

TAX MEASURES TO SUPPORT HOUSEHOLDS AND BUSINESSES

- LAW DECREE MARCH 17th 2020, NO. 18

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1. Forewords

The Law Decree no. 18/2020 ("**Decree**"), in force as from 17 march 2020, introduces urgent measures easing the impact of Coronavirus (Covid-19) emergency in Italy.

The Decree is aimed at implementing national healthcare system and supporting families, workers and enterprises economically.

In brief, the scope of the Decree is achieved via:

- financing and strengthen the Italian health-care system, civil protection and other public bodies involved in the emergency;
- support employers and workers;
- support families and enterprises, through banking system and Government guarantees;
- suspension of taxes and social security contributions as well as other tax obligations and tax incentives for the sanitation of workplaces and incentives for employees.

Here follows some of the key tax measures implemented with Decree.

2. Measure for the financial support of the enterprises (Art. 55)

In order to foster the assignment of the bad credits, the Decree provides for the possibility of converting into **tax credits** any deferred tax assets (even if not reported in the financial statements) relating to:

- *Tax losses* referred to in art. 84 of the Presidential Decree 22 December 1986, n. 917 ("TUIR") not yet deducted from the taxable income;
- Amount of the *notional return* exceeding the total net income pursuant to the ACE discipline referred to in Article 1, paragraph 4, of the decree law of 6 December 2011, no. 201, converted, with modifications, by law 22 December 2011, n. 214, not yet deducted or used after its conversion in IRAP tax credit.

Convertible Tax losses and ACE surpluses are not deductible from taxable income.

2.1. Scope of the provision

Generalized application to all companies:

- that have assigned by 31.12.2020 monetary bad credits (overdue credits for more than 90 days). Transfers of credits between related companies (article 2359 of the Civil Code) are not relevant.
- for which the state of failure or the risk of failure pursuant to article 17 of the legislative decree no. 180, or the state of insolvency pursuant to article 5 of the Royal Decree of 16 March 1942, n. 267, or article 2, paragraph 1, letter b), of the corporate crisis and insolvency code, pursuant to Legislative Decree 12 January 2019, no. 14, has not been ascertained.

2.2. Limitations

The deferred tax assets relating to tax losses and ACE surpluses can be considered for a maximum amount not exceeding 20% of the nominal value of the assigned credits for a maximum nominal value of 2 billion euro, determined taking into account all the transfers made within December 31, 2020 by all Group companies.

The conversion into tax credit takes place on the effective date of the assignment of credits.

2.3. Caratteristiche dei crediti d'imposta

Tax credits resulting from the conversion:

- are not productive of interests;
- can be used, without limitation of amount, for the offsetting provided by article 17 of the legislative decree 9 July 1997, n. 241, or can be transferred according to the provisions of article 43-bis or article 43-ter of the decree of the President of the Republic September 29, 1973, n. 602, or claimed for a refund;
- must be outlined in the relevant tax return;
- do not concur to the determination of the taxable base both for Corporate tax and IRAP purposes.

2.4. Conditions for the conversion

The conversion of the deferred tax assets into tax credits is subject to the exercise of the option referred to in article 11, paragraph 1, of the decree-law of 3 May 2016, no. 59, converted, with modifications, by law 30 June 2016, n. 119, through which the transferor company undertakes to pay an annual fee until the 31 December 2029 amounting to 1.5% of the difference between the amount of the deferred tax assets and the taxes paid.

The option, if not already exercised, must be exercised by the end of the year when the assignment of credits takes place; the option is effective from the following year.

3. Tax compliances

3.1. Deadlines of taxes payments and other tax obligations are either suspended or postponed (Articles 60, 61 and 62)

The Decree postponed 2020 tax obligation deadlines – already amended by Law Decree dated March 2, 2020 no. 9 - due to Covid-19 epidemiological emergency.

