

Italy Insight: COVID-19 (Coronavirus) Recovery Decree: a Company-Oriented Analysis

Pursuant to Law Decree May 19, 2020, no. 34 (published in the Italian Official Gazette no. 128 on May 19, 2020, ordinary Supplement no. 21/L) (also referred to as “**Recovery Decree**”), new measures have been adopted in order to face the **COVID-19 epidemic crisis**.

Below is a description of the **main news on tax law** envisaged by the Recovery Decree, with a focus on matters of interest to companies.

Considering the ongoing evolution of the epidemic and the political and legislative measures adopted as a reaction to it, it should be noted that the Recovery Decree provisions may be extended, amended or superseded by further provisions adopted by the Italian Government or Parliament.

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Tax Law Focus

1. Business support measures

(A) Cancellation of Regional Tax on Productive Activities (Section 24)

With respect to the Regional Tax on Productive Activities (also referred to as “**IRAP**”), (i) the tax balance for 2019 and (ii) the first installment for year 2020 shall not be paid by businesses and self-employed workers with a 2019 revenue volume up to EUR 250 million. The IRAP advance payment due for year 2019 is still due.

The provision does not apply to banks, other financial intermediaries, insurance companies, Public Administrations and other public entities.

(B) Capital strengthening of medium-sized companies: tax credits for cash contributions (Section 26)

This provision introduces measures aimed at supporting and achieving the strengthening of companies' capital by means of capital increases that can also lead, through the direct increase in equity resulting from a share capital increase, to the recovering of any operating losses relating to 2020.

The measure applies to limited and cooperative companies with registered and administrative offices in Italy:

- Which do not operate in the banking, financial and insurance sectors;
- With 2019 revenues higher than EUR 5 million and up to EUR 50 million;
- Which have suffered an overall decrease in the revenues in the months of March and April 2020 of at least 33% compared with the same months of 2019; and
- Which meet the additional conditions set out in paragraph 2, mainly aimed at qualifying the company as "virtuous."¹

In order to determine revenues and their decrease, if the company belongs to a group, the value of revenues shall be calculated on a consolidated basis, referring to the highest degree of consolidation, without taking into account revenues earned by the group.

The provision grants the subscribers of the capital increase a tax credit equal to 20% of the cash contribution made, with a significant investment cap of EUR 2 million (corresponding to a tax credit of EUR 400,000).

¹ To this purpose, please note that the beneficiary company must not have been in financial distress as of December 31, 2019 in accordance with the EU regulations in force; it must comply with contribution and tax rules as well as with town planning, cadastral, employment, accident prevention and environmental protection laws. The company must not have received, and subsequently not repaid, any aid which the European Commission established to be illegal or incompatible. The company must not have received anti-mafia prevention measures and its directors, shareholders and effective owners shall not have been subject to final judgments for serious tax crimes in the previous five years. According to the wording of the provision, it seems that such requirements are requested in order to grant the tax credit to the beneficiary company, while they are not necessary in order to grant the tax credit to the person which makes the cash contribution.

The tax credit is also granted when:

- a) The investment is made in permanent establishments in Italy of companies based in Member States of the European Union or in countries belonging to the European Economic Area, in compliance with the provisions above; or
- b) The investment is made through shares of Collective Investment Undertakings resident for tax purposes in the territory of the State, or in Member States of the European Union, or in States belonging to the European Economic Area, which invest more than 50% in the share capital of the above-mentioned companies.

This tax credit is not granted to those companies that directly or indirectly control the beneficiary company, are subject to common control or are associated with it or are controlled by it.

The tax credit is granted provided that (i) the paid capital increase is approved and fully executed after the entry into force of the Recovery Decree (*i.e.*, May 19, 2020) and by December 31, 2020, and (ii) the shareholding resulting from the contribution is held until December 31, 2023.

The distribution of reserves, of any kind, before such date by the beneficiary company causes the withdrawal of the tax credit and, as a consequence, the taxpayer must return the amount of the tax credit granted, plus legal interest.

The tax credit is not relevant for the purposes of determining the tax base both for direct taxes and IRAP purposes.

Shareholders may use the tax credit, without any amount limit, (i) in their tax return for the tax period in which they made the investment and the subsequent ones, or (ii) as a set-off (from the tenth day following the day of submission of the tax return relating to the investment period).

In the event that the requirements mentioned above relating to the beneficiary company are met, after the approval of the 2020 financial statement, a tax credit is also granted to the companies receiving the contributions. The tax credit is equal to 50% of the losses exceeding 10% of net assets (including such losses), with a maximum limit equal to 30% of the capital increase made by the shareholders.

The distribution of reserves of any kind by the beneficiary company before January 1, 2024 causes the withdrawal of the tax credit and, as a consequence, the company must return the amount of the tax credit granted, plus legal interest.

The tax credit is not relevant for the purposes of determining the tax base both for direct taxes and IRAP purposes.

The company may use the tax credit as a set-off, without any amount limit (starting from the tenth day following the day of submission of the tax return relating to the investment period).

The aforementioned benefits are cumulative with each other and with any other aid measures, for a total amount which may not generally exceed, for each beneficiary company, EUR 800,000.

