CORONAVIRUS
OVERCOMING THE DIFFICULTIES

KEY TAX MEASURES - LAW DECREE AUGUST 14th 2020, NO. 104

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1. Forewords

The Law Decree no. 104/2020, aka “Decreto Agosto” (“**Decree**”), in force as from August 15th 2020, introduces urgent measures in Italy covering Labor, HealthCare, Education, Economy and Taxation fields.

Here follows an overview of the key economic and tax measures implemented with Decree. As the Decree follows and partly amends measures set forth by Law Decree May 19th 2020, no. 34 (“Decreto Rilancio”) converted into law with amendments by Law no. 77/2020, it seems appropriate to make the overview be preceded by a summary of main tax measures set forth by Decreto Rilancio.

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Summary on Law Decree no. 34/2020,

a) Measures supporting business and economy

- Companies/self-employees that realized revenues/fees lower than €250mio in FY 2019 are exempted to pay balance payment (FY 2020) and advance payment (FY 2021) for IRAP purposes. Banks and other financial entities are out of the scope of this provision (art. 24).

- Companies/self-employees with turnover lower than €5mio in FY 2019 are entitled to a non-repayable grant (ranging from 10% to 20%) provided that they suffered at least a two third drop in turnover realized in April 2020 compared with April 2019. The grant is calculated on that deficit, arising by difference between turnovers (April 2020-April 2019), at rates depending on the size of entitled taxpayer (20% up to €400K turnover, 15% up to €1mio, 10% up to €5mio) (art. 25).

- Individuals and/or companies injecting capital, in turn of participations, into SMEs – incorporated under law as Italian limited liability company (such as SPA, SAPA, SRL, Cooperatives including Italian permanent establishment of EU/SEE companies and Italian OICR), – that do not carry out banking/finance/insurance activities, may benefit a tax credit equal to 20% of amount injected (capped at €2mio). Tax credit can be deducted either on tax return or settled against other taxes. This regime applies if the company receiving capital injection: a) realized revenues exceeding €5mio in FY 2019 (€10mio under sister measure "Equity Funds for SMEs"), b) suffered decrease on revenues realized in March and April 2021 compared with same month of 2020 not lower than 33%, c) approved and executed a resolution for capital increase (not lower than €250K under sister measure "Equity Funds for SMEs") by December 31st 2020, d) do not distribute reserves until January 1st 2024 (otherwise investors must refund tax credit). If further conditions are met by the receiving company (e.g., workforce counts no more than 250 people; do not fall under the difficulty undertakings defined by Reg. (UE) n. 651/2014, n. 702/2014, n. 1388/2014) an additional tax credit equal to 50% is granted and calculated on losses not exceeding 10% of net equity up to 30% of the capital increase capped at €800K (art. 26).

- Companies/self-employees with turnover lower than €5mio in FY 2019 may benefit a tax credit equal to 60% on rental paid in March, April and May 2020 for non-residential properties intended for carrying out business. Tax accredit is granted if entitled taxpayers suffered at least 50% drop in turnover realized in March, April and May of FY 2020 compared with same months of FY 2019. A tax credit equal to 30% of rental fees is granted under same conditions for complex supply of services or business rental. Tax credits can be: a) deducted on tax return (in FY when rental payment is made), or b) settled against other taxes to be paid, or c) transferred to third party (art.28).

- Individuals and/or companies injecting capital, either directly or through OICR, in turn of participations, in innovative startup or SMEs are entitled to a tax credit equal to 50% of amount injected (capped at €100K per year). The regime applies provided that investors do not sell participations received in turn for 3 years. Innovative start up and PMI may benefit further incentives, grants and subsidies under certain conditions (art.38).

- Other incentives, grants and subsidies are recognized to companies performing R&D activities aimed at tackling COVID-19 disease (arts. 55-60).

b) Incentives and tax facilitations

- Residential property's owners are entitled to a tax deduction equal to 110% of expenses, in common parts of buildings / condominiums, for improving energy efficiency, for reduction of seismic risk, for setting up electric vehicle chargers and/or photovoltaic systems. Expenses (capped at €60K and/or €30K) must be incurred from July 1st 2020 to 31st December 2021. The tax deduction can be: a) deducted on tax return in 5 FYs, or b) converted into price discount under certain conditions, or c) converted into a tax credit, or d) transferred to third party. Under certain conditions it is allowed to sum up this tax credit with similar tax measures such as those on restoration/recovery of buildings (art.119).

