

Bird & Bird & Tax Alert

COVID-19

*Extraordinary measures for tax, accounting
and corporate purposes*



15 April 2020

COVID-19: Extraordinary measures for tax, accounting and corporate purposes

The health emergency declared in Italy following the spread of coronavirus (COVID-19), and the economic crisis connected with the strict measures enacted and the travel obstructions, has also had important repercussions on tax.

The Government enacted extraordinary rules regarding, among others, deadlines for the fulfilment of formalities, including payment of taxes and procedural aspects.

Such measures have been included in the Law Decrees no. 18 issued on 17 March 2020 ("Save Italy – Decree") and no. 23 issued on 8 April 2020, ("Liquidity Decree") and are summarised below.

1. Suspension of payments of withholdings, social security, VAT, welfare contributions and premiums for compulsory insurance

Care Italy Decree – art. 57, 58, 59

Liquidity Decree – art. 18, 21

Payments due on March 16, 2020

Payments to public administrations relating to tax and social security contributions, expiring on 16 March 2020 and postponed 20 March 2020 by art. 60 of Legislative Decree no. 18/2020, are considered timely due if paid by 16 April 2020.

Taxpayers carrying out activities in specific sectors particularly affected by the emergency

For specific categories of taxpayers - carrying out those activities mainly affected by the emergency - withholding tax payments, social security and welfare contributions and premiums for compulsory insurance are suspended for the period between 2 March and 30 April 2020.

Enterprises which can benefit from the suspension are those operating in the tourism, entertainment, and sports sectors, and restaurants.

The payments will be due - without the application of penalties and interest - by 31 May 2020 in a single instalment or split in five equal monthly payments starting from the same date.

The above mentioned taxpayers are also given the suspension of VAT payments that should have been due in March and April.

Taxpayers having revenues not exceeding 2 million Euros - payments due in March

For taxpayers carrying out a business, art or professional activity, which achieved a total amount of revenues or fees not exceeding 2 million Euro in the previous fiscal year, payments expiring in the period between 8 March and 31 March 2020, related to withholding taxes pursuant to articles 23 and 24 of the Presidential Decree n. 600/1973, to the regional and municipal charges, VAT, social security and welfare contributions and premiums for compulsory insurance, are postponed.

The suspended payments shall be made - without the application of penalties and interest - in a single instalment by 31 May 2020 or split in five equal monthly payments starting from the same date.

Taxpayers suffering a decrease in the turnover or starting the business after 31 March 2019 - payments due on April and May

For taxpayers carrying out a business, art or professional activity and having the tax domicile, registered office or operational headquarter in Italy:

- with revenues or fees lower than Euro 50 million in the tax period preceding the one of enforcement "Liquidity Decree", suffering a decrease in turnover or compensation of at least 33% in the month of March 2020 compared to

March 2019 and in the month of April 2020 compared to April 2019;

- with revenues or fees higher than Euro 50 million in the tax period preceding the one of enforcement "Liquidity Decree", suffering a decrease in turnover or compensation of at least 50% in the month of March 2020 compared to March 2019 and in the month of April 2020 compared to April 2019;

payments due respectively in April and May 2020, related to withholding taxes pursuant to articles 23 and 24 of the Presidential Decree n. 600/1973, regional and municipal surcharges, VAT, social security and welfare contributions and premiums for compulsory insurance, are postponed.

The suspension of the payments due in April and May 2020 is also applicable to subjects who started their business after 31 March 2019, as well as to non-commercial entities, including third sector entities and civilly recognised religious entities, carrying out institutional activities of general interest outside the business regime.

Suspended payments shall be made, without application of penalties and interest, in a single instalment by 30 June 2020 or split in five equal monthly payments starting from the same date.

No refund is provided for the amount already paid.

Taxpayers having their domicile or registered office in the areas mainly hit by the emergency

For taxpayers having the tax domicile, registered office or operating headquarters in the provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza, VAT payments due in April and May 2020 are suspended if they suffered a decrease in turnover of at least 33% in March and April 2020 compared to that achieved in March and April 2019, irrespective of the volume of revenues or fees.

Suspended payments shall be made, without application of penalties and interest, in a single instalment by 30 June 2020 or split in five equal monthly payments starting from the same date.

No refund is provided for the amount already paid.

2. Suspension of the tax fulfilments

Care Italy Decree – art. 62

Liquidity Decree – art. 22

For all taxpayers, tax fulfilments (e.g. tax returns, communications, etc.) expiring in the period between 8 March 2020 and 31 May 2020 are postponed.

