

9 September 2020

Additional tax and corporate measures introduced by the August Decree

The Law Decree No. 104 issued on August 14, 2020 (the “**August Decree**”), published in the Official Gazette on August 14, 2020 and entered into force on August 15, 2020, introduced further support measures and extraordinary rules within the frame of the COVID-19 state of emergency, which duration was extended until October 15, 2020 by Resolution of the Council of Ministers dated July 29, 2020.

In addition to the main labour law measures, which were analyzed in the newsletter published on August 20, 2020 ([link](#)), this note provides a preliminary overview on the most relevant tax and corporate measures laid down in the August Decree.

The August Decree follows Law Decree 18/2020, converted into law with amendments by Law No. 27/2020 (the “**Cura Italia Decree**”), and Law Decree 34/2020, converted into law with amendments by Law No. 77/2020 (the “**Rilancio Decree**”).

1. SIMPLIFIED PROCEDURES FOR COMPANIES' SHAREHOLDERS' MEETINGS

Extension until October 15, 2020 of the simplified procedures for holding companies' shareholders' meetings¹

- The August Decree extends the applicability of the provisions of art. 106, paragraphs 2-6 of the Cura Italia Decree, applicable to the Shareholders' Meetings of all joint stock companies, convened by October 15, 2020. Therefore:
 1. Until October 15, 2020, the provisions relating to expression of vote by means of electronic means or by correspondence and intervention by means of telecommunications modes (e.g. teleconferencing or videoconferencing) will apply to all joint stock companies.
 2. With regard to limited responsibility companies (S.r.l.), voting - also in derogation of the provisions of Article 2479, paragraph 4 of the Italian Civil Code - may be expressed by written consultation or by written consent.
 3. Listed companies may avail themselves of the right to (i) appoint the designated representative (art. 135-*undecies* TUF) even if this right is not provided for in the company's by-laws; and (ii) accept the delegations and sub-delegations conferred by a representative pursuant to art. 135-*novies* TUF to the designated representative.

¹ Article 71, paragraph 1, August Decree.

2. AMENDMENTS TO THE TAX TREATMENT OF CERTAIN FINANCIAL INSTRUMENTS	
P.I.R. – Amendments to the Tax Treatment of Long-Term Saving Schemes²	<ul style="list-style-type: none"> ▪ The August Decree has raised to € 300,000.00 the maximum amount that a given person can invest in the so-called, “alternative” P.I.R., introduced by the <i>Rilancio</i> Decree. Such limit was previously set at € 150,000.00. ▪ In other words, as off the date of entry into force of the August Decree, investors may benefit from the specific tax regime of such “alternative” P.I.R. by investing an amount up to € 300,000.00.
3. BUSINESSES ENGAGED IN THE TOURISM AND ENTERTAINMENT SECTOR	
Amendments to the Tax Credit for Rental Fees Related to Commercial Building³	<ul style="list-style-type: none"> ▪ The August Decree amends the tax credit regime introduced by Art. 28 of the <i>Rilancio</i> Decree with respect to rental fees related to commercial buildings. <p style="margin-left: 20px;">In particular, the August Decree extends such credit to:</p> <ol style="list-style-type: none"> 1. thermal baths; and 2. the rental fees related to June. <p style="margin-left: 20px;">The extensions also cover the month of July but only for seasonal activities.</p>
Exemption from Municipal Tax on Real Estate Property (IMU) for Businesses Engaged in the Tourism and Entertainment Sector⁴	<ul style="list-style-type: none"> ▪ The Decree exempts taxpayers engaged in the tourism and entertainment business from paying the second installment of the Municipal Tax on Real Estate Property (IMU) due for 2020 (which was falling due on 16 December 2020) related to the following real estate assets: <ol style="list-style-type: none"> 1. buildings used for maritime, lake and river bathing establishments, and SPAs; 2. hotels and pensions (cadastral category D/2) and farmhouses, tourist villages, youth hostels mountain huts, marine and mountain colonies, landlords for short term rents, holiday homes and apartments, bed & breakfasts, residences and campsites, if managed by the owners; 3. buildings (cadastral category D) employed for trade fairs or exhibitions; 4. buildings (cadastral category D/3) used for movie shows, theaters and halls for concerts and shows, if run by the owners; 5. buildings used as night-clubs and ballrooms, if run by the owners;

² Article 68, August Decree.

³ Article 77, August Decree.

⁴ Article 78, August Decree.

