



# Local tax powers: from illusory power to an “order of autonomies”

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## Editorial

### Local tax powers: from illusory power to an “order of autonomies”

While local fiscality is a veritable mosaic comprising a very wide range of direct and indirect taxes, the debates surrounding their reform, which have been going on for decades, have died down somewhat in recent times. They were briefly reignited by the review of rental values, but the impact of that review should be limited at least in the short term since it was applied to businesses<sup>1</sup>, and extending it to private property<sup>2</sup> is not currently on the agenda.

The same cannot be said of the elimination of business tax and the new distribution of levies between local authorities resulting from the initial finance law for 2010, which conversely poses a serious essential problem regarding local fiscal autonomy and, beyond that, local financial governance. The subject, which has taken on new breadth with the reduction of transfers from the State, is in fact crucial since it is closely linked to the question of relations between the local sector and the State, a question that has never been fully resolved.

While “local” was able to take revenge for a time against “central”, notably on account of the increase in its fiscal power, this trend nonetheless lost momentum from the second half of the 1980s. It should be remembered that the crisis in public finances, or what was known at the time as the “crisis of the welfare state”, was one of the central reasons for the decentralist drive of the late 1970s and early 1980s.<sup>3</sup> Marked by a “withdrawal” of the State, this period saw social organization become increasingly complex as a result of the gradual assumption of responsibility by local public stakeholders in response to the financial difficulties of the State, in particular by means of a

1. Initially scheduled for 1 January 2016, implementation has been pushed back a year.

2. Tax on furnished accommodation and land tax.

3. See M. BOUVIER, *Les finances locales* [Local finances], LGDJ, 16<sup>th</sup> edition, 2015.

“commune system”<sup>4</sup> characterized by real local financial – and in particular fiscal – autonomy.

Unlike in the past, the current difficulties in the system of public finances lead us conversely to re-examine the issue of local fiscal autonomy. Having appeared once the State began transferring to local authorities taxes that dated back to the time of the revolution (real estate tax, tax on movable property, occupational taxes) that they did not consider to be profitable enough to cover the related expenses, the granting of own fiscality, i.e. a precondition for local autonomy, could then be made increasingly real. We also know that there was a long wait for this fiscality to be modernized (creation of tax on built and unbuilt properties in 1973, establishment of business tax in 1975). A little later, the legislator took a further step towards fiscal autonomy by giving local authorities the right to vote on tax rates by means of a law passed on 10 January 1980. The independent management of resources (global loans and global allocations) was then joined by a degree of independence in fiscal decision-making, with taxation becoming a significant independent source of financing and local fiscal power reaching its height, before rebates and exemptions became so widespread as to turn local taxes into actual or disguised allowances.

It was against this backdrop that the principle of financial autonomy for local authorities became constitutional (constitutional revision of 28 March 2003), a principle rooted in local fiscal power that could have suggested the re-emergence of local fiscal autonomy. However, this was merely an illusion<sup>5</sup>, as highlighted in a way by the Constitutional Council when it dissociated financial autonomy – of which it recognized the principle – from fiscal autonomy, ruling that “neither Article 72-2 of the Constitution nor any other constitutional provision grants fiscal autonomy to local authorities”<sup>6</sup>. In other words, the idea of fiscal autonomy was no longer able to resist an underlying trend leading towards a loss of substance in the local fiscal system<sup>7</sup>. Ultimately, the 2010 reform merely ratified the situation by recognizing

4. See M. BOUVIER and M.-C. ESCLASSAN, *Le système communal* [The local system], LGDJ, 1980.

5. See M. BOUVIER, « L'autonomie financière locale : illusion ou refondation » [Local financial autonomy: illusion or refounding?], in *Pouvoirs locaux* no. 87-2010.

6. Decision no. 2009-599 DC of 29 December 2009.

7. This despite the fact that the level of financial autonomy is calculated, according to the Organic Law of 29 July 2004, as a function of own resources, most of which is provided by the revenue from all types of taxes. This decision appears to confirm that the financial logic leading towards a separation of independent management of local resources from a fiscal autonomy that is gradually losing substance is neither losing momentum nor being replaced

the existence of an illusory fiscality, and indeed concluding, or perhaps merely continuing, a practically uncontrolled trend stretching back about thirty years.

It would surely be regrettable to continue in this vein. The stakes are high, specifically the future of decentralization. Local fiscality in fact boasts three main qualities: it is simultaneously an effective means for financing development, a preferential means for ensuring responsible public management and a key element in local democracy. Close observation reveals that these qualities are not actually being identified or taken seriously. A technical approach to local taxation is more often than not adopted, which results in the political and social aspects being excluded, i.e. the implications of same on power and on justice. Taxation is a source and a symbol of power. Its history is the history of the construction of political power, i.e. the State and more specifically the democratic parliamentary State. This is also why we do not usually find independent political power without fiscal power. It is also why the granting or limiting of fiscal power to an institution leads to a change in institutional balance, a modification of the political order. The fiscal system is in no way isolated from other institutions, but an integral part of them, and changing it necessarily results in changes to the context in which it resides. As such, these considerations are becoming particularly important. Indeed, its very legitimacy is at stake<sup>8</sup>. Moreover, the survival of local fiscal autonomy is also in play. We are witnessing the absorption of local authorities into the State, based implicitly on the gradual disappearance of local fiscality. This path is a particularly troublesome one, since it involves the risk of returning to centralization, irresponsibility and even rigidity, at a time when institutional flexibility is more than ever needed in an instable and fluctuating world. On the other hand, the real risk of causing the local system to implode through excessive accountability also needs to be taken into account.

Finally, and even if it is not perceived as such, fiscal power sharing is a major challenge for complex States that are increasingly diversified and right in the middle of restructuring processes. This brings to mind the changes that could quickly emerge with the emergence of larger regions or even the development of new types of groupings, and therefore powers, such as urban areas and new municipalities. These

by an alternative; each being simply satisfied, at the time the constitutional law of 2003 and the organic law of 2004 were adopted, by a simple transfer of revenues from State taxes.

8. See M. BOUVIER, *Introduction au droit fiscal et à la théorie de l'impôt* [Introduction to tax law and tax theory], LGDJ, 12<sup>th</sup> ed., 2014.

changes will necessarily be part of a restructuring of the system of public finances and will lead to an essential choice being made both in Parliament as well as within the context of a consultative body such as the National Territorial Dialogue (DNT), in the absence of a High Council of the Territories (HCT). We now need to build what we have proposed to qualify as “an order of autonomies”. This means an order based on both vertical and horizontal planes (i.e. transversal) that will help to do away with all manner of encumbrances, and particularly with a contained concept of the State and public action, a concept that does not recognise and does not formalize the multiple interactions and multiple rationales that characterize contemporary society.

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