

*The recovery of uncollected municipal tax on real estate (ICI/IMU) of the ecclesiastical institutions in the years 2006-2011. The decision of the European Commission of 3 March 2023, No. SA.20829*

NEWS

**European Commission**

**Decision 3rd March 2023, no. SA.20829 – Aiuto di Stato C26/2010 - NN43/2010 – Italia**

**Exemption from - Exemption from municipal tax on real estate (ICI/IMU) of ecclesiastical entities intended for no religious activities - configurability of the ICI exemption provided for the tax period 2006-2011 as State aid - objective and absolute impossibility to recover the aid - failure to assess alternative methods of recovering the uncollected tax - order to recover, even partially, the ICI/IMU for the years 2006-2011.**

With the Decision No SA.20829 dated 3 March 2023 - currently being published in the State aid register on the website of the Commission's Competition DG - the [European Commission ordered Italy to recover, even partially, the municipal tax on real estate \(ICI\)](#) not collected in the 2006-2011 tax period.

Article 7(2-*bis*) of Decree-Law No 203 of 2005, as subsequently amended by Article 39 of Decree-Law No 339 of 2006, granted the exemption under Article 7(i) of Decree-Law No 504 of 1992 to buildings owned by non-commercial entities, and in particular by ecclesiastical institutions, 'intended exclusively for welfare, social security, health, educational, educational, cultural, recreational and sporting activities' even when those activities were not 'exclusively commercial in nature' (see [PASQUALE COLELLA, \*La Chiesa in Italia ed il pagamento dell'ICI-IMU\*, in \*Diritto e Religioni\*, 1, 2012, pp. 27-32](#); [FABIO BALSAMO, \*L'esenzione dell'Ici a favore degli enti ecclesiastici tra fiscalità di vantaggio e tutela comunitaria della concorrenza\*, in \*Diritto e Religioni\*, 1, 2011, pp. 67-85](#); [FABIO FIORE, \*ICI, Imu ed aiuti di Stato tra vecchie e nuove regole. Un'analisi sulla tassazione degli enti ecclesiastici\*, in \*Diritto e Religioni\*, 2, 2012, pp. 199-227](#); [STEFANIA CAVALIERE, \*Aiuti di stato ed esenzione dell'ICI sugli immobili utilizzati dagli enti ecclesiastici\*, in \*Diritto e Religioni\*, 1, 2020, pp. 57-69](#)).

With the decision under comment, the European Commission complied with the ruling of the Eighth Section of the Court of Justice of the European Union in its [judgment of 6 November 2018](#) (Joined Cases C 622/16 P to C 624/16 P). With the 2018 ruling, the Strasbourg Court had partially annulled the [Commission's previous decision dated 19 December 2012](#), which merely found that the ICI exemption scheme granted to certain

categories of non-commercial entities was incompatible with EU State aid rules, without, however, also ordering the recovery of the uncollected tax. In fact, the Commission accepted Italy's observations on the existence of an absolute impossibility to recover the tax on the basis of the pre-existing tax and cadastral databases.

The Court of Strasbourg held that the Commission's decision of 19 December 2012 was censurable insofar as it ascertained the absolute and objective impossibility of recovering the tax, as alleged by Italy, without an examination of possible alternative methods of collection. In compliance with the ruling of the Court of Justice of the European Union, the European Commission has thus ordered Italy to recover the uncollected tax by suggesting, for example, the use of the declarations submitted under the new tax on real estate and supplement it with other methods, including self-declarations provided for by the subsequent [regulation of the Ministry of Economy and Finance dated 19 November 2012, no. 200](#). This regulation stated, in fact, that entities benefiting from the exemption had the burden of producing for the purposes of exemption from the tax in proportion to the non-commercial use of the property also intended for commercial activities.

The Commission's decision must be enforced by Italy, under Art. 288 of the Treaty, through the identification of possible alternative forms of recovery, even partial, of the State aid, except in cases of de minimis aid or aid in any event granted for the performance of non-economic activities.

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