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### DIRECT TAXES

#### TAX INCENTIVE *IRES PREMIALE 2025*

Article 6 (1.a) of the Italian tax delegation law 111/2023 sets forth a reduction of the corporate tax (IRES) rate if an amount equal (in whole or in part) to the income is destined to significant investments, new hirings and employee profit sharing programmes.

The implementation of the tax delegation law is still pending. Therefore, **in the tax period following the one ending on 31 December 2024 only** (i.e. in 2025 if the business year coincides with the calendar year), the corporation tax (IRES) rate is reduced by 4 percentage points (from 24 percent to 20 percent) if certain requirements (article 1 (436-444) law 207/2024) are met.

The conditions and procedures for the application of the *IRES premiale* tax incentive were set forth by a decree of the Italian Ministry of Economics and Finance issued on 8 August 2025, as outlined in more detail below.

#### *Subjective requirement*

From a subjective viewpoint, the incentive applies to all IRES taxpayers that carry out a trade activity: corporations (including financial intermediaries that apply a corporation tax rate with a 3.5 percent surcharge pursuant to article 1 (65) of the Italian law 208/2015), public and private entities, permanent establishments in Italy of foreign companies.

However, companies that in 2025 make use of liquidation procedures (i.e. voluntary or judicial liquidation, arrangements with creditors, etc.) or that determine income on a flat rate basis as well as companies that in 2024 adopted simplified accounting schemes are excluded.

#### *Objective requirement*

From an objective viewpoint, the incentive is subject to the condition that:

- a portion of no less of 80 percent of the profit of the business year ending 31 December 2024 ("**2024 profit**") is allocated to reserves;
- an amount of no less than 30 percent of the 2024 profit is allocated to reserves - and in any case an amount of no less than 24 percent of the profit of the business year ending 31 December 2023 ("**2023 profit**") - is used for significant investments.

As to the **2024 profit**, please note that:

- the profit intended for purposes other than distribution to shareholders is deemed allocated to a special reserve: therefore, for the purpose of the incentive, the 2024 profit may be allocated to loss coverage, share capital, legal or statutory reserves, carried forward etc.; for entities required to prepare financial statements in accordance with the template approved by the Bank of Italy, the reserves recorded under item 110 "valuation reserves" of said template may also be considered;
- however, if a portion of the 2024 profit exceeding 20 percent is distributed to shareholders, the incentive does not apply;
- if no profits are earned, the incentive does not apply.

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As to the **2023 profit**, please note that:

- the profit may be distributed (indeed, it is used as a further parameter only to determine an additional minimum amount of eligible investments);
- the incentive applies, even if no profits are earned or if a loss is recorded in the business year.

### Significant investments

The incentive applies provided that **significant investments** in new operating assets under the so-called “Transition 4.0 and 5.0” programmes are made, and more specifically:

- tangible assets pursuant to the «Industry 4.0» model (annex A to the Italian law 232/2016) and intangible assets (software, systems and system integration, platforms and applications) relating to investments in «Industry 4.0» tangible assets (annex B to law 232/2016);
- assets pursuant to article 38 (4) (second sentence) and (5) of the Italian law-decree 19/2024, if purchased within the framework of innovation projects aimed at achieving a reduction of energy consumption: they include assets assimilated to intangibles (annex B to the Italian law 232/2016), as well as new tangible assets that are instrumental to business operations aimed at self-producing energy from renewable resources for self-consumption.

Moreover, depending on the type of investments made, the assets must also meet the requirements set forth for the respective tax credits, such as interconnection or energy consumption reduction.

The minimum amount of significant investments required to be eligible for the incentive is determined as the greater of the following amounts:

- 30 percent of the 2024 profit allocated to reserves;
- 24 percent of the 2023 profit;
- EUR 20,000.

In terms of timing, the investments must be made **as of 1 January 2025** and by the ordinary deadline for filing tax returns for the tax period following the one ending on 31 December 2024: hence, for taxpayers whose business year coincides with the calendar year, **by 31 October 2026**.

### Workforce

Moreover, for the purpose of the incentive, in 2025

- the number of annual work units must not be lower than the average number of the previous three-year-period, and
- new permanent employees must be hired to achieve an increase in employment pursuant to article 4 of the Italian legislative decree 216/2023, equal to at least 1 percent of the number of permanent employees on average employed in 2024 and, in any case, to a least one employee with a permanent contract.

The company must not have made use of wage supplementation schemes (*cassa integrazione guadagni*) in 2024 and 2025, save for ordinary wage support (*integrazione salariale ordinaria*) pursuant to article 11 (1a) of the Italian legislative decree 148/2015.

### Grounds for forfeiture

Beneficiaries forfeit the tax incentive in the following cases:

- if the portion of the 2024 profit allocated to reserves, net of the one used to cover losses, if any, is distributed by 2026;
- if the assets subject to significant investments are sold, transferred to third parties, used for purposes unrelated to business operations or permanently allocated to production facilities abroad, even if owned by the same taxpayer, within the fifth tax period following the one in which the investment was made; however, if the assets are replaced, the incentive is not forfeited.

### Cumulative application with other tax incentives

This investment incentive (*IRES premiale*) may be combined with other tax incentives for the same eligible costs but is limited to the portion of costs actually borne by the company for the significant investments.

