

4 May 2020

## **COVID-19: Emergency measures and support measures - Update on Law Decree No. 18 of 17 March 2020 (“Decree”) as converted into Law by Law No. 27 of 24 April 2020 (“Conversion Law”)**

### **Introduction**

On 24 April 2020, Decree Law No. 18 of 17 March 2020 (“**Decree**”) was converted into law by the Italian Parliament with Law No. 27 of 24 April 2020, published in the Official Gazette No. 100 of 29 April 2020 (“**Conversion Law**”). The Conversion Law provides *inter alia* several amendments to the tax provisions laid down in the Decree. This newsletter outlines the relevant tax measures introduced by the Conversion Law.

### **1. What are the tax support measures available to businesses in the entire Italian territory?**

#### **Measures to Support Businesses Engaged in the Tourism Industry - Suspension of Payments related to Withholding Taxes and VAT<sup>1</sup>:**

The Decree suspended the tax payment deadlines falling due between 2 March 2020 and 30 April 2020 for withholding taxes due by tourism-related businesses, travel agencies and tour operators. This suspension lasts until 31 May 2020 for withholding taxes on employment income.

The Decree also suspended the VAT payment deadline set for March 2020 for tourism-related businesses, travel agencies and tour operators until 31 May 2020.

The Conversion Law addresses the suspension of tax payment due by tourism-related businesses, travel agencies and tour operators. In relation to this, tourism-related businesses, travel agencies and tour operators are now subject to the same treatment as the qualifying individuals and entities domiciled or having a permanent address or a place of business in Italy (see below).

#### **Measures to Support Businesses - Suspension of Payments Related to Withholding Taxes, Social Security Contributions and Insurance Premiums for Mandatory Insurance Policies<sup>2</sup>**

The Decree suspends the withholding taxes payments on employment income, social security contributions and mandatory insurance premium falling due between 2 March 2020 and 30 April 2020 due by various physical and legal persons active in the industries specifically listed. For these persons, the Decree also suspends the VAT payment deadline set for March 2020.

The Conversion Law enlarges the scope of application of the measure concerned.

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<sup>1</sup> Art. 61 of the Decree.

<sup>2</sup> Art. 61 of the Decree.

Specifically, businesses engaged in the tourism industry and independent book shops now fall within the scope of application of the suspension.

The suspension of payments applies to:

- a) withholding tax payments falling due between 2 March 2020 and 30 April 2020;
- b) social security contributions and insurance premiums for mandatory insurance policies payments falling due between 2 March 2020 and 30 April 2020; and
- c) VAT payments falling due in March 2020.

Suspended payments must be made, without any penalties or interest, in a single instalment by 31 May 2020 or in up to five monthly installments starting from May 2020.

### **Measures to Support Shops and Workshops<sup>3</sup>:**

The Decree grants to persons engaged in business activities a tax credit of 60% of the rental fee of March 2020 in relation to buildings falling under cadastral category C1 (*i.e.* shops and workshops). The tax credit can only be used to be offset against other tax debts, pursuant to article 17 of Legislative Decree 241/1997 (*i.e.* cannot be claimed for reimbursement).

Business activities that have not been suspended due to Covid-19 outbreak are not entitled to the tax credit.

The Conversion Law clarifies that the tax credit does not trigger Italian Corporate Income Taxation (IRES) nor Regional Productive Activities Taxation (IRAP).

## **2. Are there any tax incentives aimed at promoting private donations?**

### **Tax Incentives for Donations to fight COVID-19<sup>4</sup>:**

The measure aims to encourage donations to limit the spread of COVID-19 through a tax incentive granted to the donors.

Donations in cash or in kind, made by individuals and non-commercial entities, in favor of the State, regions, and local public bodies, non-profit foundations and/or associations, give rise to a tax credit for the donor. The tax credit amounts to 30% of the donation and cannot exceed €30,000. The tax credit can be offset by the donor against his/her gross income tax.

