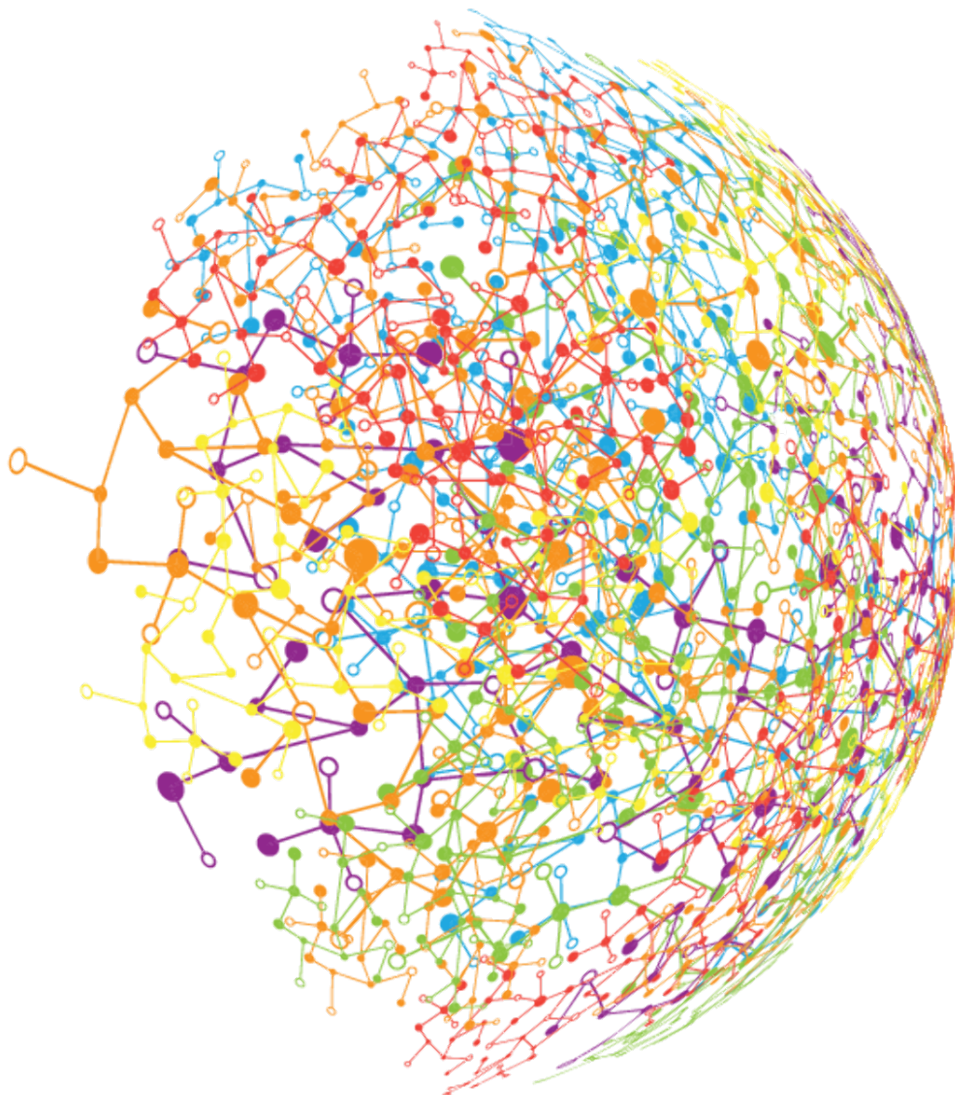


Studio Tributario e Societario



Covid-19 | Tax Alert | N. III

April 2020

Deloitte.

