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Return of brains 2022: facilitation of teachers and researchers

of

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Art. 44 of Legislative Decree no. 78/2010 provides, under certain conditions, the exclusion from employee or self-employment income of 90% of the emoluments received by teachers and researchers who transfer residence to Italy for a (basic) period of six years.

Facilitation	Exemption of 90% of the income from employment or self-employment produced in Italy. Foreign source income is not subject to facilitation.
Duration of the facilitation	The ordinary duration is 6 years from the purchase of Italian tax residence. In case of purchase of a property or dependent child extends up to the eighth year. With two dependent children at the age of eleventh, while with three dependent children you get to thirteen.
Facilitation requirements	– Have been resident abroad;– Be in possession of a university qualification;– Teaching or research activities abroad for 2 years;– Transfer residence in Italy pursuant to art. 2 TUIR;– Carry out research or teaching activities in Italy.
Subsidized income	Only income from employment or assimilated or income from self-employment.

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What is brain reentry?

The "**return of brains**" is a particular tax advantage provided for by art. 44 of [Legislative Decree no. 78/2010](#) (as amended by Legislative Decree no. 34/19) aimed at encouraging the return to Italy of researchers and / or teachers residing abroad. The rationale of the rule is to encourage the return to Italy of researchers and university professors who have [transferred their residence abroad](#). The aim is to promote the economic, scientific and cultural development of the country. This facility provides for a tax exemption of 90% of taxable income deriving from research or teaching activities in Italy, for a (basic) period of six years. The facilitation requires compliance with specific requirements that we will analyze below ([Circular, no. 14 / E / 2012](#) of the Revenue Agency).

What is the difference between brain return and facilitation for impatriate workers?

The facilitation linked to the return of **brains** is a facilitation that concerns the return to Italy of researchers and university professors who, upon the occurrence of certain requirements provided for by the law, can enjoy a partial tax relief from the income deriving from the research or teaching activity that they will carry out in Italy. This facility is often confused with another (parallel) facilitation, namely the one dedicated to **impatriate workers** (provided for by Article 16 of Legislative Decree no. 147/15 and ss.mm.). This legislation, of a more general nature, facilitates all categories of taxpayers who impatriate to Italy to carry out employment activities, or self-employment activities in individual, professional or commercial form. The two facilities, although similar in many respects, should not be confused as the requirements to be verified, the benefits and the duration are different. For this reason, if you want to deepen the return of brains, continue reading this article, while for the impatriate facilitation I leave you to read this dedicated article: "Impatriate [workers in Italy: guide to facilitation](#)".

Which subjects can apply the facilitation?

The tax relief linked to the return of **brains** applies to the following categories of subjects:

- Italian citizens;
- Citizens of the European Union.

hired or who intend to start a **business** or **self-employment** activity in Italy **by transferring their domicile there**. These subjects must meet the following **requirements**:

- I have a **degree**;

- They have **resided continuously for at least 24 months in Italy**;
- In the **last two years** or more, they have **resided outside their country of origin and from Italy** there continuously carrying out an activity of employment, self-employment or business.

Excluded from the facilitation linked to the Return of Brains are subjects holding permanent employment relationships with:

- the Public Administration;
- Companies under Italian law.

Who carry out their research or teaching activities abroad on behalf of these contracts. In essence, the research or teaching activity of the worker must necessarily be carried out in Italy.

What are the requirements of the brain return facilitation?

The tax breaks reserved for the return to Italy of teachers and researchers can be used by those who **jointly verify** the following **requirements**:

- Be in possession of a **university qualification** or equivalent;
- Have not been **occasionally resident abroad**;
- Who have carried out documented research or **teaching activities abroad at public / private research centers or universities for at least 2 continuous years** ;
- Carry out **teaching or research** activities in Italy;
- Acquire **tax residence** in the Italian territory.

All the requirements must exist at the same time for the subjects who intend to take advantage of the benefits granted by the facilitation.

What is the facilitation?

The provision provides, for income tax purposes, the **exclusion of 90% of the emoluments received from the formation of employee / self-employment income for IRPEF purposes**. The facilitation, therefore, concerns the **income of employees or self-employed** work produced in Italy for the performance of teaching and research activities. The facilitation applies from the tax period in which the teacher or researcher becomes fiscally resident in Italy. The eligible income is determined according to:

- **Art. 51 of the TUIR** if deriving from **employment** relationships and
- **Art. 54 of the TUIR**, if deriving from **self-employment** activities.

