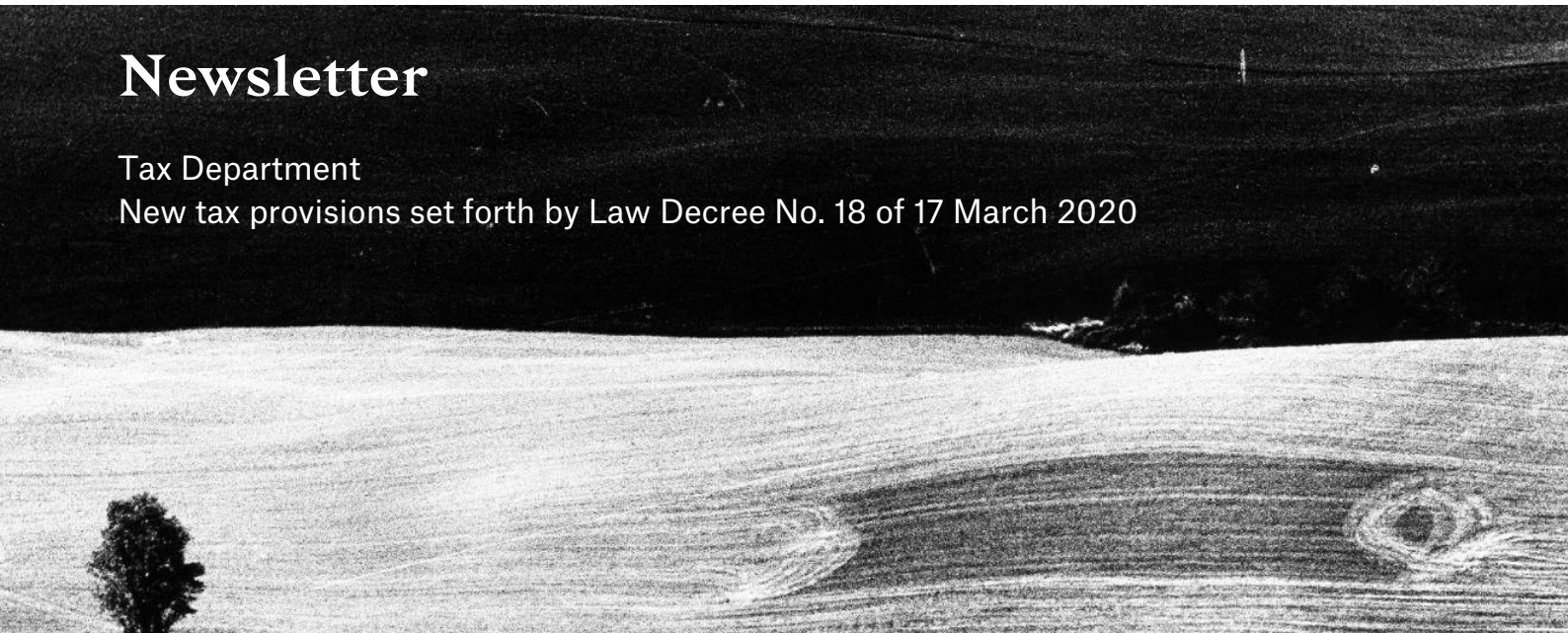


Newsletter

Tax Department

New tax provisions set forth by Law Decree No. 18 of 17 March 2020



I. The Decree

Law Decree No. 18 of 17 March 2020 has introduced specific provisions to strengthen the National Health Service and provide economic aid for families, workers and businesses to cope with the COVID-19 epidemiological emergency (hereinafter, the “Decree”).

The Decree is divided into five headings covering: (i) provisions to strengthen the National Health Service; (ii) provisions to support employment; (iii) provisions to support financial needs through the banking system; (iv) fiscal provisions to support families and enterprises; (v) and further provisions.

The following paragraphs will analyze, with exclusive reference to tax provisions, the provisions of Article 55, Article 60-71, Article 83, and Article 98 of the Decree, also in the light of the clarifications made in the Explanatory Statement (“Explanatory Statement”).

