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Italian Supreme Court – Judgement No. 30657 of 20 November 2025

Aggregation of Family Interests in Real Estate Investment Funds for the Purposes of the Transparency Regime

Introduction

By Judgment No. 30657 of 20 November 2025, the Italian Supreme Court provided important clarifications on the transparency taxation regime applicable to real estate investment funds pursuant to Article 32, paragraph 3-*bis*, of Decree-Law No. 78/2010, with specific regard to the aggregation of interests held by family members for the purpose of determining whether the 5% qualified threshold has been exceeded.

Although the case originated from a dispute concerning the transitional regime applicable in 2011, the ruling has broader significance, as it defines the substantive criteria necessary to assess the autonomous attribution of family members' holdings under the current application of paragraph 3-*bis*.

The Court held that the rule whereby interests "attributed" to family members identified under Article 5, paragraph 5, of the Italian Income Tax Act (TUIR) must be taken into account does not operate automatically. Instead, it constitutes a rebuttable legal presumption that taxpayers may overcome by demonstrating the genuine independence of their investment.

I Facts and legislative background

The dispute arose from a request for refund of the substitute tax paid for 2011 pursuant to Article 32, paragraph 4-*bis*, of Decree-Law No. 78/2010, submitted by two taxpayers—father and son—each holding units in real estate investment funds which exceeded the 5% threshold only when aggregated as at 31 December 2010.

The lower courts upheld the taxpayers' position, finding that their different tax residences were sufficient to exclude the existence of a "family unit" relevant for aggregation purposes.

The Supreme Court overturned the judgments and clarified the conditions under which family attribution must be excluded. In reconstructing the legislative framework, the Court emphasised that Decree-Law No. 78/2010:

- distinguishes between institutional and non-institutional investors;
- provides that, for resident non-institutional investors, the fund's income is attributed on a look-through basis where the investor's holding exceeds 5%;
- introduces the aggregation of interests held directly, indirectly or attributed to family members in order to prevent artificial fragmentation of holdings.

The underlying aim of the legislation is to ensure that investment funds which are formally "collective" are not used by a small family group as vehicles for managing private wealth, thereby taking improper advantage of the tax regime applicable to real estate investment funds. This rationale also underpins the current transparency mechanism under paragraph 3-*bis*, the application of which depends on whether family members' holdings must be regarded as unitary or autonomous.

II Rebuttable presumption and burden of proof

The Supreme Court held that the aggregation rule set out in Article 32 of Decree-Law No. 78/2010 constitutes a rebuttable legal presumption. For purposes of verifying the exceeding of the 5% threshold relevant for transparency taxation, the statute requires that account be taken not only of the interests held directly or indirectly by the taxpayer, but also of those "attributed" to the family members listed in Article 5, paragraph 5, TUIR.

The Court clarified that such attribution does not amount to an automatic and rigid rule of aggregation. Rather, it serves to prevent the threshold from being circumvented through the artificial fragmentation of holdings among individuals connected by family ties who, in substance, represent a single economic interest.
The Court further stated that factors such as residence, cohabitation or registration in the same household are neutral and neither trigger nor exclude the presumption.

Accordingly, the mere fact that two family members (e.g. father and son) each hold a 4% interest does not automatically result in exceeding the 5% threshold. Aggregation applies only if the autonomy of each interest is not proven.

To rebut the presumption and avoid transparency taxation, the taxpayer must provide specific and substantive evidence that his/her participation is genuine and autonomous, i.e. not part of a unitary family plan. The Court identified three key indicators:

a) *Source of the investment*
The taxpayer must demonstrate the origin of the financial resources used to acquire the units, proving that such resources derive from and correspond to his/her own economic capacity.

b) *Enjoyment of gains and benefits*
The taxpayer must show that he/she has actually received the income from the investment (distributions, redemptions, management results) and that such proceeds have not been transferred to another family member holding units in the same fund. The Court stressed the importance of tracing the flow of proceeds over time to exclude situations where, despite formal separate ownership, the economic benefits are effectively attributable to a single individual or centre of interest.

c) *Investment management activity*
Although day-to-day management of the fund is entrusted to the asset management company, all decisions concerning the "whether" and the "how" of the investment remain with the investor.

Such decisions include the initial choice to invest, the selection of the fund, the timing of entry, subsequent transactions, the decision to remain invested or exit, and the management of financial relations with intermediaries. Autonomy must be evidenced through concrete elements showing the investor's genuine independence from other family members (e.g. individual initiatives, uncoordinated decisions, different transaction timings, personal economic motivations).

When these indicators —duly supported by evidence— are present, they are sufficient to demonstrate that the holding is genuine and autonomous, thereby rebutting the legal presumption under Article 32 of Decree-Law No. 78/2010.

III Conclusions

Although rendered with reference to the 2011 transitional regime, the Supreme Court's ruling is equally relevant for assessing the current presumption of family attribution and the substantive criteria required to rebut it under Article 32, paragraph 3-*bis*. The judgment therefore provides an authoritative interpretative framework for determining the transparency taxation of non-institutional investors, especially in cases where interests are held within family groups and the 5% threshold may be exceeded solely due to statutory attribution.

Contacts

tax@chiomenti.net