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Covid-19 Italy: Measures in Italy to support the liquidity and the capitalisation of enterprises

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On 19 May 2020 the **Law Decree no. 34** has been published in the Official Gazette ("**Rilancio Decree**"). The new emergency decree is in line with the previous Cura Italia and Liquidità Decrees, introducing *inter alia* measures to support the liquidity the capitalization of enterprises, incentives and tax credits as well as measures in the context of indirect taxation, tax assessment and tax litigation.

Measures to support the liquidity and the capitalisation of enterprises

Outrights grants – Article 25

In order to support those affected by the COVID-19 epidemiological emergency, the Rilancio Decree provides that the Italian Revenue Agency will distribute outright grants and will have the power to assess and recover any undue contribution paid.

The outright grant is available to **entrepreneurs, self-employed and agricultural income's earners**, having a VAT number, whose **income or compensation in the previous fiscal year does not exceed 5 million euros**.

The contribution is subject to the condition that **the amount of turnover and fees related to April 2020 is lower than 2/3 of the same amounts related to April 2019**, determined making reference to the date of execution of the supply of goods or services. The outright grant is attributed also in the lack of the mentioned requirements, to those subjects who started their activity as from 1st January 2019 and for those subjects who, as from the emergency status' date, have their tax domicile or place of business in municipalities affected by such events whose emergency status were still in place on the date of the declaration of the state of emergency COVID-19.

The following subjects are excluded from the outright grant: (i) subjects which activity is ceased as of the date in which the application – required in order to grant access to the measure – has been submitted, (ii) public entities, (iii) financial intermediaries and holding companies, and (iv) taxpayers who benefitted from indemnities introduced by articles 27 and 38 of Cura Italia Decree, as well as (v) employees and professionals registered within the private law entities of compulsory social security.

The amount of outright grant is determined by applying, to the difference between (i) the amount of turnover and fees related to April 2020 and (ii) the same amount related to April 2019, a percentage equal to:

- 20% in case of revenues/compensation related to fiscal year 2019 not higher than 400,000 euros;
- 15% in case of revenues/compensation related to fiscal year 2019 higher than 400,000 euros and up to 1 million euros;
- 10% in case of revenues/compensation related to fiscal year 2019 higher than 1 million euros and up to 5 million euros.

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In any case, the contribution is recognized for an amount not lower than 1,000 euros (for individuals) and 2,000 euros (for subjects other than individuals).

The outright grant is not relevant for both CIT and Regional Tax (IRAP) purposes; in addition, it is not relevant for the purposes of the computation of the ratio between a) revenues concurring to the determination of the taxable income or revenues not concurring to it since they are excluded and b) the total amount of revenues, calculated for the purposes of the determination of deductible interest expenses under article 61 and deductible expenses under article 109(5) of ITC.

The outright grant will be paid by the Revenue Agency by crediting it directly to the beneficiary's bank account.

In order to obtain the outright grant, **it is necessary to submit an online application** to the Revenue Agency, attesting the presence of all the conditions, within 60 days from the starting of the procedure which will be detailed within a Decision of the Director of the Revenue Agency. The application shall also contain specific self-declarations related to the "*anti-mafia*" procedure.

The **unfaithful self-declaration** related to the "*anti-mafia*" procedure does constitute a criminal violation, punished with the imprisonment from two to six years.

Should the outright grant result as undue, the Revenue Agency will recover the amount, plus interests and penalties ranging from 100% to 200% of the outright grant undue (pursuant to art. 13(5) of Legislative Decree 471/1997). **The collection notice must be notified within the 31st December of the eighth year following the year of utilization** of the outright grant. For disputes relating to such notice, provisions concerning the recovery of tax based benefits apply.

In case the outright grant results – wholly or in part – undue, the provision of the Italian Criminal Code related to the undue perception of public funds shall be applicable.

In case the activity is ceased after the payment of the outright grant, the petitioner must keep all the elements proving and supporting the eligibility to benefit from the grant. The potential collection notice will be issued against the latter.

Capital strengthening of medium enterprises – Article 26

The provision is aimed at obtaining the capital strengthening of medium enterprises by means of capital increases that will lead to the reduction of the NOLs likely realized in 2020.