Conversion Law enlarges the scope of the tax incentive. Donations, in cash or in kind, in favor of religious organizations recognized by the Italian State are now covered by the tax incentive.

Donations in cash or in kind, made by individuals or legal entities engaged in a business activity, fall within the scope of application of article 27 of Law no. 133 of 13 May 1999. In a nutshell, these donations (i) are deductible from the donor's taxable income (ii) if they are in kind they do not trigger the deemed realization of the relevant dormant capital gains and are not relevant for VAT purposes (iii) fall outside the scope of the Italian gift tax.

For the purposes of the Regional Tax on Productive Activities (IRAP), these donations are deductible in

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<sup>3</sup> Art. 65 of the Decree.

<sup>4</sup> Art. 66 of the Decree.

the financial year in which the donation is made.

### 3. Are there any consequences for Italian Tax Authorities' activities?

#### Extension of notices of assessment statute of limitation<sup>5</sup>:

The Conversion Law addresses the extension of notices of assessment statute of limitations.

The Decree provided for a two-years extension of the statute of limitations for those notices of assessment expiring on 31 December 2020.

The Conversion Law narrows down the extension concerned to 84 days (corresponding to the suspension period, 8 March to 31 May 2020, of the administrative activities).

### 4. Are there any amendments for tax litigations pending before Italian Courts?

With reference to tax litigations pending before Italian Courts, the Decree<sup>6</sup> introduced the following measures:

- a general<sup>7</sup> postponement of hearings to 15 April 2020, subsequently postponed to 11 May 2020 by the Liquidity Decree<sup>8</sup>;
- a general<sup>9</sup> suspension of judicial activities until 15 April 2020, subsequently extended until 11 May 2020 by the Liquidity Decree<sup>10</sup>;
- Anti-Gathering Measures applicable to judicial offices until 30 June 2020;
- the suspension of the statute of limitations and forfeiture of rights until 30 June 2020;
- measures concerning tax criminal proceedings.

The Conversion Law provides important changes to the abovementioned measures with the view to encouraging the use of the electronic means in tax proceedings despite the ongoing emergency situation.

#### The possibility of using electronic means in proceedings pending before the Italian Supreme Court<sup>11</sup>

Pursuant to a forthcoming order to be issued by the Director General of Information Systems and Automation of the Ministry of Justice, until 30 June 2020, in civil proceedings before the Italian Supreme Court:

- lawyers will be allowed to electronically file appeals and documents in compliance with the laws and regulations concerning the signing, transmission and reception of IT documents;
- the payment of the Tax Court fees<sup>12</sup> (so called, "*contributo unificato*"), as well as the lump-sum advance payment<sup>13</sup> connected to the filing of the acts for starting the proceeding before the Italian

<sup>5</sup> Art. 67 of the Decree.

<sup>6</sup> Art. 83 of the Decree.

<sup>7</sup> An exception to the postponement is made for hearings relating to proceedings where the delay is likely to result in serious prejudice to the parties.

<sup>8</sup> Art. 36 of Liquidity Decree.

<sup>9</sup> An exception to the suspension is made for activities relating to proceedings where the delay is likely to result in serious prejudice to the parties.

<sup>10</sup> Art. 36 of Liquidity Decree.

<sup>11</sup> Art. 83(11-*bis*) of the Decree (as converted into Law by the Parliament).

Supreme Court are discharged by electronic payment systems, also through the so-called “PagoPA” system<sup>14</sup>.

### **Possibility to analogically sign and electronically transmit the power of attorney for litigation<sup>15</sup>**

Until the end of the social distancing measures provided for by the emergency legislation on the prevention of contagion from COVID-19, in civil proceedings, the power of attorney showing the client’s signature may be sent to the appointed lawyer, along with a copy of a valid ID, via mail or email.

In that latter case, the lawyer certifies the signature by simply putting his digital signature to the IT copy for image of the power of attorney.

In order for the power of attorney to be considered linked to a specific appeal or other document<sup>16</sup>, informative instruments identified by decree of the Minister of Justice must be employed.