- Companies/self-employees may benefit of a tax credit equal to 60% of expenses (capped at €80K), incurred in FY 2020, for setting workplaces (allowing open access to individuals) compliant with COVID-19 legislation requirements. It is allowed to sum up this tax credit with similar tax measures such as those on sanitation of workplaces and purchase of PPEs (art.120).

- Companies/self-employees may benefit of a tax credit equal to 60% of expenses (capped at €60K), incurred in FY 2020, for sanitation of workplaces and work tools and purchase of

PPEs. It is allowed to sum up this tax credit with similar tax measures such as those *sub art. 120* (art.125).

- Ordinary VAT rate (22%) on sales of PPEs and similar goods is reduced to 5% (art.124).
- Starting from January 1st 2021, the automatic increase of rates (so called "general escape clause") on VAT and on certain excises duties is repealed (art.134).
- The disclosure regime on foreign financial assets and related taxes (IVAFE) is extended to non-commercial entities and informal partnerships.
- Taxpayers holding as at July 1st 2020 non listed participations (whether substantial or not) and/or lands (whether agricultural or available for construction) may step up their value for tax purposes paying a 11% substitutive tax so to exempt perspective capital gain on sale (art. 137).
- The threshold on taxes offsetting is increased from €700K to €1mio (art. 147).
- The tax credit on R&D performed in the south of Italy is increased from 12% up to 45% depending on the size of the company entitled to benefit the tax credit (art. 244).

c) Tax deferrals, tax collections and other measures affecting the statute of limitations of Italian tax authorities' activities and tax litigations

- The following tax payments, already deferred to May, June or July by virtue of previous decrees, can be further postponed to September 16th 2020 (arts. 126-127):
  - For withholding taxes on salary of employees and assimilated income, regional and municipal taxes, social security contributions and VAT, made by enterprises, self-employees and non-commercial entities, that realized revenues/fees lower than €50mio in FY 2019 and suffered a 33% (50% in case of revenues/fees higher than €50mio) drop in turnover of March and April 2020 compared with same months of 2019. Payments can be made in a lump-sum (by 16th September 2020) or up to no.4 equal monthly instalments;
  - For fees/commissions paid gross of withholding tax, to enterprises and self-employees with revenues/fees lower than €400K realized in the FY 2019, from March 17th to May 31st 2020, provided that recipients: a) have not incurred labor costs, and b) send a written request to payers. Option for the deferral allows taxpayers to pay the withholding taxes accumulated during the deferral period in a lump-sum (by 16th September 2020) or up to no.4 equal monthly instalments;
  - For withholding taxes on salary of employees and assimilated income, and social security contributions to be paid by national sports federation, entities promoting sports, associations and sports companies. Payments can be made in a lump-sum (by 16th September 2020) or up to no.4 equal monthly instalments;
  - For withholding taxes on salary of employees and assimilated income, regional and municipal taxes, social security contributions and VAT, made by small sized enterprises and taxpayers including those established in the so called "red zone" irrespective of revenues realized. Payments can be made in a lump-sum (by 16th September 2020) or up to no.4 equal monthly instalments.
- The following measures affects companies selling goods subject to customs duties, excises duties, consumption taxes, and/or similar taxes (arts. 129-131):

- Payments of excise duty on natural gas and electricity – ordinarily due on monthly basis calculated on the basis of the consumption of the previous year – to be paid from May to September 2020, are reduced by 90%;
- The date of entry into force of certain authorization and accounting obligations for energy products envisaged for small deposits is deferred;
- No penalties apply to late payments of excise duty to be paid on energy products released for consumption in March 2020 provided that payments are made by 20 May 2020;
- Payments of excise duty on natural gas and electricity – ordinarily due on monthly basis calculated on the basis of the consumption of the previous year – to be paid from May to September 2020, are reduced by 90%;
- Payments of excise duty to be paid on energy products released for consumption in April, May, June, July and August 2020 may be made calculated to the extent of 80% and to the extent of 20% within November 16th 2020;
- The payment of custom duties to be due within May 1st and July 31st are postponed by 60 days;
- The person authorized to operate under a fiscal deposit regime of energy products and alcohols may pay in installments his debt from excises.

