

MARIA PIA NASTRI

Università degli studi Suor Orsola Benincasa di Napoli

mariapia.nastri@unisob.na.it

Taxation of Historical and Artistic Real Estate

Opodatkowanie nieruchomości o znaczeniu historycznym i artystycznym

Streszczenie. W artykule zostały ukazane ogólne zasady opodatkowania nieruchomości o znaczeniu historycznym i artystycznym we Włoszech. W pierwszej kolejności omówiony został podatek od dochodów uzyskiwanych w związku z posiadaniem tytułowych nieruchomości. Następnie przedstawiony został podatek od spadków i darowizn, a także opłaty lokalne: *IMU*, *TASI* i *TARSU*.

Słowa kluczowe: opodatkowanie nieruchomości; podatek dochodowy; podatki pośrednie; dziedzictwo historyczne i artystyczne; Włochy.

Abstract. The article presents general aspects of the taxation of historical and artistic real estate. It includes a few kinds of taxes. Firstly an income tax derived from ownership of properties of historical and artistic interest is discussed. Secondly, a group of indirect taxes and levies should be taken into account. There are inheritance tax and donation tax as well as local taxes known as *IMU*, *TASI* and *TARSU*.

Keywords: taxation of real estate; income tax; indirect taxes; local taxes; historical and artistic heritage; Italy.

1. Premise

Culture and tourism are inseparable elements of the development policy of Italy, a country which enjoys an exceptional historical, artistic, and archaeological heritage. The extraordinary resources of the country are recognised and appreciated throughout the world and are a tool of social, civil, and economic development.

The elaboration of the Strategic Tourism Plan 2017–2022¹ is in fact focused on two objectives: to strengthen Italy as a country of art and culture, and to oversee the development of the tourism sector in global growth. For Italy, the future challenge will be to manage, to preserve, and to promote an industry which is worth over 170 billion euro and which contributes 11.8% to the national GDP, and has an employment impact of around 12.8%, with positive growth prospects for the coming years. The system of cultural heritage, however, has suffered in recent years from substantial cuts in public spending, which significantly limited the resources available to the sector. Public intervention has therefore often proved insufficient. Added to this are management and organizational challenges of public administration that have left our country behind in turnover compared to other European countries with a less rich cultural heritage.

It is, therefore, necessary to identify forms of private intervention in the field of cultural heritage. There are private companies that have proved to be able to perform new tasks in the cultural sector in a better way and at lower cost, such as organizing events or reception services for the public in museums, as well as carrying out traditional tasks, such as publishing activities.

¹ See: http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1481892223634_PST_2017_IT.pdf.

However, private citizens through voluntary work, as well as associations, non-profit organizations, foundations and banks, have also supported our heritage. Private participation in the cultural heritage sector is an expression of the horizontal subsidiarity principle, set forth in Article 118, paragraph 4 of the Italian Constitution.

However, the eligibility of private intervention in the sector is strongly impacted by the existing regulatory framework and by limits imposed by the Constitution itself.

In particular, in order to clarify an issue of the eligibility of a private intervention, art. 9 of the Const. must be recalled. It stipulates that the Republic promotes the development of culture and scientific and technical research, and protects the historical and artistic landscape and heritage of the nation, establishing therefore, the principle of connection between the protection of the historical and artistic heritage and the promotion of cultural development.

The scope of the present article is limited to the field of cultural heritage represented by property assets owned by private individuals. The wealth comprising the cultural heritage requires repairs and restoration that cannot be performed by individuals, because of the lack of tax “incentives” in this regard. Private assets are a key part of our national capital that we cannot ignore; it is capital which is spread throughout the country, the capital which if abandoned, would result in the substantial degradation of a large part of the cultural offer of the whole country.

Cultural tourism has now become the first resource of our country. Tourists visit Italy to admire the natural landscape and the immense public and private cultural heritage, as long as the latter is accessible and not abandoned.

