

14 April 2020

Liquidity Decree - Tax Support Measures

The Italian Government has adopted Law Decree no. 23 of 8 April 2020 (the "**Liquidity Decree**"), published in the Official Journal of the Italian Republic no. 94 of 8 April 2020, which provides for additional measures to support companies in the current COVID-19 emergency.

The Liquidity Decree has four main goals¹:

- to strengthen liquidity for businesses;
- to provide for tax measures;
- to strengthen the Government's special power in areas of strategic importance and avoid "predatory purchases"; and
- to ensure business continuity in going concern during this emergency period.

Set out below is a summary of the key tax measures introduced in Chapter IV (*Tax measures*) of the Liquidity Decree.

1. Are There Any Tax Incentives for sanitizing workplaces?

Measures to Encourage Workplace Sanitation²:

The Liquidity Decree enlarges the scope of application of Article 64 of the Law Decree no. 18 of 17 March 2020 (the so-called Cura Italia; hereinafter "**Cura Italia Decree**" or "**Cura Italia**")³ concerning the tax credit for expenses incurred, in fiscal year 2020, for workplace sanitation.

The expenses eligible for this tax credit include those relating to the purchase of personal protective equipment (such as, among others, surgical masks Ffp2 and Ffp3, gloves, protective visors and goggles, protective clothing), and those relating to the purchase and installation of other safety equipment to protect workers from the exposure to biological agents and/or to ensure a safety distance (e.g. barriers and protective panels). Furthermore, the cost of buying hand sanitizers and disinfectants falls within the scope of this tax measure.

The Liquidity Decree confirms that the tax credit is attributed to each beneficiary (persons engaged in a business, art or professional activity) up to a maximum amount of 20,000 euros. The credit amounts to 50 per cent of the expenses incurred up to 31 December 2020. The rule also provides for an overall budget limitation of 50 million Euros⁴.

¹ The Liquidity decree has the additional aim to extend the social stock absorbers introduced by the Cura Italia Decree to workers employed until 17 March 2020.

² Art. 30 of the Liquidity Decree.

³ Art. 64 of the Cura Italia Decree.

⁴ Within 30 days of the date of entry into force of the Law Decree "Cura Italia", the Ministry of Economic Development and the Ministry of Economy and Finance will issue a joint decree to implement this measure.

2. Are There Any Tax Incentives for Free Distribution of Medicines?

Non-Application of the Legal Presumption of Supply for VAT Purposes⁵

The lack of effective treatment against Covid-19 calls for the use of medicines previously used to treat other diseases or still not officially approved by the relevant authorities, the so-called “compassionate use programs”. When such medicines are distributed\used for free, the VAT charged on their purchase is not - in principle - deductible. However, the Liquidity Decree provides that, when the distribution\use of these medicines occurs for free, this distribution\use has to be treated as a deduction for VAT purposes; as consequence the VAT deduction can be granted with respect to the VAT charged on the purchase of such medicines.

Exclusion From the Taxable Base for Corporate Income Tax Purposes⁶

Usually, the sale of goods for free is considered to fall outside the business activity of an enterprise. As a result, these sales are considered to be taxable events for the selling enterprise⁷.

To avoid this and foster the free sale of medicines as part of compassionate use programs⁸, the Liquidity Decree makes an exception to the above rule. In particular, the Liquidity Decree states that free sales of such medicines are not considered to fall outside the normal business activity of the persons distributing them⁹ and hence not taxed in their hands.

3. Are There Any Suspensions of Terms With Respect to Tax Benefits Provided in the Context of Real Estate Purchases?

Suspension of the Terms Provided for by the “First House” Regime¹⁰

The Liquidity Decree suspends all the terms connected to the formalities needed to benefit from the reduced register tax on the purchase of the so-called “first house”¹¹. The terms are suspended from 23 February 2020 to 31 December 2020 and the suspension applies to:

1. the 18 month period within which taxpayers claiming the benefit of the “first house” regime must transfer their residency in the municipality where the newly purchased house is located;
2. the one year period granted to taxpayers who sold their “first house” to buy a new house¹². Outside this term the benefit initially granted is withdrawn¹³;
3. the one year period within which taxpayers, who have purchased a new property to be used as their new main residence, must proceed to sell their previous “first house”.