The measure is addressed **to limited companies and cooperatives having legal seat in Italy** (or Italian permanent establishments of EU companies) duly incorporated and registered in the Registrar of Companies, except for those listed within article 162-*bis* of the ITC and insurance companies, **which satisfy the following conditions**:

1. revenues ranging between 5 and 50 million euros (in case of groups reference is made to figures on

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a consolidated basis not taking into account intra-group revenues) in fiscal year 2019, (in case of SMEs Equity Fund the related range is between 10 and 50 million euros);

2. recorded due to COVID-19 emergency in the two-month period March-April 2020 a decrease in revenues (on a consolidated basis not taking into account intra-group revenues) of at least 33% in comparison with the same period of 2019;
3. resolved and fully executed a paid-in capital increase, without limitation in terms of amount and destination, between the entry into force of the Rilancio Decree and 31st December 2020 (in the case of the SMEs Equity Fund for the subscription of bonds or debt securities, the capital increase may not be lower than 250,000 euros).

Tax credit in favor of the investor

In case of cash contribution, **the investors (contributing entities/subjects) are allowed to benefit from a tax credit** equal to 20% of the cash contribution, up to a maximum amount equal to 2 million euros, corresponding to a tax credit up to 400,000 euros.

The participation acquired through the contribution shall be owned until 31st December 2023. The distribution by the receiving entity of any kind of reserve before 1st January 2024 entails **the forfeiture of the benefit** and the obligation to refund the amount plus interest at legal rate.

In order to get the tax credit, the investor shall be provided with a declaration from the receiving entity certifying that the amount of the investment does not exceed the limit of the total amount of the tax credit allowed for all the measures benefitted from (as detailed below among final provisions), or, if higher, the amount for which the tax credit is due. Companies which (i) directly or indirectly control the company in which the investment is made, (ii) are subject to common control or (iii) are related with it or (iv) controlled by it, **are excluded** from the application of such provision.

The provision is also applicable to investments made in **Italian permanent establishments of EU/EEA companies**; they also apply in case the investment is made through quotas or shares of Italian/EU/EEA UCITs which invest more than 50% in the share capital of the companies referred to said measure.

The tax credit can be utilized within the tax return relating to the fiscal year in which the investment is made and in subsequent fiscal years up to its full utilisation, as well as offset (pursuant to Article 17 of Legislative Decree no. 241 of 9 July 1997) starting from the tenth day following the filing of the tax return related to the fiscal year in which the investment is made. Annual limitations usually provided for utilization/offset do not apply.

The tax credit is not relevant for both CIT and Regional Tax (IRAP) purposes; in addition, it is not relevant for the purposes of the computation of the ratio between a) revenues concurring to the determination of the taxable income or revenues not concurring to it since they are excluded and b) the total amount of revenues, calculated for the purposes of the determination of deductible interest expenses under article 61 and deductible expenses under article 109(5) of ITC.

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Tax credit in favour of the receiving entity

Entities receiving the above-mentioned contributions could benefit – upon approval of the 2020 Financial Statements – from a tax credit equal to 50% of NOLs exceeding the 10% of net equity, up to 30% of the capital increase executed, provided that the beneficiary company:

- as of 31st December 2019, was not considered as a "company in difficulty" as defined for by EU provisions;
- is in a regular position for both tax and social security contributions purposes;
- is in a regular position as regards construction and urban planning regulations, work accident prevention and environmental protection;
- is not included in the companies which have received and, subsequently, not reimbursed or deposited in a blocked account any kind of aid deemed illegal by the European Commission;
- is not in one of the obstructive conditions mentioned within article 67 of Legislative Decree no. 159/2011 (so called "*Anti-mafia*" Code);
- directors, shareholders and beneficial owners have not been definitively convicted, in the last five years, of CIT and VAT evasion-related crimes.

The distribution by the receiving entity of any kind of reserve before 1st January 2024, entails **the forfeiture of the benefit** and the obligation to refund the amount plus interest at legal rate.

The tax credit can be utilized in compensation (pursuant to Article 17 of Legislative Decree no. 241 of 9 July 1997), starting from the tenth day following the filing of the tax return related to the fiscal year in which the investment is made. Annual limitations usually provided for utilisation/offset do not apply.

