



UNIVERSITÀ DEGLI STUDI DI PADOVA
DIPARTIMENTO DI SCIENZE ECONOMICHE ED AZIENDALI
“M.FANNO”

CORSO DI LAUREA MAGISTRALE IN
ACCOUNTING FINANCE AND BUSINESS CONSULTING

TESI DI LAUREA
TAX INCENTIVE REGIMES FOR THE RESHORING OF ECONOMIC
ACTIVITIES TO ITALY: CONSTITUTIONAL AND EU LAW ISSUES

RELATORE:

CH.MO/A PROF: MARCELLO POGGIOLI

LAUREANDO: GIRALDI RUBEN

MATRICOLA N. 2124243

ANNO ACCADEMICO
2025/26

Dichiaro in conformità con le linee guida di Ateneo “Linee guida per l’impiego degli strumenti di IA generativa nella didattica e nella redazione delle tesi di laurea e di dottorato” (https://www.unipd.it/sites/unipd.it/files/2025/LineeGuidaImpiegoAI_Unipd_ITA_rev20251128.pdf) di:

- di aver usufruito di tecnologie di intelligenza artificiale generativa (ad esempio ChatGPT, Claude, Perplexity, Copilot) per:
 - Revisione della letteratura: utilizzo per identificare articoli scientifici pertinenti, generare stringhe di ricerca e organizzare la bibliografia. Tutti i riferimenti sono stati successivamente verificati attraverso database accademici tradizionali (WoS, Scopus, PubMed, Google Scholar).
 - Strutturazione del lavoro: supporto nella definizione della struttura iniziale del lavoro e nell'organizzazione dello stesso.
 - Traduzione: assistenza nella traduzione di testi per consultazione di fonti in lingua straniera.

Il/La sottoscritto/a dichiara inoltre che:

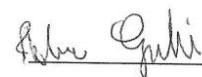
L'utilizzo degli strumenti di intelligenza artificiale è stato coadiuvante e non sostitutivo delle proprie competenze;

Tutto il ragionamento critico, l'interpretazione dei risultati, le conclusioni e le argomentazioni presenti nella tesi sono frutto del proprio lavoro intellettuale indipendente;

Tutti i contenuti generati dall'intelligenza artificiale sono stati attentamente verificati, rivisti e rielaborati;

Si assume la piena responsabilità per la qualità, l'accuratezza e l'integrità scientifica del lavoro presentato.

Firma



I hereby declare, in accordance with the University Guidelines “Guidelines for the Use of Generative AI Tools in Teaching and in the Drafting of Bachelor’s and Doctoral Theses” (https://www.unipd.it/sites/unipd.it/files/2025/LineeGuidaImpiegoAI_Unipd_ITA_rev20251128.pdf), that:

- I have made use of generative artificial intelligence technologies (e.g., ChatGPT, Claude, Perplexity, Copilot) for the following purposes:
 - Literature review: use to identify relevant scientific articles, generate search strings, and organize the bibliography. All references were subsequently verified through traditional academic databases (WoS, Scopus, PubMed, Google Scholar).
 - Structuring of the work: support in defining the initial structure of the thesis and in organizing its contents.
 - Translation: assistance in translating texts for consultation of sources in foreign languages.

The undersigned further declares that:

The use of artificial intelligence tools was supportive and not a substitute for their own skills and competencies;

All critical reasoning, interpretation of results, conclusions, and arguments presented in the thesis are the result of their own independent intellectual work;

All content generated by artificial intelligence was carefully verified, reviewed, and reworked; Full responsibility is assumed for the quality, accuracy, and scientific integrity of the work presented.

Signature

A handwritten signature in black ink, appearing to be 'W. G. G.', written over a horizontal line.

Table of contents

INTRODUCTION	5
CHAPTER 1: THE ITALIAN TAX SYSTEM: STRUCTURE, CRITICAL ISSUES AND THE ROLE OF TAX INCENTIVES.....	7
1.1 General introduction to the Italian Tax System	7
1.2 Historical evolution of the Italian Tax Framework	10
1.3 Main taxes in the Italian Tax System	17
1.4 Tax pressure in Italy: critical issues and European comparison	19
1.5 Tax Incentive Regimes as a response to structural weaknesses	22
 CHAPTER 2: TAX INCENTIVE REGIMES FOR THE RESHORING OF ECONOMIC ACTIVITIES TO ITALY	 25
2.1 Concept of reshoring.....	25
2.2 The Italian Legal Framework: from the Tax Delegation Law to Legislative Decree No. 209/2023.....	27
2.3 Article 6 of Legislative Decree No. 209/2023: structure, scope and requirements	30
2.4 The 50% exemption mechanism and its tax effects	35
2.5 Anti-abuse rules and recapture mechanisms.....	37
2.6 Comparison with other Italian Tax Incentives	40
2.7 Preliminary assessment.....	42
 CHAPTER 3: CONSTITUTIONAL AND EU LAW ISSUES OF THE ITALIAN RESHORING REGIME	 47
3.1 Introduction: the dual legal challenge.....	47
3.2 Constitutional dimension	49
3.3 EU-law dimension	53
3.4 The interaction between the constitutional and EU-law dimensions.....	59
 CHAPTER 4: A COMPARATIVE PERSPECTIVE: THE US INFLATION REDUCTION ACT	 63
4.1 Background: US industrial policy and the reshoring imperative	63
4.2 The structure of the IRA fiscal incentives	65
4.3 The EU response and its implications for Italy.....	69
4.4 Italy vs USA: a comparative assessment	73
4.5 Lessons and de iure condendo proposals	78
CONCLUSIONS.....	81
BIBLIOGRAPHY.....	84

INTRODUCTION

The paper aims to analyse Article 6 of Legislative Decree No. 209/2023, introduced in Italy in December 2023. It concerns a favourable tax regime aimed at companies that transfer activities previously carried out in countries outside the European Union or the European Economic Area to Italy, with the purpose of promoting the reshoring of economic activities. The regulation provides for a 50% tax exemption over six tax periods. However, the effectiveness of the regime is conditional upon prior authorisation from the European Commission in accordance with state aid rules. Reshoring has ceased to be a niche corporate strategy and has become a central tool of industrial policy, initially in the United States with the Inflation Reduction Act and subsequently at European level with the Net-Zero Industry Act.

The central question that this thesis aims to address is: *“Is this fiscal regime aimed at incentivising the reshoring of economic activities compatible with the constitutional principles governing the Italian tax system and with European Union law?”*

This research question seeks to analyse the compatibility of such fiscal incentives with the Italian Constitution and EU state aid law, an examination that has not been addressed in the contributions published so far on the subject. In fact, even the economic literature on reshoring primarily focuses on the causes and effects of the phenomenon, without delving into the fiscal tools that states use to encourage such decisions.

To answer this question, the thesis is structured as follows. The first chapter examines the evolution of the Italian tax system and the fundamental constitutional principles of Italy. The second chapter provides a detailed analysis of the reshoring regime introduced by art. 6 D.Lgs. n. 209/2023. The third chapter addresses the principal critical issues from both constitutional and European perspectives, with particular focus on compatibility with the principles of equality and reasonableness established in the Constitution, as well as with European state aid rules and the fundamental freedoms of the internal market. The final chapter presents a comparative analysis of the US Inflation Reduction Act to identify potential insights to suggest improving the Italian system. The thesis concludes with a recap of the research findings, highlighting the contribution to the existing literature, the paper's main limitations, and possible directions for future research.

The research has a technical and practical interest. At the scientific level, it represents a first attempt to jointly examine constitutional aspects and those related to EU state aid. At a practical level, the paper examines an incentive regime pending the European Commission's decision. As a result, companies considering moving their operations must make investment decisions

amid significant legal uncertainty. Comparing this with the US experience also helps us consider how much EU member states can rely on incentives to attract investment, since the EU's legal rules are stricter than those in the US federal system.

CHAPTER 1: THE ITALIAN TAX SYSTEM: STRUCTURE, CRITICAL ISSUES AND THE ROLE OF TAX INCENTIVES

1.1 General introduction to the Italian Tax System

The tax system constitutes one of the essential structural components of the modern State, providing the institutional framework through which public authorities acquire the financial means necessary to carry out their functions, deliver public services, and pursue economic and social policy objectives.

In contemporary legal doctrine, taxation is no longer conceived solely as a compulsory exaction, but rather as a multifaceted mechanism of governance. Through its regulatory and distributive effects, it can influence the allocation of resources, affect individual conduct, and help remedy market failures. As highlighted by leading scholars, the contemporary tax system fulfils a “multidimensional function” that goes beyond revenue collection and is integrated into the broader configuration of the economic order and the constitutional framework within which tax policy is aligned with fundamental economic objectives.

The primary role of taxation is to fund public spending. According to public finance theory, the State needs steady and reliable income to provide collective goods that the market cannot offer, such as defence, justice, education, healthcare, and major infrastructure. Richard Musgrave’s well-known classification of public sector functions puts taxation at the heart of the government’s roles of allocation, distribution, and stabilisation (Musgrave & Musgrave, *Public Finance in Theory and Practice*, 1989). Italy’s tax system follows this traditional model, with taxes being the main source of revenue for the central government, regions, and municipalities.

Intimately related to the function of financing, taxation also has a redistributive mandate. Under the constitutional order of Italy (Art. 53 Cost.), the tax system should be organised according to the principle of “ability to pay,” and to principles of progressivity, enabling its institutional architecture to actively counteract the economic inequalities generated by market processes.

According to the OECD, progressive personal income taxation remains one of the most effective tools to reduce after-tax inequality in advanced economies (OECD, *Taxing Wages*, 2023). In Italy, the personal income tax (IRPEF) has traditionally represented the main redistributive lever, despite its well-documented structural weaknesses and its concentration on dependent workers.

Taxation, also, has a corrective function by fighting negative externalities proactively by realigning private and social costs. A recent example is the employment of environmental levies and targeted excise duties to penalize pollution-intensive behaviours in order to align with the sustainability policies of the European Union.

Nowadays, taxation has developed into a critical tool of economic policy. By adjusting tax rates, defining tax bases and setting exemptions, states create investment preferences, deciding where production happens, shaping available capital, and shaping the overall competitiveness of the economy. This strategic role of taxation from a policy perspective has expanded substantially in the last thirty years owing to economic globalisation and the increased mobility of capital.

Tax incentives, preferential regimes, and tax expenditures have become widespread instruments through which governments attempt to stimulate investment, innovation and employment. Academic literature emphasises that taxation is now “a strategic lever of industrial policy” (Basilavecchia, 2022; Galli & Profeta, *Economia Italiana*, 2020).

The Italian context characterized by heavy fiscal pressure and administrative complexity represents a good illustration of this instrumental approach. In fact, the national system has increasingly relied on relief mechanisms to remain competitive like tax credits, super-deductions, and preferential regimes in order to counteract the structural distortions of heavy taxes and to provide strategic support to key businesses.

This functional shift aligns perfectly with the current consensus among major international institutions. The IMF, for example, stresses the importance of tax design for private investment, saying excessive marginal effective rates can severely stifle capital accumulation (IMF, Fiscal Monitor, 2023). Supporting this theory, the OECD also suggests positive taxation implications, verifying how proper incentives generate effective encouragement for R&D, technological progress, and green initiatives (OECD, R&D Tax Incentives Database, 2022).

The Italian tax system is firmly grounded in the constitutional framework adopted in 1948. Four articles are particularly relevant:

- **Art. 2 Cost.** “*The Republic... expects that the fundamental duties of political, economic and social solidarity be fulfilled*”;

- **Art. 23 Cost.** “*No obligation of a personal or financial nature may be imposed on any person except by law*”;
- **Art. 53 Cost.** “*Every person shall contribute to public expenditure in accordance with their capability. The tax system shall be progressive*”;
- **Art. 119 Cost.** (as amended in 2001) “*Municipalities, provinces, metropolitan cities and regions shall have income and expenditure autonomy, subject to the obligation to balance their budgets, and shall contribute to ensuring compliance with the economic and financial constraints imposed under European Union law*”.

As extensively debated in the literature, these provisions operate with a dual purpose. They anchor the system in undeniable principles of equity, while simultaneously imposing strict boundaries on the legislator to ensure that any new tax policy remains proportionate and constitutionally legitimate (Basilavecchia, 2022; Tesauero, 2019).

But in the 1990s, the larger context began to change significantly, as globalization, EU integration and speedier digitalization began to alter the primary objective of taxation. Tax policy became effectively a “competitive instrument” as countries raced to attract cross-border investors and mobile talent—a phenomenon well documented by the EU Tax Observatory (Alstadsæter et al., Global Tax Evasion Report, 2024).

Italy was no exception to these systemic shocks. Historically hampered by high statutory rates on labor and corporate income, the country's status as an investment destination was seriously reduced. To survive and offset these structural weaknesses, the government responded with a great deal of specialized tax regimes. Currently, this strategy of using tax law directs attention towards a diverse array of national priorities ranging from driving the energy transition and stimulating digital innovation to, most recently, the reshoring of economic activities.

The Italian legislator has thus used taxation strategically to achieve multiple policy goals, including digitalisation, energy transition, modernisation of the business environment, and — most recently — the reshoring of economic activities. This last dimension is particularly relevant for the purposes of this thesis, as Chapter 1 concludes by introducing the theoretical category of *tax incentive regimes* and their role in the global competition for productive capacity.

The understanding of the essential roles of a tax system – financing, redistribution, correction of externalities, and economic policy design – is fundamental to put the emergence and development of the tax incentive system in Italy in a context. In an atmosphere of heavy tax

burden and structural economic challenges, incentives have come to constitute an indispensable complement to conventional taxation.

These measures, examined in detail in later chapters, include:

- preferential corporate tax regimes,
- tax credits and deductions for investment and innovation,
- incentives linked to territorial development or environmental objectives,
- and, most recently, tax measures specifically aimed at supporting the reshoring of economic activities.

The introduction of the reshoring regime in the Decree-Law No. 209/2023 represents the culmination of broader trends that begin with the fundamental functions of taxation itself. As such, the theoretical and constitutional framework outlined in this introductory section provides the conceptual foundation for analysing the role, design, and limits of Italy's reshoring incentive regime — particularly in light of constitutional constraints and EU State aid rules.

1.2 Historical evolution of the Italian Tax Framework

The current structure of the Italian tax system cannot be fully understood without considering its historical evolution. Since national unification in 1861, Italian taxation evolved through a complex interaction between fiscal necessity, institutional weakness, constitutional transformation, administrative reform and changing economic conditions. Unlike tax regimes that grew organically within a state that had become a single nation, Italy as a whole constructed its fiscal system simultaneously with its State. The condition significantly influenced its emergence: taxation not only became a technical device to generate revenue, but also an important tool of state-building, territorial integration and political legitimacy.

From the outset, the Italian tax system had to reconcile two conflicting needs. On the one hand, the newly unified State required substantial financial resources to cover military expenses, public debt, administrative unification and infrastructure development. On the other hand, the population was highly fragmented in economic, social and territorial terms, and many taxpayers lacked both familiarity with national taxation and trust in the newly established central authorities. As Manestra observes in his historical reconstruction of Italian tax compliance, the relationship between taxpayers and the fiscal administration was marked, from the early decades of the unified State, by structural resistance, weak compliance and a limited perception of taxation as a civic duty (Manestra, *Per una storia della tax compliance in Italia*, Banca d'Italia, 2010).

1.2.1 The Post-Unification Fiscal System

Post unification, the central aim of the Italian State was to build a more homogenous tax scheme than was present in the mixed fiscal regimes inherited from the former states. The process was far from technical. It was concerned with establishing a centralised system of national fiscal authorities for collecting taxes throughout the whole territory and the spread to the regions of the empire of the Piedmontese fiscal establishments. This was in keeping with the general centralisation of the nascent liberal State which wanted to produce shared national identity through uniform legislation and administrative control.

The early Italian fiscal system relied heavily on both direct and indirect taxation. Among the most significant direct taxes were the land tax, the tax on buildings and, especially, the *imposta di ricchezza mobile*, introduced in 1864, which represented one of the earliest attempts to tax income from movable wealth, professional activity and business. At this time few European States had yet developed comparable forms of income taxation, for this reason represent an important innovation. However, its practical operation was immediately problematic because wages and certain capital income could be taxed at source, instead, business and professional income were much harder to identify and verify. As Manestra (2010) points out, the early fiscal authorities simply did not possess the investigative tools or the statutory authority required to properly measure the earnings of small business owners and independent professionals.

The fiscal pressure imposed by the new State was also perceived as particularly burdensome. In the first decades after unification, taxation was increased to address budget deficits, public debt and military expenditure. The well-known milling tax, popularly known as “*tassa sul macinato*”, which emerged in 1868, is perhaps one of the most infamous symbols of post-unification taxation. It was a question of a most basic good of consumption, and thus it was regarded as regressive, especially by the lower classes. However, the early fiscal policy of the unified State led to a perception that taxes were imposed from above at some far off central authority, and the unified State did not cultivate a culture of cooperation within the national identity.

This sentiment hit a critical threshold in Southern Italy. Because the central authority rigidly applied identical tax rules across drastically unequal economic landscapes, it fueled profound distributive tensions. Modern research routinely traces the enduring regional deficits in civic trust and tax compliance straight back to this original structural asymmetry. D’Attoma argues that unification intensified the North-South divide, as the fiscal system was perceived in the South as extracting resources without providing equivalent public goods or institutional benefits

(D'Attoma, "Explaining Italian Tax Compliance: A Historical Analysis", in Steinmo, *The Leap of Faith*, Oxford University Press, 2018). Whether or not one accepts this interpretation in its strongest form, it is clear that the post-unification tax system was affected by a legitimacy problem that would remain a recurring feature of Italian fiscal history.

1.2.2. The Liberal Period and the Limits of the Early Tax Administration

During the liberal period, the Italian tax system remained characterised by a combination of high fiscal needs and limited administrative capacity. The tax administration faced serious difficulties in identifying taxable income, updating cadastral records and enforcing compliance. This was particularly evident in relation to the taxation of professional and entrepreneurial income. The reliance on taxpayer declarations required a degree of cooperation that was often absent. As a result, the system gradually developed practices based on presumptive assessments, average income estimates and negotiations between taxpayers and tax offices.

This gap between the legal design of taxation and its practical functioning became a structural feature of the Italian system. Manestra notes that, already in the late nineteenth and early twentieth centuries, the effective tax system differed considerably from the formal legal system. While the statutory framework demanded the taxation of real income, the daily reality of the tax offices was starkly different. Stripped of adequate investigative tools and solid evidentiary powers, the administration was heavily forced to fall back on sector-wide averages and rough estimates (Manestra, 2010). This administrative weakness is not just a minor detail from the past. It clearly shows an ongoing problem in the Italian fiscal system, where ambitious laws often run into the real limits of what the state can enforce.

The liberal State struggled to make taxation socially acceptable. At the time, many people saw taxes as undermining individual freedom and property rights, which aligned with liberal ideology. The prevailing consensus dictated that government fiscal powers should remain restricted, explicitly discouraging intrusive tax audits. This ideological barrier undermined the authorities' capacity to examine private financial records and substantiate income. Ultimately, while prioritizing taxpayer protection was essential from a constitutional standpoint, it effectively diminished the state's regulatory enforcement capabilities.

At the same time, the system began to display forms of legal erosion of the tax base through exemptions, preferential treatments and sectoral reliefs. This phenomenon is important because it anticipates a later and more sophisticated development of the Italian tax system: the use of tax benefits not only as exceptions to the ordinary regime, but also as tools of economic policy. The distinction between legitimate tax relief, erosion of the tax base and unlawful evasion

would become central in the twentieth century and remains relevant today when analysing modern tax incentive regimes.

1.2.3. The Fascist period: authoritarianism, tax reform and administrative centralisation

During the Fascist period significant changes took place. In fact, in the early years of the regime characterised by an initial liberal economic orientation, Minister Alberto De Stefani pursued a policy of fiscal simplification and reduction of certain wartime taxes. Initially, the regime sought to cast itself as the champion of economic revival by reorganizing the fiscal framework and easing certain burdens. Yet, these superficial adjustments completely failed to cure the chronic issues of administrative inefficiency and widespread non-compliance.

By the late 1920s, the Fascist government shifted to a more authoritarian way of enforcing tax laws. Tax evasion was no longer seen as just an administrative issue, but was instead portrayed as a direct betrayal of the State and the nation. Mussolini famously called tax evaders “the worst parasites of national society”, showing how the regime tried to moralize and politicize tax compliance using strong language (Manestra, 2010). The government gave more power to enforcement, created the tax police, and began linking tax violations more closely to criminal penalties.