- Deadlines on payments of stamp duties for tax litigations are suspended (art. 135).
- The entry into force of the stamp duties due on e-invoices in postponed to January 1st 2021 (art. 143).
- No penalties apply on payments requested by certain deed of assessments (issued after tax verification so called “controllo formale e automatico”) and expiring between March 8th and May 19th 2020 (art. 144).
- The tax reimbursement to taxpayer are executed without ordinary compulsory setoff against tax debits (art. 145).
- The following deadlines, already deferred to March, April and May, by virtue of previous decrees, can be further postponed to September 16th 2020 (arts. 149):
  - For tax collection payments caused by deed of assessments for sums from tax settlements procedures, negotiation within tax litigation procedures, Mediations, request of payments from cadastral revaluation, request of payment for fail to register rentals contracts and/or other contracts, request of payments for registry tax, inheritance tax, gifts tax, tax on insurances;
  - For the appeals before the tax court of first instance against the just mentioned deed of assessments and the deed of assessments alleging penalties that can be settled by acquiescence;
  - For the pay in installments of payments due under the just mentioned deeds of assessments and the settlement of notice of tax collection.
- The enforceability of distrain of wages and pensions are suspended until 31st august 2020 meaning by this that relevant sums are paid to the debtor as if there’s no distrain (art. 152).

- The collection of tax, 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 is postponed to 31st august (art. 154).
- Certain deed of assessments, request of tax payments, deed alleging of penalties, tax communications, and invitation to compliance must be issued within December 31st 2020. Whilst for certain tax collection notices the statute of limitation is extended by one year (art. 157).
- The period covered by suspension caused by a request of tax settlement outside tax litigation can sum up with the period covered by the suspension of tax litigation (art. 158).

2. Economic relief measures

2.1. Reinforcing "New Sabatini" subsidies for investments in new assets (Art. 60)

Interest-reduced loans might be granted to SMEs carrying out business activity in Italy -other than financial/insurance/export-related activities – and acquiring new assets (e.g. machineries, plants, equipment) including digital technologies in the context of "Industry 4.0" national program.

Under the "New Sabatini" regime the SMEs are entitled to:

- a full or partial **subsidized loan** granted by selected banks/financial entities;
- a **state contribution** proportional to that loan;
- an optional **states-backed warranty** up to 80% of loans covering less than 5 years and amounting between 20K€ and 4mio€.

State contribution amounts to interests calculated on the basis of a 5-year loan with an annual interest rate equal to:

- 2,75% for ordinary investments;
- 3,575% for investments in technologies and integrated system in the context of "Industry 4.0" measures (big data, *cloud computing*, *cybersecurity*, advanced robotics and mechatronics, Augmented reality, 4D manufacturing, Radio *frequency identification* – RFID and tracking and tracing system of garbage).

Further benefit is recognized to **SMEs** located in southern Italy (Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily).

2.2. Relief for tourism and showbusiness industries (Arts. 77-96)

- Companies/self-employees – including SPA facilities as well as hotels and agritourism, travel and tourism agencies and tour operators - may benefit a tax credit equal to 60% on rental paid in March, April, May, June and July 2020 for non-residential properties intended for carrying out business. Tax credit is granted if entitled taxpayers suffered at least 50% drop in turnover realized in said months (March-July) of FY 2020 compared with same months of FY 2019. A tax credit equal to 30% of rental fees was granted under same conditions for complex supply of services or business rental. Tax credits could be: a) deducted on tax return (in FY when rental payment is made), or b) settled against other taxes to be paid, or c) transferred to third party.

- Certain properties (e.g., hotel, motel, seaside, lake and river bathing establishments, SPAS, fairs, cinemas, theaters and discos) are exempted from paying second installment of local tax on property (IMU) due within December 16th 2020. The payment of first installment (due on June 16th 2020) was already exempted by virtue of Decreto Rilancio (Art. 177).

