

Bird & Bird & Tax Alert

Law Decree 19 May 2020, no. 34

"Relaunch Decree": measures for enterprises



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The health emergency in Italy following the coronavirus (COVID-19), and the related economic crisis, has also had important consequences from a tax point of view.

Therefore, the Government has recently adopted several extraordinary measures to support the economy, already the subject of our previous Tax Alerts.

Finally, the Government intervened with the Law Decree 19 May 2020, no. 34 ("Relaunch Decree") which provides for new tax measures aimed at helping companies affected by the emergency.

The following are the main tax news for enterprises introduced by the Decree.

Measures for enterprises

1. IRAP payments

Art. 24

The article establishes the exclusion from the payment obligation of:

- the IRAP balance for the current period as at 31 December 2019 (FY2019 for calendar-year entities);
- the IRAP first advance payment for the following fiscal year (FY2020 for calendar-year entities).

The payment of the advance payments due for the ongoing fiscal year as at 31 December 2019 (FY2019 for calendar-year entities) remains unaffected by the provision.

The following subjects are excluded from the benefit:

- financial intermediaries;
- financial holding company;

- non-financial holding companies (*i.e.* industrial holding companies);
- insurance companies;
- public administrations.

The provision is applicable only to taxpayers with revenues or fees not exceeding Euro 250 million in the fiscal year preceding the one in progress on 19 May 2020, the date of enforcement of the Decree.

It is important to note that, for the purpose of the computation of the IRAP balance related to FY2020 emerging from the tax return IRAP 2021, the IRAP first advance payment, even if not paid pursuant to this article, shall be deducted from the tax due together with the second advance payment, which will be actually paid.

2. Non-refundable grants

Art. 25

The article provides for the recognition of a non-refundable grant that is proportionate to the losses of revenues/fees incurred in April 2020.

Grants are reserved to individuals producing corporate income, self-employment income and agricultural income.

The provision is addressed to the following subjects:

- individuals carrying out commercial activities;
- general partnerships and limited partnership;
- joint-stock companies;
- limited joint-stock partnerships;
- limited liability companies.

The following subjects are excluded:

- financial intermediaries;

- holding company;
- public entities;
- employees;
- professionals registered with private law entities of compulsory social security.

The contribution shall be requested if the following conditions are met:

- revenues or fees do not exceed Euro 5 million in the fiscal year preceding the one in progress on the enforcement date of the Decree (FY2019 for calendar-year entities);
- the amount of revenues and fees for April 2020 is lower than two thirds of the amount of revenues and fees for April 2019.

The grant is also available, if the above mentioned requirements are not met, for the following subjects who:

- started the business from 1 January, 2019;
- as of the date of the onset of the calamitous event, they have their tax domicile or operational headquarters in the territory of Municipalities affected by the aforementioned events whose states of emergency were still in progress on the date of declaration of the state of emergency COVID-19.

The amount of the grant is determined by applying a percentage to the difference between the amount of the revenues and fees for April 2020 and the amount of revenues and fees for April 2019. Such percentage varies on the basis of the revenues and remunerations of the fiscal period preceding the one in progress on the date of enforcement of this Decree, according to the following scheme:

%	Revenues/ Fees FY2019
20%	<Euro 400.000
15%	>Euro 400.000; <Euro 1 million
10%	>Euro 1 million; <Euro 5 million

The grant is recognised in any case for an amount not lower than Euro 1,000 for individuals and Euro 2,000 for subjects other than individuals.

Furthermore, the grant is not relevant for IRES and IRAP purposes.

In order to obtain the grant, the interested parties shall submit, also by means of a qualified intermediary, a specific request to the Tax Authorities with the indication of the existence of the requirements and the self-certification of anti-mafia regularity pursuant to art. 67 and 85 of Legislative Decree no. 159/2011.

A circular by the Director of the Tax Authorities will be issued in order to define the following aspects:

- the procedures for the application;
- the information to be reported;
- the deadline;
- other elements necessary for the implementation of the provision.

The grant shall be paid by the Tax Authorities by direct accreditation to a bank or postal current account held by the beneficiary.

3. Capital strengthening of medium-sized enterprises

Art. 26

The Decree introduced some measures aimed at strengthening the capital of medium-sized companies which:

- in 2019 had an amount of revenues higher than 5 million and up to 50 million Euro;
- suffered in March and April 2020, a reduction in revenues of more than 33% compared to the same two-month period of 2019 due to COVID-19.

In particular:

- companies who make cash contributions in execution of a capital increase by December 31, 2020 is entitled to a tax credit equal to 20% of the amounts paid, with a maximum investment limit of Euro 2 million. Companies that directly or indirectly control the transferring company, are controlled by it (or associated with it), or are

subject to joint control cannot benefit from the credit;

- the transferring company is entitled to a tax credit equal to 50% of the losses exceeding 10% of the net equity, gross of the losses, up to 30% of the capital increase.