Nevertheless, the authoritarian strategy approach achieved only modest results caused by alternate period of repression, corporatist cooperation and preferential treatment for productive sectors. Throughout the 1930s, the corporatist model encouraged cooperative arrangements between state authorities and financial interest groups, leading to the implementation of industry-specific coefficients and negotiated benchmarks for tax evaluation. This setup highlighted the ongoing difficulties in precisely measuring taxable revenue, thereby increasing the reliance on administrative arbitration to bridge the gap between statutory legislation and real-world economic realities

In the fascist period. several measures were adopted to support industrial areas, specific sectors and economic activities considered strategic which contributed to the expansion of tax incentives and preferential fiscal regimes. These measures were not yet comparable to contemporary tax incentive regimes, but they reveal an early use of taxation as an instrument of industrial policy. The State did not merely tax economic activity; it increasingly attempted to direct it.

1.2.4. The Republican Constitution and the Democratic Reframing of Taxation

The adoption of the Republican Constitution in 1948 marked a fundamental turning point in the legal and normative understanding of taxation. Taxation was no longer merely a reflection of the State, nor simply the fiscal need under the constitutional law. It became associated with solidarity, equality and democratic participation.

The Italian Constitution is based on three main promises: the duty to support each other (Article 2), reducing social and economic differences (Article 3), and the rule that all taxes must be approved by law (Article 23).

However, Article 53 is the real core of the system “*all shall contribute to public expenditure in accordance with their means*”. Connecting the 'ability to pay' with a progressive tax system turns taxation from just a way to collect money into a tool for social justice. Ezio Vanoni saw paying taxes as a moral and democratic responsibility, saying that tax evasion damages the basic ties of society. He believed that punishment alone was not enough. Instead, the State needed to design a tax system so fair that people would have no technical or moral reason to avoid paying. This required a more efficient administration, clear rules, and a new relationship of trust between citizens and public authorities (Vanoni, *Scritti e discorsi politici ed economici*, 1977).

The 1951 Vanoni reform introduced the obligation to file annual income tax returns and aimed to modernise the relationship between taxpayer and administration. It aimed to move beyond approximate assessments and to promote a system based on truthful declarations, administrative verification and mutual responsibility. However, the reform's success was limited by persistent administrative weaknesses, insufficient resources and the gradual return to a fragmented and complex legislative framework.

1.2.5. The Great Tax Reform of the 1970s

The biggest change in the Italian tax system happened with the tax reform in the early 1970s. This reform, mainly done between 1971 and 1973, redesigned how taxes worked in Italy and set the base for the system we have today. Besides starting and changing key taxes like IRPEF, IRPEG, IVA, ILOR, and INVIM, the reform was driven by a complex plan. Its main goal was to organise a messy, broken system full of overlapping taxes.

At the same time, lawmakers attempted to reinforce the progressivity of personal income taxation to satisfy the constitutional requirement of Article 53. Crucially, this overhaul also served to synchronize the national framework with the emerging demands of European integration, a goal most visibly achieved through the adoption of VAT. Fourth, it attempted to

modernise tax administration and improve compliance through accounting obligations and more systematic procedures.

The introduction of **IRPEF** represented the central element of the reform. It replaced several previous forms of income taxation and established a progressive personal income tax applicable to individuals. In principle, IRPEF was intended to tax comprehensive income and to serve as the main instrument of redistribution. However, its development over time has been affected by numerous exemptions, substitute taxes, special regimes and forms of schedular taxation. As a result, scholars have often argued that the original comprehensive design of IRPEF has been progressively weakened (Gallo, *Le ragioni del fisco*, 2007; Falsitta, *Manuale di diritto tributario*, latest ed.).

The reform introduced **VAT** to replace the old general tax on turnover. This change was part of Italy's effort to harmonise with European standards and made VAT the country's main indirect tax. Its adoption aligned Italy with the common European model of consumption taxation, but VAT also became one of the areas most affected by evasion, especially in sectors involving small businesses, retail trade and services.

For corporate income, the reform introduced **IRPEG**, later replaced by **IRES** in 2004. Corporate taxation developed within an increasingly internationalised economic environment, where competitiveness, investment location and tax planning became central concerns. This evolution is particularly relevant for the subject of this thesis, because corporate tax policy later became one of the principal areas in which Italy used fiscal measures to attract or retain economic activity.

Despite its ambitions, the reform did not eliminate the structural weaknesses of the Italian fiscal system. Administrative inefficiency, tax evasion, legislative instability and tax expenditures continued to affect the system. The reform modernised the legal architecture of taxation, but it did not fully solve the underlying problem of compliance. As D'Attoma notes, the reforms of the 1970s were introduced in a context of limited trust in public institutions and were subsequently undermined by judicial overload, tax amnesties and persistent administrative constraints (D'Attoma, 2018).

1.2.6. From the 1990s to the Contemporary Tax System

From the 1990s onwards, Italian tax policy was increasingly influenced by European integration, globalisation and international tax competition. In fact, many reforms were

implemented to comply with EU law, such as the introduction of IRES, which replaced IRPEG. Also, IRAP was introduced as part of this new approach.

The 1990s were characterised by the implementation of targeted measures aimed at fighting chronic evasion, especially of small enterprises and independent professionals. Due to the fact that these groups of taxpayers bypass source-withholding, the government launched the so-called “studi di settore”, which were substituted by the synthetic reliability indicators (ISA). These sector studies represents a defining trait of Italian tax enforcement characterised by a heavy reliance on presumptive, standardized metrics to gauge taxable income whenever traditional accounting falls short. These changes were accompanied by a deep organizational reorganization within the tax authorities.

Another important step was the establishment of the Revenue Agency. In particular, the growing digitalisation of administrative procedures, including payments and invoices, contributed to increasing the quality of the relationship between taxpayers and the State. Instruments such as electronic invoicing and pre-filled tax returns have improved administrative capacity and reduced certain forms of evasion.

The critical problem of the modern tax system is that it remains unstable and complex. Taxpayers are usually confused by the continuous legislative changes and temporary tax reliefs or special exemptions. All these changes reduce legal certainty and weaken the effectiveness of fiscal policies. When companies decide where to locate their businesses or whether to bring their productive activities back, the predictability of the tax system is often more important than minor tax savings. Therefore, this volatility represents a major barrier to investment.

1.2.7. From Historical Evolution to Tax Incentive Regimes

This historical reconstruction shows that the Italian tax system has constantly oscillated between revenue needs, redistributive ambitions, administrative limits and economic policy objectives. Taxation has never been a purely neutral instrument. Since the liberal period, the State has used exemptions and preferential treatments to support particular sectors or territories. Fiscal measures, in the fascist period were used to promote industrial policy, while in the Republican era, tax reliefs and incentives became increasingly common tools to stimulate investment, employment, innovation and territorial development.

This evolution provides the necessary background for understanding contemporary tax incentive regimes. These modern frameworks do not represent a break from the Italian tax

tradition. Instead, they stand as the mature, structured evolution of a system that has historically always relied on fiscal measures to govern and direct economic activity. The difference lies in the legal context in which they now operate. Today, any incentive regime must comply not only with domestic constitutional principles, such as equality, ability to pay and reasonableness, but also with European Union law, including State aid rules, the freedom of establishment and the principles of the internal market.

1.3 Main taxes in the Italian Tax System

Within the Italian tax system, taxes are traditionally divided into direct taxes and indirect taxes. Direct taxes apply immediately to manifestations of economic capacity, such as income or wealth, whereas indirect taxes affect wealth only indirectly, usually when it is consumed, transferred or used in legal transactions. This distinction, although partly conventional, remains useful to describe the overall structure of Italian taxation and to identify the main sources of public revenue (Basilavecchia, Corso di diritto tributario, 2022; Falsitta, Manuale di diritto tributario, 2023).

Among all taxes, the Personal Income Tax (IRPEF) is the most important and the hardest to pay. This tax, introduced in 1974, applies to anyone living in Italy or required to pay taxes there, as long as they have income. Its tiered system groups taxpayers by income and underscores its goal of fairness by charging higher rates to those who earn more. Today, IRPEF is divided into three income levels:

- **23% rate** for income up to €28,000;
- **33% rate** for income from €28,001 to €50,000;
- **43% rate** for income over €50,001.

This structural progressivity serves to satisfy the constitutional requirement outlined in Article 53, firmly linking tax contributions to the taxpayer's economic capacity.

Although IRPEF was originally conceived as a general and comprehensive income tax, its redistributive capacity has been progressively weakened by the spread of substitute taxes, special regimes and separate forms of taxation for certain income categories, especially capital and financial income (Gallo, Le ragioni del fisco, 2007).

In addition to the IRPEF, the main direct tax levy on businesses and commercial entities is the IRES ("Imposta sul Reddito delle Società"), also regulated by the TUIR. Introduced in 2004 by substituting the IRPEG, IRES represents the ordinary regime of taxation on business income

and other commercial entities. Unlike the IRPEF, which is a progressive tax, IRES is levied at a fixed rate of 24%. The determination of taxable income starts by considering the financial statements' results, which are adjusted for variations in accordance with the fiscal law, necessary to align the financial statement's income with the criteria established by the TUIR.

IREs is particularly relevant for business activity because it directly affects corporate profits, investment decisions and the international competitiveness of the Italian tax system. For this reason, many tax incentives addressed to enterprises operate through reductions, deductions, exemptions or special rules connected to corporate income taxation.

The main regional tax is the Regional Tax on Productive Activities (IRAP) (Bosi P., Corso di Scienze delle Finanze, Teoria dell'imposta, Il Mulino, 2023, pag. 210-211). IRAP was introduced in 1998 as a way for those involved in productive activities to contribute to the cost of public services. It was meant to tax net value added instead of profits. This approach faced a lot of criticism because even companies with financial losses still had to pay IRAP. Many people have also found its rules difficult to understand.

Subsequent legislative amendments have altered its original framework and rationality. Today, it can no longer be defined as a tax on net value added, but rather as a levy weighing on profits, rents, interest expenses, and wages, and it currently appears destined for abolition. The standard IRAP rate is 3.9%, but banks and insurance companies have different rates. Regional governments can raise or lower this rate by up to 0.92 percentage points, or they can remove it altogether.

The Value Added Tax (IVA) is the main indirect tax. It was introduced in 1972 to comply with European rules. VAT applies to most goods, services, and imports within the EU when handled by taxable businesses. The ordinary rate is currently 22%, while reduced rates apply to specific goods and services. VAT is a harmonised tax at European Union level and therefore national rules must comply with EU VAT law. It represents one of the main sources of tax revenue, but also one of the areas most exposed to evasion and fraud, particularly through false invoicing, omitted payments and carousel frauds (Manestra, Per una storia della tax compliance in Italia, Banca d'Italia, 2010).

The most relevant recurrent property tax is the Municipal Property Tax (Imposta municipale propria, IMU), which applies to the possession of real estate, with specific exemptions and reductions, especially for the main residence. IMU is a municipal tax and represents an important source of revenue for local authorities. In addition, transfers of real estate and other legal acts may be subject to registration tax (imposta di registro), mortgage tax and cadastral

tax. These taxes apply mainly to legal transactions and property transfers and are therefore relevant in determining the overall fiscal cost of investment and business operations.

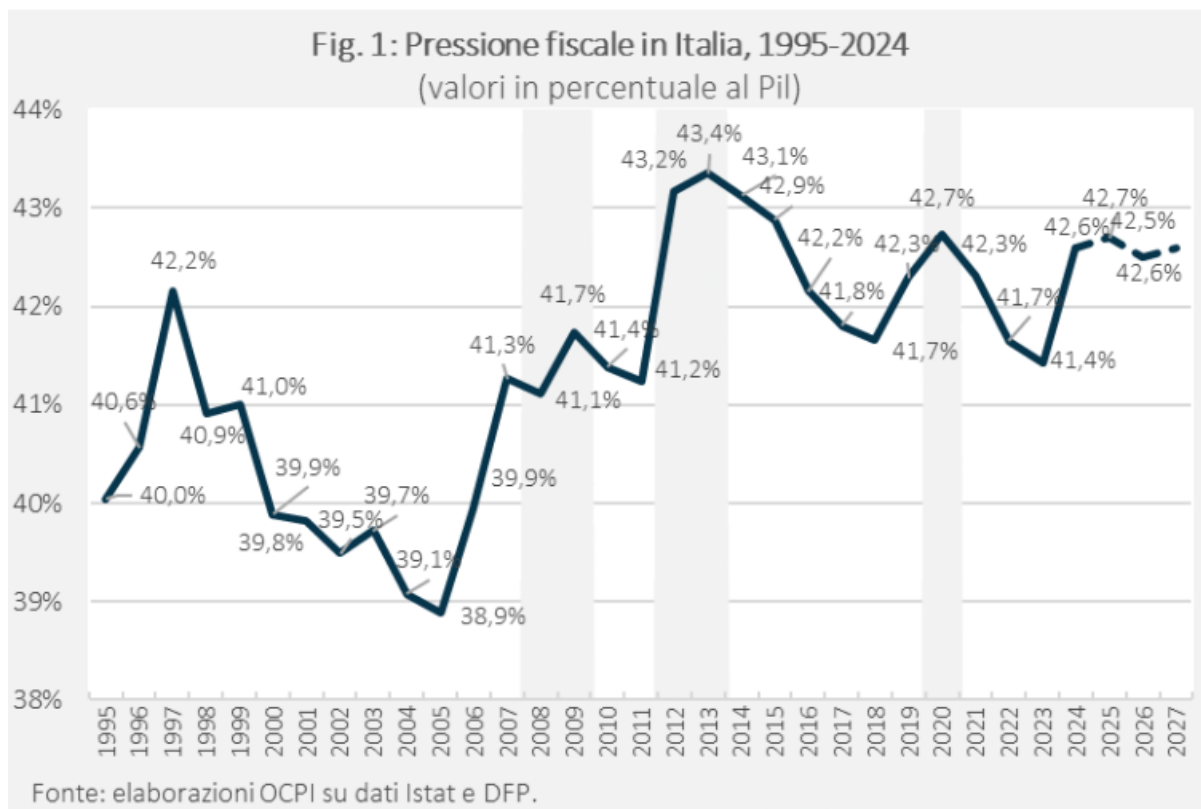
The waste tax (TARI) covers the cost of waste collection and disposal. Anyone who owns or uses property or land that can create urban waste needs to pay this tax. The amount is based on the size and use of the property, and how much waste it is expected to produce.

1.4 Tax pressure in Italy: critical issues and European comparison

The overall weight of taxation represents one of the most debated features of the Italian fiscal system. In comparative perspective, Italy has historically been characterised by a relatively high tax burden, usually measured through the tax-to-GDP ratio, namely the ratio between total tax and social contribution revenues and gross domestic product. This indicator is commonly used by international organisations such as the OECD and Eurostat to compare the fiscal pressure of different countries and to assess the role of taxation within national economies (OECD, Revenue Statistics 2024).

In the Italian case, this ratio is particularly relevant because it helps explain several structural issues of the national tax system: the high cost of labour, the burden on compliant taxpayers, the importance of tax evasion and the frequent use of tax incentives to support investment and economic activity.

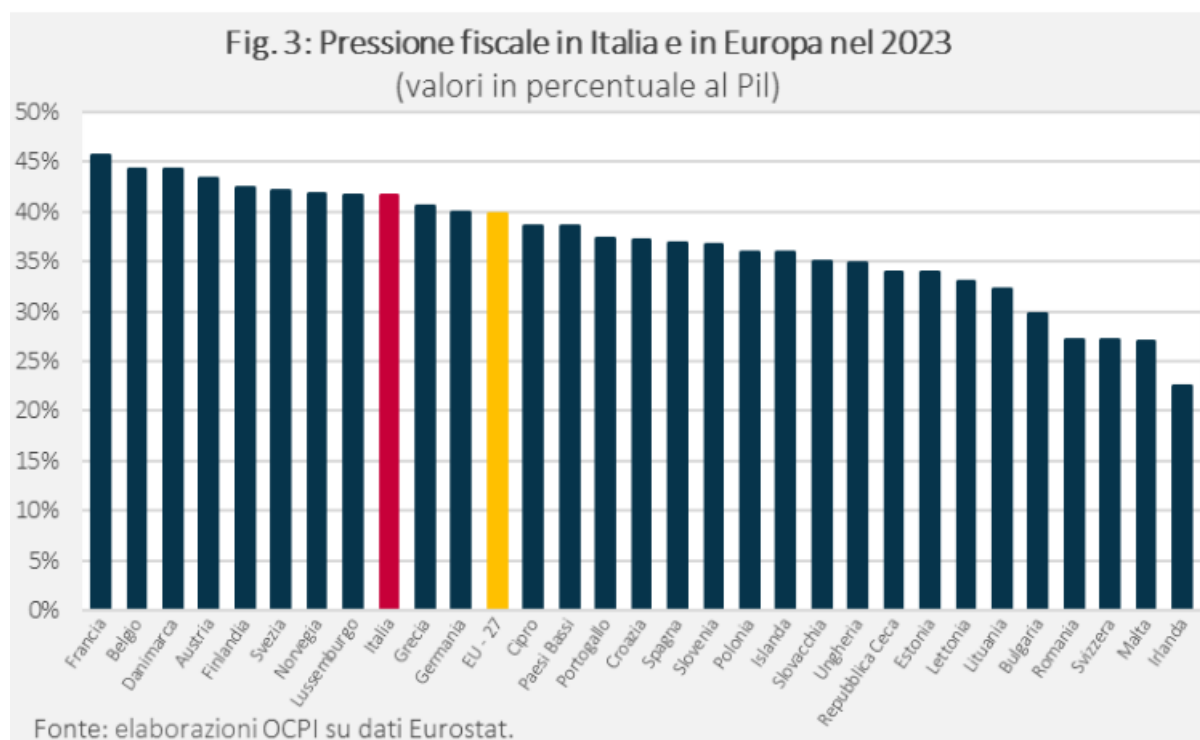
Figure 1.1: Tax burden in Italy as a percentage of GDP (OECD, *Revenue Statistics 2024*, OECD Publishing, Paris, 2024)



The historical evolution of the Italian tax burden shows a progressive increase in the role of taxation in the economy, especially after the major tax reform of the 1970s. As highlighted by Manestra, the post-reform period marked a significant rise in the level of taxation, with the tax burden stabilising at much higher levels than in the previous phases of Italian fiscal history (Manestra, *Per una storia della tax compliance in Italia*, Banca d'Italia, 2010). This development reflected the expansion of the welfare state, the growing cost of public services, the increase in social security contributions and the need to finance a high level of public debt.

From a comparative perspective, Italy's fiscal pressure remains above the OECD average and broadly aligned with the levels observed in several continental European welfare states. However, the Italian case is distinctive because the high tax burden is combined with persistent problems of tax evasion, administrative complexity and uneven distribution of the fiscal load. This means that the official tax rate might not match the actual tax burden experienced by different groups of taxpayers.

Figure 1.2: Tax-to-GDP ratio in selected OECD/EU countries (OECD, *Revenue Statistics 2024*, OECD Publishing, Paris, 2024)



The comparison with other advanced economies shows that Italy's tax burden is not exceptional if compared to countries such as France, Belgium or Denmark, but it is significantly higher than the OECD average and higher than that of several economies competing with Italy in attracting investment and productive activities. This aspect is particularly relevant when analysing the fiscal conditions affecting businesses. A high overall tax burden may reduce the attractiveness of the national system, especially where it is accompanied by legal uncertainty, frequent regulatory changes and high compliance costs.

Evaluating fiscal pressure requires distinguishing between apparent and actual tax burdens. The former simply measures total national tax and social security collections against overall GDP. When the untaxed part of the economy avoids paying taxes, the government has to rely on a smaller group of taxpayers to fund public spending, creating a clear gap between people who pay their taxes and those who evade or underreport them.

The Italian case illustrates this problem particularly clearly. Tax evasion has historically affected specific categories of taxpayers and sectors, especially self-employment, small businesses and certain service activities. According to Manestra, the difficulty of taxing the self-employed and individual entrepreneurs has long been a feature of the Italian tax system, evident in the nineteenth century and still relevant after the 1970s reform (Manestra, 2010).

This structural asymmetry contributes to the perception that the tax system is not only burdensome, but also uneven and insufficiently fair.

Business decisions like investment or hiring and location choices are influenced by high tax burden. In this respect, fiscal pressure is not merely a revenue issue, but also a factor of competitiveness. Where the ordinary tax burden is perceived as excessive or uncertain, the legislator may be induced to introduce fiscal incentives in order to compensate for structural disadvantages and encourage specific economic behaviours.