The income thus determined will contribute to the formation of the total income only for 10% of its amount and on this tax base the ordinary taxation criteria for IRPEF purposes will be applied, deducting deductible or deductible charges. For example, therefore, assuming the receipt of compensation (for employment and / or self-employment) to the extent of 100,000.00 euros, in the presence of the aforementioned conditions, the taxable employee income for IRPEF purposes becomes equal to 10,000.00 euros.

Application under the *de minimis* regime

The facilitation in question is within the limits of the *de minimis* regime (art. 8-bis of Legislative Decree no. 148/17 converted), therefore it is advisable to verify that the thresholds provided for by this regime are not exceeded.

What is the duration of the facilitation?

With regard to the **duration of the facilitation**, co. 3 of art. 44 of Legislative Decree no. 78/10 provides that this becomes **applicable from the tax period in which the researcher becomes resident in Italy and in the following 5**. This means, substantially, that the facility has a total duration of **6 years**. However, the facility in question can be extended for further years (upon the occurrence of certain requirements provided for in paragraph 3-bis of Legislative Decree no. 34/19). In particular, the facilitation applies to:

- **8 years** from that of acquisition of Italian tax residence. This is the case for teachers / researchers with at least 1 minor or dependent child. The case of the child in pre-adoptive foster care is also valid. Or, alternatively, if the teacher becomes the owner of at least one residential real estate unit in Italy, after the transfer or in the previous 12 months. The real estate unit can be purchased directly by the worker or by the spouse / cohabitant / children also in co-ownership;
- **11 years** from that of acquisition of Italian tax residence. This is in the case of teachers / researchers who have at least 2 dependent minor children, even in pre-adoptive foster care;
- **13 years** from that of acquisition of Italian tax residence. This is in the case of teachers / researchers who have at least 3 dependent minor children, even in pre-adoptive foster care.

In the event that, in the aforementioned period, the teacher or researcher [transfers his residence abroad](#), the tax benefit is lost. The forfeiture occurs starting from the tax period in which he is no longer fiscally resident in Italy.

Forfeiture of the facilitation

In the event that, in the aforementioned facilitated period, the teacher or researcher transfers his residence abroad, the tax benefit is lost starting from the tax period in which he is no longer fiscally resident in Italy.

Incumulation with other schemes

The incentives for teachers and researchers cannot be combined with the regime linked to **impatriate workers** pursuant to art. 16 of Legislative Decree no. 147/15 and with the regime of [new residents](#), pursuant to art. 24-bis of the TUIR. Those who meet the requirements to enjoy more than one of the benefits provided can freely choose which one to join. The prohibition of cumulation of preferential regimes linked to the transfer to Italy is to be considered with reference to each tax period, not precluding, however, the application of different regimes, if the requirements are met, in different tax periods.

Return of brains and continuation of work abroad

A case study that I often find is that of the researcher who returns to Italy with his wife and children, and is hired by an Italian company or institution or university. However, at the same time the research or teaching activity present abroad is maintained (perhaps in a smaller percentage). In this case, it is necessary to ask oneself how to treat the income that is received from abroad fiscally. In the event that you move your residence to Italy, but continue to carry out research or teaching activities abroad, you can take advantage of the facilitation **only for income received in Italy** as a teacher or researcher. Foreign [income](#), on the other hand, must ordinarily be subject to Italian taxation. This is in accordance with the provisions of Article 3 of the TUIR and the Double Taxation Conventions. This taking into account, the [tax credit for taxes paid abroad](#) pursuant to Article 165 of the TUIR.

Analysis of the requirements of the facilitation

The peculiarity of this facilitation regime, just as well as for the impatriate facilitation, is that the taxpayer is called to self-certify the presence of the required requirements. Self-certification is an assumption of responsibility by the requesting taxpayer towards the employer, where he declares to be in possession of the required requirements. The employer, therefore, in the presence of self-certification is called to apply the facilitation (in the case of self-employment the facilitation is applied directly in the tax return). This aspect determines a risk, as until the verification by the Revenue Agency, which could take place even after a few years, the taxpayer benefits from the facilitation, which could be revoked with the application of the reimbursement of the amounts received and the application of penalties (which we will see later). For this reason it is important to **analyze the requirements** in greater detail, also in relation to the clarifications provided so far by the Revenue Agency.

