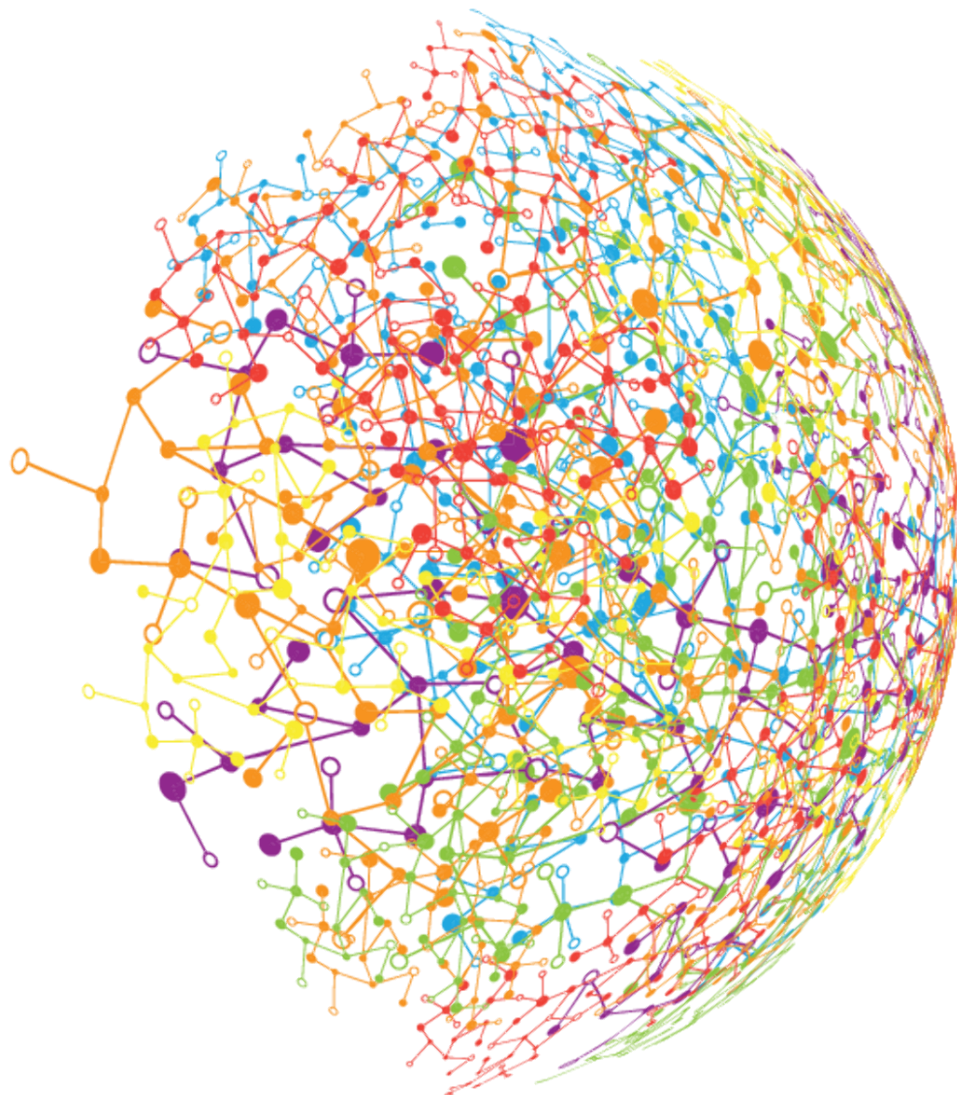


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Tax

The Law Decree no. 23 dated April 8, 2020 (hereinafter “the Law Decree”), has been converted with amendments into Law no. 40, June 5, 2020, published in the Official Gazette on June 6, 2020, effective since June 7, 2020 (hereinafter “the Law”)

Please find here below commented only the provisions that have been amended or added by the Conversion Law, for all the articles not modified please refer to our Tax Alert no. III.