### **Further measures concerning criminal tax proceedings**

The Conversion Law extends from 9 March 2020 to 30 June 2020 the possibility of using remote connections<sup>17</sup> in criminal proceedings (including tax proceedings) for:

- those criminal hearings that do not require the participation of parties other than the Public Prosecutor, private parties and defense counsels, the judge’s auxiliaries, officers or agents of the judicial police, interpreters, consultants or experts. Hearings held via remote connection must ensure the effective interaction among the parties involved<sup>18</sup>;
- the completion during the preliminary investigation phase, by the Public Prosecutor and the judge, of acts requiring the participation of the person under investigation, the offended party, the defense counsel, consultants, experts or other persons, in cases where their physical presence cannot be assured without jeopardizing the need to contain the spread of COVID-19<sup>19</sup>;
- collective deliberations in chambers in non-suspended civil and criminal proceedings<sup>20</sup>.

In relation to the criminal proceedings pending before the Italian Supreme Court and received by the Court Registry between 9 March 2020 and 30 June 2020, the limitation period is suspended until the date set for the hearing, and in any case no later than 31 December 2020<sup>21</sup>.

Finally, from the date of entry into force of the Conversion Law and until 30 June 2020, decisions on appeals filed to the Italian Supreme Court for discussion in chambers<sup>22</sup> or in public hearing<sup>23</sup> will be dealt with without the presence of the Attorney General and the defendants of the other parties, unless the plaintiff requests an public hearing<sup>24</sup>.

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<sup>12</sup> Ruled by Art. 14 of the Courts Charges Code contained in Presidential Decree no. 115 of 30 May 2002.

<sup>13</sup> Ruled by Art. 30 of the Courts Charges Code contained in Presidential Decree no. 115 of 30 May 2002.

<sup>14</sup> Provided by Art. 5(2) of Legislative Decree no. 82 of 7 March 2005.

<sup>15</sup> Art. 83(20-*bis*) of the Decree (as converted into Law by the Parliament).

<sup>16</sup> Pursuant to Art. 83 of the Civil Procedure Code.

<sup>17</sup> Identified and ruled by the Director General of Information Systems and Automation of the Ministry of Justice.

<sup>18</sup> Art. 83(12-*bis*) of the Decree (as converted into Law by the Parliament).

<sup>19</sup> Art. 83(12-*quater*) of the Decree (as converted into Law by the Parliament).

<sup>20</sup> Art. 83(12-*quinquies*) of the Decree (as converted into Law by the Parliament).

<sup>21</sup> Art. 83(3-*bis*) of the Decree (as converted into Law by the Parliament).

<sup>22</sup> Pursuant to Art. 127 of the Criminal Procedure Code.

<sup>23</sup> Pursuant to Art. 614 of the Criminal Procedure Code.

<sup>24</sup> Art. 83(12-*ter*) of the Decree (as converted into Law by the Parliament).

## 5. Are there any other tax related support measures?

### Suspension of Certain Self-liquidation Tax Payments<sup>25</sup>:

Pursuant to Decree, VAT tax payments falling due between 8 March 2020 and 31 March 2020 are suspended for taxpayers who: (i) have their fiscal domicile, registered office or place of effective management in the Province of Bergamo, Cremona, Lodi and Piacenza and (ii) are engaged in a business, craft or professional activity.

Any suspended self-liquidation tax payments must be made, without penalties and interests, (i) in a single instalment by 31 May 2020; or (ii) in up to five monthly instalments starting from May 2020. Self-liquidation tax payments made before the issuance of the Decree cannot be reimbursed to the taxpayer.

The Conversion Law enlarges the territorial scope of the suspension of VAT payments due between 8 March 2020 and 31 March 2020 in order to include the Province of Brescia.

Gianni, Orioni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations. For our previous newsletters on this subject, please click [here](#).

For any questions, please send a mail to [coronavirus@gop.it](mailto:coronavirus@gop.it)

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<sup>25</sup> Art. 62(2), (3) and (5) of the Decree.