Possession of a university degree or equivalent

The definition includes all academic, university or equivalent qualifications. Qualifications obtained abroad are not automatically recognized in Italy. Therefore, the interested party must request the "*declaration of value*" from the competent consular authority. In particular, the declaration of value is a document that certifies the **value of the** university-level qualification in the country where it was obtained. Declaration that, in the case in question, must be drawn up in Italian and issued by the **Italian Diplomatic Representations abroad** (Embassies / Consulates) competent for the area. This documentation must be kept by the applicant for the facilitation.

Educational or professional qualifications obtained abroad are not automatically recognized in Italy, so they have no legal value. Therefore, the "*Declaration of Value*" has the sole purpose of describing the value acquired by the qualification in the country of origin and, for the purposes of recognition or **equivalence** of qualifications or in order to intend to spend the qualifications in relations with public administrations or for the exercise of regulated professions, it must be submitted to the competent Italian authorities.

Subject not occasionally resident abroad

In relation to **the period** of stay abroad, the duration of this stay is not specified. However, in [Circular no. 17/E/2017](#), the Revenue Agency limits itself to requiring that it be a **stable and not occasional stay**. The stability of residence, also considered as a requirement for AIRE registration, occurs when the subject remains abroad for periods exceeding one year. On this point, however, the rule places importance on the **duration of research or teaching activities abroad**. This activity must have continued for **two consecutive years**. This period required, in fact, is the one considered minimum and necessary to integrate the assumption of **non-occasional residence abroad**. The two-year period, in view of the general nature of the rule, must be calculated on the basis of the **common calendar** and not on the basis of periods of tax residence. For the teaching activity, however, it can be calculated on the basis of the **duration of the academic years**.

Documented research or teaching activities abroad

Subjects who have carried out **documented research or teaching activities abroad** for at least two continuous years can request the facilitation on the **return of brains**. Teachers and researchers who intend to take advantage of the facility must necessarily prove the activity carried out abroad through the request for appropriate certification, issued by the universities or research centers where the activity was carried out. The research activity can be identified in the activity aimed at:

- Basic research;
- Industrial research,
- Research of experimental development and feasibility studies,

It must be research carried out in a **research organisation**. The following bodies shall be considered to be "**research organisations**":

- Universities;
- Research institutes;
- Technology transfer agencies;
- Innovation intermediaries;
- Research-oriented real or virtual collaborative entities,

This, regardless of their legal *status* (established under private or public law) and the source of funding, whose main purpose is to carry out research independently. Entities that also carry out economic activities may also be considered **research centres**. Provided that these activities are accounted for separately from research activities. The teaching activity, on the other hand, can be identified in the **teaching activity** carried out at universities, public and private. The actual performance of research or teaching activities abroad must result from appropriate documentation. The certificate must be issued by the same research centers or universities where the activity was carried out. The document must contain both the nature of the institution and the activity carried out by the teacher or researcher and its duration.

Translation of documentation into language

The documentation issued to the researcher, if produced in a foreign language, must be translated into Italian. This is what is provided for in **Circular no. 17/E/2017** of the Revenue Agency. The taxpayer can directly deal with the translation of the aforementioned documents. This is possible if this documentation has been written in English, French, German or Spanish. On the contrary, if the documents are drawn up in other languages, a **sworn translation** or **endorsement by the**

consular authority is required. The teaching and research activity does not necessarily have to have been carried out in the two years immediately preceding the return. As mentioned, it is sufficient that the interested party, before returning to Italy, has carried out these qualified activities abroad for a minimum and uninterrupted period of at least twenty-four months. For teaching, the period of twenty-four months is considered completed if the activity has been carried out for two continuous academic years.

Carrying out research or teaching activities for 24 months in Italy

As regards the activity to be carried out in Italy, the standard does not provide anything regarding the **requirements of employers and clients** of teachers and researchers. The facilitation linked to the **return of brains** does not matter the nature of the employer or the client. For the research **activity** this can be a university, public or private or a public or private research center. Or, a company or an institution which, due to the peculiarity of the economic sector in which it operates, has research facilities. As far as teaching activities are concerned, all activities aimed at teaching can be considered facilitated. As well as those aimed at training carried out at universities, schools, offices or companies, public or private.

Acquisition of tax residence in Italy

It is required that the teacher or researcher **transfers his activity to** Italy, consequently transferring the [tax residence](#) in Italy. To establish tax residence in Italy it is necessary that the subject cancels from AIRE and registers in the Resident Population Registry. This, because, the rule refers to the Tax Residence, pursuant to Article 2 of the TUIR.

But what happens if the expatriate has never registered with AIRE?