These measures are intended to encourage the conclusion of real estate sales in view of the difficulties experienced by this sector during the epidemiological emergency.

⁵ Art. 27(1) of the Liquidity Decree.

⁶ Art. 27(2) of the Liquidity Decree.

⁷ The taxable base is given by the positive difference (if any) between (i) fair market value of the goods sold for free and (ii) their tax value in the hands of the selling company.

⁸ Identified by the Decree of the Ministry of Health dated 7 September 2017, published in the Official Gazette no. 256 dated 2 November 2017.

⁹ Pursuant to Art. 85(2) of Presidential Decree no. 917 of 22 December 1986.

¹⁰ Art. 24 of the Liquidity Decree.

¹¹ Note II-bis of Article 1 of the Tariff annexed to Presidential Decree No 131 of 26 April 1986.

¹² In such cases (i.e. sale and purchase of a new “first house” within a year), the register tax due is calculated and liquidated with respect to the new house but the taxpayer is granted with a credit equal to the register tax paid for the purchase of its previous house. also the term for such credit to be granted is accordingly suspended.

¹³ But only to the extent that the “first house” has been sold within the five years following its purchase.

4. Are There Any Other Tax Incentives/Supporting Measures?

Suspension of Tax and Social Security Payments¹⁴

Taxpayers who:

- (i) have their tax domicile, legal seat or place of effective management in Italy;
- (ii) are engaged in a business, artistic or professional activity;
- (iii) with respect to fiscal year 2019, have registered gross profits not exceeding Euro 50 million; and
- (iv) in March and April 2020 have suffered a decrease of their gross profits of, at least, 33% compared with March 2019 and April 2019;

can benefit from a suspension of the following tax payments due in April and May 2020:

- a) withholding taxes on employment income (and income assimilated to employment income, under Italian tax law) with respect to direct taxes as well as regional and municipal surtaxes;
- b) VAT payments;
- c) social security payments;
- d) mandatory insurances premium payments.

The same suspensions also apply if, during fiscal year 2019, the relevant taxpayers (meeting the requirements set forth under (i) and (ii) above), that have registered gross profits exceeding Euro 50 million but only to the extent that they have suffered a decrease of their gross profits of, at least, 50% in March and April 2020 compared to same months in the previous year.

These suspensions shall also apply where the activity of the business, art or profession started after 31 March 2019.

In addition, if the relevant taxpayers have their tax domicile, legal seat or place of effective management in the Provinces of Bergamo, Brescia, Cremona, Lodi e Piacenza, then with specific respect to VAT payments the suspensions reported above apply regardless of the amount of gross profits registered in 2019. In other words, the suspensions apply to all the taxpayers meeting the requirements under (i), (ii), (iii) and (iv) with respect to withholding, social security and mandatory insurance premiums payments but with respect to VAT payments point (iii) remains irrelevant and does not need to be met – *i.e.* no gross profits threshold is set in this case.

Finally, the suspension described in the first paragraph also applies with respect to (i) non-commercial entities, (ii) non-profit organizations, and (iii) civil religious entities, which do not carry out a business activity¹⁵ (no thresholds need to be met for this suspension to apply) but not with respect to VAT payments.

All the payments benefiting from the suspension must be made either (i) within 30 June 2020 in a single instalment or (ii) in up to five monthly instalments starting from June 2020. No penalties or interests are due with respect to such payments.

If the requirements to benefit from all the above mentioned suspensions are not met, the Liquidity Decree provides that the payments of (i) withholding tax on employment income, (ii) social security contributions, and (iii) mandatory insurance premium payment deadlines, are suspended until:

¹⁴ Art. 18 of the Liquidity Decree.

