were focus on helping individuals under difficult circumstances, but not businesses.

To be specific, the 12th of March of 2021, almost one year after the declaration of the first State of Alarm due to COVID-19 (14th of March 2020) the Government announced and aid package that will be managed by the regions.

This direct aid package consists on EUR 7 Billion euros that will be assigned to business and professionals under request, although EUR 2,5 billion will be specifically dedicated to the two Spanish islands regions (Canary Islands and Baleares) that suffered the tourism crisis with greater intensity.

The aid will be assigned under this conditions:

- At least 30% of sales reduction
- Only to specific sectors: hospitality, tourism, commerce
- For the payment of fixed expenses and debts to suppliers and other creditors
- Compensation up to 40% of the sales drop for micro-business and 20% for others.
- Maximum aid of EUR 200,000
- Companies cannot pay dividends or increase the salary of managers in two years.

¹⁷¹ We have already proposed a few relevant tax reforms in order to curb the worrisome numbers of Spanish deficit and public debt in the mid and long-term, specially regarding VAT. See: Martín Rodríguez, J.M., «Medidas fiscales en España frente a la crisis del COVID-19.: Respuesta inmediata a los problemas de liquidez y propuestas para garantizar la sostenibilidad en el medio y largo plazo», Retos jurídicos ante la crisis del COVID-19 (editors: Juan Francisco Rodríguez Ayuso & Elena Atienza Macías), Wolters Kluwer, 2020, pp. 148-157.

Maybe it is too late, since the Spanish Statistic Institute (INE) had already alerted that during the first 6 months of the COVID-19 crisis in Spain (april.-october 2020) more than 200,000 companies (17,4% of all Spanish companies) and more than 300,000 self-employed workers (10% of them) terminate their activities¹⁷².

5. Concluding Remarks

It is obvious that the Spanish life style, our culture and openness has caused critical death numbers due to COVID-19. The economic consequences of the pandemic has also been huge since Spain is heavy dependent on tourism. Numbers do not lie, Spain suffered one of the sharpest contractions in the world, with the highest public deficit in the European Union (11%) and critical debt numbers (120% of GDP). However, as we have seen, short-term COVID-19 fiscal countermeasures in Spain had strictly complied with the minimum requirements of the situation: tax deferrals, official credit lines, support for employers and companies with a big expense on Record of Temporary Employment Regulation, etc.

Maybe the constraints of the actual Spanish political situation (a left-wing coalition, with many parties to agree in order to reach the parliamentary majority) have influenced the lack of ambitious business incentives (except on media productions..). Moreover, the Budget for 2021 appeared to forget the economic context and, regarding fiscal measures, only reflects a few minor political agreements.

This “perfect storm” for sectors such as tourism, amusement or restauration, has received the first actual answer almost one year after the start of this crisis. However, nor the amount of the direct aid, neither the strict conditions or burocracy will help its success.

The truth is that the main Spanish countermeasure against COVID-19 economic crisis has been *waiting*. Waiting for European Union Aid Package to arrive, waiting for vaccines to work, waiting for International travellers to return and waiting to business to survive until then....

¹⁷² See. https://www.ine.es/covid/covid_economia.htm (accessed 20 April 2021)