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ITALIAN DEDUCTIONS OF FAMILY EXPENSES DIFFERENTIATED ACCORDING TO NATIONALITY ON VERIFICATION OF THE NON –DISCRIMINATION PRINCIPLE

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Abstract:
The 2025 Italian Financial Law (Law 30 December, n. 207, Art. 1, paragraph 11) introduced an innovative provision to differentiate Personal Income Tax (so-called I.R.P.E.F.) deductions for dependent family members, distinguishing, among resident taxpayers, Italian, European Union or European economic area citizens from citizens of other States, who are not entitled to deductions in relation to family members residing abroad.
Ultimately, the citizen of States which do not belong to the European Union and the European Economic Area who is resident in Italy but who has dependent family members not resident in the territory of the Italian State is no longer entitled to the deductions for family expenses that are instead due to his homologue who is an Italian citizen, an EU citizen or a citizen of States that are part of the European Economic Area.
The norm, which has very little to do with taxation system, raises more than one doubt of legitimacy considering that it penalizes a taxpayer who, as a resident, habitually contributes to Italian public spending on incomes produced everywhere (the so called world wide income taxation principle). It is therefore necessary to question the reason behind this innovative regularity provision (and the suspicion of a discrimination is strong), in order to evaluate its rationality and legitimacy with respect to the Italian Constitution, European law and International tax law governed by conventions.

Keywords: *Family taxation – Deductions for dependent family – Non-European citizens – Discrimination -*

1. Brief history of deductions for dependent family in Italy

The institution of family-related tax deductions, historically enshrined in Article 12 of the Consolidated Income Tax Act (the so-called T.U. II. RR.[1]) since its adoption in 1986, has recently been subject to a peculiar legislative intervention through the 2025 Italian Budget Law[2].

As is well known, family-related tax deductions have long been the preferred tool of the Italian legislature to acknowledge family ties within the tax framework (MELIS, 2024; BASILAVECCHIA, 2022). Although the family unit does not have an autonomous role in income taxation, it is undeniable that belonging to a family unit affects the income availability of its members. Ultimately, being part of a family unit—with all that this entails—is not irrelevant for income taxation purposes. Even though, despite numerous appeals, the Italian legislature has never adopted income-splitting mechanisms like the German model or the French family quotient, it has always introduced corrective mechanisms to account—albeit in a rough and approximate manner—for the expenses borne by families.

[1] Presidential Decree 22th December 1986, n. 917, Approvazione del testo unico delle imposte sui redditi.
[2] L. 30th December 2024, n. 207, Bilancio di previsione dello Stato per l'anno finanziario 2025 e bilancio pluriennale per il triennio 2025-2027.

In particular, the deduction mechanism chosen by the Italian tax legislature since the introduction of its Personal Income Taxation (the so called I.R.P.E.F.) is relatively simple: when in a family there are individuals who do not have their own independent income (specifically set at € 2,840.51), the main income earner of the family can subtract a specific deduction from the gross tax calculated by applying progressive rates to the taxable base.

These tax deductions for family expenses apply to the spouse and dependent family members in pre-established amounts defined by law and are progressively reduced as the total income increases, until they are entirely phased out when income reaches € 95,000 for deductions related to dependent children, and €80,000 for deductions related to the spouse and other relatives. It should also be noted that since March 1st 2022, with the introduction of the Universal Child Allowance[3], deductions for dependent children now apply only to children over the age of 21 and under 30 (PEPE 2020).

Over the years, family-related tax deductions have undergone several changes.

One significant change involved their temporary transformation into tax allowances. Article 3 of Delegated Law No. 80 of 2003[4] envisaged a gradual replacement of deductions from the gross tax into deductions from taxable base; and Article 1, paragraph 349 of Law No. 311 of December 30, 2004, with effect from January 1st, transformed family-related deductions into allowances for family burdens.

However, after a few years, the previous deduction system was reinstated.

The deduction system, codified in the Consolidated Income Tax Act (the so - called T.U.II.RR.) in 1986, essentially confirmed the model chosen by the legislature in the 1970s tax reform. Except for the brief period in which they were converted into allowances, the version formalized in the 1986 act (which closely replicated the provision previously contained in Article 15 of the 1973 IRPEF Decree No. 597[5]) retained characteristics that still define it today: eligibility for family members (spouse and children, with other relatives added later) who do not have sufficient income; a progressive nature, as the deduction amount decreases as the taxpayer's income increases, eventually phasing out; and reported per month.

