JUDGMENT NO 50 OF 2026
[omitted]
THE CONSTITUTIONAL COURT
[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 21-*bis* of Legislative Decree No 74 of 10 March 2000 (New rules on offences relating to income tax and value added tax, pursuant to Article 9 of Law No 205 of 25 June 1999), introduced by Article 1(1)(m) of Legislative Decree No 87 of 14 June 2024 (Reform of the tax penalty system, pursuant to Article 20 of Law No 111 of 9 August 2023), initiated by Division 3 of the Second Instance Tax Court (*Corte di giustizia tributaria di secondo grado*) of Piedmont and by Division 13 of the First Instance Tax Court (*Corte di giustizia tributaria di primo grado*) of Rome, respectively with referral orders of 10 March 2025 and 16 June 2025, registered as Nos 79 and 256 in the 2025 Register of Referral Orders and published in *Official Journal of the Italian Republic* Nos 19 and 51, first special series 2025.

Having regard to the entry of appearance filed by A.R., as well as the statements in intervention filed by the President of the Council of Ministers;

after hearing Judge Rapporteur Luca Antonini at the public hearing on 27 January 2026;

after hearing Counsel Alfonso Celotto for A.R. and State Counsels Erica Farinelli and Gianna Maria De Socio for the President of the Council of Ministers;

after deliberation in chambers on 23 February 2026.

[omitted]

Conclusions on points of law

16.– By referral order of 10 March 2025 (registered as No 79 in the 2025 Register of Referral Orders), the Second Instance Tax Court of Piedmont raised questions concerning the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, with reference to Articles 3, 24 and 97 of the Constitution.

The challenged provision states as follows: “1. A final judgment of acquittal in criminal proceedings on the grounds that the offence did not take place or that the defendant did not commit it, handed down following a trial concerning the same person and the same material facts evaluated in tax proceedings, shall, in those latter proceedings, have the force of res judicata at every stage and level of the proceedings in question as regards those same facts. 2. The final criminal judgment referred to in paragraph 1 may also be filed with the Court of Cassation up to fifteen days before the hearing or the in-chambers session. 3. The provisions of paragraphs 1 and 2 apply, limited to cases of acquittal on the grounds that the offence did not take place, also to the natural person in whose interest the employee, legal representative or contractual representative acted, or to the body or company, whether or not it has legal personality, in whose interest the representative or director (including a de facto director) acted, as well as to their owners or members”.

According to the referring court, the challenged provision infringes Article 24 of the Constitution since the Inland Revenue Agency (*Agenzia delle entrate*), which has an interest in the assessment and collection of taxes, is bound by a criminal judgment of acquittal in tax proceedings without however ever having had the chance to safeguard the tax debt in the criminal proceedings by intervening therein as a civil claimant given that, according to the Court of Cassation, Joint Civil Divisions, Judgment No 29862/2022, the tax authorities may avail themselves of that procedural mechanism to claim damages for loss suffered but not to obtain payment of the evaded tax itself. Consequently, the tax authorities' interests are left unprotected in criminal proceedings since, again according to the referring court, one cannot maintain that the said protection can be assured by the public prosecutor.

The referring court added that, in any event, even if one were to maintain that the Inland Revenue Agency's status as a civil claimant in criminal proceedings could serve to safeguard the underlying tax debt itself, that could constitute a breach of its right of defence in that it might well not receive the notice referred to in Article 419 of the Code of Criminal Procedure.

17.– Furthermore, the referring court is of the view that the challenged provision infringes Article 3 of the Constitution because it introduces an unreasonable disparity in treatment "as regards the effects that a criminal judgment of acquittal has in the non-criminal sphere for non-tax offences as opposed to tax offences that adversely affect the State's primary interests".

Indeed, whilst Article 652 of the Code of Criminal Procedure provides that a final criminal judgment of acquittal handed down following a trial has the force of res judicata in civil or administrative proceedings only if the injured party had intervened in the criminal proceedings as a civil claimant or had been placed in a position to do so, no such limitations are envisaged by the challenged provision given that it allows the res judicata effect of a criminal judgment of acquittal to be extended to tax proceedings regardless of whether the tax authorities intervened or could have intervened as a civil claimant in the criminal proceedings.

Moreover, the rules of evidence are much stricter in criminal proceedings "(where a conviction is based on the standard of 'beyond a reasonable doubt') than in tax proceedings (where the civil standard of 'a balance of probabilities' applies)". It thus follows that the automatic extension of the effects of an acquittal "to a party-led proceeding, based on different rules of evidence and procedure, with parties to the proceedings who do not coincide with the parties to the criminal proceedings" is unreasonable.

According to the referring court, a further reason for the disparity in treatment lies in the fact that the challenged provision protects only taxpayers' interest in extending the effects of a criminal acquittal in their favour to the tax proceedings, but not the Revenue's interest in benefiting, with similar automatic effect, from a criminal conviction.

18.– The President of the Council of Ministers intervened in the proceedings, represented and defended by State Counsel (*Avvocatura generale dello Stato*), requesting that the questions be declared inadmissible or manifestly unfounded.

19.– By referral order of 16 June 2025 (registered as No 256 in the 2025 Register of Referral Orders), the First Instance Tax Court of Rome raised questions concerning the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, with reference to Articles 3(1), 24, 53, 97, 102(1), 111(1) and 111(2) of the Constitution.

19.1.– The referring court considered, first and foremost, that the challenged provision infringes Article 3(1) of the Constitution in that it has introduced an unreasonable disparity in treatment as regards the effects that a criminal judgment of acquittal has in the non-criminal sphere for non-tax offences as opposed to tax offences. This is because, unlike the provisions of Article 652 of the Code of Criminal Procedure, under which the possibility of extending the effects of a criminal acquittal to civil or administrative proceedings is conditional upon the injured party having intervened in the criminal proceedings as a civil claimant or having been placed in a position to do so, the challenged provision provides for an automatic extension of the force of res judicata of a criminal judgment of acquittal to tax proceedings without any conditions.

19.2.– Furthermore, according to the referring court, the challenged provision infringes Articles 3 and 53 of the Constitution: as a result of the challenged provision, "a situation of tax inequality" arises "between taxpayers acquitted in criminal proceedings, who obtain the automatic judicial annulment of the notice of tax assessment or the tax collection notice even when they exhibit an ability to pay, whilst the same outcome is not guaranteed to taxpayers who have never had criminal proceedings taken against them despite having committed tax offences that are, in fact, less serious".

Therefore, automatically extending the effects of a final criminal judgment of acquittal to tax proceedings even where that judgment was based on procedural defects or the inadmissibility of evidence essentially amounts to an *a priori* waiver of the tax debt stated in the notice of tax assessment even in those cases where a taxpayer, although acquitted in criminal proceedings, has a capacity to pay that is sufficient to warrant the levy.