This connection is essential for the purposes of this thesis. The fiscal incentives implemented to reshore economic activities are not isolated measures but part of a broader fiscal strategy. The goal is to make Italy more appealing to businesses based in other countries. This approach also aims to tackle geopolitical and economic issues tied to supply chains and key industries.

However, these incentives bring up important legal questions since they need to follow constitutional principles such as equality, ability to pay, and fairness. Sometimes, these tax measures must also be reviewed under EU State aid rules. While high regular taxes may explain why incentives are used, they do not automatically make selective tax breaks fair or justified.

In conclusion, the Italian tax burden is a key factor in understanding both the structure of the national tax system and the emergence of targeted incentive regimes. Its weight on GDP, its distribution among taxpayers and its interaction with tax evasion and administrative complexity provide the background against which recent measures for reshoring must be analysed. The next sections will therefore move from the general structure of the Italian tax system to the specific role of tax incentives as instruments of economic and industrial policy.

1.5 Tax Incentive Regimes as a response to structural weaknesses

The structural features of the Italian tax system described in the previous sections — high fiscal pressure, complexity, frequent legislative changes and uneven distribution of the tax burden — help explain why tax incentives have become an increasingly relevant instrument of fiscal and economic policy. In a system perceived as burdensome by both individuals and enterprises, the legislator often uses preferential tax measures to reduce the ordinary tax cost of selected activities and to encourage behaviours considered economically or socially desirable.

In general terms, a tax incentive regime may be defined as a set of tax rules that grant a more favourable treatment than the ordinary regime, provided that certain subjective or objective requirements are met. These measures do not merely reduce taxation; rather, they use taxation as a tool to influence economic decisions. Tax incentives may encourage investment,

innovation, employment, environmental transition, territorial development or the localisation of productive activities within a given jurisdiction. For this reason, they represent one of the clearest examples of the use of tax law as an instrument of economic policy (Basilavecchia, Corso di diritto tributario, 2022; OECD, Tax Incentives and the Global Minimum Corporate Tax, 2022).

Tax incentives are not the same for all companies, and the mechanical design of these incentives dictates precisely how they affect a company's tax burden. Tax credits, for example, provide an immediate cash-flow advantage by directly reducing the final liability on a euro-for-euro basis. But super-deductions and allowances proceed another way, artificially shrinking the taxable base (base imponibile). Allowing a business to write off more than 100% of a qualifying cost effectively drives down the ETR, all without forcing the government to alter the nominal statutory rate (Klemm, 2009). The last category of preferential regimes, such as the Patent Box or reshoring incentives, is based on a mechanism for the partial exclusion of predetermined income components from ordinary taxation. Through the application of specific percentages of reductions in the tax base, these regimes permit the imposition of a favourable fiscal treatment on a particular flow of income, as long as the strictly economic substance requirements are met.

The role of fiscal incentives is particularly relevant in a system characterised by a high level of taxation. Incentives may have a corrective function when the tax burden is perceived as heavy or potentially discouraging for investments. They can reduce the effective tax burden on specific activities by increasing the attractiveness of the national economic system. The adoption of this perspective permits partial compensation for the effects of higher taxation on labour and firms through the implementation of these incentives. But, there is also a potential limit because the extensive use of exceptions or special regimes can increase the risk of a more complex and less transparent fiscal system.

Tax incentives must be assessed considering, also, legal constraints. Any fiscal incentive must comply with the constitutional principles. A tax advantage may be legitimate when it pursues a constitutionally relevant or economically rational objective. At the same time, may raise constraints when it determines arbitrary privileges or unjustified disparities among taxpayers.

From the perspective of European Union law, tax incentives may raise issues under the rules on State aid, particularly when they selectively favour certain undertakings, sectors or territories within the meaning of Article 107 TFEU.

This framework is particularly important for the analysis of tax incentives for reshoring. In recent years, supply-chain disruptions, geopolitical tensions and the search for greater economic

resilience have led several States to adopt measures encouraging enterprises to relocate productive activities within national borders. Italy has followed this trend through specific fiscal measures aimed at supporting the return of economic activities previously carried out abroad. These measures must be understood as part of the broader use of tax incentives to address structural weaknesses of the domestic system and to strengthen national competitiveness.

The following chapters will therefore focus on the Italian reshoring tax incentive regime, with particular attention to the measures introduced by Legislative Decree No. 209 of 27 December 2023. The analysis will examine their structure, rationale and practical scope, before assessing their compatibility with Italian constitutional principles and European Union law.

CHAPTER 2: TAX INCENTIVE REGIMES FOR THE RESHORING OF ECONOMIC ACTIVITIES TO ITALY

2.1 Concept of reshoring

The analysis of the tax incentive regime introduced by Legislative Decree No. 209 of 27 December 2023 requires, as a necessary preliminary step, a precise delimitation of the phenomenon it seeks to regulate. The term "reshoring" — alongside its cognate expressions "backshoring", "nearshoring", and "friendshoring" — belongs to a family of concepts that, while originating in the management and supply chain literature, have progressively acquired normative relevance insofar as they constitute the factual substratum upon which legislative incentive regimes operate.

The absence of a universally agreed legal definition makes terminological precision not merely an academic exercise, but a condition for the correct identification of the beneficiaries and the scope of application of fiscal measures such as those contained in Article 6 of D.Lgs. 209/2023.

In the academic literature, the foundational definition was proposed by Fratocchi et al. (2014), who identified the phenomenon as the voluntary corporate decision concerning the home country's partial or total relocation of production or other business functions, previously moved offshore, back to the country of origin of the parent company, regardless of the ownership mode of the relocated activity. This definition highlights two constitutive elements that retain direct legal significance: first, the *voluntary* character of the decision — as opposed to forced repatriations compelled by host country regulations — and second, the reference to the *country of origin*, which in a fiscal context translates into the requirement of a prior connection between the relocating entity and the incentivising State.

In the literature, "backshoring" was firstly defined as "*the geographic relocation of a functional, value creating operation from a location abroad back to the domestic country of the company*" (Holz, 2009). Through this definition, Holz wants to emphasize the importance of back-shoring as a separate phenomenon within a broad scenario to which all business operations refer.

The concept of reshoring has been defined in different ways in the academic literature, although a broad consensus exists as to its essential features. Gray et al. define reshoring as the relocation of manufacturing activities previously offshored back to the firm's home country (Gray et al., The Reshoring Phenomenon: What Supply Chain Academics Ought to Know and Should Do, 2013). Fratocchi et al. subsequently adopted a broader perspective, describing reshoring as a voluntary business strategy through which production, sourcing, or other value-creating activities previously relocated abroad are transferred either to the country of origin or to a

geographically closer location (Fratocchi et al., Manufacturing Back-reshoring as a Non-linear Internationalization Process, 2016). They point out that reshoring is not just about moving factories home, but about reorganizing international value chains to adapt to new economic conditions.

The literature further distinguishes reshoring from related relocation strategies. Nearshoring refers to the transfer of business activities from distant jurisdictions to geographically proximate countries, rather than to the firm's home State. As observed by Ancarani, Barbieri and their co-authors, this strategy enables firms to retain some of the advantages associated with international production while simultaneously reducing transport costs, shortening delivery times, improving managerial coordination, and mitigating supply-chain risks (Ancarani et al., Backshoring Strategy and the Adoption of Industry 4.0: Evidence from Europe, 2019; Barbieri et al., What Do We Know about Manufacturing Reshoring?, 2018).

Friendshoring, by contrast, is a phenomenon whose emergence is substantially more recent and whose conceptual contours are still being defined in the academic literature. Friendshoring involves shifting production and sourcing to countries that are considered to be geopolitical allies, as opposed to simply looking for lower labour costs or other economic advantages. Compared to initial offshoring decisions, which considered basically efficiency, present reshoring decisions — including friendshoring — tend to place the geopolitical dimension at the centre of the analysis (Angela da Rocha, Luíza Neves Marques da Fonseca, Clarice Secches Kogut, Deciphering relocation paths: A systematic literature review of near-shoring and friendshoring, Journal of International Management, Volume 31, Issue 5, 2025).

This difference defines both the purpose and the personal and material limits of tax incentive programs. The Italian law created a program that only applies to activities moved from countries outside the EU or EEA to Italy (Article 6 of D.Lgs. 209/2023). Therefore, the incentive is limited to a strict reshoring case, meaning the return of activities to Italy, and clearly excludes nearshoring within the EU or EEA from the rule. This legislative choice, as will be argued in the following chapters, carries significant implications both from a constitutional equality perspective and from the standpoint of EU State aid law.

The transition of reshoring from a purely economic and managerial concept to a “*fattispecie giuridica*” — a legally cognisable factual situation — occurred progressively as States began deploying fiscal instruments to incentivise it as a matter of industrial policy. Since the 2010s, policy makers in advanced countries, particularly in the US and the UK, have looked with interest at backshoring as a strategy for promoting manufacturing renaissance, increasing

employment, and rebalancing economies, notably in response to the 2008 global economic and financial crisis (Casadei & Iammarino, 2023).

This transition from economic reality to legal norm raises a fundamental question of legal taxonomy: is reshoring, as the object of tax incentive regimes, a *unitary* legal concept, or does it encompass qualitatively distinct factual situations that may warrant differentiated treatment under the principle of equality? The answer, as will be demonstrated in Chapter III, is not straightforward, and lies at the heart of the constitutional tensions raised by the selective nature of regimes such as that introduced by D.Lgs. 209/2023.

Recent empirical studies covering the period from 2015 to 2024, including the shocks of the US–China tariff war, the COVID-19 pandemic, and the Russia–Ukraine conflict, provide quantitative evidence of increasing reliance on political friendshoring, more recent progress in reshoring, and a complex reconfiguration of global supply chain patterns. These findings confirm that the phenomenon addressed by D.Lgs. 209/2023 is structurally embedded in a broader geopolitical and macroeconomic transformation, and that its legal regulation cannot be assessed in isolation from this context (Ando et al., 2026).

Policy makers have expressed considerable concern regarding the vulnerabilities of productive systems resulting from decades of increasing fragmentation of production, and the current phase is increasingly characterised by reshoring, friendshoring, and a general shortening of productive chains — a transformation that, to be effective, requires alignment with public policies. It is precisely within this normative turn — from spontaneous economic phenomenon to deliberate object of legislative design — that the Italian D.Lgs. 209/2023 acquires its full significance, and to the analysis of which the following sections are devoted.

2.2 The Italian Legal Framework: from the Tax Delegation Law to Legislative Decree No. 209/2023

The fiscal incentive regime for the reshoring of economic activities to Italy does not represent an isolated or improvised legislative intervention, but rather one specific component of a broader and organically conceived reform of the Italian tax system. To understand its normative significance and properly assess its constitutional and EU law implications, it is therefore necessary to situate Article 6 of D.Lgs. 209/2023 within the wider reform architecture of which it forms a part.

The Italian tax system had long been criticised, both in domestic academic literature and in comparative international assessments, for its structural complexity, its high effective tax

burden on productive activities, and its limited capacity to attract foreign direct investment. As noted in Chapter I, these systemic weaknesses represented the background against which successive governments sought to introduce targeted agevolative regimes as corrective instruments. The reform launched in 2023 represented the most ambitious attempt in decades to address these weaknesses in a systematic and coordinated manner.

Law No. 111 of 9 August 2023, known as “*Legge 9 agosto 2023, n. 111 — Delega al Governo per la riforma fiscale*”, is the main law driving the reform. It assigns to the government the job of reviewing, no later than 31 December 2025, the entire tax system, also through the redaction of one or more “Testi Unici” aimed at rationalising the existing normative. The law, published in the “Gazzetta Ufficiale” on 14 August 2023, is composed of 23 articles divided in 5 titles. The reform concerns multiple aspects of the tax system: general principles and updates to the “Statuto del contribuente” (Title I), discipline of principal taxes like IRPEF, IRES, IVA and IRAP (Title II), rules for assessment, collection, and penalties (Title III). Title IV and V, instead, provides the rules relating to the instruments and exercise modality of the delegation.

For the purpose of this paper, art. 3 of Law n. 111/2023 dedicated to the international and supranational dimensions of the Italian tax system, is particularly relevant. This provision identifies the principles and directive criteria that assist the legislator in the reform process. In particular, it aimed to favour greater coordination between the Italian tax system and OECD recommendations in the context of the BEPS (Base Erosion and Profit Shifting) project. Ultimately, it increase the coordination, also, with best practice developed at international level and Italy’s existing double taxation conventions. More specifically, among the directive criteria of Article 3 the legislature included the objective of promoting the introduction of measures to enhance the international competitiveness of the Italian tax system — a formulation broad enough to encompass both anti-avoidance measures and the positive incentivisation of inward investment and production relocation.

The government has approved Legislative Decree n. 209/2023 regarding the reform of international tax, in implementation of the principles contained in Article. 3 of the Law Delegation. The law was published in the “Gazzetta Ufficiale” n. 301 on 28 December 2023 and was entered into force on 30 December of the same year. The new provisions are valid for the tax period starting from 1 January 2024.

The reform is developed around four principal arguments. A first group of provisions involves the redefinition of the fiscal residence criteria for natural persons and companies or other entities, regulated respectively by articles. 1 and 2. The aim is to make the Italian normative

more compliant with international standards by eliminating concerns that in the past had generated coordination problems with other tax systems and treaty partners.

A second group of provisions is represented by articles 3 and 4, dedicated to the revision of CFC (Controlled Foreign Companies) discipline. In this case, the legislator tried to simplify the regime's functioning and align it with the new global minimum tax framework.

To the aim of this research are particularly relevant articles 5 and 6. They introduced, respectively, the new incentive regime for impatriates workers and the fiscal incentive related to the reshoring of economic activities. This last measure would be the principal subject of the analysis developed in the following chapters. The fourth pillar (Articles 8 to 60) implements the EU Directive 2022/2523 on the Global Minimum Tax.

The introduction of a fiscal incentive for the reshoring of economic activities within a decree focused on international tax reform highlights the legislative choice to place this fiscal regime in a broader context of fiscal competitiveness. In this perspective, the capacity to attract investments is interpreted as an element of the competition among tax systems, rather than as a simple expression of domestic industrial policy.

The explicit association of reshoring with international competitiveness in the official communications of the Council of Ministers is legally significant: it indicates that the *ratio legis* of Article 6 is not simply to correct a market failure or to compensate for the structural disadvantages of the Italian fiscal system, but to use tax law as an instrument of active competition for the attraction of productive activities in the context of the broader international realignment of global value chains described in the preceding paragraphs (Redazione Fisco e Tasse, Decreto Fiscalità internazionale: i principali contenuti, 2023).

The regime, by revising the fiscal incentive for highly qualified workers, companies, and persons exercising arts or professions in associated form who were previously resident abroad and return to Italy from 2024 onwards — maintaining fiscal residence there for a minimum number of years — represents the Italian legislature's response to the structural economic forces driving reshoring. It is, in essence, a legislative acknowledgment that spontaneous market-driven reshoring, while increasing in frequency, is insufficient to achieve the scale of productive relocation that Italy's industrial policy objectives require, and that fiscal incentivisation is therefore a necessary complement to the broader suite of structural reforms.

This *ratio legis* has direct implications for the constitutional and EU law analysis developed in subsequent chapters. A regime justified by the objective of international fiscal competitiveness

is, by its nature, selective — it confers advantages on a category of taxpayers defined by the geographical origin of their activities — and it operates in a context where selectivity is precisely the criterion that triggers scrutiny under both Article 53 of the Italian Constitution (the principle of *capacità contributiva*) and Article 107 TFEU (the prohibition on State aid incompatible with the internal market). It is to the detailed examination of the structure and mechanics of Article 6 that the following section turns.

2.3 Article 6 of Legislative Decree No. 209/2023: structure, scope and requirements

Article 6 of D.Lgs. 209/2023 constitutes the first dedicated legislative provision in the Italian legal order to establish a *ex novo* fiscal incentive regime specifically targeting the relocation of business activities to Italy from non-EU/EEA countries. While the earlier regime for “*lavoratori impatriati*” focused on moving human capital, Article 6 is about shifting productive activities themselves, regardless of the entity’s tax status or location. The rule is clear and divided into five parts: the main condition for the incentive (paragraph 1), the anti-abuse rule (paragraph 2), the separate accounting requirement (paragraph 3), the recapture process (paragraph 4), and the State aid standstill clause (paragraph 5).

The analysis that follows proceeds systematically through each operative element, since a precise understanding of the norm's structure is a necessary precondition for the constitutional and EU law assessment developed in subsequent chapters.

2.3.1. The personal scope

Article 6, paragraph 1, does not limit the regime based on personal factors — it does not restrict eligibility to specific groups of taxpayers defined by legal form, size, sector, or nationality. Both the *explanatory report* and Assonime's analysis show that the regime is available to anyone who meets the main requirement, which is moving a previously offshore business activity to Italy. This includes resident companies (“*società di capitali*” and “*società di persone*”), individual entrepreneurs, groups working together in the arts or professions, and even non-commercial entities (“*enti non commerciali*”) that have done minor business activities abroad and then moved them to Italy.

The explanatory report clarifies that, the relevant criterion is not the legal identity of the entity that previously conducted the activity abroad, but the economic subject — typically a corporate group — that controls the activity at the moment of transfer. The incentive therefore extends, explicitly, to intra-group. Also, the explanatory report confirms that what matters is the physical

relocation of the activity to Italian territory, not its prior fiscal position vis-à-vis the Italian State. As Assonime notes, this means that even the activity of a CFC already taxed in Italy by attribution of income under the transparency mechanism can benefit from the regime, provided it is physically relocated to Italy.

2.3.2. The objective scope: which activities qualify

The objective condition for access to the regime is set out in Article 6, paragraph 1: the activities must be (a) *business activities* or activities consisting in the *exercise of arts or professions in associated form*; (b) previously carried out in a *non-EU and non-EEA foreign country*; and (c) *transferred to the territory of the Italian State*. It is important to look closely at each of these elements.

Article 6 defines business activities as those recognized by the main rules of the TUIR. The incentive applies to productive and commercial activities linked to a business or branch that was previously located in a non-EU or EEA country and has actually moved to Italy. The Assonime circular makes it clear that assets that can earn income without active and organized management, such as individual intellectual property rights, passive shareholdings, or financial instruments managed without active involvement, are not considered qualifying business activities under this system. Moving these kinds of assets, even if they later generate income taxed in Italy, does not meet the requirements of Article 6. The goal is to encourage real relocation of business activity, not just the transfer of assets that generate passive income.

Assonime points out a debated issue involving *holding companies* and *IP companies* whose main asset is intangible property that is managed passively. There are two main ways to interpret this situation. The first approach relies on the EU State aid definition of an undertaking. According to CJEU case law, this includes any entity involved in economic activity, regardless of its legal form. This means any entity that can offer goods or services on a market is covered. The second, more restrictive approach looks at whether the entity's activity in Italy, without changing its tax residence, would have been considered a *permanent establishment*, or "*stabile organizzazione*," under Article 162 TUIR. This would show a real, non-artificial physical presence in Italy.

As Assonime correctly observes, this question merits formal clarification from the competent authorities, and its resolution will be material for the State aid assessment, since the European Commission will need to verify the authenticity of the relocated activity in order to approve the regime. Article 6 expressly limits the regime to activities transferred from countries that are not

members of the EU or EEA (Norway, Iceland, and Liechtenstein). This restriction has a dual significance. On the one hand, it reflects the *ratio legis* of the provision: the reshoring phenomenon addressed by the legislature is the return to Italy of activities previously relocated to third countries (primarily Asian or North American jurisdictions), not the movement of activities within the EU single market. On the other hand, as will be argued in Chapter III, this geographical restriction introduces a normative distinction that raises non-trivial questions under EU law — both with respect to the free movement of capital and the principle of non-discrimination — insofar as activities transferred from other EU Member States are expressly excluded from the incentive.

Another point to consider is what it means for the relocated activity to be moved "to the territory of the Italian State." The language in Article 6 shows that lawmakers wanted this to mean actually moving the economic activity to Italy, not just creating a tax link with the country. This view comes from the opening section, which says the goal is to support productive activities in Italy, and from how the recapture mechanism is set up. Since the tax benefit is withdrawn if the activity is subsequently transferred outside Italy, the continued physical presence of the business appears to be an essential element of the incentive rather than merely an incidental circumstance.

As Assonime emphasises, simply changing a taxpayer's fiscal residence without actually relocating business operations does not meet the regime's legal requirements (Assonime, Circular No. 5/2024, 2024). The key issue is not whether Italy can tax the income based on residence, but whether the incentive brings real productive activity to Italy.