Legislative Decree no. 34/19 intervened precisely to regulate access to this facility for **expatriates who are not AIRE registered**. These rules apply to subjects who move to Italy starting from 2020. It is expected that teachers / researchers not enrolled in AIRE who return to Italy:

- From 1 January 2020 they can apply the Brain Return regime provided that they have had residence in another State pursuant to a double taxation agreement on income in the 2 tax periods prior to the transfer to Italy;
- By 31.12.2019 they can apply, with reference to tax periods in which tax acts still appealable or subject to pending disputes in every state and level of judgment have been notified as well as for tax periods still ascertainable, the regime referred to in the aforementioned art. 44 "in the text in force on 31.12.2018". This is on condition that they have had residence in another State under a double taxation agreement on income in the 2 tax periods prior to the transfer to Italy.

Unpaid leave

Teachers with a permanent employment relationship who have carried out teaching or research activities abroad using **unpaid leave**, once they have returned to Italy acquiring tax residence, can take advantage of the facilities referred to in art. 44 of Legislative Decree no. 78/10, if the other conditions are met. This is specified in Resolution no. 92/E/2017 of the Revenue Agency.

How do I request the facilitation for researchers and teachers?

The request for the facilitation is made in different ways. The variable is the hiring of the worker as an employee, or the exercise of self-employment activities. Let's see, below, both cases.

Request for application of the return of brains to the employer

For teachers and researchers who are hired in Italy, the facilitation is requested directly from the **employer**. The request is made through the preparation of a **substitutive declaration of notarial deed** signed by the taxpayer interested in the facilitation. In the declaration, the subject must indicate the existence of the **conditions required** to obtain the facilitation.

The **substitutive declaration**, pursuant to Presidential Decree no. 445/00, must contain:

- Personal details (name, surname and date of birth);
- Tax code;
- The indication of the date of return to Italy;
- The declaration of possessing the requisites provided for by the facilitation regime whose application is requested;
- The indication of the current residence in Italy;
- The declaration of not benefiting at the same time from the tax incentives provided for by art. 44 of Legislative Decree no. 78/2010, by Law no. 238/2010, by art. 16 of Legislative Decree no. 147/2015 (prohibition of cumulation pursuant to art. 2 of the implementing decree) and art. 24-*bis* of the T.U.I.R. (prohibition of cumulation pursuant to art. 1, paragraph 154, of the 2017 Budget Law).

The applicant may **attach** a copy to the form:

- The identity document;
- The *curriculum vitae*;
- The degree certificate and related declaration of value for qualifications obtained abroad;
- The certification of permanent permanence abroad, with commitment to educational activities or scientific research;
- The certificate of registration with **AIRE** in the period prior to repatriation;
- The list of scientific publications;
- The indication of the teaching or research activity to be carried out.

Once the documentation has been received, the employer will apply the benefit directly to the paycheck.

Employer's obligations

Once the documentation has been obtained from the worker, the employer is called to a series of obligations. These are as follows:

- **Make the withholding taxes** on the taxable part of the sums and values referred to in Article 51 of the TUIR. The tax base is reduced to 10%. This starts from the pay period following receipt of the request;

- At the end of the year or at the end of the employment relationship, **make the adjustment between the withholdings made and the tax due on the total amount of emoluments**, reduced and paid from the date of employment of the worker.

The provisions indicated do not apply in the event that the worker notifies the employer of the transfer of his residence or domicile outside Italy. In the [Single Certification](#), the total amount of the sums and values paid and the amount reduced to the percentages indicated above must be indicated separately.

To deepen the aspects related to self-certification: "[Application to the employer for the Return of Brains facilitation](#)".

Request for the application of brain re-entry in the PF income model

In the event that the researcher or teacher intends to carry out these **activities independently** in Italy, the methods of application of the facilitation change. In this case, the researcher or teacher is required to open [a VAT number](#) and invoice their professional services. The application of the facilitation, in this case, takes place through the indication in the tax return of the existence of the requirements. This indication must be made within the [RE framework](#) of the Personal Income model.

For further information on the compilation of the framework I leave you to this dedicated contribution: "[Compilation of the framework RE: Income of Self-Employment](#)"

The important thing to remember here is withholding tax. In fact, in the event that a tax regime is applied that provides for the application of withholding taxes, the professional is called upon to further fulfil. In order to avoid that the withholdings applied by the customers are in excess of the tax to be paid in the declaration, it is possible to self-certify the reduction of the withholding tax. By submitting appropriate documentation, the professional can request the reduction or non-application of the withholding tax to the customer.