19.3.– It is further alleged that Article 24 of the Constitution is infringed in that the Inland Revenue Agency's right of defence is violated given that, in the light of Court of Cassation, Joint Civil Divisions, Judgment No 29862/2022, the tax authorities cannot intervene in the criminal proceedings as a civil claimant to assert, in that forum, its interest in the collection of unpaid taxes. Nor, the referring court adds, can it be considered that the tax authorities' interest in collecting the unpaid taxes can be safeguarded in the criminal proceedings through the public prosecutor as only the Inland Revenue Agency holds the interest in question.

19.4. – Moreover, according to the referring court, the challenged provision infringes Article 102(1) of the Constitution in that it undermines the judicial function exercised by the tax courts as well as Article 111(1) of the Constitution in that it prevents the tax courts from exercising their power to independently assess whether and what effects a criminal acquittal would have in tax proceedings.

The referring court additionally alleged that Articles 111(1) and 111(2) of the Constitution, read in conjunction with Article 24 of the Constitution, are also infringed in that the challenged provision alters the principle that the parties in tax proceedings are equal before the law since their procedural powers are unequal: unlike taxpayers acquitted in criminal proceedings, who in tax proceedings can invoke the res judicata effects of the criminal judgment in their favour, the tax authorities cannot in the tax proceedings invoke a criminal conviction handed down against taxpayers as likewise having the force of res judicata.

19.5.– The President of the Council of Ministers intervened in the proceedings, represented and defended by State Counsel, requesting that the question of constitutionality raised with reference to Article 97 of the Constitution be declared inadmissible and, on the merits, that the questions be declared manifestly unfounded.

20.– As a preliminary point, since the referral orders concern the same provision and raise questions that largely coincide, the proceedings are to be joined in order to be heard together.

21.– In both proceedings, State Counsel has objected that the question raised in relation to Article 97 of the Constitution is inadmissible due to a lack of reasoning on the basis that the referring courts have not explicitly stated the reason for that reference.

The objection is well founded.

Although both referral orders make express reference to Article 97 of the

Constitution as the constitutional provision in the light of which the question of constitutionality has been raised, the grounds for the referral in that respect lack any explanation whatsoever as to why Article 97 is relevant. It follows that the associated question is inadmissible on the grounds of a lack of reasoning.

22.– In the proceedings that Referral Order No 79/2025 concerns, State Counsel has first and foremost objected that the questions are inadmissible for want of relevance on the basis of the applicable factual and legal framework has not been sufficiently described.

In particular, State Counsel argues that the referring court has failed to verify, as required, that the material facts evaluated in the criminal proceedings are identical to those in the tax proceedings.

Additionally, State Counsel maintains that the referring court has not specified whether the acquittal in the criminal proceedings had been handed down pursuant to paragraph 1 or paragraph 2 of Article 530 of the Code of Criminal Procedure. Clarification that is necessary because Court of Cassation case law has made it clear that an acquittal under the said paragraph 2 is not relevant for the purposes of Article 21-*bis* of Legislative Decree No 74/2000 as such an acquittal does not contain any positive finding as to the absence of the constituent elements of the offence but merely a finding as to the absence of evidence sufficient to convict the defendant.

22.1.– The objection is unfounded.

As regards the aspect concerning the incomplete reconstruction of the facts of the case, it should be noted that the referring court clearly described not only the facts underlying the tax charge but also the criminal offences in respect of which the judgment of acquittal was handed down.

Indeed, it highlighted that the tax notices of assessment had alleged a failure to file tax returns for the years 2015 and 2016, on which the assumption was made that a certain Swiss company Flashmap SA had been bogusly incorporated on foreign soil for the sole purpose of evading taxation in Italy on the profits made by the company resident for tax purposes in Italy. The referring court also specified that the Criminal Court of Turin had acquitted one of the applicants of the offence of failure to file a tax return (under Article 5 of Legislative Decree No 74/2000) and that the offence had been based precisely on the bogus incorporation of the Swiss company.

The referring court went on to point out that both the criminal and the tax proceedings were based on the same material facts evaluated, namely the false tax residence of the company Flashmap SA, which had given rise, in criminal law terms, to the charge of failure to file a tax return, and, in tax law terms, to the earning of undeclared profits.

As regards the issue of insufficient specification of the form of acquittal at issue, it should be noted that, contrary to what State Counsel maintains, the referring court specified that the criminal court had acquitted one of the applicants of the offence under Article 5 of Legislative Decree No 74/2000 on the basis that “the offence did not take place”. It is for that reason, being required to apply the challenged provision, the referring court held that the criminal judgment of acquittal should have the force of res judicata in the tax proceedings.

Furthermore, there is no merit to the argument put forward by State Counsel to the effect that for the purposes of assessing the relevance of the questions of constitutionality raised, the referring court should have followed Court of Cassation case law in accordance with which the form of acquittal to which the challenged provision refers is solely that pursuant to Article 530(1) of the Code of Criminal Procedure – entailing a positive finding that the constituent elements of the offence are absent – and not that pursuant to Article 530(2) of the Code of Criminal Procedure because in the latter case the criminal court merely makes an assessment that the evidence is insufficient to convict the defendant and hence such a finding could not be regarded as binding on a tax court.

It should be reiterated here that, in accordance with the established case law of this Court (most recently Judgment No 25/2025), "the assessment of relevance is a matter for the referring court and, in this regard, this Court carries out a purely 'external' review, limited to ascertaining the existence of reasoning that is not implausible, not manifestly erroneous or not contradictory (see, inter alia, Judgments Nos 192/2022 and 32/2021), without going so far as to carry out an independent examination of the factors that led the referring court to reach certain conclusions, and may interfere with that assessment solely if it appears, prima facie, to be entirely without foundation (Judgment No 218/2020)".

With regard to the question of constitutionality at issue, the referring court's interpretation maintaining that the challenged provision applies in the event of an acquittal on the basis that "the offence did not take place" is not implausible, without it being necessary to check whether the criminal court had made a positive finding regarding the absence of the constituent elements of the offence.

This conclusion can also be reached bearing in mind that, following the entry into force of the challenged provision (29 June 2024), by Interlocutory Order No 5714 of 4 March 2025 the Tax Division of the Court of Cassation referred the matter to the First President for possible referral to the Joint Divisions regarding a key question of principle relating to the scope of application of that provision. This is because a conflict of interpretation had arisen concerning two aspects: the first, relating to whether or not the effects of a final criminal acquittal also extend to the underlying tax debt and not merely therefore to the penalty; the second, relating to the applicability of the new legislation to cases of acquittal pursuant to Article 530(2) of the Code of Criminal Procedure.

Therefore, the interpretation given by the referring court – albeit implicitly – regarding the res judicata effect in tax proceedings of the finding contained in a judgment of acquittal handed down in criminal proceedings on the basis that "the offence did not take place", even where that ruling is rooted in a finding of insufficient evidence as to the commission of the offence, does not appear implausible.

23.– State Counsel has furthermore objected to the inadmissibility of the questions of constitutionality on the grounds of an incomplete reconstruction of the relevant legal framework, alleging that the referring court merely referred in general terms to the challenged provision without, however, taking account of the existence of various interpretations regarding its scope of application.

According to State Counsel, in the face of divergent case law, the referring court should have set out the reasons why it considered that it could opt for one interpretation rather than another.