The tax credit is not relevant for both CIT and Regional Tax (IRAP) purposes; in addition, it is not relevant for the purposes of the computation of the ratio between a) revenues concurring to the determination of the taxable income or revenues not concurring to it since they are excluded and b) the total amount of revenues, calculated for the purposes of the determination of deductible interest expenses under article 61 and deductible expenses under article 109(5) of ITC.

SMEs Equity Fund for the subscription of financial instruments

The provision establishes a "**SMEs Equity Fund**" for the subscription, by 31 December 2020, within the limits of the Fund's endowment, of newly issued bonds or debt securities ("**Financial Instruments**") having specific characteristics:

1. Financial Instruments have a maturity of six years;
2. The issuing company could repay the securities in advance, after three years as from the subscription;

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3. Financial Instruments are immediately repaid in case of "*anti-mafia*" related prohibition;
4. In case the issuing company is subject to bankruptcy or other insolvency procedures, the Fund's receivables for repayment of capital and interest are satisfied after unsecured receivables (so called "*crediti chirografari*") and before those provided for by Article 2467 of the Italian Civil Code.

Financial Instruments issued by the above-mentioned companies which satisfy all the conditions required (and having, in addition, less than 250 employees), could be issued for a maximum amount equal to the lower between:

1. three times the amount of the capital increase (listed above among the general conditions to benefit from the measure) that, in case of SMEs Equity Fund, shall not be lower than 250,000 euros, and
2. 12,5% of the amount of revenues related to fiscal year 2019 which, in case of SMEs Equity Fund, range between 10 and 50 million euros.

If the company is a beneficiary of loans secured by a public guarantee in implementation of the aid schemes provided for by the Communication of the European Commission containing the temporary state aid framework in the context of the COVID-19 emergency, the sum of the amounts of such aid and the the amount of the Financial Instruments subscribed cannot exceed the greater of 25% of the revenue parameter of the 2019 tax period referred to in point 1. above, double the company's personnel costs relating to 2019 as resulting from the financial statements or from certified data if the company has not approved the financial statements, the company's liquidity need for the 18 months following the granting of the aid measure, as resulting from a self-certification by the legal representative.

Financial Instruments could be issued also waiving the limitations provided under article 2412(1) of Italian Civil Code.

The management of the Fund is entrusted to Invitalia ("**Fund Manager**"), or to companies wholly owned by it.

In order to benefit from the measure, the issuing company shall submit a **specific request to the Fund Manager**, including all the necessary documentation. The Manager shall then verify the existence of the requirements and the execution of the capital increase.

The issuing company shall:

1. not resolve or make, starting from the date of the application and until the full repayment of the Financial Instruments, any distributions of reserves and purchases of its shares or quotas and not proceed with the repayment of shareholder loans;
2. allocate the financing to support personnel costs, investments or working capital employed in production plants and business activities located in Italy;

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3. provide the Fund Manager with a periodic report, with the contents, frequency and methods indicated by the latter, in order to allow controls on the commitments undertaken.

A ministerial decree will define characteristics, conditions and terms of the financing and the Financial Instruments. Interests accrue annually and are paid in a lump sum on the repayment date. The decree will also specify the objectives for the achievement of a potential reduction in the repayment value of the Financial Instruments.

Final provisions

Paragraph 10 of the provision sets a cap of 2 billion euros for 2021 in order to benefit from the above tax credits (in the hands of both the investor and the receiving entity). A ministerial decree, to be adopted within thirty days from the date of entry into force of the Rilancio Decree, will define criteria and methods for the application and utilization of the tax credit, also for the purposes of the in order to budget limit.

With regard to the SMEs Equity Fund, paragraph 19 provides for an initial endowment of 4 billion euros for 2020.

The above benefits may be combined with each other and with any other aid measures up to a maximum total amount of 800,000 euros, or 120,000 euros in case the company operates in the fisheries and aquaculture business or 100,000 euros for agricultural production.

The effectiveness of the measures provided for is subject to the authorisation, by the European Commission, mentioned under article 108(3) of the Treaty on the Functioning of the European Union.

