

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

Law Decree no. 18 on March 17, 2020 (Official Gazette no. 70 of March 17, 2020) ("**Italy Care Decree**") is the main economic and regulatory effort adopted by the Italian Government in the global challenge against **COVID-19** **outspread**.

Please find below a company-oriented outline with a particular focus on certain labour and tax topics which have been introduced by the Italy Care Decree throughout the emergency period.

Please note that the provisions of the Italy Care Decree may however be extended, amended or superseded by additional provisions which may be approved by the Italian Government and Parliament as the current situation develops.

Labour Law Focus

1. State Aids to Companies and Workers

(A) New Ordinary CIG, Ordinary Check and Special CIG

General Rules

Ordinary CIG ("*Cassa Integrazioni Guadagni Ordinaria*") is a State economic aid for companies active in certain sectors provided by Sec. 10 of Legislative Decree 148/2015, including manufacturing, industrial, building.

Ordinary CIG is granted under certain conditions to employees whose working hours are suspended or reduced for exceptional events after a complex legal procedure and negotiation with Trade Unions. It generally covers 80% of concerned workers' wages for a limited amount of time of 90 days.

Ordinary Check ("*Assegno Ordinario*") is a complementary equivalent economic State aid normally granted in other specific sectors where CIG is not applicable and reserved to companies/associations retaining at least 5 employees.

Italy Care Decree Exceptions: Italy Care Decree provides that Ordinary CIG may be exceptionally obtained without previous negotiation with Trade Unions (all steps, including such negotiation, shall be taken within 3 days after the request).

Both Ordinary CIG and Ordinary Check may be requested:

- For all employees working in the company by February 23, 2020, notwithstanding their seniority;
- For a limited term of up to 9 weeks starting from February 23, 2020 until August 2020.

Restricted Zones (so-called “Red Area”) Special Rules: Such aids may also be requested by companies located, or with employees who work, in Municipalities falling into the “Red Area” (i.e. Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini and Vò) in addition to the special aids granted to them by Law Decree no. 9/2020 (i.e., CIG and Ordinary Check which these companies are currently enjoying).

In any of the sectors where other similar State aids are not applicable (and associations), Regions (and Autonomous Provinces) may exceptionally acknowledge Special CIG with special decrees:

- (i) For the same limited term of up to 9 weeks above;
- (ii) Based on previous agreements to be entered into by each Region (or Autonomous Province) with Trade Unions; **but please note that if the requesting company/association hires less than 5 employees Special CIG may be granted without previous agreements between Regions (or Autonomous Provinces) and Trade Unions.**

(B) Suspension of Special CIG and Temporary Change to Ordinary CIG

Companies currently enjoying Special CIG (“*Cassa Integrazione Guadagni Straordinaria*”) based on ordinary rules may suspend it and request its temporarily replacement with Ordinary CIG up to 9 weeks periods. In case of replacement, Special CIG terms are postponed accordingly.

(C) Suspension of Solidarity Check and Temporary Change to Ordinary Check

Solidarity Checks (“*Assegno di solidarietà*”) are economic aids granted at certain conditions to companies which may not enjoy Ordinary or Special CIG.

Companies currently enjoying Solidarity Checks (“*Assegno di solidarietà*”) – economic aids granted to companies which may not enjoy Ordinary or Special CIG – may suspend it and request its temporarily replacement with Ordinary Check for 9 weeks time.

(D) Special Contributive Advantage

As also specified by INPS Circular no. 47 dated March 28, 2020, with respect to any special aid granted under Italy Care Decree, the additional contribution to be paid by the employer is not due for the time such aid is given.

2. No Dismissals Policy

- For the period of 60 days after March 18, 2020, collective dismissal procedures pursuant to Sections 4, 5 and 23 of Law no. 223/1991 may not be activated;
- Collective dismissal procedures activated after February 23, 2020 are suspended;
- Dismissals based on objective justified reason pursuant to Section 3 of Law no. 604/1966 are forbidden and ineffective.

Tax Law Focus

(A) Conversion of DTAs into tax credit

Companies which – by December 31, 2020 – transfer for consideration commercial and financial receivables, whose payments are over 90 days late, can convert into tax credit the Deferred Tax Assets (DTAs) associated with:

- (i) Tax losses carried forward, still available at the date of the sale of the receivables; and
- (ii) The Notional Interest Deduction (ACE) exceeding total net taxable basis not yet used.

Please note that this rule is not applicable if (a) the seller is a company in default or in insolvency, and if (b) the acquiring entity belongs to the same group of the seller.

The aforesaid DTAs can be converted into tax credit even if not accounted for in the financial statements and for a maximum amount not exceeding 20 percent of the nominal value of the transferred receivables, which in turn is capped at Euro 2 billion, per year and per group of companies.

The conversion into tax credits will take place on the effective date of the sale of the receivables and is conditional upon the exercise of the option pursuant to article 11, of Law Decree May 3, 2016, No. 59. At the moment it is not clear if the credit can be used starting from the sale of the receivables or from the beginning of the next year, but – even if based on the analysis of the explanatory note - it seems that the tax credit could be used in FY 2020.

The tax credit arising from the conversion is not interest-bearing and can be, alternatively, (i) used to offset taxes without any amount limit, (ii) transferred intra-group or to third parties, or (iii) claimed for a refund. The tax credit must be reported in the tax return and is not relevant for IRES (corporate income tax) and IRAP (regional tax) purposes.

(B) Tax credit for workplace sanitation

A tax credit equal to 50 per cent of the expenses incurred in FY 2020 for sanitizing workplaces and work appliances is granted to taxpayers performing business, art or professional activities, up to a maximum amount of Euro 20,000. The implementation of the tax credit is subject to the adoption of a forthcoming decree.

(C) Tax credit for rents due for shops/stores

A tax credit equal to 60 per cent of the rent due for the month of March 2020 for properties belonging to the C/1 cadastral category (shops/stores) is granted to business taxpayers.

The tax credit is not available for the taxpayers who carry out the retail and personal services activities listed in Annex 1 and 2 of the Decree of the President of the Council of Ministers of March 11, 2020, which - at the date of Italy Care Decree – had not been suspended.

The tax credit can only be used to offset taxes due.

Italian Revenue Agency, with the Circular no. 8, dated April 3, 2020 (“IRS Circular”), has clarified that the tax credit is available only if the relevant rent has been paid.

(D) Donations in cash or in-kind aimed at supporting COVID-19 epidemiological emergency enforcement measures

Donations in cash and in-kind made by taxpayers earning business income in support of COVID-19 epidemiological emergency measures can benefit of the tax regime provided for by Article 27 of the Law May 13, 1999, No. 133, which regulates the donations, in cash or in-kind, made to foundations, associations, committees and other entities involved in situations where people are affected by public disasters or other extraordinary events.

In particular, as clarified by the IRS Circular:

- (i) The donations in cash or in-kind can be deducted for business income purposes without limitations and even when the taxpayer realized a tax loss in the FY in which the donation is made;
- (ii) The donations in-kind, from a direct income tax perspective, do not generate any positive elements of income (as a consequence of the destination of the donated goods for a use not included in the business activity).

From a VAT perspective, the IRS Circular clarified that deductibility of the VAT paid on the acquisition of the donated goods is allowed only if the donation in-kind (i) relates to food and pharmaceutical products that are no longer marketable and (ii) is made in favor of public entities, as well as private non-profit entities, having civic and solidarity purposes and which carry out activities of general interest.

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