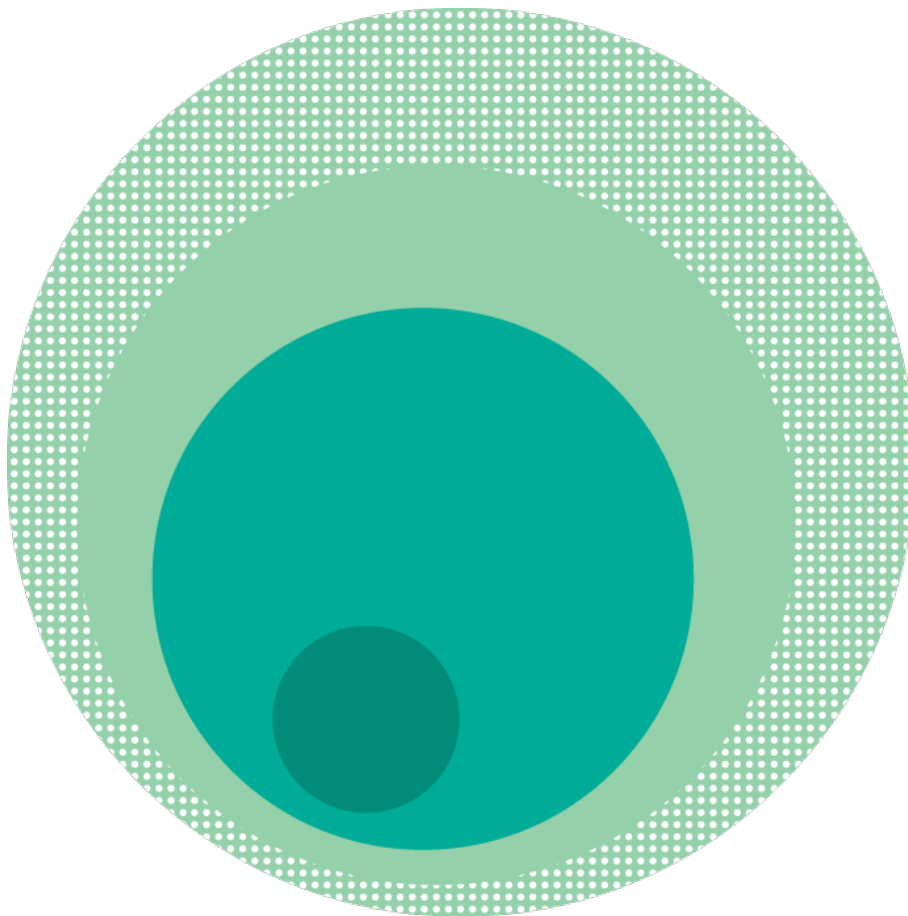


## The Biennial Preventive Agreement

This Taxnews provides a brief overview of the functioning of the Biennial Preventive Agreement (Concordato Preventivo Biennale): a new institution that involves the formulation, by the Revenue Agency, of a proposal for the biennial determination of income derived from business activities or the exercise of arts and professions for direct taxes and IRAP purposes. For 2024, the deadline to join the BPA is strictly set for October 31, 2024. The topic is particularly complex, and for each taxpayer, an analysis of the convenience of joining must be carried out, in addition to verifying the absence of any prohibitive causes or exclusions from the BPA. Therefore, it is advisable to contact our office to evaluate the potential for joining the BPA together.



## BIENNIAL PREVENTIVE AGREEMENT

The **Biennial Preventive Agreement** (hereinafter “**BPA**”) is a new institution that involves the formulation, by the Revenue Agency, of a proposal for the biennial determination of income derived from business activities or the exercise of arts and professions for direct taxes (IRES, IRPEF, and additional taxes) and for the net production value for IRAP purposes.

Essentially, it is an **agreement between professionals/businesses and the tax authorities to pre-establish the incomes and the net production value subject to taxation, receiving a preferential treatment in return**. Access to the new biennial preventive agreement is **optional**.

For the tax periods covered by the agreement, acceptance of the proposal will entail for the taxpayer:

- the subjecting of pre-agreed incomes with the Revenue Agency to IRPEF/IRES and potentially to IRAP;
- any actual incomes received by the taxpayer that are higher or lower than those agreed upon with the tax authorities will not be relevant for tax purposes.

