



Press Office of the Constitutional Court

Press release of 4 December 2020

SINGLE MUNICIPAL TAX (IMU) ON REAL ASSETS COMPRISING PROPERTY, PLANT AND EQUIPMENT: IMU MUST BE DEDUCTIBLE FOR THE PURPOSES OF TAX ON BUSINESS INCOME (CORPORATION TAX [IRES] AND PERSONAL INCOME TAX [IRPEF])

The single municipal tax (IMU) on real assets comprising property, plant and equipment is “an inherent tax cost, the deductibility of which cannot be precluded without compromising the coherence of the purpose of the tax once the legislator has, at its discretion, adopted the criterion of taxation of net income for tax on business activity”.

This constitutes the heart of the reasoning according to which, in [Judgment No. 262](#) filed today (author of the Judgment: Luca Antonini), the Constitutional Court declared unconstitutional – as previously announced in the [press release of 19 November](#) – the ineligibility for deduction from the amount liable to tax on business income (IRES and IRPEF) of the single municipal tax paid in relation to real assets comprising property, plant and equipment “due to the violation of the principle of coherence, and thus the principle of reasonableness (Articles 3 and 53 of the Constitution)”.

In particular, the Court accepted the questions raised by the Milan Provincial Tax Board concerning Article 14(1) of Legislative Decree No. 23 of 2011 (as in force in 2012), insofar as it provided that the single municipal tax was entirely ineligible for deduction from business taxes.

The Court held that the original approach of the legislative decree on municipal tax federalism, of which the single municipal tax was an essential part, had been overturned by legislation subsequently enacted: as a result of developments that were not in keeping with this approach and system, from 2012 onwards the single

municipal tax had in fact been fundamentally transformed, turning amongst other things into a particularly onerous and critical tax for businesses.

The Judgment goes on to stress that the deductibility under examination does not by any means pertain “to the issue of tax relief in a strict sense”, but “rather pertains to those principles of taxation in which the predominance of a structural characteristic is apparent”.

The Court went on to clarify that this “does not subject the legislator to an absolute prohibition on placing limits on the deductibility of costs”. However, aside from situations that can be justified on the grounds of proportionality and reasonableness, “it is difficult to identify an adequate justification for these exceptions: in particular, the legislator is required to justify the mere requirement for revenue raising in a transparent manner by increasing the headline rate of tax and not by making inconsistent adjustments concerning its deductibility, which give rise to discriminatory, latent and significant increases in the amount liable to tax, to the detriment exclusively of a limited class of taxpayers”.

Finally, the Court declined to extend, as a consequence of its ruling, the reach of the unconstitutionality to the provisions enacted over the years allowing only the partial deductibility of the single municipal tax on real assets comprising property, plant and equipment because, in enacting this legislation over time, the legislator has gradually corrected its position, eventually adopting the virtuous rule – which the Judgment however defines as “certainly no longer postponable” – of total deductibility starting from 2022.

Rome, 4 December 2020