The measures affect enterprises with tax domicile, registered office, operative seat, in the Italian territory without any distinctions. New deadlines are differentiated according to business sectors and size of taxpayers as shown in the following chart:

REQUIREMENTS	TAX FULFILMENT	PREVIOUS DEADLINE	NEW DEADLINE
1. Accommodation facilities, travel agencies and tour operators, 2. Enterprises and professionals listed under par. 2, lett. b) - r) of art. 61 (see below)	Payments due on March and April 2020 of: (i) withholding taxes on salary of employees and assimilated income; (ii) social security contributions. Payment of March 2020 VAT	From March 2nd, 2020 to April 30, 2020	- By one installment within May 31st, 2020 , or - By option in 5 installments as from May 2020 to September 2020.
National sports federations, sports promotion bodies, associations and sports, professional and amateur clubs, under par. 2, letter a) of art. 61	Payments due on March, April and May 2020 of: (i) withholding taxes on salary of employees and assimilated income; (ii) social security contributions.	From March 2nd, 2020 to May 31, 2020	- By one installment within June 30, 2020 , or - By option in 5 installments as from June 2020 to October 2020.
	Payment of March 2020 VAT		- By one installment within May 31st, 2020 , or - By option in 5 installments as from May 2020 to September 2020.
Enterprises and professionals, irrespective of the activity carried out, with revenues <u>lower than € 2 Mil</u> realized in the FY proceeding the one as of March 16, 2020 ¹ .	Payments due on March 2020 of: - withholding taxes on salary of employees and assimilated income ² ; - Regional and municipal taxes; - VAT; - Social security contributions.	From March 8th, 2020 to March 30, 2020	- By one installment within May 31st, 2020 , or - By option in 5 installments as from May 2020 to September 2020.
Enterprises and professionals, irrespective of the activity carried out, included the ones with revenues <u>higher than € 2 Mil</u> realized in the FY proceeding the one as of March 16, 2020 ³ .	Payments of any taxes due to Public Administration (social security contributions included)	March 16, 2020	March 20, 2020
Taxpayers with (a) revenues lower than 400.000 euro realized in the FY proceeding the one as of March 16, 2020 ⁴ ; (b) who	Not subject, by option, to withholding taxes on self-employment income and on commissions⁵ on revenues	April 16, 2020	- By 1 installment within May 31, 2020⁶ , or - By option in 5 installments as from

¹ FY as at December 31, 2019 for calendar year taxpayers.

² In case of **labour intensive** contracts/subcontracts (appalti) with an amount higher than **200.000 euro**, the Principal under the new obligations introduced by art. 4 of Law decree 26 October 2019 n. 124, should check if the Contractor/Sub-contractor who is obliged to pay withholding taxes of its employees opted for the extension.

³ FY as at December 31, 2019 for calendar year taxpayers.

⁴ Periodo di imposta al 31.12.2019 per i soggetti solari.

⁵ According to art. 25 and 25-bis DPR 600/1973

⁶ The suspension of withholding taxes payment is allowed further the submission of a declaration written by the self-employee or by the agent to its withholding tax agent. The payment of the suspended withholding tax must be done by the self-employee or by the agent.

did not incur personnel expenses in the previous month.	received in the period March, 6 -March 31, 2020		May 2020 to September 2020.
All Taxpayers ⁷	Tax obligations ⁸ (pre-filled tax return excluded ⁹).	From 8 March, 2020 to May 31, 2020	June 30, 2020