¹⁵ On the opposite, if such entities carry out a business activity, the suspension of payments will follow the procedures and requirements for taxpayers engaged in a business activity described above.

- 1) 30 April 2020 (suspended payments must be made either in a single instalment within 31 May 2020 or in monthly installments – not more than five - starting from May 2020) for the activities listed below:
 - a) businesses engaged in the tourism sector;
 - b) stadia, sports facilities, gyms, clubs and structures for dance, fitness and bodybuilding, sports centres, swimming pools and swimming centres;
 - c) theatres, concert halls, cinemas, including ticketing services and support activities for artistic performances, night-clubs, game rooms and billiards;
 - d) lottery offices, lotteries, bets, including the management of related machines;
 - e) fairs and events (including those of an artistic, cultural, recreational, sporting and religious nature) promoters;
 - f) restaurant, catering, ice cream shops, patisseries, bars and pubs;
 - g) museums, libraries, archives, historical places and monuments and similar places, botanical gardens, zoos and nature reserves;
 - h) nursery schools and day care services for disabled children, educational services for children as well as first and second degree educational services, professional training courses, sailing, navigation and flight schools, which issue patents or commercial licenses, schools of professional guide for drivers;
 - i) non-residential social assistance activities for the elders and disabled;
 - j) spa (Law No. 323 of 24 October 2000) and wellness centres;
 - k) amusement parks or theme parks;
 - l) bus, railway, underground, sea or airport stations;
 - m) land, air, sea, river, lake and lagoon freight and passenger transport services, including the management of funiculars, cableway, funicular, chair-lifts and ski-lifts;
 - n) lease of (land, sea, river, lake and lagoon) transport vehicles;
 - o) rental of sports and recreational equipment or structures and equipment for events and shows;
 - p) driving and tourist assistance services;
 - q) registered non-profit organizations (ONLUS), service organizations registered in the Regional register and of the autonomous provinces, social promotion associations registered in the national, regional and autonomous provinces of Trento and Bolzano registers which performs, exclusively or principally, activities of general interest.
- 2) 31 May 2020 (suspended payments must be made either in a single instalment within 30 June 2020 or in up to five monthly installments starting from June 2020) for the activities listed below:
 - a) national sports federations;
 - b) sports promotion entities;
 - c) professional and amateur sports associations and clubs.

No Withholding on Certain Kind of Income¹⁶

No withholding tax is charged on:

- a) self-employment income; and
- b) commission fees, agency fees, brokerage fees *et similia*;

which have been paid between 17 March 2020 and 31 May 2020 and derived from taxpayers who:

- (i) have their tax domicile, legal seat or place of effective management in Italy; and
- (ii) in fiscal year 2019 have registered gross profits not exceeding Euro 400,000; and
- (iii) in February 2020 did not incur in any employment expense.

The amount of the withholding taxes not levied must be paid by the relevant taxpayer either:

- 1) for their entire amount within 31 July 2020;
- 2) in installments (up to five monthly instalments starting from July 2020).

No penalties or interests are due with respect to such payments.

Extensions of the Effectiveness of the Documents of Fiscal Compliance (DURF)¹⁷

The Liquidity Decree provides that all the Documents of Fiscal Compliance (so-called DURF¹⁸), issued on or before 29 February 2020 remain effective until 30 June 2020.

These documents allow the principal to be exempted from the obligation to monitor withholding payments on employee's income involved in labor-intensive procurement contracts.

The purpose of Article 23 is to limit the access by contractors to the Agency's offices in order to obtain a new DURF.

No Sanctions or Interest Due for Reduced Advance Payments¹⁹

No penalties or interest are due if the advance payments related to:

- a) Individual Income Tax (IRPEF);
- b) Corporate Income Tax (IRES); and
- c) Regional Tax on Productive Activities (IRAP)

for the fiscal year 2020 are paid for a lower amount than the one provided for by the law.

