



Press Office of the Constitutional Court

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CONSTITUTIONAL COURT: THE “ADDITIONAL” 2013 CORPORATE INCOME TAX WAS NOT ARBITRARY

The duty to pay taxes is a constitutional value. It is also a duty of solidarity from which no derogation is possible, because it serves to finance the system of (social and civil) constitutional rights that, in order to become effective, requires considerable resources. Flouting the duty to pay taxes thus means to undermine this very obligation of solidarity, as well as the protection afforded to fundamental rights. Moreover, the values of supreme legal culture underlying the duty to pay taxes can remain evident as long as the system is firmly anchored to the set of principles and related balancing operations established and allowed for by the Constitution, which includes respect for individual taxpayer capacity (Article 53 of the Constitution).

In light of these and other principles, the Constitutional Court, in Judgment no. 288, filed today (Judge Rapporteur: Luca Antonini), declared unfounded the challenges raised against Article 2(2) of Decree-Law No. 133 of 2013. This provision abolished the second installment of the municipal real estate tax (*Imposta municipale sugli immobili*, IMU) and introduced, for 2013 only, an additional corporate income tax (*Imposta sul reddito delle società*, IRES) to be paid only by financial, credit and insurance companies. The Constitutional Court held that imposition of this extraordinary and temporary tax did not amount to an arbitrary act on the part of the legislator. Indeed, the new tax was part of a set of measures that had substantial compensatory effects for those same taxable persons, already in tax year 2013.

The Court therefore emphasised that, on the basis of a comparison with industrial markets, the legislator inferred for 2013 alone that participating in financial markets was a specific and self-standing indicator of taxpaying capacity. At the

same time, however, the legislator did balance the various interests at stake, meeting a specific need of the financial, credit and insurance sectors, given that it intervened on the regime of write-downs and deductible losses such as to attenuate ordinary IRES and IRAP [*imposta regionale sulle attività produttive*, regional tax on productive activities] taxation.

By virtue of these systemic elements, the taxation measure cannot be considered arbitrary.

Today, taxpaying capacity presents several particularly dynamic aspects. The challenged additional tax provided financial coverage for a redistributive operation that sought to lessen the tax burden deriving from the second IMU instalment, in a difficult and critical economic climate.

Rome, 23 December 2019