In the report submitted on October 31, 2013 by the Commission for the revival of cultural heritage and tourism, and for the reform of the Ministry, “valorisation” is defined as “activities constituted by the exercise of functions and the discipline of activities aimed at promoting knowledge of the cultural heritage, and ensuring the best conditions of use and access to the heritage in order to promote culture”. It is on these premises that operational proposals regarding the relationship between public and private

should be built. One of the aims of the Commission was in fact “the identification of effective synergies between public authorities and intervention of private actors in the management of cultural heritage and tourism-related activities”.

It is important to point out that private real estate assets should also be enhanced and offered to tourists, at least partially, thus allowing the community access to historic homes, and applying tax reliefs and/or a reduction in taxation closely related to the maintenance and enhancement of individual assets, thus avoiding their abandonment or selling-off.

2. Protection and enhancement

The historical and artistic heritage in Italy has always found protection through appropriate legislation aimed not only at preserving it, but also at facilitating its preservation and enhancement. It is these two elements that we must consider further.

It is a well known fact that the protection of cultural heritage is expressly provided for in our Constitution, which has devoted some articles to the so-called fundamental principles. These fundamental principles indicate the direction and goals to be pursued: art. 9 states: “The Republic promotes the development of culture and scientific and technical research”, paragraph 2, literally states: “protects the landscape and the historical and artistic heritage of the nation”.

Although a distinction between promotion and protection is evident, there cannot be a clear dividing line in the interpretation of those terms, because these two activities must be framed together, also because of the fact that the promoter is always the State. However, this is a rule of law, with prescriptive value which must find further explication through ordinary legislation.

The discipline that regulates real estate assets of historical-artistic interest dates back to the Law of 20 June 1909, No. 364, which was followed by the Law of 1 June 1939, No. 1089, the Legislative Decree of 29 October 1999, No. 490, and finally the Legislative Decree of 22 January 2004, No. 42, currently in force. In the tax law of 2 August 1982 No. 512,

the legislator introduced a subsidised system based on increase, but mainly on the increase and enhancement of the public artistic and cultural heritage. The legislator has, in fact, provided a favourable tax regime to facilitate owners who are required to fulfil some conservation and maintenance obligations. In addition, the legislator compensated them for the constraints of allocation, use, and transfer which is placed on the owners of historic properties². On the basis of art. 1 of L. 512/1982, the cadastral income of property entirely dedicated and open to the public such as museums, archives, film libraries of public institutions and private foundations, do not contribute to the income of either individuals or legal entities, providing the owner does not receive any income from the property use. Similarly income tax is not payable on revenue derived from land, parks, and gardens which are open to the public or which the Ministry of Heritage recognises as places for cultural activities of public interest.

However, the situation changed with the L.D. of 2 March 2012, No. 16 (conv. L. of 26 April 2012, No. 44) and the reform of registration taxes on onerous property transfers, in force since 1.01.2014: these legislative changes have eliminated almost all previously existing tax relief for property subject to constraint³. There is no denying that despite the legislator's good intentions toward simplification, the legislation is currently complex and cumbersome because it was subject to specific modifying interventions. The rise of real estate tax has been constant in recent years (e.g. IMU, waste collection tax and services – paid by square meter without any subsidisation – VAT on works, the upcoming land registry reform which will switch taxation from number of rooms to square meters).

As made clear earlier, development and conservation should go hand in hand. Unfortunately, it is evident that private cultural heritage is in a danger of collapsing under the tax burden and of being unable to bear the weight of management. The increasing effect of maintenance and management costs determines the need for an intervention in a form of tax profit.

² See: M. Ainis, M. Fiorillo, *L'ordinamento della Cultura*, Milan 2015, p. 241 et seq.

³ The first tax incentives were introduced by L. August 2, 1982, No. 512 (so-called "Scotti Law"), dedicated to the "Taxation of assets of relevant cultural interest".

Financial leverage can and must be exercised to avoid the abandonment and decommissioning of the private cultural heritage. A unanimous need emerges for backing from the Ministry of Heritage and Culture and the MEF disregarding contributions that are easily subject to the prohibition of state aid.