Tax

Postponement of tax and social security contribution payments

(Art. 18 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The provision suspends for April and May 2020 tax and social security contribution payments for Italian taxpayers that have reduced their turnover under certain thresholds

Taxpayers with revenues lower than or equal to 50mil Euro

For the subjects carrying on business, art or professional activities having their legal or operative seat or tax domicile in Italy and:

- having revenues **lower than or equal to 50mil Euro** for the fiscal year preceding that running at the date of effectiveness of the Decree under exam,
- having reduced their turnover more than **33%** in the month of March 2020 and April 2020, in respect of the same months of the previous year,

the following payments due in the month of April and May 2020:

- a) withholding tax payments applied on employees' income and similar (included local taxes due),
- b) VAT payments,
- c) social security contribution payments (included obliged insurance),

are postponed to June 30, 2020, and are paid in one or up to five equal instalments. No refund is made for prepayments.

Taxpayers with revenues higher than 50mil Euro

For the subjects carrying on business, art or professional activities having their legal or operative seat or tax domicile in Italy and:

- having revenues **higher than 50mil Euro** for the fiscal year preceding that running at the date of effectiveness of the Decree under exam,
- having reduced their turnover more than **50%** in the month of March 2020 and April 2020, in respect of the same months of the previous year,

the following payments due in the month of April and May 2020:

- a) withholding tax payments applied on employees' income and similar (included local taxes due),
- b) VAT payments,
- c) social security contribution payments (included obliged insurance),

are postponed to June 30, 2020, and are paid in one or up to five equal instalments, no refund is made for prepayments.

Taxpayers starting a business in 2019

The above postponement applies also to taxpayers that have started a business after March 31, 2019. Moreover, the postponement - only for withholding tax and social security contribution, as above detailed - is applicable also to non commercial entities.

Taxpayers having their residence, legal or operative seat in the district of Bergamo, Brescia, Cremona, Lodi or Piacenza

The postponement of the VAT payments due in the months of April and May 2020, regardless the level of turnover, is applied also to the subjects carrying on business, art or professional activities having their residence, legal or operative seat, or tax domicile in the district of Bergamo, Brescia, Cremona, Lodi or Piacenza, if they have reduced their turnover more than 33% in the month of March and April 2020, in respect to the same months of the previous fiscal year.

Taxpayers operating in the sectors more heavily impacted by the Covid-19 emergency

The Decree under exam has confirmed that, regardless the level of turnover, the postponements of tax payments already provided by the Italian Covid-19 Legislation (Law Decrees n. 9/2020 and n. 18/2020) for the taxpayers operating in the business sectors more heavily impacted by the emergency (such as touristic and accommodation service entities, sport entities, entities managing theatres, cinema etc., exhibit

companies, restaurants, bars or pubs, entities managing assistance for old or disable people, childhood care, thermal sites, touristic guides, etc.) are confirmed.

Extension of the withholding tax postponement for certain incomes (commission fees, agency fees, etc.)

(Art 19 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The decree has extended the withholding tax postponement already provided by art. 62 of Law Decree n. 18/2020, to certain incomes.

In particular, for subjects having their residence, legal or operative seat in Italy, with a turnover lower than 400.000 Euro (in the previous fiscal year), the revenues cashed during the period between March 17, 2020, and May 31, 2020, are not subject to the withholding taxes provided by artt. 25 and 25-bis of Presidential Decree n. 600/1973, provided that in the preceding month no employment costs are incurred. The taxpayers enjoying this option: (i) make to its withholding agent a specific declaration according to which the revenues to be paid are not subject to withholding tax pursuant to the present rule (ii) directly pay the withholding taxes, not applied by the withholding agent, within July 31, 2020 (the previous deadline was May 31, 2020) in one shot or up to five equal monthly installments, without application of penalties and interests.

Advanced payments computation

(Art 20 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

As a general rule advanced payments for direct taxes purposes (i.e. IRPEF, IRES) and IRAP are computed and paid by the taxes due for the previous fiscal year (so called historical method). However, under the taxpayer's option the advanced payments can be computed on the taxes actually due for the fiscal year they refer to (so called provisional method). In case of lower payments penalties and interest are applied.

