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## Introduction

We are living in extraordinary times. In an extremely brief time, our lives and ways of working have been completely transformed.

The Coronavirus emergency is having a deep impact on global economy and business. All companies of any sectors are dealing with this disruption. While the primary focus of any business will be on ensuring the health and wellbeing of staff, businesses are facing an increasing number of challenges that need to be addressed and mitigated. The legal implications are wide-ranging and complex. Governments and Parliaments around the world are implementing a wide range of emergency measures to help support businesses in light of the Coronavirus pandemic.

In this framework, the Italian Government also adopted urgent measures and Italian Parliament enacted laws for such purpose.

In particular, on the 17<sup>th</sup> of March, 2020 has been published in the Italian Official Journal, the Law Decree No. 18/2020 (so-called “**Cura Italia Decree**”), on the 8<sup>th</sup> of April has been published the Decree Law no. 23/2020 (so-called “**Liquidity Decree**”) and on the 19<sup>th</sup> of May 2020 it has been published the Law Decree no.34/2020 (so called “**Rilancio Decree**”).

The first two of them has been converted respectively into Law no. 27 of 24 April 2020 and Law no.40 of 5 June 2020, meanwhile the third one is going to be converted in the next month of July.

These measures range from employee protection to financial stimulus and some fiscal measures to help businesses, including the suspension of tax and social contribution payments.

The measures taken by the Italian Government to handle the difficult economic situation include extraordinary temporary measures in relation to the judicial system, with specific provisions for trials, the insolvency procedures and other decisions related to shareholders loans, accounting principles and approval of financial statements, temporary measure with respect to foreign investment in Italy.

In this Guide, organized by topic area, you will find a summary of the measures enacted as of 5 June 2020 which are more interesting for business and commercial perspective.

We are already at work to find ways to guide business through this challenging period and we will be pleased to address tax or legal queries on what companies can do now and how they can prepare for the future.

## 1 Financial Issues

### 1.1 MEASURES IN FAVOUR OF LIQUIDITY THROUGH THE BANKING SYSTEM

Article 56 of the Cura Italia Decree introduced an extraordinary moratorium to help SMEs that have suffered temporary liquidity shortages as a result of the epidemic to overcome the most critical phase of the production drop associated with the Covid-19 outbreak. In particular, micro-enterprises and small and medium-sized enterprises in Italy which at the date of entry into force of said Decree (i.e. 17 March 2020), had obtained loans or credit lines from banks or other financial intermediaries will be able to benefit from the following measures.

#### MORATORIUM ON PAYMENT OBLIGATIONS FOR NON-INSTALMENT LOANS

For existing loans, i.e. already granted on the date of 17 March 2020, which have a contractual maturity before 30 September 2020, the contracts are extended, together with guarantees, insurance or other elements that assist them, without any formality, until 30 September 2020 under the same conditions.

#### MORATORIUM ON PAYMENT OBLIGATIONS FOR LOANS REPAYABLE IN INSTALMENTS

In relation to instalment loans already granted on the date of 17 March 2020, the payment of instalments and lease instalments falling due before 30 September 2020 is suspended and the repayment plan for the suspended instalments and lease instalments is deferred together with the accessory elements and without formalities.

#### IRREVOCABILITY OF SHORT-TERM CREDIT LINES

Revocable credit facilities and loans against advances on loans (overdrafts or revolving credit lines) already granted as at 17 March 2020 are irrevocable until 30 September 2020. Irrevocability is provided until 30 September 2020 for both the amount of the credit facilities already drawn and the residual committed amount still to be drawn.

### 1.2 PUBLIC GUARANTEES SUPPORTING FINANCING TO COMPANIES

The Liquidity Decree introduced new important measures to support the liquidity of companies based in Italy damaged by the Covid-19 emergency, that replace and extend the measures previously provided for by the Cura Italia Decree, in particular with regard to the Guarantee Fund for SMEs. The support provided for in the Liquidity Decree takes the form of the granting - until 31 December 2020 - of guarantees in favour of banks, national and international financial institutions and other entities authorised to exercise credit in Italy, for loans in any form issued in favour of the aforementioned companies. These guarantees are granted to financial institutions by SACE and by the Guarantee Fund for Small and Medium Enterprises ("Guarantee Fund for SMEs"), whose scope of action is significantly extended, with the increase up to 90% - and in some cases up to 100% - of the percentage of guaranteed credit and with the extension of the operation of the guarantee to companies with up to 499 employees (i.e. "MID-CAP companies").

The guarantee system provided for by the Liquidity Decree is differently regulated depending on the entity issuing the guarantee in favour of the financial institutions granting the loan to the company (SACE S.p.A. or the Guarantee Fund for SME).

Several measures provided under the conversion into law of the Liquidity Decree (in particular, the increase in guarantee coverage percentages and the extension of duration of the loans) are subject to the authorization of the European Commission, as requested in accordance with the provisions of the Treaty on the Functioning of the European Union, in order to provide them with full operativity.

## THE GUARANTEES ISSUED BY SACE

With regard to the guarantees issued by SACE, there are a number of limits and conditions which reflect the provisions of European legislation introduced, on a temporary and urgent basis, by the European Commission by way of derogation from State aid provisions in order to deal with the Covid-19 emergency. In addition, the maximum amount of guaranteed commitments may not exceed a total of EUR 200 billion, of which at least EUR 30 billion are intended for micro, small and medium-sized enterprises (SMEs), it being understood that SMEs as well as professional associations and companies between professionals, will only be able to access SACE coverage if they have reached the maximum ceiling for guarantees granted by the Guarantee Fund for SMEs and by ISMEA (a public agency supporting companies operating in the agri-food and fisheries sectors). Companies that directly or indirectly control (or are controlled by), pursuant to Article 2359 of the Italian Civil Code, a company resident in a non-cooperative country for tax purposes are excluded from access to the guarantees issued by SACE, unless the company can prove that the non-resident person carries out an effective economic activity, through the use of personnel, equipment, assets and premises.

In particular:

- a. SACE guarantee may not last longer than six years with the possibility for undertakings to take advantage of a pre-amortization period of up to 36 months;
- b. on 31 December 2019, the beneficiary undertaking did not qualify as an “undertaking in difficulty” within the meaning of EU legislation and on 29 February 2020 it did not hold exposures classified as “non-performing loans” by the banking system;
- c. the debt-to-equity ratio recorded over the last two years by the company (which shall not exceed 7.5), relevant for the definition of “undertaking in difficulty”, must include, in the calculation of the assets, certain, liquid and collectable, non-prescribed receivables, arising under supplies and contracts vis-à-vis the Italian public administration entities;
- d. the amount of the guaranteed loan shall not exceed the highest between (i) an amount equal to 25% turnover and (ii) twice the personnel costs; both amounts as resulting from the 2019 balance sheet;
- e. the guarantee may be issued for maximum coverage percentages which may be 90%, 80% or 70% of the granted financing, depending on the number of employees and the value of the turnover;
- f. the loan shall be used in an amount not exceeding 20% of the available amount, for the payment of loan instalments, due or falling due, during the emergency period (i.e. from 1 March 2020 to 31 December 2020) for which there is an objective impossibility of repayment as a result of the COVID-19, certified by the legal representative;
- g. SACE guarantee may only be provided for new loans; to this end, the bank must demonstrate that, following the granting of the loan for which the guarantee is requested, the total amount of the bank’s exposures to the beneficiary is higher than the amount of the outstanding exposure at the time of entry into force of the Liquidity Decree.

The loan covered by SACE guarantee must be intended to support personnel costs, rent fees for instrumental real estate assets, investments or working capital employed in production plants and business activities located in Italy; this circumstance must be certified by the legal representative of the company. The bank, on its part, must certify by a declaration of its legal representative that the bank fees and interest applied to the financing guaranteed by SACE involve a financial cost for the company lower than the cost that would have been applied by the bank for transactions with the same characteristics but without guarantee.

The beneficiary company must also undertake (i) for itself and on behalf of any other company established in Italy which is part of the same group, not to distribute dividends in 2020, (ii) to manage employees through trade union agreements and (iii) not to relocate production, until the fully repayment of the loan.

The guarantee fees due to SACE are established by the Liquidity Decree varies from 25 basis points to 50 basis points on the first year up to a maximum of 100 basis points and 200 basis points on the fourth, fifth and sixth year respectively, depending on whether or not the beneficiaries are SMEs.

A simplified procedure is provided for the issuance of SACE guarantee in favour of companies with less than 5,000 employees in Italy and a turnover of less than 1.5 billion Euros. Requests for new loans must be supplemented by a self-certification of the owner or the legal representative of the applicant company, that relieves the financing entity from carrying out any further checks than the formal verification of such statement.

For companies exceeding these thresholds, the guarantee is subject to approval by decree of the Ministry of Economy and Finance, after consultation with the Ministry of Economic Development.

The conversion into law of the Liquidity Decree introduced the possibility that SACE could issue its guarantees also against the assignment of receivables in respect of which a guarantee of solvency is given by the assignor - made, after 7 June 2020, to banks and financial intermediaries. The procedure and documentation necessary to issue the guarantee will be further specified by SACE.

Moreover, the guarantee of SACE has also been extended in favor of banks, national and international financial institutions and other entities subscribing in Italy to bonds or other debt securities issued by companies to which a rating of at least BB- or equivalent is assigned. If the rating assigned is lower than BBB- the original subscribers of the bonds or debt securities are obliged to hold at least 30% of the value of the bond issue for its entire duration.

## THE GUARANTEES ISSUED BY THE GUARANTEE FUND FOR SMES

The guarantees issued by the Guarantee Fund for SMEs are intended for enterprises with no more than 499 employees (including those having 25% or more of the capital or voting rights held directly or indirectly by a public body or jointly by several public bodies, as well as professional associations and companies between professionals). The European Commission will have to authorize: (i) the increase from 80% to 90% of the coverage percentage of the direct guarantee issued by the Fund in favour of the financing institutions for each financial transaction and (ii) the increase from 90% to 100% of the coverage percentage of the reinsurance or counter-guarantee issued by the Fund in favour of Confidi or other guarantee funds (provided that the guarantees issued by the latter in favour of lending banks do not exceed the maximum percentage of 90% of the financed amount and that they do not provide for the payment of extra fees for the credit risk assumed).

The amount of the guarantee that can be issued by the Fund on subsidized terms in favour of each company is increased from EUR 1.5 to 5 million, it being understood that the (total) loans guaranteed for each company may not exceed the highest of the following amounts:

- a. double the beneficiary undertaking's wage bill of 2019 or of the last available year (including social security contributions and the cost of personnel working on the undertaking's site but formally on the payroll of subcontractors);
- b. 25% of the total turnover of 2019 or of the last available annual account;
- c. the requirement for working capital and investment costs foreseen by the enterprise in the following 18 months (in case the enterprise is an SME) and in the following 12 months (in case of other enterprises with no more than 499

- employees; i.e. MID CAP); the requirement is subject to self-certification by the owner/legal representative of the enterprise.
- d. for companies with multi-year production cycles, revenues from sales and services added to changes in inventories of work in progress, semi-finished and finished products for 2019.
  - e. Companies with turnover not exceeding Euro 3,200,000 may benefit from a guarantee of the Fund for 90% of the financed amount, to which a further 10% cover granted by Confidi or other entities authorized to issue guarantees may be added; in this case, however, the guarantee issued by the Fund may not exceed the highest between 25% of the beneficiary's turnover and double the beneficiary undertaking's wage bill of 2019.

