

## Ability to pay, equitable distribution and social justice

### **ABSTRACT**

Today, the power to impose taxes, far from being mere discretionary plying, unmotivated and sole, is manned by a number of limitations and guarantees for the protection of the taxpayer: a particular role in this context, it is covered by the principle of ability to pay under article 53 of Constitution, as a result of which the legislator is not free to subject to tax any fact of life, being able to apply the tax only to cases that are manifestations of wealth. Therefore, the ability to pay presents itself, at the same time, as assumed, limit and measure of taxation. In the absence of a normative notion, in the recent past, the ability to pay has been depicted as a kind of “empty box”. Nevertheless, it is necessary to indicate, positive and symptomatic, individual indexes of the principle of ability to pay. Among the “direct” indices can be counted the income, assets and increases in value, while constitute “indirect indices” consumption, business or transfer of assets. The paradigm cannot be divorced from the source system and normative values, having to be coordinated to the inviolable rights of man and the duties required by political, economic and social solidarity, as a basis for the constitutional state: the duty of each person to participate in public spending becomes the mandatory principle of social solidarity, which descends directly from article 2 of Constitution. The Constitutional Court, in reconstructing the scope of the principle, has identified three requirements that must comply with the ability to pay: effectiveness, certainty and timeliness. The ability to pay is inextricably linked to the principles of reasonableness and tax equality, so that equal situations should match the same taxation regimes and, correlatively, to different situations an unequal tax treatment.

**Keywords:** *jus impositionis*; obligation to contribute to public expenditure; principle of ability to pay; fair allotment; social justice.

## 1. Limitations to *jus impositionis* and guarantees for the protection of the taxpayer: the principle of ability to pay

In the current rule of law the *jus impositionis* is not reconnected, as before, to exercise of discretion, unmotivated and unquestionable power, expression of the sovereignty of State, being guarded by a number of limitations and guarantees for the protection of the taxpayer.

A particular role in this context, it is covered by the principle of ability to pay under article 53 of Constitution (Tesauro, 2009, p. 68).

As a result of this paradigm, the legislator is not free to subject to tax any fact of life, being able to apply the tax only to cases that are expressions of ability to pay (Tesauro, 2009, p. 69; Micheli, 1976, p. 93; Santamaria, 2011, p. 51; Moschetti, 1988, p. 7), namely in situations likely to gain economic benefits from which both rationally subjective suitability of deductible tax liability (Uricchio, 2017, p. 38): this allows you to validate a design ethic of tax performance, orienting the *jus impositionis* so as to hit the only expressive assumptions of wealth to meet public expenditure.

The article 53 of Constitution, stating a principle of substantive tax law, with a statutory provision programmatic significance, states that «everyone is expected to contribute to the public expense because of their ability to pay»: the statutory provision does not restrict the duty insurance are citizens, but extends it to all those who, in relation to the various situations considered by the individual tax laws, are in touch with our legal system (Micheli, 1976, p. 13).

Furthermore, the constitutional enunciation, where has that “everyone” are obliged by virtue of “their” ability to pay, find the connecting factor between the ability to pay and the party responsible (Moschetti, 1988, p. 11).

In this way, just the ability to pay tribute holders are required to apply for public expenses, within the limits of such ownership: as a result of semantic link between “all” and “their”, place in article 53 of

Constitution, each taxpayer is required to pay by reason of their ability to pay, not because of an ability to pay in whole or in part attributable to others.

This fact raises the question of the constitutionality of the figures of the substitute and the responsible tax, “almost subjectivity” hypothesis that pursuing a paramount purpose of collective interest, allowing you to facilitate the assessment and collection of taxes: despite the substitute and the responsible are required to pay in connection with ability to pay of other person, the institute of recourse allows you to comply with the prescriptions of article 53 of Constitution (Gaffuri, 2008, p. 437).

As regards the scope of application, the ability to pay cannot be generalized, but it should be limited only to taxes to ensure the cost of public services indivisible, included in the concept of sets, without understanding those aimed to affecting the cost of public services divisible, within the concept of tax<sup>1</sup> (Moschetti, 1988, p. 3-4; Maffezzoni, 1980, p. 1012; Micheli, 1976, p. 97; Granelli, 1981, p. 30-31; La Rosa, 1968, p. 51-52; Gaffuri, 2008, p. 430-431; Parente, 2013, p. 533).