Therefore, a question is: beyond the legislative interventions dictated by purely economic reasons, how can the taxation of real estate assets of historical and artistic interest be rethought, and what propositions might be put forward for the legislative changes which are necessary to protect and make life easier for owners of such properties?

In order to formulate useful deliberations it is therefore necessary to examine the regulatory developments in the field of direct, indirect, and local taxes, in order to highlight how, in recent years, the tax regime of this particular real estate sector has changed, imposing a significant financial burden on owners. Moreover, this approach of the legislature is, as previously pointed out, in stark contrast to the relief rationale enshrined in art. 9 of the Constitution and in recent regulatory interventions related to the public sector which have introduced several discounts (*art bonus*, sponsorships etc.) in various sectors in order to preserve and protect our cultural heritage.

3. Income tax

Firstly, it is necessary to clarify that the tax regime for the direct taxation of physical and legal persons, as reviewed by the legislature in recent years, has led to an increase of the taxable base amount and the related income tax⁴.

⁴ For further information about a tax profiles see: F. Pistolesi, *Il ruolo delle agevolazioni fiscali nella gestione dei beni culturali in tempi di crisi*, "Rivista di Diritto Tributario" 2014, No. 1, p. 1211; L. Starola, *Proposte fiscali per la valorizzazione del patrimonio culturale*, "Corriere Tributario", 2014, No. 6 p. 489; S. Chirichigno, G. Stancati, *Gli immobili di interesse storico-artistico alla ricerca di un inquadramento sistematico*, "Corriere Tributario" 2013, No. 10, p. 825; L. Starola, *La sponsorizzazione dei beni culturali: opportunità fiscali*, "Aedon" 2010, No. 1; F. Solfaroli Camillocci F., *Che cosa può fare il Fisco per la cultura: le agevolazioni fiscali dalla L. n. 512 del 1982 ad oggi*, "Fisco"

Deductions have also been subject to significant changes in recent years, as outlined in the following paragraphs.

3.1. The previous system of a taxation of a real estate of historical and artistic interest: the “figurative income”

Under the old tax system, according to art. 11, paragraph 2, of Law of 30 December 1991 n. 413 (repealed by the above mentioned Decree Law of 2 March 2012 No. 16), an income tax which was derived from ownership of properties of historical and artistic interest was commensurate on the basis of the so-called figurative income by the application of the lowest rates of valuation foreseen for homes in the census area in which the building was located. The relief arrangement was applicable regardless of the use of the property. Therefore, even in the case of a leased property, the rent was not taken into consideration for tax purposes. However, a “reduced cadastral income” was taken into consideration – in contrast to what was provided for ordinary leases, in which the income has always been represented by the greater of the values between the rent, reduced by 15% (5% in 2013), for expenses, and the re-valued cadastral income – the owner-lessor was “in any case”⁵ subject to taxation based on the “figurative income”. The relief intended to compensate owners who in the public interest in the conservation of the cultural heritage, have to bear maintenance costs, which are often substantial and likely to cause uncertainties

2013, No. 27, p. 4125; G. Fidone, *Il ruolo dei privati nella valorizzazione dei beni culturali: dalle sponsorizzazioni alle forme di gestione*, “Aedon” 2012, No. 1–2.

⁵ See. Ag. Entr. Circ. No. 7/1106 1993, No. 154/E of 1995, No. 9/E of 2005; also significant is the ruling of March 9, 2011, No. 5518 of the Supreme Court in Joint Session, which defined the rules in art. 11, paragraph 2, of Law 30 December 1991 No. 413 not as exemption or tax reduction, but as a “sort of substitute tax regime” and as “peculiar mode of imposition abstractly determined with no relation to the actual value (lease or land) of the taxed good”. We would remind you of the Supreme Court judgment of 7 November 2012, No. 19251, according to which “the phrase «in any case» would lose any useful meaning, if the provision in question referred exclusively to the determination of income of un-leased properties: ‘any case’ would not be contemplated, just one case”.

regarding the obtainment of actual income⁶. Indeed, it seems clear that the fiscal discipline of real estate of historical and artistic interest is not comparable with that of other properties, as they are not a homogeneous category (antique dwellings, castles, historic buildings, etc.). The relief found its rationale not only in the canon of reasonableness, but also, in the case of tenant of rent arrears, in avoiding the payment of income tax on revenue never collected.

