

DISCRIMINATION AND HUMAN RIGHTS: THE CASE OF
THE TAMPON TAX

*DISCRIMINACIÓN Y DERECHOS HUMANOS: EL CASO DEL
IMPUESTO SOBRE LOS TAMPONES*

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Sofia Paola
ALFANO

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ABSTRACT: The Tampon Tax has been for a long period ignored and, while the public opinion is now more active on the topic, it is still mostly unknown to many. Most countries apply a taxation on sanitary products that can range from 5% to 25% circa, which burdens an important part of the population for reasons beyond their control. While some EU Member States managed to tackle the issue quickly and efficiently, Italy has been fighting with the issue for some time, and only recently it has managed to temporarily reduce it to 5%.

KEY WORDS: Tampon tax; European taxation policies; gender discrimination.

RESUMEN: *El Impuesto sobre los Tampones ha sido ignorado durante mucho tiempo y, aunque la opinión pública ahora está más activa en el tema, todavía es en gran medida desconocido para muchos. La mayoría de los países aplican impuestos a los productos sanitarios que pueden variar entre el 5% y el 25%, lo que supone una carga para una parte importante de la población por razones fuera de su control. Mientras que algunos Estados miembros de la UE lograron abordar el problema de manera rápida y eficiente, Italia ha estado luchando con este tema durante algún tiempo y solo recientemente logró reducirlo de forma provisoria al 5%.*

PALABRAS CLAVE: *Tampon Tax; políticas fiscales europeas; discriminación de género.*

SUMMARY.- I. INTRODUCTION.- II. THE TAMPON TAX IN THE EUROPEAN UNION.- III. THE TAMPON TAX IN ITALY.

I. INTRODUCTION.

With the term “Tampon Tax” we mean the Value Added Tax that weights on the products used to deal with menstrual hygiene, such as pads and tampons, but also more ecological alternatives such as the menstrual cup or washable pads. Particularly, it is extremely reprehensible the conception of pads as “luxury” items, a conception common to many countries, which therefore consequently tax these items.

The first country to get rid of the tampon tax was Kenya, in 2004, where the decision was motivated from the high female school dropout rate caused by the inability to safely manage menstruations¹, and Kenya committed itself to allocate the necessary funds to nationally distribute pads.

More recently, other States moved to reduce or eliminate the tampon tax.

In the United States, many States are still working on removing it, with various degrees of success.

This document will focus on how different Member States of the European Union dealt with this taxation with a deeper focus on Italy, but it is important to point out that the United States tackled the issue in a different way. The United States are similar to the European Union for they do not have a unified system to establish the VAT on menstrual products, and therefore the States are free to do as they consider appropriate. We will see that in the European Union, Member States have individually moved to reduce the taxation. In the United States, to reach the same result or to completely eliminate the tampon tax, privates had to conduct class actions and mobilize the public opinion. The consequent legal cases are very useful to illustrate that the tampon tax is discriminatory, for it only weighs on menstruating people, meaning that a part of the population suffers from it for reasons beyond their control.

An important topic that should be at least briefly touched upon is the fact that the elevated cost of pads and tampons leads to the so-called “period poverty”,

1 SAGALA, I.: “Kenya has scrapped the tax on menstrual products, but they are still too expensive for rural women”, July 2019.

which is defined by ActionAid as a global problematic regarding women and girls who do not have access to hygienic and safe sanitary products, and/or are not able to manage with dignity their menstrual cycle.²

In the United Kingdom, according to a study conducted by Plan International UK, 10% of young girls are unable to afford pads, while 15% found it difficult to find the economic resources to buy them. 12% had to use emergency supplies (toilet paper, in the best-case scenario, but also tissues, dirty cloths, or even sheets of paper) instead of pads, indicating their high cost as the reason for doing so.

II. THE TAMPON TAX IN THE EUROPEAN UNION.

The European system foresees different tax categories, following Council Directive number 112 of 2006³, according to which menstrual products had to be taxed at least at 5%.

In 2016, the topic of the tampon tax was firstly explicitly tackled by the European Commission, which proclaimed its effort to allow Member States to eliminate this taxation.

On the 24th of June 2021, the European Parliament approved a non-binding resolution according to which the members of the Parliament urged the removal of the tampon tax, and therefore the possibility to eliminate the threshold of the minimum 5% taxation. Furthermore, the members of the Parliament asked the Member States to tackle the issue of period poverty⁴. This resolution is the first explicit proposal for the complete removal of the VAT on period products. Member States, up until that date, could only propose to reduce it to 5%, according to the Directive in force.

The Directive of 2006 has been modified in April 2022, to allow Member States to completely remove the tampon tax. In fact, the new article 98 specifies that Member States can apply a VAT inferior to 5% to the items indicated in the third attachment, which now finally includes menstrual products.

We can illustrate a brief framework of different European Member States.

2 ALFANO, R., ALFANO, S.P., and OTHERS, "La Agenda 2030 de las Naciones Unidas y los 17 Objetivos de Desarrollo Sostenible (ODS). Análisis de algunas políticas - fiscales y no fiscales – italianas", Los objetivos de desarrollo sostenible: principales desafíos jurídicos (Edited by M. Marcos Cardona y V. Selma Penalva), Dykinson, 2022.

3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

4 European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health (2020/2215(INI), p.13.

In France, a first attempt at bringing the taxation from 20% to 5% dates back to 2016. The amendment to their budget law was initially rejected with the argument that it would have substantially reduced the revenues. However, because of the public outrage following this declaration, the then Prime Minister affirmed that the necessary funds to cushion this reduction were actually available, and the Value Added Tax was reduced to 5%⁵.