It is also important to note that, pursuant to Article 21 of The Consolidated Income Tax (intitled: Tax determination for non-resident tax payers), such deductions were originally not available to non-resident taxpayers in Italy. It is worth recalling that in income taxation, residency—not citizenship—is the determining factor. Actually, modern income tax systems distinguish tax treatment based on residency[6]: residents are taxed on income from all sources (the so – called worldwide income taxation principle), while non-residents are taxed only on income produced within the taxing state's territory. Consequently, deductions are granted differently based on whether the taxpayer is a resident or not.

Regarding family-related deductions, the principle—shared by other tax systems—was based on a principle of fiscal consistency: it is more appropriate and practical for the taxpayer's country of residence to consider personal and family situations of their resident tax payers, since income earned in another state by a non-resident typically constitutes only a portion of their overall income.

In essence, it was acknowledged that residents and non-residents are not in comparable situations, thus justifying the state's decision not to grant certain tax benefits to non-residents without this being considered discriminatory. This conclusion rested on the assumption that taxpayers generally live full and productive lives in their country of residence with their loved ones, while earning income in another country is typically incidental and relatively insignificant. This concept, reflecting a static economy, was bound to be overtaken by the strongly pro-European approach adopted first by the European Community and later by the European Union, which promoted both economic and non-economic mobility of millions of European citizens.

[3] Law 1st April 2021, n. 46, Delega al Governo per riordinare, semplificare e potenziare le misure a sostegno dei figli attraverso l'assegno unico e universale and Legislative Decree 29th December 2021, no. 230, Istituzione dell'assegno unico e universale per i figli a carico in attuazione della delega conferita al Governo ai sensi della legge 1° aprile 2021, n. 46.

[4] Law 30th April 2003, no. 80, Delega al Governo per la riforma del sistema fiscale statale.

[5] Republic President Decree 29th September 1973, no. 597, Istituzione e disciplina dell'imposta sul reddito delle persone fisiche.

[6] USA is one of the few States that for the income taxation use the citizenship criterion: the US citizen pays US taxes even if they reside abroad. The same applies to the Philippines.

The divergence in recognizing personal and/or family expenses to residents and non – residents was addressed by the Court of Justice in the landmark Schumacker ruling (PACE 2017; RICHELLE-SCHON-TRAVERSA, 2013; NIESTEN 2015)[7]. This marked the beginning of an evolutionary process[8] that led to the current legal framework: Article 24, paragraph 3 of the Consolidated Income Tax Act (the so – called T.U.II.RR.) incorporated the so-called Schumacker rule, allowing non-residents to claim family-related deductions, provided they earn at least 75% of their total income in Italy and do not benefit from similar deductions in their home country. An additional condition is that the home country ensures adequate information exchange.

As a result, both resident and non-resident Schumacker taxpayers could claim family-related deductions under certain conditions (PACE 2021, CERIONI, 2014; CERIONI 2017).

2. The new system introduced by the financial Law 2025

Given this background, the recent legislative move at the end of the year raises concerns. Italian Lawmakers have decided to restrict the applicability of family-related deductions to taxpayers who are citizens of Italy, another EU member state, or a state party to the European Economic Area Agreement, in relation to family members residing abroad (BASILAVECCHIA 2025).

In short, an I.R.P.E.F. taxpayer who is a citizen of Italy, an EU member state, or an EEA state may claim family-related deductions for relatives residing abroad. However, an IRPEF taxpayer who is not a citizen of these countries (hereafter referred to—though imprecisely—as a non-EU citizen), even if residing in Italy and thus subject to worldwide income taxation principle, will not be entitled to these deductions for family members residing abroad, penalized even against a non-resident who can benefit from it for his family members residing abroad.

Before delving deeper into this provision, it is worth recalling that the 2007 Italian Budget Law (Law No. 296 of 2006, Article 1, paragraphs 1325 et seq.) introduced specific provisions outlining the procedures for non-EU taxpayers, fiscally resident in Italy, to claim family-related deductions. The issue was merely evidentiary, clarifying the types of documents that non-EU residents in Italy needed to provide to prove dependent status pursuant to Article 12.

In contrast, the 2025 Budget Law goes much further: aside from clearly contradicting established principles of income taxation—where citizenship is never a factor—it results in an unjustifiable and incomprehensible discrimination among resident taxpayers: between Italian, EU (or assimilated), and non-EU citizens.