3.2. The changes introduced by the Decree Law No. 16/2012

Article 4, paragraph 5-*quater* of the aforementioned Decree Law of 2 March 2012, No. 16, provided a repeal of the described system of an income tax for a real estate of historical-artistic interest.

Since January 1, 2012 (pursuant to art. 4, para. 5 *sexies* lett. b of Decree Law of 2 March 2012, No. 16), the taxation system has changed radically, foreseeing a far more onerous taxation system for the owners in the face of unchanged maintenance costs and the constraints to which the assets are subjected.

The current tax system operates differently according to whether the property is leased or not. If the property is un-leased, it is seen that despite the repeal of the criterion based on “figurative income”, for constrained properties owned by physical persons not in a corporate regime, there have been no new specific provisions for income tax (IRPEF). The DL No. 16/2012, has ordered a reduction of 50% of the taxable base, calculated, in any case, using the ordinary income⁷. Currently, therefore, the income derived from the possession of constrained properties is determined by referencing the actual income from the property, which is evi-

⁶ Court Cass., SS.UU., judgment of 9 March 2011, No. 5518, in the database *Big Suite*, Ipsa.

⁷ In this regard, please note that the so-called “Monti Manoeuvre” (DL No. 201/2011), which, as an experiment, brought forward by the IMU application to 2012, had not provided any relief for property subject to constraint, as instead was established for the purposes ICI.

dently greater than the “figurative income” previously used⁸. The reduction of the taxable base to 50% is provided for by art. 37 co. 1e 90 co. 1 of the Presidential Decree of 22 December 1986 No. 917 with express reference to real estate in art. 10 of Legislative Decree. No. 42/2004, assets that have a direct constraint, that is, a specific cultural significance, which will be dealt with in greater detail hereinafter.

3.3. The taxable base in the case of leased property

The owners of properties subject to constraint are subjected to amendments to Article 37, paragraph 4-bis of the Tuir (Consolidated Income Tax Act) by the Legislative Decree No. 16/2012 of the leasing discipline.

Since 2012, in fact, the income of individuals, ordinary partnerships, commercial leasing companies, from any use (residential or otherwise) of buildings of historical – artistic interest, is equal to whichever is greater between the lease lump sum reduced by a flat 35% and the cadastral income raised by 5% resulting from the application of the valuation rate (average ordinary income), reduced by 50%⁹. It is evident that the normative change has resulted in a financial burden: in fact it is necessary to compare the actual property income, re-evaluated and reduced by 50%, with the rent lump sum, reduced by a flat 35%. Rarely, however, will the rent be less than the income. The tax relief establishes only a greater reduction of the lease lump sum compared to that provided ordinarily for buildings that do not have historical or artistic interest. Indeed, the tax recovery of 65% of the rent, of net costs and related charges, does appear very strange compared to its total irrelevance in the previous tax system, which merely taxed the figurative income. If it is true that the relief was intended to offset the operating costs borne by the owner-lessor and to

⁸ Additionally in this case, for the real estates the increase of 1/3 of the base growth is not applicable, as is normally provided in Art. 41 Tuir.

⁹ See Ag. Entr. circ. 31 December 2012 No. 114 which clarifies the need of a comparison between the 50% of the cadastral income re-valued by 5% pursuant to Art. 3 para. 48 of Law 662/96.

allow for the determination of the actual income which is received by the lessor, then the question is whether the mere removal of 30% from the lump sum (35% compared to the ordinary 5%), is sufficient to offset the costs and the huge burden on owners of constrained properties, compared to the operating costs of any other property. For business activity operators who discount Irpef and for passive subjects of Ires pursuant to art. 90, paragraph 1 of Presidential Decree No. 917/1986 the taxable base for non-instrumental and un-leased property is thus calculated according to the above-mentioned cadastral criteria.