Postponement of tax and social security contribution payments - Extension of the withholding tax postponement for certain incomes (commission fees, agency fees, etc.)

(art. 18 and 19, Law no. 40, June 5, 2020 entered into force on June 7, 2020)

The Law has fully confirmed the postponement of tax and social security contribution payments due in the months of April 2020 and May 2020 under the condition already provided by the Law Decree. For completeness please be aware that all the payments mentioned by the Law Decree have been already postponed to September 16, 2020, by the Law Decree no. 34, dated May 19, 2020. For the detail of the payments actually postponed please refer to our Tax Alert no. III and no. IV.

Advanced payments computation to be paid in June

(art. 20, Law no. 40, June 5, 2020 entered into force on June 7, 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 Law has modified the title of the article, specifying “to be paid in June”. Therefore it is confirmed that for the fiscal year subsequent to that running as of December 31, 2019, whose advanced payments shall be made in June, 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.

Tax free assets and participation step up for subjects carrying on hotel and thermal activities

(art. 6-bis, Law no. 40, June 5, 2020 entered into force on June 7, 2020)

Italian companies (different from IAS/IFRS adopters) carrying on hotel and thermal activities can step up assets, participations included, registered in the statutory financial statement as at December 31, 2019 without any substitutive tax application. The step up can be made in the first statutory financial statement following to that running as of December 31, 2019 or in the subsequent or in both. The assets step up is recognized for fiscal purposes from the fiscal year which the financial statement refers to. A 10% substitute tax can be paid in relation to the net worth reserve booked as a consequence of the step up of the tax costs in order to

avoid the ordinary taxation when distributing it (the reserve is otherwise subject to taxes at the level of the company itself at the time of its distribution to the shareholders). A lock-up period of four fiscal years is provided in case the stepped up assets are sold or attributed to the shareholders or in any case aim to purposes different from the business activity. ITA GAP and IAS compliant companies can also opt for the realignment between fiscal and accounting value (if higher than the fiscal one) of certain assets. Also in this case the worth reserve booked as a consequence of the realignment can be subject to the above mentioned 10% substitute tax.

Assets and participation step up

(art. 12-ter, Law no. 40, June 5, 2020 entered into force on June 7, 2020)

The Law has extended the assets, participation included, step up option provided by the 2020 Budget Law (Law n. 160/2019, art. 1, paragraph 696 and followings). As per the Law, the Italian companies (different from IAS/IFRS adopters) can apply the step up option in the statutory financial statement subsequent to that running as at December 31, 2019, December 31, 2020, and December 31, 2021. In case of real estates step up the relevant value is respectively recognized for tax purposes starting from the fiscal year running as of December 1, 2022, 2023 and 2024. According to the provision of the 2020 Budget Law, a substitute tax equal to 12% for depreciable assets and 10% for not depreciable ones is applied.

Moreover the 2020 Budget Law provided also that both ITA GAP and IAS compliant companies could opt for the realignment between fiscal and accounting value (if higher than the fiscal ones) of certain assets by applying a substitute tax with the effects of the step up similar to the ones mentioned above. In addition the 2020 Budget Law foresees also that a 10% substitute tax can be paid in relation to the net worth reserve booked as a consequence of the step up/realignment of the tax costs in order to avoid the ordinary taxation when distributing it (the reserve is otherwise subject to taxes at the level of the company itself - so called "schiava d'imposta" - at the time of its distribution to the shareholders).

Statutory law and insolvency procedures section: brief notes

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

(art. 9, Law no. 40, June 5, 2020 entered into force on June 7, 2020)

The Law Decree covered also certain insolvency procedures in order to extend the relevant deadlines and allow the taxpayers to re-discuss certain contents. The Law has extended the provision to other procedures such as the crisis agreements ("accordi di

composizione della crisi") and consumer's plans ("piani del consumatore").