SMEs and natural persons engaged in business, arts or professions, professional associations and companies between professional insurance agents, insurance subagents and brokers registered in the relevant register, as well as "third sector" entities, damaged by the Covid-2019 emergency, shall be entitled to 100% direct guarantee from the Fund, in the maximum amount of Euro 30,000, or the highest between 25% of the beneficiary's turnover (as resulting from the latest financial statements or tax declaration or other appropriate documentation or even self-certification) and double the beneficiary undertaking's wage bill of 2019 or of the last available annual account. The guarantee of the Fund is granted to the financing institution provided that such financing has a maximum duration of 10 years and a pre-amortisation of 2 years. For these loans, the Liquidity Decree provides for a subsidised interest rate (not exceeding the average rate of return on government securities (*Rendistato*) with duration similar to the financing, increased by 0.2%). The guarantee in this case is automatic and does not require any analysis or evaluation by the Fund. Therefore, the bank will only be required to provide the loan based on the verification of compliance with the formal requirements of the Decree.

The Liquidity Decree provides for a simplified procedure for access to the Fund, since only the data necessary to fill in the economic-financial form of the evaluation model provided for by the Fund's operating regulations, aimed at verifying the beneficiary company's credit risk, will have to be submitted by the banks. Requests for new loans must be supplemented by a self-certification of the owner or the legal representative of the applicant company, that relieves the financing entity from carrying out any further checks than the formal verification of such statement.

### 1.3 **"RILANCIO DECREE": THE NEW MEASURES FOR CAPITAL STRENGTHENING**

The new measures introduced by the Rilancio Decree are complementary to those provided by the Cura Italia Decree and the Liquidity Decree and they are aimed at achieving better financial sustainability by strengthening the economic and asset structure of companies. They are mainly classifiable under section 3.1 ("Limited amounts of aid") in the "Temporary Framework for State Aid Measures to Support the Economy in the Current Outbreak of Covid-19", adopted by the European Commission on 10 March 2020 and amended on 3 April 2020 and 8 May 2020 and, as such, subject to the limit of the total gross amount for each company of 800,000 euros (120,000 euros for companies in the fisheries and aquaculture sector and 100,000 euros for companies in the primary production of agricultural products). It is important to underline that the measures covered by section 3.1 of the Temporary Framework may be cumulated with the measures provided for in section 3.2 (i.e. "Aid in the form of guarantees on loans") of the same Temporary Framework, as well as with aid falling within the scope of the *de minimis* regulation.

#### NON-REFUNDABLE PAYMENTS

The Rilancio Decree provides for a non-repayable grant in favor of subjects engaged in business activities and self-employed persons holding an Italian vat registration number, with revenues or fees not exceeding 5 million euros in the last tax period (2019), provided that they



have registered in April 2020 a turnover or fees lower than 2/3 of the amount of turnover or fees registered in April 2019.

The contribution, which may not in any case be lower than 1,000 euros for natural persons and 2,000 euros for subjects other than natural persons, is determined by applying - to the above mentioned difference in turnover - a percentage of 20%, 15% and 10% respectively for subjects with revenues or fees not exceeding (for year 2019) 400,000 euros, 1 million euros and 5 million euros.

## INCENTIVES TO CAPITAL INCREASES

In relation to limited liability companies and joint-stock companies with registered and administrative offices in Italy that have:

- a. recorded revenues for the tax year 2019 between 5 and 50 million euros;
- b. suffered an overall reduction in revenues in March and April 2020 of at least 33% compared to the same period of the previous year, and
- c. approved and implemented, after 20 May 2020 and by 31 December 2020, a fully paid-in capital increase

tax benefits are provided for both shareholders and companies.

In particular, the shareholders are entitled to a tax credit equal to 20% of the cash contributions made in execution of the above mentioned capital increase, with a maximum investment limit of the cash contribution, on the basis of which calculating the tax credit, set at 2 million euros.

Companies whose capital has been increased receive a tax credit equal to 50% of the losses recorded in 2020, in excess of 10% of shareholders' equity, up to a maximum of 30% of the capital increased amount.

The abovementioned benefits (in favour of shareholders and in favour of companies) can be cumulated: the total gross amount of the above mentioned aid measures shall not exceed for each company the amount of 800,000 euros provided for in the Temporary Framework of the European Commission.

## ISSUANCE OF NEW FINANCIAL INSTRUMENTS TO BE SUBSCRIBED BY PUBLIC FUNDS

Companies with revenues exceeding 10 million euros that have benefited from paid-in capital increases of at least 250,000 euros in the period 20 May-31 December 2020 shall also be granted with the possibility to issue (also by way of derogation from the limit provided for by the Italian Civil Code, stating that bonds cannot be issued for an amount higher than the sum of (i) double the share capital, (ii) the legal reserve and (iii) the available reserves resulting from the latest approved financial statements) debt financial instruments with a maximum duration of 6 years and payment of interests accrued, along with the capital, at the date of reimbursement, which may be subscribed by 31 December 2020 by a fund specifically set up and managed by Invitalia (the "SME Fund").

The reimbursement of the capital amount and the payment of interest on the financial instruments issued, are - in case of bankruptcy - subordinated to any other receivable towards the company (except for receivables deriving from shareholders' loans).

In the same direction as the above measures, the Relancio Decree provides the authorisation to Cassa Depositi e Prestiti S.p.A. to set up specific assets to make any kind of investment in joint stock companies with registered offices in Italy and annual turnover exceeding 50 million euro (including the subscription of financial instruments and the acquisition of equity investments on the primary and secondary markets, preferably through the subscription of convertible bonds, participation in capital increases, the purchase of shares listed on the secondary market in the case of strategic operations).

## 1.4 “RILANCIO DECREE”: MEASURES IN SUPPORT OF START-UPS

In addition to refinancing already existing measures (by allocating resources in favour of the loans provided by the “Smart&Start Italia” instrument and the “Venture Capital Support Fund” and by reserving to innovative start-ups a quota of the funds of the “Guarantee Fund for SMEs”), the Relancio Decree provides for:

- a. the allocation of 10 million euros for the granting of non-repayable grants to innovative start-ups for the purchase of services provided by public or private entities operating for the development of innovative enterprises (such as incubators and business angels) and
- b. the 12-month extension of both the period of stay of innovative start-ups in the special section of the Companies Register and of any time limits related to public incentives.

The following measures are instead aimed at encouraging investments in the share capital of innovative start-ups and innovative SMEs:

- a. the introduction of a tax deduction equal to 50% of the amount invested by the individual taxpayer in the share capital of innovative start-ups and innovative SMEs (up to a maximum of 100,000 euro for each tax period and with the obligation to hold the participation for at least 3 years) and
- b. the halving of the financial thresholds for minimum investments in joint stock companies and innovative start-ups (reduced to Euro 500,000 and Euro 250,000, respectively) for non-EU citizens to obtain the so-called “Investor Visa for Italy”.

Finally, two new dedicated funds have been created at the Ministry of Economic Development: as in other European countries, a digital entertainment fund (“First Playable Fund”) has been set up to support the creation and production of videogames through the provision of non-refundable grants, amounting to 50% of the eligible expenses provided for in the Decree itself, for amounts ranging from a minimum of Euro 10,000 to a maximum of Euro 200,000 per single prototype.

In addition to the First Playable Fund, the Rilancio Decree provides for the “Technology Transfer Fund”, through which it is intended to promote initiatives and investments useful for the use of research results by companies (in particular innovative start-ups and innovative SMEs) and also to promote open innovation between the public and private sectors. The Decree provides for the possibility for the Ministry of Economic Development to achieve the above purposes also through indirect participation in the equity and debt capital of companies: methods and criteria of such intervention will be defined through a decree to be issued by the Ministry within 60 days.

## 2 Corporate issues

### 2.1 CONDUCT OF COMPANY MEETINGS

Article 106 of Cura Italia Decree introduced a number of new measures in relation to the conduct of company’s meetings. The provisions of this article apply to company’s meetings convened by 31 July 2020 or by the date, if later, until the state of emergency in Italy relating to the health risk related to the Coronavirus outbreak.

## CONVENING OF THE SHAREHOLDERS' MEETING TO APPROVE THE FINANCIAL STATEMENTS

As an exception to the provisions of article of the Italian Civil Code, which provides for the shareholders' meeting to be convened once a year within 120 days of the end of the financial year and which, among other things, sets the deadline for presenting the financial statements to shareholders at 120 days of the end of the financial year, all companies are allowed to convene the shareholders' meeting to approve the financial statements within 180 days of the end of the financial year.

## EXPRESSION OF VOTES AND CONDUCT OF THE COMPANY'S MEETING

In case of joint-stock companies, limited partnerships, limited liability companies, cooperatives and mutual insurance companies, the expression of vote by electronic means or by correspondence and the participation in the company's meeting by means of telecommunications is also permitted in derogation of the provisions of the articles of the bylaws. The same companies may also provide that the company's meeting is to be held, even entirely, by means of telecommunications that guarantee the identification of the participants, their participation and the exercise of their voting rights, pursuant to and for the purposes of Italian Civil Code, without in any case requiring the chairman, secretary or notary, where required, to be in the same place.

## EXPRESSION OF VOTES IN LIMITED LIABILITY COMPANIES

These companies may allow voting by written consultation or written consent, also by way of derogation from the provisions of article the Italian Civil Code and the various provisions of the articles of the Bylaws.

## **2.2** CAPITAL REDUCTION

Article 6 of Liquidity Decree provides for a suspension from 9 April 2020 to 31 December 2020 of the application of certain articles of Civil Code concerning the reduction of share capital for losses. This implies, therefore, that the cause of dissolution of the company for reduction of the share capital for losses provided for in articles of the Civil Code does not operate.

In particular, these are all those cases in which the share capital undergoes a reduction due to losses (for more than a third or even below the legal limit) to which the administrative body is required to proceed without delay to convene the shareholders' meeting to cover the losses themselves by restoring the minimum share capital, or to resolve on the dissolution of the company.

In order to ensure that shareholders are adequately informed of the company's true financial position, however, the administrative body is still obliged to convene the shareholders' meeting to submit to the latter the report on the company's financial position referred to in Article 2446, paragraph 1 of the Italian Civil Code.

## **2.3** COMPANY FINANCING

Article 8 of Liquidity Decree provides that articles of the Italian Civil Code concerning the subordination of the repayment of financing made by shareholders or by those who exercise management and coordination activities, do not apply when these financing is granted in the period between 9 April and 31 December 2020. Therefore, the mechanisms that in the ordinary way in the event of bankruptcy proceedings put shareholders in second place to creditors are deactivated. The purpose is to encourage the increase of financing flows to the company by shareholders.

## 2.4 PREPARATION OF THE FINANCIAL STATEMENTS

With regard to the financial statements, Article 7 of Liquidity Decree allows for the valuation of the items in the 2020 financial statements on a going concern basis and therefore assuming business continuity, provided that such continuity occurred in the financial statements closed before 23 February 2020 *i.e.* the financial statements for the year ended 31 December 2019. This is a rule that makes it possible to ensure the continued application of valuation criteria also for such companies that had to temporarily cease their activities due to the health emergency. Basically Article 7 seeks to protect companies that were in a business continuity situation before the Coronavirus emergency occurred.