23.1.– The objection is unfounded.

The referring court clearly set out the text of the challenged provision and emphasised that it was obliged to apply it, given that "the acquittal, as provided for by the aforementioned provision, was a full one (*con formula piena*) and followed a trial". It thus concluded that, "with regard to the same material facts evaluated, that judgment has the force of res judicata in the tax proceedings".

From this perspective, the relevant legal framework is sufficiently clear, including for the purposes of assessing the relevance of the question of constitutionality.

There remains a further aspect, highlighted by State Counsel, concerning the failure to take into account the conflicting case law on the scope of the challenged provision:

namely, whether a final criminal judgment has effect in tax proceedings solely in relation to penalties (as some Court of Cassation case law seems to hold following the line of authority established by Court of Cassation, Tax Division, Judgment No 3800 of 14 February 2025) or also in relation to the underlying tax debt.

In this regard, it should be reiterated that, for the purposes of assessing the relevance of a question of constitutionality, "this Court is not called upon to scrutinise the soundness of the various competing interpretations of the challenged provisions but is required only to assess the plausibility of the interpretation underpinning the referral order to substantiate the relevance to the case at issue of the doubt as to constitutionality expressed (among many others, Judgments Nos 207/2021, 183/2021, 181/2021, 59/2021, 32/2021, 22/2021 and 15/2021)" (Judgment No 27/2022).

From that standpoint, the referring court's interpretation – endorsing the view that the challenged provision applies also in relation to the underlying tax debt and not merely to the penalties – does not appear implausible.

24.– A further objection of inadmissibility was raised by State Counsel on the grounds that the referring court's view that there is a breach of Article 24 of the Constitution is based on Court of Cassation case law on the matter pursuant to which, in criminal proceedings, the Inland Revenue Agency may intervene in the proceedings as a civil claimant solely for the purpose of obtaining damages for the loss suffered and not to assert a claim for payment of underlying unpaid tax.

According to State Counsel, the referring court failed to explain how Article 24 of the Constitution is infringed "by the legislative measure under consideration, rather than by the case law on the limits on intervening as a civil claimant in criminal proceedings".

24.1.– The objection is unfounded.

In raising the question of constitutionality on the grounds of breach of Article 24 of the Constitution, the referring court, with adequate reasoning, has outlined the legislative and case law framework. And it is in relation to that overall assessment that it has concluded that the challenged provision violates the Inland Revenue Agency's right of defence, given that it requires it to "bear" the effects of the acquittal handed down by the criminal court.

25.– Before examining the questions of constitutionality on the merits, it is best to provide a brief overview of how the legal framework regulating the relationship between criminal and tax proceedings has developed over time.

The regulation of the relationship has deep-rooted origins, and the challenged provision reflects the importance that the legal system – following a complex evolution – now attributes to the relationship between the tax authorities and taxpayers. That relationship is characterised, on the one hand, by the consideration that tax compliance constitutes an expression of citizens' strict duty of solidarity to contribute to public expenditure and, on the other hand, by the need to identify effective forms of safeguards for taxpayers.

26.– Indeed, the original approach underpinning Article 21(4) of Law No 4 of 7 January 1929 (General rules for combatting violations of financial laws) was an expression of authoritarianism. It was rooted in so-called tax priority (*pregiudizialità tributaria*), providing that "for offences under the laws on direct taxes, criminal proceedings may be brought once the assessment of the tax and the related penalties has become final in accordance with the laws governing that matter".

That was a fundamental approach which remained intact even when, shortly afterwards, on the basis of the reputed superiority of criminal jurisdiction over other forms of jurisdiction, Article 28 of the 1930 Code of Criminal Procedure (a provision subsequently declared unconstitutional in Judgment No 55/1971) established that a final criminal judgment had binding and automatic effect on other proceedings. However, that same article provided for the exclusion of its application in cases where there were "limitations on the evidence relating to the disputed right". Therefore, it was inapplicable to tax proceedings, which were characterised by specific rules of evidence.

Consequently, in determining criminal liability for offences that had both criminal law and tax law implications, the criminal courts were bound by the outcome of the tax assessment made by the tax authorities and by any review thereof carried out by the tax tribunals – at the time administrative bodies that were not independent – given that "the law (Article 285(1) of [Royal Decree No 1175 of 14 September 1931 embodying the 'Consolidated Law on Local Finance']) excluded from the jurisdiction of the judicial authorities any matter relating to 'the assessment of income or findings of fact concerning the taxable base"', with a limitation "dating back to a time when judicial protection was not fully and completely implemented" (Judgment No 6/1969).

Furthermore, access to judicial protection itself was restricted by the *solve et repete* rule, laid down in various statutory provisions, in accordance with which the obligation to pay the tax constituted an indispensable prerequisite for bringing proceedings to seek a judicial determination of the unlawfulness of the tax debt.

The overall structure of the system was therefore characterised by a strongly statist approach, far removed from the very different configuration of the relationship between authority and liberty that would be introduced by the Republican Constitution.

Significant from that standpoint was the rapid series of judgments declaring the rules relating to the *solve et repete* principle to be unconstitutional (Judgments Nos 21/1961, 79/1961, 75/1962, 86/1962, 89/1962, 100/1969 and 125/1969, as well as the reform of the tax tribunals achieved by Decree of the President of the Republic No 636 of 26 October 1972 (Reform of the rules governing tax litigation) establishing that those bodies were of a judicial nature.

Even more emblematic later on was Judgment No 88/1982, which declared that the tax priority rule was unconstitutional as regards "Articles 60 and 21(3) of Law No 4 of 7 January 1929 insofar as they provide[d] that the assessment of tax and the related penalties, having become final at the administrative stage, must be regarded as conclusive in criminal proceedings for the determination of offences provided for by tax laws relating to direct taxes".

According to the said judgment, the prevalence of tax proceedings over criminal proceedings (*pregiudizialità tributaria*) was "certainly incompatible with the principle of free assessment of evidence, which is all the more stringent in criminal proceedings", as set out in Article 101(2) of the Constitution, and with Article 24 of the Constitution "in that the administrative finding deemed to be conclusive in criminal proceedings prevents the exercise of the inviolable right of defence".

26.1.– A few months after that judgment, Article 12(1) of Decree-Law No 429 of 10 July 1982 (Rules to combat evasion in relation to income tax and value added tax and for facilitating the settlement of pending tax disputes), converted, with amendments, into Law No 516 of 7 August 1982, provided that "notwithstanding the provisions of Article 3 of the Code of Criminal Procedure, tax proceedings may not be stayed; however, a final judgment of conviction or acquittal handed down following criminal proceedings relating to offences under income tax and value added tax legislation has the force of res judicata in tax proceedings as regards the material facts that the criminal proceedings concerned".

Consequently, the 1982 legislation, on the one hand, ruled out staying tax proceedings on the grounds that criminal proceedings were pending, thereby establishing, in this respect, a *dual track* between the two sets of proceedings, in the sense of allowing them to commence autonomously and independently.