However, this rule only applies to the extent that the advance payments made are at least equal to 80% of the advance payments that should have been due on the basis of the relevant tax returns for fiscal year 2020.

Postponement of the Deadline of the Withholding Agent Certificate (“*Certificazione Unica*”)²⁰:

The deadline for the submission of the Withholding Agent Certificate (“*certificazione unica*”²¹), due on 31 March 2020²², is postponed to 30 April 2020.

¹⁶ Art. 19 of the Liquidity Decree which amends Art. 62(7) of the Cura Italia Decree.

¹⁷ Art. 23 of the Liquidity Decree

¹⁸ Regulated under Article 17-*bis*, paragraph 5, of Legislative Decree No. 241 of 9 July 1997

¹⁹ Art. 20 of the Liquidity Decree.

²⁰ Art. 22 of the Liquidity Decree.

²¹ Regulated under Article 4(6-*ter*) of the Presidential Decree No. 322 of the 22 July 1998.

²² The deadline of 16 March set forth in Article 4(6-*quarter*) and (6-*quinqes*) of the Presidential Decree No 322 of the 22 July 1998 was already postponed to 30 March by Article 1(3) of the Law Decree No. 9 of the 2 March 2020.

Relief From Some Payments Deadlines²³:

Payments to public authorities that were due on 16 March 2020 and were postponed until 20 March 2020 under the Cura Italia Decree²⁴ – are still considered to be timely carried out if made within 16 April 2020. Therefore, payments due on 20 March 2020 and not executed yet may be executed within 16 April 2020. No penalties or interest can be requested to taxpayers meeting this last deadline.

Deadline for Payment of Stamp Duty on Electronic Invoices²⁵

The Liquidity Decree amends deadlines for the payment of the stamp duty on electronic invoices related to the first and second quarter of 2020.

Specifically, stamp duty payments must be made within:

- a) 20 July 2020, if the amount due for electronic invoices issued during the first quarter is lower than € 250 and the total amount due for the first six months of 2020 is higher than € 250; or,
- b) 20 October 2020, if the total amount due for electronic invoices issued during the first six months of 2020 is lower than € 250.

It is worth noting that deadlines for payment of the stamp duty on electronic invoices related to the third and fourth quarter 2020 are not amended.

5. Are There Any Other Tax Measures?

Taxation of Dividends Received by Non-Commercial Partnerships (*Società Semplici*)²⁶:

The tax regime for dividends received by non-commercial partnerships (*società semplici*) was repeatedly amended in recent years.

In particular, under the most recent change of this tax regime (Article 32-*quater* of Law Decree No. 124 of 26 October 2019 - “**Art. 32-*quater***”), a look through approach applies to dividends paid to non-commercial partnerships (*società semplici*). The look through approach results in dividends received by non-commercial partnerships (*società semplici*) to be taxed when received by the partner (in proportion to his/her share in the partnership) under the same tax regime that would have applied in case of a direct distribution to him/her.

Art. 32-*quater* gave rise to significant interpretative concerns as it failed to address important aspects. Considering that, Article 28 of the Liquidity Decree reformulates Art. 32-*quater* to solve certain interpretative concerns.

In particular, Article 28 of the Liquidity Decree aims at:

- a) including foreign-sourced dividend payments within the scope of Art. 32-*quater*. Indeed:
 - (i) dividend payments made by non-Italian resident companies to non-commercial partnerships (*società semplici*) will fall within the scope of Art. 32-*quater* and will, thus, be subject to the look-through regime. As a result, investing through a partnership (*società semplici*) in equity instruments issued by Italian resident companies will be equivalent, from an Italian tax perspective, to investing in equity instruments issued by non-Italian resident companies.

²³ Art. 21 of the Liquidity Decree.

²⁴ Art. 60 of the Cura Italia Decree.

²⁵ Art. 26 of the Liquidity Decree.

²⁶ Art. 28 of the Liquidity Decree.