- Tourist hotel accommodation facilities – including structures that carry out agritourism activities, SPAS, as well as open-air accommodation facilities - may benefit a tax credit equal to 65% of the costs incurred in FYs 2020 and 2021 for the requalification and improvement of structures, including but not limited to energy efficiency improvements.

- Other measures are granted to stimulates private/public transports and mobility companies including airlines business (Arts. 84 and 85) as well as logistics including portal entities (Arts. 93, 94 and 95)

2.3. Tax credits for advertisements and internationalization of businesses (Arts. 91 and 96)

- Companies/self-employees/non-commercial entities may benefit of a tax credit equal to 50% of advertising expenses (including sponsorships) not lower than 10K€, incurred between July 1st and December 31st 2020. Expenses must be made towards leagues having turnover at least of 200K€ but not exceeding 15mio€, that organize national team championships within the Olympic disciplines or professional sports clubs and amateur sports societies and associations registered in the CONI register operating in disciplines admitted to the Olympic Games and carrying out youth sports.

- Subsidized loans are granted to enterprises – including Italian innovative start-ups - willing to expand their business abroad Italy and supporting the internationalization processes of Italian trade fair organizations, set up in the form of joint stock companies.

- It is recognized a tax credit equal to 50% of the overall advertising expenses incurred in FY 2020 – including costs suffered for internet services such as server, hosting for digital newspapers.

3. Tax measures

3.1. Installments of tax payments already deferred by virtue of previous decrees (Art. 97)

- Payments of withholding taxes on salary of employees and assimilated income, regional and municipal taxes, social security contributions and VAT, already deferred to May, June or July by virtue of previous decrees can be further postponed as follow:

  1. in a lump-sum by 16th September 2020;
  2. in no.4 equal monthly instalments starting by 16th September 2020;
  3. in no.2 installments:
     a. 50% in a lump-sum by 16th September 2020 or up to no.4 equal monthly instalments;
     b. 50% in one or more equal monthly installments (maximum no. 24 installments) within 18 January 2021.

3.2. Postponement of the forced tax collection (Art. 99)

- The collection of tax, 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 - which were already postponed to 31st August 2020 by virtue of Decreto Rilancio (art. 154) - are now postponed to 30th November 2020. This implies also that any tax collection activities are suspended until October 15th 2020.

- The enforceability of distrain of wages, salaries and pensions – which were already suspended until 31st august 2020 by virtue of Decreto Rilancio (art. 152) – are now suspended until October 15th 2020. This means that relevant sums are paid to the debtor as if there's no distrain.

3.3. Assets and participations value step up (Arts. 106 and 110)

- Eligible taxpayers may **step up** for tax purposes the value of in-scope assets (all or cherry picked) and participations booked into financial statement as at December 31st 2019.

- The surplus reserve caused by the step up can be recognized, fully or partly, for tax purposes i.e. Corporate income tax (IRES), Regional tax on productive activities (IRAP) and additional taxes, by paying a **10%** substitutive tax. The tax recognition of the surplus reserve entitles the eligible taxpayers to minimize taxation in the event of surplus reserve distributions.

- The higher value of stepped-up assets can be recognized for tax purposes i.e., Corporate income tax (IRES), and Regional tax on productive activities (IRAP), by paying a **3%** substitutive tax so to exempt perspective capital gain on sale. To these purposes it is not relevant whether in-scope assets are depreciable or not.

Note: *A focus on this provision will be soon released.*

3.4. *Mutual agreement* procedure (Art. 113)

- The Legislative Decree 10 June 2020, no. 49, implemented into the Italian legislation the EU Directive no. 2017/1852 on tax dispute resolution mechanism (new MAP). Under the Legislative Decree taxpayers were not allowed to join the new MAP procedure if, on the tax dispute under procedure, an Italian tax court was held a decision -irrespective of whether or not the decision was still subject to be appealed. The Decree amended such limitation in a way that the initiation of the new MAP cannot be prevented by Italian tax courts decisions of first and second instances which are subject to be appealed.

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Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.

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