On the other hand, whilst acting within a framework aimed at tightening criminal penalties for tax offences, that same legislation established that a final criminal judgment had the force of res judicata in tax proceedings as regards the establishment of the material facts that the criminal proceedings concerned.

The previous order of priority, which had characterised the 1929 system, was thus overturned. Coordination was introduced between the two sets of proceedings structured in a manner offering greater safeguards, not unlike the coordination introduced by the challenged provision, save for the fact that the binding effect of a conviction and not merely that of an acquittal was extended to tax proceedings.

The exception to the the prevalence of criminal proceedings over tax proceedings (*pregiudizialità penale*) was considered in Judgment No 349/1987, which stated that "the challenged paragraph 1 of Article 12 [of Decree-Law No 429/1982, as converted into law], which, on the one hand, allows tax tribunals to carry out their duties even whilst criminal proceedings are pending and, on the other hand, provides that a final criminal judgment – whether a conviction or an acquittal – has the force of res judicata in tax proceedings, subject to the subjective limits set out by the Constitutional Court in Judgment No 247 of 15 July 1983, does not infringe the Constitution".

Furthermore, Judgment No 120/1992, although relating to paragraph 2 of the aforementioned Article 12, subsequently provided an interpretation conforming to the Constitution to the effect that the tax authorities were bound in all cases by a final judgment in the criminal proceedings. Judgment No 264/1997 adopted the same line, stating that "the alignment of the tax case with the findings of fact made by the criminal court must be carried out, upon the taxpayer's request where applicable, without being subject to the time limit imposed by the expiry of the deadline for tax assessment: a time limit which 'according to an interpretation of the provision conforming to the Constitution, and in line with the general principle set out above', is to be regarded as absolutely binding solely in respect of the tax authorities' initiatives aimed at worsening the taxpayer's position. Consequently, such aligning action takes place irrespective of when the final judgment is handed down. Nor is the tax authorities' failure to participate in the criminal proceedings relevant, given the different decision-making scope of the latter compared with administrative proceedings".

26.2.– The 1988 Code of Criminal Procedure subsequently revised – through Articles 651, 652, 653 and 654 – the rules governing the effects of a final criminal judgment.

Insofar as it is relevant to the present case, Article 654 of the Code of Criminal Procedure provides as follows: "1. With regard to the defendant, the civil claimant and the civilly liable party who has appeared or intervened in the criminal proceedings, a final criminal judgment of conviction or acquittal handed down following a trial shall have the force of res judicata in civil or administrative proceedings, where such proceedings concern a right or a legitimate interest the recognition of which depends on the establishment of the same material facts that the criminal proceedings concerned, provided that the facts established were held to be relevant for the purposes of the criminal decision and provided that civil law does not impose any limitations on the evidence relating to the subjective position at issue."

The Court of Cassation subsequently held that Article 654 of the Code of Criminal Procedure had resulted in the repeal of the aforementioned Article 12 (Court of Cassation, Fifth Division, Judgment No 19481 of 29 September 2004).

According to the well-established position of the Court of Cassation, this framework meant that "the tax court cannot merely note the existence of a final judgment convicting or acquitting the defendant in relation to tax offences and automatically extend the effects of that judgment to the assessment proceedings of the individual tax office, but, in exercising its independent powers to evaluate the conduct of the parties and the evidence on the record (Article 116 of the Code of Civil Procedure), must in any event verify the judgment's relevance within the specific context in which the body of evidence is intended to operate" (Court of Cassation, Fifth Division, Judgment No 9109 of 21 June 2002).

In other words, in accordance with the so-called principle of the circularity of evidence (*circolarità delle prove*), a final criminal judgment of acquittal could be taken into consideration as a possible source of evidence by the tax court, to be freely evaluated along with the other findings of the preliminary investigation, including those based on presumptions (Court of Cassation, Fifth Division, Judgment No 2938 of 13 February 2015).

26.3.– Article 20 of Legislative Decree No 74/2000 established the *full dual track* (*"doppio binario pieno"*) system governing the relationship between criminal proceedings and tax proceedings, based on the principle of speciality and the mutual autonomy of the two systems (criminal and tax), ruling out any subordination of one to the other.

Article 25(1)(d) explicitly repealed Article 12(1) of Decree-Law No 429/1982, as converted into law. Furthermore, Article 19(1) of the same legislative decree – specifying that "when the same act is punishable under one of the provisions of Title II and under a provision providing for an administrative penalty, the special provision shall apply" – established the principle of speciality between administrative and criminal provisions, thereby giving effect to the substantive *ne bis in idem* principle.

26.4.– This system, which is therefore based on the full independence of criminal and tax proceedings, has not proved to be without its problems during the long period in which it has been in force.

In practice, it could happen that a defendant who had been acquitted on foot of a final criminal judgment – even after years of trials at various levels, either on the grounds that they had not committed the offence or that the offence did not take place – could well in theory only secure the annulment of the tax debt at the end of equally lengthy and parallel tax proceedings.

Furthermore, the independence of the two judicial proceedings could also lead to different and conflicting outcomes, because, even if the criminal court had ruled out the existence of a particular offence, the tax court might still have reached a different conclusion and held that it had taken place.

It is therefore not surprising that, in the explanatory report accompanying Government Bill No 144/2024 (on the "Draft legislative decree revising the tax penalty system"), it was emphasised that the challenged provision serves to strengthen "the integration of the penalty systems with a view to upholding the *ne bis in idem* principle (the criterion for delegation referred to in Article 20(1)(a)(1))", which is particularly relevant in relation to punitive sanctions arising from tax offences.

Those are issues to which this Court has not been insensitive. Emphasising the *ne bis in idem* principle, it has in fact clarified that it is designed "to protect the defendant not only from the prospect of being punished twice, but also from facing a second trial for the same offence, irrespective of the outcome of the first one, which may even have ended in an acquittal. The primary rationale for this protection – not seen here as an objective "regulatory" principle instrumental to legal certainty but as a fundamental right of the individual – is therefore to avoid the further suffering and expenses that arise from a new trial concerning offences for which that individual has already been tried" (Judgment No 149/2022).

26.5.– It is in the light of this context that it must be concluded that Article 21-*bis* of Legislative Decree No 74/2000, by providing that a final criminal judgment of acquittal on the grounds that the offence did not take place or that the defendant did not commit it shall have the force of res judicata in tax proceedings, undoubtedly pursues the objective of providing safeguards and simplification within the complex relationship between criminal and tax proceedings, thereby giving concrete effect, including at the procedural level, to the need to protect the taxpayer's subjective position.

These objectives, as also noted by State Counsel, form part of a continuum in tax matters within the "broader context of the evolution of relations between 'authority' and 'consent' and the attempt by Italian tax law to gradually move away from the long-standing authoritarian view of the relationship between the tax authorities and taxpayers" (Judgment No 137/2025) in favour of a progressive shift towards an approach based on compliance, early dialogue between the tax authorities and taxpayers, and cooperative compliance.