### TAX MONITORING OBLIGATIONS

To fill out the RW field of the income tax return of individuals, the shares held in foreign non-real estate undertakings for collective investments in transferable securities (UCITS):

- not traded on regulated markets,
- which have no nominal or redemption value,

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must be valued at their purchase cost (Italian tax authority, answer to request for consultation 11 of 7 August 2025).

### CAPITAL GAIN FROM THE SALE OF FOREIGN EQUITY HOLDINGS WITH REAL ESTATE IN ITALY

Capital gains earned by US residents after the sale of equity holdings in a foreign company whose assets consist wholly or mainly of properties located in Italy are subject to taxation also in Italy (article 23 (1-bis) of the Italian tax code and Protocol to the Convention for the Avoidance of Double Taxation Italy-USA).

In this regard, it is irrelevant that the properties have been held for more than 5 years and that, therefore, in case of direct sale they would not have given rise to any taxable capital gain in Italy (Italian tax authority, answer to request for advance ruling 175 of 4 July 2025).

### DIVIDEND WAIVER: LEGAL COLLECTION

The resolution on dividend distribution gives rise to the shareholders' right to receive the distributed dividends. In the event of a subsequent waiver

- by shareholders (individuals) the dividends are deemed legally collected and, therefore, must be subjected to a withholding tax of 26 percent pursuant to article 27 of the Italian DPR 600/1973;
- by the company that resolved upon the distribution, no taxable income arises pursuant to article 88 (4-bis) of the Italian tax code (TUIR) (Italian tax authority, answer to request for advance ruling 182 of 8 July 2025).

On the other hand, however, the Italian Supreme Court confirms its position, according to which the concept of legal collection has no basis as to the new regulation under to article 88 (4-bis) of the Italian tax code (TUIR) currently in force (Italian Supreme Court 19700 of 16 July 2025).

### BLACKLIST DIVIDENDS

Dividends are not deemed to originate from countries with a privileged tax scheme pursuant to article 47-bis of the Italian tax code (TUIR) if the test on the actual tax level is passed:

- both in the year of profit accrual
- and in the year of profit distribution.

If the test is not passed, dividends are subject to taxation for the entire amount (instead of up to 5 percent only), unless the second exemption reason pursuant to article 47-bis of the Italian tax code (TUIR) applies – or it is proved that <<the shareholdings do not cause income to be located to countries or territories with privileged tax schemes>> - for the purposes of which the withholding tax on dividends levied by the foreign state is also considered (Italian tax authority, answer to request for advance ruling 191 of 21 July 2025).

### APPLICATION OF DOUBLE TAXATION AGREEMENT TO A TRANSPARENT TRUST

Participants in funds that invest in Italy may benefit from the DTA entered into by and between their country of residence provided that the funds' profits are allocated to them to be subjected to tax in their country of residence. This condition is met

- if the country of residence qualifies the fund as fiscally transparent and taxes the profits allocated to the participants, regardless of whether they are actually received (so-called "tax transparency"),
- and if the fund is a mere vehicle through which income is streamed to the participants, to whom dividends are distributed at least annually due to statutory constraints and who subject them to taxation in their countries of residence (so-called "economic transparency") (Italian tax authority, answer to request for advance ruling 194 of 25 July 2025).

### REVALUATION OF BUSINESS ASSETS

In no case the values recorded in the financial statements must exceed the values attributed to the assets based on

- the market value, determined on the basis of the quotations recorded in regulated markets,
- the internal value, determined on the basis of the assets' substance, production capacity and actual economic possibility of their use in the company (Italian Supreme Court, tax section, 17813 of 1 July 2025).

### DISMANTLING AND RESTORATION COSTS

To implement article 4 (7-quinquies) of the Italian legislative decree 38/2025, coordination provisions were introduced for IRES and IRAP purposes, which refer to the new OIC 34 "Revenues" accounting standard and to the amendments to the Italian accounting standards OIC 16 and OIC 31

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required in the light of the newly established dismantling and restoration obligations (Ministerial Decree of 27 June 2025).

### NON-EXISTENT AND NON-DUE TAX CREDITS

The Italian Ministry of Economics and Finance (MEF) provides clarifications on how to distinguish between non-existent and non-due tax credits (MEF guidelines of 1 July 2025).

### VAT

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#### VAT REIMBURSEMENT

An application for VAT refund made by an individual in his or her capacity as fiscal representative of the incorporated company and not of the incorporating company does not preclude the right to VAT refund, since on the one hand the incorporating company takes over all rights and obligations of the incorporated company and on the other hand this type of irregularity is not sufficient to deprive the taxpayer of the right to obtain a VAT refund (Italian Supreme Court, tax section, 15026 of 4 June 2025).

#### WORKS OF ART

The application of a 5 percent VAT rate on all sales of works of art, antiques or collectibles, previously set forth at 10 percent, is established under the "Omnibus Decree". The reduced VAT rate is no longer limited to imports only or to sales made directly by the authors of the works or their heirs and legatees (Italian law-decree 95 of 30 June 2025).

#### DEDUCTION OF VAT

VAT paid on purchases related to a planned and not carried out business activity, involving the execution of exempt transactions, is not deductible (Italian Supreme Court, tax section, 15638 of 12 June 2025).

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Yours sincerely,

HAGER & PARTNERS

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