## 2.5 APPOINTMENT OF THE REPRESENTATIVE PROVIDED FOR BY ART. 135-UNDECIES OF THE TUF

### APPOINTMENT OF THE REPRESENTATIVE IN LISTED JOINT-STOCK COMPANIES

Article 106, paragraphs 4 and 5 of Cura Italia Decree, provides that listed joint stock companies, companies admitted to trading on a Multilateral Trading Facilities and companies with shares widely distributed among the public may designate the representative provided for in Article 135-*undecies* of the “Testo Unico della Finanza” or TUF (Consolidated Law on Finance). for the exercise of voting rights at ordinary and extraordinary shareholders' meetings, even if the corporate Bylaws provide otherwise. The same companies may also provide in the notice of call that attendance at the shareholders' meeting shall take place exclusively through this representative; the latter may also be granted proxies or sub-delegations pursuant to Article 135-*novies* of the TUF.

### APPOINTMENT OF REPRESENTATIVE IN BANKING COMPANIES

Similar provisions are provided by Article 106, paragraph 6 of Cura Italia Decree for cooperative banks, cooperative credit banks, cooperative societies and mutual insurance companies.

They may, by way of derogation from Article 150-*bis*, paragraph 2-*bis* of the Testo Unico Bancario (Consolidated Law on Banking) (according to which the statute of cooperative banks determines the maximum number of proxies that may be granted to a member, in any case not exceeding 20), Article 135-*duodecies* of the TUF (which does not allow cooperative societies to use the system of voting proxies) and Article 2539, paragraph 1, Italian Civil Code (which, with reference to cooperative banks, provides that each member may represent up to a maximum of 10 members) and the provisions of the Bylaws that provide for limits on the number of proxies that may be conferred on the same party, designate the representative provided for in Article 135-*undecies* of the TUF for ordinary or extraordinary meetings. The same companies may also provide in the notice of call that participation in the shareholders' meeting shall take place exclusively through the aforementioned designated representative. In such cases Article 135-*undecies*, paragraph 5, of the TUF does not apply. The deadline for conferring the proxy referred to in Article 135-*undecies*, paragraph 1, of the TUF is set at the second day prior to the date of first call of the shareholders' meeting.

## 3 Insolvency procedures and bankruptcy

### 3.1 CRISES AND INSOLVENCY CODE

The so-called "Liquidità" Decree, converted with amendments with the Law of 5 June 2020, No 40, specifically dedicates some articles to insolvency procedures and to the related civil and accounting regulations for companies.

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Firstly, the implementation of the remaining rules of the Crisis and Insolvency Code ("Codice della crisi e dell'insolvenza - Legislative Decree no. 14 of 12.01.2019") is deferred until 1.09.2021, in order to protect the productive economic system to prevent a temporary financial imbalance from being considered as persisting and thus causing the exit from the market of some companies that are still performing.

Again, for the purposes of protecting the entrepreneurial market, until 31 December 2020 the obligations for companies of recapitalization, reduction of share capital or transformation provided by articles 2446, 2447, 2482-bis and 2482-ter of the Italian Civil Code are suspended. It is also provided for the ineffectiveness of the cause for the dissolution of the Company due to the reduction or loss of capital (articles 2484, no. 4 and 2545-duodecies of the Italian Civil Code).

Correspondingly, the principle of valuation of financial statement items on a "going-concern" basis is suspended (Article 2423-bis, par. 1 of the Italian Civil Code; see also Article 2428 of the Italian Civil Code on the drafting of the annual management report).

The temporary disapplication (until 31.12.2020) of the rules on the subordination of loans made in favour of the Company by shareholders or by those performing management and coordination activities (Articles 2467 and 2497 quinquies of the Italian Civil Code) has also been provided for, in order to encourage alternative sources for the possible financial sustainability of the Company.

The sphere of Company's protection also extends to the access to insolvency procedures. With regard to Agreements with creditors, Debts restructuring agreements, Crisis composition agreements and approved consumer plans, the deadlines to comply with these already approved procedures, expiring after 23 February 2020, are extended by six months.

In the proceedings still awaiting for the approval, instead, the debtor Company may file a instance to the Court to obtain an additional period of up to ninety days to amend the plan and the terms of payment proposed to creditors. This possibility, however, is precluded if the creditors have already voted against homologation of the proposal.

The debtor, before the approval of the plan and of the proposal by creditors, may also file a memorandum only containing an indication of new deadlines for the fulfillment of these procedures. Such deferral may not, however, exceed six months.

In addition, the debtor who has obtained the granting of the term provided for by Article 161, par. 6, L.F. already extended by the Court, even if a declaration of Bankruptcy is pending, may request a further extension of ninety days, specifically motivated and justified by the circumstances arising from the Covid-19 epidemic. This last request may also be submitted by the debtor Company who has been granted the time limit as per Art. 182-bis, par. 7, first sentence.

The debtor who by 31 December 2021 has obtained the concession of the terms for the presentation of a composition with creditors with reserve (Art. 161, par. 6, L.F.) or a restructuring agreement (Art. 182-bis, paragraph 7, L.F.) may, within these terms, waive the procedure by declaring that he has prepared a recovery plan pursuant to Art. 67, par. 3, L.F. published in the Companies' Register and by providing the documentation related to said publication. As a result of this waiver, the Court will declare the petition filed pursuant to the above rules (Article 161, par. 6, L.F. or Article 182-bis, par. 7, L.F.) not prosecutable after having verified the completeness and correctness of the documentation.

Finally, it should be noted that, in order to control the imbalances due to exogenous and extraordinary circumstances and to avoid an overburdening of the judicial offices, all petitions for the declaration of bankruptcy filed between 9 March 2020-30 June 2020 are not prosecutable. These provisions shall not apply:

- when the insolvency is not a consequence of the Covid-19 outbreak (but already existing and enduring);
- to the application for bankruptcy by anyone filed under Articles 162, par. 2 (inadmissibility of the composition with creditors), 173, par. 2 and 3 (revocation of admission to the composition with creditors), and 180, par. 7 (failure to approve the composition with creditors) L.F.;
- to petitions filed by the Public Prosecutor accompanied by a request for the issuance of precautionary or conservative measures to protect the company's assets (Article 15, par. 8, L.F.), and this in order to avoid dissipatory conducts, including those of criminal relevance, to the detriment of creditors, or when criminal proceedings are in progress pursuant to Article 7, par. 1 L.F.

Where the declaration of inadmissibility of petitions filed during the period from 9 March 2020 to 30 June 2020 is followed by the declaration of bankruptcy by 30 September 2020, that period (9 March 2020 to 30 June 2020) shall not be counted towards the time limits laid down in Articles 10, 64 (ineffectiveness of acts free of charge), 65 (ineffectiveness of payments of claims due on or after the date of the declaration of bankruptcy), 67 par. 1 and 2 (revocation of acts for pecuniary interest, payments and guarantees), 69-bis and 147 (bankruptcy of the shareholders of a s.r.l. - limited company) L.F..

The purpose of the latter rule is to prevent the blocking of claims from producing detrimental consequences for the mass of creditors, avoiding the forfeiture of the possibility to pursue the recovery actions provided for the protection of the mass.

## 4 M&A

### 4.1 EXTENSION OF THE GOLDEN POWER

The Liquidity Decree has significantly strengthened and extended, although temporarily, the special powers of the executive power in relation to areas considered as strategic and of national interest.

#### GOLDEN POWER: WHAT IT IS

In order to safeguard the structures of companies operating in areas considered strategic and of national interest, Decree Law no. 21 of 15 March 2012 (converted with amendments by Law no. 56 of 11 May 2012) regulates the special powers that can be exercised by the Government in the defence and national security sectors, as well as in certain areas considered of strategic importance in the energy, transport and communications sectors.

With reference to "assets and relationships of strategic importance for the national interest" expressly identified, the Decree Law. no. 21/2012 provides for an obligation to notify any resolution, act or transaction involving such assets and having the effect of modifying their ownership, control or availability in favour of entities outside the European Union, or of changing their destination, as well as any resolution relating to companies holding such assets, which provides for a change of the corporate purpose, the winding-up of the company and the modification of statutory clauses which, in relation to the quantity of shares held by the same party, limit the right to vote to a maximum extent or provide for staggered voting rights.

Pursuant to Decree Law No. 21/2012, notification is also required for transactions related to the purchase by entities outside the European Union of controlling interest in Italian companies that hold assets identified as strategic.

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In relation to a "threat of serious prejudice" to the public interest, the Government is entitled to exercise, on the basis of objective and non-discriminatory criteria, different powers depending on the case, ranging from opposition to the purchase of shares to vetoes to the adoption of corporate resolutions and imposition of specific requirements and conditions.

## THE MEASURES INTRODUCED BY THE LIQUIDITY DECREE

The Liquidity Decree has undoubtedly strengthened and expanded the Golden Power, first of all by extending, until 31st December 2020, the obligation to notify the purchase of shares to new sectors considered strategic in light of the health and economic emergency caused by Covid-19 (namely critical infrastructure, including among the others the financial sector; cybersecurity, technologies aerospace, defence, as well as nanotechnology and biotechnology; security of supply of critical inputs, including energy and raw materials, as well as safety and security nutrition; access to, or the ability to control, sensitive information, including personal data; media freedom and pluralism).

The obligation to notify is also introduced, again until 31st December 2020, in relation to the purchase of controlling shares also by foreign entities belonging to the European Union, as well as to the purchase by entities outside the European Union of interest attributing a share of voting rights or capital equal to or greater than 10% (if the total value of the investment is at least equal to one million euros), as well as to acquisitions that result in exceeding the participation thresholds of 15, 20, 25 and 50%.

The Liquidity Decree also intervenes on the powers of the Government, recognising - in addition to the pre-existing possibility of sanctioning with nullity the transactions carried out in the absence of mandatory notification - the power to intervene ex officio on transactions not notified and to possibly exercise the special powers, as well as the power to request from public administrations, public and private companies, information and documents useful during the investigation phase, possibly preliminary to the exercise of the special powers.

## 5 Employment Issues

The Cura Italia Decree, converted into Law no. 27 of 24 April 2020 and the Rilancio Decree have provided measures, in order to support employees and employers during the epidemiological emergency due to the Covid-19. In the following, we outline the main measures provided by the aforementioned legislation.

### 5.1 SMART-WORKING AND PARENTAL LEAVES

Smart-working has been defined and stated as the ordinary way for working in suspended activities. Pursuant to Law No. 81/2017, in a normal situation, this possibility is granted, only on the basis of an individual agreement with the employee, to be sent to the Ministry of Labour through the "*Cliclavoro*" website. However, due to the current emergency the employer can implement the smart-working modality without any written agreement, by simply communicating the list of the affected employees through the "*Cliclavoro*" website.

The employer has in any case to send to the employees an information about the risks for their health and safety arising from this modality of carrying out the working activity, which can be found on the website of I.NA.I.L., the institute competent for the public insurance against accidents at the workplace.

Following the conversion into Law of the Law Decree "*Cura Italia*", disabled employees, or employees with a disabled person in their household, have the right to perform their work activities in smart-working, until the end of the epidemiologic emergency (now set on 31 July

2020), provided that this way of carrying out the working activity is consistent with the peculiarities of the performance.

According to the Rilancio Decree, until the end of the state of emergency, employed parents having at least a child under the age of 14, have the right to perform their work activities in smart-working, even in lack of individual agreements but still respecting the information's duties of which under Law no. 81/2017, provided that this way of carrying out the working activity is consistent with the peculiarities of the performance and the other parent is not benefiting from income supporting measures or is non-working parent.

The Cura Italia Decree also implemented a special kind of parental leave, connected to the Covid-19 emergency for employees with children up to 16 years of age and to be used solely during the suspension of schools.

The Rilancio Decree has provided that until 31 July 2020, employees with children up to 12 years old can apply for this special parental leave of up to a total of 30 days (15 in addition to the days already provided by "Cura Italia"), even non-consecutive, which can be used alternatively between parents. Alternatively, one ore more bonus are provided for the purchase of baby-sitting services up to a total of euro 1.200,00, granted by means of the so-called "Libretto di famiglia" (euro 600,00 more than the 600,00 already provided by the "Cura Italia").