In order to benefit from the tax credits, the Decree provides for some requirements that qualify the company as "virtuous" (*i.e.* tax and social security regularity, regularity in construction, urban planning, labour, etc.).

There are also specific safeguard clauses which provide the recapture of the tax benefit with the legal interests in the event of distribution of the reserves by the company or sale of the equity investments before 1 January 2024.

The sum of the tax credits cannot exceed Euro 800 thousand.

The benefits are linked to the authorisation of the European Commission.

4. Strengthening of the operating framework of innovative start-ups

Art. 38

From the enforcement date of the Decree, it recognises a tax credit for individual tax (IRPEF) purposes amounting to 50% (instead of the ordinary 30%) of the sum invested by the individual taxpayer in the share capital of innovative start-ups and innovative SMEs, up to a maximum investment of Euro 100,000.

The investment can be made directly or through collective investment savings organisations that mainly invest in innovative start-ups.

The tax credit is applicable only to innovative start-ups or innovative SMEs enrolled in the special section of the Register of Companies at the time of investment.

The investment shall be kept for at least three years.

In case of disposal, even if partial, of the investment before the minimum holding period, the benefit is recaptured and the tax payer is obliged to payback the related recovered amount, plus legal interest.

A special Decree of the Minister of Economic Development, to be issued within sixty days from

the enforcement of the Decree, will identify the operating aspects of the benefit in exam.

No changes were made to the tax benefits for investments in innovative start-ups made by taxpayers subject to corporate income tax (IRES): the ordinary tax incentives remain available for such investors.

In the context aimed at strengthening the development of innovative start-ups, it should be noted that within the framework of the tax credit for research and development activities, expenses deriving from contracts entered into with innovative start-ups are now considered eligible as included in the *extra-muros* research contracts.

In case of *extra-muros* research contracts with innovative start-ups based in Italy, therefore, the relative expenses constitute the calculation basis of the tax credit for an amount equal to 150%.

Tax credits

5. Tax credit for rental fees for properties

Art. 28

A tax credit is recognised for individuals carrying out business, art or professional activities and for non-commercial entities, which is parameterised to the rents of non-residential properties.

It is possible to benefit from the tax credit if:

- revenues/remunerations were less than or equal to Euro 5 million in 2019 (not required for hotel and farmhouses structures);
- there is a decrease in turnover, in the relevant months, greater than or equal to 50% if compared to the same month in 2019.

The tax credit is equal to:

- 60% of the monthly fee paid with reference to the months of March, April and May (April, May and June for tourist accommodation with only seasonal activities) 2020 in the case of contracts of rental, leasing and concession of real estate.
- 30% of the monthly fee paid with reference to the months of March, April and May (April, May and June for tourist accommodation with only seasonal activities) 2020 in case of service

contracts for complex services or business leases comprising at least one property.

6. Tax credit for the adaptation of work environments

Art. 120

Persons carrying on business, art or profession in places open to the public, such as bars, restaurants, hotels, theaters and cinemas (indicated in Annex 1 to this Decree) are granted a tax credit of 60% of the expenses incurred in 2020 for the interventions necessary to enforce the health requirements and the containment measures against the spread of COVID-19 for a maximum of Euro 80,000. As an example, the building interventions necessary for the renovation of changing rooms and canteens, the construction of medical spaces, entrances and common areas, and the purchase of security furnishings.

The tax credit, which can be combined with other concessions for the same expenses, can be used for offsetting through the F24 form in the year 2021. Alternatively, there is the possibility of transferring the tax credit to credit institutions or other financial intermediaries.

7. Tax credit for the sanitation of the workplace

Art. 125

A tax credit equal to 60% of the expenses incurred in 2020 for the sanitation of the workplace and for the purchase of tools and equipment is recognised in favour of subjects carrying out business, arts and professions and non-commercial entities of individual protection, up to a maximum of Euro 60,000 for each beneficiary.

The tax credit can be used:

- directly in the tax return relating to the tax period for the expense;
- in compensation, in the F24 model, starting from the day following that of recognition of the same.

The criteria and methods of application and use of the tax credit will be established with a specific provision by the director of the Tax Authority.

8. Tax credit for advertising investments

Art. 186

The Decree intervenes again on the extraordinary tax credit regime for advertising investments, raising the tax credit measure from 30% (provided by art. 98 of the Care Italy Decree) to 50%.

The deadline for sending the electronic communication for the year 2020 remains unchanged and may take place in the period between the 1 September and 30 September 2020.

It should be remembered that the tax credit is proportionate with the expenses incurred for advertising campaigns in the daily and periodical press, including online and on local, analog or digital television and radio broadcasters.