- (ii) article 28 of the Liquidity Decree does not affect the application of the rules on dividends paid by black-listed companies.
- b) shedding light on the application of the withholding tax and substitute tax on dividends paid to non-commercial partnerships (*società semplici*) having one or more Italian resident individual partners. Indeed:
 - (i) dividends paid to the non-commercial partnership (*società semplice*) and attributable to the partner (Italian-resident individual holding the interest in the non-commercial partnership - *società semplice* – not in their business capacity) is subject to a 26% withholding tax pursuant to Article 27 of Presidential Liquidity Decree 600/1973.
- c) providing rules on the tax treatment of dividends received by non-commercial partnerships (*società semplice*) for the portion thereof attributable to (i) non-commercial entities partners and (ii) non-Italian resident partners;
 - (ii) non-commercial entities: the entire amount of the dividend is subject to income tax;
 - (iii) non-Italian resident partners:
 - 1) other than those referred to in point (ii): dividends are subject to the withholding tax provided under Article 27 of Presidential Liquidity Decree 600/1973;
 - 2) EU or EEA (white list) companies and entities: dividends are subject to the withholding tax (at a 1.20% rate) provided under Article 27(3-ter), of Presidential Liquidity Decree 600/1973.
- d) providing for a transitional tax regime applicable to dividend payments (the distribution of which was decided on or before 31 December 2022) arising from profits earned by companies and entities subject to Corporate Income Tax (IRES) until the end of the financial year running at 31 December 2019. The dividends falling within the transitional tax regime are subject to the tax regime in place before the entry into force of 2018 Budget Law, *i.e.* the participation exemption regime applies.

The portion of the dividend received by non-commercial partnerships (*società semplice*) to be taxed in the hands of the partners varies in relation to the time period in which the corporate profits out of which the dividends are paid have been generated:

- (i) 40% for profits generated before 1 January 2008;
- (ii) 49.72% for profits generated from 1 January 2008 to 31 December 2016;
- (iii) 58.14% for profits generated from 1 January 2017 to 31 December 2019.

In light of the above, dividends falling within the scope of the transitional tax regime should be subject to participation exemption. As a result, the Liquidity Decree seems to eliminate the risk of inclusion of the full amount of the dividend into the partner's taxable income. This issue arose from the provisions of the 2018 Budget Law and now appears solved. The transitional tax regime is of the utmost importance for taxpayers. Official guidance on the interpretation and application of the transitional tax regime are, therefore, needed.

Subject to the transitional tax regime, the provisions of Article 28 of the Liquidity Decree apply to dividends received since 1 January 2020.

6. What About Tax Court Proceedings?

Extension of the Obligation to Electronically Serve and File Documents\Acts in Tax Proceedings²⁷

Even for judicial proceedings not started through the telematic procedure (*i.e.* a procedure where documents are served and filed only on an electronic basis through a telematic system)²⁸, the service and the filing of documents following the ones that started the relevant tax proceedings to be made by:

- a) tax authorities;
- b) collecting agents;
- c) private entities carrying out activities of liquidation, assessment and collection of local taxes²⁹;
- d) parties assisted by an authorized attorney;

and the issuance of acts by the Courts in tax proceedings must now be performed exclusively through the above mentioned telematic procedure.

Electronic Service of Penalty Assessments Related to Tax Court Fees³⁰

Judicial offices may serve assessments for the application of penalties deriving from the omitted or partial payment of the Tax Court fees³¹ also (i) through registered emails sent to the judicial parties' domicile or, (ii) where the domicile was not communicated, by depositing such assessments at the Secretary office of Tax Courts or the competent Chancellor's office.

This procedure is also allowed if the application of penalties arises from a formal request for payment (*"invito al pagamento"*)³².

Realignment of the Suspension Period for Parties to Tax Proceedings³³

The Cura Italia Decree³⁴ seemed to have introduced a different suspension period for hearings and judicial activities for the parties to tax proceedings:

- a) the suspension period for tax authorities seemed to run from 8 March 2020 to 31 May 2020³⁵;
- b) the suspension period for taxpayers ran from 9 March 2020 to 15 April 2020³⁶.