From this perspective, with specific regard to procedural aspects, Article 21-*bis* ties in with the provision of Article 7(5-*bis*) of Legislative Decree No 546/1992, added by Article 6(1) of Law No 130 of 31 August 2022 (Provisions on justice and tax proceedings), which stipulates that tax courts must annul a tax notice of assessment in the event of insufficient evidence.

Indeed, with the aim of bringing criminal and tax proceedings into line with one another, the aforementioned provision states as follows: "The tax authorities shall prove in court the infringements alleged in the challenged tax notice of tax assessment. The courts shall base their decision on the evidence that emerges during the proceedings and shall annul the tax notice of assessment if the evidence to substantiate it is lacking or contradictory, or if it is in any case insufficient to demonstrate, in a detailed and precise manner, and in accordance with substantive tax law, the objective grounds on which the tax debt and the imposition of penalties are based".

Compared, therefore, with the authoritarian approach of the past embodied in the tax priority rule under Law No 4/1929, the legislature has reached a conclusion that reflects the view that "the obligation to pay tax, in the constitutional conception, relates to the *pactum unionis* rather than to the *pactum subiectionis*", in that it is "instrumental to the financing of the civil and social rights recognised by the Constitution" (again, Judgment No 137/2025, but in similar terms previously in Judgment No 288/2019).

Moreover, as the legal literature has long noted, it is precisely a taxpayer's condition of inferiority that has historically fostered – due to the legislative mechanisms into which it has been translated: the so-called particularism of tax law – a natural conflictual relationship between the tax authorities and taxpayers. And that situation, in a serious case of unintended consequences, rather than facilitating the fulfilment of tax obligations, has largely fuelled a cultural climate inclined to justify the exorbitant tax evasion that still afflicts our country.

27.– It is in the light of the above considerations that the questions of constitutionality must therefore be examined on their merits.

The first question of constitutionality, raised in both referral orders, essentially alleges a breach of Article 24 of the Constitution on the grounds that the Inland Revenue Agency's right of defence is infringed given that – further to Court of Cassation, Joint

Divisions, Judgment No 29862/2022 – it cannot intervene in criminal proceedings as a civil claimant to protect the State's fiscal interests. Joining in a civil claim is permitted solely to seek damages for the loss incurred as a result of tax evasion and not for the underlying tax debt.

It is argued that as the protection of such a claim falls outside the remit of the public prosecutor, it is not safeguarded within criminal proceedings.

27.1.– The question is unfounded.

The right to a defence, "already counted amongst the inviolable rights of man" (amongst many, Judgment No 232/1989), is invoked here to safeguard the distinct position of the tax authorities.

Moreover, the logical premise on which both referral orders are based – namely, that the tax debt is not adequately protected within the criminal proceedings due to the Inland Revenue Agency's absence therefrom – is incorrect from a number of standpoints.

27.1.1.– It must first be clarified that criminal-tax cases are not so much concerned with the fiscal interest as with ensuring the proper fulfilment of tax obligations and duties, which in turn are an expression of the mandatory duty of solidarity to contribute to public expenditure, as provided for in Articles 2 and 53 of the Constitution. A duty that is compromised by tax evasion.

From this perspective, safeguarding tax debts is certainly not unrelated to the pursuit of the public interest, which is the institutional focus of the public prosecutor's actions. Public prosecutors are equipped with appropriate procedural tools and, pursuant to Article 327 of the Code of Criminal Procedure, have at their disposal the judicial police, including a body with general jurisdiction over economic and financial matters, namely the Revenue Police (*Guardia di finanza*).

It should also be noted that Legislative Decree No 87/2024 has established close institutional cooperation between public prosecutors and the Inland Revenue Agency.

Indeed, the aforementioned legislative decree added paragraph 3-*quater* to Article 129 of the implementing provisions of the Code of Criminal Procedure, whereby "[w]hen bringing criminal proceedings for offences provided for in Legislative Decree No 74 of 10 March 2000, the public prosecutor shall inform the competent provincial directorate of the Inland Revenue Agency, notifying it of the charge" (Article 1(2) of Legislative Decree No 87/2024).

That same legislative decree also amended Article 32 of Decree of the President of the Republic No 600 of 29 September 1973 (Common provisions concerning the assessment of income tax) and Article 51 of Decree of the President of the Republic No 633 of 26 October 1972 (Establishment and regulation of value added tax), adding the following concluding paragraphs to both articles: "[w]hen the Inland Revenue Agency receives notification from the public prosecutor of the initiation of criminal proceedings pursuant to Article 129(3-*quater*) of the implementing provisions of the Code of Criminal Procedure, as set out in Legislative Decree No 271 of 28 July 1989, it shall respond without delay by forwarding, including to the competent Command of the Revenue Police, the certificate relating to the status of the tax offence" (Article 1(3) and (4) of Legislative Decree No 87/2024).

In this way, the Inland Revenue Agency, through the mutual exchange of information, can contribute to establishing the factual background of the criminal proceedings, so as to assist and support the prosecution in identifying sources of evidence and, consequently, to enable the establishment at trial of the facts on which the tax debt is based.

Above all, on a more general level, it should also be borne in mind that the same legislative decree has structured the criminal proceedings by significantly strengthening their focus on the recovery of the underlying tax debt – not merely, therefore, on the imposition of the relevant penalties – and thus of the tax authorities' claim relating to the evaded tax.

Indeed, the mechanism of direct and equivalent confiscation, governed by Article 12-*bis* of Legislative Decree No 74/2000 and aimed at recovering the evaded tax whose amount has already been established in criminal proceedings, has been amended to the effect that "the seizure of assets for the purposes of confiscation referred to in paragraph 1 shall not be ordered if the tax debt is being settled by instalments, including following a conciliation process or an agreed tax assessment, provided always that, in such cases, the taxpayer is up to date with the relevant payments" (Article 1(1)(e)(2) of Legislative Decree No 87/2024).

It has also been provided that certain tax offences are not punishable if the tax debt is settled whilst criminal proceedings are pending (Article 13 of Legislative Decree No 74/2000, as amended by Article 1(1)(f)(3) of Legislative Decree No 87/2024).

Additionally, it has been established that certain mitigating circumstances relating to the offences set out in Legislative Decree No 74/2000 apply if the tax debt – except in cases where the offence is not punishable – is settled whilst criminal proceedings are pending (Article 13-*bis*(1) of Legislative Decree No 74/2000, as amended by Article 1(1)(g)(1) of Legislative Decree No 87/2024).

Moreover, again in the case of tax offences, a plea bargain may be requested by the parties only where, prior to the declaration of the opening of the trial proper at first instance, the tax debt, including administrative penalties and interest, has been settled (Article 1(1)(g)(2) of Legislative Decree No 87/2024).

As a result of this comprehensive set of substantive and procedural rules, far from disregarding the underlying tax debt as erroneously argued by the referring courts, on the contrary criminal proceedings focus precisely on that claim, through various significant legal mechanisms, thereby reinforcing the objective of recovering the evaded tax.

27.1.2.– Furthermore, the Inland Revenue Agency may in any event intervene in the criminal proceedings as a civil claimant to claim damages for any loss suffered as a result of tax evasion.

