

General Foundations and Features of Legal Interpretation

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General Definitions (1/2)

Legal interpretation is considered necessary to implement the regulatory function of law among members of society.

General Definitions (2/2)

Interpretation comes before any legal evaluation.

It involves examining a person's actions or behavior to check whether they follow certain rules.

This interpretation itself can also be evaluated, especially to see whether those, who exercise power, are acting lawfully.

Interpretation in mass fiscal system (1/3)

Interpretation of Law is important in the Italian tax system: a “mass” fiscal system, in which taxpayers must first interpret tax regulations in order to apply them correctly by themselves.

For this reason, the Charter of Taxpayers' Rights (Law No. 212/2000) requires that tax rules be clear and transparent and defines when they apply over time. It also stipulates that tax authorities must guarantee taxpayers easy and free access (including online) to all tax laws and administrative rules in force.

Interpretation in mass fiscal system (2/3)

Taxpayers are required to interpret tax law, in order to contribute to public expenditure in accordance with their “*capacità contributiva*” when the conditions for taxation are met. In this interpretative process, taking into account the above rules on interpretation, they may also decide to make use of the interpretations of the same provisions given by judges, the tax authorities and scholars, without however being bound by them.

Interpretation in mass fiscal system

(3/3)

However, given the highly technical nature of tax law and the often unclear wording of tax provisions, the Taxpayers' Charter also provides for specific safeguards. In particular, it excludes the application of administrative penalties where there is objective uncertainty in the interpretation of the law (Article 10(3)) and protects the legitimate expectations of taxpayers who comply with the guidance contained in acts of the tax authorities, even where such guidance is later amended. Protection also applies where the taxpayer's conduct results from delays, omissions, or errors attributable to the authorities themselves (Article 10(2)).

General principles of Law (1/2)

The Italian legal system follows the civil law tradition and is mainly based on written rules.

For this reason, legal interpretation focuses primarily on the law, from the Constitution to other rules adopted according to the law, such as regulations and ministerial decrees.

Under the nominalistic principle, legal rules are valid because they are created through formal institutional procedures. Today, state laws are approved when both Chambers of the democratically elected Parliament pass the same text.

General principles of Law (2/2)

For some matters, the Constitution requires that rules be set by law.

This serves two purposes: it ensures **democratic legitimacy**, because laws are approved by elected representatives, and it **protects citizens** by limiting the powers of administrative and judicial authorities.

In some areas, such as criminal law, only the law can regulate the matter. In other areas, like tax law, the law only needs to regulate the essential aspects, while the remaining details can be set by lower-level regulations.

Interpretation *erga omnes* (1/2)

Anyone who applies the law can interpret it, but this interpretation is not binding for everyone.

Only the legislator can give an interpretation that applies to all, by passing an **authentic interpretation law**. This type of law is retroactive and clarifies which meaning the original law has had since it entered into force

Interpretation *erga omnes* (2/2)

In most legal fields, "authentic interpretation" (where the legislature passes a new law to explain the meaning of an old one) can be *unpredictable*.

In tax law, the Charter imposes **formal criteria**:

It must be explicitly labeled as an "interpretive law."

It is generally used to clarify ambiguous provisions, but the Charter restricts its abuse to prevent the government from retroactively changing tax burdens under the guise of "clarity."

Judicial interpretation (1/2)

Judicial interpretation does not create a binding precedent for other judges. It merely resolves the specific case at hand, and its authority becomes definitive only once the judgment is final.

The Court of Cassation, by contrast, is entrusted with the function of *nomofilachia* — that is, ensuring a uniform interpretation of the law and preserving the unity of the national legal system (art. 65 of Royal Decree No. 12/1941).

Judicial interpretation (2/2)

A recurring issue in the Italian legal order — as in most modern democratic states — concerns **the line between applying the law and creating law through judicial interpretation.**

Article 101 of the Constitution states that judges are subject only to the law, thereby guaranteeing judicial independence from the executive and defining the judicial role as essentially interpretative.

