



International Tax

## Italy Tax Alert

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### One-time IRES refund opportunity available for companies

#### Contacts

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Italian companies and branches of foreign companies have a limited window of opportunity to obtain a refund of prior corporate income tax (IRES) overpaid because they were not allowed to deduct a certain portion of their liability for the regional tax on productive activities (IRAP) for IRES purposes. The portion concerned is that attributable to such corporations' personnel costs.

On 17 December 2012, the Italian tax authorities issued the relevant form that must be filed electronically for a taxpayer to claim a refund of the IRES overpaid by an Italian company during the past four fiscal years (2007-2011 for calendar year taxpayers) corresponding to the portion of IRAP paid on personnel costs and not deducted for IRES purposes.

The authorities also issued the deadlines for filing the refund claims, which will depend on the specific region/city where the company is located. *The special one-time refund claim must be filed within 60 days from the initial filing date.* The initial filing dates run from 18 January 2013 to 15 March 2013, so the filing window will expire between 19 March 2013 and 15 May 2013.

Depending on the Italian company's specific tax position in each relevant tax year, the claim could result in an actual cash refund (if the company was in a tax-paying position for IRES purposes) or an additional NOL available for carryforward (if the company was in a loss position).

The ability to make the refund claim arises from a decree issued by the government in April 2012. The decree allows taxpayers to file a claim with the Italian tax authorities to recover the IRES overpaid in the past four fiscal years (2007-2011 for calendar year taxpayers) corresponding to the portion of IRAP paid with regard to personnel costs and not deducted for IRES purposes. As from fiscal year 2012 (the FY as of 31 December 2012), the portion of IRAP attributable to personnel costs is fully deductible from the IRES base.

Payments arising from the refund claims will be made first with respect to the earliest years (2007 and 2008), up to an overall maximum amount of funds available at the national level. If the amount available at the national level is insufficient to meet all the payments required, companies that have not received refunds could be reimbursed upon further refinancing of the available amount.

## Calculating the refund amount

Calculation of the eligible IRES refund claim will require a detailed analysis of the personnel costs incurred during the past four years, as well as a calculation of the IRAP taxable base and IRAP paid. Making such calculations may be time-consuming, depending on the company's specific facts and circumstances (e.g. in the case of tax group regime, extraordinary transactions, expatriate employees, etc.).

The following calculation example is based on a simple situation:

IRAP paid	390	
IRAP taxable base	10,000	
Nondeducted personnel costs	250	
<i>% personnel costs on IRAP taxable base</i>	<i>2.5%</i>	
IRAP paid on personnel costs	10	<i>(390 x 2.5%)</i>
IRES taxable base	1,000	
IRES paid (27.5%)	275	
IRES recalculated with "new" IRAP deduction	272	<i>(1,000-10) x 27.5%</i>
<b>IRES refund</b>	<b>3</b>	

Very generally speaking, the amount of the refund should correspond to approximately 0.8% to 1% of the personnel costs shown in the Italian financial statements for the relevant years (since the average IRAP rate is 3.9% and the IRES rate is generally 27.5%).

## Action steps

As noted above, the special one-time refund claim must be filed electronically within 60 days from the initial filing date provided for the relevant company's domicile, so affected companies need to act immediately to take advantage of a potential refund of IRES.

Under Italian GAAP, the tax benefit should be booked in the 2012 financial statement; specific advice should be sought to determine the relevant period in other countries.

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