	<p>Buildings (cadastral category D/3) used for movie shows, theaters and halls for concerts and shows, if run by the owners are, in principle, exempt from the municipal tax on real estate property (IMU) for 2021 and 2022. However, the said exemption is conditional upon the approval of the European Commission.</p>
<p>Other Tax Measures for Businesses Engaged in the Tourism and Thermal SPA Sector⁵</p>	<ul style="list-style-type: none"> ▪ For fiscal years 2020 and 2021, the tax credit for the refurbishment of tourist accommodation facilities (referred to in Article 10 of Decree Law no. 83 of 31 May 2014) is reinstated and amended by the August Decree. <p>The tax credit is equal to 65% of the expenses incurred.</p> <p>The following real estate properties are also encompassed in the scope of the tax measure in question: (i) real estate properties employed in the carrying out of agritourist activities (ii) SPAs (iii) open-air accommodation tourist facilities.</p> <p>The tax credit can only be used in one go using the F24 form.</p>
<p>4. ENERGY UPGRADING OF BUILDINGS – TAX INCENTIVES</p>	
<p>Real Estate Properties Ruled Out Form the Tax Incentive⁶</p>	<ul style="list-style-type: none"> ▪ The August Decree provides that the tax deductions for energy upgrading of building do not apply to real estate units falling within the cadastral categories A/1, A/8, as well as cadastral category A/9 for real estate units not open to the public.
<p>5. TAX CREDIT FOR ADVERTISEMENT AND SPONSORSHIP EXPENSES IN FAVOR OF SPORTS FEDERATIONS/CLUBS AND PROFESSIONAL/AMATEUR SPORTS ASSOCIATIONS</p>	
<p>Tax Credit for Advertisement and Sponsorship Expenses Paid in Favor of Sports Federations/Clubs and Professional/Amateur Sports Associations⁷</p>	<ul style="list-style-type: none"> ▪ For fiscal year 2020, the August Decree provides a tax credit to companies, self-employed workers and non-commercial entities that invest in advertising campaigns, including sponsorships, in favor of: (i) leagues that organize national championships in the Olympic sports, (ii) professional/amateur associations/sports clubs registered in the CONI register, engaged in sports encompassed in the Olympic Games and carrying out youth sports activities. <p>To benefit for the tax credit, the investment must be (i) not lower than € 10,000.00 (ii) made in the time span between 1 July 2020 and 31 December 2020 (iii) made through non-cash payment instruments (iii) made in favor of relevant beneficiaries that derived 2019 Italian sourced revenues ranging from € 200,000.00 to Euro 15,000,000.00.</p> <p>The tax credit is equal to 50% of the relevant investments made by the</p>

⁵ Article 79, August Decree.

⁶ Article 80, Paragraph 6, August Decree.

⁷ Article 81, August Decree.

	<p>eligible taxpayer. The August Decree provides for a cap of € 90,000,000.00 representing maximum financial resources dedicated to tax incentive at stake. If the overall eligible investments exceed the said ceiling, the tax credit will be reallocated among the beneficiaries.</p> <p>The tax credit can be employed exclusively to offset other taxes in accordance to the provisions of Article 17 of Legislative Decree No. 241 of 9 July 1997. The use of the tax credit requires the submission by the taxpayer of a specific application to the Department for Sports of the Presidency of the Council of Ministers.</p>
<h2>6. MEASURES CONCERNING TAX COLLECTION ⁸</h2>	
<p>Possibility to Pay in Installments the Tax Payment Suspended by the Law Decree 34/2020⁹</p>	<ul style="list-style-type: none"> ▪ Pursuant to Decree 34/2020¹⁰, tax payments suspended by previous Italian Anti-Covid Decrees are now due: (i) in a single instalment by 16 September 2020, or (ii) in up to 4 monthly instalments starting from 16 September 2020. <p>The August Decree enables taxpayers to execute the tax payments concerned as follows:</p> <ol style="list-style-type: none"> 1. 50% of the relevant payment, by 16 September 2020 or in up to 4 monthly instalments starting from 16 September 2020; 2. the remaining 50% of the relevant payment, in up to 24 monthly instalments starting from 16 January 2021. <p>No penalties nor interest apply to the payments under the option provided for by the August Decree. On the other hand, amounts previously paid cannot be reimbursed to the taxpayer.</p>
<p>Deferral of the Period of Suspension of Payments Introduced by <i>Cura Italia</i> Decree¹¹</p>	<ul style="list-style-type: none"> ▪ The <i>Cura Italia</i> Decree introduced a suspension of payments of certain tax and non-tax revenues resulting from notices of payment, debit notices and notices of assessment issued by the Tax Collection Agent. <p>Pursuant to August Decree, the aforementioned payments previously falling due between 8 March 2020 (21 February 2020 for taxpayers having their residence, legal or operational seat in the Municipalities included in the so-called “red-zone” ¹²) and 15 October 2020 (before, 31 August 2020), are now due by 30 November 2020.</p>

⁸ Article 99, August Decree.

⁹ Article 97, August Decree.