Nevertheless, because interpretation inevitably involves understanding not only the wording of a single provision but also its place within the broader system of norms and their interrelations, legal scholars frequently accuse the Court of Cassation of “**judicial creationism**”. This term refers to those rulings in which the Supreme Court, having identified a regulatory gap concerning the effects of a particular situation, deems it necessary to articulate a general principle — very often drawn directly from the Constitution — from which the rules applicable to the concrete case can then be derived.

Public Administration and Dottrina

(1/1)

The **Italian Public Administration** uses **circulars** to ensure uniformity. While they don't bind judges or taxpayers, they are crucial for "administrative predictability."

Circulars: Act as internal operating manuals. If an official deviates from a circular without reason, it can lead to a violation of the principle of *impartiality* (Art. 97 of the Constitution).

Legal Scholarship (*Dottrina*): This isn't just academic exercise; it serves as the "intellectual laboratory" for the law. Scholars often identify gaps where the law is silent, eventually influencing the legislature to draft new norms or the courts to set new precedents.

TRANSITION

The Italian legal landscape is shifting, particularly with the recent **Constitutional Court ruling no. 137 of 2025**: a fundamental evolution in legal philosophy, a transition from an "adversarial" model to one rooted in constitutional cooperation.

The decline of the *in dubio pro fisco* and *contra fisco* doctrines marks a significant move toward legal certainty and proportionality. Instead of favoring one party based on their status (State vs. Taxpayer), the modern approach prioritizes the "correct" interpretation of the norm in light of constitutional principles.

PERSPECTIVE

Old Perspective

Conflict: State vs. Private Interest.

Rigidity: Use of *in dubio pro fisco* and *in dubio contra fisco*.

Nature: Tax as a "sacrifice" or "penalty."

New Perspective

Collaboration: Transparency and Good Faith.

Systemic: Harmonization with EU and Constitutional law.

Nature: Tax as a tool for "social solidarity" (Artt. 2 and 53 Cost.).

The *new* Functional Nature of Tax

Unlike criminal law, which seeks to prevent undesirable behavior, the tax function identifies **normal economic activity** as the basis for funding the state.

Criminal Law: Focuses on "thou shalt not." It triggers a state response to a breach of social order.

Tax Law: Focuses on "because you did." It triggers a contribution based on the capacity (*capacità contribuiva*), turning private wealth into public utility: taxes as contribution of public spending to the financing of the rights.

The *old* Trap of "Tax Particularism" (1/2)

Treating tax law as an "exceptional" or "isolated" branch of law has led to problems.

This **particularism** often results in:

Special Rules of Interpretation: The idea that tax statutes should be interpreted strictly against the state (in favor of liberty) or strictly in favor of the state (to prevent evasion), rather than following general legal principles.

Fragmentation: When tax law is siloed, it risks losing its connection to constitutional principles like equality and proportionality.

The *old* Trap of "Tax Particularism" (2/2)

Historically, tax law has been viewed as "exceptional" or "special," meaning it deviates from common law and must be applied strictly. Article 23 of the Constitution: The principle of no taxation without representation implies that a tax must be clearly defined by law. Analogy is seen as a threat to this because it allows a judge to "create" a tax burden where the legislature was silent.

Extensive Interpretation: Simply broadening the meaning of a word to its fullest linguistic limit. (Usually permitted).

Analogy: Filling a legal vacuum by applying a rule from a similar case. (Traditionally prohibited).
The "Strict Interpretation" Rule: As you noted, the Court of Cassation is particularly rigid regarding tax relief (exemptions). Since these are exceptions to the general rule of paying taxes, they cannot be expanded beyond the literal text.

Distributive Equity vs. Conflict

When we move past the "Taxman vs. Citizen" binary, we see the tax function as a mechanism for distributive equity.