The suspended fulfilments shall be carried out within 30 June 2020 without the application of any penalty.

The deadlines for delivery to the recipient and for the electronic filing of the Withholding Tax Statement 2020 (i.e. Certificazione Unica 2020) related to tax period 2019 are set on 30 April 2020.

The Withholding Tax Statement 2020 can be filed to the Tax Authorities by 30 April 2020, without application of any penalty for late transmission.

It should be noted that the electronic filing of the Withholding Tax Statement, containing data not relevant for the pre-filled return, can take place within the deadline for the filing of the Withholding Tax Return (i.e. 31 October).

3. Postponement of the payments in the gaming sector

Care Italy Decree – art. 66

The deadline for the payment of the single tax collection on the appliances and the concession fee expiring on 30 April 2020 are postponed to 29 May 2020. The amounts due can be paid in monthly instalments of the same amount, with the legal interest calculated on a day-to-day basis. The first instalment shall be paid by 29 May 2020 and the subsequent instalments by the last day of the month. The last instalment shall be paid by 18 December 2020.

4. Mention for waiving the postponements

Care Italy Decree – art. 68

By an ad hoc Decree of the Minister of Economics and Finance, specific forms of mention are recognised to taxpayers who do not avail themselves to one or more of the postponements of payments provided for by this Decree, upon previous communication to the Ministry.

5. Validity of the statements of the tax position of the contractors and subcontractors

Liquidity Decree – art. 23

As part of the legislation related to the monitoring obligations on the head of the contracting entities in contract and subcontract works, certifications released by the Tax Authorities to contractors or subcontractors within 29 February 2020 shall remain effective until 30 June 2020.

6. Suspension of withholding taxes for self-employed workers

Care Italy Decree – art. 62

Liquidity Decree – art. 19

For taxpayers, that achieved a total amount of revenues or fees not exceeding 400,000 Euro in the previous tax period, the revenues and fees received in the period between 17 March 2020 and 31 May 2020 - upon releasing a specific declaration - are not subject to withholding taxes pursuant to articles 25 and 25-bis of the Presidential Decree n. 600/1973, by the withholding agent, provided that in the previous month they did not bear any expense for employee or similar work.

The suspended amounts shall be paid directly by the taxpayer - without the application of penalties and interest - in a single instalment by 31 July , 2020 or split in five equal monthly payments to be performed starting from the same above mentioned date.

7. Provisional method for advanced payments

Liquidity Decree – art. 20

For the fiscal year following the one in progress in 2019, penalties and interest shall not apply in the event of omission or insufficient payment of the advanced payments for IRPEF, IRES and IRAP purposes, as a consequence to their computation with the forecasting method, provided that the amount paid is not lower than 80% of the amount that would be due as advanced payment on the basis of the tax return relating to the tax period in course.

8. Simplification for the payment of stamp duty on electronic invoices

Liquidity Decree – art. 26

The deadlines for the payment of stamp duty on electronic invoices are postponed as follows:

- in the event that the stamp duty on e-invoices relating to the first quarter of 2020 is lower than 250 Euro, the payment can be made by 20 July;
- if the total amount of the stamp duty for the first six months of the year is lower than 250 Euro, then the payment can be postponed until 20 October 2020.

The deadlines related to third and fourth quarters remain unchanged.

9. Bonus to employees

Care Italy Decree – art. 60

A bonus of 100 Euro, to be weighted by the number of working days carried out at the workplace in March 2020, is recognised in favor of employees with a total yearly income not exceeding 40,000 Euro.

The bonus shall not be included in the taxable base for direct taxes purposes and shall be paid automatically by the employer, starting with the remuneration for the month of April, and in any case within the terms provided for the adjustments.

Withholding tax agents recover the incentive paid by offsetting through F24 Form.

10. Tax credit for costs related to sanitation and the purchase of protective equipment in the workplace

Care Italy Decree – art. 62

Liquidity Decree – art. 19

In order to encourage the sanitation of the workplace, as a preventive measure for the COVID-19 virus, a tax credit is introduced in favor of the subjects performing business, art or professional activities. The tax credit for the 2020 tax period is

equal to 50% of the expenses incurred for sanitising workplaces and work appliances, up to a maximum amount of 20,000 Euro.

The tax credit is extended to the purchase of personal protective equipment and other safety devices aimed at protecting workers from accidental exposure to biological agents and at ensuring interpersonal distance.

The criteria and methods of application and implementation of the tax credit will be established by a Decree to be issued by the Minister of Economic Development, with the Minister of Economics and Finance.