The tax base of buildings of artistic and historical interest owned by companies and non-commercial entities, is also calculated on the average ordinary income produced by the constrained properties, constituted by the actual re-valued cadastral income, as required by art. 37, paragraph 1 of the Tuir. Similarly to what was discussed above for non-instrumental and leased assets, the annual rent is calculated with a flat-rate deduction of 35% (if higher than the income as calculated through the land registry). Instead, for an occupied property which belongs to companies, the taxable income is determined effectively, taking into account the costs that are actually borne by the possessors of such assets¹⁰. Costs for the protection and restoration of constrained capital property for the purposes of l. 42/2004 can be derived from the company income on a cash basis (Art. 100 co.2 lett. E of Tuir). The deductibility from an income is limited to the costs actually borne by the company. Therefore, if the enterprise received contributions, then (of course) only the difference will be deductible.

3.4. Direct and indirect constraint

It is therefore necessary to check whether conditions exist to be able to benefit from the described tax advantage: buildings with historical and artistic value are surveyed for the Cadastre of Buildings in the ordinary manner. Therefore, the same procedures and criteria with which related to

¹⁰ See Cass., April 9, 2017 No. 9204 in database *Big Suite*, Ipsoa.

all buildings are surveyed: the titles of property of artistic historical interest are obtained from the transcripts made by the Real Estate Registry, in which the decision by which the constraint is recognized is noted.

This note is intended to enforce the constraint on the building even in the case of any future “...owner, possessor, or holder of any kind”.

With reference to the exact identification of the “historic” buildings, it is necessary to distinguish between direct and indirect constraints.

The rules governing cultural heritage have undergone a significant evolution: Law No. 1089/1939 has been the subject of two successive modifications. The first one was the Legislative Decree No. 490/1999, which was replaced by the previously mentioned Legislative Decree No. 42/2004.

Currently, with regard to IMU, the legislator has correctly made reference to Legislative Decree No. 42/2004, which distinguishes two types of constraints:

- a first constraint, which can be called a direct one: it concerns a specific asset in which a specific cultural significance is recognized. This constraint is now affixed pursuant to art. 10 et seq of Legislative Decree No. 42/2004, which has replaced art.3 of L. No. 1089/1939;
- a second constraint, which may be entitled as an indirect one, does not identify a merit of a property, but imposes some restrictions (taxpayer’s behaviour cannot damage another property deemed worthy of protection). The indirect constraint concerns, for example buildings which are located in the vicinity of monumental assets, so that the context in which the main building is located is safeguarded. This constraint could be called “of the area”: the taxpayer is not affected by the restrictions because the Public Administration is interested in the specific property, but rather because it endeavours to prevent an adjacent prominent resource from being adversely affected. This constraint is now foreseen in art. 45 et seq. of Legislative Decree No. 42/2004, which reformed the previous art. 21 of L. n.1089/1939¹¹. Of particular interest is the intervention of the Constitutional Court,

¹¹ See A. Busani, *Immobili*, Ipsoa, 2015, p. 448.

which, with judgment No. 111/2016 accepts the consolidated views which can be found in the Supreme Court and its case law, justifying the inferior economic utility of assets under direct constraint, due to limitations to which the property is subject, on the basis of tax fairness. However, this approach is not entirely acceptable since assets subjected to a direct or indirect constraint are able, albeit to varying degrees, to affect specific contributory ability which is relevant for tax purposes, and should not be subject to tax treatment that would entail a significant reduction of the tax in one case, and any reduction of any kind in the other.

