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The tax treatment of privately owned assets of historical and artistic interest

O tratamento fiscal dos bens privados de interesse histórico e artístico

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Abstract

Italy is the country with the highest concentration of assets of historical and artistic interest. Based on the definition of cultural heritage considered, it is estimated that Italy holds between 60% and 75% of all artistic assets existing across all continents. In Italy, the ownership of assets of historical and artistic interest does not solely entail advantages and pleasures. Indeed, holders of such assets are subject to specific obligations, including, but not limited to, preservation, maintenance, prohibition of demolition, the State's right of pre-emption in the event of sale, and the obligation to make the assets accessible to the public. In compensation for these obligations, the tax legislator has provided favorable treatment for both direct and indirect taxation. In recent years, however, the traditional tax benefits granted to private owners of historical residences have been progressively reduced, while incentives for assets owned by public entities or non-profit institutions have increased. An emblematic example of this trend is the *Art Bonus*, which encourages private participation in the preservation and restoration of public cultural assets. This legislative evolution appears to reflect a certain distrust toward private ownership of assets of historical and cultural interest, often considered an "undeserved" form of wealth. The objective of this scientific contribution is to illustrate the fiscal treatment reserved in Italy for private historical residences, highlighting its critical aspects and potential reform perspectives. The current fiscal framework underscores the need for a change in tax legislation to better balance public and private interests, thereby more effectively promoting and enhancing all assets of historical and artistic interest, while ensuring greater compliance with the

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obligations of conservation and protection of cultural heritage in the interest of the entire community.

Keywords: Real estate taxation, Assets of historical and artistic interest.

Resumo

A Itália é o país com a maior concentração de bens de interesse histórico e artístico. Em relação à definição de patrimônio cultural considerada, estima-se que o país possua entre 60% e 75% de todos os bens artísticos existentes em todos os continentes. Na Itália, a posse de bens de interesse histórico-artístico não implica apenas vantagens e prazeres. De fato, quem detém tais bens está sujeito a obrigações específicas, que incluem, entre outras, a conservação, a manutenção, a proibição de demolição, o direito de preferência do Estado em caso de venda e a obrigação de abrir os bens ao público. Em contrapartida a essas obrigações, o legislador tributário previu um tratamento fiscal favorável tanto para a tributação direta quanto indireta. Nos últimos anos, entretanto, os benefícios fiscais tradicionais previstos para proprietários privados de imóveis históricos foram progressivamente reduzidos, enquanto aumentaram os incentivos para bens de propriedade pública ou de instituições privadas sem fins lucrativos. Um exemplo emblemático dessa tendência é o *Art Bonus*, que incentiva a participação privada na conservação e restauração de bens culturais públicos. Essa evolução normativa parece refletir uma certa desconfiança legislativa em relação à propriedade privada de bens de interesse histórico-cultural, frequentemente considerada uma riqueza "imerecida". O objetivo deste contributo científico é ilustrar o tratamento fiscal reservado, na Itália, a residências privadas de interesse histórico, destacando suas criticidades e perspectivas de reforma. O panorama fiscal atual evidencia a necessidade de uma mudança na legislação tributária que equilibre de forma mais adequada os interesses públicos e privados, de modo a incentivar e valorizar mais eficazmente todos os bens de interesse histórico-artístico, bem como garantir maior respeito às obrigações de conservação e proteção do patrimônio cultural no interesse de toda a coletividade.

Palavras-chave: Fiscalidade dos imóveis, Bens de interesse histórico e artístico.

Premise

To adequately understand the tax profiles of privately owned historical residences, it is essential to begin with a fundamental premise: ownership of assets of historical and artistic interest does not solely entail advantages and pleasures. Indeed, holders of such assets are subject to specific obligations, including, but not limited to, preservation, maintenance, prohibition of demolition, the State's right of pre-emption in the event of sale, and the obligation to grant public access to the property. In compensation for these burdens, the tax

legislator has established favorable treatment for both direct and indirect taxation, with particular regard to local taxes, notably the IMU (Municipal Property Tax). Therefore, the *favor fisci* represents a form of balance between the legal obligations and the significant management costs borne by the owners of historical properties.

The importance of this *favor* is heightened by the recognition that, beyond the satisfaction of owning or managing properties of historical and artistic significance, owners must bear considerable burdens. It is no coincidence that the Constitutional Court, in reference to Article 53 of the Constitution, has referred to a "reduced contributive capacity" of such assets.

The *favor fisci* is also tied to the need to encourage and promote the protection and enhancement of these assets, in compliance with Article 9 of the Constitution, as well as Articles 3 and 6 of the Code of Cultural Heritage and Landscape.

In recent years, however, the traditional tax benefits granted to private owners of historical residences have been progressively reduced, while incentives for publicly owned properties or those held by non-profit institutions have increased. An emblematic example of this trend is the *Art Bonus*, which encourages private participation in the conservation and restoration of public cultural assets. This legislative evolution appears to reflect a certain distrust of private ownership of assets of historical and cultural interest, often considered an "undeserved" form of wealth—particularly striking in a country like Italy, which holds the majority of the world's artistic heritage.