11. Tax credit for retailers

Care Italy Decree – art. 62

In favor of taxpayers carrying out business activities – with the exception of the activities of trade in food and basic necessities as listed by the Decree of 11 March 2020 – a tax credit equal to 60% of the amount of real estate rental expenses incurred in March 2020 is established (for the properties included in the cadastral category C / 1).

The tax credit will be used only through offsetting in the F24 form.

12. Tax Credit for advertisement investments

Liquidity Decree – art. 98

Save Italy Decree amended the existing provision regarding the tax credit for advertisement investments. More in particular, the Decree provided that in FY2020 a 30% tax credit with respect to advertisement expenses incurred in the same fiscal year is granted, differently from the previous version of the law, which required to make a comparison with advertisements expenses incurred in previous fiscal years. The maximum amount of the eligible advertisement expenses shall be provided by a specific Decree of the President of the Italian Government. The Electronic Communication of the advertisement expenses shall have to be filed within next September 2020.

13. Pro-COVID Donations

Care Italy Decree – art. 63

Donations made to support the measures against the spread of COVID-19 are deductible from the taxable basis for IRES purposes, to the extent that they are made through foundations, associations, committees and entities. The existing general provisions are in any event still applicable.

The same donations are deductible from the taxable basis for IRAP purposes in the fiscal year in which the payment is made.

Donations made by individuals are deductible from the gross tax, for an amount equal to 30% of the donation, provided that it does not exceed 30,000 Euro.

14. Free transfer of drugs for compassionate use

Liquidity Decree – art. 27

In order to facilitate the use of drugs that are proving to be extremely useful with the emergency, free supplies of drugs for compassionate use are not subject to VAT or income tax.

15. Financial measures to support enterprises

Care Italy Decree – art. 54

Companies that transfer within 31 December 2020, receivables towards defaulting debtors – which debts are older than 90 days - can convert the deferred tax assets into a tax credit if related to:

- the tax losses carried forward;
- the allowance for corporate equity (ACE) carried forward.

The benefit deriving from the above components cannot exceed 20% of the face value of the receivables transferred. The latter can be considered for a maximum amount of 2 billion euro.

The tax credit can be offset, without any limitation as to the amount, through the F24 Form or transferred or requested for refund.

The tax credit must be reported in the tax return and does not concur to the taxable basis for both corporate income tax and regional tax.

16. Dividends distributed to simple partnerships

Liquidity Decree – art. 28

The Decree amends the art. 32-*quater* of Legislative Decree 124/2019 which rules the tax regime of dividends paid to simple partnerships, providing that the latter "are understood to be perceived as transparency by the respective shareholders with consequent application of the corresponding tax regime". In particular, the changes are aimed at

- including in the discipline the profits from foreign sources, with the exclusion of those from States or territories with a privileged tax regime
- clarifying the methods of application of the withholding tax and substitute tax for the dividends received by the simple partnership and referable to individuals
- regulating the tax regime for dividends received by the simple partnership and referable to non-commercial and non-resident entities
- establishing the application of the provisions to dividends received from 1 January 2020 and regulating a transitional regime for the distribution of dividends deriving from investments in companies and entities subject to IRES.

17. Suspension of the terms relating to the activity of the tax offices

Care Italy Decree – art. 67

Liquidity Decree – art. 29, 36

In the period between 8 March and 31 May 2020, the terms and deadlines for tax offices and, in general, tax authorities are suspended:

- with regard to liquidation, control, assessment, collection and litigation activities;
- to answer to ruling requests (e.g. ordinary, anti-avoidance, new investments, requests in the context of the collaborative compliance regime, etc.). The deadlines for submitting supplementary documentation to the ruling requests are also suspended. The deadlines for

the ruling already filed (which can only be submitted electronically) during the suspension period, start as of 1 June 2020.

No specific indication is provided in relation to the tax settlement procedures. So far, Tax Offices are respecting the regular deadlines (without taking into account the suspension period) and the confrontation with taxpayers is made remotely (by phone or e-mail).

The Liquidity Decree provides for that the litigation activities of the Tax Offices are suspended up to next May 11, in order to align such suspension with that one provided in general for all tax proceedings.

18. Statute of Limitation and Deadline for Tax Offices

Liquidity Decree – art. 67

The statute of limitations and deadlines relating to the activities of the offices and tax authorities, expiring in the present year, i.e. 2020, are extended until 31 December of the second year following that of the suspension (e.g. to 2022 for Corporate Income Tax and VAT purposes for taxpayers closing the fiscal year at December 31, 2015, the statute of limitation for Corporate Income Tax and VAT.