Additionally, there is the **option** to apply a **substitute tax** to the part of business or self-employment income derived from joining the agreement that *exceeds* the actual income declared in the tax period *prior* to the one to which the proposal refers.

VAT is expressly excluded from the preventive agreement and must therefore be managed and paid according to the usual procedures.

### I. SUBJECTIVE REQUIREMENTS AND CAUSES OF EXCLUSION OR OBJECTION

#### 1. Subjective requirements

The BPA is applicable to subjects required to apply the synthetic indices of tax reliability (**ISA**) or those adhering to the **flat-rate regime**. The following taxpayers are excluded:

- those who, despite being obligated, have not filed income tax returns for the tax periods 2021, 2022, and 2023;
- those who have been convicted of tax crimes committed during the tax periods 2021, 2022, and 2023;
- those who, for the tax period 2023, have tax debts totaling €5,000 or more (it is specified that debts under suspension or installment payment do not count towards this limit).

Additionally, taxpayers under the flat-rate regime who started their activity in 2023 are excluded, as they will not receive any proposal for the agreement. It is also specified that acceptance of the BPA proposal by partnerships and equivalent entities, as well as by capital companies under a tax transparency regime, will also bind all partners and associates.

## 2. Causes of exclusion and objection

In addition to the subjective causes of exclusion, there are other objectionable causes that prevent adherence to the BPA:

- having earned, in the tax period preceding the one to which the proposal refers, income that is entirely or partially exempt, excluded, or non-contributory to the taxable base, exceeding 40% of the income derived from business activities or the exercise of arts and professions;
- having carried out **operations such as mergers, demergers or contributions** in the first year to which the agreement proposal refers;
- for partnerships or associations under Article 5 of the TUIR: having made changes to the social structure in the first year to which the agreement proposal refers (changes in the distribution of shares within the same social structure are not relevant).

## II. TAXABLE BASE, METHODS FOR ADHERENCE AND CAUSES FOR TERMINATION

### 1. Taxable base

The **agreement proposal**, if accepted, establishes for the subsequent biennium — except for those in the flat-rate regime, for whom, on a trial basis, adherence to the BPA applies only for the year 2024 — the income from business and self-employment activities, and (only for ISA subjects) the IRAP taxable base.

The agreed income is calculated by the Revenue Agency according to the ordinary rules set forth by the TUIR; the income estimated by the Revenue Agency does not take into account:

- capital gains and losses;
- active and passive extraordinary income;
- bad debts;

- income or portions of income (profits or losses in the case of business income) derived from participations in partnerships or associations under Article 5 of the TUIR;
- consideration received from the sale of clientele or intangible assets related to artistic or professional activities (in the case of self-employment income).

In any case, the agreed income, including the components mentioned above, cannot be less than €2,000.00.

## 2. Methods and deadlines for adherence to the agreement proposal

Operationally, the Revenue Agency provides taxpayers or their intermediaries, also through the use of electronic networks, with specific **software programs** for the acquisition of data necessary for the processing of the BPA proposal.

**For the year 2024 only, the deadline to join the BPA is strictly set for October 31, 2024.** Starting in 2025, the deadline for potential adherence will be July 31.

## 3. Causes for termination of the BPA

The BPA ceases to have effect starting from the tax period in which certain events occur, namely:

- Cessation of the activity or modification of the same compared to that exercised in the tax period preceding the biennium, unless the same ISA applies;
- Mergers, demergers, contributions, or transfer of business;
- Changes to the social structure by partnerships or associations under Article 5 of the TUIR;
- Presence of specific and exceptional circumstances (for example: natural disasters, business lease, company liquidation, serious damage to premises where the activity takes place or to inventory, etc.) that have caused a contraction of the actual taxable bases exceeding 30% compared to those covered by the agreement.

Additionally, for ISA taxpayers only, the BPA ceases in the case of:

- Adherence to the flat-rate regime;
- Declaration of revenues exceeding the limit established by the approval or revision decree of the relevant Synthetic Indices of Tax Reliability (ISA) increased by 50%.

Meanwhile, for flat-rate taxpayers only, the BPA ceases in the case of exceeding the revenue or compensation limits set by the regime increased by 50%.