This special parental leave can be used by only one parent for up to 30 days, under the condition that no other parent can take care of the child. This means that the other parent cannot be completely (i.e. not working at all – so called "at 0 hour") in "furlough" or benefit from the "ordinary salary support cheque of the Salary" ("CIGO - cassa integrazione guadagni ordinaria" or "assegno ordinario del Fondo di Integrazione Salariale"), be unemployed, or on maternity leave. In the event that the employee's child is younger than 12 years, an indemnity corresponding to 50% of the employees' salary is granted during the parental leave. Parents of children up to 12 and 16 years old can be granted the parental leave, but in this case without any salary indemnity.

## **5.2 SOCIAL SECURITY PAYMENTS CONNECTED TO THE COVID-19 EMERGENCY**

ORDINARY FURLOUGH FOR "COVID-19-NAZIONALE" ("CIGO - CASSA INTEGRAZIONE GUADAGNI ORDINARIA") AND "ORDINARY SALARY SUPPORT CHEQUE OF THE SALARY" ("ASSEGNO ORDINARIO DEL FONDO DI INTEGRAZIONE SALARIALE")

The Cura Italia Decree and the Rilancio Decree have introduced special measures in order to support companies that under normal circumstances cannot benefit from any measure.

While companies of the industrial sector (manufacturing, transport, extraction, production and distribution of energy, water and gas, construction and similar) have access to the "ordinary furlough" (hereinafter "CIGO") as usual, without regard to the number of their employees, companies that normally cannot request CIGO and belong to sectors that have not set up special bilateral solidarity funds for emergency cases, can request the "ordinary salary support cheque" (hereinafter "FIS") if they employ more than 5 employees and pay contribution to the salary integration fund.

Both CIGO and FIS can be requested for blue-collar and white-collar employees, middle-line managers and apprentices with professional contract, while executives are excluded. The aforementioned workers must be regularly hired and assigned to the relevant production unit for which the salary integration treatment is requested as of 25 March 2020.

The aforementioned social security payments can be requested for a maximum period of 9 weeks with reference to periods between 23 February 2020 and 31 August 2020. The 9-week duration is increased by further 5 weeks only for employers that have already benefited from



the above-mentioned 9 weeks. A further 4 weeks period is granted for companies that have depleted the above-mentioned 14 weeks (9+5).

In order to have access to the CIGO or FIS, and also in case of prorogation of the relevant periods, the company has to inform and consult the Union representatives, inviting them to a joint examination, which shall be carried out - even just online, e.g. in videoconference - within 3 days from the request. Thereafter, the company can submit its request to the local competent office of the I.N.P.S.<sup>1</sup>, within the end of the month following the one in which the suspension/reduction of work-activity occurred and must indicate the reason: “COVID-19 nazionale”. The indication of the aforementioned reason is important in order to have access to the relevant treatment and - in case of companies that do normally have access to the CIGO - in order to distinguish this special request from the “usual” CIGO motivation’s requests. The deadline for the submission of applications related to periods of suspension or reduction of work activity, which started between 23 February 2020 and 30 April 2020, shall be 31 May 2020.

The CIGO/FIS indemnity can be paid out directly by the I.N.P.S., or be anticipated by the employer and then compensated with the social security contribution due by the employer to the I.N.P.S.

The CIGO and FIS indemnity amounts to 80% of the employee’s global salary, within certain maximum limits set for by the I.N.P.S.: Euro 998,18 for monthly global salaries up to Euro 2.159,48 and Euro 1.199,72 for higher wages. The corresponding costs for the employer, in case of application by 100% of the CIGO / FIS, amount solely to the T.F.R. (7,6% of the ordinary salary). In any case, the maximum limits provided above for the indemnities are applied only in case of complete suspension of work, while in case of partial reduction of the working hours, the maximum amounts must be reduced proportionately to the reduction.

#### “DEROGATORY FURLOUGH” FOR “COVID-19-NAZIONALE” (“CID – CASSA INTEGRAZIONE IN DEROGA”)

The “Cura Italia” Decree and the “Rilancio” Decree have also introduced a special measure – the “Derogatory furlough” (“Cassa Integrazione in Deroga” hereinafter CID) that can be requested by all companies excluded from the CIGO-FIS, regardless of their sector of activity and the number of workers employed by them (i.e. even in the event that they should have only 1 employee).

The CID may be granted for the duration of the suspension of the work-activity and in any case for a period not exceeding 9 weeks for a period between 23 February 2020 and 31 August 2020, increased by further 5 weeks after depletion of the initial 9 weeks period. A further 4 weeks period is granted for companies that have depleted the above-mentioned 14 weeks (9+5).

The single Regions and Autonomous Provinces have regulated the access to this measure and have autonomously defined the procedure to be followed for submitting the request. In any case, the payment can be carried out exclusively directly by the I.N.P.S., which receives the authorization decrees from the Regions within 48 hours.

For this reason, the employer has to send to the INPS all the data necessary for the payment of the salary integration, according to the instructions raised by the INPS itself, by the 20th day of each month following the one in which the salary integration period is active.

Companies with more than 5 employees and that cannot have access to CIGO or FIS, must sign an agreement with the Unions, in order to be entitled to request the CID, while for companies with up to 5 employees no prior trade union agreement has to be stipulated unless

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<sup>1</sup> I.N.P.S. is public institute for social security

this has been expressly stated by the regional agreements and provision on the CID. Companies located in more than 4 different regions have to file their request to the Labour Ministry.

Differently from the usual regulations regarding derogatory furlough, for the one connected to the Covid-19 emergency, there is no need to force all employees to use all their holidays and paid leaves before accessing such measure.

As CIGO and FIS, the CID indemnity amounts to 80% of the employee's global salary, within certain maximum limits set for by the I.N.P.S.: Euro 998,18 for monthly global salaries up to Euro 2.159,48 and Euro 1.199,72 for higher wages. The corresponding costs for the employer, in case of application by 100% of the CID, amount solely to the T.F.R. (i.e. 7,6% of the salary). In any case, the maximum limits provided above for the indemnities are applied only in case of complete suspension of work, while in case of partial reduction of the working hours, the maximum amounts must be reduced proportionately to the reduction.

### **5.3 PROHIBITION OF DISMISSAL**

Pursuant to art. 46 of the "Cura Italia" Decree, as amended by the Rilancio Decree, starting from the date of entry into force of the "Cura Italia" Decree (17 March 2020), the beginning of mass dismissal procedures is precluded for 5 months. This means that until 17 August 2020 mass dismissals procedures cannot be started and pending procedures started after 23 February 2020 are suspended.

Until the expiration of the above-mentioned deadline, employers also cannot proceed with individual dismissals for justified objective reason pursuant to art. 3 of Law no. 604/1966, regardless of the number of employees and cannot resume the ongoing procedures of dismissal for objective reason of which under art. 7 of Law no. 604/1966.

Such prohibition does not apply in case the staff affected by the dismissal are employed under a contract relationship and are re-employed following the intervention of a new contractor on the basis of a legal provision, a national collective labour agreement or the contract itself.

Employers who, in the period from 23 February 2020 to 17 March 2020, have terminated employment contract for objective reasons, may revoke the dismissal at any time, provided that they simultaneously apply for the salary integration treatment from the date on which the dismissal took effect. In this case, the employment relationship shall be deemed to have been restored without interruption, without charge or penalty to the employer.

### **5.4 EXTENSION OR RENEWAL OF FIXED-TERM EMPLOYMENT CONTRACTS**

The conversion of the "Cura Italia" Decree into Law no. 27/2020 granted employers the possibility of renewing or extending fixed-term contracts and fixed-term lease of manpower agreements, in derogation of articles 20 and 32 of Legislative Decree no. 81 of 15 June 2015, which prohibits the stipulation and/or extension of fixed-term employment (or lease of manpower) relationships at production units in which there is an ongoing suspension of work or a reduction in working hours covered by a "Furlough" treatment. Moreover, a derogation has been made to article 21, paragraph 2, of Legislative Decree no. 81/2015, which provides for the compliance with a fixed period of time (the so-called "stop&go" period) between the expiry date of the first fixed-term contract and the second fixed-term contract to be entered into with the same worker.

Finally, the Rilancio Decree has provided for the possibility of renewing or extending fixed-term contracts, only if already in force as of 23 February 2020, until 30 August 2020, also in derogation of art. 19 of Legislative Decree 81/2015 (which provides for the obligation to state specific reasons for fixed-term employment relationships of more than 12 months).

## 5.5 ARISE OF WORK RELATIONSHIPS

With reference to the following sectors:

- Agriculture, breeding and zootechnic, fishing and related activities;
- Personal assistance;
- Support domestic work

employers may apply for stipulating an employment contract with foreign citizens present on the national territory or for stating the existence of an irregular employment relationship, still in progress, with Italian citizens or foreign nationals. Similarly, foreign citizens, with a residence permit expired on 31 October 2019 (not renewed), can apply for a temporary residence permit, valid only in the national territory, for a duration of six months from the submission of the application.

## 5.6 PROSECUTION OF ACTIVITIES IN THE COMPANY

On 24 April 2020, the "Agreement on measures aimed at containing the spread of the Covid-19 in the workplace" signed on 14 March 2020 by the CGIL, CISL and UIL (most representative Unions at national level) together with the Government and the Employers' Associations, has been integrated. The Agreement, taking into account the different government provisions, provides that "*the continuation of production activities can only take place under conditions that ensure adequate levels of protection for the workers*".

Therefore, prosecution of the activity is subject to the provision of this Agreement and in any case has to respect the relevant provisions set for by the relevant legislation. The implementation of said provisions has in any case to be strictly referred to the concrete working conditions of each company.

Failure to implement the Protocol which does not ensure adequate levels of protection shall result in the suspension of the activity until safety conditions are restored and in case of infected workers the employer could incur criminal liability.

## 5.7 HEALTH MONITORING

Until the date on which the emergency ceases, employers shall ensure, exclusively through the company doctor, exceptional health surveillance of workers most at risk of infection on the basis of age, immunodepression risk, oncological pathologies or life-saving therapies.

Employers who are not obliged to appoint the competent doctor may appoint a doctor for the emergency period or may apply to the INAIL, which provides this service with its own occupational physicians.

If the employee is found to be unfit for the job, this is not a reason for the employer to terminate the employment contract.

## 6 Fiscal Issues

The measures described below refer to the one provided for in the Cura Italia Decree, converted into Law no. 27 of 24 April 2020, in the Liquidity Decree, converted into Law no. 40

of 5 June 2020 and in the new Rilancio Decree no. 34 of 19 May 2020, thus are referred to the situation as of 5 June 2020. Please consider that the situation is subject to further updates in case of introduction of any other measure.

## 6.1 SUSPENSIONS OF PAYMENT DEADLINES AND TAX OBLIGATIONS

The Cura Italia Decree converted into Law no. 27 of 24 April 2020, the Liquidity Decree, converted into Law no. 40 of 5 June 2020, and the Rilancio Decree, as a result of the health emergency arising from the spread of Covid-19, provided for some suspensions of the terms with reference to tax and social security contributions payments and other tax obligations.

The postponements concern a wide range of taxpayers, but are differentiated according to the type of activity carried out, the amount of revenues or compensation received during the tax period prior to the entry into force of the Decrees, the geographical location of the registered office in the places most affected by the emergency.

Among them, the most important measures interesting for businesses in Italy are detailed below.