The Decree foresees that for the fiscal year subsequent to that running as of December 31, 2019, no penalties and interest are applied in case of advanced payments computed on the provisional method if the payments cover at least the 80% of the taxes actually due.

Delay for payments to Public Administrations

(Art 21 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The Decree foresees that any payment to Public Administration (included taxes) due by March 16, 2020, and already postponed to March 20, 2020, by the Law Decree 18/2020, is not considered as delayed in case the payment is made by April 16, 2020.

Postponement for withholding tax agents' fulfillments

(Art 22 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

For the year 2020 certain withholding tax agents' fulfillments had already been postponed and, in any case, under the provision of the Decree, are considered valid if made by April 30, 2020.

Postponement of the effectiveness of certain tax certificates issued by the month of February 2020

(Art 23 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

Certain tax certificates issued by the Tax Authorities for contracts purposes issued by the month of February 2020 are considered valid up to June 30, 2020.

Individuals' tax return

(Art 25 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

In order to grant the individuals' annual tax return filing (Model 730), simplified procedures are adopted by the intermediaries (e.g. CAF) to be authorized to access to the individuals' pre-filled in tax returns and relevant documents.

Payment of the stamp duty due on the electronic invoices

(Art 26 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

In order to reduce the VAT tax payers' fulfillments, the payment of the stamp duty due on the electronic invoices can be paid (i) for the tax due for the first quarter of the year, within the deadline provided for the second one, if the

amount due for the first quarter is lower than 250 euro (ii) for the tax due for the first and second quarter, within the deadline provided for the third quarter if the tax due for both the first and second quarter is lower than 250 euro.

Free transfer of drugs for compassionate reasons

(Art 27 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

Under some circumstances the free transfer of drugs for compassionate reasons is not subject to taxation for both VAT and direct taxes purposes.

Amendments to the tax regime applied to dividends paid to partnerships (Società semplici)

(Art 28 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The Decree has amended the art. 32-quarter of the Law Decree 124/2019, providing that dividends paid to resident partnerships qualify for tax purposes as dividends "paid" straight to the relevant partners and their own taxation regime has to be applied (by a kind of transparency regime).

In more detail, the Decree has clarified that:

- the "transparency" regime is applied also to dividends from non resident entities,
- the regime to be applied in case of non resident partners (with the application of the withholding taxes as provided by the Italian tax law) or trust,

- public entities and entities other than corporations (with a full taxation),
- the procedure to be applied in case of certain financial instruments,
- a transitory regime is applied to dividend distributed within December 31, 2022, and referred to profits earned until the fiscal year running as of December 31, 2019.

Tax trial provisions

(Art 29 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The paragraph 1 of the relevant provision sets forth that the Tax Authorities and the parties assisted by a licensed defender appeared in Court by analogical procedures must notify and deposit the following acts and courts orders only by the digital procedures provided for by the Economy and Finance Ministry Decree n. 163/2013 and by the following implementation decrees.

Court hearing and trial fulfillment for civil, criminal, administrative accounting, tax or military juridical procedures

(Art 36 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The art. 83 of the Law Decree 18/2020 provided that all the expiration terms of the court hearings and of the related trial fulfillments, pending in the period from March 9, 2020 to April 15, 2020, were postponed after April 15 2020. The Decree under exam has

extended such postponement until May 11, 2020.

Administrative procedures

(Art 37 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

All the terms related to any administrative procedure pending as of February 23, 2020, or hereafter set up, are suspended until May 15, 2020.

Statutory Law and Insolvency Procedures: Brief notes

Postponement of the effectiveness of the “Code for the business crisis” provided by the Legislative Decree n. 14, January 12, 2019

(Art 5 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The mentioned regulations shall be effective since September 1, 2021.