### III. PREMIUM BENEFITS AND OTHER CONSEQUENCES

#### 1. Premium effects resulting from adherence to the BPA

For all those who adhere to the BPA, **no assessments** (inductive assessments pursuant to Article 39 of Presidential Decree No. 600/73) **can be carried out**, unless the investigation by the Financial Administration reveals grounds for disqualification from the BPA. Additionally, all the **premium benefits** provided for ISA subjects who obtain a score of 10 (regardless of the actual score achieved) are recognized, namely:

- exemption from the conformity certificate requirement for the offsetting of credits up to €70,000 per year for VAT and up to €50,000 per year for direct taxes and IRAP;
- exemption from the requirement to obtain a conformity certificate or provide a guarantee for VAT refunds not exceeding €70,000 per year;
- exclusion from the application of the rules for non-operating companies (Article 30, Law No. 724 of December 23, 1994);
- exclusion of assessments based on simple presumptions (Article 39, paragraph 1, letter d, second sentence, Presidential Decree No. 600/73 and Article 54 of Presidential Decree No. 633/72);
- advancement by at least one year, with graduation according to the level of reliability, of the deadlines for assessment activities regarding business and self-employment income and VAT;
- exclusion of the synthetic determination of total income, provided that the total assessable income does not exceed the declared income by two-thirds.

#### 2. Determination of prepayments

The prepayments for taxes related to the periods covered by the biennial preventive agreement are calculated according to the ordinary rules, taking into account the agreed incomes. However, for the **first tax period** of adherence to the agreement:

- for **income taxes** determined using the **historical method**: an additional amount of 10% is due on the positive difference between the agreed income

and the declared income from business or self-employment for the previous period, adjusted according to the determination rules specific to the agreement under Articles 15 and 16 of Legislative Decree No. 13/2024;

- for **IRAP** determined using the **historical method**: an additional amount of 3% is due on the positive difference between the agreed net production value and that declared for the previous period, adjusted according to the determination rules specific to the agreement under Article 17 of Legislative Decree No. 13/2024;
- if the prepayments are determined based on the tax for the current period (the so-called **predictive method**), the second prepayment installment is calculated as the difference between the total prepayment due based on the agreed income and net production value and the amount paid with the first installment calculated according to the ordinary rules.

### 3. Optional regime: substitute tax on excess agreed income

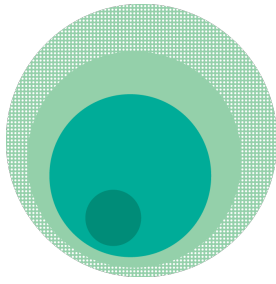
The new substitute tax regime provides that, for the tax periods covered by the agreement, taxpayers who adhere to the proposal of the Revenue Agency can, at their option, subject to a substitute tax on income (including additional taxes) the portion of business or self-employment income derived from joining the agreement that exceeds the actual income declared in the tax period preceding the one to which the proposal refers, net of extraordinary items, according to the following scale:

<b>ISA Score Achieved in the 2023 Tax Period</b>	<b>Applicable Rate on the Excess Portion</b>
Equal to or greater than 8	10%
Equal to or greater than 6 but less than 8	12%
Less than 6	15%

The taxpayer's adherence to the Biennial Preventive Agreement is optional and occurs through the completion of the BPA 24/25 Form, along with the ISA form and the calculation of the income proposed in advance by the Revenue Agency.

Our office is available to assist you in calculating the proposed income, verifying the presence of any objectionable or exclusionary causes from the BPA, and assessing the convenience of adherence.

**We invite you to contact us if this institute is of interest to you.**



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**FIDERCONSULT SRL**

**ROMA**

00144 - Via Birmania, 81  
Tel. 06.591.74.69  
Fax 06.591.35.82

**FIRENZE**

50132 - Viale Giuseppe Mazzini, 10  
Tel. 055.234.79.02  
Fax 055.234.79.09

**FIDENZA**

43036 - Via Monsignor Ottorino Davighi, 436  
Tel. 06.591.74.69  
Fax 06.591.35.82

**MILANO**

20144 - Via Bernardino Telesio, 2  
Tel. 02.48.01.25.34

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