### TAXPAYERS WORKING IN SPECIFIC SECTORS MOST AFFECTED BY THE EMERGENCY

Decree Law no. 9 of 2 March 2020 already guaranteed the suspension until 30 April 2020 of the payments of withholding taxes on income from employment and similar activities, as well as of the obligations and payments of social security and welfare contributions, as well as compulsory insurance for companies in the tourism and hospitality sector, travel and tourism agencies and tour operators with registered or operational seat or tax domicile in the territory of the State. This provision was extended to 31 May 2020 for sports federations, sports promotion bodies, associations and sports clubs.

For these entities, payments relating to VAT due in March 2020 (VAT for the month of February 2020 and VAT balance 2019) were also suspended. Article 61 of Cura Italia Decree extended this suspension also to other subjects<sup>2</sup>. These lists were indicative and not exhaustive, as confirmed in the following Resolution no. 14 of 21 March 2020<sup>3</sup>.

Suspended payments shall have been made, without the application of sanctions and interest, in a single installment by 31 May 2020 or by up to 5 equal monthly installments from May 2020 (by 30 June 2020 or from June for sports federations and associations). No repayment shall have been made of amounts already paid.

### TAXPAYERS WITH REVENUES LOWER THAN € 2 MILLION IN 2019

Article 62 of Cura Italia Decree suspended payments due between 8 March 2020 and 31 March 2020 for taxpayers who accrued, in the previous tax period (2019), revenues and compensation not exceeding 2 million euros. The deferral of payment deadlines expiring between 8 March and 31 March 2020 applied to taxes subject to self-liquidation concerning withholding taxes on employees' and similar income, social security and welfare contributions, and compulsory insurance premiums, as well as VAT. For these entities, the deadline for payment was set at 31 May 2020, in a single installment, i.e. in five equal monthly installments starting from May 2020, without the application of interest and penalties.

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<sup>2</sup> The subjects belong to the tourism/hotel sector, thermal baths, transport of passengers, catering and bars, culture (cinemas, theatres), sports, education, social assistance (non-residential for the elderly and disabled), amusement parks, events (fairs/conferences), amusement arcades and betting centers, volunteers/social services

<sup>3</sup> <https://www.agenziaentrate.gov.it/portale/documents/20143/2369968/RIS+sospensione+versamenti+COVID-19+T.pdf/13271ba0-12eb-75c6-d8f8-c272ff40b7cc>  
[https://www.agenziaentrate.gov.it/portale/documents/20143/2369968/ris\\_sospensione\\_versamenti\\_COVID19ulteriori\\_precisazioni.pdf/18f7990c-f37e-e84d-7be9-9e3e572def0d](https://www.agenziaentrate.gov.it/portale/documents/20143/2369968/ris_sospensione_versamenti_COVID19ulteriori_precisazioni.pdf/18f7990c-f37e-e84d-7be9-9e3e572def0d)

## TAXPAYERS RESIDING IN THE PROVINCES OF BERGAMO, CREMONA, LODI AND PIACENZA

Article 62, paragraph 3 of Cura Italia Decree provides that the suspension of VAT payments expiring between 8 March 2020 and 31 March 2020 and extended to 31 May 2020 applied to those performing business, art or profession activities who have their fiscal domicile, registered office or operating seat in the Provinces of Bergamo, Cremona, Lodi and Piacenza regardless of the volume of revenues or compensation received.

## TAXPAYERS RESIDING OR BASED IN THE FIRST "RED ZONE" MUNICIPALITIES

The Ministerial Decree of 24.02.2020 and art. 62, par. 4 of Cura Italia Decree suspended the terms for the payment of social security, welfare and obligatory insurance contributions and tax obligations expiring between 21 February 2020 and 31 March 2020 for those who on the date of 21 February 2020 had their fiscal domicile, registered office or operating seat in the municipalities belonging to the so-called "red zone"<sup>4</sup>.

## NEW POSTPONEMENTS AFTER THE ISSUING OF THE RILANCIO DECREE

Articles 126 and 127 of the Rilancio Decree further postponed the abovementioned deadlines to the 16 September 2020.

In particular, the measure concerns:

- the payment of withholding taxes on employees' income;
- withholdings relating to the regional and municipal surtax;
- VAT suspended by art. 18 of the Liquidity Decree for the months of April and May 2020;
- withholdings deriving from the non-application of withholding taxes on revenues and compensation received in the period between 17 March and 31 May by those with revenues or compensation not exceeding 400.000 euro;
- withholdings suspended from March 2 to April 30, as well as VAT due in March 2020 in favour of subjects operating in the sectors mentioned in art. 61 of the Cura Italia Decree;
- suspended payments for subjects with revenues or compensation up to 2 million and for subjects in the provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza.

Suspended payments may be made, without the application of sanctions and interest, in a single installment by 16 September 2020 or up to a maximum of four monthly installments of equal amount, with payment of the first installment by the said deadline of 16 September.

The measure concerns:

- those operating in the sectors most affected by the emergency (tourism, catering, entertainment, transport, etc.) – previous deadline 31 May 2020 or 5 instalments starting from May
- those carrying out business, art, profession with revenues or remuneration not exceeding 2 million euro in 2019 - previous deadline 31 May 2020 or 5 installments starting from May
- those who suffered a decrease in turnover or fees of at least 33 per cent (revenues or fees in 2019 up to 50 million euro) or at least 50 per cent (revenues or fees in 2019 over 50 million euro) in the months of March and April 2020 compared to the same months of 2019 - previous deadline 30 June 2020 or 5 installments starting from June
- those carrying on business activities, art or profession having their fiscal domicile, registered office or operational seat in the provinces of Bergamo, Brescia, Cremona, Lodi, Piacenza - previous deadline 31 May 2020 or 5 instalments starting from May
- those carrying on business activities, art or profession having their fiscal domicile, registered office or operational seat in the provinces of Bergamo, Brescia, Cremona, Lodi, Piacenza, and the newly added provinces of Alessandria and Asti (as provided for in the

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<sup>4</sup> Municipalities of Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini and Vo'.

- conversion of Liquidity Decree), which have suffered a decrease in turnover or fees of at least 33 per cent in the months of March and April 2020 compared to the same months of 2019 - previous deadline 30 June 2020 - or 5 instalments starting from June
- those who have started the business activity after 31 March 2019 - previous deadline 30 June 2020 or 5 instalments starting from June
  - national sports federations, sports promotion bodies, professional and amateur sports associations and clubs for payments due in March, April, May (already due on 30 June 2020 or 5 instalments starting from June) and June 2020
  - non-commercial entities, including those belonging to the Third Sector, civilly recognized religious bodies, which carry out institutional activities not under the business regime - previous deadline 30 June 2020 or 5 installments starting from June
  - those having their fiscal domicile, registered office or operational seat in the municipalities belonging to the so-called "Red Zone" for payments due between 21 February 2020 and 31 March 2020 - previous deadline 31 May 2020 or 5 installments starting from May
  - those having their fiscal domicile, registered office or operational seat in the municipalities belonging to the so-called "Red Zone" for payments due between 23 February 2020 and 30 April 2020 - previous deadline 1 May 2020 or 5 installments starting from May.

## SUSPENSION OF "PREU" PAYMENTS ON GAMING MACHINES

The payment of the PREU (Single Treasury levy) on gaming machines and the license fee due by 30 April 2020 are extended to 29 May 2020. Suspended payments shall be made in 8 equal monthly installments starting on 29 May 2020 and within the last day of the following months. The daily statutory interest applies (0.05% per year).

## DEFERRAL OF OTHER TAX OBLIGATIONS BESIDES PAYMENTS

All tax obligations other than payments, withholding taxes and retention of withholding tax relating to the regional and municipal surtax due between 8 March 2020 and 31 May 2020 are suspended. The fulfillment shall be made, without the application of any penalty, by 30 June 2020.

This deadline includes the VAT declaration 2020 for the fiscal year 2019 (deadline 30 April), the Intrastat models (deadlines 25 March, 27 April and 25 May), the "Esterometro" (deadline 30.04) and the first quarter VAT return "LIPE" (deadline 31.May).

With reference to the provisions concerning the deadline for the 2020 pre-filled tax return ("730 precompilato"), the deadline for providing the interested parties and the electronic transmission of the 2020 "Certificazione Unica" (Single Certification) is extended to 30 April 2020, without the application of penalties, without prejudice to the other provisions of art. 62 of the Cura Italia Decree.

## WITHHOLDING TAX: POSTPONEMENT

The Liquidity Decree extended to 31 May 2020 the deadline already provided for by the Cura Italia Decree with reference to the date of accrual of revenues and compensation received by parties with revenues or compensation not exceeding Euro 400,000 in the previous tax period (2019).

The fees received in the period from 17 March 2020 to 31 May 2020 are therefore not subject to withholding tax (on self-employment and other income and commissions relating to commission, agency, brokerage, trade representation and business relations), upon the non-exposure of the withholding tax on the invoice and the submission of a specific declaration by the recipient.

Those who have incurred expenses for employee or similar services in the previous month may not benefit from the above-mentioned provision.

Withholding taxes which had to be paid in a single installment by 31 July 2020 (the previous deadline of 31 May 2020 was already cancelled), by the recipient, or in 5 equal installments starting from the month of July 2020 (no longer May 2020), without the application of penalties and interest, have now to be paid within the 16 September 2020 or in four installments starting from the 16 September.

In this regard, a special tax code will soon be established by the Revenue Agency.

## FURTHER SUSPENSIONS FOR PAYMENTS DUE IN APRIL AND MAY

The suspended payments for April and May must be made, without penalty and interest, in a single installment by 30 June 2020 or by up to 5 equal monthly installments from June 2020.

The new measures shall apply to those who earned revenues or fees of less than 50 million euro in the previous tax period, and who have experienced a decrease in turnover or fees of at least 33% in March 2020 compared to March 2019, and at least 33% in April 2020 compared to April 2019. The decrease in turnover for persons who have exceeded 50 million turnover in the previous tax period must be at least 50%.

The suspension also applies to those carrying out business, art or professional activities that have started their activity after 31 March 2019 and, without limits on turnover, to those based in the provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza who have registered a decrease in turnover of at least 33%.

## 6.2 TAX AND FINANCIAL BENEFITS

### TAX CREDIT FOR SANITATION AND PURCHASE OF PROTECTIVE DEVICES

A tax credit up to a maximum of 60.000 euro (up to a total limit of 200 million euro), equal to 60 per cent of the expenses incurred in 2020 to sanitize the working environment and the tools used in the activity, is introduced for those carrying out business activities, art or profession, associations, foundations and other private entities, including those of the Third Sector, as well as to purchase personal protective equipments and those suitable to ensure the health of workers and visitors, comprising devices to ensure the interpersonal safety distance, as well as installation costs (masks, gloves, protective visors and goggles, protective overalls and footwear, hand cleansers and disinfectants, thermometers, thermoscanners, decontaminating and sanitizing carpets or trays, barriers and protective panels). The benefit does not contribute to the formation of income for tax purposes and the value of production for IRAP (regional tax) purposes and can be included in the tax return for the tax period in which the expenditure is incurred or can be used as compensation through F24. A measure issued by the Tax Authority will define the implementing provisions. At the same time, art. 64 of the Cura Italia Decree, converted by Law no. 27 of 24 April 2020 and art. 30 of the Liquidity Decree Law (TAX CREDIT FOR WORKPLACE SANITATION) are repealed.