It is, in fact, still classified as an injured party (Court of Cassation, Second Criminal Division, Judgment No 4583 of 9 February 2022), with the consequence that, pursuant to Article 90(1) of the Code of Criminal Procedure, "in addition to exercising the rights and prerogatives expressly granted to it by law, it may, at every stage and level of the proceedings, file written submissions and, with the exception of proceedings before the Court of Cassation, adduce evidence". That renders the alleged exclusion of the right to receive notice of the hearing's scheduling erroneous as well.

28.– The second question of constitutionality alleges a breach of the principle of equality, which both referral orders raise with reference to the *tertium comparationis* represented by Article 652(1) of the Code of Criminal Procedure, in accordance with which, for a final criminal judgment of acquittal to have the force of res judicata in civil or administrative proceedings for restitution and damages for loss brought by the injured party or in their interest, it is always necessary for the injured party to have intervened in the criminal proceedings as a civil claimant or to have been given the opportunity to do so.

In the light of that latter provision, it is argued that the challenged provision introduces an unreasonable disparity in treatment between the effects of judgments of acquittal relating to tax offences – which have the force of res judicata even without the injured party having joined in the proceedings – and those relating to non-tax offences.

28.1.– The question is unfounded.

First of all, it should be noted that the challenged provision is of a procedural nature, as has been clarified by the Court of Cassation.

The Court of Cassation has, in fact, emphasised its "procedural nature", "with ultimately almost unanimous rulings such that it currently constitutes established case law", given that it impacts on "the external effect of a final criminal judgment in tax proceedings (the first paragraph) and the procedures for its filing in Court of Cassation proceedings (the second paragraph)" (Court of Cassation, Tax Division, Interlocutory Order No 5714 of 4 March 2025).

In this context, in accordance with established constitutional case law, the legislature must be accorded broad discretion in this matter because the structure of procedural mechanisms is open to challenge only to the extent that the choices made are manifestly unreasonable or arbitrary (among many others, Judgments Nos 230/2022 and 74/2022, 213/2021, 95/2020, 79/2020 and 58/2020).

A comparison of the challenged provision with the provision set out in Article 652 of the Code of Criminal Procedure, from this perspective and given the different areas to which the provisions relate, does not reveal an arbitrary breach of the principle of equality.

The latter provision, in fact, is structured around the positions of parties acting primarily to seek damages for loss from other parties and aims to safeguard the injured party's right to be heard in criminal proceedings, by requiring – as a prerequisite for the binding effect of a final criminal judgment in civil or administrative proceedings – the injured party's participation in the criminal proceedings or, at the very least, a genuine possibility to participate.

That specificity, however, does not constitute an absolute rule, so much so that it does not even appear, at least in the same terms, in Article 653 of the Code of Criminal Procedure, which concerns proceedings for disciplinary liability.

In any case, Article 21-*bis* does not disclose an arbitrary breach of the coherence of the legal system, in that the primary issues at stake are not damages for loss and the legal position of the injured party, but rather the aspect relating to a criminal acquittal in respect of a charge of breach of a mandatory duty of solidarity.

The difference in perspective between the two areas of application of the provisions under comparison is thus clear: under Article 652 of the Code of Criminal Procedure, the intention is to safeguard the injured party's right not to be prejudiced by a finding made in proceedings to which they were not a party whereas under Article 21-*bis* of Legislative Decree No 74/2000 it is not an individual right that is at stake but rather the general interest in the fulfilment of tax obligations.

From that standpoint, what has been previously observed (point 27.1.1 above) is by no means insignificant. First, the strong institutional link between public prosecutors and the Inland Revenue Agency, established by Legislative Decree No 87/2024, itself enables the latter to play a significant and active role in criminal proceedings. Second, the more general circumstance that, as aforesaid, the protection of the debt owed to the Exchequer arising out of tax evasion is by no means alien to criminal proceedings.

29.– According to both referral orders, a further reason for unequal treatment stems from the fact that the challenged provision allegedly protects only the taxpayer's interest in extending the effects of a criminal acquittal in their favour to tax proceedings but not the Inland Revenue Agency's interest in benefiting, with similar automatic effect, from a criminal conviction.

Moreover, the second order (registered under No 256 in the 2025 Register of Referral Orders) also alleges in this regard a breach of Articles 111(1) and 111(2) of the Constitution, read in conjunction with Article 24 of the Constitution, in that the challenged provision is claimed to have undermined the principle of equality of the parties in tax proceedings.

29.1.– These questions of constitutionality are likewise unfounded.

Here too, it should be noted that constitutional case law traditionally recognises that the legislature enjoys broad discretion in shaping procedural rules.

That said, although Article 654 of the Code of Criminal Procedure does not distinguish between acquittals and convictions and hence Article 21-*bis* introduces special provisions, it must also be borne in mind that the latter implements a specific provision in the parent statute mentioning solely acquittals. Specifically, Article 20(1)(a)(3) of Law No 111/2023 requires that "the relationship between criminal proceedings and tax proceedings be reviewed, providing, in accordance with the general principles of the legal system, that, in cases of a final acquittal on the grounds that the offence did not take place or that the defendant did not commit it, the facts established during the criminal trial shall be conclusive in the tax proceedings as regards the establishment of those same facts".

It should also be noted that the aforementioned Article 20 of the parent statute, in turn, is linked to Article 1 of that same law, which requires "compliance with constitutional principles as well as with the legal order of the European Union and international law".

In this regard, it is worth mentioning the recent judgment of the European Court of Human Rights, *Tasoncom srl v. Moldova*, Tenth Section, of 22 October 2024. In that case the Court found a violation of Article 6(1) of the European Convention on Human Rights because the Supreme Court of Justice of Moldova had dismissed an application to set aside an appeal judgment finding the defendant liable in the tax proceedings despite the existence of a final criminal acquittal on the same established facts.

Ultimately, the fact that Article 21-*bis* of Legislative Decree No 74/2000 limited the exception to the dual track principle – which for a long time characterised the relationship between criminal and tax proceedings – solely to judgments of acquittal does not appear to exceed the threshold of manifest unreasonableness, using the standard by which this Court habitually assesses the legislature's discretion regarding procedural rules.

30.– The further questions of constitutionality raised solely by the second referral order (registered under No 256 in the 2025 Register of Referral Orders) remain to be examined.

First, the referring court alleges an infringement of Articles 3(1) and 53 of the Constitution relying on a two-fold argument: (i) since the means of evidence typical of tax proceedings are precluded in criminal proceedings, the challenged provision results in less favourable treatment of taxpayers who have not faced criminal proceedings – because they committed less serious offences – compared to taxpayers acquitted in criminal proceedings; (ii) the challenged provision entails an unjustified waiver of tax debts against those who, although acquitted on grounds of procedural defects or the inadmissibility of evidence, would in reality be liable to pay tax on the basis of their ability to pay.

Second, the referring court alleges an infringement of Articles 102(1), 111(1) and 111(2) of the Constitution, in that the judicial function exercised by tax courts is impaired since they are prevented from exercising their power to independently assess the effects of the criminal acquittal in the tax proceedings.

