

Recovery of ICI for Religious Entities: Systematic Profiles and Application

Issues

(16 March 2026)

On 7 February 2026, a decree of the Ministry of Economy and Finance was published in the Official Gazette approving the instructions for completing the “ICI recovery” declaration for religious entities and, more generally, for non-commercial entities¹. This constitutes a one-off tax compliance obligation incumbent upon the entities concerned which, in the years from 2006 to 2011, benefited from the exemption from the municipal property tax (*Imposta Comunale sugli Immobili – ICI*) pursuant to Article 7(1)(i) of Legislative Decree No. 504 of 30 December 1992². This obligation arose following the condemnation of Italy by the Court of Justice of the European Union for the unlawful State aid granted to non-commercial entities through the aforementioned ICI exemption.³

Under pressure from the EU institutions⁴ and with a view to avoiding infringement proceedings, the Italian legislature enacted Article 16-bis of Decree-Law No. 131 of 16 September 2024⁵, which provides for the recovery of ICI unpaid in the tax years 2006–2011 through the application of an objective criterion. More specifically, non-commercial entities are required to submit the relevant recovery declaration where, in the IMU return relating to the tax years 2012 or 2013, they indicated an overall tax liability exceeding EUR 50,000 per year or, alternatively, where they were required to pay such amount –

¹ Art. 1 of the Decree of the Ministry of Economy and Finance of 4 February 2026, published in the Official Gazette of 7 February 2026, No. 31.

² Article 7(1)(i) of Legislative Decree No. 504/1992 provided that the following were exempt from ICI: «properties used by the entities referred to in Article 73(1)(c) of the Consolidated Income Tax Act, as set out in Presidential Decree No. 917 of 22 December 1986, as subsequently amended, with the exception of properties owned by political parties, which remain subject to the tax irrespective of the use made of the property, where such properties are used exclusively for the carrying out, on a non-commercial basis, of welfare, social security, healthcare, scientific research, educational, hospitality, cultural, recreational and sports activities, as well as the activities referred to in Article 16(a) of Law No. 222 of 20 May 1985».

³ See Court of Justice of the European Union, judgment of 6 November 2018, *Scuola elementare Maria Montessori v Commission*, Joined Cases C-622/16 P and C-624/16 P (available on the Court’s website at <https://curia.europa.eu>). The Court annulled the previous decision of the European Commission of 19 December 2012, 2013/284/EU, in so far as it «did not order recovery of the unlawful aid granted on the basis of the exemption from the municipal property tax». The European Commission decisions referred to in the text may be consulted on the EU law portal at <https://eur-lex.europa.eu>.

For a general overview of the issue, see A. PEREGO, *Il recupero dell’ICI non versata dagli enti non commerciali (anche religiosi). Presupposti ed esiti di una recente pronuncia della Corte di giustizia dell’Unione europea*, in *Stato, Chiese e pluralismo confessionale*, No. 26 (2019), pp. 5–32, and A. QUATTROCCHI, *Aiuti di Stato ed enti non commerciali: legittima esenzione Imu e prospettive di recupero Ici*, in *Diritto e pratica tributaria internazionale*, vol. 16, No. 3 (2019), pp. 816–842.

⁴ Following the judgment of the Court of Justice of 2018, the European Commission, by Decision (EU) 2023/2103 of 3 March 2023, required Italy to recover the ICI not paid by non-commercial entities, while also laying down the criteria for its practical implementation.

⁵ Converted, with amendments, into Law No. 166 of 14 November 2024. In implementation of Article 16-bis(1) of Decree-Law No. 131/2024, the Decree of the President of the Council of Ministers of 23 December 2025 and the aforementioned Decree of the Ministry of Economy and Finance of 4 February 2026 were subsequently adopted.

also following assessments carried out by the municipalities⁶. It therefore appears evident that this objective threshold effectively excludes small and medium-sized non-profit entities from the scope of the ICI recovery regime, since the payment of a tax of such magnitude necessarily presupposes the ownership of a particularly substantial real estate portfolio.

As regards the method for determining the tax to be recovered, two preliminary observations are necessary. First, it should be noted that the illegality of the State aid was not identified in relation to the exemption *per se*⁷, but rather to the indiscriminate manner in which it was granted. This is confirmed by the European Commission's decision of 3 March 2023, which makes clear that the illegality does not concern the system governing the Municipal Property Tax (*Imposta Municipale Propria – IMU*)⁸. Although that system reproduced the same exemptions previously provided under the ICI regime⁹, it introduced – through the Decree of the Ministry of Economy and Finance No. 200 of 19 November 2012¹⁰ – objective

⁶ Repayment of the benefit received is not required where, during the period from 2006 to 2011, the limits laid down, for each individual tax year, by the European *de minimis* aid regulations in force at the time when the aid to be recovered was granted were complied with, namely Regulation (EC) No. 69/2001 of 12 January 2001, in force until 31 December 2006, and Regulation (EC) No. 1998/2006 of 15 December 2006, in force from 1 January 2007 until 31 December 2013. Non-commercial entities are also exempt from the declaratory obligation where, in the years 2006–2011, the amounts received constituted compensation for public service obligations or remuneration for the provision of services of general economic interest pursuant to Article 106(2) of the Treaty on the Functioning of the European Union (TFEU).