### TAX CREDIT FOR THE ADAPTATION OF WORKING ENVIRONMENTS

As part of the measures to contain and prevent the spread of the virus in the workplaces, a tax credit is being introduced equal to 60 per cent of the expenses incurred in 2020 for construction interventions or for the purchase of furniture, instruments and equipment necessary to comply with health regulations for the containment of the virus.

The tax credit is granted to those carrying out business activities, arts and professions in places open to the public (hotels, bars, restaurants, ice-cream parlours, museums, theatres, libraries, bathing establishments or spas...), foundations and institutions, including those

belonging to the Third Sector, up to a maximum of 80.000 euro per beneficiary and may be used exclusively as compensation in 2021.

The eligible expenses that can currently be identified relate to construction work (adaptation of canteens, changing rooms, construction of new spaces), purchase of safety furniture, purchase or development of tools and technologies that ensure the performance of work in safety, the purchase of temperature sensing equipment for employees and visitors, but further eligible expenses and eligible persons may be identified by decree Mef-Mise.

The tax credit, which may be combined with other benefits for the same expenses within the limits of the cost incurred, may be transferred to other entities, but not reimbursed. The Tax Authority shall also provide operating instructions on the criteria and methods of application and use of the tax credit.

## TAX CREDIT FOR THE RENTAL OF SHOPS AND STORES

In order to limit the negative effects deriving from the emergency situation and the compulsory closures of non-essential activities imposed by the Government, Cura Italia Decree introduced the possibility, only for business operators in the "non-essential" categories, to benefit from a tax credit equal to 60% of the amount paid for the rental payments relating to March 2020 of buildings belonging to cadastral category C/1 (shops and stores). The credit can be used to offset other taxes by means of the F24 model.

## AMENDMENTS TO THE TAX CREDIT FOR ADVERTISING INVESTMENTS

For the year 2020 an extraordinary access system to the "Advertising Bonus" incentive is planned in order to counter the drastic drop in advertising investments that is affecting the many publishing companies. It can be used by those holding business income, self-employed workers and non-commercial entities, under the same conditions provided for in par. 1 of Article 57-bis of Legislative Decree 50/2017 and within the maximum limit of expenditure established in accordance with par. 3 or the maximum limit defined annually by the Prime Ministerial Decree issued within the deadline for sending the communication and in any case within the limits of the regulations of the European Union.

This incentive has been briefly modified as follows:

- i. Quantification of the tax credit equal to 30% of the expenses incurred and no longer, as previously established, on the incremental investment. The eligible expenses are those relating to advertising campaigns in the daily and periodical press, including online, and on local analogue or digital television and radio stations in 2020;
- ii. Deferment by 6 months of the period for sending the telematic communication of access to credit by submitting the request from 1st September 2020 to 30 September 2020 and keeping valid those submitted from 1st January 2020 to 31 March 2020.

## TAX CREDIT FOR THE CONVERSION OF DEFERRED TAX ASSETS RELATING TO LOSSES AND ACE SURPLUSES

Companies that by 31 December 2020 finalize the sale of commercial or financial receivables, due from defaulting debtors (default occurs when the non-payment exceeds 90 days from the due date) have the possibility to transform into tax credits deferred tax assets (DTA) resulting from tax losses pursuant to Article 84 TUIR not yet deducted from taxable income and ACE surpluses not yet deducted or enjoyed through tax credits at the date of the sale.

This provision does not apply to transfers of receivables between companies linked by controlling relationships pursuant to Article 2359 of the Italian Civil Code and subsidiaries,



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even indirectly, of the same entity, nor to entities that are at risk of bankruptcy or in a state of insolvency.

The maximum limit of tax losses and ACE surpluses that may be included in the computation of convertible DTAs may not exceed 20% of the nominal value of the assigned receivables.

For conversion purposes, receivables assigned by 31 December 2020 whose nominal value is up to 2 billion euros are recognized. For entities belonging to groups, the limit is calculated taking into account all the assignments made by the group members.

The receivable must be indicated in the tax return and may be used for offsetting, sold to third parties or claimed back.

## DONATIONS OF GOODS

It has been provided for the extension of donations of products for social solidarity purposes (e.g., extension to donations of textiles, clothing, furniture, toys, building materials and household appliances, PCs, tablets, e-readers and other reading devices in electronic format, no longer marketed or not suitable for marketing) that can benefit from the tax benefits recognized by art. 16 of Law 166 /2016 (referring to the free sale of food, pharmaceutical and other products for social solidarity purposes), carried out by companies towards ONLUS, Third Sector entities, public and private bodies set up for the non-profit pursuit of civic and solidarity purposes. With reference, therefore, to the free sale of these products for social solidarity purposes, it is provided that:

- iii. The assets are not considered to be intended for purposes unrelated to the business operations of the company pursuant to Article 85, paragraph 2 of the TUIR, and therefore the sales in question are not considered to produce revenues that contribute to the determination of the business income;
- iv. The presumption of supply of goods pursuant to Article 1 of Presidential Decree 441/97 does not operate for VAT purposes.

The presumption of supply of goods for VAT purposes does not apply to free supplies of medicines under authorized compassionate use program, nor does the market value of such supplies is considered as revenue for direct tax purposes.

## INCREASE IN THE ANNUAL LIMIT OF CREDITS THAT CAN BE OFFSET BY MEANS OF THE F24 MODEL

For the year 2020, the maximum limit provided for in the art. 34 par. 1 Law 388/2000 of tax credits and contributions that can be offset in F24 or reimbursed to taxpayers is raised from 700.000 euro to 1 million euro.

## REDUCTION IN VAT RATE FOR THE SALE OF GOODS NEEDED FOR THE MITIGATION AND CONTROL OF THE EPIDEMIOLOGICAL EMERGENCY FROM COVID-19

VAT due on supplies made by 31 December 2020 of equipment and products useful for the containment of the epidemic has been reduced to zero. The rate will change to 5 per cent as from 1 January 2021. The goods concerned by the measure include, among others, lung ventilators, tubes, suction and humidification systems; laryngoscopes and ultratomographs; surgical masks, Ffp2 and Ffp3; protective clothing for sanitary purposes (latex, vinyl and nitrile gloves, protective visors and goggles, protective overalls, footwear and over-shoes, headgear, waterproof gowns and surgical gowns); thermometers; hand sanitizers and related wall dispensers; tampons. The right to deduct the tax paid on purchases and imports of these goods is in any case granted, even if they relate to transactions exempt pursuant to art. 19 of DPR 633/1972.

## 6.3 SUSPENSION OF ADMINISTRATIVE DEADLINES

The control, clearance and collection activities of the offices of the Italian tax authorities are suspended from 8 March 2020 to 31 May 2020. This concerns the "external" activities of the offices, such as the notification of questionnaires and checks, since the others are not suspended. There is no provision for a general suspension of payment periods arising from acts of taxation. Such suspension operates only for certain types of acts, such as enforceable tax assessment verification notices and notices of payments.

The following, among others, are excluded from any suspension: tax collection notices ("Avvisi bonari") issued following the automatic liquidation/formal check of the declaration and liquidation notices issued in relation to taxes on deeds.

### TAX ASSESSMENT VERIFICATION NOTICES AND ENFORCEABLE TAX ASSESSMENT VERIFICATION NOTICES

Payments due from 8 March 2020 to 31 August 2020 are postponed to 30 September 2020 if they result from the notices referred to in Article 29 of Legislative Decree 78/2010. These are tax assessment verification notices issued in relation to income taxes, VAT and IRAP or other minor tax areas, the rules of which refer to those of income taxes. The same applies to Customs assessment notices (Article 9, paragraphs 3-bis to 3-sexies of Law Decree 16/2012) and for local tax assessment verification notices, enforceable from 1 January 2020 pursuant to Article 1, paragraph 792 of Law 160/2019.

Tax injunctions ex RD 639/10 also benefit from the postponement. The Italian Revenue Agency specified that the postponement until 30 September 2020 does not apply to enforceable tax assessment verification notices: for these enforceable tax assessment verification notices, taxpayers do not benefit from the postponement until 30 September 2020, but only from the suspension of the deadlines from 9 March 2020 to 11 May 2020 (suspension of procedural activities).

### INPS DEBIT ALERTS

The payment terms deriving from art. 30 of DL 78/2010 are suspended from 8 March 2020 to 31 August 2020. These are the acts through which INPS (Italian National Social Security Institute) recovers unpaid social security contributions, regardless of the reason for the omission (non-payment, evasion).

The payment must be made by 30 September 2020 in a single instalment, and it is in any case possible to defer the amounts pursuant to art. 19 of Presidential Decree 602/73.

The payment terms are not suspended for acts by which the various pension funds, such as, for example, the Funds for self-employed professionals, order the payment of contributions. Unless, of course, this is part of other postponement/suspensions provided for by Cura Italia Decree or the order is made by means of a notice of payments.

### NOTICES OF PAYMENTS

Payment terms due from 8 March 2020 to 31 August 2020 arising from tax collection acts issued by Collection Agents are postponed to 30 September 2020. This can also refer to a non-tax income, therefore the suspension operates regardless of the body that has formed the notice of payments (Tax Agency, Professional Welfare Fund, Local Authority) as well as the legal nature of the notice of payments itself (it is not relevant whether it is ordinary or extraordinary).

### DIVISION INTO INSTALMENTS

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The division into instalments of amounts deriving from tax acts are not included, at a general level and without prejudice to what will be explained below, in the suspension of payments.

## DEFERMENT OF AMOUNTS ENROLLED ON THE REGISTER

As clarified by the Italian Revenue – Tax Collection Agency, the possibility of deferment of amounts enrolled on the register pursuant to art. 19 of Presidential Decree 602/73 remains unaffected, and the application, in order to avoid executive/cautelary actions, must be submitted by 30 September 2020. The deferment of the amounts enrolled on the register pursuant to art. 19 of Presidential Decree 602/73, both in the case of notice of payments and in the case of enforceable tax assessment verification notices, is in fact part of the suspension, as stated by the Italian Revenue – Tax Collection Agency. By 30 September 2020 it is necessary to pay, as a single payment, only the suspended instalments, and not all those still to be paid.

## SUSPENSION OF PAYMENT OF THE AMOUNTS REQUESTED FOLLOWING THE AUTOMATED AND FORMAL CONTROL OF THE TAX

The following amounts falling due between 8 March and 31 May 2020, may be paid by the deadline of 16 September:

- the amounts due as a result of the automatic checks carried out in accordance with Articles 36 bis D.P.R. 600/1973 and 54 bis D.P.R. 633/1972,
- the amounts due as a result of the formal checks carried out pursuant to Article 36 ter of Presidential Decree 600/1973,
- the instalments due as a result of the option to pay the amounts referred to in the previous two points.

## VERIFICATION WITH ACCEPTANCE, TAX MEDIATION AND JUDICIAL CONCILIATION

There are no forms of suspension for payments resulting from verification with acceptance and judicial conciliation, both for the first instalment and for subsequent instalments. Consequently, payments shall be made within the ordinary deadlines. The term, of twenty days in accordance with art. 17-bis of Legislative Decree 546/92, is suspended with reference to the first instalment/total of the amounts to be paid by tax mediation agreement. On the other hand, there is no suspension for the payment of subsequent instalments (the mediation in this case is considered as completed).

## SUSPENSION OF PAYMENTS OF AMOUNTS DUE AS A RESULT OF TAX ASSESSMENT VERIFICATION NOTICES WITH ACCEPTANCE, JUDICIAL CONCILIATION, ADJUSTMENT AND SETTLEMENT AND RECOVERY OF TAX CREDITS

The deadlines for the payment of sums due as a result of acts of tax assessment verification notices with acceptance, conciliation agreements, mediation agreements, acts of liquidation following the allocation of the annuity, acts of liquidation for failure to register lease and other contracts, acts of recovery, liquidation notices issued for failure, deficient or late payment of registration tax, inheritance and gift tax, substitute tax on financing, insurance tax, are extended to 16 September 2020.