The effectiveness of these measures is subject to the authorisation of the EU Commission, and their implementation is subject to a subsequent decree by the Ministry of Economy and Finance, to be adopted within 30 days from the entry into force of the Recovery Decree.

(C) Tax credit for rents on non-residential property (Section 28)

Entrepreneurs, artists or professionals:

- a) With revenues not exceeding EUR 5 million in year 2019, and
- b) In case of a decrease in turnover in the months of March, April and May 2020 by at least 50% compared with the same months of 2019,

Are granted a tax credit equal to 60% of the rent paid in the months mentioned above pursuant to the renting, lease and concession agreements of non-residential real estate used for industrial, commercial, craft, agricultural or tourist activities, or for exercise of self-employed work.

With regard to complex, integrated services contracts or lease of going concerns that include at least one non-residential real estate used for carrying out the above activities, the tax credit is granted for an amount equal to 30% of the relevant rent.

The tax credit:

- Is not relevant for the purposes of determining the tax base both for direct taxes and IRAP purposes;
- Can be used by the beneficiary, without any amount limit, (i) in the tax return relating to the period in which the expense is incurred, or (ii) as a set-off (after payment of the rent); and

- Cannot be combined with the tax credit provided for shops/stores pursuant to Section 65 of Law Decree no. 18/2020 (“**Italy Care Decree**”).

(D) Tax credit for safety and health measures to be implemented in workplaces (Section 120)

Entrepreneurs, artists or professionals that carry out their activities in places open to the public - as set out in Annex 1 to the Recovery Decree - are granted a tax credit equal to 60% of their expenses incurred in 2020, for a maximum of EUR 80,000, relating to:

- Measures necessary to ensure that health regulations and COVID-19 containment measures are complied with (including work on buildings or purchase of safety items); and
- Investments in innovative activities (including those related to the development or purchase of tools and technology necessary to carry out the working activity and the purchase of equipment to control employees’ and users’ body temperature).

The tax credit:

- Is cumulative with other benefits of the same kind; and
- Can be used in 2021 exclusively as a set-off, without any amount limit, without prejudice to the following Section 122 of the Recovery Decree concerning the right to transfer the tax credit to third parties.

By further decrees issued by the Ministry of Economic Development, in accordance with the Ministry of Economy and Finance, further admissible expenses or beneficiaries may be identified.

(E) Tax credit for sanitation costs and the purchase of personal protective equipment at the workplace (Section 125)

Taxpayers performing business, art or professional activities are granted a tax credit equal to 60% of their expenses incurred in 2020 for the sanitation of working environments and tools, as well as for the purchase of personal protective equipment and other devices to ensure the health of workers and users (such as those listed in paragraph 2).

The tax credit:

- Is up to a maximum amount of EUR 60,000 per beneficiary, with a total limit of EUR 200 million for year 2020;

- Is not relevant for the purposes of determining the tax base both for direct taxes and IRAP purposes;
- Can be used, without any amount limit, (i) in the tax return relating to the period in which the expense is incurred, or (ii) as a set-off, without prejudice to Section 122 of the Recovery Decree concerning the right to transfer the tax credit to third parties; and
- Replaces the tax credit provided for by Section 64 of the Italy Care Decree, being the latter provision repealed at the same time.

The tax credit criteria and rules for application will be set by order of the Director of the Italian Tax Authority within 30 days from the entry into force of the Recovery Decree.

(F) Transfer of the tax credits provided by the measures adopted in order to face the COVID-19 epidemic crisis (Section 122)

With the entry into force of the Recovery Decree and until December 31, 2021, the beneficiaries of the following tax credits, rather than using them directly, may transfer them to third parties (including credit institutions and other financial intermediaries):

- Tax credit for shops and stores pursuant to Section 65 of the Italy Care Decree;
- Tax credit for rent of non-residential buildings and business leases pursuant to Section 28 of the Recovery Decree;
- Tax credit for safety and health measures to be implemented in workplaces pursuant to Section 120 of the Recovery Decree; and
- Tax credit for the sanitation of workplaces and the purchase of protective equipment pursuant to Section 125 of the Recovery Decree.

The transferees shall benefit from the tax credits (i) in the same manner in which the credit would have been used by the transferor or (ii) also by offset, without any amount limit. The amount of tax credit which remained unused in the current year cannot be used in the following years and cannot be refunded.

With respect to the Italian Tax Authority, (a) the transferor remains liable for the credit (*i.e.*, it is subject to the relevant powers of assessment and sanction) and (ii) the transferee is only liable for the use of the tax credit irregularly or in excess.

The procedures for the implementation of the above-mentioned provision will be established pursuant to an order of the Director of the Italian Tax Authority.

2. Measures concerning refunds, offsets and payments by the Public Administration

(A) Suspension of the compulsory offset between tax credit and tax claims (Section 145)

For year 2020, rules provided for by Section 28-ter of Presidential Decree no. 602/1973 do not apply. Therefore, the Italian Tax Authorities will grant tax refunds without first offsetting their enforceable tax claims against the taxpayer's credits.