The spending limit for the year 2020 has been raised to Euro 60 million.

9. Tax credit for digital services

Art. 190

A tax credit is recognised for companies that publish newspapers and periodicals (which employ at least one permanent employee) for 30% of the expenses incurred in 2019 for the acquisition of server services, hosting and evolutionary maintenance for the publications edited in digital format, and for information technology for connectivity management.

The modalities, the contents, the documentation requested, and the deadlines for the presentation of the application for admission to credit are established by a Prime Minister's Decree.

10. Transfer of tax credits introduced by measures issued to deal with the emergency from COVID-19

Art. 122

The article introduces the possibility, until 31 December 2021, of opting for the transfer of the tax credit to other subjects, including credit institutions and other financial intermediaries.

In detail, the credit transfer option is allowed for the following measures:

- Tax credit of 60% of the amount of the rental fees, relating to the month of March 2020, for shops (cadastral category C1) provided by Art. 65 of Legislative Decree n.18/2020 (so called Care Italy Decree);

- Tax Credit of 60% of the amount of the rental fees provided by Art. 28 of the "Relaunch Decree";
- Tax Credit of 60% for the adaptation of the work environments envisaged in art. 120 of the "Relaunch Decree";
- Tax Credit of 60% for the sanitation of the work environment and the purchase of protective devices pursuant to Art. 125 of the "Relaunch Decree".

Methods for implementing the provisions above will be defined in the Decision that will be issued by the Commissioner of Italy Revenue Agency.

Deferral of payment deadlines and tax compliance

11. Tax payments

Art. 126 and 127

The payment deadline for the suspended taxes and contributions (VAT, withholding taxes and contributions) is postponed to 16 September 2020 without penalties and interest. The payment can be settled in one or more instalments (for a maximum of four).

By the same date, the suspended withholding taxes not withheld by the withholding agents must be paid.

12. Postponement of the customs duties payments

Art. 161

Taxpayers - holders of a debit account - in serious financial and economic circumstances (as required by the directorial Decrees adopted by the Customs Agency) can request, without application of penalties and interest, a 60 day extension for the duties payments falling between 1 May 2020 and 31 July 2020.

13. Postponement of pre-filled draft terms

Art. 142

The tax assistance program by the Tax Authority for the provision of pre-filled drafts of VAT registers and communications of periodic VAT payments has been deferred to VAT transactions since 1 January 2021.

Other tax measures

14. Transfer of tax deductions and discount on the consideration

Art. 119 - Art. 121

In the years 2020 and 2021, subjects who incur expenses for the interventions listed below can opt, instead of directly using the deduction, alternatively:

- for a contribution, in the form of a discount on the consideration due up to a maximum amount equal to the consideration due, advanced by the supplier who carried out the interventions and recovered by the latter in the form of tax credit, with the option of subsequent transfer of the credit to other entities, including credit institutions and other financial intermediaries;
- for the transformation of the corresponding amount into a tax credit, with the option of subsequent transfer to other subjects, including credit institutions and other financial intermediaries.

The provisions apply for expenses related to the interventions of:

- recovery of the building stock referred to the article 16-*bis*, c. 1, lett. a) and b), TUIR;
- energy efficiency referred to the art. 14, Legislative Decree 63/2013, including those for which the deduction is 110%;
- adoption of anti-seismic measures pursuant to art. 16, Legislative Decree 63/2013, including those for which the deduction is 110%;
- recovery or restoration of the facade of existing buildings, including those of only external cleaning or painting, as per art. 1, c. 219, L. n. 160/2019;
- installation of photovoltaic systems pursuant to art. 16-*bis*, c. 1, lett. h) TUIR, including interventions for which the 110% deduction is due;
- installation of charging stations for electric vehicles referred to the article 16-*ter*, Legislative Decree n. 63/2013, including interventions for which the 110% deduction is due.

The tax credits referred to this article are also used for offsetting through F24 form.

The tax credit is used with the same division into annual shares with which the deduction would have been used.

By order of the Director of the Tax Authority are defined the implementing modalities of the provisions in question.

15. Deferral of the effectiveness of the provisions on Plastic Tax and Sugar Tax

Art. 133

The entry into force of the provisions relating to both Plastic Tax and Sugar Tax has been deferred to 1 January 2021.

16. Extension of the revaluation of land and equity investments

Art. 137

The possibility for individuals, simple Partnership, non-commercial entities and non-residents without permanent establishment in Italy to step-up the purchase value of the participations and landfills is also extended to assets held from 1 July 2020.

It is necessary to have by 30 September 2020:

- a sworn appraisal;
- the payment of the substitute tax equal to 11% of the values resulting from the appraisal for the entire amount or limited to the first of the three equal annual installments.