The Legal Nature of Properties of Artistic Interest

Having established the above, it is useful to examine in greater detail the applicable tax regime, which appears relatively clear yet not devoid of interpretative challenges. A primary issue to clarify concerns the criteria used to identify properties subject to historical and artistic interest restrictions. Generally, such properties are classified in the cadastral system under category A/9; however, this is not always the case (see Circular 5/T of 2012). Indeed, cadastral classification is not a decisive factor in determining the historical interest of a property, which depends instead on the restriction recorded in the land registry. Consequently, the first step in the fiscal assessment is to verify the nature of such a restriction.

The restriction may be either direct or indirect. A direct restriction, pursuant to Article 10 of Legislative Decree 42/04, applies to a property of particular cultural significance and grants access to specific tax benefits. An indirect restriction, pursuant to Article 45 et seq. of the same decree, does not entail a direct acknowledgment of the cultural value of the property but imposes limitations on the owner's conduct to prevent harm to other historically valuable assets in the vicinity. In this latter case, the restricted property is not entitled to tax benefits.

The Direct Taxation of Private Residences of Historical and Artistic Interest

With regard to direct taxation, the fiscal framework has undergone significant changes since 2012. In the past, the income derived from properties of historical and artistic interest

was determined through the so-called "notional income," calculated by applying the lowest cadastral valuation rates provided for properties within the same census zone. This method aimed to encourage the rental of historical properties to generate financial resources dedicated to their preservation.

Since 2012, however, following the revision of the expenditure tax system, the taxation regime has changed.

In summary, the new regime provides as follows:

1. For non-leased properties, taxation is now applied through the IMU (Municipal Property Tax), which, since 2012, has replaced the IRPEF (Personal Income Tax) and related surcharges. However, for IRES (Corporate Income Tax) taxpayers and non-commercial entities, the ordinary average income derived from these properties is determined based on the cadastral value, increased by 5%, and reduced by 50%. In these cases, IMU is still payable.
2. For leased properties, the rental income is determined as the higher of the actual rental income, reduced by a 35% flat deduction, or the cadastral value, increased by 5% and reduced by 50%. This change marked the end of the previous favorable regime, under which the property was taxed solely based on its cadastral value, without considering the rental income actually received.

In both scenarios, if the requirements are met, the *cedolare secca* regime (a flat-rate tax) may be applied, with a substitute tax rate of 21% (26% starting from the second leased property). The decision to apply the *cedolare secca* must be made when drafting the lease agreement (or upon its renewal) or annually, within the deadline for paying the registration tax due for subsequent years after the first.

It is essential to note that the reduced 21% rate of the *cedolare secca* does not necessarily guarantee tax savings, even though it is lower than the current first-tier IRPEF rate. Indeed, the 35% flat deduction provided under the ordinary regime could make the latter more advantageous. However, as rental income increases, the application of the *cedolare secca* may become more beneficial, as this regime exempts taxpayers from paying the registration tax and from annual adjustments to the rental fee based on ISTAT inflation indices.

Indirect Taxation: IMU Relief Measures

With regard to indirect taxation, the law provides a relief measure for owners of restricted properties. Specifically, the cadastral value is reduced by 50% for the purpose of calculating the IMU (Municipal Property Tax) taxable base, but only if the property is directly restricted. It is important to note that the imposition of a restriction on a property does not alter its cadastral classification, and there is no requirement to reclassify the property upon the imposition of the restriction.

It should also be noted that the recognition of tax relief for historical buildings is not contingent upon the registration of the restriction in cadastral records, even if such an annotation does not appear in the cadastral extract. For 2024, IMU is fully deductible on a

cash basis (100%) if the property is instrumental, i.e., directly used by the business for the conduct of its activities, regardless of its cadastral classification. However, the IMU exemption for primary residences does not apply, as many historical residences are classified under categories A/1 (luxury residences), A/8 (villas), and A/9 (castles and palaces of historical and artistic value), which are typically assigned to restricted private historical residences.

This exclusion appears to raise constitutional legitimacy concerns, particularly in light of a cadastral classification system that, as is well known, is marked by "irregular inconsistencies" and is therefore entirely inadequate to provide a reliable representation of the properties surveyed.

Additionally, with respect to IMU, it should be recalled that the Supreme Court of Cassation (Order No. 6266 of March 2, 2023) has recognized the possibility of combining the IMU reduction with the reduction granted for properties deemed uninhabitable (a cumulative 50% reduction). This is because these reductions serve distinct purposes, which are considered fully compatible and therefore cumulative.

The Tax Regime for Transfers for Consideration and Gratuitous Transfers

In the case of the transfer of a restricted property, no special tax benefits are provided compared to other types of properties. Historical properties are subject to a 9% registration tax, with a minimum of €1,000, and fixed mortgage and cadastral taxes amounting to €50. Since 2014, the tax benefits previously granted for the transfer of historical properties for consideration, such as the reduced 3% rate for residential properties and 4% rate for instrumental properties, have been abolished.