Liberal-style guarantees

While acknowledging that the long-standing theories on the special nature of tax law have been superseded, it should nevertheless be noted that Taxpayers' Charter (Law No. 212/2000) currently regulates certain rules of interpretation that specifically concern tax matters and are partly influenced by liberal-style guarantees.

For example, it is the only area of the legal system in which the law of authentic interpretation is regulated (with formal criteria) (Article 1, paragraph 2) and the effects of the succession in time of rules relating to periodic taxes are regulated (Article 3, paragraph 1). In particular, in compliance with the criteria of enabling Law No. 111/2023 (tax system reform), Article 2, paragraph 4-bis, prohibits the analogy of “tax rules governing the tax base and taxable persons.”

From another point of view

While the Court of Cassation focuses on the literal text, the **Constitutional Court** often focuses on **Article 3 (Equality)**.

If two situations are identical in their economic substance (*eadem ratio*), taxing one while exempting the other is discriminatory.

Mechanism: The Court doesn't technically "use analogy"; instead, it declares the rule **unconstitutional** for being too narrow.

Result: This achieves the same outcome as analogy—extending a benefit to a new group—but through the lens of constitutional legitimacy rather than mere interpretation.

Legal Basis & General Boundaries (1/4)

Interpretation necessarily involves a tension between the literal wording of a provision and its underlying purpose, as well as a relationship between the identified rule and the other rules of the legal system.

In other words, a legal norm does not have an inherent meaning, but acquires meaning through an interpretative process.

Legal Basis & General Boundaries (2/4)

In the Italian legal system, this process must follow the criteria set out in Article 12 of the preliminary provisions to the Civil Code, which states that, in applying the law, no meaning may be attributed to it other than that resulting from the ordinary meaning of the words, considered in their context, and from the intention of the legislator.

This provision describes an interpretative method that starts from the literal meaning of the words, both individually and in context, and leads to the *ratio legis* and its systematic implications.

Legal Basis & General Boundaries (3/4)

In addition to these rules, there are also unwritten principles that can be inferred from the legal system and that help to resolve antinomies, that is, apparent conflicts between several rules governing the same situation.

The primary principle is interpretation in conformity with the Constitution, which requires preference to be given to the interpretation that avoids the invalidity of the act due to conflict with constitutional principles.

Legal Basis & General Boundaries (4/4)

This is followed by the hierarchical criterion between sources of law, including constitutional provisions and other sources that prevail due to constraints arising from EU law and international obligations. Another criterion is that of competence, based on the allocation of subject matters between the State and the Regions, as governed by Article 117 of the Constitution.

Where these criteria cannot be applied, the principle of specificity must be considered, according to which a special rule prevails over a general one. Finally, in the absence of a relationship of specificity, the principle governing the succession of laws over time requires the application of the later law, without retroactive effect (with regard to procedural rules, the principle of *tempus regit actum* applies).

Not unreasonableness meaning (1/2)

It is now generally accepted that the rules for interpreting tax law largely coincide with those applied in ordinary law. However, it has also been noted that the Taxpayers' Charter contains specific interpretative rules aimed at protecting the taxpayer and reflecting their particular role within our mass fiscal system. Since its first ruling on the matter (Judgment No. 17576 of 2002), the Court of Cassation has held that any doubt concerning the interpretation or application of tax provisions falling within the scope of Law No. 212 of 2000 must be resolved in the manner most consistent with the principles of the Taxpayers' Charter, to which all tax legislation, including prior legislation, must conform.

Not unreasonableness meaning (2/2)

In implementation of the enabling law for tax reform, Article 1 of the Charter has been amended to provide that its rules, in implementation of the Constitution, the principles of EU law and the European Convention on Human Rights, constitute general principles of the tax system, serve as criteria for the interpretation of tax legislation, and apply to all parties involved in the tax relationship. The expressly stated general applicability of these principles, which are specific to tax law, may strengthen concerns about the **unreasonableness of any derogation that is not adequately justified by the need to protect other constitutional values.**