3.5. Deductions

The parties responsible for the maintenance, protection or restoration of constrained cultural assets can benefit, for the purposes of Irpef, by a tax deduction of 19% for costs incurred and actually borne by them, in accordance with Article 15, paragraph 1, letter g, Tuir. As clarified by the Resolution 10/E of 9 January 2009 for the usability of the deduction, those persons who have a legal title granting them ownership or possession of the constrained property are obliged to carry out its maintenance, protection or restoration. Necessary expenses, when they are not required by law, must be recorded in a special declaration in lieu of an affidavit (Article 47 of Presidential Decree 445/2000). The declaration which is submitted by the applicant to the Ministry of Cultural Assets and Activities, should include costs that are relative to the actual costs incurred for the execution of the interventions to which the benefit relates (Article 40, paragraph 9, DL 201/2011). This relief can be added to the costs of housing recovery operations (Article 16-bis, Tuir), but in this case it must be decreased by 50% up to a total expense of 96 thousand or 48 thousand Euro, depending on the date on which the expenses were incurred.

4. Indirect taxes

As was mentioned in the premise, the indirect tax regime has eliminated all prior existing reliefs, in accordance with the amendment of art. 10 of D.L. No. 23/2011 and art. 26 of D.L. No. 104/2013, which entered into force in 2014.

4.1. The reform of the registration taxes on transfers for consideration

It is now settled in the doctrine that low contributive capacity, resulting from obligations and constraints put on property owners of real estate of historic and artistic interest, has determined a rationale for an attenuation of the tax burden. This concerns also acts of transfer of the assets in question. This tax relief relates to the need to mitigate taxation, taking into account the high maintenance costs which owners are bound to face in order to preserve the characteristics of the properties subject to the constraint. Until the legislative amendment of 2014, Article 1 of the Tariffa, part I, annexed to Presidential Decree n. 131/1986 in fact provided for the application of registry tax at the reduced amount of 3% (instead of 7%) for the transfer of properties of historical-artistic interest, subject to the satisfactory condition of preservation of the real estate being transferred. Also a mortgage and a cadastral tax weighed down on the transfer, by respectively 2% and 1% in the case of residential buildings, or of 3% and 1% in the case of commercial buildings. However, following the recent reform of the taxation of real estate transfers, such transfers have been made subject to a tax amount of 9%, with an increase of six percentage points for the registration tax and a minimum of payment due of 1.000 Euro¹²; while mortgage and cadastral taxes have been reduced and applied on a fixed basis (rather than proportional) for an amount of € 50.00 respectively.

¹² See Ag. Entr. circ. February 21, 2014, n. 2/E in database *Big Suite*, Ipsoa.

However, the taxation of these transfers has experienced an increase of 2 to 3 percentage points overall, with the exception of first houses, which benefit from relevant reliefs.

4.2. Inheritance tax and donation

The increase of registry tax from €168.00 Euro to 200.00 Euro is the only modification which has been recently introduced regarding the tax regulations governing the transfer of property of historical-artistic value *mortis causa* or donation.

Article 13 of D.L. No. 346/1990 acknowledges, for the purpose of inheritance tax, an exclusion from the taxable base which was established for goods already under constraint at the start of the inheritance¹³. However, if hereditary assets include properties not yet subjected to constraint despite possessing characteristics of a historical-artistic property, the tax due from the heir or legatee will be reduced by 50%, pursuant to art. 25 of D. L. No. 346/1990¹⁴.

The exemption will apply if the heir presents an inventory of the assets in question to the Ministry of Cultural Heritage. The inventory should include an analytical description which allows for the identification of assets which would make it possible to issue a certificate pertaining to

¹³ Excluded from the assets inherited are constrained cultural goods, pursuant to Legislative Decree No. 42/2004, subjected to a declaration of public interest before the opening date of the succession (art. 13 of D.L. No. 346/90).