Bankruptcy statements

(art. 10, Law no. 40, June 5, 2020 entered into force on June 7, 2020)

In order to protect the Italian corporations and the Italian entrepreneurs by the risk of bankruptcy, the Law Decree has declared not allowed any bankruptcy claim filed between March 9, 2020, and June 30, 2020, unless, according to the Law, the bankruptcy is requested by the entrepreneur and it is not due to the Covid-19 health emergency, certain criminal risks occur or other conditions included in the Italian Bankruptcy Law are met.

Incentives

Temporary measures to support corporate liquidity

(art. 1 Law Decree 23/2020 amended by Law no. 40, June 5, 2020 entered into force on June 7, 2020)

With the conversion into law of the Law Decree 23/2020, some amendments have been approved in relation to the temporary measures to support corporate liquidity (art. 1, Law Decree 23/2020). More in detail, new paragraph 1-*bis* provides for the extension of SACE guarantee also to the transfer of credits with solvency guarantee provided by the transferor, made by companies eligible for the SACE guarantee, after the entry into force of the Law, to banks and financial intermediaries recorded in the register of Article 106 of the Consolidated Banking Act. For the identification of eligible companies, please refer to our Tax Alert no. III regarding the Law Decree. Moreover, for the purpose of granting guarantees, according to paragraph 1-*ter*, companies that according to Article 2359 of the Civil Code directly or indirectly control a company resident in a country or in a territory that is not cooperative for tax purposes or that are controlled, directly or indirectly by a company resident in a country or in a territory that is not cooperative for tax purposes, are excluded. Non-cooperative countries or territories for tax purposes are the jurisdictions identified in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, adopted with the conclusion of Council of the European Union. The

exclusion does not apply if the company demonstrate that the non-resident company carries on an effective economic activity, throughout the use of personnel, equipment, assets and premises. On the other hand, professional associations and companies between professionals are eligible for the application of the law. As regards the grace period, that is an option for the beneficiary, it is increased from 24 to 36 months. Furthermore, details have also been provided in relation to the calculation of the debt/equity ratio of the company, which shall not exceed 7,5 in the last two years, for the purposes of identifying "company in difficulty". The company that benefit from the guarantee as well as any other company based in Italy that is part of the same group to which the former belongs, including those subject to management and coordination, shall avoid to distribute dividends or the purchase their own share during the year 2020. If the above-mentioned companies have already distributed dividends or re-purchased (own) shares at the time of the financing request, the limitation shall be applied for the 12 months following the date of the request. Moreover, according to letter n) and n-*bis*) of art. 1, the finance loan may also be used to pay the rental cost or the lease cost for the ongoing business concern and, for an amount not exceeding 20% of the financed amount, to pay instalments of existing loans expired or falling due during the emergency period (i.e. from 1 March 2020 to

31 December 2020) for which the enterprise is not able to make the reimbursement due to the epidemic situation, provided that such impossibility is attested by the legal representative. In addition, beneficiaries shall not relocate production outside Italy. Finally, the scope of the rule is extended by introducing the possibility of granting guarantees to financial institutions and other credit institutions for financial loans or other debt instruments issued by companies with a rating of at least BB-. If the rating falls to BBB-, the guarantee may be granted, provided that at least 30% of the original amount remains with the original bond underwriters. For the identification of companies, please refer to our Tax Alert No. III regarding the «Liquidity» Decree.

Substitute declaration for requests of new loan

(art. 1-bis Law Decree 23/2020 added by Law no. 40, 5 June 2020, entered into force on 7 June 2020)

Requests for new loan, made pursuant to art. 1 of Law 40/2020, must be supported by a self-declaration with which the owner or legal representative of the company declares - under his own responsibility - the existence of certain requirements. In particular, it must be declared that the business activity has been limited or interrupted by the epidemiological emergency due to COVID-19, that the data provided are true and correct, that the financing is required to support personnel costs,

investments or assets used in production plants located in Italy.