Germany is quite an interesting story, mainly because of the escamotage that was used to bring the attention of the public opinion on the topic. A start-up, "The Female Company", started selling the "Tampon book", a book which included many different stories surrounding menstruation, and a pack of pads. Since the pack was part of the book, it was subjected to a 7% taxation, which is how much books are taxed, instead of being subjected to a Value Added Tax of 19%. The initiative was accompanied by an independent online petition, and the effect was the reduction of the taxation to 7% starting in January 2020.

A particular focus should be given to the United Kingdom, at least before Brexit, and to Scotland in particular, and then to the Republic of Ireland.

The United Kingdom has often been very vocal about wanting to be able to completely eliminate the tampon tax, and this topic has been a very important strong point for Brexiters. The reduction of the taxation to 5% dated back to 2001, and ever since 2015 the government had allocated the income coming from the tampon tax to the "Tampon Tax fund", to allow the realization of projects to favour women and young girls living in vulnerable conditions. In 2016 the government had voted to completely remove the taxation, but it was then constrained by the European Directive. With Brexit, the tampon tax has been eliminated starting 2021⁶.

Scotland can be a particular virtuous example, especially when considering the topic of period poverty. Scotland already guaranteed the free distribution of pads in schools and universities, but now, with the passing of the Period Product Free Provision Bill, it has allocated around 9.2 million pounds to allow for the free distribution of pads also through local authorities, charity associations, and sport clubs, among others⁷.

The Republic of Ireland is the only Member State at the time of writing to be completely "tampon tax" free, because of a decision dating back to 2005, and

5 "Tampon Tax: France MPs Back VAT Cut on Sanitary Products", *BBC News*, December 2015.

6 MORALES, C.: "UK Eliminates Tax on Tampons and Other Sanitary Products", *The New York Times*, 2021.

7 TUMIN, R., "Scotland Makes Period Products Free", *The New York Times*, 2022.

therefore before the entry into force of the European Directive, which did not have a retroactive effect.

This however does not mean that the situation is similar everywhere, and so we still have Member States with a very high tampon tax. To name a few, Hungary foresees a 27% taxation on period products, the highest in Europe, while Denmark and Sweden have a 25% taxation.

III. THE TAMPON TAX IN ITALY.

The taxation on pads in Italy was first put into place in 1973, starting at a 12% level and increasing over time up to 22%⁸.

The first proposal to bring the taxation on all menstrual products to 5% dates back to 2016, but at the time it did not even reach the parliamentary debate, because it was not considered as a national priority. The following proposal was in 2020 and it foresaw the reduction of the taxation only to a 10% level, but it was rejected because it was calculated that the cut in income could not be covered by any other means. However, a first reduction was applied to a very specific category of menstrual products: in fact, a taxation of 5% was applied to compostable and biodegradable pads, which are however generally more expensive and more difficult to find⁹. Additionally, not all women can use these kinds of products, and it is therefore possible that it could be demonstrated the discriminatory nature of this reduction in taxation. The reasoning behind this measure was environmental in nature, as it aimed at reducing products that are considered as polluting, but it should be noted that as of now there is an absence of relevant studies in this regard from the academic community.

As of its budget law for 2023, the new Government has lowered the Tampon Tax for all menstrual products to 5%, but the initiative is set to last only for one year at the moment.¹⁰

Three important initiatives will now be illustrated.

The first one was conducted in 2021 by Coop Italia which, during the week of Women's Day, cut the taxation to 4% and sold pads in a specific informative packaging. While this initiative only lasted a few days, it had a great resonance

8 TESTA, G.: "Perchè la tampon tax è un'imposta ingiusta", *Internazionale*, December, 2019.

9 "Il governo abbasserà le tasse sugli assorbenti (ma solo su quelli biodegradabili)", *Il Post*, November 2019.

10 "Il governo ha ulteriormente ridotto l'IVA sugli assorbenti", *Il Post*, November 2022.

because of the dimension and diffusion of Coop Italia through the national territory¹¹.

The second initiative comes from Lloyds Farmacia, which completely eliminated the taxation up until the end of December 2021. The decision was motivated by the idea that menstrual products should not be considered as luxury items and the hope that the initiative could have a national impact. The initiative was replicated in 2022 because of its success.

The third and most important initiative was the one conducted by some local administrations which passed specific motions to allow council-run pharmacies to sell pads without taxation. Even more, sometimes they allowed for the selling of pads at lower prices, with the difference paid by the individual administrations. This initiative was extremely important when considering the national framework at the time, but it does bring up some criticisms.

The first problem is represented by the fact that it created a lack of homogeneity on the national territory regarding some products that are necessarily used by a consistent portion of the population.

The second issue arises from the temporary nature of these initiatives, since these motions all had a date after which the national taxation would be once again applied.

The third, and probably most important problem, is represented by the inadequate results it could achieve. Council-run pharmacies, and pharmacies in general, often don't sell a wide variety of pads and tampons, and they are often more expensive than in supermarkets or other stores.

The road to the complete elimination of this taxation is still probably a long one, especially because the reduction to 5%, even if only for one year, is seen as enough. However, it is not.

The tampon tax must be considered discriminatory, for it weighs only on a portion of the population for reasons beyond their control, and it derives from a patriarchal system that does not understand what a period is and how it can be safely managed.

There is therefore the need to understand that such items cannot be considered as "luxury" items but as essential tools to safely deal with a completely natural body function.

¹¹ "Manovra: Coop, obiettivo resta calo della "tampon tax" al 4%", *Ansa*, November, 2022.

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