⁷ In this regard, in Decision (EU) 2023/2103 of 3 March 2023, the Commission agrees that «there may be situations in which the individual advantage granted through the ICI exemption does not constitute State aid, since the beneficiaries were not engaged in economic activities. In its final decision, the Commission did not find, because it was unnecessary to do so, that all the activities covered by the scheme were economic in nature. The Commission found that at least some of those activities were economic and that certain individual uses of the scheme involved State aid».

⁸ The municipal property tax (*Imposta municipale propria – IMU*) was introduced by Legislative Decree No. 23 of 14 March 2011, replacing ICI.

⁹ Article 9(8) of Legislative Decree No. 23 of 14 March 2011 referred back to the exemptions provided for in Article 7(1)(b), (c), (d), (e), (f), (h), and (i) of Legislative Decree No. 504/1992.

¹⁰ Pursuant to Article 3 of Ministerial Decree No. 200/2012, «institutional activities shall be regarded as being carried out on a non-commercial basis where the constituent act or the statutes of the non-commercial entity provide for:

a) the prohibition on distributing, whether directly or indirectly, profits and operating surpluses, as well as funds, reserves or capital, during the lifetime of the entity, in favour of directors, members, participants, employees or collaborators, unless such allocation or distribution is required by law, or is made in favour of entities which, by law, statute or regulation, form part of the same unified structure and carry out the same activity or other institutional activities directly and specifically provided for by the applicable legislation;

b) the obligation to reinvest any profits and operating surpluses exclusively in the development of activities instrumental to the pursuit of the institutional purpose of social solidarity;

c) the obligation, in the event of the dissolution of the non-commercial entity for any reason, to transfer the assets of the entity to another non-commercial entity carrying out a similar institutional activity, unless a different allocation is required by law».

The framework is completed by Article 4 of Ministerial Decree No. 200/2012: «1. Without prejudice to the requirements set out in Article 3, the institutional activities listed below shall be deemed to be carried out on a non-commercial basis only where, in light of their nature, they meet the additional requirements set out in the following paragraphs.

2. Welfare and healthcare activities shall be deemed to be carried out on a non-commercial basis where they:

a) are accredited and subject to contractual arrangements or agreements with the State, the Regions or local authorities and are carried out, within each territorial area and in accordance with the legislation applicable therein, in a complementary or supplementary manner with respect to the public service, and provide users, under the conditions laid down by European Union and national law, with free healthcare and welfare services, save for any cost-sharing contributions provided for by the legal system for the financing of the universal service;

criteria for the recognition of the exemption, expressly limiting it to activities of a non-commercial nature¹¹. From this follows the second observation, which is a corollary of the first: the European Commission's decision of 3 March 2023 appears to suggest that a preferential tax regime applicable to certain market operators may be considered permissible only with regard to entities operating on a non-commercial basis, that is, in the absence of profit-making purposes. The foregoing considerations are further confirmed by the fact that the legislature has provided that the calculation of the ICI to be recovered must be carried out by applying the IMU rules in force for the 2013 tax year, without prejudice, however, to the application of the taxable base, multipliers and rates laid down by the ICI legislation in force for each of the relevant years¹².

b) where they are not accredited and subject to contractual arrangements or agreements with the State, the Regions or local authorities, are carried out free of charge or against the payment of fees of a symbolic amount and, in any event, not exceeding half of the average fees charged for comparable activities carried out under competitive conditions within the same territorial area, taking into account also the absence of any relationship with the actual cost of the service.

3. Educational activities shall be deemed to be carried out on a non-commercial basis where:

a) the activity is equivalent to that provided by the State school system and the school adopts rules ensuring non-discrimination at the stage of admission of pupils;

b) the obligations concerning the admission of pupils with disabilities, the application of collective bargaining agreements to teaching and non-teaching staff, the adequacy of facilities to the prescribed standards, and the publication of financial statements are complied with;

c) the activity is carried out free of charge, or against the payment of fees of a symbolic amount such as to cover only a fraction of the actual cost of the service, taking into account also the absence of any relationship with that cost.

4. Hospitality activities shall be deemed to be carried out on a non-commercial basis where they are provided free of charge or against the payment of fees of a symbolic amount and, in any event, not exceeding half of the average fees charged for comparable activities carried out under competitive conditions within the same territorial area, taking into account also the absence of any relationship with the actual cost of the service.