¹⁰ Articles 126 and 127, August Decree.

¹¹ Article 99(1), August Decree.

¹² Listed in Attachment 1 to Prime Minister’s Decree dated 1 March 2020.

<p>Failure to Fulfill the Installment Plan Triggering the Loss of the Benefits of Deferred Payment¹³</p>	<ul style="list-style-type: none"> The <i>Rilancio</i> Decree made less stringent the conditions triggering the loss of the benefits of deferred payment for installment plans existing on 8 March 2020 and deriving from the acceptance of the requests filed by the taxpayer within 31 August 2020. Indeed, the loss of the benefit concerned occurs when the taxpayer fails to pay 10 instalments (prior to amendment in question, the loss of the benefit was triggered by the non-payment of 5 instalments). <p>Pursuant to the August Decree, the measure is extended to installment plans deriving from the acceptance of the requests filed by the taxpayer within 15 October 2020.</p>
<h2>7. MUNICIPAL TAX ON REAL ESTATE PROPERTY (IMU)</h2>	
<p>IMU tax rate¹⁴</p>	<ul style="list-style-type: none"> The August Decree allows the Italian municipalities to increase the IMU maximum tax rate by 0.08%, starting from 2020.
<h2>8. STEP-UP OF BUSINESS' ASSETS AND PARTICIPATIONS</h2>	
<p>Step-up of business' assets and participation¹⁵</p>	<ul style="list-style-type: none"> The August Decree allows the step-up for accounting and, upon election, for tax purposes (IRES and IRAP) of the value of the business' fixed assets and shareholdings (qualified participation accounted for as fixed assets) resulting from the financial statements of the financial year comprising 31 December 2019. <p>Real estate assets produced or to be sold by the taxpayer as part of its core business activity cannot benefit from the (accounting/tax) step-up in value.</p> <p>Eligible taxpayers comprise companies and business entities, resident in Italy for tax purposes, <u>that do not adopt international accounting standards</u>. The measure also includes commercial partnerships, sole proprietorships, non-commercial entities, resident in Italy for tax purposes and non-resident persons having a permanent establishment in Italy.</p> <p>The accounting step-up must be recorded in the financial statements of the financial year encompassing 31 December 2020, also separately for each asset.</p> <p>The (accounting) stepped-up value can also be recognized for tax purposes (IRES and IRAP) upon the payment of a 3% substitute tax. In principle, tax values resulting from the election are to be taken into account starting from the fiscal year following that one relevant for the step-up for accounting purposes. This means that, as a general rule, the stepped-up values are to be taken into account for tax purposes starting</p>

¹³ Article 154(1), *Rilancio* Decree.

¹⁴ Article 108, August Decree.

¹⁵ Article 110, August Decree.

	<p>from fiscal year 2021. However, capital gains/losses arising from the disposal of the assets occurred before the fourth year in which the step-up for accounting purposes occurred are to be computed on the non-stepped up tax value of the relevant asset.</p> <p>The surplus arising from the accounting step-up can also be recognized for tax purposes upon the payment of a 10% substitute tax.</p> <p>The above-mentioned substitute taxes can be paid in a maximum of three equal instalments.</p>
<h2>9. TAX EXEMPTION FOR BENEFITS IN-KIND GRANTED TO THE EMPLOYEES</h2>	
<p>Tax Exemption for Benefits in-kind Granted to the Employees¹⁶</p>	<ul style="list-style-type: none"> For fiscal year 2020, the August Decree increases the amount of the value of goods sold and services provided by the employer to its employees, to be excluded from income taxation in the hands of the recipient. More precisely, benefits in-kind granted by the employer to its employees are not brought into charge to taxation in the hands of the recipient provided that their total amount in the relevant fiscal year does not exceed €516.46.
<h2>10. TAX DISPUTE RESOLUTION MECHANISMS IN THE EUROPEAN UNION</h2>	
<p>Tax Dispute Resolution Mechanisms in the European Union (Council Directive (EU) 2017/1852 of 10 October 2017 and Legislative Decree of 10 June 2020, No. 49)</p>	<ul style="list-style-type: none"> The August Decree amends Legislative Decree No. 49 of June 10, 2020, which implemented in Italy the Council Directive (EU) 2017/1852 of 10 October 2017 concerning tax dispute resolution mechanisms in the European Union. As a result of the said amendment, the taxpayer is now prevented from submitting a complaint on a tax question in dispute aimed at starting a mutual agreement procedure only if a final decision has been served by the competent Court or other judicial body of a Member State. Prior to the amendment in question, any decision on a question in dispute rendered by the relevant Court or other judicial body of a Member State (whether final or not) precluded the mutual agreement procedure from starting.

¹⁶ Article 112, August Decree.

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