While resident tax – payers with have Italian and EU (or assimilated) citizenship face no restrictions in claiming deductions for family members residing abroad - and even Schumacker residents may benefit under the conditions of Article 24(3)- resident tax – payers who do not have Italian or EU citizenship (or other similar) are the only group denied such deductions. Even if they are fully taxed in Italy on their global income like any other resident, they cannot claim deductions for a spouse or children living abroad, even though they bear the related financial burdens.

As is well known, the principle of non-discrimination in taxation ensures that all taxpayers are treated fairly and equally, without distinctions based on criteria that are irrelevant for tax purposes, such as nationality, residence, or gender. This principle is fundamental to achieving tax justice and to preventing tax laws from generating unjustified disparities in treatment (AVI-YONAH, 2007).

The principle of non-discrimination in taxation is grounded in the idea that tax laws must treat similar situations in a similar manner. This means that, if two taxpayers share the same relevant characteristics for taxation purposes—such as identical income levels, income types, or residence status—they should be subject to the same tax treatment (PISTONE 1995; SACCHETTO 2011).

In light of this, the discriminatory nature of the provision in question is self-evident.

This provision is not only patently discriminatory but also lacks any reasonable justification from a tax perspective. If the purpose of the deductions is to account, at equal taxable income, for the reduced contributive capacity of those supporting relatives with their income, it is unclear why lacking

[7] Schumacker C-279/93.

[8] Asscher C-107/94; Gilly C-336/96; Gschwind C-391/97; Zurstrassen C-87/99; De Groot C-385/00; Schempp C-403/03; Meindl C-329/05; Beker & Beker C-168/11; Ettwein C-425/11.

European citizenship (or assimilated one) should affect that right. While equating EU citizenship with Italian citizenship was likely intended to avoid conflict with EU Treaty provisions, there is no valid reason why a North African, Chinese, or Pakistani resident in Italy—fully taxed like any EU resident—should be denied these legal benefits for relatives who, for various reasons (irrelevant to tax authorities), reside abroad and rely on the taxpayer's income.

The issue clearly does not concern evidence of eligibility (i.e., proof of the family relationship and income threshold), as the legislature has already provided detailed regulations on that matter. Ministerial Decree No. 149 of August 2, 2007, establishes specific documentary requirements for non-resident taxpayers who intend to benefit from tax deductions for dependent family members. These requirements are set out in Articles 1 and 2 of the Decree and differ based on whether the taxpayer resides in a European Union (EU) or equivalent state, or in a non-EU country.

For taxpayers residing in an EU Member State or a country treated as equivalent, the required documentation may take the form of a statutory declaration (self-declaration in lieu of affidavit).

Through this, the taxpayer must certify:

- The familial relationship with the dependent for whom the deduction is claimed;
- That the dependent earns income below the legal threshold established by Italian tax law;
- That the dependent does not benefit from an equivalent tax relief in their country of residence or any other country.

For taxpayers residing in non-EU countries, the documentation must consist of:

- Either original documents issued by the relevant consular authority;
- Or documents bearing an Apostille;
- Or valid official documentation issued in the country of origin.

All documentation must be translated into Italian and legally certified (unless exempt under the Apostille Convention). The purpose of this provision is to enable the Italian tax authority to verify compliance with legal conditions before granting tax deductions.

3. The non discrimination principle of the OECD Model Convention.

However, Article 12, paragraph 2-bis of the Italian T.U. II. RR. appears not so much discriminatory as punitive in nature.

Unlike the Schumacker resident, a taxpayer residing in Italy who does not possess EU or equivalent citizenship is not eligible to claim deductions for family members residing abroad—even in cases where the country of residence ensures a sufficient level of cooperation in terms of information exchange with the Italian Revenue Agency.

The new rule introduced by the Financial Law clearly introduces an unjustified discrimination based solely on citizenship—a factor that is entirely irrelevant within the framework of Italian tax law and that blatantly violates the principle of non – discrimination enshrined in the OECD Model Convention. Art. 24, par. 1, of the OECD Model Convention reads as follow: "1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States".