Moreover, when the constituent assembly (Falsitta, 2013, p. 789; Falsitta, 2009, p. 97), the introduction of such a principle was not at all obvious: numerous doubts concerns were raised by those who considered it pointless to impose substantive conditions on the entity’s right to claim the tax levying, being ability to pay entity immanent to the entire system of values on which he leaned the Constitution (Uricchio, 2017, p. 35). In addition, the constitutional coverage could lead to the belief that the *jus impositionis*, while finding no basis in supremacy exercised by the State on its territory, could be limited (Uricchio, 2017, p. 35). It was believed, therefore, inappropriate to devote a constitutional provision in order to enshrine an obligation essential to the life of the community, being able to descend to contribute to public expenditure from the values required by economic, political and social solidarity inherent in an organized group; nevertheless, the principle has found bin in the article 53 of Constitution (Uricchio, 2017, p. 35).

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<sup>1</sup> In case law, comp. Cons. St., 14 dicembre 1963, n. 1058, in *Riv. dir. fin.*, 1964, II, p. 166; Cass., 13 luglio 1971, n. 2247, in *Dir. e prat. trib.*, 1972, II, p. 176; Cass., 18 ottobre 1971, n. 2930, in *Dir. e prat. trib.*, 1972, II, p. 1099.

## 2. The ability to contribute as a prerequisite, limit and measure of taxation

The provision sets must satisfy the requirement's ability to pay "to be constitutional, not to be tribute" (Tesauro, 1987, p. 6), since, for sorting, the tax benefit is only that conforms to the Constitution, therefore, linked to ability to pay (Bertolissi, 1992, p. 529; Bartolini, 1957, p. 9-10; Parente, 2013, p. 523-524).

As a result, the ability to pay presents itself, at the same time, as assumed, limit and measure of taxation<sup>2</sup> (Uricchio, 2017, p. 35-36; De Mita, 1987, p. 455-456, nt. 1; Moschetti, 1988, p. 2; Manzoni, 1967, p. 13-14 and 73), makes limitation for an ordinary legislature's freedom in choosing impassable of taxable persons, the assumption and the amount of the tax benefit (Micheli, 1976, p. 94; Moschetti, 1988, p. 2): assumption of imposition, as there may be cases where the contribution attributable to the taxpayer's obligation is not likely to express an ability to pay, as there are an inseparable link between the present case and tax liability; parameter of the imposition, since, in the event that there is such a link, the extent of competition in public spending will vary because of the concrete economic ability manifested by the taxpayer: the greater will be the economic capacity of the subject, the higher will be the tribute that it must correspond to the exchequer; extent of taxation, because the taxpayer will not be asked for a contest at public expense in excess of their economic capacity, otherwise, would hit an ability to pay in whole or in part does not exist (Uricchio, 2017, p. 37).

The principle also allows you to monitor the constitutionality of tax rules and, in the manner provided by law, ask the court of guardianship laws, insofar as they are inconsistent with this principle, not reconnecting that duty (constitutional) of share of the costs of the community to a economically assessable (Micheli, 1976, p. 94; Lupi, 2007, p. 688).

In this way, you can carry out a control on the fairness of the tax laws, becoming the ability to contribute a vital instrument for the interpretation and application of the tax law (Santamaria, 2011, p. 52).

<sup>2</sup> In addition, comp. Corte Cost., 6 luglio 1966, n. 89, in *Boll. trib.*, 1966, p. 1832; Corte Cost., 10 luglio 1968, n. 97, in *Giur. cost.*, 1968, I, p. 1538; Corte Cost., 29 dicembre 1972, n. 200, in *Boll. trib.*, 1973, p. 433.

Finally, the policy presents the advantage to qualify the activity taxation by reconnecting it to the needs of society: the latter, on the one hand, undergoes a deprivation of their wealth; on the other, takes advantage of a strengthening of the rights whose enjoyment is subject to the existence of financial assets (Bertolissi, 1992, p. 529).

In this context, the constitutional norm constrains the ordinary legislator and restricts the discretion, preventing him from typing as social behaviors that are not tax assumptions manifestation of wealth, nor economic strength (De Mita, 1987, p. 455; Parente, 2013, p. 526).

The ability to pay denotes the suitability of the person to bear the economic burden of taxation and is aimed at identifying the extent of participation of the individual public expenditure (Del Giudice, 2011, p. 127; Lupi, 2007, p. 687): as a “Janus” (Antonini, 1996, p. 244 ff.), it becomes, then, as a guarantee for the taxpayer and to limit the State apparatus (Parente, 2013, p. 526).