Specific aimed fund (so called "*Patrimonio Rilancio*") for large companies – Article 27

In order to implement measures to support and boost the Italian economic and production system, the Rilancio Decree authorises Cassa Depositi e Prestiti ("**CDP**") to set up a fund so called "*Patrimonio Rilancio*", to which assets and legal relationships are contributed by the Minister of Economic and Finance.

The provision expressly provides that the sources of the *Patrimonio Rilancio* have to be destined to support and relaunch the Italian economic and productive system, in compliance with EU provisions, having as beneficiary entities joint-stock companies, even listed on regulated markets, including those established as cooperatives which:

1. have legal seat in Italy;
2. did not operate in bank, financial or insurance businesses;
3. have annual turnover higher than 50 million euros.

Access requirements, conditions, criteria and operation methods will be defined by subsequent ministerial decrees.

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Priority will be given to actions consisting of the subscription of convertible bonds, participation in capital increases, purchase of shares listed on the secondary market in case of strategic operations. Relevance will be made, among other, to the impact of the company with regard to technological development, critical and strategic infrastructures, strategic production chains, environmental sustainability, logistics and supply chain, employment levels and the labour market. Furthermore, it is specified that actions may be carried out in relation to restructuring of companies which, despite temporary financial or equity gap, are characterised by adequate profitability projections.

It should be noted that specialized press anticipates the introduction of a measure that will prevent access to the *Patrimonio Rilancio*'s benefits to companies located in Italy, but having shareholders located in non-cooperative countries/territories or in any case having privileged tax regimes.

Provisions on IRAP payments – Article 24

In order to tackle the crisis arising from the COVID-19 epidemiological emergency granting liquidity to the companies, the Rilancio Decree provides that companies and self-employed workers having respectively **revenues or compensation not exceeding 250 million euros in the previous fiscal year**, **will not be required to pay the IRAP balance payment for 2019 and the first IRAP advance payment for 2020**, without prejudice to the obligation to pay the IRAP advance payments for 2019. The amount of the first advance payment for 2020 shall be excluded from the amount of tax due as balance payment for fiscal year 2020.

The provision does not apply to banks, other financial entities (mentioned in Article 162-*bis* of the ITC), insurance companies, governments and public entities.

Increase of the annual limitation of credits which can be compensated using "F24" payment form – Article 147

In order to tackle the COVID-19 economic emergency and with the purpose of granting additional liquidity, the Rilancio Decree **increases, for 2020, the annual offset limit of tax credits from 700,000 euros to 1 million euros**.

Transfer of tax credits arising from COVID-19 provisions – Article 122

The provision introduces on an experimental basis and up to the end of 2021, **the possibility, for those entitled to benefit from specific tax credits introduced by COVID-19 provisions** (tax credit for shops and stores, for rental of non-residential properties and lease of going concern, for sanitizing and adapting work environments), **to opt for the sale** of said tax credits – wholly or in part – in favour of third parties, including credit institutions and other financial intermediaries.

The transferee may utilise the credit acquired to be offset and in all the other ways in which it would have been utilised by the transferor. The amount not utilised in the current year cannot be utilised in the following years and cannot be claimed to reimbursement. Annual limitations usually provided for compensation do not apply.

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The above does not affect, also in case of sale of the tax credit, the power of assessment of the responsible Authorities relating to the control over the existence of the tax credit as well the possibility to apply penalties towards the beneficiaries. The transferee is responsible only for the irregular utilisation of the tax credit or for the utilisation for an amount exceeding the tax credit acquired.

The implementation measures, including those related to the exercise of the option, will be published by means of a Decision of the Director of the Italian Revenue Agency.

Municipal tax on real estate assets' exemption for tourist sector – Article 177

The provision establishes that owners of:

1. immovable assets used for seaside, lake and river bathing establishments, as well as thermal establishments' buildings; and
2. immovable assets classified within the D/2 category of the Italian Cadastral Register and properties owned by holiday farms, tourist villages, youth hostels, mountain chalets, sea and mountain chalets, bed and breakfast, holiday accommodation and campsites, as long as the owners are also manager of the business therein carried out.,

will not be required to pay on 16 June 2020 the first instalment of the Municipal Tax on real estate assets (IMU) neither the quota pertaining to the State nor the quota pertaining to the Municipality.

Do you have any questions? Our German Desk Team is at your disposal.

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