Such a rule has been highly criticised and it might be repealed at the time of the conversion of the Save Italy Law Decree.

19. Relationship with the Collection Agent

Care Italy Decree – art. 68

The deadlines for payment of sums due in the period between 8 March and 31 May in relation to collection notices, tax assessments already final, assessment notices issued by the Customs Agency and other local authorities, INPS assessment notices are deferred to 20 June 2020.

Payments due on 28 February in relation to the scrapping of notice of payments and payments due on 31 March relating to final installment of the notice of payments are deferred to 31 May.

20. Tax disputes

Care Italy Decree – art. 83

Liquidity Decree – art. 36

The Save Italy decree provides for that:

- the postponement (already introduced with Legislative Decree 11/2020 of 8 March 2020) of the hearings scheduled for the period of 9 March - 15 April 2020. The Liquidity Decree further postpones the term by next May 11, 2020 (specifying that the term should apply to tax offices);
- suspension of the terms for the filing of any brief or document related to the tax proceedings for which the decree provided for the mandatory deferral of the hearings;
- the suspension of the term for the notification of the appeal in the context of the first degree of the tax proceeding.

The Revenue Agency clarified that the suspension of the terms to lodge the brief appeal is applicable also to the settlement procedures (Circular Letter n. 6). However, with the aim at encouraging the cooperation between the Revenue Agency and the taxpayers and closing the tax disputes, the confrontation between taxpayers and tax offices in the context of settlement procedures may continue, to the extent that guidelines issued to prevent physical movements under COVID-19 emergency are duly observed.

21. Other provisions regarding tax disputes

Liquidity Decree – art. 29

With the aim at encouraging the digitalisation of the tax proceedings, the Liquidity Decree provides that:

- Notification and filing of documentation shall have to be made by digital means for all ongoing tax disputes (irrespective of the fact that the obligation was introduced for tax disputes as of 1st July 2019). The requirement does apply for all the steps of the tax dispute (unless the tax dispute does not require the technical assistance, i.e. cases having a value lower than 3,000 Euro);
- the notification of the penalty deed in case of insufficient / omitted payment of the duty for the tax dispute shall be made via legal mail, or

in absence, it will be filed with the secretary of the Tax Court

22. Handling of company general meetings

Care Italy Decree – art. 103

Notwithstanding the provisions of art. 2364, c. 2, and by art. 2478-*bis* of the Italian Civil Code, all companies are allowed to call the ordinary general meeting for the approval of the financial statements within 180 days from the end of the financial year.

For limited companies and cooperative companies, the notice of call of the ordinary and extraordinary general meeting may provide, also by way of derogation from the provisions of the by-laws, for the expression of the vote electronically or by mail and for the attendance at the meeting by telecommunication means. Furthermore, it is allowed that the shareholders' meetings take place, even exclusively, by telecommunication means guaranteeing the identification of the participants, their participation and the exercise of the right to vote, without the need for the chairman, the secretary or the notary to be in the same place, where applicable.

Limited liability companies in the form of S.r.l. may provide, by way of derogation from art. 2479, c. 4, of the Italian Civil Code and any provisions of the by-laws, for the expression of the vote by written consultation or by written consent.

The above provisions shall apply to the general meetings called by 31 July 2020 or by the date, if later, when the state of emergency will be in force.

23. Postponement of the entry into force of the Crisis and Insolvency Code

Liquidity Decree – art. 5

The Decree provides for the postponement of the entry into force of the Crisis and Insolvency Code on 1 September 2021.

24. Temporary provisions on share-capital reduction for losses

Liquidity Decree – art. 6

The Decree provides, with reference to the financial years closed by December 31, 2020, the temporary disapplication of the provisions of the Civil Code (art. 2446, 2447 for the "Spa" and 2482-*bis*, 2482-*ter* for the "Srl") regarding the capital reduction for losses. Furthermore, the cause of dissolution of the company due to reduction or loss of the share capital does not apply (art. 2484 and 2545-*duodecies* of the Civil Code).

25. Temporary provisions on the principles of preparation of the financial statements

Liquidity Decree – art. 7

In preparing the financial statements closed before February 23, 2020 but not yet approved or in progress as of December 31, 2020, the companies use the going concern principle, based on the provisions of article 2423-*bis* of the Italian Civil Code, if it is used in the previous financial statements.

26. Temporary provisions on corporate financing

Liquidity Decree – art. 8

From the entry into force of the Decree and until 31 December 2020, the provisions of the Civil Code relating to the subordinated loans made by shareholders or those who carry out the management and coordination (art. 2467 and 2497-*quinquies* of the Code civil) do not apply.

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