¹⁴ See Cass. civ. Sec. V, 03.08.2013, No. 5882 in database *Big Suite*, Ipsoa, which clarifies how, in matters of inheritance tax, cultural goods are excluded from assets inherited as long as a declaration is presented to the Tax Office, as an annex to the declaration of a succession, which shows that the conservation and protection duties arising from such constraint have been discharged. The judgment dwells on the amendability of the declaration of succession in the absence of an expressed provision of invalidity in the described case. V. Cass. civ. Sec. V, Sent., 05.10.2016, No. 19878 textually explains: “To better grasp the different existing arrangements between the cultural heritage of public property and that of private property (which repeats the previous distinction between the case in the Law No. 1089 of 1939, Articles 3 and 4), it is hardly necessary to point out that for privately owned assets there is a protection system in place only for declared cultural goods, in the sense that they are entitled to protection only in the presence of the «declaration of cultural interest» pursuant to D.L. No. 42, 2004, art. 13 issued by the competent authorities, indicating its historical and archaeological value”.

their characteristics which consent the exemption, and which proves that the obligations of conservation and protection set by the constraint have been absolved. The certificate is to be attached to the inheritance tax declaration¹⁵.

It must be pointed out that an omission to indicate cultural assets in the inheritance tax declaration results in the exclusion of the benefit. However, an omission of the Ministerial certificate within the time limit set for the presentation of the declaration can be rectified by presenting the certificate within three years from the date of the opening of succession proceedings as provided by art. 30 para. 6 of D. L. No. 346/90. This measure, while foreseeing the attachment of the application request for certification, does not penalise the absence of a request. Thus even in its absence, the tax relief will apply as long as the constraint stands¹⁶. The lack of certification may also be remedied when the deadline for the supplementary statement has passed, as there are no time limits, and considering that the revision and retroaction of the declaration do not fall within the prescribed time limits of the declaration of succession¹⁷. The exclusion of buildings of historical and artistic interest from the tax base for succession does not exclude liability to mortgage and cadastral tax¹⁸.

In brief, regarding acts of donation, for buildings which have already been under constraint upon transfer since 1 January 2014 the fixed amount of 200.00 Euro of registry costs applies, as provided for by art. 59, paragraph 1, Legislative Decree. N. 346/1990. However, for those not yet subject to constraint, but having the requirements to possess characteristics of a historical-artistic property the tax is reduced by 50%, by analogy to what is foreseen for inheritance tax.

¹⁵ See Ag. Entr. circ. 30 March 2000 No. 61/E in database *Big Suite*, Ipsoa.

¹⁶ See A. Busani, *Immobili*, Ipsoa 2015, p. 1383; Cass. 4.11.2008, 26449, database *Big Suite*, Ipsoa.

¹⁷ See Cass. December 15, 2010, No. 25366, database *Big Suite*, Ipsoa.

¹⁸ See Cass. February 3, 2016, No. 2098, database *Big Suite*, Ipsoa.

4.3. Pre-emption

Pre-emptive rights are not often exercised for the impossibility of maintaining assets. The assets risk falling into not very clean hands or being bought by companies (that then go bankrupt) and are consequently abandoned.

Article 13 of D. L. 346/90 expressly foresees pre-emption from the date of the opening of the succession onwards. Only after 60 days have passed from notification of the communication, can the owner transfer the property attained by succession, under penalty the loss of exemption and the consequent re-entry of the cultural asset into the active inheritance (ex art. 4 D. L. 346/90)¹⁹.

Pre-emption therefore involves two acts of transfer with associated prolongation, additional stamp duty, and as well the payment of mortgage and land registry costs in relation to both acts. In this context, fiscal simplification would be desirable.

5. Local tributes: IMU, TASI and TARSU

It should be pointed out that in the case of local tributes, the so-called figurative income disappears. In fact, IMU and TASI provide the reduction of cadastral income by 50%, in the same way as described for Irpef for property subject to historical and artistic constraint for the purpose of calculating tax owed. Letter a) of art. 13, para. 3, of the D.L. n. 201/2011 provides for 50% reduction of the taxable base for buildings of historical or artistic interest pursuant to art. 10 of D. L. n. 42/2004, for assets subject to so-called direct constraint, which are, presenting specific cultural relevance.