With regard to limits imposed by ability to pay to the taxing powers, you relinquishing at least two very significant: an absolute limit, which forces you to select – which requirements of the tribute – get fit to demonstrate actual and present economic strength; a relative limit, which constrains the legislature to assume what ratio of the charge, expressed by the assumption, a principle consistent with those found in the sort order and reasonable than the public cost sharing purposes (Fantozzi, 2005, p. 26; Micheli, 1976, p. 93).

In sum, the constitutional provision protecting two interests of equal rank: the public interest in the competition of all public expenditure, expressive of the function of solidarity; the interest of the individual to respect for his ability to contribute, symptomatic of the function of constitutional guarantees of the law (Fantozzi, 2005, p. 19).

### 3. Direct and indirect indices of ability to pay

In the absence of a normative notion, in the recent past, the ability to pay (Griziotti, 1953, p. 351 ff.; Giardina, 1961; d’Amati, 1964, p. 464 ff.; Manzoni, 1967; Micheli, 1967, p. 1530; Gaffuri, 1969; Maffezzoni, 1970; d’Amati, 1973, p. 106 ff.; Moschetti, 1973; Berliri, 1974, p. 114 ff.; La Rosa, 1981, p. 233 ff.; De Mita, 1984; Marongiu, 1985, p. 6 ff.; De Mita, 1987,

p. 454 ff.; Moschetti, 1988, p. 1 ff.; Antonini, 1996, p. 274; Perrone, 1997, p. 577 ff.; Batistoni Ferrara, 1999, p. 345 ff.; Fedele, 1999, p. 971 ff.; Russo, 2007, p. 48 ff.; Gaffuri, 2008, p. 429 ff.), based on three legal arguments of identity – the vagueness of the concept; the absolute immunity of legislative choices; the opportunity to report article 53 of Constitution to the tax system as a whole (Moschetti, 1988, p. 5) -, was depicted as a kind of “empty box” (Balladore Pallieri, 1948, p. 63; Giannini, 1950, p. 273; Ingrosso, 1950, p. 158; Balladore Pallieri, 1955, p. 370; Tesauro, 2009, p. 69; Micheli, 1976, p. 93; Fantozzi, 2005, p. 21; De Mita, 1987, p. 454; for critical remarks, comp. Maffezzoni, 1980, p. 1009; Gaffuri, 2008, p. 431; Parente, 2013, p. 527-528).

Considering that a fact is an indication of ability to pay when it is economic in nature, namely expresses economic strength (De Mita, 1987, p. 455-456, nt. 1; Giardina, 1961; Gaffuri, 1969; Lupi, 2007, p. 683), the paradigm of article 53 of Constitution has been assigned (Tesauro, 2009, p. 69; Gaffuri, 1969, p. 63 ss.; Zonzi, 1976, p. 2218; Lupi, 2007, p. 687; Perrone Capano, 1979, p. 83-95; for a different orientation, comp. Granelli, 1981, p. 30 ff.) the meaning of minimum economic capacity (Moschetti, 1988, p. 6; Maffezzoni, 1980, p. 1009), but without identifying the ability to pay with the limited economic capacity of the subject (Parente, 2013, p. 529-530).

In fact, the ability to pay, while assuming the economic capacity, is not identified with it, but implies an assessment regarding the taxpayer's position and its ability to contribute to public loads (Moschetti, 1988, p. 10; Vanoni, 1937, p. 89-90 and 94): in this light, are expressive of ability to pay the facts indexes of force or economic potential, namely those who have wealth in a broad sense<sup>3</sup> (Gaffuri, 2008, p. 438).