Temporary provision in case of reduction of the corporations’ share capital

(Art 6 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

According to the Italian civil law, in case of losses registered by corporations and affecting the share capital over certain thresholds, specific actions are required to the directors and shareholders to recover the level of the capital or to reduce it accordingly.

In order to avoid any negative effect for the Italian corporations facing the emergency, the Decree foresees that for the business years ending between April 9, 2020 and December 31, 2020, the mentioned regulations (provided by the art. 2446, art. 2482-bis, art. 2447 and 2482-ter of the civil code) can be misapplied.

The misapplication regards also the articles of the civil code providing the wind up of the company in case

of reduction of the share capital under certain limits (as per art. 2484, n. 4, and art. 2545-duodecies of the civil code).

Temporary provision for the statutory financial statements

(Art 7 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

In order to grant the correct information of the financial statements, the Decree allows the Italian companies, meeting the requirement of the business continuity in the fiscal years preceding the present crisis, to keep such perspective of business continuity also in the financial statements to be prepared that include the date of December 31, 2020.

In more detail, the Decree allows the Italian corporations to write down the financial statements including the date of December 31, 2020, under the business continuity perspective if the mentioned requirement (of the business continuity) was met in the last financial statement referred to the business year ended before February 23, 2020, even if not yet approved.

Temporary provision for corporations’ financing

(Art 8 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

Another temporary provision is introduced by the Decree that allows the misapplication of the Italian civil code regulations requiring that the corporations, financed by their shareholders or by the entity exercising the activity of direction and coordination, to postpone the refund of such financings (art. 2467 and art. 2497-quinquies of the civil code).

Insolvency procedures: estimated agreement (“concordato preventivo”) and restructuring agreement (accordo di ristrutturazione)

(Art 9 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

The Decree covers also certain insolvency procedures in order to extend the relevant deadlines and allow the taxpayers to re-discuss certain contents.

Bankruptcy statements

(Art 29 Law Decree n. 23, April 8, 2020, effective since April 9, 2020)

In order to protect the Italian corporations and the Italian entrepreneurs by the risk of bankruptcy, the Decree has declared unprocessable any bankruptcy claim filed between March 9, 2020, and June 30, 2020, unless the request is filed for criminal purposes.

Government Incentives

Amendment to the tax credit for the costs of sanitizing the environment

(art. 30 of Law Decree no. 23 of April 8th, 2020 published in the official gazette on April 8th, 2020)

Article 30 of Decree-Law no. 23 of April 8th, 2020 amended article 64 of Decree Law no. 18 of March 17th, 2020, extending its scope of application. As a result of this amendment, the tax credit is recognized not only for the costs of sanitizing work environments and tools, but also for the purchase of personal protective equipment as well as other safety devices designed to protect workers from accidental exposure to biological agents and to guarantee interpersonal safety distance. This includes, for example, surgical masks, FFP2 and FFP3 masks, gloves, protective visors and goggles, protective suits and footwear, barriers and protective panels, including hand cleansers and disinfectants. Such incentive is confirmed for a maximum amount of EURO 20,000 for each company, at the rate of 50% of the expenses incurred in the 2020 fiscal year and within the end of the available resources for the year 2020, equal to 50 million Euros.

Temporary measures to support corporate liquidity

(art. 1 of Law Decree no. 23 of April 8th, 2020 published in the official gazette on April 8th, 2020)

In order to guarantee liquidity to companies with headquarters in Italy affected by the epidemic, article 1 provides for SACE S.p.A. to issue guarantees until 31 December 2020 to banking and financial institutions for loans in favor of those companies, if certain conditions are met. More in details, the guarantees are issued for loans with duration not exceeding 6 years aimed at financing personnel costs, investments or working capital used in production plants and business activities located in Italy. The guarantees shall be granted within the limits of the higher between the 25% of the sales realized in Italy or the double of the Italian personnel costs resulting from the Financial Statement 2019. The guarantee could be up to 90% of the amount financed, compared to the size of the companies in terms of turnover and employees, provided that the company were not already in financial difficulty on December 31st, 2019.