30.1.– The questions of constitutionality are unfounded for the following reasons.

In changing the law the legislative intent was that where the facts are the same in both proceedings and the findings reached in the criminal trial – which is the system equipped with the preliminary investigation and trial procedures best suited to verifying disputed material facts – lead to an acquittal on the basis that "the offence did not take place" or "the defendant did not commit it', the tax proceedings cannot establish a different and contradictory picture of the facts.

From this perspective, Article 21-*bis* has granted taxpayers the same level of protection as that afforded to defendants in criminal proceedings, in terms of the standard of proof and the conditions for a verdict of guilt, which – as provided for in Article 533(1) of the Code of Criminal Procedure – must be "beyond a reasonable doubt".

This is undoubtedly a legislative choice designed to safeguard rights, which cannot be regarded as manifestly unreasonable when viewed within the framework of an interpretation conforming to the Constitution.

This must be developed along two lines of argument.

30.1.1.– First, it must be borne in mind that, in order to achieve the objective that justifies it – namely, to ensure coordination between the two judicial systems with a view to simplifying and providing certainty regarding the legal situations established within the legal system – the derogation from the dual track principle must comply with the principle of reasonableness under Article 3 of the Constitution.

This implies, on the one hand, that it is necessary to avoid a situation where tax courts are called upon, on a case-by-case basis, to determine the exact scope of an acquittal by examining the content of the criminal judgment.

It should also be noted, as regards the form of acquittal to be adopted at the conclusion of criminal proceedings (Joint Criminal Divisions of the Court of Cassation stated (in Judgment No 40049 of 29 May – 28 October 2008), that the rule contained in Article 530(2) of the Code of Criminal Procedure requires that the wording "the offence did not take place" or "the defendant did not commit it" be used either "where positive proof has been established that the offence did not take place or that it was not committed by the defendant or where the relevant evidence is lacking, insufficient or contradictory, since the varying degree of evidence cannot affect the wording to be used, which must remain the same in each case".

From that standpoint, Article 21-*bis* of Legislative Decree No 74/2000, in accordance with this principle, makes no distinction between whether a judgment of acquittal is issued following a positive finding that the offence did not take place or a negative finding based on insufficient evidence.

In this respect, the challenged provision differs from that set out in Article 652 of the Code of Criminal Procedure, in relation to which the Court of Cassation (Joint Divisions, Judgment No 1768 of 26 January 2011) held that "a judgment of acquittal is capable of producing the force of res judicata specified therein not by virtue of the wording used, but solely insofar as it contains, in categorical terms, an actual and positive finding that the offence did not take place or that it is impossible to attribute it to the defendant".

This consistent and well-established line of Court of Cassation case law on the scope of application of Article 652 of the Code of Criminal Procedure – which applies generally to the regulation of the relationship between criminal proceedings and civil and administrative proceedings (and therefore also to Articles 653 and 654 of the Code of Criminal Procedure) – cannot be applied to the challenged provision. This is because it uses different terminology since it no longer refers, like the aforementioned articles of the Code of Criminal Procedure do, to the "establishment" of the facts or to "established facts" but merely provides that the acquittal must relate to "the same material facts evaluated in tax proceedings".

Furthermore, it must also be borne in mind that, had the legislature wished to exclude the scenario set out in paragraph 2 of Article 530 of the Code of Criminal Procedure, it would have done so expressly. Just as, moreover, it refrained from reproducing the provision contained in paragraph 2 of Article 652 of the Code of Criminal Procedure, pursuant to which "[a] final judgment of acquittal handed down in accordance with Article 442 shall have the same effect if the civil claimant has accepted a summary trial", thereby excluding judgments issued under special procedures.

Moreover, the wording of Article 21-*bis* is consistent on a systemic level with the aforementioned paragraph 5-*bis* of Article 7 of Legislative Decree No 546/1992, which provides that a tax court *must* annul a tax notice of assessment in the event of *insufficient evidence*.

From this perspective too, it would be inconsistent with the stated aims of simplification and legal certainty to consider that Article 21-*bis* was intended to grant every tax court the power to disregard the effect of a final criminal judgment in the absence of an acquittal in the fullest terms when that same tax court, following the conclusion of the proceedings before it, is in any case obliged to annul the tax notice of assessment in the event of insufficient evidence, pursuant to the aforementioned paragraph 5-*bis* of Article 7.

30.1.2.– Second, there is however an undeniable risk of excessive misalignment between the two proceedings in the case of certain typical tax offences, the commission of which is difficult to establish without recourse to legal presumptions. A criminal court cannot apply such presumptions for the purposes of reaching a verdict, which, as mentioned, must be beyond a reasonable doubt.

In this regard, it should be noted that no difficulties would seem to arise when a criminal court rules out the existence of the offence by resorting to simple presumptions, because, in this case, the two proceedings share the same evidential tools. The possibility of resorting to that form of evidence is, in fact, recognised both in criminal law (Article 192 of the Code of Criminal Procedure) and in tax law (as expressly provided for by specific provisions; for example, Article 39(1)(d) of Decree of the President of the Republic No 600/1973).

Nor is there any misalignment between the two proceedings with regard to the very simple presumptions provided for in Articles 39(2) and 41(2) of Decree of the President of the Republic No 600/1973, which allow a tax court alone, under certain conditions, to make findings based even on presumptions that do not meet the requirements of gravity, precision and consistency. Indeed, the law permits recourse to those presumptions when it is necessary to determine an undertaking's income in a context where accounting records are entirely absent or falsified. In such cases, since the existence of tax evasion is certain, the presumptions serve solely to determine the amount of the evasion.

In this regard, it should be noted that the Court of Cassation has consistently held that the threshold for criminal liability constitutes "an essential element of the offence", with the consequence that failure to meet that threshold results in acquittal (Court of Cassation, Third Criminal Division, Judgment No 35611 of 16 June – 29 August 2016), such that in those cases the facts established for criminal purposes differ from those relevant for tax purposes.

Therefore, one cannot maintain in such cases that there is that identity of material facts which is, on the contrary, a prerequisite for the applicability of Article 21-*bis*.

A serious issue regarding the application of this provision may, however, arise when the criminal investigation involves specific offences for which tax law brings into play the evidentiary rules of legal presumptions.

These are limited cases, such as, for example, those relating to the profitability of banking transactions (Article 32 of Decree of the President of the Republic No 600/1973); tax residence (Articles 2(2) and 2(2-*bis*) of Decree of the President of the Republic No 917 of 22 December 1986, containing the “Approval of the Consolidated Income Tax Act”); the residence of trusts (Article 73(3) of Decree of the President of the Republic No 917/1986); the residence of companies (Articles 73(5-*bis*) and 73(5-*quater*) of Decree of the President of the Republic No 917/1986); the determination of income from employment (Article 52 of Decree of the President of the Republic No 917/1986); tax evasion relating to undeclared foreign investments (Article 12 of Decree-Law No 78 of 1 July 2009, containing “Anti-crisis measures and extension of time limits”, converted, with amendments, into Law No 102 of 3 August 2009); the rules on the presumption of the transfer and acquisition of assets (Article 53 of Decree of the President of the Republic No 633/1972).