<sup>3</sup> Comp. Corte Cost., 16 giugno 1964, n. 45, cit.; Corte Cost., 31 marzo 1965, n. 16, in <http://www.giurcost.org/decisioni/index.html>; Corte Cost., 6 luglio 1966, n. 89, cit., p. 1832; Corte Cost., 10 luglio 1968, n. 97, cit., p. 1538; Corte Cost., 18 maggio 1972, n. 91, in *Dir. e prat. trib.*, 1973, II, p. 193; Corte Cost., 22 giugno 1972, n. 120, in <http://www.giurcost.org/decisioni/index.html>; Corte Cost., 28 luglio 1976, n. 200, in *Giur. cost.*, 1976, I, p. 1254; Corte Cost., 20 aprile 1977, n. 62, in *Giur. cost.*, 1977, I, p. 606; Corte Cost., 23 maggio 1985, n. 159, in <http://www.giurcost.org/decisioni/index.html>; Corte Cost., 4 maggio 1995, n. 143, in *Riv. dir. trib.*, 1995, parte II, p. 470; Corte Cost. n. 21/1996, in <http://www.giurcost.org/decisioni/index.html>; Corte Cost., 22 aprile 1997, n. 111, in *Giur. it.*, 1997, I, p. 476; Corte Cost., 21 maggio 2001, n. 155, in *Riv. dir. trib.*, 2001, II, p. 589; Corte Cost., 21 maggio 2001, n. 156, in *Giur. it.*, 2001, 10, p. 1079; Corte Cost., 28 gennaio – 6 febbraio 2002, n. 16, in *Giur. it.*, 2002, p. 1788; Corte Cost., 8 aprile – 10 aprile 2002, n. 103, in *Giur. cost.*, 2002, p. 853.

However, hypothesize generically that all economic facts are expressions of ability to pay is rather an understatement (d'Amati, 2006, p. 31-32; d'Amati – Uricchio, 2008, p. 37; Gaffuri, 1969, p. 88 ff.; Manzoni, 1967, p. 73 ff.), being, however, must locate, positive and concrete, individual indexes symptomatic of the principle of contribution (De Mita, 1987, p. 457; Parente, 2013, p. 530-531).

Not surprisingly, they do not conform to the above principle those tributes affecting subjective qualities, such as the culture, beauty and technical expertise, the ability of these qualities generate wealth or as themselves revealing wealth: one thinks, for example, to the case of a degree which, although, in theory, more opportunities to derive economic results from their knowledge and skills compared to a person with a degree lower, that doesn't support the conclusion, in concrete terms, that this potential constitutes ability to pay index, being merely hypothetical use of such subjective conditions to produce income (Uricchio, 2017, p. 39-40).

As to the exact configuration of ability to pay, have formed different currents of thought (Gaffuri, 2008, p. 434-435): a first reconstruction<sup>4</sup> (Basilavecchia, 2002, p. 292; La Rosa, 2000, p. 185) has embraced a subjective notion of ability to pay, referring to the actual suitability of helping to cope with the tax duty, through indexes concretely detectors of wealth; a different orientation<sup>5</sup> married a objective view, identifying the notion in any economic fact likely to be expression, even without the subjective suitability requirement; in the middle there is the thesis, perhaps more reasonable, which drew up a relative concept (Fantozzi, 2005, p. 25), as a function not only of the need for each assumed economic potential, but also expresses the need to differentiate between taxpayers and tributes (on the evolution of the orientation of constitutional jurisprudence in the matter, comp. Salvati, 1998, p. 507; Marongiu, 1999, p. 1757).

Among the “direct indices” of contributory capacity (Moschetti, 1988, p. 6; Cosciani, 1977, p. 393 ff.) may be counted the income (wealth acquired) (Tesoro, 2009, p. 71; De Mita, 1987, p. 457), the heritage (wealth

<sup>4</sup> Comp. Corte Cost., 10 luglio 1968, n. 97, cit., p. 1538; Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 20 aprile 1977, n. 62, cit., p. 606.

<sup>5</sup> Comp. Corte Cost., 21 maggio 2001, n. 156, cit., p. 1079, with note by R. SCHIAVOLIN, *Prime osservazioni sull'affermata legittimità costituzionale dell'imposta regionale sulle attività produttive*.

possessed)<sup>6</sup> and its increases in value<sup>7</sup>, while they constitute “indirect indexes” consumption, business and transfer of goods (Tesauro, 2009, p. 71-72; De Mita, 1987, p. 457; Parente, 2013, p. 531-532).

Who knows if in the future, given the new forms of production of wealth and lifestyle increasingly frantic, even the “free time” can be counted, like consumption, between indirect indices contributory capacity.

These indexes express the attitude to the contribution, understood as a collection of events and conditions that manifest the ability to cope with the public expenditure by paying taxes (Gaffuri, 2008, p. 430).