More specifically, acts for which the payment deadlines expire between 9 March and 31 May are subject to an extension; it is also possible to benefit from the extension for the payment of instalments falling due during the same period (between 9 March and 31 May).

For the same acts mentioned above, the final deadline for the notification of the tax appeal before the Tax Court of First Instance, whose payment terms expire between 9 March 2020 and 31 May 2020, is also extended to 16 September 2020.

## DEFERMENT OF AMOUNTS DERIVING FROM THE SO-CALLED "PACE FISCALE" (D.L. 119/2018)

The instalments for the "*rottamazione-ter*" and the "*saldo e stralcio*" due in the year 2020 may be paid on 10 December 2020. For payment by 10 December, there are no five days of grace within which payment is in any case allowed without this leading to forfeiture of benefits.

It is also provided that, for deferral plans already in place on 8 March 2020 and for measures to accept requests submitted up to 31 August 2020, the debtor's forfeiture of the agreed instalments is determined in the event of failure to pay ten instalments, including non-consecutive ones (instead of the five instalments normally provided for).

Finally, for taxpayers who have forfeited the benefits of the facilitated definition ("*Rottamazione-ter*", "*Saldo e Stralcio*" and "*Facilitated definition of EU resources*"), for failure, insufficient or late payment of the instalments due in 2019, it is possible to request deferment of payment for the amounts still due.

## RULINGS AND OTHER CONSULTING ACTIVITIES

It has been provided for the suspension from 8 March 2020 to 31 May 2020 of the deadlines for responding to all types of rulings (ordinary, qualifying, anti-abuse, disapplicative). The provision also expressly includes the answers to be provided following the presentation of the additional documentation (art. 3 of Legislative Decree 156/2015 and art. 2 of Legislative Decree 147/2015).

The rulings submitted during the suspension period and the related deadlines start from the first day of the month following the end of the suspension. During the suspension period, the submission of the above-mentioned rulings and consultations is allowed only via PEC, or, for non-residents who do not use a domicile in the territory of the State, by sending them to the ordinary e-mail address [div.contr.interpello@agenziaentrate.it](mailto:div.contr.interpello@agenziaentrate.it).

For the same period from 8 March 2020 to 31 May 2020, the terms set forth in Article 7, paragraph 2, of Legislative Decree no. 128 of 5 August 2015 (regarding admission to collaborative fulfilment), Article 1-bis of Decree Law no. 50 of 24 April 2017 (regarding the procedure of cooperation and enhanced collaboration) and Articles 31-ter and 31-quater of Presidential Decree no. 600 of 29 September 1973 (on prior agreements for companies with international activity), as well as the terms relating to the procedures set forth in Article 1, paragraphs 37 to 43, of Law no. 190 of 23 December 2014 (on prior agreements related to the use of certain intangible assets).

## TAX ASSESSMENT AND COLLECTION ACTIVITIES - EXTENSION OF PRESCRIPTION AND FORFEITURE PERIODS

Assessment verification, contestation, imposition of penalties, recovery of tax credits, adjustment and settlement notices, relating to acts or taxes, for which the time limits, calculated without taking into account the suspension referred to in Article 67, paragraph 1, expire between 8 March and 31 December 2020, shall be notified not earlier than 1 January 2021 and until 31 December 2021, by way of derogation from the ordinary time limits. This extension shall apply to acts issued (even if not notified) by 31 December 2020. For acts and communications affected by the extension of time limits, notified in 2021, no interest shall be due for the period between 1 January 2021 and the date of notification of the act.

This shall be without prejudice to the notification of documents which are characterized by indifference and urgency as well as cases where the issue of the document is for tax purposes requiring the simultaneous payment of taxes.

## 6.4 SUSPENSION OF PROCEDURAL DEADLINES

### *EX OFFICIO* POSTPONEMENT OF HEARINGS AND TELEMATICS MEANS FOR TAX PROCEEDINGS

The hearings are scheduled to be postponed *ex officio* until after 11 May 2020.

Furthermore, there is an obligation for all parties in the tax process who have joined the lawsuit by analogical means to serve and file subsequent documents, as well as court orders, exclusively by telematic means. In this regard, the Italian Revenue Agency has specified that the obligation to use telematic means does not apply to persons who, pursuant to art. 12, paragraph 2 of Legislative Decree no. 546/1992, are in court without technical assistance and in relation to whom the provisions of art. 16-bis, paragraph 3-bis of the aforementioned Legislative Decree continue to apply, i.e. the right to use, for notifications and filings, the telematic modalities, subject to the indication in the appeal or in the first defensive act of the PEC address to which communications and notifications are to be received.

Finally, a new provision is also introduced to allow the Judicial Offices to serve the sanctioning acts resulting from omitted or partial payment of the unified contribution (“Contributo Unificato”) through PEC (even if the imposition of the sanction is contained in the invitation for payment referred to in Article 248 of the TUSG) at the address for service or, in the absence of such indication, by filing at the Secretariat Office of the Tax Commissions or at the competent registry.

### PROCEDURAL ACTIVITIES

From 9 March 2020 to 11 May 2020, the time limits for completion of any procedural steps shall be suspended. If the running of the time limit begins during the period of suspension, the beginning of the running of the time limit shall be postponed until the end of the period of suspension, i.e. until 12 May 2020.

The suspension shall apply to any procedural time-limit and in particular to the following:

- a. Submission of the tax appeal (Tax Court of First Instance)
- b. Entry of appearance of the plaintiff
- c. Notification of the tax appeal, main or incidental (Tax Court of Appeal)
- d. Mediation
- e. Resumption of the interrupted or suspended litigation
- f. Resumption of the litigation following incompetence
- g. Deadlines for claiming presidential decrees.

The final deadline for the notification of the tax appeal before the Tax Court of First Instance, whose payment terms expire between 9 March 2020 and 31 May 2020, is further extended to 16 September 2020.

Payments of amounts deriving from acquiescence (art. 15 of Legislative Decree 218/97) and from facilitated definition of penalties only (art. 17 of Legislative Decree 472/97) must be made, in any case, within the deadline for appeal, applying the suspension from 9 March 2020 to 11 May 2020.

As a result of Article 6, paragraph 3 of Legislative Decree 218/97, the request for verification with acceptance suspends the deadline for appeal for a period of ninety days. The aforementioned ninety-day suspension is cumulated with the suspension of the procedural deadlines, from 9 March 2020 to 11 May 2020.

There are no forms of suspension for payments resulting from verification with acceptance and judicial conciliation, both for the first instalment and for subsequent instalments. Consequently, payments shall be made within the ordinary deadlines.

The term, of twenty days in accordance with art. 17-bis of Legislative Decree 546/92, is suspended with reference to the first instalment/total of the amounts to be paid by tax mediation agreement. On the other hand, there is no suspension for the payment of subsequent instalments (the mediation in this case is considered as completed).

The procedural deadlines of the tax authorities are suspended from 8 March 2020 to 31 May 2020, i.e. for a longer period of time than the suspension foreseen for taxpayers (9 March 2020 – 11 May 2020). However, it has been established that, with regard to procedural deadlines, the suspension from 9 March 2020 to 11 May 2020 also applies to tax authorities. This includes, inter alia, the time limits for: (i) the entry of appearance of the defendant (Article 23 of Legislative Decree 546/92);(ii) the notification of the tax appeal, principal or incidental, in Tax Court of Appeal (Articles 51 of Legislative Decree 546/92 and 327 of the Italian Criminal Code). The foregoing operates, indistinctly, for each imposter, not only for tax agencies (i.e. also local authorities, Chambers of Commerce, judicial offices). The suspension of the procedural deadlines from 9 March 2020 to 11 May 2020 also applies to Collection Agents as well as to local concessionaires, registered in the register of art. 53 of Legislative Decree 446/97 or other regulatory provisions.

## PRODUCTION OF DOCUMENTS AND EXPLANATORY MEMORANDA

Pursuant to Article 32 of Legislative Decree No. 546/92, the documents, illustrative briefs and response briefs must be produced within twenty, ten or five free days before the hearing, respectively. In this regard, it is provided that when the time limit is counted backwards and falls in whole or in part during the suspension period, the hearing or the activity from which the time limit begins is postponed so that it can be respected.

## 6.5 OTHER FISCAL NEWS

### PROVISIONAL METHOD FOR ADVANCE PAYMENTS IN JUNE

With regard to the advance payments due in June 2020, in order to help taxpayers who, as a result of the epidemiological crisis, might face a decrease in taxable income for IRPEF, IRES and IRAP purposes, Article 20 of Decree Law no. 23 of 8 April 2020 allows the calculation and payment of advance payments due using the provisional method.

For the 2020 tax period only, therefore, no penalties or interest will be applied if the advance payments made turn out to be no less than 80% of the amount due on the basis of the tax return for the current tax period.

With the Circular no. 9 of 13 April 2020, the Tax Authority clarified that the provision also applies to the substitute tax for income tax and IRAP due by taxpayers using forms of income determination with flat-rate criteria, to the "dry coupon" (Cedolare secca) on rent, to the tax due on the value of real estate located abroad (IVIE) or on the value of financial assets held abroad (IVAFE).

### PROVISIONS ON PAYMENT OF IRAP (REGIONAL BUSINESS TAX)

The payment of the 2019 Regional tax balance emerging from the 2020 IRAP declaration and the first 2020 advance payment is not due, without prejudice to the payment of the 2019 tax period.

Taxpayers with corporate income or self-employed workers with revenues or compensation not exceeding 250 million euro in the 2019 tax period are excluded from the payment obligation. On the other hand, financial intermediaries (banks) and financial and non-financial holding companies, insurance companies and public administrations are excluded from the benefit, regardless of the volume of revenues. The amount of the first installment of the 2020

advance payment, equal to 40 per cent of the total advance payment due for non ISA entities, equal to 50 per cent for ISA entities, even if not paid, shall be deducted from the calculation of the tax to be paid as balance for the 2020 tax period that will emerge from the IRAP return 2021 together with the amount of the second advance payment of November 2020.

## EXEMPTIONS FROM THE IMU (MUNICIPAL TAX) FOR THE TOURISM SECTOR

The first installment of the municipal tax (IMU), due on 16 June 2020, is not due for properties classified in cadastral category D/2 (hotels and guest houses) and properties in holiday farms, tourist villages, youth hostels, mountain huts, marine and mountain colonies, short-stay rooms for rent, holiday homes and apartments, bed & breakfast, residences and campsites. The exemption also applies to sea, lake and river bathing establishments and spa buildings.

The benefit is granted on condition that the respective owners are also those who manage the activities that are carried out therein.

## EXTENSION OF VALIDITY OF THE CERTIFICATES REFERRED TO IN ARTICLE 17-BIS, PARAGRAPH 5, OF LEGISLATIVE DECREE NO. 241 OF 9 JULY 1997

With regard to the obligation, in relation to tender contracts, to pay withholding taxes on employees' and similar income for workers employed in the execution of the work or service, as well as the related social security contributions and INAIL premiums, in compliance with certain conditions set out in Article 17-bis of Legislative Decree 241/97, Article 23 of Legislative Decree no. 23/2020 provides that the certificates pursuant to art. 17-bis paragraph 5 of Legislative Decree no. 241/97 issued by the Italian Revenue Agency until 29 February 2020 - aimed at notifying the client by the contractors or subcontractors of the existence of the requirements set out in the same paragraph so that the obligations relating to the aforementioned withholding taxes and compensation do not apply - remain valid until 30 June 2020.

