

*Interpretation of Tax Legislation in Italy*

# Contextual Interpretation

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# Definition

Contextual (or systematic) interpretation occurs when provisions are not interpreted in isolation, but in light of other provisions that define, or contribute to defining, the meaning and scope of the former.

Contextual interpretation is based on the assumption that provisions **are part of a system**. It therefore reflects the need to ensure their consistency. This need may arise both:

- when the provisions used as tools of interpretation have a higher ranking than the one to be interpreted;
- when the provisions used as tools of interpretation have the same ranking than the one to be interpreted, belonging to the same legislative text or the same area of law, or even to another area of law.

# How to Ensure Consistency

Contextual interpretation may ensure consistency among provisions **in two ways**:

- discarding, among the different meanings that can be assigned to the provision to be interpreted, those that would produce a conflict, or even just a disharmony, between the latter and the provision used as a tool of interpretation;
- choosing, among the different meanings that can be assigned to the provision to be interpreted, the one that best implements the cohesion of the latter with the provision used as a tool of interpretation.

# Conditions

The first and fundamental interpretative rule for tax provisions is the literal rule.

Therefore, contextual interpretation usually implies that the literal wording of the provision is ambiguous, or does not define the subjective or objective elements of the case with sufficient certainty, or provides incomplete regulatory data, or uses general concepts or categories that require further specification.

# Conditions

According to case law, contextual interpretation may, and must, be used also when literal interpretation *“leads to results that are illogical in relation to the regulatory system to which it belongs or affects protected interests of constitutional significance”*.

In these cases, in fact, *'it is the duty of the interpreter to seek - using the other hermeneutic criteria provided for by law - the different possible meaning to be attributed to that rule in order to reduce it to systematic unity (logical-systematic interpretation aimed at 'reductio ad unitatem') or adapt it so as to bring it into line with the Constitution (so-called 'constitutionally oriented' interpretation), with the necessary remedy of constitutional review remaining only if attempts at interpretation in accordance with the Constitution have been unsuccessful'*.

# Consistency within Tax Legislation

Contextual interpretation may encounter a limitation in the very structure of tax legislation. Case law has in fact highlighted how the latter is characterized by a plurality of 'microsystems' (e.g. income tax, VAT, registration tax), each with its own logic and specific rules.

From this perspective, it is inevitable that the need to reduce inconsistencies between provisions relating to different taxes, if not completely ignored, is far less pressing than the need to reduce the inconsistencies between provisions relating to the same tax.

# Provisions Used as Tools

Constitution (Art. 3, Art. 23, Art. 53).

EU fundamental principles (such as freedom of establishment, free movement of capital, free movement of workers and freedom to provide services),

European Convention on Human Rights (Art. 8).

Taxpayers' Charter (according to Art. 1, as amended by Legislative Decree No. 219/2023, the provisions of the Charter, *“implementing the provisions of the Constitution, the principles of the European Union, and the European Convention on Human Rights, constitute general principles of the tax system, **criteria for interpreting tax legislation**, and apply to all parties to the tax relationship...”*).

# Judicial boundaries

In contextual interpretation, however, the literal scope of the provisions to be interpreted must be safeguarded. According to case law, *“an interpretative operation cannot be considered admissible... which, although from the perspective of a declared historical-adaptive and constitutionally oriented interpretation, goes beyond the limit of the meaning arising from the letter of the law”*

According to case law, furthermore, *“in order to safeguard the balance between the interests that are predominantly opposed in the tax relationship (the guarantee of taxpayers and the budgetary needs of the taxing authority), which is expressed at the constitutional level in Article 53 of the Constitution, in the rule of law enshrined in Article 23 of the Constitution, and in the provision of Article 81 of the Constitution... the scope of taxation is outlined by the legislator (positively, as well as, consequently, negatively) through the precise indication of taxable objects and subjects, with the consequence that, in relation to taxing rules, it is undisputed that taxation **cannot apply to objects or subjects not covered by the express regulatory provision**, so that, for speculative reasons, the rules on tax relief cannot be subject to integration that transcends the semantic boundaries of the aforementioned express regulatory provision”*

# Legislative boundaries

Legislative Decree No. 219/2023 has added par. 4 *bis* to Article 2 of the Taxpayers' Charter, according to which "*Tax regulations governing tax liability and taxable persons shall apply exclusively to the cases and times considered therein*".

# Crossing the Boundaries

The ability to pay principle has been often recalled in case law to cross these boundaries and to justify the restriction of the scope of relief provisions, with conditions unrelated to their text, or the broadening of the scope of taxing provisions.

This attitude is usually fostered by the concern to protect the public revenues from tax evasion or avoidance. For example, the ability to pay principle has been invoked by case law to establish the general prohibition of abuse of rights. According to the Court of Cassation, *“The principles of ability to pay (...) and progressivity (...) form the basis of both tax rules in the strict sense and those that grant taxpayers advantages or benefits of any kind, since the latter rules are also clearly aimed at the fullest implementation of those principles. Consequently, the principle that taxpayers cannot derive undue tax advantages from the distorted use, even if not contrary to any specific provision, of legal instruments suitable for obtaining tax savings, in the absence of economically appreciable reasons justifying the operation, other than the mere expectation of such tax savings, cannot but be considered inherent in the legal system, as a direct derivation from constitutional rules”*.

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