In fact, the decision of what hit them with the imposition is also dependent on the conception that you have of the State, of its role and relations with taxpayers: a classical-liberal strand focuses on proprietary rights with respect to the public interest to levy (on tax interest, comp. Boria, 2002), minimizing state intervention; an egalitarian approach and welfare regulation, however, rejects the model of “minimal State”, reevaluating the public interest to the levy to the rights owners (Gallo, 2007, p. 19; Gallo, 2009, p. 399).

#### 4. The ability to pay as a mandatory principle of social solidarity

The article 53 of Constitution cannot be considered divorced from the source system and normative values, having to be coordinated, through hermeneutics systematic and axiological, to the legislation that recognizes and guarantees the inviolable rights of man, and forces the fulfillment of the duties required by political, economic and social solidarity (article 2, paragraph 1 of Constitution), constitutional State foundation (Micheli, 1976, p. 14 and 92; Moschetti, 1980, p. 3; Santamaria, 2011, p. 51-52; De Mita, 1976, p. 338; Braccini, 1977, p. 1258; Forte, 1980, p. 28-29; Tesauro, 2009, p. 66; d’Amati – Uricchio, 2008, p. 37; Lupi, 2007, p. 689; Parente, 2013, p. 534).

In this view, the duty of every person to cope with public spending

<sup>6</sup> Comp. Corte Cost., 22 aprile 1997, n. 111, cit., p. 476, with note by E. MARELLO, *Sui limiti costituzionali dell'imposizione patrimoniale*.

<sup>7</sup> Comp. Corte Cost., 30 settembre 1987, n. 301, in *Boll. trib.*, 1987, p. 1747.

because of their ability to pay becomes a mandatory principle of social solidarity, which descends directly from article 2 of Constitution by requiring each member of the state community to participate in needs of the community not by virtue of a commutative relationship with the State, but as a member of the community (Micheli, 1976, p. 14; Maffezzoni, 1970, p. 29 ff.; Tesauro, 2009, p. 66-67; De Mita, 1987, p. 455; Maffezzoni, 1980, 1009 ff.; Fedele, 1971, p. 27; Moschetti, 1988, p. 3; Parente, 2013, p. 535).

The value of the setting is that of giving the tribute a function of social justice, making public expenditure contribution become duty of solidarity (Gallo, 2009, p. 403). In this context, there is the reconstruction (d'Amati, 1973, p. 126) that relies on the ability to pay the mediating function between two values of equal rank: the contribution, on the one hand, and the enjoyment of public services, of the other part (Uricchio, 2017, p. 45). This function cannot be understood as mere correspondence between cost and benefit, resulting in rather a link, in political and social terms, between the contest at public expenses and the use of public services by the individual partner, in a distribution perspective (d'Amati, 1973, p. 126; Uricchio, 2017, p. 45, nt. 44).

In fact, the foundation of the duty to contribute to the collective needs can be found not so much in the benefit that an individual receives from the State, against the fulfillment of general or special services, as in the duty of political solidarity, capable of expressing the interest of all the creation and life of the public body (Micheli, 1976, p. 13-14; Moschetti, 1988, p. 10; Perrone Capano, 1979, p. 82-83).

The tribute not expressed solely, purely tax, to raise government revenues, but also fulfills a no taxation purpose: implement the principle of social solidarity, realizing a fair allotment through the use of taxation for economic purpose, redistribution, social and out of taxation in general (Moschetti, 1988, p. 10; Micheli, 1976, p. 94; Tesauro, 2009, p. 67; for critical remarks, comp. Gaffuri, 2008, p. 436). In this way, fiscal performance, without divest fiscal order (procuring revenue to the treasury), it generates a plurality of positive effects (Uricchio, 2017, p. 46).

Also the tributes with paramount purpose out of taxation – purpose that may fall in the context of the case of taxation or remain outside it – must comply with article 53 of Constitution connecting to symptomatic situations of ability to pay, such as get economically significant capable

of constituting manifestation of wealth (De Mita, 1987, p. 464; Tesauro, 2009, p. 67; Fantozzi, 2005, p. 25; Maffezzoni, 1980, p. 1023; Gaffuri, 2008, p. 435-436).

Moreover, in certain cases – environmental taxation (Gallo – Marchetti, 1999, p. 115 ff.; Gaffuri, 2008, p. 437; Selicato, 2008, p. 111 ff.; Uricchio, 2013, p. 731 ff.; Parente, 2015, p. 319 ff.) – taking into account negative externalities caused by the polluting activities and costs to be incurred for the reclamation and rehabilitation of the area, it is considered appropriate to demonstrate subsisting *ipso iure* circumstances of ability to pay, there is a sort of “qualified ability to pay”, resulting from savings, future and possible, of public expenditure.

