



## ITALY – October 2022

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### **IMU (MUNICIPAL PROPERTY TAX) ON FIRST HOUSE: DOUBLE EXEMPTION TO SPOUSES LIVING IN TWO DIFFERENT MUNICIPALITIES**

Stop paying IMU for spouses who reside and habitually reside in two different homes, irrespective of the municipality in which they are located.

The Constitutional Court ruled this and by ruling No. 209 of October 13, 2022, it reestablished the right to the exemption for each primary home of persons married or in a civil union, declaring illegitimate the provision of the 2011 “Salva Italia” Decree regulating the property tax.

In the case at hand, the Naples Tax Commission had raised, with reference to Articles 1, 3, 4, 29, 31, 35, 47 and 53 Cost., questions of constitutional legitimacy of Article 13, paragraph 2, fifth sentence, Law Decree No. 201/2011, as amended by Article 1, paragraph 707, letter b), Law No. 147/2013, in particular in the part IMU exemption was not provided for the home used as main residence of the family nucleus, in the event one of its members is a registered resident under the Population Register and lives in a property located in another municipality.

According to the provisions of Article 13, paragraph 2 of Law Decree No. 201/2011, husband and wife are, in fact, obliged to indicate which of the two homes they own is the main one and to pay the IMU on the other one, which is considered a second property.

Until now, the rule applied only to spouses, while mere cohabitants could own two houses, one each, without paying property tax because they were both primary residences.

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Ruling No. 209 of Constitutional Court eliminates this distinction, specifically to prevent it from constituting discrimination against couples who decide to unite in marriage or by civil union. Indeed, the Constitutional Court, in its ruling No. 209 of Oct. 13, 2022 on the subject, declared that “In our constitutional system, tax measures structured in a way that penalizes those persons who formalized their relationship by uniting in marriage or forming civil union cannot be considered “legitimate””.

“In a context such as the current one, in fact,” – it is explained – “characterized by increased labour mobility, development of transportation and technological systems, and the evolution of customs, it is more frequent for people united in marriage or civil union to agree to live in different places, reuniting periodically, for example on weekends, remaining within the framework of a material and spiritual communion.”

Therefore, in order to recognize the exemption on the “first house,” not considering sufficient, for each spouse or person bound by civil union, the registered residence and habitual abode in a given property, determines a clear discrimination with respect to de facto cohabitants, who, under the same conditions, are instead granted, for each respective property, the aforementioned benefit.

In summary, the censured rule would infringe on:

- the “equal rights of workers forced to work outside the family home” (Articles 1, 3, 4 and 35 Const.);
- the “equal right of married taxpayers to de facto partners” (Articles 3, 29 and 31 Const.);
- the principles of tax paying capacity and progressivity of taxation (Article 53 Const.);
- the family as a natural society (Article 29 Const.);
- the “expectation with respect to provisions for the formation of the family and the fulfillment of related tasks” (art. 31 Const.);
- the protection of savings (art. 47 Const.).

The Constitutional Court then clarifies the responsibility of municipalities and institutions to carry out the necessary controls in the circumstance the spouses intestate one property each in order not to pay taxes on the second one as well. Indeed, declarations of constitutional illegitimacy do not in any way determine a situation in which “second homes” can benefit.

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In conclusion we can state that the Consulta's ruling No. 209/2022 opens the way for taxpayers to apply for an IMU refund and excludes municipal assessments. Taxpayers should pay attention to the deadline to apply for refund!

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