2.3.3. The anti-abuse exclusion: the 24-month rule

Article 6, paragraph 2, introduces a targeted anti-abuse provision: "*Non sono incluse tra le attività di cui al comma 1 quelle esercitate nel territorio dello Stato nei ventiquattro mesi antecedenti il loro trasferimento*". The purpose of this restriction is to prevent the artificial relocation of an activity to a foreign country followed by an immediate return to Italy solely to access the preferential regime.

The scope of this exclusion deserves precise delimitation, since it applies only to activities previously carried out in Italy, and not to activities previously carried out in another EU or EEA Member State subsequently transferred to a non-EU/EEA country and then relocated to Italy. From an anti-abuse perspective, this legislator choice can be clear, but creates a potential

inconsistency in the treatment of different relocation paths that may become relevant for the proportionality assessment under EU State aid law.

2.3.4. The separate accounting obligation

Article 6(3) requires beneficiaries to keep accounting records that clearly separate the income and production value of the incentivised activity from the rest of their business. This is more than just an administrative task. It is essential for the regime to work, since the tax benefit is based only on the results of the relocated activity, which must be easy to identify in the taxpayer's accounts. If this separation is not done, tax authorities cannot check if the exemption is used correctly. As a result, access to the regime would be refused.

When a taxpayer has both eligible and non-eligible activities in one company, it is not enough to identify only the directly related items. Shared costs also need to be divided between activities using fair and clear methods. Assonime suggests using a revenue-based method, which is practical but can make it harder to follow the rules and may cause uncertainty about which taxable amounts qualify for the exemption.

2.3.5. The measure and duration of the incentive

The incentive consists in a 50% partial exemption of the taxable income attributable to the transferred activity, applied both for the purposes of corporate income tax (IRES) and regional production tax (IRAP). More precisely, the transferred activity's income concurs to the formation of the IRES and IRAP tax bases only to the extent of 50% of its amount. The regime applies for the tax period in which the transfer occurs and for the five subsequent tax periods — a total of six tax years.

2.3.6. The recapture mechanism and permanence requirements

Article 6, paragraph 4, establishes a recapture mechanism that conditions the definitiveness of the tax benefit on the continued presence of the relocated activity in Italy for a specified period following the expiry of the incentive. If the beneficiary transfers the incentivised activity outside Italian territory — even partially — within five tax periods following the expiry of the incentive regime, the Italian tax authorities recover the taxes not paid during the incentive period, together with interest. For *large enterprises* within the meaning of Commission Recommendation 2003/361/EC — those exceeding 250 employees and either €50 million

annual turnover or €43 million balance sheet total — the post-incentive surveillance period is extended to ten years.

This rule that businesses must keep their activity in Italy for at least ten or fifteen years, depending on the dimension, helps make investments stable and stops companies from moving just for tax reasons.

Assonime explains that the recapture rule applies only when a business physically moves its activity out of Italy, following the rules for joining the regime. If a company just stops or reduces its activity in Italy, recapture is not triggered. Businesses can also expand abroad as long as they keep their Italian operations. The rule does not apply if ownership of the activity changes within the same economic group, as outlined in Section 6 of the Assonime circular.

2.3.7. The state aid standstill clause

Article 6, paragraph 5, provides that the effectiveness of the regime is conditional upon prior authorisation by the European Commission pursuant to Article 108(3) TFEU. This *standstill clause* is of exceptional normative significance. This is a clear legislative acknowledgment that the Italian legislature saw the incentive as State aid under Article 107(1) TFEU, or at least could not rule out this classification. As a result, they made its effectiveness dependent on EU-level approval. Although *D.Lgs. 209/2023* came into force on 30 December 2023 and its rules apply from the following tax period, taxpayers cannot actually use the regime until the Commission has given its authorisation.

This standstill clause raises a number of unresolved interpretive questions that are directly material to the legal analysis of this thesis. As Assonime observes, it is uncertain whether the Commission's authorisation will permit retroactive application of the incentive to transfers effected after 1 January 2024 but before the authorisation decision, or whether only post-authorisation transfers will qualify. This temporal uncertainty — inherent in the Article 108(3) TFEU notification procedure — is not merely a transitional practical problem: it reveals a structural tension between the Italian legislature's industrial policy objectives and the EU's *ex ante* control mechanism over selective fiscal advantages, a tension that lies at the core of the EU law analysis developed in Chapter IV.

As Assonime correctly identifies, the concern, that led the legislator to include the standstill clause, is that activities relocated from non-EU countries may, once established in Italy with the benefit of a 50% tax exemption, compete on more favourable terms with enterprises already

operating in Italy in the same sectors. This concern — that the geographical limitation on the origin of the activity does not insulate the regime from competitive distortion on the Italian (and therefore EU) market — is precisely the argument that the European Commission must assess in its State aid review, and whose substantive legal dimensions will be examined in Chapter IV.

2.4 The 50% exemption mechanism and its tax effects

The fiscal incentive in Article 6 of *D.Lgs. 209/2023* reduces the amount of taxable income. In Italian tax law, this is called “*detassazione*” or “*parziale non concorso alla formazione del reddito imponibile*”. This means that only half of the income from the transferred business activity is counted in the IRES and IRAP tax bases for the year of the transfer and the next five years. The other half is excluded, so the total tax paid is lower, even though the official tax rate stays the same.

This technical characterisation — partial income exclusion rather than rate reduction or tax credit — has consequences that extend well beyond the merely computational. As will be argued below, the choice of instrument reflects specific legislative priorities and generates distinctive legal implications both in the domestic constitutional dimension and in the EU law framework.

The IRES, or “*Imposta sul Reddito delle Società*,” is a proportional tax on the net income of companies and other entities, set at a flat rate of 24%. It was introduced by Legislative Decree No. 344 of 2003 and is governed by the TUIR. Normally, the taxable base is calculated by taking the accounting result under civil law and making the adjustments required by the TUIR, such as increases and decreases. The 24% rate is then applied to this fiscal income.

With the reshoring regime, taxpayers benefit from a significant tax advantage. They calculate the taxable income from the transferred activity using the standard TUIR rules, and then they can exclude 50% of that amount. As a result, IRES is charged on only half of the ordinary taxable income, so the effective IRES rate for this income is halved.

The IRAP “*Imposta Regionale sulle Attività Produttive*”, established by Legislative Decree No. 446 of 1997, is structurally distinct from IRES. It is levied on the net value of production generated by business activity conducted in Italian territory, and it does not admit the carry-forward of negative balances. Its tax base is determined on a gross basis - that is, starting directly from the accounting result without many of the deductions permitted under IRES - and the standard rate is 3.9%, subject to regional variations.

Article 6 extends the 50% partial exclusion to the IRAP base, so that the net production value attributable to the incentivised activity concurs to the IRAP tax base only to the extent of 50% of its amount. The partial exemptions for IRES and IRAP have a major impact on the standard Italian corporate tax burden. With an IRES rate of 24% and an IRAP rate of 3.9%, the combined effective tax rate is about 27.9%. If the 50% exclusion applies to both, the rate drops to around 13.95%. According to the Assonime circular, this may be lower than the 15% global minimum tax set by the OECD Pillar Two framework and adopted in Italy by Articles 8–60 of D.Lgs. 209/2023.

IRAP does not permit the carry-forward of negative production value balances. This means that any negative production value balance generated by the incentivised activity cannot be used to offset positive tax bases in subsequent years.

The reshoring incentive works with the OECD Pillar Two framework by lowering the corporate tax rate from 27.9% to 13.95%. This means that large multinational groups could be taxed below the 15% international minimum. When this happens, the Qualified Domestic Minimum Top-Up Tax, set by Legislative Decree No. 209/2023, steps in to raise the total tax to the required global minimum.

The interaction between the reshoring incentive and the GloBE rules thus produces a paradoxical result for large multinational groups: the very instrument designed to attract their productive activities to Italy may, for those groups, be partially neutralised by the concurrent operation of the global minimum tax. The effective benefit of the reshoring regime for large multinationals is therefore not the full 13.95 percentage point reduction from the ordinary rate, but a more limited advantage bounded at the floor by the 15% minimum. This observation has significant implications for the policy coherence of the measure and for its compatibility with the EU State aid rules, since it affects the quantification of the selective advantage conferred on different categories of beneficiaries.

The Italian legislature choice for a partial income exemption rather than an investment tax credit - the instrument used, for example, in the “*Piano Transizione 4.0*” and in the research and development incentive framework - reflects a deliberate policy choice with specific legal and administrative consequences.

A tax credit directly reduces the amount of tax owed at the standard rate. This means it does not depend on whether the activity is profitable and, in some cases, can be refunded, which

helps even businesses that are not making a profit. However, tax credits are more noticeable as government spending and may attract more attention from State aid regulators because they act as a direct transfer of public funds.

The partial income exemption, by contrast, operates within the income determination framework of the TUIR, preserving the structural continuity of the tax base and allowing the incentive to interact organically with the existing loss carry-forward, interest limitation, and transfer pricing rules. As the explanatory report implicitly suggests, this approach reflects the legislature's intention to treat the reshoring regime as a structural modification of the income tax base rather than as a subsidy-equivalent transfer, a characterisation that, as Chapter IV will demonstrate, proves difficult to sustain in light of the European Commission's approach to fiscal State aid.

Furthermore, the partial exemption approach matches several existing Italian fiscal incentive regimes, such as the *Patent Box* regime and, before it was abolished, the *ACE “Aiuto alla Crescita Economica.”* These incentives also work by changing the TUIR tax base instead of offering direct tax credits. This consistency makes it easier for the reshoring regime to interact with other incentives, as highlighted in the Assonime circular's analysis of cumulation issues. However, it also raises the question of whether the total fiscal benefit from combining several base-reducing incentives stays within the limits set by the Italian constitution and EU State aid law.

2.5 Anti-abuse rules and recapture mechanisms

Fiscal incentives for relocating business activities often raise a common issue in tax policy because companies might meet the formal requirements but not actually move their operations. The real problem is that the relocation may be only on paper, with no real change in where production happens. Article 6 of Legislative Decree No. 209/2023 is crucial in order to address this risk by using both preventive and corrective measures.

Instead of using just one safeguard, the law works on two levels. First, it limits access to the regime if the relocation does not seem to involve a real return of activity. Second, even after the incentive is given, it can be taken back if the business later moves out of Italy. The system's effectiveness depends on how these two controls work together.

How well this structure works matters for both policy and legal reasons. If the safeguards are too weak, the regime could give benefits to deals that do not create real economic activity in

Italy. This could raise concerns under the principle of reasonableness in Article 3 of the Constitution and under EU State aid proportionality rules in Article 107(3) TFEU. On the other hand, if the rules are too strict, they might discourage real relocations and hurt the industrial policy goals set by lawmakers.

Article 6(2) gives a clear example of the preventive approach. It leaves out any activities that took place in Italy during the 24 months before being moved abroad and then returned. This rule is designed to stop artificial “exit-and-return” schemes. These happen when a business moves its operations out of the country for a short period, only to bring them back and claim a tax benefit. Without this rule, companies could get the incentive even if the move was just on paper and did not involve any real change in production.

The 24-month rule is straightforward. It applies automatically, and tax authorities do not need to show that a company acted with abusive intent. This approach gives certainty to both taxpayers and the administration, but it can also be rigid. For example, real business reorganisations that involve a temporary foreign operation of less than 24 months, such as a short joint venture or a pilot production facility set up abroad and later moved back to Italy after a real strategic review, may be left out of the regime even if the foreign presence was genuine. The legislature has apparently accepted this cost in exchange for the administrative simplicity of a rule-based exclusion.

Some interpretive boundary issues arise from paragraph. First, the exclusion applies only to activities previously carried out in Italy: it does not apply to activities previously carried out in another EU or EEA Member State and subsequently transferred to a non-EU/EEA country before being relocated to Italy. This asymmetry constitutes a potential weakness in the architecture of the provision that the European Commission may consider in its State aid compatibility review.

The law does not require a minimum period for foreign activities if they were *not* previously carried out in Italy. This suggests lawmakers aimed the anti-abuse rule at round-tripping, rather than setting a general minimum time for foreign operations. Because of this, it can be difficult to tell the difference between genuinely new activities started by foreign investors, which count as new investments and are excluded from the regime, and short-term foreign activities that only formally meet the transfer rule.

The main anti-abuse measure in Article 6 is the recapture mechanism described in paragraph 4. If the beneficiary moves the incentivised activity outside Italy within five tax periods after the incentive ends, or ten tax periods for large enterprises as defined by Commission Recommendation 2003/361/EC, even partly, the tax authorities will recover the unpaid taxes from the incentive period, along with interest. This recovery is retroactive, so the liability relates to the periods when the incentive was used, not when the transfer takes place.

The words "even partially" in paragraph 4 mean that if only part of the incentivised activity is moved—such as one production line or a single function from a larger operation—the full recapture applies. It is not limited to just the portion that was transferred. This all-or-nothing approach is implemented by the legislator in order to discourage even incremental delocalisation of incentivised activities. Whether this strictness is constitutionally and EU-law proportionate is a question that will be addressed in Chapter III.

The recapture period begins to run after the expiry of the incentive, however it must also extend to transfers occurring during the incentive period. The combined duration of the incentive period and the surveillance period means that the total permanence requirement is ten years for standard beneficiaries and fifteen years for large enterprises. This extended permanence obligation transforms what appears on its face to be a temporary incentive into a long-term territorial commitment, with all the legal certainty and planning implications that this entails for corporate taxpayers.

The reshoring recapture mechanism does not operate in isolation within the Italian legal order but must be read alongside the general anti-delocalisation framework established by Article 5 of Decree-Law No. 87 of 2018 “*decreto dignità*”, which sets out the general consequences of delocalisation by enterprises that have benefited from State aid conditioned on productive investment. As the Assonime circular identifies, the relationship between Article 6 of *D.Lgs. 209/2023* and Article 5 of the “*decreto dignità*” is one of special law to general law (*lex specialis* to *lex generalis*).

Article 5 of the “*decreto dignità*” sets out two scenarios in its two paragraphs. The first rule applies to productive investments that must take place in Italy. If these investments are moved to countries outside the EU or EEA, the aid must be paid back, along with a financial penalty that is two to four times the amount received. The second rule concerns investments in a specific area. In this case, moving the investment, even within the EU or EEA, means the aid must be repaid with interest, but there is no penalty. The reshoring recapture rule in Article 6 works in

a similar way to the second rule. It requires repayment of unpaid taxes with interest, but no extra penalties, and considers any move outside Italy, including to EU countries, as a trigger.

The reshoring regime, also, interacts with the general anti-avoidance rule established by Article 10-bis of Law No. 212/2000 “*Statuto del contribuente*”, as amended by Legislative Decree No. 128 of 2015. This provision disallows, for tax purposes, arrangements that lack of economic substance and that have the essential purpose of obtaining undue tax advantages, even where formally compliant with applicable rules.

The anti-abuse clause of paragraph 2 of Article 6 addresses only one specific scenario which is the round-tripping of an activity previously conducted in Italy. It does not preclude the application of the general anti-avoidance rule to other arrangements that may formally satisfy the eligibility criteria of Article 6 while lacking genuine economic substance. The tax authorities could, in principle, invoke Article 10-bis to challenge a transfer that is formally from a non-EU/EEA country to Italy but that lacks *substance* on the basis that the arrangement lack of economic substance and serves principally to generate an undue tax advantage.

The specific anti-abuse provision in paragraph 2 and the general anti-avoidance rule work together rather than separately. The specific rule deals with a clearly defined situation and has automatic legal effects. The general rule gives tax authorities a way to handle abusive arrangements that do not fit the specific scenario but still lack the real economic basis required by the system. This layered anti-abuse architecture is, as will be argued in Chapter III, relevant to the constitutional assessment of the proportionality of the regime: the availability of a general anti-avoidance instrument reduces — though does not eliminate — the risk that the incentive benefits arrangements that are fiscally, but not economically, genuine, thereby attenuating (but not resolving) the concern that the regime confers advantages that are disproportionate to its legitimate policy objectives.

2.6 Comparison with other Italian Tax Incentives

The fiscal incentive for reshoring introduced by Article 6 of D.Lgs. 209/2023 does not represent an isolated legislative intervention but forms part of a stratified and increasingly articulated system of tax incentives that the Italian legislature has developed over the past two decades with the aim of attracting investment, stimulating innovation, and promoting the territorial development of the national productive system. Comparing the main existing incentives helps place the reshoring regime in a wider policy context, shows what role it plays, and highlights what sets it apart from similar tools. In this work, the comparison also points out the legal

differences and possible tensions that can come up when several incentive regimes apply to the same taxpayer or activity.

Patent Box

A patent box—also referred to as intellectual property (IP) regime—taxes business income earned from IP at a rate below the statutory corporate income tax rate, aiming to encourage local research and development. Many patent boxes around the world have undergone substantial reforms due to profit shifting concerns.

Article 6 of Legislative Decree No. 146 of 21 October 2021, converted into Law No. 215 of 17 December 2021, abolished the former Patent Box regime and replaced it with a new regime providing enhanced deductibility of research and development (“R&D”) costs relating to certain intangible assets (the so-called *super deduction*, also referred to as the new Patent Box).

This enhanced deduction is available for both IRES and IRAP when R&D expenses are related to specific intangible assets used in the taxpayer’s business.

The Patent Box encourages companies to develop and retain intellectual property in Italy, while the reshoring regime incentivizes the return of business activities to the country. The Patent Box provides a significant cost deduction, which applies even if IP activities are not profitable. In contrast, the reshoring regime offers an income exemption that benefits only profitable activities. According to the Assonime circular, both regimes can be used together. For instance, relocating R&D to Italy and subsequently obtaining an IP right may allow access to both the Patent Box deduction and the 50% reshoring exemption. However, due to the lack of clear rules on combining these benefits, there remains uncertainty regarding the overall advantage and compliance with all state aid limits.

R&D and Innovation Tax Credits: Transition 4.0 and Transition 5.0

The 2020 Italian Budget Law (No. 160/2019) introduced the “Transition 4.0 Plan”, a set of incentives for companies, provided in the form of tax credits, to support and promote the digitalisation of the Italian production system through tangible and intangible investments in technologically advanced technologies, research and development activities and training of staff. The Transition 4.0 Plan aims to stimulate economic growth by providing incentives for tangible and intangible investments in digital technologies and by supporting high-quality training to improve the availability of skills and professional profiles capable of designing and

managing the integration of 4.0 technologies (Bank of Italy and MEF, Transition 4.0 Plan: An Assessment of Investment, Employment and Productivity Effects, 2026).

Article 38 of Decree-Law No. 19 of 2 March 2024, converted with amendments into Law No. 56 of 29 April 2024 and containing “Further Urgent Measures for the Implementation of the National Recovery and Resilience Plan (PNRR)”, introduced the new Transition 5.0 Plan. The measure establishes a tax credit for enterprises undertaking new investments between 1 January 2024 and 31 December 2025 in production facilities located in Italy, as part of innovation projects that achieve either a reduction in the energy consumption of the production facility of at least 3 per cent or, alternatively, a reduction in the energy consumption of the processes affected by the investment of at least 5 per cent.

The inpatriates regime

Another relevant fiscal regime introduced by Article 5 of D.Lgs. 209/2023 was the inpatriates regime. The measure provides, when met specific requirements, a 50% income tax exemption for the highly qualified workers who transfer their tax residence to Italy and keep it for the period established by the decree.

The inpatriates regime requires workers who were previously employed in Italy by the same group to have lived abroad for at least seven years. Unlike other regimes, the reshoring regime requires that the business activity has been abroad for just 24 months.

The reshoring regime is unique because it uses an *origin-based* approach, offers an income exemption, and follows a progressive timeline. These features set it apart from other major Italian tax incentives. As a result, it tends to attract profitable businesses that want to relocate, but it may not be suitable for capital-intensive or loss-making activities. The regime also brings up important constitutional and EU law questions.

An origin-based income exemption is selective in a way that investment-based or location-based incentives are not. It gives an advantage based on where a business previously operated, not on its current actions or location. This approach does not fit easily with the principle of ability to pay in Article 53 of the Italian Constitution or the idea of selective advantage in Article 107(1) TFEU.

2.7 Preliminary assessment

The analytical examination conducted in the preceding sections of this chapter provides a sufficient normative foundation for a preliminary assessment of the reshoring regime introduced by Article 6 of D.Lgs. 209/2023. Such an assessment, at this stage of the work, is necessarily circumscribed: it does not extend to the constitutional and EU law dimensions of

the regime — which are the subject of Chapters III and IV respectively — but focuses on the internal coherence, practical effectiveness, and structural limitations of the instrument as a matter of fiscal policy and legislative design. The purpose of this concluding section is twofold: to identify the genuine strengths of the regime that justify its inclusion in the Italian normative framework, and to map the principal areas of weakness that will require deeper critical examination in the chapters that follow.