Italian Tax Authorities tried to remove such misalignment through a Circular Letter³⁷, which clarified that the suspension period running from 9 March 2020 to 15 April 2020 would also apply to tax authorities engaged in tax litigations³⁸.

The Liquidity Decree confirms the Italian Tax Authorities' approach and provides that the suspension period for hearings and judicial activities in tax proceedings is the same for taxpayers and tax authorities and now runs from 9 March 2020 to 11 May 2020 (see below).

²⁷ Art. 29(1) of the Liquidity Decree.

²⁸ The telematic tax proceedings are regulated by the Decree of Minister of economy and finance no. 163 dated 23 December 2013 and the subsequent implementing decrees.

²⁹ As well as other revenues collected by provinces and municipalities, enrolled in the register established pursuant to Art. 53 of Legislative Decree no. 446 dated 15 December 1997.

³⁰ Art. 29(2) of the Liquidity Decree.

³¹ Provided by Art. 16 of Presidential Decree no. 115 dated 30 May 2002 (so-called, Courts Charges Code, "CCC").

³² Pursuant to Art. 248 of CCC.

³³ Art. 29(3) of the Liquidity Decree.

³⁴ Law Decree no. 18 of 17 March 2020.

³⁵ Art. 67(1) of Cura Italia Decree, currently being converted into Law.

³⁶ Art. 83(1), (2) and (21) of Law Decree no. 18 of 17 March 2020, currently being converted into Law.

³⁷ See Answer to Question no. 2.8 of Circular Letter no. 8/E of 3 April 2020.

³⁸ The line of reasoning of the Italian Tax Authorities was based on the circumstance that Art. 83 of Cura Italia Decree qualified as a "special" rule on tax proceedings with respect to the "general" provision of suspension of the activities for tax authorities provided by Art. 67 of the same Decree.

Extension of the Suspension Period for the Terms of Tax Proceedings³⁹

The suspension period introduced under the Cura Italia Decree⁴⁰, i.e. from 9 March 2020 until 15 April 2020, is extended until 11 May 2020. Hence, the new suspension period runs from 9 March 2020 to 11 May 2020 (“**Suspension Period**”).

As a result:

- a) the hearings of pending tax proceedings (including those of a criminal nature) are postponed after 11 May 2020;
- b) the terms for the performance of any activity related to tax proceedings (including those of a criminal nature) are suspended until 11 May 2020.

It is worth to recall that, as already provided by the Cura Italia Decree⁴¹:

- a) when terms start within the Suspension Period, the start is postponed until the end of such period;
- b) when terms are determined by counting backwards with respect to the date of a hearing or an activity and the relevant time period falls even partly within the Suspension Period, the hearing or the activity shall be deferred accordingly, in order to respect the time period requirement;
- c) terms for (i) appeals before Tax Courts of first instance and (ii) the conclusion of some specific pre-court procedures (*i.e.* so-called “*reclamo/mediazione*”)⁴² are suspended during the Suspension Period.

The extension of the Suspension Period does not apply to hearings and terms related to criminal proceedings where the maximum time limits for pre-trial detention⁴³ expire within six months after 11 May 2020, irrespective of whether or not the relevant defendant (in pre-trial detention) makes a request to that extent.

Finally, from 11 May 2020 until 30 June 2020, the judicial offices shall adopt the necessary organizational measures to allow the respect of the hygienic-sanitary prescriptions provided for by the Ministry of Health in order to avoid gathering and close contacts among people.

³⁹ Art. 36 of the Liquidity Decree.

⁴⁰ See Art. 83 of the Cura Italia Decree, currently being converted into Law.

⁴¹ See Art. 83(2) of the Cura Italia Decree, currently being converted into Law.

⁴² Provided by Art. 17-*bis*(2) of Legislative Decree no. 546 of 31 December 1992.

⁴³ Provided by Art. 304 of Criminal Procedure Code.

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