List of the activities under par. 2 of Article 61 of the Decree

- a) National sports federations, sports promotion bodies, professional and amateur sports associations, as well as subjects that manage stadiums, sports facilities, gyms, clubs and structures for dance, fitness and bodybuilding, sports centers, swimming pools and swimming centers;
- b) theaters, concert halls, cinemas, including the services of ticket office and support activities for artistic performances, as well as discos, dance halls, nightclubs, game rooms and billiards;
- c) lottery offices, lotteries, bets, including the management of related machines and apparatus;
- d) entities that organize courses, fairs and events, including those of an artistic, cultural, recreational, sporting and religious nature;
- e) entities that manage catering, ice cream shops, patisseries, bars and pubs;
- f) museums, libraries, archives, historical places and monuments, as well as botanical gardens, zoos and nature reserves;
- g) entities that manage day nurseries and day care services for disabled children, educational services and nursery schools, first and second-degree educational services, professional training courses, sailing, navigation and flight schools, which release patents or commercial licenses, professional driving schools for drivers;
- h) individuals who carry out non-residential social assistance activities for the elderly and disabled;
- i) spa companies pursuant to law no. 323, and centers for physical well-being;
- j) entities that manage entertainment parks or theme parks;
- k) manage bus, railway, underground, sea or airport stations;
- l) entities that manage freight and passenger transport services by land, air, sea, river, lake and lagoon, including the management of funiculars, cable cars, cable cars, chair lifts and ski lifts;
- m) entities that manage rental services of land, sea, river, lake and lagoon transport vehicles;
- n) entities that manage sports and recreational equipment rental services or structures and equipment for events and shows;
- o) entities who carry out driving and tourist assistance;
- p) non-profit organizations of social utility referred to in article 10 of Legislative Decree no. 460 registered in the appropriate registers, to voluntary organizations registered in the regional registers and of the autonomous provinces referred to in the law of 11 August 1991, n. 266, and to social promotion associations registered in the national, regional and autonomous provinces of Trento and Bolzano as referred to in article 7 of law no. 383, which exercise, exclusively or principally, one or more activities of general interest pursuant to article 5, paragraph 1 of Legislative Decree 3 July 2017, n.117.

4. Incentives to employees (Article 63)

The Decree recognizes a non-taxable incentive ("premium") to employees¹⁰ that: i) worked at their workplace in March 2020; ii) generated employment income not exceeding 40,000 euros in FY 2019.

⁷ Irrespective of the revenues realized as at 31.12.2019.

⁸ Although it has not been specified by the Decree the reference is made to the periodical tax obligations (e.g. Esterometro, quarterly VAT reports, VAT Return) to be filed within the period March 8, 2020 – May 31, 2020).

⁹ According to art. 1 of Law Decree n.9 dated 2.03.2020, the pre-filled tax return shall be made available as from May 5, 2020.

¹⁰ Pursuant to art. 49, par 1, of TUIR "Employee incomes are those derived from agreements substantiated on the performance of work (whatsoever qualified) employed and under the direction of others, including home-work if considered as such under labor legislation."

The premium amounts up to **100 euros** calculated on a working days basis.

It is granted by employers (as withholding agent) to employees by April 2020 or in any case by the year-end.

Symmetrically employers are granted with a credit paring the premium to offset payments due (ex art. 17 legislative decree 9 July 1997 n. 241).

5. Tax incentives for the sanitation of workplaces (Art. 64)

Entrepreneurs and self-employees may benefit of a **tax credit** for FY 2020 equal to 50 per cent of expenses incurred, up to a maximum amount of 20,000 euros, for sanitation of workplaces and work tools.

Implementation of the tax credit will be further defined by decree of the Ministry of Economic Development jointly with the Minister of Economy and Finance.

6. Tax treatment of gifts in cash or in kind to support entities involved in tackling COVID-19 (Art. 66)

Individuals and non-commercial entities, may **deduct** from income tax base **30%** of the gifts they made in cash or in kind in favor of the State, regions, local territorial bodies, public bodies or institutions, foundations and associations legally recognized as non-profit, involved in the containment and management of the epidemiological emergency from COVID-19. This deduction is granted up to EUR 30,000. However, higher effective tax benefit in the hand of the donor might slightly depends on whether this deduction can be combined with similar tax deductions for gifts in force in Italy.¹¹ In order to claim tax benefits, it is reasonable to deem that the gifts must be made by traceable means of payment (e.g. credit card, bank or postal wiring).