5. Cultural and recreational activities shall be deemed to be carried out on a non-commercial basis where they are provided free of charge or against the payment of a symbolic fee and, in any event, not exceeding half of the average fees charged for comparable activities carried out under competitive conditions within the same territorial area, taking into account also the absence of any relationship with the actual cost of the service.

6. Sports activities shall be deemed to be carried out on a non-commercial basis where such activities are provided free of charge or against the payment of a symbolic fee and, in any event, not exceeding half of the average fees charged for comparable activities carried out under competitive conditions within the same territorial area, taking into account also the absence of any relationship with the actual cost of the service».

¹¹ Unlike the IMU regime, the ICI exemptions, pursuant to Article 7(2-bis) of Decree-Law No. 203 of 30 September 2005, also extended to activities carried out on a commercial basis, that is to say, activities aimed at generating a profit. This placed those entities, formally classified as “non-commercial” but operating in the market with profit-making purposes, in a privileged position compared with other economic operators, since they benefited from a favourable tax regime. Such preferential treatment could have been regarded as lawful only if limited to entities operating without profit-making purposes and carrying out socially beneficial activities on a non-commercial basis. Subsequently, Article 39 of Decree-Law No. 223 of 4 July 2006 amended the aforementioned paragraph 2-bis, narrowing the scope of the ICI exemption and making it conditional upon the activities not being exclusively commercial in nature.

¹² See Article 16-bis (1) of Decree-Law No. 131/2024. Where the effective rate cannot be determined, an average rate of 5.5 per thousand shall apply.

As regards the timing of the obligation, the Decree of the Ministry of Economy and Finance of 4 February 2026 provides that non-commercial entities must submit the relevant declaration by 31 March 2026 and pay the amounts subject to recovery by the following 30 April¹³.

With regard to the content of the declaration, entities subject to the recovery obligation must indicate the properties which, in the years 2006–2011, benefited from the ICI exemption pursuant to Article 7(1)(i) of Legislative Decree No. 504/1992, where the activities carried out therein were conducted on a commercial basis, to be assessed in accordance with the criteria set out in Ministerial Decree No. 200/2012. Once the properties that should not have benefited from the aforementioned exemption have been identified, the entities must indicate any ICI amounts already paid and calculate the additional tax due by way of recovery. To this amount must be added interest, calculated on a compound basis, accruing from the date on which the benefit was made available to the taxpayer until the date of its effective recovery¹⁴.

The supervision of compliance is entrusted to the municipalities, which are responsible for assessment activities and for the imposition of the relevant penalties¹⁵.

Nevertheless, certain substantive and operational shortcomings of the measure under consideration cannot be overlooked. At first glance, it appears to respond to legitimate requirements of EU law, which seeks to prevent certain economic operators from being unjustifiably favored over others through tax exemptions that may, in effect, constitute unlawful State aid. However, this principled consideration encounters several evident operational limitations in practice. First, the recovery concerns the tax years 2006–2011; consequently, the entities concerned will be required to retrieve documentation dating back many years, which in most cases is likely no longer available¹⁶. For the purposes of completing the declaration, the entities must report the details of the properties they owned during the period in

¹³ Art. 3 of the Decree of the Ministry of Economy and Finance of 4 February 2026. The original time limits laid down by Article 16-bis (1) of Decree-Law No. 131/2024 were 30 November 2025 for the submission of the declaration and 31 December thereafter for payment of the amount subject to recovery.

¹⁴ Article 16-bis (3) and (4) of Decree-Law No. 131/2024.

¹⁵ Pursuant to Article 16-bis (8) of Decree-Law No. 131/2024, «failure to submit the declaration referred to in paragraph 1 shall give rise to an administrative penalty equal to 100 per cent of the unpaid amount, with a minimum of EUR 50. If the declaration is inaccurate, an administrative penalty equal to 40 per cent of the unpaid tax shall apply, with a minimum of EUR 50. Where an amount differing from that declared is paid, the administrative penalty referred to in Article 13 of Legislative Decree No. 471 of 18 December 1997 shall apply».

¹⁶ It should be recalled that in Italy the obligation to retain tax and accounting records generally lasts, pursuant to Article 2220 of the Civil Code, for ten years. In this regard, however, it would not appear possible to invoke the protection of legitimate expectations on the part of the entities, since, according to the settled case-law of the Court of Justice of the European Union, «undertakings in receipt of aid may, as a matter of principle, entertain legitimate expectations as to the lawfulness of that aid only where it has been granted in compliance with the prescribed procedure ... A diligent economic operator must normally be in a position to ascertain whether that procedure has been followed» (see A. Perego, *Il recupero dell'ICI non versata*, *op. cit.*, pp. 26–28).

question¹⁷ and indicate any ICI amounts already paid, where the relevant proof of payment is still available¹⁸.