## 5. Effectiveness, certainty and timeliness, such as requirements that must comply with the ability to pay. The principles of reasonableness and tax equality

The Constitutional Court<sup>8</sup>, in reconstructing the scope of article 53 of Constitution, identified three requirements that must comply with the ability to pay: effectiveness, certainty and timeliness (d’Amati, 2006, p. 32; d’Amati – Uricchio, 2008, p. 37; Micheli, 1976, p. 96; Parente, 2013, p. 537).

Under the first requirement, the link between wealth detector and tribute must be made effective, and not apparent or fictitious, expressing the suitability of assumption with respect to the tax liability, which must be a real economic event, such as to allow the measurement of an existing income and not merely alleged (Santamaria, 2011, p. 54; Tesauro, 2009, p. 73; Fantozzi, 2005, p. 23; De Mita, 1987, p. 463; Micheli, 1976, p. 97; De Mita, 1981, p. 60; Gaffuri, 2008, p. 439; on the exemption of “minimum subsistence”, comp. Moschetti, 1988, p. 9; Maffezzoni, 1980, p. 1011-1012).

<sup>8</sup> Comp. Corte Cost., 12 luglio 1967, n. 109, in *Riv. dir. fin.*, 1967, II, p. 223; Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 26 marzo 1980, n. 42, in <http://www.giurcost.org/decisioni/1980/0042s-80.html>; Corte Cost., 22 aprile 1980, n. 54, in *Rass. Avv. Stato*, 1980, I, 1, p. 691; Corte Cost., n. 252/1992, in <http://www.giurcost.org/decisioni/>; Corte Cost., 29 gennaio 1996, n. 73, in <http://www.giurcost.org/decisioni/index.html>; Corte Cost., 26 luglio 2000, n. 362, in <http://www.giurcost.org/decisioni/index.html>.

In other words, in the present case, must fall situations that, both subjective and objective level, are likely to show an unequivocal manner, wealth (Uricchio, 2017, p. 36).

Like this, the competition at public expense is linked to the possession of an actual ability to pay and suitability for taxation. Therefore, cannot be classified as an economic suitability not based on ability to pay “real facts”, but on a “basic dummy”<sup>9</sup> (Moschetti, 1988, p. 13).

The second requirement is closely related to the first, having to be unequivocal and timely ability to pay and not purely hypothetical<sup>10</sup> (Fantozzi, 2005, p. 23).

Finally, applying the “current events”, the tribute should be related to an ongoing ability pay, no past or future: the ability to pay must be when you experience the withdrawal.

In this perspective, the timeliness is an irreducible limit the introduction of “retroactive taxation”<sup>11</sup> (Fantozzi, 2005, p. 25; Tesauro, 2009, p. 75), which are unconstitutional when they lost at the time of their application, «an appropriate relationship with the then existing wealth, but now probably spent»<sup>12</sup> (Gaffuri, 2008, p. 442).

In truth, the three requirements are inextricably linked: the timeliness is an explanation of effectiveness, which in turn has an affinity with the certainty requirement (Tesauro, 2009, p. 75; Parente, 2013, p. 539).

The topical parameter, as mentioned above, excludes the possible adoption of retroactive taxation, which, having to get past, refer to a current, but not passed ability to pay (Amatucci, 2005; Mastroiacovo, 2005).

In fact, given the actual connection between premise and tax, even under the temporal profile, the legislature cannot impose retroactive duties, as such in contrast with both the current principle of ability to pay, than with that of legal certainty<sup>13</sup> (Moschetti, 1988, p. 15).

<sup>9</sup> Comp. Corte Cost., 26 marzo 1980, n. 42, cit.

<sup>10</sup> Comp. Corte Cost., 28 luglio 1976, n. 200, cit., p. 1254; Corte Cost., 26 marzo 1980, n. 42, cit.; Corte Cost., n. 252/1992, cit.; Corte Cost., 29 gennaio 1996, n. 73, cit.; Corte Cost., 26 luglio 2000, n. 362, cit.

<sup>11</sup> Comp. Corte Cost., 22 aprile 1980, n. 54, cit., p. 691.