Reimbursement to companies for missed participation in international trade fairs and events

(art. 12-bis Law Decree 23/2020 added by Law no. 40, 5 June 2020, entered into force on 7 June 2020)

Pursuant to Article 49 of Law Decree no. 34/2019, the tax credit for the participation to SMEs in international trade fairs, is also due for the year 2020 for the costs incurred by companies for participation in trade fairs and events abroad, which have been cancelled due to the emergency connected to the current epidemiological situation.

SMEs Guarantee Fund

(art. 13 Law Decree 23/2020 as amended by Law no. 40, June 5, 2020 entered into force on June 7, 2020)

The Law Decree 23/2020 has been converted into Law and has introduced some amendments to the provisions related to the SME Guarantee Fund. More in detail:

- entities with no more than 499 employees are eligible for the guarantee even if the 25% of the share capital or voting rights are held directly or indirectly by a public entities or, jointly, by several public entities;
- the possibility to obtain the guarantee for the 100% of the loan, is also extended to professionals associations, companies between professionals

as well as insurance agents, insurance subagents and brokers registered in the relevant section of the Register;

- certain clarifications have been provided in relation to the possibility to grant the guarantee to entities with exposures classified as: probable to remain unpaid, past due or impaired;
- furthermore, for the entities that are entitled to request a guarantee up to 100% of the financing, according to letter m) of art. 1 of Law 40/2020, the following amendments have been provided:
 - o extension of the duration of the loan from 72 months to 120 months;
 - o the amount of the financing may not exceed alternatively the double of the employee expenses or 25% of the turnover for 2019. In addition, the granted amount could not exceed 30,000 euros (instead of 25,000);
- beneficiaries may request the adjustment of the amount and duration;
- also for the entities with revenues not exceeding € 3.2 million, the guarantee may be granted for financial transaction within the limit alternatively of the double of the employee expenses or 25% of the turnover for 2019.

Tax credit for the rental of shops and stores

(art. 65 Law no. 27, 24 April 2020, entered into force on 30 April 2020)

The article 65 of the Decree 18/2020 grants a tax credit of 60% of the amount of the rent cost for March 2020 related to buildings falling under cadastral category C/1.

The tax credit is available for companies carrying out an activity different from food stores, pharmacies, etc..

The amendment to the conversion Law provided that the tax credit is not taxable for corporate income tax and regional tax for productive activities purposes.

Implementation of the provisions of Law Decree. 18/2020

(art. 49-bis, 72-ter, 54-bis, Law no. 27, 24 April 2020, entered into force on 30 April 2020)

The article relating to the Guarantee Fund for SMEs located in the so-called Red Zones, the measures in favour of Invitalia soft loans and the increase of the SIMES Fund contained respectively in articles 6, 25 and 27 of Law Decree 9/2020 have been implemented respectively in articles 49-bis, 72-ter, 54-bis of Law 27/2020. For more detail, please refer to our Tax Alert no. I.

Tax credit for rent

(Revenue Agency Circular letter no. 14/E dated 6 June 2020)

On June 6, 2020, the Revenue Agency published the Circular letter n. 14/E, providing some details and clarifications regarding the tax credit for rental of real estate for non-residential use. We would like to remind that the beneficiaries of such credit are those carrying out business, art or professional activities, with revenues not exceeding 5 million euros in the fiscal year prior to that running at date of entry into force of Law Decree 34/2020 that is entered into

force on May 19th, 2020 (so called "Decreto Rilancio").

The document clarified that also the flat-rate subjects and agricultural companies are entitled to benefit of the tax credit, whether they determine their income on a cadastral basis or on a business income basis. On the other hand, who conduct business activities or self-employed activities carried out not usually are not entitled to apply for the credit.

The Circular letter specifies that the threshold of revenues must be determined for each type of entity, taking into account its own rules for determining the income.