Strengths of the regime

The reshoring regime introduced by Legislative Decree No. 209 of 27 December 2023 has several strengths.

The first, and most fundamental, strength is the timeliness of the intervention. As shown in paragraph 2.1, recent changes like post-pandemic supply chain issues, global political tensions, higher labour costs in traditional offshoring countries, and new automation technologies have opened up a new opportunity for productive reshoring that was not available ten years ago. The Italian legislature's choice to use fiscal tools at this moment shows a clear understanding of the current economic situation and puts Italy in a strong position to compete with France, Germany, and other advanced economies for productive investments that global companies are now reconsidering because of these changes. The timing of the reform reinforces the systematic coherence of the Italian intervention considering the issuing, at the same time, of the EU's Net-zero Industry Act and the revision of the State aid framework.

The second strength lies in the structural simplicity of the incentive mechanism. Applying the 50% partial income exemption through the ordinary rules of the TUIR (Consolidated Law on Income Tax) reduces compliance costs for taxpayers and administrative costs for the tax authorities. By doing so, the integrity of the ordinary tax system is preserved, avoiding the fragmentation that, by contrast, characterizes other tax incentives within the Italian tax system.

Third, the permanence architecture of the regime — combining a six-year incentive period with a five or ten-year post-incentive surveillance period — reflects a genuine attempt to ensure that the fiscal advantage translates into durable productive investment rather than ephemeral fiscal engineering. The requirement of ten to fifteen years of Italian territorial presence before the benefit becomes definitively retained is among the most demanding permanence conditions in the comparative landscape of European reshoring incentives and reflects a legislative determination to prioritise structural economic integration over short-term capital attraction.

Structural limitations

Against these strengths must be set a series of structural limitations that constrain the effectiveness of the regime and generate legal uncertainty in its application.

A partial income exemption does not help businesses that have losses in their first years in Italy, which is a structural limitation. This limitation affects which companies see the regime as an important factor in their decisions.

The geographical scope restriction represent another structural limitation. The exclusion of activities transferred from other EU and EEA Member States from the scope of the regime has the unintended consequence of creating a normative asymmetry within the European single market. This distinction, while internally coherent from the perspective of the regime's anti-globalisation narrative, is difficult to justify on purely economic grounds and raises the EU law concerns that will be examined in Chapter IV.

In addition, the standstill clause of Article 6, paragraph 5, introduces a dimension of temporal uncertainty, meaning that enterprises cannot rely on its availability at the moment of making the location decision that the incentive is designed to influence. Productive relocation decisions are irreversible in the short term and must be made on the basis of a reliable assessment of the Italian fiscal environment. The uncertainty linked to the absence of a definitive date on which the incentive may enter into force makes the incentive structurally weaker. Moreover, its retroactive extension to transfers carried out during the period preceding authorisation remains legally uncertain.

Interpretive uncertainties

Beyond the structural limitations, the regime generates a number of interpretive uncertainties that, pending formal clarification from the competent authorities, create legal risk for potential beneficiaries.

The biggest uncertainty is how to define qualifying business activity. This is especially true for holding companies, IP companies, and cases where activities are moved between existing entities instead of transferring an entire business unit.

Questions remain regarding the appropriate treatment of losses and the allocation of common costs when a beneficiary engages in both incentivised and non-incentivised activities. Additionally, uncertainty persists regarding how these rules interact with the Global Minimum Tax.

The fiscal incentive and the structural cost environment

A final dimension of the preliminary assessment concerns the relationship between the fiscal advantage conferred by Article 6 and the broader structural cost environment that conditions the attractiveness of Italy as a location for productive activity. As documented in the Italian academic literature and in successive OECD and World Bank competitiveness assessments, Italy's structural disadvantages as a business location — high energy costs, administrative complexity, infrastructural deficits in certain regions, judicial system inefficiencies, and a persistent skills gap in technical and scientific disciplines — represent the primary barriers to inward productive investment, including reshoring. Even a well-designed, temporary income exemption does not solve these underlying structural issues.

The risk is that the reshoring policy will mostly attract businesses that can easily move to take advantage of tax breaks, but do not have strong ties to any location. This approach does not address the deeper barriers that prevent companies with real jobs and supply chains from relocating. This concern is not merely academic: it is directly relevant to the constitutional proportionality assessment, since a regime that confers selective fiscal advantages without producing the economic benefits that justify the derogation from the principle of equal tax treatment raises questions of reasonableness under Article 3 of the Italian Constitution, as will be argued in Chapter III.

Concluding remarks

The preliminary assessment conducted in this section confirms that the reshoring regime of Article 6 of D.Lgs. 209/2023 represents a technically coherent and timely legislative intervention that addresses a genuine economic need and reflects an accurate reading of the macro-structural forces driving productive relocation. Its principal strengths — simplicity of mechanism, generous permanence architecture, and systemic coherence with the broader Italian incentive framework — are genuine and should not be underestimated.

At the same time, the regime's income conditionality, its geographical restriction, the standstill-induced temporal uncertainty, and the unresolved interpretive questions that surround its application in complex corporate scenarios represent limitations that reduce its practical effectiveness and generate legal risk for potential beneficiaries. More fundamentally, the selective nature of the incentive — an origin-based income exemption that benefits a defined category of taxpayers on the basis of the geographical provenance of their activities — places it at the intersection of the two principal areas of legal tension that this work investigates: the constitutional principle of “capacità contributiva” and equal treatment, on the one hand, and the

EU prohibition on State aid incompatible with the internal market, on the other. It is to the systematic examination of these tensions that the following chapters are devoted.

CHAPTER 3: CONSTITUTIONAL AND EU LAW ISSUES OF THE ITALIAN RESHORING REGIME

3.1 Introduction: the dual legal challenge

The analytical examination of the reshoring regime conducted in Chapter II has revealed a fiscal instrument of considerable technical sophistication, one that pursues a legitimate and economically well-grounded industrial policy objective through a structurally coherent legislative design. Yet the same analysis has progressively disclosed a fundamental normative tension that pervades the regime at every level of its architecture: the tension between the selectivity that is constitutive of the incentive's very logic and the legal constraints — both constitutional and supranational — that govern the permissible boundaries of differential fiscal treatment.

This tension is not accidental. It is, rather, an inherent feature of any fiscal incentive regime that seeks to modify the locational behaviour of economic actors by conferring advantages on a defined category of taxpayers while withholding them from others in comparable economic positions. The reshoring regime of Article 6 of D.Lgs. 209/2023 is selective in a particularly pronounced sense: it does not merely distinguish between taxpayers on the basis of what they do — as investment-based incentives do — or where they operate — as territorially defined incentives do — but on the basis of where they previously operated. The geographical origin of the activity is the decisive eligibility criterion, and it is this criterion that generates the dual legal challenge examined in the present chapter.

The reshoring regime is characterised by a fiscal treatment reserved to a determined category of taxpayers. This selective choice raises questions that can be examined under two correlated levels. The ability to pay principle, provided by art. Article 53 of the Italian Constitution requires that the fiscal burden be distributed among taxpayers according to their economic capacity. When a new fiscal measure partially exempts a specified group of taxpayers from paying tax, while other taxpayers with the same economic conditions are required to pay it, this creates a treatment difference. Because this asymmetry affects the distribution of the tax burden, it requires justification at the constitutional level. Simply aiming for an industrial policy goal is not enough. The Italian Constitutional Court has repeatedly stated that any exceptions to equal fiscal treatment must be based on a reason that is logically linked to the legislative goal and is proportionate in its effects.

The second constitutional level focuses on the principle of reasonableness found in Article 3 of the Constitution. The Constitutional Court uses this as a broad proportionality test for laws that treat taxpayers differently. For instance, if a law offers a 50% income exemption for six years

based on a person's origin, but this has no real connection to their economic situation, the law must show that its goal is legitimate. It also has to prove that the measure is appropriate for reaching that goal, that there were no less restrictive alternatives, and that the cost to taxpayers matches the benefit to the community.

Another constitutional issue is the principle of reasonableness in Article 3 of the Constitution. Using this principle, the Constitutional Court developed a proportionality test to review differences in tax laws. One important rule gives some taxpayers a 50% income exemption for six years, depending only on their place of origin, not their ability to pay. This rule must prove that its purpose is legitimate. The means adopted to achieve that objective must satisfy the requirements of suitability, necessity, and proportionality. In particular, proportionality requires that the fiscal cost imposed on the general body of taxpayers is commensurate with the economic benefits generated for the community.

From the perspective of European Union law, the same selective structure generates a distinct but parallel set of legal concerns, organised around two principal axes. The first is the prohibition on State aid incompatible with the internal market under Article 107(1) TFEU. A fiscal measure that confers a selective economic advantage on certain undertakings by reducing the tax burden they would otherwise bear constitutes State aid within the meaning of that provision, subject to prior notification to and authorisation by the European Commission. The Italian legislature has itself acknowledged this qualification by inserting the standstill clause of Article 6, paragraph 5 — a recognition that the regime meets, or at least cannot be said not to meet, the four cumulative criteria established by settled CJEU case law: imputability to a Member State, transfer of State resources, selective economic advantage, and effect on intra-EU trade and competition.

Besides State aid issues, the reshoring policy also raises questions about the EU's internal market rules. It applies only to moves from countries outside the EU and EEA, so where the activity comes from matters. As a result, tax consequences change depending on whether the relocation is within or outside the Union.

For example, a company moving its operations from a country like China to Italy can benefit from the incentive. However, if the same move is from another EU Member State, such as France, it does not qualify for the regime. Although formally justified by reference to external relocations, this design may still affect the conditions under which companies organise their activities within the internal market.

A central thesis of the present chapter is that the constitutional and EU law challenges raised by the reshoring regime are not merely parallel but structurally connected. The concept of selectivity — differential treatment of taxpayers in comparable situations without adequate justification — is the common thread that runs through both dimensions. The same normative feature that generates the constitutional concern under Articles 3 and 53 of the Italian Constitution is the feature that qualifies the measure as potentially incompatible State aid under Article 107(1) TFEU and potentially restrictive of fundamental freedoms under Articles 49 and 63 TFEU.

In this chapter, the analysis is based on the following question which will be examined through the constitutional lens and the EU law lens: is the selectivity of the reshoring regime legally justified?

This approach permits to reflect the contemporary Italian tax law, where constitutional and EU constraints operate as a complex system of limits on legislative discretion rather than as wholly independent normative regimes.

3.2 Constitutional dimension

3.2.1 The constitutional framework for tax incentives in Italy

The Italian Constitution does not contain an explicit provision governing tax incentives. Their constitutional legitimacy must therefore be reconstructed through the interaction of three fundamental norms which define both the foundation and the limits of the legislature's discretion in designing preferential fiscal regimes:

- Article 2 “*The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled*”;
- Article 3 “*All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country*”;
- Article 53 “*Every person shall contribute to public expenditure in accordance with their capability. The tax system shall be progressive*”.

The Constitutional Court has interpreted the first paragraph of art. 53 not just as a distribution rule but also as a standard that affects the legitimacy of any legislative choice altering the ordinary tax burden. The principle of ability to pay reflects the taxpayer's actual economic capacity, which is determined by income, wealth, or consumption. This is a factual measure, not based on behaviour or geography. A tax rule that offers an exemption based on where the taxpayer was located, instead of their reduced or different economic capacity, goes against this standard and needs to explain why it deviates.

The Constitutional Court has looked into the legitimacy of tax incentive systems many times. It has created a way to analyze the difference between “agevolazioni promozionali” and “agevolazioni arbitrarie.” The first type includes special measures aimed at important goals. These goals can include employment, investment, territorial development, or innovation. There is a logical connection between the benefits provided and the goals pursued. The second type includes measures that give tax advantages without proper justification based on recognized constitutional values. This distinction isn’t always clear-cut, but it follows a consistent logic, the legitimacy of a tax incentive relies on having a justifiable reason that is logically linked to a legitimate goal and proportionate in its impact on the general principle of equal tax treatment.

3.2.1 The principle of ability to pay and the origin-based exemption

The most fundamental constitutional question raised by Article 6 of D.Lgs. 209/2023 concerns the relationship between the partial income exemption it introduces and the principle ability to pay under Article 53. The issue can be stated with precision: two enterprises operating in Italy, generating identical taxable income from identical productive activities, bear different IRES and IRAP liabilities solely because one has transferred its activity from a non-EU/EEA country within the qualifying period while the other has been operating in Italy continuously or has relocated from another EU Member State.

Both businesses earn the same income. The only difference is where their activities happen, which is a matter of behavior and history, not economics. The constitutional question is whether this difference justifies different tax treatment.

Italian scholars identify two main ways to look at this issue. The first, more flexible approach, says that Article 53 lets lawmakers use taxes to shape economic policy. Incentives that change where businesses operate, even if they create differences among taxpayers with the same income, are considered constitutional if they serve a valid goal and are temporary.

The more restrictive interpretation of the ability-to-pay principle argues that it sets real limits on how the legislature can differentiate between taxpayers. According to this view, tax differences are justified only when the criteria used are linked, directly or indirectly, to economic capacity or to the social cost generated by the activity being taxed.

From this standpoint, the geographical location of a business activity is seen as an external factor. It does not reflect the taxpayer's economic strength. For this reason, it cannot normally justify different tax treatment under Article 53, unless there is a particularly strong and specific justification.

This debate is not only theoretical. It raises a deeper constitutional issue about what the ability-to-pay principle actually means. One way to interpret this is as a rule of equality that limits which criteria can be used to set different tax rates. Another, more flexible view is that the principle only requires taxes to be based on some measure of economic capacity, without limiting how lawmakers choose to distinguish between taxpayers.

Up to now, the Constitutional Court has not clearly answered this question in cases about location-based incentives. The reshoring regime could therefore offer an opportunity to further clarify the issue.

3.2.2 The reasonableness test

Even accepting that the reshoring regime pursues a legitimate constitutional objective — the strengthening of national productive capacity and the enhancement of supply chain resilience — the principle of reasonableness under Article 3 of the Constitution requires that the measure satisfy a proportionality assessment along three dimensions: appropriateness, necessity, and proportionality *stricto sensu*.

The suitability of the instrument can be defended, although it is not free from doubts. An exemption on part of the income can reasonably reduce the tax burden on productive activities carried out in Italy, improving the country's attractiveness compared to other jurisdictions.

However, the exemption primarily benefits businesses that generate profits quickly. It is less useful for companies that need large upfront investments and face early losses.

The compliance with the constitutional principles of this selective effect depends on the interpretation given. The main point is to comprehend if the advantage recognised for already profitable firms represents a deliberate policy choice by the legislator or an indirect consequence of the technical structure of the incentive.

Under a different perspective, Article 3 of the Italian Constitution and the principle of reasonableness become relevant. This principle requires that the legislator implement adequate policies that are not overly restrictive in achieving the desired goals. In the reshoring case, alternative mechanisms could be taken into consideration, like investment-linked tax credits or lower corporate tax rates for specific projects. These solutions could incentivise the reshoring of economic activities in Italy without generating the same disparities caused by the exemption of the income produced.

Proportionality is the more critical aspect. It is, in fact, necessary to assess whether the financial sacrifice required of the state, represented by the tax revenue lost during the incentive period, is offset by the expected economic benefit. For example the increase of investment or the creation of new jobs.

The additionality topic has a key role, because if a significant number of beneficiary firms would in any case choose to reshore their activities in Italy, even without the presence of the incentive, the fiscal advantage would not produce a real incentivising effect. In this case, the fiscal incentive serves as an additional benefit for firms that would have made the same decision regardless of state intervention. In that case, it does not create real economic benefits and instead increases inequality among taxpayers. Not including an ex-ante additionality assessment in the legislative process, which is a standard part of evidence-based tax policy, is a major gap. This weakens the justification for proportionality and could make the regime open to constitutional challenge.

3.2.3 The rule of legality and the delegation framework

A further constitutional dimension of the reshoring regime concerns the principle of legality in taxation under Article 23 of the Constitution, which requires that every financial obligation be imposed by law. In the context of legislative delegation, this principle interacts with the requirement that the delegated legislation remain within the boundaries set by the enabling law — in this case, Law No. 111 of 2023.

Article 3 of Law No. 111/2023 gives the Government the power to reform the international dimension of the Italian tax system to enhance its competitiveness consistent with EU law and OECD standards. The reshoring regime set out in Article 6 of Legislative Decree 209/2023 can be seen as a reasonable way of implementing the legislative delegation. Supporting the relocation of productive activities from non-EU countries is generally consistent with the idea of improving international tax competitiveness.

However, the enabling law does not clearly mention the possibility of introducing a tax advantage based on the geographical origin of economic activities. This raises a question of consistency: it is not obvious whether Article 6 stays within the limits of the delegation or whether it introduces something new, namely an income exemption tied to origin that was not explicitly envisaged by the legislature.

This issue is not only formal. According to the case law of the Constitutional Court, delegated legislation must remain within the principles and guiding criteria set by the enabling act. These criteria must be interpreted in a balanced way, neither too broadly nor too narrowly. If the Government goes beyond them, Articles 23 and 76 of the Constitution may be violated.

Even if the reshoring regime is unlikely to be declared unconstitutional on this basis alone, the issue is still relevant. It could become particularly important if the European Commission does not authorise the measure and its validity has to be assessed purely under domestic law.

A further issue concerns the lack of implementing regulations, which has been highlighted by both the Senate Study Service and Assonime as a significant gap. When the application of a tax incentive depends on interpretative choices that are not clarified by the law, the system ends up being shaped partly by administrative practice rather than by clear legal rules.

This situation increases uncertainty for taxpayers and reduces the predictability of the tax regime. The Constitutional Court generally considers legal certainty and foreseeability as implicit requirements of the principle of the rule of law.

3.3 EU-law dimension

The prohibition of State aid incompatible with the internal market is laid down in Article 107(1) TFEU. It covers any measure granted by a Member State or through State resources in any form. The key condition is that the measure must distort or threaten to distort competition by favouring certain undertakings or sectors and must be capable of affecting trade between Member States.

The European Commission and the Court of Justice of the European Union interpret this rule broadly. In practice, they apply a four-step test. If all four conditions are met, the measure must be reported under Article 108(3) TFEU and then reviewed for compatibility under Article 107(2) and (3) TFEU.

Including a standstill clause in Article 6(5) of the Italian reshoring regime shows that lawmakers may have recognised the measure could fall under State aid rules. At the very least, it suggests

they considered this possibility. This is more than just a precaution. It also means the regime might give a selective economic advantage funded by State resources, which could affect trade within the EU.

The analysis therefore needs to examine each of the four criteria separately, with special attention to selectivity, which is usually the most complex and debated element in State aid cases.

The first criterion, the attribution to the State and the use of State resources, is relatively straightforward. The regime provides a partial exemption from income tax. This means that the State renounces tax revenue it would normally collect under the standard IRES and IRAP system.

According to the case law of the Court of Justice, starting from the *Paint Graphos* judgment (Cases C-78/08 to C-80/08), any measure that leads to a loss of tax revenue is considered a use of State resources. This is because the State's financial capacity is reduced in the same way as if it had made a direct expenditure. It is also irrelevant whether the advantage takes the form of a tax reduction or a direct subsidy.

The economic advantage requirement is satisfied because the 50% partial exemption lowers the IRES and IRAP taxes the beneficiary has to pay compared to the usual system. This benefit is clear and easy to measure. The combined tax rate for the incentivised activity falls from about 27.9% to about 13.95%, representing a reduction of nearly fourteen percentage points. This reduction constitutes an economic advantage within the meaning of Article 107(1) TFEU, regardless of whether it increases the absolute profitability of the relocated activity or merely reduces its tax cost relative to alternative locations.

The effect on trade and distortion of competition criterion is met whenever the beneficiary operates in a market where intra-EU trade exists, which is the case for virtually any productive or commercial activity of the scale contemplated by the reshoring regime. The Court of Justice uses a fairly low standard when looking at this condition. The *Altmark* Case (Case C-280/00) explained that even small advantages can fall under Article 107(1) TFEU if they affect markets where the beneficiary is involved in economic activity that can be traded across borders.

The *assonime* circular points out that companies moving from non-EU countries and getting the 50% exemption might work in the same sectors as businesses already based in Italy. As a result, they could compete under more favourable tax conditions, which is exactly the type of distortion of competition that Article 107(1) TFEU is intended to prevent.