<sup>12</sup> Comp. Corte Cost., 10 giugno 1966, n. 64, in *Giur. cost.*, 1966, p. 737; Corte Cost., 15 luglio 1994, n. 315, in [www.giurcost.org/decisioni/1994/0315s-94.html](http://www.giurcost.org/decisioni/1994/0315s-94.html).

<sup>13</sup> Comp. Corte Cost., 4 aprile 1990, n. 155, in *Foro it.*, 1990, I, c. 3072.

In any case, in tax matters, the principle of non-retroactivity cannot be interpreted rigidly, since retroactive duties are constitutionally legitimate when they hit past events that express a contributory capacity still current<sup>14</sup>.

In this regard, article 3, paragraph 1, Law July 27, 2000, no. 212 (the Statute of the rights of the taxpayer), entitled “temporal effectiveness of tax rules”, enshrined the principle of non-retroactivity in tax matters, ruling that «except as provided by article 1, paragraph 2, the tax provisions do not have retroactive effect. With regard to periodic tributes, changes introduced only apply from tax period following that existing on the date of entry into force of the provisions that provide for».

Therefore, in the light of this provision, which codified, even in the field in question, the general principle of non-retroactivity of the law according to art. 11, paragraph 1, preliminary provisions to the civil code, has excluded the retroactive application of the law, if retroactivity is not expressly established<sup>15</sup> (Parente, 2011, p. 480, nt. 57).

The category's ability to pay, as a basic constitutional on fiscal matters, aimed to guarantee the taxpayer, can also be used as an interpretative criterion: between multiple interpretations, the interpreter has to stick to the one that face except the connection between tax and assumed (De Mita, 1987, p. 460).

Finally, the ability to pay is inextricably linked to the principles of reasonableness (Luther, 1997, p. 341 ff.; Paladin, 1997, p. 900 ff.) and tax equality, connoting ethical value of the tribute: the combination between articles 53 and 3 of Constitution implies that equal situations should be equal taxation regimes and, correlatively, to different situations an unequal tax treatment<sup>16</sup> (Paladin, 1997, p. 305; Micheli, 1976, p. 95; Moschetti, 1988, p. 17; Gaffuri, 2008, p. 430).

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<sup>14</sup> Comp. Corte Cost., 23 maggio 1966, n. 44, in *Giur. cost.*, 1966, p. 737; Corte Cost., 11 aprile 1969, n. 75, in *Dir. e prat. trib.*, 1969, II, p. 349; Corte Cost., 27 luglio 1982, n. 143, in *Boll. trib.*, 1982, p. 1764; Corte Cost., 20 luglio 1994, n. 315, in *Fin. loc.*, 1994, p. 1199; Corte Cost., 19 gennaio 1995, n. 14, in *Foro amm.*, 1997, p. 1597; Corte Cost., 27 luglio 1995, n. 410, in *Foro it.*, 1995, I, c. 3074; Corte Cost., 4 novembre 1999, n. 416, in *Giur. it.*, 2000, p. 678.

<sup>15</sup> On the topic, comp. Cass., 2 aprile 2003, n. 5115, in <http://rivista.ssef.it>; Cass., 9 dicembre 2009, n. 25722, in <https://webrun.notariato.it/notiziario>

<sup>16</sup> Comp. Corte Cost., 6 luglio 1972, n. 120, cit., p. 1452.

The transposition of this principle to the tax matters helps create a fair tax system, characterized by the same regulation of economic facts that express equal ability to pay and from a different discipline for situations which do not exhibit the same wealth (Tesauro, 2009, p. 78).

So, identical or similar taxpayer are treated in, as far as possible, an equal or similar way, by supporting a higher sacrifice for those who demonstrate greater ability to cope with collective expenses, according to reasonably progressive criteria (Commissione Diocesana “Giustizia e Pace”, 2000, p. 6).

Therefore, the principle of progressive improvement models taxes on condition of individual taxpayers, guaranteeing a rational and efficient reallocation of wealth (Turchi, 2010, p. 469).

This allows to ability to pay to be absorbed by the principle of equality, guaranteeing the redistributive wealth, more noble purposes than merely corresponding. The setting has the merit to identify the basis of the tax, initially limited to the fiscal sovereignty of the State, in contribution-related duty, understood as a bond of solidarity, which corresponds the exercise, for the purpose of apportionment, a legislative power of taxation (Gallo, 2009, p. 401).

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