Gifts in cash or in kind, made by **companies subject to Italian Corporate Tax**, are **deductible** from corporate tax base both for IRES and IRAP purposes. Effective tax benefit for the company may vary depending on whether this deduction can be limited and/or combined with similar tax deductions for gifts in force in Italy.¹²

In order to calculate tax deductions on gifts involving goods donated by individuals, non-commercial entities and companies, in favor of mentioned entities, such goods are evaluated in accordance with decree 28 November 2019. In principle, this means that the goods should be evaluated at arm's length (art. 9 of the TUIR). For tax deduction purposes, the donation should be supported by a written declaration of the donor whereby goods are described per quality/quantity and by a declaration of the beneficiary.

7. Suspension of the statute of limitations of Italian tax authorities' activities (Art. 67)

The Decree provides for the suspension of key activities performed by Italian tax authorities from 8 March until 31 May 2020.

¹¹ See, for instance, art. 10, co. 1, lett. I-quater TUIR, as interpreted by the Italian Revenue Agency (Ruling 7 July 2010, No. 68/E, Ruling 19 August 2011, No. 87/E and Guide Lines 4 April 2017, No. 7/E) providing full deductibility from income tax base to individuals making gifts to University Hospital Institutions ("Aziende Ospedaliere-Universitarie") and Health and Hospitalization Institutions with research aims ("Istituti di ricovero e cura a carattere scientifico"), Public and Private Research Institutions, including the National Health Institution ("Istituto Superiore della Sanità"). But, combination of tax benefits on their gifts is not allowed under the D.L. n. 35 of 14 march 2005 (decreto sulla competitività).

¹² See, for instance, art. 100 (2)(a) of the TUIR, Article 1(353) of Law 23 December 2005, No. 266, Article 83 of the , Article 14 of Law Decree 14 March 2005, No. 35.

This suspension affects assessments, collections and litigations activities carried out by Italian tax authorities, as well as the following procedures:

- Rulings procedure (art. 11, Law 212/2000, art. 6, Legislative Decree 128/2015 and art. 2, Legislative Decree 147/2015); under the suspension period the taxpayer can only file ruling via certified email PEC;
- Settlements and cooperation procedures (art. 7, co. 2, Legislative Decree 128/2015 art. 1 bis, Legislative Decree 50/2017);
- Advanced Agreement Procedures (art. 31 ter Presidential Decree 600/1973) and Downward adjustments on international associated companies' income procedures (art. 31 quater Presidential Decree 600/1973);
- Patent box procedures (art.1, co. 37-43, L. 190/2014).

8. Suspension of the tax collections (Art. 68)

The Decree suspends collection of tax and non-tax related payments, including but not limited to collections of sums requested by virtue of tax collection orders (issued by collection agents), self-enforceable deed of assessment, tax collection notices issued by local authorities.

To the contrary, sums requested by virtue of deeds, orders, notices other than those specifically referred by Article 68 are not suspended (e.g. those deeds of assessment non self-enforceable, those issued under art. 36 (bis) and 36 (ter) of the Presidential Decree 600/1973).

The suspension is effective as from 8 March until 31 May 2020.

This suspension implies that suspended payments must be paid in a single installment by 30 June 2020. Moreover, payments made during the suspension period cannot be claimed back.

9. Measures to tackle COVID-19 outbreak and to contain its impact on civil, criminal, tax and military litigations (Art. 83)

Article 83 provides for a re-scheduling of tax litigations and related activities and fulfillments (e.g. appeal, communication, notification). It follows that appeals before tax courts of first (against deed of assessment or tax collection notices) and second instances (against judgments) are suspended until further notice.

Whether such measure may affect settlement procedures outside pending tax litigations is doubtful. Uncertainties are mainly due to case-law that, due to the non-litigation nature of that procedures, denied postponement (90 days) of the deadline to appeal once settlement procedure was filed (Cass. 11632/2016). However, it seems reasonable to deem that the settlement procedures, irrespective its nature, fall within the suspension under either art. 67 or art. 103 of the Decree.

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