The third condition, selectivity, is the central and most complex element in State aid analysis. It is also the main source of legal uncertainty for the reshoring regime. A measure is selective when it favours certain undertakings or types of production over others in comparable legal and factual situations, in light of the system's objective.

The Commission and the Court of Justice use a clear three-step test to check selectivity in tax measures. First, they find the reference system, which is the usual tax regime in a Member State. Next, they see if the measure treats similar businesses differently from that system. Finally, they look at whether this difference can be explained by the nature or logic of the tax system.

Defining the reference system is important for the reshoring regime because it sets the baseline for measuring any advantage. There are two main ways to define it.

The first approach is straightforward and sees the reference system as the standard Italian corporate tax framework, which includes the usual IRES and IRAP rules for all companies in Italy. In this view, the 50% exemption in Article 6 is a clear departure from the normal regime. It reduces the tax burden only for a specific group of firms, even though there is no difference in their economic capacity or the nature of their activity.

To test whether a fiscal measure is selective, the European Commission and the Court of Justice follow a structured analysis. The first passage consists of identifying the reference system, which is the tax system, applicable to that member state. Then it determines whether the measure introduces asymmetries between operators, in light of the system's objective, in a comparable situation. At a later stage, it is evaluated if the difference can be justified by the structure or the internal logic of the tax system analysed.

In the analysis of the reshoring regime, the individuation of the reference system is critical. From it depend the criteria used to assess the existence of a potential selective advantage.

In this regard, different perspectives have been developed. One perspective treats the standard Italian corporate tax framework as the reference system. In this case, the fiscal incentive introduced by Article 6 constitutes a derogation from the ordinary regime. The 50% exemption reduces the tax burden only for a specific category of firms, even in the absence of distinguishing elements in their economic capacity profile or the characteristics of the activities they conduct. The result is that the measure appears suitable for creating a disparity in treatment with respect to the rules normally applicable to other economic operators. For this reason, the measure appears clearly selective in a legal sense (*de iure* selectivity).

The second, more favourable characterisation would identify the reference system as the broader Italian framework of fiscal incentives for investment and business location — a system that already includes, as described in § 2.6, the Patent Box, the Transition 4.0 and 5.0 tax credits, the ZES Unica, and the impatriates regime. On this characterisation, the reshoring regime might be presented as a specific application of a general legislative logic of incentivisation, comparable to other measures that the Commission has already approved, rather than as an anomalous derogation from an otherwise neutral system. However, this characterisation is unlikely to prevail: the Commission's approach to fiscal State aid, confirmed in *World Duty Free* (Cases C-20/15 P and C-21/15 P) and *Fiat* (Case C-885/19 P), requires the reference system to be identified at the level of the applicable tax rules rather than at the level of the general incentive policy, and the applicable rules for corporate income taxation in Italy are unambiguously the ordinary IRES and IRAP provisions.

If we take the standard IRES/IRAP regime as our reference, the exception in Article 6 is selective in two ways. First, it is selective by person, since it only covers companies that have moved their operations from a non-EU or non-EEA country. This means companies that have always been in Italy or have moved from other EU Member States are not included. Second, it is selective by subject matter, as it only applies to companies with income-generating activities. Loss-making companies that cannot benefit from a partial income exemption are therefore excluded. This double selectivity makes it much more likely that the measure will be considered State aid and makes it harder to argue that it is a general measure.

The qualification of the reshoring regime as State aid within the meaning of Article 107(1) TFEU does not automatically render it incompatible with the internal market. Article 107(3) TFEU provides a series of grounds on which the Commission may declare aid compatible, subject to a balancing test that weighs the positive effects of the measure in achieving a well-defined objective of common interest against its negative effects on competition and trade. The reshoring regime will most likely rely on Article 107(3)(b), which covers aid for serious disturbances in a Member State's economy, and Article 107(3)(c), which allows aid to support specific economic activities or regions.

Article 107(3)(b) is probably not a strong basis for compatibility. The Commission interprets this rule strictly and looks for evidence of a broad economic crisis that affects the entire Member State, not just one sector or a structural issue. Although Italy faces well-known economic problems such as high fiscal pressure, slow productivity growth, and ongoing differences between the North and South, these do not amount to a serious disturbance as defined by Article

107(3)(b). In the past, this article has mostly been used during financial crises and major economic shocks.

Article 107(3)(c) offers a more plausible compatibility ground. The Commission has applied this provision to approve a wide range of investment incentives directed at facilitating the development of specific economic activities, provided that the aid is necessary, proportionate, and does not adversely affect trading conditions to an extent contrary to the common interest. The reshoring regime's stated objective, which is to promote the relocation of productive activities to Italy in order to enhance supply chain resilience and support industrial policy, may constitute a legitimate objective of common interest within the current geopolitical and economic context. This is particularly relevant given the European Union's recent shift in industrial policy, as reflected in the Net-Zero Industry Act and the revised State aid framework.

However, Article 107(3)(c) TFEU requires more than just a legitimate policy goal. The aid also needs to be necessary and proportionate.

Aid is considered necessary only if the beneficiary would not have invested or relocated without it. Proportionality means the support should only cover the extra cost of choosing Italy instead of another location.

The question of additionality matters here because many companies might decide to reshore for broader economic reasons, not just because of tax incentives. In these cases, the aid might not actually be necessary.

There are also concerns about how the measure is designed. The 50% exemption applies equally to all eligible companies, no matter their sector, investment amount, or local challenges. Because of this uniform structure, it may in some cases provide a benefit that goes beyond what is strictly necessary to achieve the policy goal.

The situation gets more complicated when the Global Minimum Tax framework is considered. The regime lowers the effective tax rate on certain activities to about 13.95%, which could trigger the Qualified Domestic Minimum Top-up Tax (QDMTT) for large multinational groups. The actual tax benefit depends a lot on the size and structure of the beneficiary. Large multinational groups may get less benefit than small and medium-sized enterprises (SMEs). However, the 50% exemption does not take this difference into account and applies the same way to everyone. This makes it even harder to judge if the measure is proportionate.

Beyond State aid rules, the geographical scope of the reshoring regime also raises questions under the fundamental freedoms of the TFEU. In particular, issues arise under Article 49 on freedom of establishment and Article 63 on free movement of capital.

The freedom of establishment guarantees that EU companies can set up and operate in any Member State under the same conditions as domestic companies. A measure that differentiates based on where a business previously operated may indirectly discourage companies from other Member States from relocating to Italy. This is visible in the structure of the reshoring regime. A company moving production from China to Italy benefits from the 50% exemption for six years. However, a company moving from France to Italy does not get the same benefit. This difference could discourage companies from relocating within the EU and may go against the purpose of the internal market.

Article 63 TFEU, which covers the free movement of capital, applies to both movements within the EU and between Member States and countries outside the EU. Since reshoring often means moving assets, equipment, and money, this process is closely tied to capital movements. If the incentive does not apply to activities moved from other EU countries, it could make moving assets to Italy from within the EU less appealing than from outside the EU. This result goes against the usual goal of the internal market, which is to support economic ties within the EU over those with non-EU countries.

The justifications available for restrictions on fundamental freedoms are more limited than those available under Article 107(3) TFEU. When a measure is not discriminatory and proportionate to the objective pursued, the Court of Justice accepts that restrictions on fundamental freedoms can be justified by overriding reasons of public interest, in accordance with the rule of reason. The Italian government could argue that the reshoring regime meets these requirements. In particular, it may be justified as an attempt to address a structural market failure, namely the long-term weakening of domestic production linked to sustained offshoring trends. On this view, the different treatment of relocations from EU and non-EU countries could be explained by the fact that these situations involve different competitive dynamics. However, there are still serious questions about whether this argument would hold up in court. The Court of Justice often asks Member States to prove that any limits on fundamental freedoms are only those absolutely necessary. Automatically excluding cases based solely on country of origin, without considering the specific economic situation, could be seen as going too far.

However, this argument faces the difficulty that the Court of Justice has consistently required that restrictions on fundamental freedoms be proportionate, and a categorical exclusion of all

EU-origin relocations — regardless of the specific competitive disadvantage involved — may not satisfy this requirement.

3.4 The interaction between the constitutional and EU-law dimensions

The analyses conducted in the precedent paragraphs have proceeded along parallel tracks, one constitutional, one supranational, but have converged on a common finding: the origin-based selectivity of the reshoring regime is the central normative problem from both perspectives. This convergence is intentional and reflects the structural reality of the contemporary Italian tax legal order. In this context, constitutional and European Union law set up a layered system that limits what lawmakers can do. These limits are different in theory but work together in practice.

The constitutional rule about ability to pay and the EU State aid rule about selectivity follow similar reasoning. Both say that different tax treatment must be based on an objective reason linked to the measure's goal, and any benefit should match that goal. However, businesses that get the reshoring exemption are not truly different from those that do not, either in economic capacity (the main test under Article 53) or in other features important to the Italian tax system (the main standard in EU law for judging exceptions). In both cases, the only reason for the tax difference is where the business was located before. This territorial difference does not relate to the main criteria and does not meet constitutional or EU standards for fair taxation.

However, the operational consequences and enforcement mechanisms of these two legal systems differ significantly. If a constitutional challenge succeeds, the Italian Constitutional Court will declare Article 6 unconstitutional, thereby removing its domestic legal validity with *erga omnes* effect. The EU law challenge, if the Commission were to refuse authorisation, would result in the impossibility of applying the regime and the obligation to recover any aid already granted, with the addition of interest. These are distinct legal consequences, operated by distinct institutional actors, through distinct procedural mechanisms.

The relationship between the constraints imposed by European Union law and the Italian constitutional order is governed by the principle of primacy, as incorporated into Italian constitutional jurisprudence through the counterlimits doctrine established by the Constitutional Court in its judgment No. 183 of 1973 (Frontini) and further developed in subsequent decisions. This doctrine states that European Union law takes precedence over ordinary Italian laws, including tax laws. However, it is still limited by the supreme constitutional principles and fundamental rights that the Constitutional Court considers essential to Italy's constitutional identity.

For the reshoring regime, the primacy of EU law means that if the European Commission denies authorisation under Article 108(3) TFEU because the regime is considered incompatible State aid, Article 6, paragraph 5's standstill clause would stop the regime from having legal effects, no matter its status under Italian law. The EU law constraint would operate as a pre-emptive limit on the regime's effectiveness, rendering the constitutional question moot in practical terms — though not in theoretical ones, since a declaration of unconstitutionality would have independent legal significance for the validity of the delegation and the legislative process.

Conversely, if the Commission were to authorise the regime, the EU law clearance would not resolve the constitutional questions raised in this chapter. When the Commission authorises a measure under Article 107(3) TFEU, it means the measure is compatible with the internal market from the EU law point of view. However, this does not decide whether the measure meets the requirements of Articles 3 and 53 of the Italian Constitution. These are two different assessments. A measure that passes the EU State aid test might still have constitutional problems under Italian law. This point is often overlooked in discussions about fiscal incentives, where some see EU authorisation as a substitute for constitutional legitimacy. The theoretical framework of this thesis clearly rejects this idea.

Even if the European Commission decides that the reshoring regime fits with the internal market, this does not mean it meets Italian constitutional law. The two reviews have different goals and use different legal standards. So, even with a positive State aid decision, it would still be unclear whether Article 6 follows the principles of equality and ability to pay found in Articles 3 and 53 of the Constitution.

The main issue is how beneficiaries are selected, in fact, eligibility is based only on where the business was before moving to Italy. This does not relate to the taxpayer's financial situation or the normal structure of corporate taxes. Because of this, the difference between those who benefit and those who do not is not based on the usual reasons for different tax treatment under Italian law or EU State aid rules. If there is a negative decision, the outcomes would be different: a declaration of unconstitutionality would remove the rule from Italian law, while an EU State aid decision would require following Union law. Still, the core problem remains the same: the special treatment is not based on an objective reason that matches the measure's purpose.

There is another problem with Article 6(5). It delays the reshoring regime until the European Commission finishes its State aid review. As a result, the incentive cannot start right away and depends on a future EU decision. Until then, businesses thinking about moving cannot be sure they will get the tax benefit, which leads to a long period of legal uncertainty.

From the EU law perspective, this uncertainty is a normal and accepted part of the Article 108(3) TFEU notification process. The standstill obligation is specifically intended to prevent the premature implementation of potentially incompatible State aid before the Commission has completed its assessment. In contrast, from a constitutional perspective, the same uncertainty generates concerns that are independent of the EU law framework. The principle of legal certainty, recognised by the Constitutional Court as part of the rule of law under Article 3 of the Constitution, means that taxpayers should be able to predict the legal effects of their economic choices. If a tax incentive's start date is unclear when an investment decision is made, and if its retroactive application is still being debated in court, it does not meet this standard.

This constitutional issue is made more serious by the type of economic decisions the reshoring policy aims to affect. As discussed in chapter 2, moving production is usually a one-way decision in the short term. Once a factory is taken apart abroad and rebuilt in Italy, it is very hard to reverse.

A company may decide to move its business to Italy, hoping to get the reshoring incentive. If the European Commission takes a long time to approve or rejects the incentive, the company could face high, non-refundable costs, even if the tax rules are later restored. This situation challenges the principle of legitimate expectations, which the Constitutional Court includes under legal certainty. Lawmakers set a clear expectation by introducing the incentive with Legislative Decree No. 209/2023, effective from 30 December 2023. However, the standstill clause means the incentive will not apply until the European Commission approves it, which could weaken that expectation.

The analysis conducted in this chapter leads to a coherent overall legal assessment of the reshoring regime, which may be summarised as follows. The regime is constitutionally vulnerable on three grounds: the absence of a sufficient justifying cause grounded in ability to pay capacity for the origin-based income exemption; the questionable proportionality of the measure in light of the additionality problem and the availability of less distortive alternatives; and the legal uncertainty generated by the combination of the standstill clause and the absence of implementing regulations.

There are also some issues to consider under EU State aid law. The way the reshoring incentive is designed suggests it probably falls under Article 107(1) TFEU, and it looks like the national legislature has thought about this. The more difficult question is whether it can be justified under Article 107(3)(c) TFEU. Even though supporting businesses to relocate can be a valid policy goal, this by itself does not mean the measure meets the rules of the internal market.

The way this measure is set up makes it unclear if the tax benefit is really necessary or aimed at the right companies. Since the exemption is a flat rate, it is difficult to know if the incentive fits the actual challenges businesses face when relocating to Italy. It is also not clear if the regime leads to new investment or simply rewards moves that would have happened anyway.

These questions become even more complicated with the Global Minimum Tax framework, which changes how multinational companies are taxed and makes it harder to judge the real economic impact of the measure.

There are also concerns about fundamental freedoms. The regime treats relocations from EU countries differently than those from non-EU countries, which could lead to extra legal risks.

The Commission's authorisation process under Article 108 TFEU does not solve these problems. It only looks at whether State aid rules are followed and does not address possible issues with fundamental freedoms.

The reshoring policy might seem strong in its economic logic and design, but its legal foundation is much weaker. Looking at it from both domestic constitutional principles and European Union law, the policy shows several major flaws that weaken the stability expected from its legislation. The following chapter examines whether the comparative experience of the United States — and specifically the Inflation Reduction Act — offers lessons that could inform a more legally robust and economically effective approach to fiscal reshoring incentives in the Italian and European context.

CHAPTER 4: A COMPARATIVE PERSPECTIVE: THE US INFLATION REDUCTION ACT

4.1 Background: US industrial policy and the reshoring imperative

Since the 2008 global financial crisis, reshoring has become a major topic in American political and economic discussions. After nearly thirty years of offshoring, the public began to question its long-term effects. The idea of American deindustrialisation, or the steady decline of the country's manufacturing base, became a common theme in policy debates across both major political parties. This was one of the few issues where there was bipartisan agreement in an otherwise divided political climate.

Manufacturing jobs in the US fell from about 19.5 million in 1979 to around 11.5 million by 2010 (Bureau of Labor Statistics). Trade liberalisation and low manufacturing costs in China are considered critical factors contributing to this decline. Also, US tax and trade policies encouraging companies to move production overseas play their role in this fall in manufacturing jobs. But not everyone agreed on these causes.

Before the IRA, early reshoring efforts in the US were small and mostly uncoordinated; they were not ambitious enough to change the overall trend. Because the political climate was not favourable to major industrial policies and there was no strong sense of geopolitical urgency, the role of the federal government was limited.

The qualitative transformation of US reshoring policy that culminated in the IRA was driven by the convergence of three distinct yet mutually reinforcing shocks, each exposing a different dimension of the vulnerabilities created by decades of globalised, efficiency-optimised supply chains.

The first shock was the COVID-19 pandemic, which began in 2020 and made it clear how fragile global production networks could be. During the worst parts of the pandemic, shortages of personal protective equipment, semiconductors, and many other goods showed that the just-in-time, concentrated manufacturing model, while efficient, also had hidden risks that standard risk management had missed. This led to a broad political consensus that supply chain resilience should be a clear goal of federal economic policy.

China's growing geopolitical competition was a subject of interest for different governments, especially under President Biden; the rivalry escalated into a trade war, which led to increased export controls and investment screening to separate from China in key technology areas. This competition represents the second shock. Most of the world's semiconductor manufacturing is

in Taiwan and South Korea, and rising tensions over Taiwan made people worry about relying on East Asia for important technologies. The CHIPS and Science Act of 2022, passed around the same time as the IRA, was a direct response to this issue. It put significant federal funding toward bringing semiconductor manufacturing back to the US.

Then, the Russia's invasion of Ukraine in February 2022 increased the need for an energy transition, highlighting the risks of relying on unstable or hostile countries not only for energy but also for the minerals, parts, and manufacturing needed for clean energy at home. This final shock reflects the IRA's focus to boost US production of renewable energy technologies, battery components and critical minerals, representing areas where China had achieved a strong, or even leading, position in the global market.

The process that led to the passage of the Inflation Reduction Act (IRA) on 16 August 2022 marks a major shift in how the United States approaches industrial policy. Although the final version of the IRA was less broad and ambitious than first proposed, it still dedicated federal resources on a scale not seen before for climate and industrial policy goals.

A first point to emphasise in this comparative analysis is that, with respect to the Italian reshoring regime, the IRA is characterised by an open-ended fiscal architecture. The Italian legislature defined in a clear way the boundaries of the fiscal incentive (e.g. by incorporating a fixed-percentage exemption and a standstill clause requiring prior EU authorisation) in order to address the risk of an unbounded selective advantage. Instead, the US Congress designed the fiscal incentives without establishing a cap on budgetary costs; as a consequence, these costs are determined *ex post* by the volume of qualifying investment and production, rather than fixed *ex ante* by the legislature. The reason for this legislative choice is rooted in a different fiscal philosophy and different constitutional and institutional contexts in which the two instruments operate. In fact, the Italian Legislature must comply with EU state aid discipline, which requires it to account for the competitive and budgetary implications of open-ended fiscal commitments during the legislative design phase.

The US approach to reshoring should not be viewed as a universally accepted model of industrial policy. The Inflation Reduction Act has, in fact, generated extensive political and academic debate. The criticism has focused on the scale of public expenditure, the reliance on tax incentives as a policy tool, and the use of domestic-content requirements to influence investment decisions. Opponents have questioned whether these incentives genuinely alter business behaviour or merely provide financial support for investments that firms would have undertaken in any event. At the other end of the debate, others have argued that the legislation

does not go far enough to protect domestic industry and have criticised the limited effectiveness of its enforcement mechanisms.

After the 2024 presidential election brought a new administration, Congress reviewed and changed several parts of the Inflation Reduction Act. Some tax benefits were reduced, and the end dates for certain incentives, especially those for clean energy and electric vehicles, were moved up. This situation shows that even in the US, where it is easier to change fiscal policy than in the European Union, industrial policy still depends a lot on shifting political priorities. The US approach should be seen as a changing framework, not a fixed example, and its long-term direction is still unclear.

The IRA emerges from a different constitutional framework and fiscal philosophy than the Italian reshoring regime. For example, there is an absence in the US federal system of constraints comparable to Article 53 of the Italian Constitution and Article 107 TFEU. As demonstrated in Chapter III, these constraints are central to understanding both the design choices embedded in Article 6 of *D.Lgs. 209/2023* and the resulting legal vulnerabilities. The following section provides a detailed examination of the fiscal structure of the IRA.

4.2 The structure of the IRA fiscal incentives

The Italian reshoring regime provides a 50% income exemption that applies equally across sectors and forms of economic activity. In contrast, the IRA developed various fiscal instruments, each directed to a specific policy objective, to deconstruct the reshoring problem. This different structure, which was designed by the US, reflects a different conception of how fiscal policies should be implemented to achieve the desired goals.