The second operational difficulty concerns the monitoring and assessment activities, which the law assigns to the municipalities concerned by the recovery, without the implementing decree providing any further guidance in this regard. This is a particularly complex task, given the absence of a central authority responsible for coordinating local entities and vested with powers of intervention¹⁹.

Finally, it should be noted that one aspect which, over the years, has attracted considerable media attention concerns whether the recovery of unpaid ICI relates exclusively to the Catholic Church or, more generally, to religious entities²⁰. In this regard, it is appropriate to clarify that such entities will not be involved in the recovery in relation to their institutional activities of religion and worship²¹ which, by their very nature, are presumed to be carried out on a non-commercial basis. Indeed, Article 4 of Ministerial Decree No. 200/2012 does not establish specific non-commerciality requirements for activities of religion and worship; consequently, these fall within the category of non-economic activities for which, according to the European Commission, the ICI exemption does not constitute unlawful State aid²². Religious entities will be involved in the recovery of the tax only in relation to activities other than those of religion and worship, namely welfare, healthcare, educational, hospitality, cultural and recreational activities, which fall within the mission of many such entities and in respect of which it will be necessary to assess compliance with the requirements laid down in Articles 3 and 4 of Ministerial

¹⁷ This is a complex operation, especially in relation to properties that are no longer owned by the entities concerned.

¹⁸ This operation is likely to prove particularly complex, given that, in the years 2006–2011, payments could be made not only by means of F24 forms but also through postal payment slips. Whereas the former are generally traceable through the entity's tax drawer with the Italian Revenue Agency, the latter, unless diligently retained in the entities' archives, will in all likelihood be difficult to substantiate.

¹⁹ Article 3 of the Decree of the President of the Council of Ministers of 23 December 2025 provides that the Department of Finance of the Ministry of Economy and Finance is to carry out coordination activities in the management of ICI recovery operations, limited to the mere collection of data to be transmitted to the European Commission. Pursuant to Article 6(2) of Decision (EU) 2023/2103, indeed, «Italy shall keep the Commission informed of the progress of the national measures adopted for the implementation of this Decision until the aid granted under the scheme referred to in Article 1 has been fully recovered. At the Commission's simple request, it shall immediately submit information on the measures already adopted and those envisaged in order to comply with this Decision. It shall also provide detailed information concerning the amount of aid and interest already recovered from the beneficiaries».

²⁰ See G. LATOUR – G. PARENTE, *Ici della Chiesa, parte l'operazione di recupero sprint*, in *Il Sole 24 Ore*, 2025 (<https://www.ilsole24ore.com/art/ici-chiesa-parte-l-operazione-recupero-sprint-AHUnhN1C>), F.Q., *La Commissione Ue ordina allo stato italiano di recuperare l'Ici non pagato dalla Chiesa. In ballo fino a 11 miliardi*, in *Il Fatto Quotidiano*, 2023 (<https://www.ilfattoquotidiano.it/2023/03/03/la-commissione-ue-ordina-allo-stato-italiano-di-recuperare-lici-non-pagato-dalla-chiesa-in-ballo-fino-a-11-miliardi/7084414/>), M. MAIURANA, *L'Ici arretrata alla chiesa, una cartella esattoriale che nessuno vuole emettere*, in *Blog UAAR*, 2022 (<https://blog.uaar.it/2022/08/20/lici-arretrata-alla-chiesa-una-cartella-esattoriale-che-nessuno-vuole-emettere/>).

²¹ Pursuant to Article 16(a) of Law No. 222 of 20 May 1985, activities of religion and worship are understood as «those directed to the exercise of worship and the care of souls, the formation of the clergy and of members of religious orders, missionary purposes, catechesis and Christian education».

²² See *supra*, note 7.

Decree No. 200/2012²³. Should those parameters not be satisfied, religious entities will be subject to the recovery of the unpaid ICI, with the consequent obligation to submit the declaration and to pay the amounts due within the statutory time limits.

In conclusion, although the rules governing the recovery of ICI may be regarded as a necessary intervention aimed at aligning the domestic legal order with European constraints, their implementation appears particularly complex. The temporal distance from the tax years concerned by the recovery, the burdensome reconstruction of the relevant documentation and the absence of a strict coordination among the taxing authorities create a situation of significant uncertainty, likely to encourage a proliferation of appeals before the tax courts, which may substantially affect the practical operation of the measures adopted by the legislature. In this context, it would be desirable for the provisions on the recovery of ICI to be applied in compliance with the principles of proportionality and legal certainty, in order to ensure an orderly management of tax collection while limiting the risk of serial litigation capable of giving rise to conflicting lines of case law.

GIUSEPPE SABATELLI

²³ See *supra*, note 10.