For the purposes of TASI, a specific tax relief norm is missing in the regulatory provision (L. No. 147/2013). The lack of any detailed standard providing exemption leads to interpretational problems connected with the achievement of effective benefits from this tax. However, doubts were removed following a ministerial interpretation, leading to the application

¹⁹ See Cass. March 31, 2011 No. 7362, database *Big Suite*, Ipsoa; inclusion in inheritance assets must be understood with reference only to the single good and not all constrained cultural goods found in the hereditary axis, object of exemption.

of tax breaks to TASI too, as both tributes share the same taxable base. Art. 10 of D. L. n. 42/04 is referred to in the case of IMU. It is quite clear, although not defensible, that tax relief is only applicable to direct constraints.

Lastly, a brief mention must be made about the taxes on solid urban refuse collection, which are calculated on the basis of square meters. The problem is that a large part of these properties are completely unused. A reduction in local taxes could be hypothesised *de iure condendo* considering the effective usage, and even more so the touristic potential of the property.

6. Conclusion

After a close examination of the present taxation system it becomes clear how tax pressure on historical residences has become very onerous over recent years and is even unsustainable. The elevated taxation (together with the huge maintenance costs) leads to a serious risk of our heritage of private historic buildings passing into the hands of foreign companies.

It is therefore necessary to retread the path of conservation and development of our heritage in order to meet tourism objectives.

It is evident that currently public financial intervention, contrarily to what occurred in the past, will not be forthcoming or, at the most, help will be restricted to cases of extreme urgency. Thus, other interventions of fiscal nature are necessary.

If we choose to take this path, the contrast between public and private interest must, above all, be eliminated and new solutions must be hypothesised to counteract the abandonment of private heritage, similarly to what is taking place in the public domain (eg. *art bonus* and sponsorships).

Beyond the constant requirements of revenue, with which the legislator is forced to comply, the tax relief rationale must be salvaged. Respecting the principle of contributory capacity, it extends to guarantee tax on revenues which are not always consistent with the huge conservation/maintenance burden. From an operational point of view, it is necessary to check if the property is affected by direct or indirect constraints. And it is on the indirect constraint that a careful evaluation should be

made in order to provide a gradation of the relative deductions, in proportion to the aforementioned 'minor' constraint.

In such a context one could think about a rationalisation and unification of the specific fiscal dispositions for these assets. This could be achieved by the introduction of new and more incisive tax reliefs and by no longer referring to compensations only, by means of deductibility of maintenance costs with multiyear validity, through the introduction of deduction proportional to the indirect constraint, and not only to the direct constraint. A further element that could be the object of revision is the possibility of directing and committing part of the revenue derived from the use of the historical real estate (tourism for example) to protection and enhancement, backed up by a more favourable regime of reduction or by a reduction of local taxes (also taking into consideration that tourist attractiveness of some of these assets).

Lastly, it should be stressed that land registry reform might add further tax demands: any revision of land registry values for these properties must provide adequate reductions in the ordinary average patrimonial value and the ordinary average revenue. These reductions should take into account a series of factors which are connected to the particular type of assets, as it is clear that square metres cannot be considered an appropriate criterion in cases such as these. Regarding the land registry, it would be desirable to proceed the law with consultations.

Synergy between private and public bodies in a view of the system is thus fundamental, so that the entire historical and cultural heritage (public and private) may constitute one single instrument of development for our country and particularly for the south (although 16% of UNESCO sites and 75% of the coastlines are located in the south, only 8% of foreign tourist income is collected).

In 2016, accommodation structures in Italy registered a record breaking number of arrivals, 116.9 millions. The sector has also registered a positive trend in 2017: tourism has increased by over 4%. This, very briefly, is what emerged from the Annual Report of Federculture 2017, which assesses the situation yearly, in order to understand tendencies and plan future strategies for culture in Italy.

However, a reflection on the structural nodes in our taxation system seems appropriate in order to intervene with a far reaching plan that sets the basis for a long lasting development also of the private real estate heritage.

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