This rule is in all treaties signed by Italian State with other States to prevent double taxation. An example can help us: a Pakistani National who lives in Italy, works in Italy and pays his taxes in Italy, if has their spouse or their children abroad in accordance with the new rule of Art. 12 cit., cannot subtract the specific deduction from gross tax unlike the Italian national taxpayer. This is in stark contrast with the article of the treaty between Italy and Pakistan that in the Art. 24 refers verbatim to the principle of non- discrimination of the OECD Model Convention[9]. The same is for a Macedonian citizen considering that Macedonia has not yet joined UE and is not a member of the European Economic Area Agreement. Italian Republic and Macedonian Government have subscribed a convention for avoidance

[9] Convention between the Republic of Italy and the Islamic Republic of Pakistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes income signed in Rome 22th June 1984.

a double taxation[10] and the Article 25 contain the non discrimination principle, too. As is well known, the prevalence of international treaties over national sources arises from art. 75, Presidential Decree 600/1973, according to which, in the application of income taxes, international agreements made executive in Italy are safeguarded, as well as from art. 117 of the Constitution[11].

The interpretation that the citizenship is non relevant on this issue is, moreover, confirmed by the position taken by the Italian Revenue Agency, which in several rulings has expressly denied that Italian citizenship, on its own, enables non-resident taxpayers living in non-EU countries to benefit from the provisions applicable to EU-based taxpayers. In particular, Italian citizens residing in non-EU (or equivalent) countries while serving in diplomatic representations (as per Resolution dated June 13th , 2008[12]) requested to be allowed to use the more favorable regime outlined in Article 1 of the aforementioned Decree—specifically, the self-declaration method. The Revenue Agency firmly rejected these requests, emphasizing the irrelevance of the taxpayer's Italian citizenship and reaffirming its earlier position stated in the Resolution of January 8th , 2008[13]: "In light of the above, it is deemed that the possibility of certifying the conditions required under paragraph 1324 of Law No. 296 of 2006 by means of a self-declaration as per Article 47 of Presidential Decree No. 445 of December 28, 2000—granted to individuals residing in an EU Member State or a State party to the European Economic Area Agreement—cannot be extended to individuals, even if Italian citizens, residing in other countries".

4. Some final reflections on the relationship between citizenship and tax payment

This is all the more evident when considering recent studies in which some scholars have emphasized a potential relationship between citizenship status and the contribution to public expenditure. These studies conclude with the proposition that it should be the payment of taxes that influences the recognition of citizenship, rather than the inverse (DEL FEDERICO 2020; BASILAVECCHIA 2019; CIPOLLETTI 2014). In particular, is observed (BASILAVECCHIA, 2019) that Article 53 of the Italian Constitution, in addressing the contribution to public spending, refers to "everyone," employing a term that deliberately implies a general and inclusive principle of participation in public expenditure—one that is not intended to exclude anyone *a priori*.

The task of defining the relationship between the taxpayer and the national territory is entrusted to ordinary legislation. As previously noted, such legislation has established a distinction between the taxation of resident and non-resident individuals, imposing a fiscal burden capable of taxing globally produced wealth exclusively on the former. Ultimately, direct taxation is founded upon a close relationship between the taxpayer and the national territory. Given the role of such taxes in financing indivisible public expenditure, this arrangement reflects a fundamental coherence between the essential services and inalienable functions that a State must ensure and the territorial connection that must be exhibited by those individuals who are obliged to fulfill tax obligations.

It is worth noting that Article 53 of the Italian Constitution is situated in Title VI of Part One, which addresses political rather than economic relations. The other provisions contained in this Title pertain to: the right to vote granted to citizens, including those residing abroad (Art. 48); freedom of association for political purposes (Art. 49); the right to petition Parliament (Art. 50); access to public office and elected positions, granted to citizens (Art. 51); national defense and compulsory military service (Art. 52); and, finally, loyalty to the Republic, the obligation to observe its laws, and the performance of public functions by citizens (Art. 54). Thus, this section of the Constitution is largely

[10] Signed in Rome 20th December 1996.

[11] Resolution of the Constituent Assembly 22th December 1947 - Italian Republic Constitution; article 117 of the Italian Constitution states that legislative power is exercised by the Italian State in compliance with the constraints deriving from international obligations.

[12] https://def.finanze.it/DocTribFrontend/getPrassiDetail.do?id={B7408C1A-389D-4AC1-8CBB-F61F89E6A22F}.

[13] https://def.finanze.it/DocTribFrontend/getPrassiDetail.do?id={B0583A02-3F98-4C2C-BEF7-44D7F33FE319}.

reserved for citizens of the Republic. Nevertheless, Article 53 diverges from this pattern in that it is addressed not solely to citizens, but rather to "everyone."