The distinctive feature of those legal presumptions is that, as they are cases in which it would be extremely complex for the tax authorities to establish a fact beyond a reasonable doubt, once the known event provided for by law exists, the burden of proof falls on the taxpayer to provide evidence to the contrary, demonstrating that the event did not take place.

It may therefore happen, in cases where these legal presumptions apply, that a criminal court, being unable to apply the legal presumption in forming its own judgement, rules out the occurrence of a specific event (for example, the false tax residence of a company) precisely when a tax court, by applying that legal presumption, might have concluded – in the absence of evidence to the contrary from the taxpayer – that the tax debt existed.

Therefore, in cases where legal presumptions come into play, Article 21-*bis* could be interpreted in such a way as to result in an excessive narrowing of the standard of proof available to tax courts for the purpose of verifying the proper fulfilment of the mandatory duty to contribute to public expenditure.

That interpretation, which would seem to excessively favour the rule giving precedence to a final criminal acquittal to the detriment of the tax court’s autonomy of assessment, is not however the only viable one.

It must therefore be ruled out given that a different interpretation of the challenged provision is both possible and necessary: one that ensures compliance with the Constitution and precludes the applicability of the provision only where, on the one hand, the facts in question relate to typical legal presumptions and, on the other, the criminal acquittal does not result from a positive finding that the offence did not take place.

This interpretation, which shields the provision from the defects of unconstitutionality alleged by the referring court, is based on the premise that, in this case, there is no such identity of the material facts under assessment upon which the mechanism of the challenged provision is developed.

An identity that arises however when rebuttal evidence emerges within the same criminal proceedings and hence Article 21-*bis* becomes applicable once again. Indeed, if the criminal court has acquitted the defendant by giving weight to evidence which, in tax proceedings, would constitute evidence that rebuts a legal presumption, this essentially means that the criminal court has carried out the very same assessment of the facts that the tax court would in any event be required to carry out had the taxpayer provided evidence to the contrary.

There would therefore be no unjustified interference with the rules of evidence in tax proceedings.

Interpreted in these terms, in other words, the system set out in Article 21-*bis* does not conflict with the independence of tax proceedings and their specific evidential characteristics. Rather, it strikes a fair balance between the constitutional principles mentioned above (points 26.4 and 26.5).

By way of example, if in criminal proceedings a taxpayer provides the rebuttal evidence required by Article 73(5-*bis*) of Decree of the President of the Republic No 917/1986 – introduced to combat bogus foreign tax residence – by demonstrating that the board of directors is not predominantly composed of directors resident in Italy, the criminal judgment will be conclusive in the tax proceedings because the facts evaluated are the same and there has been no unreasonable misalignment between the two proceedings.

If, on the other hand, no rebuttal evidence emerges in the criminal proceedings and the court acquits the defendant solely because it is not certain of guilt beyond a reasonable doubt, the misalignment – which could potentially conceal a case of tax evasion – would become unreasonable. This is not, however, due to the wording used in the acquittal (the points made in 30.1.1 above apply in this regard) but rather to the fact that the legal presumptions permitted by law in tax proceedings are inadmissible in criminal proceedings.

The same reasoning must also apply where the acquittal in the criminal proceedings results exclusively (as in the case mentioned in the referral order) from the finding that all the evidence was obtained in breach of specific rules laid down by criminal procedural law but not applicable under tax law.

In this case too, it must be held that the rule in Article 21-*bis* regarding the conclusive effect of a final criminal judgment for the tax court cannot apply, since the criminal court did not base its decision on an assessment of the evidence brought to its attention – not even in negative terms – but merely stopped at the procedural "threshold" of its inadmissibility in the proceedings.

In such cases, therefore, it will be for the tax court to assess, in accordance with the rules of tax law, whether such evidence may be admissible in the tax proceedings.

30.1.3.– Ultimately, from that standpoint, an interpretation conforming to the Constitution of Article 21-*bis* of Legislative Decree No 74/2000 requires one to hold that the criminal judgment of acquittal to which that provision refers always has the force of res judicata in tax proceedings except in cases: (a) involving typical legal presumptions since in those instances it is necessary for the aforementioned judgment to contain a positive finding that the offence did not take place; (b) the acquittal was handed down solely as a result of the inadmissibility of evidence in the criminal proceedings that may however be admissible in the tax proceedings inasmuch as obtained in accordance with tax rules.

This interpretation is based, for the reasons set out above, in particular on the principle of reasonableness under Article 3 of the Constitution and on the principle of tax equality under Articles 3 and 53 of the Constitution, and does not prejudice the principle of capacity to pay (Article 53 of the Constitution) or Articles 102(1), 111(1) and 111(2) of the Constitution.

Moreover, it also appears to serve the purpose of ensuring a balanced coordination between criminal and tax proceedings, since it is difficult to imagine that a taxpayer would not be motivated, in order to avoid the continuation or initiation of tax proceedings, to provide, where it exists, any rebuttal evidence already within the criminal proceedings, thereby safeguarding the inherent need for simplification which Article 21-*bis* strives to achieve.

30.2.– In the light of the above interpretation, which is geared towards constitutional conformity, the questions raised must therefore be held to be unfounded.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

1) *declares* inadmissible the question as to the constitutionality of Article 21-*bis* of Legislative Decree No 74 of 10 March 2000 (New rules on offences relating to income tax and value added tax, pursuant to Article 9 of Law No 205 of 25 June 1999), introduced by Article 1(1)(m) of Legislative Decree No 87 of 14 June 2024 (Reform of the tax penalty system, pursuant to Article 20 of Law No 111 of 9 August 2023), raised, with reference to Article 97 of the Constitution, by Division 3 of the Second Instance Tax Court of Piedmont and by Division 13 of the First Instance Tax Court of Rome in the relevant referral orders;

2) *declares* unfounded the question as to the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, raised, with reference to Article 24 of the Constitution, by Division 3 of the Second Instance Tax Court of Piedmont and by Division 13 of the First Instance Tax Court of Rome in the relevant referral orders;

3) *declares* unfounded the question as to the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, raised, with reference to Article 3 of the Constitution, by Division 3 of the Second Instance Tax Court of Piedmont and by Division 13 of the First Instance Tax Court of Rome in the relevant referral orders;

4) *declares* unfounded the questions as to the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, raised, with reference to Articles 24, 111(1) and 111(2) of the Constitution, by Division 13 of the First Instance Tax Court of Rome in the relevant referral order;

5) *declares* unfounded, in the terms set out in the reasoning, the questions as to the constitutionality of Article 21-*bis* of Legislative Decree No 74/2000, introduced by Article 1(1)(m) of Legislative Decree No 87/2024, raised, with reference to Articles 3(1), 53, 102(1), 111(1) and 111(2) of the Constitution, by Division 13 of the First Instance Tax Court of Rome in the relevant referral order.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 23 February 2026.

Signed:

Giovanni AMOROSO, President

Luca ANTONINI, Judge Rapporteur