

Extraordinary enfranchisement of tax-suspension reserves (Article 14 of Legislative Decree No. 192 of 13.12.2024) - Implementing Decree

1 FOREWORD

Article 14 of Legislative Decree No. 192 of 13.12.2024 introduced the possibility of freeing revaluation surpluses, reserves and funds, in suspension of taxation, through the payment of a substitute tax on income tax and IRAP at the rate of 10%.

With the Ministerial Decree of 27.6.2025, the implementing provisions of the aforementioned extraordinary franking rules were established.

Reserves (and funds) in suspense for tax purposes, i.e., those reserves in respect of which, upon the occurrence of a certain event, the company is required to pay tax, may be franked. In other words, these are reserves formed from untaxed profits, which must contribute to the formation of the company's income when distributed.

formation of the company's income when distributed, or used to cover losses or, in other cases, depending on depending on what the rule under which the reserves were entered provides for.

Following franking, the reserves and funds are no longer in tax suspension and may be distributed to shareholders, or used for other purposes, without further taxation.

2 PARTIES CONCERNED

Both IRES and IRPEF subjects (sole proprietorships, partnerships and persons treated as such) may franking, the latter provided they are in ordinary accounting.

IRES subjects under the transparency regime by option pursuant to Articles 115 or 116 of the TUIR and non-resident subjects with a permanent establishment in the territory of the State may also frank the reserves.

For all persons under the transparency regime, the franking of the reserves entails the allocation of the franked amount to the shareholders, so that the subsequent distribution does not have any substantial effects (resulting in the reduction of the fiscally recognised cost of the shareholding, previously increased due to the allocation for transparency).

3 SCOPE OF APPLICATION OF FRANKING

Franking is an option of the taxpayer, not an obligation, and may relate to all tax-suspended reserves and funds in the balance sheet, even if charged to capital stock.

They are not frankable:

- reserves recorded as a counter-entry to the revaluation of business assets carried out for civil law purposes only;
- the reserves generated in application of non-accounting deductions pursuant to the 'old' Article 109, paragraph 4, letter b) of the Consolidated Law on Income Tax;
- the reserves of cooperatives recorded on the basis of Article 2545-ter of the Italian Civil Code (so-called 'indivisible reserves');
- reserves formed in connection with contributions made pursuant to Article 4 of Legislative Decree No. 358/97 (double tax-suspension contributions);
- tax-suspension reserves, the creation of which is related to taxes other than income tax and IRAP (e.g. reserves formed with the so-called 'extra-profits' of banking institutions, the distribution of which is subject to extraordinary tax pursuant to Article 26 of Legislative Decree 104/2023).

Franking does not necessarily have to affect all tax-suspension reserves in the balance sheet. Moreover, reserves may also be franked to a partial extent.

4 FRANKING AMOUNT

The frankable amount is the amount shown in the balance sheet for the financial year current on 31.12.2024 (2024 balance sheet for entities whose financial year coincides with the calendar year). It is necessary, however, that the reserves in

It is necessary, however, that the tax-suspension reserves to be freed were already present in the financial statements of the financial year current on 31.12.2023 (2023 financial statements for entities whose financial year coincides with the calendar year).

If a tax-suspension reserve has changed between the two financial years identified above, the tax-franchable amount is the lesser of the amount for the financial year current on 31.12.2023 or the amount for the financial year current on 31.12.2024.

Distributions made pursuant to resolutions dated prior to the commencement date of the financial year following the financial year ending 31.12.2024 shall be taken into account in determining the franked amount. For the purposes of determining the franchable amount, distributions made on the basis of resolutions made before the beginning of the financial year following the financial year ending 31 December 2024 shall be taken into account.

Let us assume that a company has a tax-suspension reserve in the amount of €100,000 in the balance sheet of the current year ending 31.12.2023:

- if during the current financial year as at 31.12.2024 a distribution to the shareholders - from the reserve - of the amount of EUR 60,000 is resolved and executed, the taxable amount is EUR 40,000;
- if a distribution to the shareholders - from the reserve - of the amount of €60,000 is approved but not executed during the financial year current on 31.12.2024, the frankable amount is €40,000;
- if a distribution to the shareholders - from the reserve - of the amount of EUR 60,000 is resolved and carried out during the financial year current on 31.12.2025, the frankable amount is EUR 100,000.

5 SPECIAL CASES

In the event of a change from ordinary accounting to simplified accounting, the reserves are included in the taxable income in the first year of application of the simplified accounting regime. If this financial year is the first following the current one as at 31.12.2024 (2025 for entities whose financial year coincides with the calendar year), it is possible to frank the reserves subject to tax suspension, provided the requirements of the law are met (in particular, their existence in the financial statements of the current financial year as at 31.12.2023).

In the case of a company transformation, the franking may be carried out by the company resulting from the transformation; any distribution of the franked reserve to the shareholders follows the fiscal regime of the profits of the company resulting from the transformation (if this is a partnership, the reserve is deemed to be imputed to the shareholders for transparency purposes, and no tax is due at the time of distribution).

6 DECLARATION OF SUBSTITUTE TAX

The 10% substitute tax must be reported in the tax return for the tax period ending 31.12.2024 (REDDITI 2025 form, to be filed by 31.10.2025 for persons whose tax period coincides with the calendar year).

With the indication in the declaration, the option for redemption shall be deemed to be finalised, regardless of any late, omitted or insufficient payment of the tax.

7 PAYMENT OF SUBSTITUTE TAX

The payment of the 10% substitute tax must mandatorily be made in 4 equal annual instalments, without interest.

Terms

The deadline for the payment of the first instalment is that relating to the payment of the balance of income tax for the tax period in progress as at 31.12.2024 (tax period 2024, for 'so-lari' persons); the subsequent instalments must be paid within the terms established for the payment of the balance of income tax for the following tax periods.

It is possible to pay the substitute tax with a 30-day deferral, applying the 0.4% surcharge pursuant to Article 17(2) of Presidential Decree 435/2001.

For example, considering a joint-stock company with a financial year coinciding with the calendar year that has approved the 2024 financial statements by 31.5.2025, the terms for the payment of the first instalment of the substitute tax are set forth:

- on 30.6.2025, or on 21.7.2025 if they benefit from the extension pursuant to Article 13 of Law Decree 84/2025, without the 0.4% increase;

- or to 30.7.2025, or to 20.8.2025 if benefiting from the extension pursuant to Article 13 of DL 84/2025, with the 0,4% surcharge.

Tax code

For the payment of the substitute tax in question, with Res. Agenzia delle Entrate 4.6.2025 no. 35 established the tax code '1867', called '*Imposta sostitutiva delle imposte sui redditi e dell'imposta regionale sulle attività produttive derivante dall'affrancamento straordinario delle ri-serve - articolo 14 del decreto legislativo 13 dicembre 2024, n. 192*'.

For the purposes of completing the F24 form:

- the aforesaid tax code must be indicated in the 'Treasury' section, in correspondence with the amounts indicated in the column 'amounts payable';
- In the field 'Reference Year', the tax year for which the payment is made must be indicated, in the format 'YYYY'.

Compensation

The amount of substitute tax to be paid may be offset in the F24 form against available credits, pursuant to Article 17 of Legislative Decree 241/97.

Repayment

The amount of substitute tax not paid by the due date may be subject to automatic repayment, pursuant to Article 13 of Legislative Decree No. 472/97.