17. Increase in the annual limit of credits that can be offset through the F24 form

Art. 147

For the year 2020, the limit of the horizontal compensations of tax credits is raised from Euro 700,000 to Euro 1 million.

18. Extension of the deadline for super-depreciation

Art. 50

The subjects, who by 31 December 2019 have accepted the new capital goods orders and paid the minimum deposit of 20%, can benefit from the latest version of the super amortisation provided that the investment is made by 31 December 2020

and not more by 30 June 2020 (art.1 DL n. 34/2019).

19. Goods for COVID-19 containment – reduction of the VAT rate

Art. 124

The sale of specific listed goods for COVID-19 containment – between others, surgical, Ffp2 and Ffp23 masks, thermometers, monitor, hand sanitisers, wall dispensers for sanitisers, hydroalcoholic solution, latex/vinyl/nitrile gloves - is VAT exempt. The VAT paid on the relevant purchases is deductible.

Starting from 1 January 2021, the above sales are subject to a 5% VAT rate.

Tax collection and justice

20. Suspension of the compensation between tax credits and debts

Art. 145

For the year 2020, when granting tax refunds, the compensation between the tax credit and assessed amounts does not apply.

21. Suspension of payments of invites to spontaneous compliance

Art. 144

Payments of sums deriving from invites to spontaneous compliance, issued following automatic liquidation or formal control of the declaration, expiring in the period between 8 March 2020 and 31 May 2020 can be made by 16 September 2020.

Payments can also be made in four monthly installments of the same amount from the same date.

22. Suspension of payments terms in case of settlement procedures and other assessment activities

Art. 149

The deadline for payment of sums due in the period between 8 March and 31 May is postponed to 16 September 2020 in relation to:

- a settlement, in-court settlement and mediation procedures,

- b assessments deeds related to registry, inheritance and gift taxes, substitute tax on loans and assessment related to tax credits;
- c installments related to payment of the tax amnesty proceedings;
- d invites to spontaneous compliance.

The payments may be performed in one single installment or in monthly installments (max. 4), without applying penalties and interest.

The term to lodge appeals against the deeds indicated at point b) above it is also further postponed.

23. Amendments to the payments procedure applicable to Public Authorities

Art. 153

As a general principle, any payments higher than Euro 5.000 from entities and companies with a predominantly public participation are frozen if due to taxpayers in debit position *vis-à-vis* Revenue Agency – Collector Office.

The Decree suspended such a procedure for the period between 8 March and 31 August 2020.

24. Measures applicable to tax collection activities

Art. 154

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, social security assessment notices are deferred to 30 September 2020.

The same postponement applies to installment plans already in place. The omitted payment of any installment (maximum 10) shall not affect the validity of the installments plan.

Payments due in FY2020 in relation to the scrapping of notice of payments and payments due in FY2020 are postponed to 10 December 2020.

25. Statute of limitation

Art. 157

The Decree introduced a new provision regarding the power of Tax Offices in relation to tax assessment procedures. In particular, the Decree

confirmed the ordinary rules regard of statute of limitations and deadlines relating to the activities of the offices and tax authorities, expiring in the present year, *i.e.* 2020.

Nevertheless, the Decree granted to Tax Offices a one-year extension, applicable only to proceed with the notification of the relevant tax deeds. This would imply that, even though not served within the ordinary term, the tax assessments shall have to be mandatorily drafted within the ordinary deadline (e.g. 2020 for tax assessment on corporate income taxes for FY2015 in case of FY coinciding with the calendar year).

The Decree postponed to next fiscal year (starting from 1 January 2021) the notification of the invites to spontaneous compliance.

The postponement by one year applies also to the collection notices arising from automated controls.

26. Specific provision on Tax Disputes

Art. 135

The Decree provides for the possibility that hearings before Tax Courts are held remotely. The request for remote hearings may be filed by each of the parts of the tax proceeding in the first brief or with a separate request to be notified to the counterparts(s) and filed with the tax court. The request shall be performed before having received the communication with the date of the hearing.

A specific Decree will provide specifications and technical requirements, with indication of the Tax Courts able to arrange remote hearings.

The Decree provides for the suspension of any penalties in connection with omitted / partial / delayed payment of the stamp duty due to start tax disputes for the period between 8 March 2020 and 31 May 2020.

The Decree confirmed the combination of the suspension of the procedural terms provided for by art. 83 of the Save Italy Decree (for 64 days) in relation to the tax dispute with the deadline of 90 days foreseen as part of the settlement procedure.

27. Procedural time-limits

Art. 158

The Decree confirmed the combination of the suspension of the procedural terms provided for by art. 83 of the Save Italy Decree (for 64 days) in

relation to the tax dispute with the deadline of 90 days foreseen as part of the settlement procedure.

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