

## Reshoring Tax Incentive

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## 1. Foreword

With Art. 6 of the Legislative Decree no. 209 of 27 December 2023, Italy has implemented a favourable regime aimed at encouraging the reshoring in Italy of economic activities carried out in foreign Countries, other than EU and EEA Countries.

The above mentioned rule isn't, however, effective yet as it is subject to the authorization procedure provided for by Art. 108(3) of the [TFUE](#) for [State aid](#) purposes.

## 2. The transfer of economics ac- tivities to Italy

The regime favors the transfer to Italy of certain economic activities. Nonetheless, the law provision does not specify nor list which are the transactions that may lead to the transfer of an economic activity to Italy.

As a general rule, based on the wording and on the rationale underlying the new law provision, regardless to the legal structure or transaction used to transfer an economic activity to Italy, what is relevant is that a real economic activity is moved to Italy. This should lead to deny the benefit of the regime in all the instances in which, despite to the transaction, no new economic activity is found to physically exist in Italy.

### 2.1 “Direct” transfer of the economic activity to Italy

The most simple and immediate way to transfer an economic activity to Italy is to actually transfer a company or a [permanent establishment](#) to Italy.

However, for the reasons highlighted in the premises above, with respect to companies, it seems that the mere transfer of the legal seat to Italy while maintaining the real operations abroad should not qualify for the regime.

### 2.2 “Indirect” “transfer of the economic activity to Italy

The transfer of an economic activity may also occur through the execution of other kind of transactions.

For instance, the transfer may occur through the contribution of a non-EU nor EEA permanent establishment to an Italian existing or newly created company. However, in the first case, the regime should only apply with respect to the income derived by the existing Italian company through the assets of the permanent establishment contributed to it.

Another kind of transaction that might trigger the application of the regime is the merger of a non-EU or EEA company into Italian company. In similar cases, the regime will should apply only to the extent that the merger also causes the actual transfer of an activity to Italy.

## 3. The tax advantages arising from the transfer

When an economic activity is transferred from a non-EU and non EEA Country to Italy, where all the conditions provided for by Art. 6 of the [Legislative Decree](#) are met, certain tax benefits apply to the business which is transferred.

### 3.1 Activities that may benefit from the new rule

The law provision merely refers to “economic activities” (including both the ones producing business income and the ones producing self-employment income) and this broad wording seems to include any going concern already existing abroad which is physically transferred to Italy. On the contrary, the mere transfer of assets (either tangible or intangible) does not seem to fall within the scope of the rule.

Finally, it is doubtful where the new provision should also cover the transfer to Italy of entities merely deriving passive income (e.g. passive holding companies).

In addition, it the new rule only covers activities that:

- originated abroad at any time; or
- were transferred abroad from Italy at least 24 months before being transferred back to Italy.

As a consequence, new activities that are started in Italy by investors located in non-EU nor EEA Countries should not fall within the scope of the rule under analysis.

### 3.2 Main benefits of reshoring

The tax incentives related to the reshoring of economic activities consists of a 50% reduction of the taxable income produced in Italy for both [IRES](#) and [IRAP](#) purposes.

This benefit applies for six years following the transfer of the economic activity to Italy i.e., for the tax period of reshoring and for the following five fiscal years.

It is not clear, however, how and if the benefit should apply where the economic activities transferred to Italy register a loss for the purposes of the corporation tax.

### 3.3 The tax basis in the assets transferred to Italy

The Legislative Decree here under analysis does not provide for any specific rule in order to determine the tax basis in the assets transferred to Italy.

Nonetheless, Italian tax law already contains a general rule to determine the value of assets that are transferred to the Italian territory in transactions similar to the ones described under § 2 above, i.e. 166-bis of the [TUIR](#).

The above-mentioned rule states that the tax basis in the assets transferred is equal to their fair market value if:

- the assets were previously located in a white-list Country pursuant to the Ministerial Decree dated 4 September 1996; or
- if the assets were located in Country not listed in the Ministerial Decree mentioned in the point above, a specific ruling procedure is carried out.

If none of the conditions above is met, the value of the assets for tax purposes is equal to the lower of:

- its purchase price;
- its book value;
- its fair market value.