Some clarifications have also been provided with regard to hotel and agritourism structures, which can benefit from the credit regardless of the revenues booked in the previous fiscal year, even if they carry out seasonal activities.

The *tax credit* is equal to 60% of the rents, lease payment or concession fee of non residential real estate and equal to 30%, in relation to fees for complex service contracts or business lease contracts. On this point, the circular letter identifies the contracts for complex services: this include for example, the real estate that are part of complexes with a unitary destination, such as tourist villages, sports centres, shopping malls and *co-working* contracts.

A further condition for the benefit is that the company has suffered a decrease of turnover in each of the months of March, April and May of at least 50%, compared with the same month of the previous tax year. In order to verify the decrease of turnover, shall be considered the invoiced and relevant transactions included in the periodic VAT settlement for the month March, April and May, respectively, and added the not relevant transaction

for VAT purposes, taking as a reference the date of execution of the transaction.

In order to benefit from the credit it is necessary that the rent has been paid; in case of delay in the payment, the possibility to use the tax credit remains suspended until the payment of the rent.

The tax credit can be used to offset other tax liabilities, after the payment of rent, using the F24 form with the tax code '6920', established by the Revenue Agency Resolution No 32/E.

Alternatively, the tax credit may be used in the tax return for the fiscal year in which the expenditure is incurred; or it may be transferred to the lessor or grantor or to other subject, including credit institutions and other financial intermediaries, with the option of subsequent transfer of the credit for the latter. In case of transfer, the financial administration will verify for the transferor the existence of the conditions to use the credit and the correct determination, while for the transferee only the regular use of the credit received. The Director of the revenue Agency, with a specific provision, shall define the procedures for the transfer of the credit.

Finally, we remind that the tax credit cannot be cumulated with tax credit for Shops and stores provided for by Article 65 of the Law Decree 18/2020 concerning the rents paid for the month of March. If not yet used, the taxpayer is entitled to opt for the new tax credit introduced by "Decreto Rilancio" instead of the previous one.

Please note that the regulations apply in compliance with the limits and conditions set for in the Framework Communication of the European Commission of 19 March 2020.

Decree implementing the research, development and innovation tax credit ("CIRSI Decree")

The Decree of the Ministry of Economic Development sets out measures to implement the tax credit for research, development and innovation pursuant to article 1, paragraphs 198-207, of Law no. 160 of 27 December 2019, hereinafter "R&D&I Credit". The CIRSI Decree, issued by the Ministry of Economic Development (MISE) provides indication about the following aspects:

- a) the definition of the new R&D&I tax credit, in particular the general parameters for the technical classification of R&D activities, technological innovation activities and design and aesthetic design activities;
- b) the identification of the digital transition 4.0 and green transition targets, in the presence of which the credit for innovation technology activities is increased (10% instead of 6%);
- c) the rules for determining and allocating eligible costs;
- d) details about the supporting documentation of certain categories of eligible costs.

In fact, companies resident in the territory of the State, including permanent establishments of non-residents, can benefit from the credit, regardless of legal form, economic sector to which they belong, size and tax regime for determining business income, provided that they comply with the regulations on safety at work, applicable in each sector, and are regular in fulfilment of their obligations to pay social security and welfare contributions to workers.

The measure of the tax credit is different according to the classification of the activities carried out:

- a) research and development: 12% and up to a maximum of EUR 3 million;
- b) technological innovation: 6% with a maximum of EUR 1,5 million;
- c) digital innovation 4.0 and ecological transition: 10% and up to a maximum of €1,5 million;
- d) design and aesthetic design: 6% up to a maximum of €1,5 million.