The analysis that follows examines the four principal categories of IRA incentives in turn, before considering the structural design features that cut across all of them.

The first and most substantial category of IRA incentives consists of the modified and newly enacted tax credits applicable to the generation of electricity from renewable and "clean" sources. The IRA modified or enacted four tax credits for the generation of electricity from renewable or "clean" sources: the modified tax credits — the energy investment tax credit (ITC) and the production tax credit (PTC) — provide tax credits for investing in or producing electricity from renewable-energy facilities that began construction before 2025, while the newly enacted tax credits — the clean electricity investment tax credit (CEITC) and the clean electricity production tax credit (CEPTC) — provide tax credits for investing in or producing electricity from energy facilities beginning thereafter (Buffie, Nicholas E., *Domestic Content Requirements for Electricity Tax Credits in the Inflation Reduction Act (IRA)*, 2025)

The ITC is a percentage-based credit calculated on qualifying capital expenditures incurred in constructing an eligible facility, typically set at a base rate of 6% and rising to 30% if the facility satisfies prevailing wage and registered apprenticeship requirements. The PTC, by contrast, is calculated per unit of electricity produced over a ten-year period following the facility's placement in service. The presence, within the same legislative framework, of both credit types and taxpayers' freedom to choose the more convenient credit structure based on the characteristics of their specific projects provides a degree of instrument flexibility. The Italian reshoring regime, instead, does not allow taxpayers to choose between an investment-linked and an output-linked form of relief.

This distinction becomes relevant when considering the critique highlighted in the previous chapter related to the income conditionality of the Italian regime. The ITC, being calculated on capital expenditures rather than on taxable income, can be recognised even if the underlying facility has not generated positive taxable income. In this sense, it advantages capital-intensive and long-term projects, which the Italian income exemption struggles more to encourage in their early years of operation.

The second category, introduced by IRA Section 13502 and codified as Section 45X of the Internal Revenue Code, is the Advanced Manufacturing Production Credit, directed specifically at the domestic production of components and materials used in clean energy manufacturing supply chains. The IRA establishes a New Advanced Manufacturing Production Credit to incentivise the domestic production of various components, including applicable critical minerals used in renewable energy generation, storage and related manufacturing, with a tax credit equal to 10% of the cost of production awarded to producers of critical minerals with the requirement that eligible minerals be produced in the United States (International Energy Agency, Inflation Reduction Act 2022: Sec. 13502 Advanced Manufacturing Production Credit, 2026).

The credit accrues every year in direct proportion to the volume of national production which satisfies the requirements under the law. By doing so, the fiscal incentive is renewed every year and grows together with the increase of the beneficiary firm's production. It represents a different approach with respect to the Italian reshoring regime, where the income exemption is limited to a fixed period of six years and is granted at the time of relocation. The credit applies to eligible components produced and sold after 31 December 2022. It is subject to phase-out percentages beginning in 2030: 75% in 2030, 50% in 2031, 25% in 2032, and 0% in 2033. These phase-out percentages, which allow a gradual phase-out, highlight a significant difference from the Italian regime. Because as foreseen by the Italian legislative decree, the

benefit expires instantaneously at the end of the six tax years (Mike, *The Reshoring Movement in American Manufacturing*, 2025).

Subsequent legislative developments have narrowed the scope of Section 45X. In particular, Section 70514 of the One Big Beautiful Bill Act of 2025 has limited access to fiscal credit by introducing more stringent requirements related to domestic content and imposing constraints related to the “prohibited foreign entity”. The discipline also provides for a gradual elimination of the credit for wind energy by 31 December 2027. Together, it included metallurgical coal as a “critical mineral”, and defined specific phase-out percentages for other critical minerals, excluding metallurgical coal.

This amendment is itself instructive: it demonstrates that even a production-linked, output-scaling incentive of the Section 45X type remains subject to significant legislative revision when domestic political priorities shift — a point that qualifies, without undermining, the broader observation that the IRA's instrument design is more flexible and more economically responsive than the Italian regime's fixed-rate exemption.

The third, and, from the perspective of the present thesis, the most structurally distinctive, category of IRA incentives consists of the domestic content bonus credits, which condition an enhanced rate of relief on meeting specified thresholds for the domestic sourcing of project inputs. The IRA amended Sections 45 and 48 of the Internal Revenue Code to allow companies to receive additional bonus tax credits of up to 10% for Qualified Projects that satisfy certain domestic content requirements for iron, steel, and manufactured products, with the Department of Treasury and Internal Revenue Service releasing guidance on the domestic content tax credit requirements for Qualified Projects (Erin L. Felix, Daniel H. Petkoff, *Guidance Released on Inflation Reduction Act Domestic Content Tax Credits*, 2023)

The technical structure of this conditionality is itself worth examining in some detail, since it represents the clearest point of conceptual contrast with the sector- and content-neutral design of the Italian reshoring regime. Projects meeting the domestic content requirement under the Investment Tax Credit can receive a bonus of up to 10%, which could be as much as a 33% increase in the ITC amount; to qualify for the full value of the bonus, projects must satisfy three additional requirements, the first being that all steel and iron manufacturing processes occur within the United States. Pursuant to the IRA, all manufacturing processes for iron and steel products that are structural in nature must take place in the United States, except for metallurgical processes involving the refinement of steel additives, though the iron and steel requirements do not apply to steel or iron used in manufactured products and their components.

Beyond the iron and steel requirement, a separate and more complex threshold applies to the broader category of manufactured products incorporated into the qualifying facility. Beginning in 2023, a percentage of the value of manufactured products and their components must be of domestic origin, with this domestic content percentage threshold scaling upward over time, reaching 55% after 2026; components incorporated into the manufactured product are considered American-made if their manufacturing processes and all of their constituent components are based in the United States (International Revenue Service, Inflation Reduction Act of 2022)

The administrative complexity generated by this conditionality has required extensive subsequent regulatory elaboration. Treasury and the IRS have issued updated domestic content guidance under the IRA, building on earlier notices and establishing an elective safe harbor mechanism that simplifies, for certain categories of components, the demonstration of compliance with the applicable domestic content percentage thresholds. In November 2024, shortly before certain of the newly enacted clean electricity credits were to take effect, the IRS issued notices exempting direct payment recipients from the domestic content requirement where they certify in writing that they qualify for specified exceptions, with these regulations applying to facilities that begin construction before 2027 (Sabin Center for Climate Change Law, IRA Section 13502 – Advanced Manufacturing Production Credit (for Solar and Wind Manufacturers)).

The large set of implementing acts highlighted a trade-off between a more sophisticated, targeted incentive with higher administrative and compliance costs and a simpler, uniform exemption rate. The Italian legislature's choice of simplicity over targeting, criticised in § 2.7 for its potential to reward windfall relocations, must therefore be assessed against the genuine cost of the alternative approach, as illustrated by the US experience.

Beyond the substantive categories of credit described above, two cross-cutting structural features of the IRA's fiscal architecture deserve separate emphasis because they directly address the income-conditionality limitation that constitutes one of the principal criticisms of the Italian regime.

First, the IRA introduced, for the first time in the structure of major US federal energy tax credits, a general mechanism of *transferability*: an eligible taxpayer that generates a tax credit but lacks sufficient tax liability to absorb it may sell the credit, in whole or in part, to an unrelated third party in exchange for cash, with the proceeds of the sale excluded from the seller's gross income and the purchaser unable to deduct the purchase price. A secondary market

for tax credits is created as a consequence of this mechanism. In this market, capital-intensive firms or loss-making enterprises have the chance to immediately transform the fiscal benefit in liquidity without attending the presence of sufficient taxable income to absorb the benefit. This represents a first difference with the Italian reshoring regime.

Then, the IRA also introduced the possibility of direct pay for certain categories of beneficiaries, like tax-exempt entities or state and local governments, where they received a direct cash payment from the Treasury equal to the value of the credit, instead of a tax reduction. This shows a clear policy approach where incentives created to promote real investment should not depend on the preexisting fiscal capacity of the beneficiary.

The combination of different elements (multiple instruments, transferable credits and partially refundable) generates an incentive system easier to adapt to a firm's cash flow needs, which decides to relocate or invest, with respect to the Italian reshoring regime grounded on a unique measure not transferable and conditioned by the production of taxable income.

This is not to suggest that the IRA model is without its own significant limitations — its administrative complexity, its exposure to subsequent legislative revision, and its concentration on a narrower set of strategic sectors all represent genuine trade-offs — but the comparative analysis at the level of instrument design provides a first, and significant, point of reference for the *de iure condendo* proposals developed in the following paragraphs.

4.3 The EU response and its implications for Italy

The enactment of the IRA in August 2022 produced an immediate and, in retrospect, somewhat disproportionate sense of alarm within European policy circles, reflecting a recognition that the scale of the US fiscal commitment — and the explicit domestic content conditionality embedded within it — represented a qualitatively new form of competition for mobile productive investment, one for which the existing EU regulatory architecture, built around strict State aid discipline and a deep-seated institutional aversion to subsidy competition between Member States, was poorly equipped to respond. Fearing a devastating business exodus across the Atlantic Ocean, the European Commission unveiled new plans to boost the European Union's homegrown green industry and counter the generous tax credits and rebates of the \$369-billion Inflation Reduction Act. This formulation — "exodus" — is itself revealing of the tenor of the European reaction: the concern was not merely that the IRA would attract new investment that would otherwise have gone to Europe, but that it would actively divert investment and production capacity already committed to, or under consideration for, European locations (Ernst

and Young, European Commission publishes proposal for a “Green Deal Industrial Plan for the Net-Zero Age”, 2023).

This concern was not without empirical foundation in the sectors most directly targeted by the IRA's domestic content provisions. Over half of all lithium-ion batteries on the EU market in 2022 were produced in Europe, with the continent projected to become the world's second-biggest battery cell manufacturer by the end of the decade; however, the US IRA, launched in August 2022, changed the rules of the industrial game and risked making companies reprioritise current European investment announcements towards the United States. In just a few months since the launch of the US IRA, investments into battery factories, new mines, and electric vehicle production mushroomed in North America, a response to the requirement that 40% of battery metals come from the US and half of all battery components be made in North America from 2024 for the full EV tax credit to apply, with the battery supply chain of an electric car receiving up to USD 50 of subsidy per kWh of battery — over a third of total battery costs at the time. This magnitude of subsidisation — operating through an instrument design that is considerably more aggressive and more explicitly protectionist than anything contemplated within the existing EU legal framework — explains the urgency with which the European institutions moved to construct a coordinated response.

The European Commission's initial institutional response took the form of the Green Deal Industrial Plan for the Net-Zero Age, presented on 1 February 2023, less than six months after the IRA's enactment. The Plan, designed to support the scaling up of the European Union's net-zero manufacturing capacities and products, was intended to help meet Europe's climate neutrality goals while also maintaining EU competitiveness, especially in light of the adoption of the US Inflation Reduction Act, and consisted of four main pillars: a simplified regulatory environment, funding, skills, and trade. European Commission President Ursula von der Leyen described the EU's ambition as wanting to "seize the moment" of the net-zero industry, framing the plan explicitly as a direct response to the \$369-billion Inflation Reduction Act (Krist, A European Response to the US Inflation Reduction Act, 2023)

The trade-related dimension of the Plan is particularly relevant to the comparative legal analysis developed in this thesis, as it reveals the EU's preferred strategy for managing the tension between the protectionist logic of the IRA's domestic-content conditionality and the EU's own institutional commitment to open, rules-based international trade. This pillar of the Plan was dedicated to making trade work for the clean transition and enhancing cooperation, including

continuing to work with the World Trade Organization, advancing new Free Trade Agreements, and continuing to address competitive concerns resulting from the Inflation Reduction Act, alongside new initiatives such as a Critical Raw Materials Club, a Clean Tech/Net-Zero Industrial Partnership, and an export credits facility. This emphasis on multilateral and cooperative instruments, rather than directly replicating the IRA's domestic content model, reflects the structural constraint, examined in § 3.3, that any EU-level or Member-State-level domestic content requirement of the type embedded in IRA Section 45X risks falling foul of both the EU's internal market discipline — since a requirement favouring inputs sourced from a single Member State would itself constitute a barrier to the free movement of goods under Article 34 TFEU — and the EU's external World Trade Organization commitments, which constrain the use of local content requirements as a matter of international trade law in a manner that does not equally constrain a sovereign federal government such as the United States in the same way, given the latter's distinct international legal posture on subsidy disciplines.

The second, and from the perspective of the present thesis the legally most significant, pillar of the EU response consisted of a targeted relaxation of the ordinary State aid rules, adopted through the Temporary Crisis and Transition Framework (*TCTF*). As part of the Green Deal Industrial Plan for the Net Zero Age, the European Commission adopted on 9 March 2023 its Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia, with the text amending the Temporary Crisis Framework last amended on 28 October 2022. The TCTF extends the possibility for Member States to support measures needed for the transition towards a net-zero industry, and forms an exception to the main rule that all State aid measures must be notified to and cleared by the European Commission, although the underlying block exemption regulation remains strictly interpreted, with the Court of Justice having held that national State aid measures must conform not only with the substantive provisions of the regulation but also with all of its procedural requirements, even those that appear to be merely formalistic, such as publication obligations (Isabel Marques da Silva, Euronews, Explained: Why the EU-Mercosur trade deal could finally be ratified this year, 2023).

The TCTF's significance for the present analysis lies in the specific mechanism through which it addresses the IRA challenge: rather than centralising the EU's industrial policy response at the supranational level, the Framework operates by *relaxing the constraints* on individual Member States' freedom to grant national State aid, leaving the substantive design and fiscal commitment to each Member State's own discretion. Unlike other jurisdictions, the TCTF does not establish an overarching subsidy programme, and each EU Member State remains

competent to introduce State aid programmes, with EU countries potentially incentivised to use the TCTF by complementary legislation such as the Net-Zero Industry Act. This decentralised structure reproduces, within the EU's institutional architecture, the same intra-EU competitive dynamic — Member States competing against one another to attract mobile investment through fiscally generous, individually notified or block-exempted aid schemes — that the ordinary State aid discipline is designed to prevent, raising the question, addressed further in § 4.4, of whether the EU's response to an external competitive threat (the IRA) risks exacerbating the internal market distortions that Article 107 TFEU exists to control (What's caught in the Net? Insights into the Net Zero Industry Act, 2024).

The third pillar of the EU response, and the one with the most direct structural parallel to the Italian reshoring regime examined in this thesis, is the Net-Zero Industry Act. In March 2023, the European Commission published a legislative proposal for an EU response to the US Inflation Reduction Act: the Net Zero Industry Act, an unconvincing policy proposal both in what it contained and in what it did not. Following its proposal in March 2023, the NZIA was adopted by the European Parliament and Council in May 2024 and entered into force in June 2024, with Member States required by 2025 to designate national contact points and implement permitting reforms, and with a binding target, by 2030, of achieving 40% domestic manufacturing for net-zero technologies. The Regulation — formally Regulation (EU) 2024/1735 — constitutes the EU's industrial backbone for achieving climate neutrality, accelerating permitting, financing, and skills development for clean-tech sectors such as solar, wind, batteries, hydrogen, and carbon capture, and creating the Net-Zero Europe Platform to coordinate investments and designate "strategic projects" eligible for fast-track regulatory approval (Oxford University Press, Dimitrios Kyriazis, Fiscal State Aid Law and Harmful Tax Competition in the European Union, 2023).

The early academic and policy critique of the NZIA proposal is instructive for assessing the broader EU industrial policy environment within which the Italian reshoring regime must operate. The NZIA proposal was criticised for taking a top-down approach in which specific technologies are selected for preferential treatment, with the preferable alternative being a technology-neutral approach open to all current and future technologies that can contribute to the net-zero challenge. This critique — favouring technology-neutral over sector-specific instrument design — stands in an instructive tension with the comparative assessment developed in § 4.4 below, which will suggest that the Italian reshoring regime's own sector-neutral design, while avoiding the technology-picking criticism levelled at the NZIA, sacrifices the more precise justifying cause that a targeted instrument — of the kind embedded in both

the IRA and, to a lesser degree, the NZIA's strategic sector designations — would be able to offer in response to the constitutional and EU law selectivity concerns examined in Chapter III (Oxford University Press, Dimitrios Kyriazis, *Fiscal State Aid Law and Harmful Tax Competition in the European Union*, 2023).

The EU-level response to the IRA carries two direct implications for the assessment of the Italian reshoring regime developed in this thesis. First, the existence of the TCTF and the NZIA establishes that the European institutions have themselves recognised the legitimacy of a more permissive approach to State aid in pursuit of reshoring and reindustrialisation objectives, at least within the specific sectoral domain — net-zero and clean technology — that these instruments address. This recognition strengthens, to a degree, the argument developed in chapter 3 that the Italian reshoring regime might satisfy the Article 107(3)(c) TFEU compatibility test, since the Commission's own policy practice demonstrates an institutional willingness to tolerate selective fiscal advantages in pursuit of comparable industrial policy objectives. However — and this is the second and more significant implication — the TCTF and the NZIA are both *sector-specific* instruments, calibrated to the net-zero and clean technology domain in direct response to the IRA's own sectoral focus. The Italian reshoring regime's sector-neutral design means that it cannot straightforwardly avail itself of the more permissive compatibility standards that the Commission has developed specifically for net-zero and clean-tech investment, and a beneficiary relocating, for example, a conventional manufacturing or services activity unrelated to the green transition would need to rely on the ordinary, more stringent compatibility assessment under Article 107(3)(c) TFEU described in chapter 3, without the benefit of the more favourable sectoral framework that the EU's own IRA-response architecture has constructed.

It is to a systematic, point-by-point comparison of the Italian and US instruments — and to the question of which features of the IRA model, if any, could plausibly be incorporated into a reformed Italian reshoring regime without falling foul of the EU legal constraints examined in Chapter III — that the following section now turns.

4.4 Italy vs USA: a comparative assessment

The analysis conducted has identified the principal structural, institutional, and legal differences between the US and Italian approaches to fiscal reshoring incentives. This part of the analysis is structured around six dimensions that are directly relevant to the constitutional and EU law analysis developed in Chapter III. We will look at each dimension by focusing on how the US-Italy contrast illuminates both the strengths and the structural limitations of the Italian regime.

4.4.1 Instrument type: income exemption versus investment/production credit

The most consequential difference between the two systems concerns the basic technical form of the fiscal benefit. The Italian regime works by partially excluding taxable income from the IRES and IRAP bases. As shown in chapter 2, this approach only provides a benefit if the incentivised activity generates positive taxable income. In contrast, the IRA mainly uses investment and production tax credits, which are calculated based on qualifying capital spending and output. These credits do not depend on the beneficiary's overall profitability and can be made available through transferability and direct-pay options.

There is a practical consequence of this divergence when considering the case of an enterprise relocating in Italy a capital-intensive manufacturing activity that normally entails higher start-up costs, thereby reducing taxable income to zero, at least during the first phase of the operation. This firm obtains a limited or null benefit during the period when the locational decision is more sensitive to fiscal incentives by applying the Italian regime. By contrast, under the IRA model, the same firm obtains an immediate fiscal benefit linked to the investment, reflected in a direct reduction in taxes and a cash refund under the direct pay option or the sale of the credit in the secondary market. By considering all the situations, the benefit is realised at the moment in which the investment is sustained, independent of the subsequent capacity of the firm to generate taxable income.

This comparison strengthens the critique developed regarding the Italian legislature's choice to base the instrument on income rather than investment, which creates a fiscal disadvantage for the very category of capital-intensive industrial relocation that the regime's stated *ratio legis* would appear to prioritise. The IRA's instrument choice, by contrast, is precisely calibrated to the phase of the investment cycle in which a fiscal incentive can exert genuine influence on the location decision.

4.4.2 Sectoral specificity: neutrality versus targeting

The Italian regime is sector-neutral: any business activity transferred from a non-EU/EEA country qualifies, regardless of its strategic relevance to any specific industrial policy objective. The IRA, by contrast, is heavily sector-specific, concentrating the substantial majority of its fiscal resources on clean energy generation, critical minerals processing, semiconductor-adjacent advanced manufacturing, and electric vehicle supply chains — sectors selected by the US Congress based on an explicit assessment of strategic vulnerability and national security relevance.

The Italian constitution's reasonableness test says that an incentive must have a legitimate goal and must also be an appropriate way to reach that goal. This is easier to prove when the beneficiaries are closely connected to the policy's purpose. A sector-specific incentive, for example, limits the benefit to activities where the connection between relocation and strategic goals is clear and easy to verify. The Italian regime, instead, provides the benefit to any reshoring operation that satisfies formal requisites, without considering its strategic value. This increases the possible number of windfall beneficiaries and weakens the justification needed for the constitutional test.