The rationale offered is twofold. First, limiting tax obligations to citizens would unjustifiably remove taxable material from the fiscal base. Second, the beneficiaries of public services and functions financed by taxation include not only Italian citizens but also individuals who are neither citizens nor residents. Consequently, extending the tax burden to non-citizen taxpayers is amply justified. Conversely, the same author observes that if tax liability may be imposed irrespective of citizenship, then it is reasonable to consider whether the inverse relationship might also be established «that is, whether an individual who contributes to public expenditure for a substantial period, through the fulfillment of tax obligations, might (or should) be deemed worthy of citizenship to have performed a non-episodic political duty that binds them to the Italian State. Faced with this evident asymmetry, and following a thorough examination of Italian citizenship legislation, the author—acknowledging that "the payment of taxes constitutes a political marker of belonging to the community"—cautiously endorses the idea that the fulfillment of tax obligations should be regarded as a relevant criterion for the granting of citizenship.

In light of these final considerations, the restriction of tax deductions to residents who are also citizens appears, in all respects, unjust and indefensible.

Conclusions

The new discipline of deductions for dependent family, that will be applied concretely starting next year's tax return (2026) for incomes produced during this year (2025), moves in the opposite direction to the principles that should inform a fair and non discriminatory tax system, and certainly is not in line with the social changes taking place in the society.

As was made clear, there are not fiscal reasons that justify this difference of taxation based on citizenship as its then a taxpayer is penalized even if they are resident in Italy and normally contribute to public expenditures with their incomes every where produced.

The doubts relate to the principles set out in the Italian Constitution, and to that non discriminatory principle that is laid down in various way in the European Convention on Human Rights (Art. 14), in the Treaty on the Functioning of the European Union (art. 18), and in the treaties to prevent double taxation signed by the Italian State in according to the OCSE Model.

The means of protection offered by these legal system are multiple. There is the possibility to raise a question of internal constitutional legitimacy or a preliminary referral in the European judicial area (DEL FEDERICO 2010); to start a mutual agreement procedure (UCKMAR-CORASANITI-DE' CAPITANI DI VIMERCATE, 2009) or to bring an action before the European Court of Human Rights. The probability that such tools will be used to remove a rule which is not easy to defend is very high.

REFERENCES:

Avi-Yonah, R.s., (2007). International Tax as International Law, Cambridge.

Basilavecchia, M., (2025). Detrazioni IRPEF differenziate in base alla cittadinanza: qualche perplessità è d'obbligo – IPSOA Quotidiano, 1° febbraio 2025.

Basilavecchia, M., (2022). Corso di Diritto tributario, Torino.

Basilavecchia, M. (2019). Concorso alla spesa pubblica e cittadinanza, Scritti in ricordo di Giovanna Mancini, Lecce.

Cerioni, L. (2017). Staatsscretaris van Financiën: a step forward in a proper application of the ability to pay principle in cross -border situations? British Tax Review.

Cerioni, L. (2014). Guido Imfeld and Nathalie Garcet v. Belgian State: a contamination of the Schumacker doctrine? British Tax Review.

Cipolletti, C. (2014), Cittadinanza statale e cittadinanza europea: il caso della legge maltese, in Riv. Dir. Int.

Del Federico, L., (2020), Accordi, arbitrati e tutela del contribuente nell'evoluzione del diritto tributario internazionale, in Riv. Dir. Trib. Int.

Del Federico, L., (2010) Tutela del contribuente ed integrazione giuridica europea, Milano.

Melis, G. (2024). Manuale di Diritto tributario, Torino.

Pace, A., (2021). La famiglia transnazionale: profili fiscali, Milano.

Pace, A., (2017). I profili fiscali della famiglia transnazionale nella giurisprudenza adeguatrice della Corte di Giustizia UE, in RTDT.

Pepe, F., (2020). Vantaggi, criticità ed implicazioni sistematiche dell'istituendo "Assegno unico ed Universale per i figli a carico, in Riv. Tel Dir. Trib., 9 ottobre 2020;

Pistone, P. (1995). La non discriminazione anche nel settore dell'imposizione diretta: intervento della Corte di Giustizia, in Dir. Prat. Trib., I, 1995.

Richelle, I. – Schon, W. – Traversa, E., (2013). Revisiting Schumacker: Source, Residence and Citizenship in the ECJ Case – Law on Direct Taxation, in Allocating Taxing Powers, within the European Union, Netherlands.

Sacchetto, C. (2011). Principi di diritto tributario europeo e internazionale, Torino.