In order to correctly classify the research and development, technological innovation, design and aesthetic innovation activities as well as the scope of digital innovation 4.0 and ecological transition, the CIRSI Decree provides the following definitions:

- 1) according to art. 2 of the CIRSI Decree, fundamental research, industrial research and experimental development activities in the scientific and technological field, as defined by the OECD Frascati Manual, which pursue an advancement of knowledge or general capabilities in a scientific or technological field and not in relation to the capabilities of an individual company, are considered **research and development activities**;
- 2) according to art. 3 of the CIRSI Decree, activities aimed at the production of products, of tangible and intangible assets or services, or new or substantially improved production processes, or which differ from those already manufactured or applied by the companies in terms of technological characteristics or performance or eco-compatibility or ergonomics or other

substantial elements are considered **technological innovation activities**. In order to identify the activities, it shall also refer to the criteria contained in the OECD Oslo Manual. The CIRSI Decree also describes activities that are not eligible for credit, including works carried out to make minor changes and improvements to products and processes already made or applied by the company, including the resolution of problems related to normal operation or the customization of products;

- 3) according to art. 4 of the CIRSI Decree, innovation activities concerning the external or aesthetic appearance of products are considered **design and aesthetic innovation activities**. In particular, these activities are aimed at substantial innovation of company products in terms of shape, and other non-technical and functional elements, such as the characteristics of the colours, the lines. It is also made clear that a product is defined as any industrial or craft object including complex products, packaging, graphic symbols, characters, etc. Furthermore, the CIRSI Decree specifies that works relating to new collections and samples, typical of the fashion sector, which present new elements with respect to the previous ones, with regard to shapes, colours and other relevant elements, are considered eligible for credit;
- 4) according to art. 5, paragraph 1 of the CIRSI Decree, the activities carried out in projects relating to the transformation of company's processes through the integration and interconnection of internal and external factors,

relevant for the value creation, are considered **digital innovation 4.0 activities**. For example, these are projects connected to the introduction of solutions that allow a) a common integration of the different components, modules and systems of a company architecture; b) the improvement of the operational management of production; c) the integration between the information system (IT) and the phases of the production process of goods or services; d) the planning and simulation of production processes; e) the definition and systematic generation of key indicators of company objectives;

- 5) according to Art. 5, paragraph 2 of the CIRSI Decree, activities aimed at transforming business processes according to the principles of the circular economy as set out in the European Commission Communication (COM 2020) 98 of 11 March 2020 are considered innovation activities with **ecological transition objectives**. For example: (a) the design of sustainable longer-lasting products, designed to be reused, repaired or upgraded; (b) the introduction of technological solutions for recovery in order to obtain high quality raw materials from post-use products; c) the adoption of solutions and technologies to monitor the life cycle of the product and to allow the evaluation of the state of the post-use product, etc.

Eligible expenses must comply with the general rules of effectiveness, inherence and accuracy, as well as the general tax rules with reference to Article 109, paragraphs 1 and 2 of the Italian Income Tax Code,

regardless of the accounting principles adopted and income regime applicable. Moreover, the CIRSI Decree provide for the rules for determining personnel costs, depreciation rates, lease payments and directors' costs. More specifically, it is clarified that depreciation are recognized up to the maximum amount deductible for tax purposes according to Articles 102 and 103 of the Italian Income Tax Code. In addition, with regard to personnel costs, the eligible costs include the relevant cost for the company relating to the hours or days spent on eligible activities, including travel allowances. Important clarifications are also provided with reference to *"individuals not older than 35 years of age, at first employment"* whom costs may benefit from the 50% increase. In particular, the rule refers to individuals recruited during the fiscal year with an employment agreement, including part-time contracts, who at the starting date, have not yet reached the age of 35 and who have never previously been employed, also with other companies. Finally, paragraph 6 of Article 6 contains some limitations for the determination of eligible costs relating to directors expenses. The eligible costs could not exceed 50% of the ordinary annual fixed directors' fees that shall be paid by the company during the fiscal year. For certain costs, there are also specific documentation to be provided in the form of a certificate issued by the legal representative.



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