



Newsletter



DISPUTES TAX INSIDER

Legitimate limits to re-qualify deeds for registration tax, according to Constitutional Court's decision no. 158/2020

Article 20 of Presidential Decree No. 131 of 26 April 1986, in the current version, does not violate the Constitution, in so far as it excludes the possibility of re-qualifying, for registration tax application, the deeds submitted for registration on the basis of extratextual elements or related deeds.

Constitutional Court issued this principle in its decision no. 158 of 21 July 2020, statuing the groundlessness of the question of constitutional legitimacy of Article 20 of the Presidential Decree 131/86 raised by the Supreme Court with order no. 23549 of 23 September 2019.

The decision is especially important for national law, as it has intervened to resolve a long conflict within the case law on the correct interpretation to be given to the above rule.

THE QUESTION

Article 20 of the of the Presidential Decree 131/86, following the amendments introduced by Article 1, paragraph 87, letter a) of Law No. 2016 of 27 December 2017 ("Budget Law 2018"), states that, in interpreting each deed to be subject to registration tax, the tax authorities have to take into consideration only "*elements that can be inferred from the deed itself, regardless of extratextual ones and related deeds, without prejudice to the provisions of subsequent articles*".

It should be recalled that Article 20 of the Presidential Decree 131/86 was amended by the legislator precisely to overcome the Supreme Court's case law according to which the previous version of the Article 20 of Presidential Decree 131/86 allowed the interpreter to requalify deeds for the application of the registration tax, taking into consideration the "real cause" of several related deeds, i.e. the economic effects achieved by the combination of several deeds.

With the remission order, the Supreme Court does not seem to agree with the above legislative amendments, since, according to the judges, the current version of the article would be contrary to the principle of contributory capacity provided by Article 53 of the Constitution and to the principle of equality provided by Article 3 of the Constitution.

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First of all, the current version of Article 20, precluding the possibility of giving prominence to negotiation connection involving the act submitted for registration, would produce the practical effect of subtracting from taxation a typical manifestation of ability to pay.

Secondly, the possibility that equal manifestations of economic strength may ultimately correspond to different levels of taxation due to the more or less complex negotiating scheme put in place by the parties would lead to a probable breach of the principle of equality and reasonableness.

THE CONSTITUTIONAL COURT'S DECISION

The Constitutional Court rejected the constitutionality question raised by the Supreme Court for the following reasons.

With the legislative amendment, the legislator confirmed the taxation only for the deed submitted for registration, according to legal effects inferable from it, in line with the principles underlying the regulation of registration tax and, in particular, with the nature of the "deed tax" historically recognized to the registration tax.

The confirmation of the "deed tax" nature of the registration tax - which must, therefore, be applied by taking into consideration only the legal effects of the deed submitted for registration, excluding related deeds and extratextual elements (a part from the hypotheses expressly regulated by Presidential Decree 131/86) – did not affect the internal coherence between the "structure of the tax" and "its economic premise", but, on the contrary, it has applied the principles of contributory capacity and tax equality.

The Supreme Court was therefore wrong to consider that only the reference to the "real cause" of the overall transaction would allow for the application of the above mentioned legal principles.

Moreover - concludes the Constitutional Court - the interpretation focused on the "real cause", would generate inconsistencies in the legal system.

First of all, it would allow the tax authorities to operate in an anti-avoidance function without applying the guarantee of endoprocedural hearing provided for by Article 10-bis of Law No 212/2000.

Secondly, it would avoid any evidence of the existence of "undue" tax advantages and transactions "without economic substance", elements required by Article 10-bis, in order to establish a claim of abuse of law.

Indeed, the taxpayer would thus be precluded from any legitimate tax planning (which is, on the contrary, admitted in the national and European Union tax system).

CONCLUSION

In our opinion, the Constitutional Court's decision is in line with the text of the Article 20 and with the clear intention of the legislator to confirm the nature of the registration tax as a "deed tax".

Moreover, as mentioned above, the Revenue Agency, regardless of Article 20, may in any case contest any deeds aimed at tax avoidance through the appropriate rules provided for the abuse of the law (Article 10-bis of Law 212/00), giving the necessary guarantees to the taxpayer.

If further information is required, please refer to your LED Taxand contact: cpolito@led-taxand.it or fdiluciano@led-taxand.it.

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