Determining the correct value of the assets transferred to Italy is relevant in order to determine the income which might benefit from the new regime. For instance, if such assets are depreciable, the tax depreciation will reduce the relevant income that benefits of the regime.

### 3.4 Administrative fulfilments

In order for a transferred economic activity to benefit for the reshoring rule, the taxpayer must keep separate accounting records suitable for verifying the correct determination of reduction for IRES and IRAP purposes.

However, the law provision does not clarify the features such separate accounting shall meet.

### 3.5 Recapture mechanism

If within the 5 fiscal years following the end of regime, the beneficiary transfers the economic activities out of the territory of the State, even partially, the [Italian Tax Authorities](#) must claim back the tax savings enjoyed by the taxpayer together with the related interest (the provision does not require any penalties to be applied in this case).

If beneficiary is a “large enterprise” (identified in accordance with Commission Recommendation 2003/361/EC of May 6, 2003), the recapture period is extended to 10 fiscal years following the expiration of the regime. In this regard, “large enterprises” are those that, for two consecutive fiscal years, simultaneously have more than 250 employees and annual sales of more than 50 million euros or an annual balance sheet total of more than 43 million euros. Therefore, the economic activities

transferred have to remain in the Italian territory for 11 fiscal years (16 fiscal years, in the case of “large enterprises”).

### 3.6 Entry into force

The reshoring regime has entered into force from the fiscal year following the one in which the Legislative Decree was published; hence, for taxpayer having a fiscal year in line with the calendar year the provision has entered into force from 2024 onwards.

However, the provision is not effective yet. Indeed, its effectiveness has been suspended pending the authorization procedure of the [European Commission](#), according to the special rules for State aid in Article 108(3) of the TFEU.

RESHORING TAX INCENTIVE	
Main features	
<b>Eligible activities</b>	<p><b>Economic activities</b> transferred to Italy from which:</p> <ul style="list-style-type: none"> <li>• <b>business income</b>; or</li> <li>• <b>self-employment income</b></li> </ul> <p>is derived.</p>
<b>Tax benefit</b>	<p><b>50% reduction</b> of the:</p> <ul style="list-style-type: none"> <li>• <b>IRES</b>; and</li> <li>• <b>IRAP</b></li> </ul> <p>taxable basis.</p>
<b>Duration of the regime</b>	The benefit of the regime lasts for <b>six fiscal years</b> .
<b>Recapture</b>	The tax benefit is withdrawn if the <b>economic activities are transferred abroad before the elapse of the fifth fiscal year following the expiration of the regime</b> .

## 4. Glossary

### European Commission

The European Commission is the EU's politically independent executive body. It is responsible for drafting and proposing new European legislation. In addition, the Commission implements the decisions of the European Parliament and the Council of the EU.

### Legislative Decree

It is a decree adopted by government through an express and formal delegation given by Italian parliament. It has the same constitutional value as a law or a law decree.

### IRES

Italian Corporate Tax (IRES) with a 24% flat rate, reduced to 12% for some no-profit organisations and increased to 27.5% for banks and other financial institutions.

### IRAP

Regional tax on productive activities levied on companies at 3.9% rate (which may vary depending on several factors).

### Italian Tax Authorities

Agency, under control of the Ministry of Finance, which performs all the functions and tasks assigned by the law in the field of tax revenue and tax duties.

### Permanent establishment

In international tax law, it defines the threshold for a presence of foreign enterprise to be taxable in another State. The domestic definition is provided under Art. 162 of the TUIR. This definition is substantially consistent with Art. 5 of the OECD Model Tax Convention.

### State aid

The term indicates advantages conferred by national public authorities, in any possible form, to undertakings and granted on a selective basis. The discipline is contained in Art. 107(1) of the TFEU.

### TFEU (Treaty on the Functioning of the European Union)

The Treaty on the Functioning of the European Union (TFEU), as a result of the Lisbon Treaty, was developed from the Treaty establishing the European Community (TEC or EC Treaty). Together with the Treaty on European Union, the TFEU represents the constitutional basis of the European Union.

### TUIR

Italian Income Tax Code, enacted through Presidential Decree no. 917/86.