By considering the EU State aid compatibility assessment under Article 107(3)(c) TFEU, the same observations are made. The European Commission's own response to the IRA — embodied in the TCTF and the NZIA — has been explicitly sectoral, concentrated on net-zero and clean technology investment. This sectoral framework provides Member States with a comparatively well-established and Commission-endorsed pathway to compatibility for incentives targeting these specific activities. The Italian reshoring regime's sector-neutral design means that the substantial majority of its potential beneficiaries — those relocating activities unrelated to the green transition — cannot avail themselves of this more permissive sectoral framework and must instead rely on the ordinary, more demanding compatibility test, with the corresponding additionality and proportionality difficulties.

4.4.3 Supply chain conditionality: presence versus absence

A third point of contrast, already developed in chapter 4, concerns the presence in the IRA of an explicit domestic-content conditionality linking the value of the fiscal benefit to the proportion of project inputs sourced domestically, as opposed to its complete absence in the Italian regime. An enterprise that relocates a manufacturing activity to Italy while continuing to source the totality of its inputs from non-EU suppliers — including, potentially, from the very non-EU/EEA country from which the activity itself was relocated — qualifies for the full 50% exemption on terms identical to an enterprise that develops a genuinely domestic supply chain.

This absence of conditionality is significant for two distinct reasons already touched upon in earlier chapters. First, from a purely economic policy perspective, it means that the regime, as currently designed, incentivises only the relocation of final assembly or service delivery functions, without necessarily generating the broader economic spillovers — supplier development, employment in upstream sectors, technology transfer — that a more genuinely embedded reshoring of an entire productive value chain would produce. Then the regime does

not impose any conditions linked to the supply chain. In practice, the incentive only favours the reshoring of economic activities in Italy, without requiring a true strengthening of production links with the national economy. This increases the additionality problem, meaning the risk that the fiscal benefit is granted even when there is no concrete increase in economic activity in Italy. In these cases, the measure becomes easier to critique because the fiscal advantage can be too high relative to the effective benefits produced. The same problem is found in the reasonableness test required by both the Italian Constitution and the assessment of State aid under European Union law. The measure must be justified and must not go beyond what is necessary to achieve its objective.

It should be acknowledged, however, that the introduction of a domestic content requirement analogous to the IRA's would face a distinct and significant legal obstacle within the EU context that has no equivalent in the US federal system: a requirement conditioning a national fiscal advantage on the sourcing of inputs from Italian — rather than more broadly EU — suppliers would risk constituting a restriction on the free movement of goods under Article 34 TFEU and might itself raise separate State aid and internal market objections, since it would discriminate against suppliers established in other EU Member States in a manner structurally analogous to the discrimination against EU-origin relocations. A domestic content conditionality calibrated to "EU content" rather than "Italian content" would avoid this specific objection, but would correspondingly dilute the link between the incentive and the specifically Italian industrial policy objective that Article 6 purports to serve — illustrating, once again, how the EU legal architecture constrains policy instrument choices in a manner that has no parallel in the US federal system.

4.4.4 Temporal structure: cliff-edge versus graduated

The manner in which the two incentive systems are structured over time represents the fourth difference. In fact, the Italian regime provides a 50% exemption for six tax periods. At the end of this period, the benefit ends, without any transition phase toward normal taxation. Instead, IRA's Section 45X introduces a mechanism for the gradual reduction of the credit across different categories of production, where the fiscal advantage progressively decreases rather than stopping all at once.

This difference affects the proportionality assessment at both constitutional and EU law levels. A gradual phase-out mechanism, in fact, is more consistent with this principle because it allows the incentive to be reduced as the supported activity becomes more autonomous and competitive. By contrast, the Italian regime, which provides a sudden end to the benefit and a

long permanence requirement creates a "fiscal cliff" at year six. This can disrupt how beneficiaries plan their investments and operations, which a more gradual change would help prevent.

4.4.5 Institutional and legal environment: the absence of supranational constraint

The fifth and, in many respects, most fundamental point of comparison concerns the institutional and legal environment within which each instrument operates. The US federal government, in designing and enacting the IRA, faced no supranational equivalent to Article 107 TFEU, no standstill obligation analogous to Article 108(3) TFEU, and no domestic constitutional constraint comparable in stringency to the Italian *capacità contributiva* principle of Article 53. This allowed Congress to design an instrument of considerable selectivity — sector-specific, content-conditional, wage- and apprenticeship-differentiated — without the same order of legal exposure that an EU Member State would face in adopting an equivalently selective measure.

This structural asymmetry is not a marginal methodological caveat but a central interpretive key for the entire comparative exercise conducted in this chapter. It explains why certain features of the IRA model — particularly the explicit domestic content conditionality discussed under point III above — cannot be transplanted into the Italian legal order without modification, and why any *de iure condendo* proposal must be calibrated not merely to improve the economic effectiveness of the Italian regime but to do so within the binding constraints established by Chapter III.

4.4.6 Overall fiscal philosophy: bounded selectivity versus open-ended entitlement

The sixth and final comparison looks at the broader fiscal philosophy behind the two systems. From the start, the Italian legislature was aware of the EU State aid rules and designed Article 6 as a limited, measurable policy: it set a fixed percentage, a fixed duration, and required prior EU approval. This approach reflects a culture in which the fiscal costs and competitive effects of a selective tax measure must be assessed and validated in advance. In contrast, the US Congress, which did not face the same external checks, made the IRA's main credits open-ended entitlements. The final cost depended on how much the market used them, which turned out to be much higher than expected. However, this approach did not set any limit on the amount of investment the policy could attract.

This difference in fiscal philosophy cannot be solved by simply copying the US approach. An EU Member State cannot use the IRA's open-ended entitlement model without creating the kind

of unlimited selective advantage that both the constitutional reasonableness test and the EU State aid rules are meant to prevent. In conclusion, the main takeaway is not that Italy should fully adopt the IRA's fiscal philosophy, but that it should adopt certain design features. For example, the use of relief based on investment, and not based on income, or supply chain requirements set at the EU level. By doing so, there will still be an externally validated fiscal approach required by EU rules, but with a more effective and legally defensible system under both EU and constitutional law.

4.5 Lessons and de iure condendo proposals

The comparative analysis conducted, read together with the constitutional and EU law assessment of Chapter III, permits the formulation of a set of concrete de iure condendo proposals for reforming the Italian reshoring regime. The proposals developed in this section are deliberately calibrated to the institutional constraint identified throughout this chapter: Italy, as an EU Member State, cannot replicate the IRA's instrument design wholesale, but can selectively incorporate those features of the US model that address the structural weaknesses, while respecting the binding limits imposed by Article 53 of the Constitution and Article 107 TFEU.

First proposal: converting the income exemption into an investment tax credit

As discussed before, the use of a partial income exemption under Italian reshoring does not permit capital-intensive relocations to exploit the benefit during their investment phase. A potential solution is to implement an investment tax credit as a benefit, based on a percentage of qualifying capital expenses for moving activities to Italy.

This credit could be made partially refundable or transferable for companies that do not have sufficient tax liability to use it immediately, similar to the IRA's transferability approach. This would make the incentive more accessible to start-ups and businesses that are not yet profitable. According to Chapter III, this change would also make the policy more constitutionally reasonable, since an investment-based credit links the tax benefit to a clear and measurable economic input (capital spending) instead of taxable income, which does not always reflect the social value of the relocation. It would also make it easier to meet EU State aid rules, as investment aid based on eligible costs is the standard form covered by the General Block Exemption Regulation. This could allow the new regime to qualify for a block exemption and avoid the need for individual notification, thereby removing the uncertainty discussed.

Second proposal: introducing targeted sectoral prioritisation

The second proposal responds to concerns about sectoral neutrality mentioned in paragraph 4.4. Instead of removing sectoral neutrality, which could lead to the same "technology-picking" criticism aimed at the NZIA, a better option is to use a differentiated rate structure. Every qualifying relocation would get a basic benefit. Sectors that are important to Italy's and the EU's economic strength would get a higher rate. These sectors would be selected through a clear process that is updated regularly, and might include areas such as pharmaceuticals, semiconductors, critical raw materials processing, and advanced manufacturing. This approach makes the policy widely accessible and provides stronger reasons for offering greater benefits. It also brings Italy's reshoring policy in line with the sector-focused approach already backed by the Commission through the TCTF and the NZIA.

Third proposal: an EU-calibrated supply chain conditionality

The third proposal addresses the absence of supply chain conditionality. Given the internal market constraint discussed in that section — a purely Italian content requirement would itself raise Article 34 TFEU concerns — the conditionality should be calibrated to *EU-origin* content rather than Italian-origin content: an enhanced exemption rate, or accelerated access to the benefit, could be made available to enterprises that source a specified minimum proportion of their inputs from EU/EEA suppliers. By doing so, the additionality problem is addressed by rewarding the deepening of European supply chain integration. Also, there will be no discrimination between Italian and other EU suppliers, which could potentially raise a new internal market objection.

Fourth proposal: a graduated phase-out and earlier certainty mechanism

The last proposal consists of replacing the interruption of the benefit at the end of the six years with a more gradual reduction to facilitate the transition back to ordinary taxation. An example can be the implementation of full exemption or 25% exemption for the following three years. Separately, and more urgently, the standstill-induced uncertainty could be mitigated by redesigning the measure, where possible, to fit within an existing GBER category, removing the need for individual notification and allowing the incentive to take effect immediately upon enactment, as the IRA's credits did.

Concluding remark

None of these proposals requires Italy to depart from the bounded, externally validated fiscal philosophy that EU membership necessarily imposes. They suggest, rather, that a more

carefully calibrated instrument — investment-based, sectorally weighted, supply-chain conscious, and temporally graduated — could achieve the legitimate industrial policy objectives of Article 6 while substantially reducing the constitutional and EU law vulnerabilities identified throughout this thesis. It is to the synthesis of these findings that the concluding chapter of this work now turns.

CONCLUSIONS

This thesis has answered its research question through a doctrinal legal analysis to assess the regime's ratio legis and practical effectiveness. Four steps, more or less, got this thesis from question to answer. Before touching Article 6 at all, it was necessary to understand the system it sits inside — hence Chapter I, which reconstructs the structural, historical and constitutional backbone of Italian taxation. Without that baseline, judging whether a selective incentive deviates from the ordinary regime makes no sense. Chapter II then took the regime apart provision by provision, leaning on the text of Article 6, its explanatory report, and — the most authoritative secondary source available at the time of writing — the Assonime circular of February 2024, to pin down exactly who qualifies, how the mechanism works, what the anti-abuse architecture looks like, and where the measure sits among Italy's other incentives. Chapter III analyzed the reshoring regime from the legal point of view, applying to the discipline constructed in Chapter II the principles provided by the Constitutional Court in terms of equality and ability to pay (artt. 3 and 53 Cost.), and the jurisprudence of the Court of Justice and the European Commission's approach in terms of state aids and fundamental freedoms of the internal market. Chapter IV, instead, broadened the perspective of the investigation through the comparisons with the US Inflation Reduction Act. The aim was not simply to describe a different model of fiscal incentive, but to evaluate whether the critical points revealed in the Italian reshoring analysis are unavoidable features of any reshoring policy or depend on specific legislative choice.

What are the conclusions that arose during this research?

A first result concerns the complex structure of the discipline. The regime introduced by art. 6 seems consistent with the evolution of the Italian tax framework and with the increasing adoption of fiscal incentives as economic policy instruments. Also, the introduction time is not casual: the reform step in when the reshoring ceased to be a simple firm strategy and became a prior objective of industrial policy.

However, conclusions change when the focus shifts to the level of legal legitimacy. Under this profile, the discipline presents different critical elements that make the regulatory foundation of the entire regime less solid. Conditioning a tax exemption on where an activity used to be located, rather than on any real difference in economic capacity, runs into a justifying-cause problem under Article 53 — and that problem looks almost identical to the selectivity test the Commission has to run under Article 107(1) TFEU. Put differently: the constitutional and the EU law objections are really the same objection, seen from two institutional angles. On top of

that, the standstill clause in paragraph 5 introduces legal uncertainty that raises its own constitutional concerns, tied to the principle of legitimate expectations.

Third — and this came out of the comparative chapter — none of this is inevitable. The vulnerabilities trace back to specific choices: building the incentive around income rather than investment, keeping it sector-neutral, leaving out any supply chain conditionality. Each of these could, in principle, be redesigned without falling outside what EU law permits.

How does this suit against what's already been written?

Regarding Italian constitutional tax law, the results of the research do not call into question the Constitutional Court's consolidated approach, developed starting from judgment No. 179/1976. The principle, according to which a fiscal incentive is consistent with the Constitution only if is justified by a legitimate scope and the differential treatment result reasonable and proportionate with respect to the objective pursued, remains stable.

The new consideration of this research consists rather of applying, for the first time, these interpretative criteria to the discipline introduced by art. 6 of D.Lgs. n. 209/2023. From this application arises a specific problem related to the choice to subordinate the benefit to the income produced, which appears not perfectly consistent with the regulation's declared aim: the strengthening of national productive capacity. This is an analysis that the existing doctrine, focused more on the operative aspects of the regime, has not studied further.

Similarly, the analysis developed at the level of EU law represents the Court of Justice's consolidated approach to state aid. The path followed is the traditional one, based on the individuation of the reference system, the assessment of possible derogation, and the verification of possible justification through the approach developed in the *World Duty Free* and *Fiat* cases. Using this methodology, the research confirms that the fiscal exemption, based on the precedent of geographical localization of the activity, is selective under Article 107 TFUE. The introduction of the standstill clause by the Italian legislator seems to recognize this conclusion. The original contribution of this paper, however, lies in highlighting how the measure's selective nature operates at two distinct and mutually competing levels: geographical and income-based. Moreover, the analysis highlights the problematic relationship between this discipline and the global minimum tax framework set out in OECD Pillar Two.

With respect to the comparative industrial policy literature on the IRA and the EU response to it, the findings are broadly consistent with the existing critical assessment of the Net-Zero Industry Act as an underdeveloped instrument, but extend this literature by applying it, for the

first time, to a non-energy-sector national reshoring incentive, revealing that the EU's own IRA-response architecture (TCTF, NZIA) inadvertently disadvantages sector-neutral measures such as the Italian regime relative to sector-specific ones.

The thesis's central original contribution, consistent with the gap identified in the Introduction, is therefore the first systematic, integrated constitutional and EU law analysis of the Italian reshoring regime, combined with a comparative assessment against the US model — a combination that neither the existing tax-technical commentary nor the existing comparative industrial policy literature had previously undertaken jointly.

There are three main limitations to this work. First, the analysis was done while the regime was still suspended and waiting for European Commission approval. As a result, the constitutional and EU law assessment in Chapter III is forward-looking and could not use any actual Commission decision or court case about Article 6, which is a common issue when studying new laws. Second, the comparative analysis in Chapter IV focused solely on the United States, chosen for the importance and relevance of the IRA. The analysis would be richer if it included other EU Member States with similar reshoring incentives, but this was beyond the scope of the thesis. Third, the assessment of the regime's likely economic impact was based on qualitative reasoning from the structural factors discussed in Chapter II, rather than on new quantitative or empirical research, which was outside the scope of this legal study.

These limitations suggest three natural extensions of the present work. First, once the European Commission adopts its authorisation decision under Article 108(3) TFEU, a follow-up study could test the predictions developed in Chapter III against the Commission's actual reasoning, particularly regarding the selectivity and proportionality assessment. Second, a broader comparative study extending the analysis of Chapter IV to other EU Member States' reshoring measures — and to the eventual Commission practice on their notification — would permit a more general assessment of how the EU State aid framework is accommodating the post-IRA wave of national reindustrialisation incentives. In conclusion, to address the additionality concerns discussed in this thesis with empirical evidence, a study tracking the actual uptake of the Italian regime once it becomes operative would constitute a valuable advancement in this area of research.

BIBLIOGRAPHY

Assonime. (2024, 23 Febbraio). *Attuazione della riforma fiscale in materia di fiscalità internazionale (D.L.vo n. 209 del 2023): la disciplina fiscale del cd. reshoring* (Circolare N. 4 del 23 febbraio 2024). Assonime.

Basilavecchia, M. (2022). *Corso di diritto tributario* (2^a ed.). Giappichelli. Bernardi, S. (2024). Il rimpatrio (reshoring) di attività economiche (Capitolo VII). In *La fiscalità internazionale* (Collana Riforma Fiscale). Biblioteca Eutekne.

Bosi P., Corso di Scienze delle Finanze, Teoria dell'imposta, Il Mulino, 2023, pag. 210-211

Bray, S. (2023, October 30). *Comparing Corporate tax Systems in Europe, 2022*. Tax Foundation.

<https://taxfoundation.org/data/all/eu/comparing-corporate-tax-systems-europe-2022/>

Congressional Research Service (2025, January), Domestic Content Requirements for Electricity Tax Credits in the Inflation Reduction Act (IRA).

https://www.congress.gov/crs_external_products/R/PDF/R48358/R48358.2.pdf

D'Attoma, J. (2018, August). Explaining Italian Tax Compliance: A Historical Analysis. In S. H. Steinmo (Ed.), *The Leap of Faith: The Fiscal Foundations of Successful Government in Europe and America* (pp. 106-128). Oxford University Press.

<https://doi.org/10.1093/oso/9780198796817.003.0005>

D'Italia, B. (n.d.). *Banca d'Italia - Final Report on the Transition 4.0 Plan: An Assessment of Investment, Employment and Productivity Effects*. (C) Banca D'Italia.

<https://www.bancaditalia.it/media/notizia/final-report-on-the-transition-4-0-plan-an-assessment-of-investment-employment-and-productivity-effects/>

Decreto Legislativo 27 dicembre 2023, n. 209. *Attuazione della riforma fiscale in materia di fiscalità internazionale* (Art. 6 - Trasferimento in Italia di attività economiche; Art. 7 - Decorrenza). G.U. 28 dicembre 2023, n. 301. Banca Dati Eutekne.

Di Nardo, T. (2020, 10 Ottobre). *Analisi della pressione fiscale in Italia, in Europa e nel mondo: Struttura ed evoluzione dei principali indicatori di politica fiscale* (Documento di Ricerca). Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili & Fondazione Nazionale dei Commercialisti.

European Commission publishes proposal for a. (n.d.).

<https://taxnews.ey.com/news/2023-0229-european-commission-publishes-proposal-for-a-green-deal-industrial-plan-for-the-net-zero-age?uAlertID=Sd/G8rua1oj6/158EZ2AiA==>

Falsitta, G. (1999). *Manuale di diritto tributario. Parte generale*. CEDAM.

Fratocchi, L., Di Mauro, C., Barbieri, P., Nassimbeni, G., & Zanoni, A. (2014). When manufacturing moves back: Concepts and questions. *Journal of Purchasing and Supply Management*, 20(1), 54–59. <https://doi.org/10.1016/j.pursup.2014.01.004>

Gallo, F. (2007). *Le ragioni del fisco. Etica e giustizia nella tassazione*. Il Mulino.

Holz, R. (2009) An Investigation into Offshoring and Backshoring in the German Automotive Industry. PhD Thesis, University of Wales, Swansea.

Italy 1947 (rev. 2020) Constitution - Constitute. (n.d.).

https://www.constituteproject.org/constitution/Italy_2020

Klemm, A. (2009, January). *Causes, Benefits, and Risks of Business Tax Incentives* (IMF Working Paper No. WP/09/21). International Monetary Fund.

Lexnet - European Information. (n.d.).

<http://www.lexnet.eu/>

Liboreiro, J. (2023, February 1). EU presents new industrial plan to counter American green subsidies and prevent talent drain. *Euronews*.

<https://www.euronews.com/my-europe/2023/02/01/eu-presents-new-industrial-plan-to-counter-american-green-subsidies>

Manestra, S. (2010, Dicembre). *Per una storia della tax compliance in Italia* (Questioni di Economia e Finanza - Occasional Papers No. 81). Banca d'Italia.

Op-Ed. (2023, November 27). *Rebooting the EU's Net Zero Industry Act*. World Commerce Review.

<https://worldcommercereview.com/rebooting-the-eus-net-zero-industry-act/>

Tasse, R. F. E. (n.d.). Decreto Fiscalità internazionale: i principali contenuti. *Fisco E Tasse*. <https://www.fiscoetasse.com/rassegna-stampa/34926-decreto-fiscalita-internazionale-i-principali-contenuti.html>

Tesauro, F. (2016). *Compendio di diritto tributario*. UTET Giuridica.