In fact, transfers for consideration of properties of historical and artistic interest are now subject to even heavier taxation whenever the property is non-residential or transferred to buyers acting in the course of a business or self-employment activity. In such cases, the more favorable "price-value" system does not apply to determine the taxable base. Any capital gains arising from the sale will not be subject to taxation during the period in which the State may exercise its right of pre-emption.

For transfers *mortis causa* or *inter vivos* made gratuitously, certain tax benefits are provided. If the property is already restricted at the time of transfer, the inheritance tax is excluded from the taxable base. If, on the other hand, the property is not yet restricted but possesses the characteristics of a historical and artistic property, the tax payable by the heir or legatee is reduced by 50%. A clawback provision applies, revoking the benefit if the heir or legatee sells the property within five years of the inheritance or changes its use without authorization.

For donations, if the restriction exists at the time of transfer, the registration tax is applied as a fixed amount of €200. For properties that are not yet restricted but meet the criteria for historical and artistic classification, the tax is reduced by 50%.

Challenges and Future Prospects

Tax incentives for gratuitous transfers should be extended to transfers for consideration. Legislators should consider introducing tax benefits for these cases as well, thereby creating greater coherence within the tax system and encouraging transfers that take place within entrepreneurial projects. Such incentives could include provisions for the revocation of benefits based on the purchaser's behavior over the years following the transaction—for instance, within five years—in relation to the preservation and enhancement obligations imposed by law. This would also serve as an incentive for the circulation of these assets, in compliance with the conditions and limits established by the applicable regulations.

The only existing incentive that goes in the opposite direction is the option to transfer such assets to the State in order to extinguish tax debts.

Furthermore, a reform of the tax bonuses for the restoration and maintenance of historical residences would be desirable to promote the preservation and public enjoyment of these assets. To this end, the cumulation of the "ecobonus" with incentives for the preservation of historical residences could be introduced, as was done with the "superbonus."

The current tax system shows significant limitations that make owning a historical residence less appealing from a fiscal perspective, particularly for those who intend to use it for economic purposes. Compared to current incentives for energy efficiency upgrades and seismic adjustments, the 19% tax deductions provided for charitable donations in favor of cultural and artistic activities (Article 15, letter h, of the TUIR) and for expenses aimed at the preservation and restoration of historical residences (Article 15, letter g, of the TUIR) are insufficient. Until 2019, these bonuses had the advantage of not being subject to income limits. However, with the introduction of paragraph 3-bis of Article 15, the deduction is now granted in full only to taxpayers with a total income below €120,000, with a proportional reduction as income increases. These limits should be eliminated since higher deductions are justified only for high-income taxpayers, not the other way around.

One possible solution would be to extend access to the benefits of the Art Bonus to private historical residences. Additionally, the cumulation of the ecobonus with the deduction for restricted properties could be allowed, similar to the approach taken with the Superbonus introduced by the Relaunch Decree in 2020, which extended benefits to properties classified under cadastral category A/9, provided they are accessible to the public. Furthermore, extraordinary expenses incurred for the restoration of historical residences could be recognized fiscally, with a reduction of the IMU taxable base if such expenses are included in amortization plans spread over time.

Specific provisions should also address waste disposal taxation, given that historical properties typically consist of large spaces, which directly impacts the tax base for this levy.

Finally, the introduction of the proposed measures should be accompanied by a significant simplification of the bureaucratic requirements currently imposed on owners of restricted historical residences to access tax benefits. For instance, to benefit from deductions for restoration expenses, it is necessary to verify the necessity and appropriateness of the expense. To benefit from the exclusion of cultural assets from the inheritance tax base, a

certificate issued by the Superintendent is required, attesting to compliance with the protection and preservation obligations established by the Code of Cultural Heritage.

Conclusions

The current tax landscape for private historical residences highlights the need for a reform that balances public and private interests more effectively. The tax treatment of historical residences should incentivize both the economic enhancement of these properties, and the fulfillment of obligations related to their preservation and protection as cultural heritage. It is essential that fiscal policies account for the efforts and responsibilities borne by the owners of historical residences, providing adequate tax support to ensure the preservation of our cultural heritage.

Owning a historical residence, far from being an expression of unmerited wealth, often represents a family legacy that entails significant burdens and responsibilities. Owners take on these obligations for moral and emotional reasons. From the perspective of collective interest, these residences deserve greater recognition and support at the fiscal level. It is important to consider that, should these burdens become unsustainable, the alternative would likely be the abandonment of these properties, resulting in the loss of a significant part of our cultural and national heritage to the detriment of society as a whole.

Naturally, the extent of tax benefits should be differentiated based on the degree of public accessibility of the property. Greater incentives should be provided when historical residences are open to the public, even outside the framework of economic exploitation. In this context, it would be more appropriate to assess the actual use of the property rather than the legal nature of its owner. Thus, the same tax benefits should be granted regardless of whether the residence belongs to public entities, non-profit private organizations, or individual private owners.

The hope is that, in the future, a tax system can be established that, on the one hand, promotes the use of historical residences for the benefit of the public and, on the other, acknowledges the value of ownership as a cultural, social, and economic commitment undertaken by their owners.

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