(B) Increase in the annual limit of credits that can be offset using the F24 model (Section 147)

For year 2020, the annual limit of credits that can be offset using the F24 model or refunded on fiscal account ("conto fiscale") is increased from EUR 700,000 to EUR 1 million.

(C) Suspension of the audits pursuant to Section 48-bis of the Presidential Decree no. 602 of 1973 (Section 153)

Provision is made for the temporary suspension (from March 8, 2020 to August 31, 2020) of the application of Section 48-bis of Presidential Decree no. 600/1973, according to which the Public Administration, before making payments for amounts higher than EUR 5,000, verifies with the Italian Tax Authority - Tax Collection Service whether the creditor is in default in relation to its tax debts and, in such case, suspends payment for 60 days of an amount equal to such debts.

Audits concerning overdue debt positions, which may have already been carried out even before the aforementioned period, have no effect whatsoever, except if the Italian Tax Authority – Tax Collection Service has already served a seizure of credits from third parties ("pignoramento dei crediti presso terzi").

3. Postponement of deadlines

(A) Postponement of deadlines for certain tax and social security payments (Sections 126-127)

Pursuant to Sections 126 and 127 of the Recovery Decree, the deadlines for certain tax and social security payments, previously suspended pursuant to foregoing measures adopted to face the COVID-19 epidemic crisis, have been unified and postponed to September 16, 2020. Payments may be made, without application of interest and penalties, by September 16, 2020 (i) in a single installment or (ii) by installments, up to

a maximum of four equal monthly installments, with payment of the first installment by the above-mentioned date.

The postponement applies to, *inter alia*:

- Payments due in March 2020 relating to withholding taxes on employment income and other income treated as such, VAT, social security and welfare contributions, and compulsory insurance premiums, initially extended to May 31, 2020 by Section 62, paragraphs 2 and 3, of the Italy Care Decree; and
- Payments due in April and May 2020 relating to withholding taxes on employment income and income treated as such, VAT, social security and welfare contributions, and compulsory insurance premiums, initially extended to June 30, 2020 by Section 18 of Decree Law no. 23/2020 (“**Liquidity Decree**”).

4. Value-added tax (“VAT”) provisions

(A) Repeal of the VAT and excise duties safeguard clauses (Section 123)

The VAT and excise duties safeguard clauses, which provide for automatic increases in VAT and excise duties rates in order to achieve the public finance targets, have been repealed. The lower tax revenues arising from this measure have been estimated starting from 2021 and in the years ahead.

(B) VAT rate decrease for the supplies of goods necessary for the containment and management of the COVID-19 pandemic (Section 124)

The supply of goods relating to (i) face masks (surgical, FFP2 and FFP3), (ii) certain medical devices, (iii) certain protective clothing apparel for health purposes (*i.e.*, latex, vinyl and nitrile gloves, protective visors and goggles, protective overalls, footwear and over-shoes, headgear, impermeable gowns, surgical gowns) and (iv) thermometers, hand disinfectant cleaners, and wall dispenser for disinfectants:

- a) If made by December 31, 2020, shall be exempt for VAT purposes, with the right to deduct VAT on purchases and import of such goods; and
- b) If made after December 31, 2020, are subject to VAT with a reduced rate of 5%.

5. **Other relevant provisions**

(A) Enhanced depreciation for new capital goods: extension of delivery period (Section 50)

For the purposes of benefitting from the so-called “superammortamento” provided for by Section 1, Decree Law no. 34/2019, new capital goods purchased from April 1, 2019 to December 31, 2019, and not yet delivered by that date (provided that advance payments of at least 20% of the purchase cost have been made), may be delivered by December 31, 2020.

In this regard, it should be noted that, pursuant to the benefit mentioned above, for entrepreneurs, artists and professionals that have purchased new capital goods in 2019, the purchase cost is increased by 30% with exclusive reference to the determination of depreciation quotas and the financial lease payments.

(B) Extension of the right to reevaluate the purchase cost of land and shares not traded in regulated markets (Section 137)

The right to reevaluate the purchase cost of land (both with edification or agriculture destination) and of shares in companies not listed on stock exchange, owned outside the company regime, may be performed again, provided that:

- The assets are owned as of July 1, 2020;
- By September 30, 2020, the appropriate appraisal report is drawn up and sworn; and
- By the same date, the first (in the case of an option to pay by instalments) or the only payment due by way of substitute tax (the latter amounting to 11%) is made. In the case of payment by instalments (in a maximum of three equal annual instalments), interest at the rate of 3% is due on the subsequent instalments.

(C) Methods of recovery of undue payments on social welfare benefits and wages subject to withholding tax (Section 150)

In the case of return to the employer (as tax substitute) of sums unduly received by the employee, as from January 1, 2020:

- The refund to the employer shall be net of the withholding tax levied at the time of disbursement; and
- The tax substitute, who has received a refund of the sums net of the withholding held and paid, is entitled to a tax credit in the amount of 30% of the sums received,

which can be used as a offset without any amount limit. As specified in the explanatory note to the Recovery Decree, this tax credit, in accordance with ordinary rules, is relevant for the purposes of determining the tax base both for direct taxes and IRAP purposes.

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