Specifically:

- companies with less than 5,000 employees in Italy and a turnover of less than Euro 1.5 billion euro can obtain coverage equal to 90% of the amount of financing required and for these there is a simplified procedure for access to the guarantee;

- the coverage drops to 80% for companies with more than 5,000 employees in Italy and a turnover between Euro 1.5 and 5 billion;
- maximum coverage is 70% for companies with a turnover of more than Euro 5 billion.

Article 1 defines also the amount of the commission applicable to the companies for the guarantees. Companies who benefit from these guarantees shall avoid to approve the distribution of dividends in the twelve months following the disbursement of the loan (not only the direct beneficiary but all the Italian companies belonging to the group) and to manage employment levels through trade union agreements. The commitments may not exceed a maximum amount of Euro 200 million, of which at least Euro 30 million are intended for SMEs which have made full use of the availability of access to the SMEs Guarantee Fund. The measure is subject to approval by the European Commission under Article 108 of the Treaty on the Functioning of the European Union.

Measures to support exports, internationalization and business investment

(art. 2 of Law Decree no. 23 of April 8th, 2020 published in the official gazette on April 8th, 2020)

Article 2 increases public export support, authorizing SACE S.p.A. to issue guarantees on loan granted to company up to a maximum total amount of 200 billion Euro.

The measure refers to all companies of any sector or size that operate in Italy and abroad and intend to acquire new customers in foreign countries.

The intervention introduces a co-insurance system under which 90% of the commitments deriving from SACE's insurance activity are assumed by the State and the remaining 10% by the company itself.

The aim is to enable SACE S.p.A. to meet the growing demand to insure operations deemed strategic for the national economy, where the company would not have the financial structure to cover such operation.

SMEs Guarantee Fund

(Art. 13 of Decree-Law No 23 of April 8th, 2020 published in the official gazette on April 8th, 2020)

Article 13 of Decree-Law No 23/2020, , increased the **SMEs Guarantee Fund** and replace art. 49 of the Law Decree 18/2020. Indeed, the provision of this article confirmed some measure included in the previous Decree and introduced new measures. In particular, the main measures adopted are the following:

- the guarantee is granted free of charge;
- the maximum amount guaranteed per company is raised to € 5 million and companies with no more than 499 employees are eligible for the guarantee;

- subject to authorization of the EU Commission, the percentage covered by the direct guarantee is increased to 90 % of the amount of each financial transaction, within the limit alternatively of i) the double of the employee expenses, ii) 25% of the turnover for 2019, iii) working capital costs and investment costs needs in the following 18 months (reduced to 12 for company with no more than 499 employees);
- it is confirmed the increase in the maximum percentage of guarantee, to the extent of 80% for direct guarantee operations; and to the extent of 90% for reinsurance operations to the extent that there is new financing at least for 10%;
- the duration of the SMEs Guarantee Fund is extended in the event of suspension of loans by banks;
- new loans, up to a maximum of 25,000 Euro, granted to SMEs damaged by the emergency, are also eligible for the guarantee of the fund, to the extend of 100%, provided that the repayment date of the capital start no earlier than 24 months from disbursement, the duration is up to 72 months and the amount not exceed 25% of the amount of revenues of the beneficiary. The guarantees of the SMEs Guarantee Fund is granted automatically, free of charge and without evaluation;
- Furthermore, for beneficiary entities with a revenue up to 3.2 million Euros, the guarantee may be grant up to 100% for loans that do not exceed the lower between 25% of the revenues or the amount of 800,000 euro.
- all the terms relating to the administrative formalities for

- operations covered by the Fund's guarantee are extended for three months;
- the Fund guarantee may also be requested on financial transactions already completed and disbursed by the lender no later than 3 months after the date of submission of the request and, in any case, after January 31th, 2020.



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