## SIMPLIFICATIONS FOR THE PAYMENT OF STAMP DUTY ON ELECTRONIC INVOICES

It is provided that if the amount of stamp duty due for electronic invoices issued in the first calendar quarter of the year is less than €250 (but the total amount of tax due for the first and second quarter is more than €250), the payment can be made within the deadline for payment of stamp duty on invoices issued in the second quarter of the year (deadline 20 July 2020). If, taking into account also the stamp duty due on invoices issued in the second quarter of the year, the total amount (first quarter and second quarter) to be paid remains less than €250, the stamp duty due in respect of the first and second quarter of the year may be paid within the time limits set for the payment of the stamp duty due on electronic invoices issued in the third quarter of the reference year (deadline 20 October 2020). The ordinary deadlines for payment of stamp duty due on electronic invoices issued in the third and fourth calendar quarter of the year (i.e. 20 October 2020 and 20 January 2021 respectively) remain unchanged.

## SUSPENSION OF THE SEIZURES OF THE COLLECTION AGENT ON SALARIES AND PENSIONS - ARTICLE 152

It is provided for the suspension of the provision obligations arising from seizures from third parties made in the period between the date of entry into force of this decree and 31 August 2020 by the collection agent and the persons registered in the appropriate register (art. 53 of Legislative Decree no. 446/1997), relating to salaries/pensions and similar treatment, seized, within the limits of the law, by the same parties and, at the same time, the same amounts are subtracted from the seizures, allowing the third party, even if assigned by the judge, to make the aforementioned amounts available to the debtor. The provisions made before the date of entry into force of this decree remain unaffected and the sums credited, prior to the aforementioned date, to the collection agent and to the persons registered in the appropriate register (art. 53 of Legislative Decree 446/1997) remain definitively acquired and non-refundable.

## 7 Litigation and civil law issues

### 7.1 CIVIL LAW ISSUES

#### ITALIAN CIVIL CODE

The Covid-19 outbreak and the consequent restrictions and prevention measures imposed by the public authority are having disruptive effects on trade and are preventing, in many cases, the proper performance of commercial agreements. In case of lack of specific force majeure clauses in agreements governed by Italian law, parties may invoke one of the remedies provided under the Italian Civil Code.

#### SUPERVENING IMPOSSIBILITY (*IMPOSSIBILITÀ SOPRAVVENUTA*)

As a general principle, under Civil Code, a party cannot be held liable for a breach of contract if it is able to prove that the breach has been caused by a supervening impossibility to fulfil its obligations, which is not attributable to the party itself (art. 1218 of the Italian Civil Code).

To invoke the aforementioned statutory remedy, the impossibility to perform the contractual obligation shall be:

- i. objective, i.e. due to a cause beyond the party's control and not falling within its business risk (e.g., financial difficulties will not release the party from its duty to pay a sum of money);
- ii. supervening and reasonably unforeseeable, by means of common diligence, at the time when the agreement was entered into;
- iii. unavoidable, i.e. not determined by the fault of the non-performing party.

According to Italian case law, a party may even refuse to receive the counterparty's obligation (e.g., delivery of goods) when this has become impossible to use by the receiving party, for reasons behind the receiving party's control.

When a superseding impossibility occurs:

- i. if the impossibility is final, the affected obligation expires and becomes unenforceable (art. 1256, par.1, of the Italian Civil Code);
- ii. if the impossibility is temporary, the party shall not be held responsible for the delay in performing its obligation for the relevant duration. However, if the impossibility lasts for so long that the rationale underneath the original obligation becomes vain (due to its own nature or because the receiving party loses interest in it), the obligation expires (art. 1256, par. 2, of the Italian Civil Code);
- iii. if the impossibility affects the obligation only in part, the obligation expires to the same extent, while the obliged party will continue to be bound by the remaining enforceable share of the original obligation (art. 1258, par. 1, of the Italian Civil Code); in this case, however, the counterparty has the right to a corresponding reduction of its counter-performance (e.g. price reduction) and may withdraw from the agreement, if it has no material interest to the partial fulfilment of the obligation (art. 1464 of the Italian Civil Code).

In any case, the party released from its obligation due to supervening impossibility: (i) cannot request the counter-performance from the other party; and (ii) must return any benefit possibly received (e.g., advance payments) (art. 1463 of the Italian Civil Code).



## EXCESSIVE BURDENSOMENESS (*ECCESSIVA ONEROSITÀ*)

Although the general rule is that agreements remain binding despite changes in circumstances that may affect the initial position of the parties, exceptionally long-term agreements (with continuous or periodical obligations, or with deferred obligations) may be terminated under Italian law if:

- i. exceptional and unforeseeable events occur during the contractual duration; and
- ii. as a consequence, one party's obligation becomes excessively burdensome compared to the obligation of the other party (so as to cause a party's disproportionate sacrifice to the benefit of the other).

In these cases, the party whose performance became excessively burdensome may terminate the agreement, unless:

- i. the supervening excessive burdensomeness falls within the normal risk of the contract (i.e., within the degree of uncertainty typical, natural and implicit in the contract, that each party undertook by entering into it);
- ii. the other party offers to renegotiate the terms of the agreement in an equitable manner.

## SPECIFIC PROVISION UNDER CURA ITALIA DECREE

An *ad hoc* provision (art. 91 of Cura Italia Decree), issued in the context of the Covid-19 outbreak, states that the compliance with the containment measures shall always be evaluated for the purposes of excluding:

- i. a party's contractual liability (pursuant to art. 1218 of the Italian Civil Code) and the consequent obligation to pay compensation (pursuant to art. 1223 of the Italian Civil Code); and
- ii. the applicability of any forfeitures, penalties or liquidated damages connected to delays or default of the party.

Moreover, the Italian Ministry of Economic Development authorized the local Chambers of Commerce to issue certificates attesting the state of sanitary emergency in Italy due to Covid-19 and the restrictive measures connected thereto.

Such certificates can be submitted to counterparties in order to prove the existence of a force majeure event (i.e., the Covid-19 epidemic and related restrictions), but they need to be supported by a specific evidence of the causal link between the epidemic/restrictions and the impossibility to perform the obligation undertaken. In fact, even if the force majeure event can be considered as proven, the consequent impossibility for the party to perform its obligation has to be ascertained on a case-by-case basis.

## 7.2 CIVIL PROCEEDINGS

### MEASURES PROVIDED FOR CIVIL PROCEEDINGS: RELEVANT LEGISLATION

Art. 83 of the Cura Italia Decree and art. 36 of the Liquidity Decree provided for some urgent measures to regulate the pending civil proceedings during the Coronavirus emergency.

### HEARINGS

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Hearings of all civil proceedings were postponed up until 11 May , 2020 included. This postponement was provided *ex officio* by the law and therefore some Courts deemed as not necessary the submission of the postponement notice.

## SUSPENSION OF PROCEDURAL TIME-LIMITS

The procedural time-limits of all civil proceedings were suspended from 9 March 2020 up until 11 May 2020 (included) (for 64 days) and resume at end of the suspension period (starting from 12 May 2020).

Should the procedural time limit have begun during the period of suspension, the beginning of the time limit was postponed up until the end of the period of suspension.

Should instead a backward time limit have occurred completely or partially during the period of suspension, the hearing or the activities from which the time limit starts should have been postponed so as that this could have been respected.

## EXCEPTIONS

The postponement of hearings *ex officio* and the suspension of procedural time limits were not applicable in the following cases:

- i. proceedings within the jurisdiction of the Juvenile Court relating to declarations of adoptability, unaccompanied foreign minors, minors removed from their families and situations of serious harm;
- ii. proceedings relating to alimony or maintenance obligations arising from family, parentage, marriage or relatives in law relationships;
- iii. precautionary proceedings for the protection of fundamental human rights;
- iv. proceedings relating to the suspension of the enforceability or enforcement of a first instance judgment, pursuant to articles 283 and 351 of the Italian Code of Civil Procedure;
- v. proceedings relating to the suspension of the enforcement of a second instance judgment, pursuant to art. 373 of the Italian Code of Civil Procedure;
- vi. all proceedings in which the delayed trial may cause serious harm to the parties. In this case, the declaration of urgency is made by the President of the Court or his delegate and it is attached to the claim or to the writ of summons (statement of claim), by a decree that cannot be appealed and, for proceedings already pending, by order of the delegated judge or the chairman of the proceeding, which cannot be appealed either.

## PERIOD IMMEDIATELY AFTER THE SUSPENSION

The chairmen of the judicial offices between 12 May 2020 and 30 June 2020 may take various organizational measures, in order to avoid gatherings within the judicial office and close contacts between people, for example: (i) limitation of public access to the judicial offices, while guaranteeing access to those who have to carry out urgent activities; (ii) limitation, having heard the opinion of the administrative manager, of the opening hours of the offices to the public; (iii) performance of civil hearings that do not require the presence of any person other than the defendants and the parties through remote connections; (iv) postponement of civil hearings to a date subsequent to 30 June 2020; (v) scheduling civil hearings that do not require the presence of anyone other than the defendants of the parties through the exchange and filing of written notes containing only the requests and conclusions, and the subsequent decision of the judge outside the hearing.

## STATUTE OF LIMITATIONS PERIODS

Only the statute of limitation periods which can be enforced exclusively by carrying out judicial activities are suspended from 9 March 2020 up until 30 June 2020 included.

Therefore, it is still necessary (even during the suspension period) to interrupt the statute of limitation period by conducting out of court activities (i.e. by sending formal notice via certified email / registered letter with return receipt).

### 7.3 **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The time limits for carrying out any activity related to mediation proceedings, assisted negotiation proceedings (i.e. “negoziazione assistita”, a specific ADR proceeding provided under Italian law) and any other out-of-court dispute resolution proceeding were suspended from 9 March 2020 up until 11 May 2020 included, if these proceedings have already started by 9 March 2020 and if they constituted a legal condition for the progression of the claim.

However, the above was without prejudice to the possibility, in any other cases (i.e., when the out-of-court proceeding did not constitute a legal condition to the proceeding), of carrying out alternative dispute resolution proceedings. For example, if the parties undertook to refer any disputes to arbitration courts, the parties might have regularly initiated the proceeding, subjected to possible suspensions provided for by each arbitration chamber.

### 7.4 **THE IMPACT OF THE CONVERSION LAW N. 27 OF 24 APRIL 2020 OF THE CURA ITALIA DECREE AND OF THE CONVERSION LAW N. 40 OF 5 JUNE 2020 OF THE LIQUIDITY DECREE ON CIVIL PROCEEDINGS**

The conversion laws n. 27 of 24 April 2020 and n. 40 of 5 June 2020 confirmed the provisions provided by Art. 83 of the Cura Italia Decree and by the Art. 36 of the Liquidity Decree.

Inter alia the conversion law n. 27 of 24 April 2020 added the following legislative measures:

- in civil proceedings before the Court of Cassation, until 30 June 2020, the filing of documents may be carried out by electronic means (which before was not possible) and the related payments of the Court taxes are carried out by electronic payment systems;
- from 9 March 2020 until 30 June 2020, mediation hearings may take place by electronic means with the prior consent of all parties involved in the proceedings;
- until the end of the distancing measures provided for the emergency COVID-19, in civil proceedings the signing of the power of attorney may also be carried out by signing the power of attorney on paper and sending back to the attorney a scanned copy along with a copy of a valid identity card. The attorney will have later to affix its electronic signature to certify the signature of the client.

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