II. Article 55 – Financial aid for enterprises

Article 55 of the Decree, aimed at supporting businesses in terms of financial needs, provides that assignments of impaired receivables made for consideration by 31 December 2020 allows the transformation of deferred tax assets (“DTA”), even if not booked in the financial statements, into tax credits that can be used, without limit of amount, for the payment of taxes, withholding taxes and social security contributions or sold (intra-group or to third parties) or requested for reimbursement to the tax authorities.

From a subjective point of view, the rule refers to companies without any limitation concerning the activity carried out. Therefore, it is applicable both to industrial and banking and financial companies. However, it does not apply to companies for which a state of severe financial difficulties or the risk thereof has been assessed in accordance with Article 17 of Legislative Decree No. 180 of 16 November 2015 (regulations concerning reorganization and resolution of credit institutions), or a state of insolvency within the meaning of Article 5 of Royal Decree No. 267 of 16 March 1942 (so-called Bankruptcy Law) or Article 2, paragraph 1, letter b) of Legislative Decree No. 14 of 12 January 2019 (the so-called Code on Crisis and Insolvency).

The assigned receivables may be either commercial or deriving from financing and must be considered “impaired”, *i.e.* they must be due from debtors in default for more than ninety days from the date on which payment was due. Assignments of receivables between companies that are associated by relationships of control pursuant to Article 2359 of the Italian Civil Code and to companies controlled, even indirectly, by the same party, are excluded from the scope of application of Article 55 of the Decree.

The convertible DTA are those relating to (i) tax losses that can be carried forward pursuant to Article 84 of Presidential Decree No. 917 of 22 December 1986 (without application of the limits provided for in paragraph 1 of the rule for entities benefiting from a profit exemption scheme) and (ii) the amount of the notional return on the Allowance for Corporate Equity (“ACE”) exceeding total net income and which at the date of the assignment of the receivables has not yet been deducted from or otherwise set against the taxable income.

The portion of DTA convertible into tax credits is equal to 20% of the nominal value of the receivables assigned, but subject to a maximum nominal value limit of 2 billion euros for the total amount of receivables assigned that are recognized for conversion purposes. For entities belonging to groups, the limit is calculated taking into account all assignments made by entities belonging to the same group.

The conversion of the DTAs into tax credits takes place on the effective date of the assignment of the aforesaid receivables. From such date, the assignor will no longer be able to offset the losses or deduct or take advantage through a tax credit of the surplus of the ACE notional yield for the part related to the portion of the DTA converted into tax credits.

The tax credits arising from the conversion of DTAs must be set out in the tax return. They are not interest-bearing and do not contribute to the computation of IRES nor to the IRAP tax base.

The conversion of the DTAs into tax credits is subject to the exercise by the assignor company, by the end of the financial year in which the assignment of the credits takes effect, of the election under the Article 11, paragraph 1, of Law Decree No. 59 of 3 May 2016, if not already exercised, and the consequent payment of the 1.5% fee. From the wording of Article 55, it appears that, without prejudice to the immediate usability of the tax credits, for the purposes of the fee, the election is effective from the financial year following that in which the assignment was made.

III. Article 60 – Relief from time limits

Article 60 of the Decree extends to 20 March 2020, without the application of penalties and interest, the deadlines for payments to public administrations expiring on 16 March 2020.

IV. Article 61 – Postponement of withholding tax payments, social security and welfare contributions and compulsory insurance premiums

Article 61 of the Decree extends the postponement of the payment of withholding taxes on employment income and similar, social security and welfare contributions and premiums for compulsory insurance, already provided in favor of the hotel and tourism industry under Article 8, paragraph 1 of Law Decree No. 9 of 2 March 2020, to further categories of businesses operating in the sports, art and culture, transport and catering, education and assistance, gaming and betting sectors.

There is a postponement of value added tax payments expiring in March 2020 for businesses operating in the hotel and tourism industry and for all the categories of businesses indicated in paragraph 2 of Article 61¹.

¹ These are “a) national sports federations, sports promotion entities, sports, professional and amateur associations and clubs, as well as those managing stadiums, sports facilities, gyms, clubs and facilities for dance, fitness and bodybuilding, sports centers, swimming pools and swimming centers; b) entities that manage theatres, concert halls, cinemas, including ticketing services and support activities for artistic performances, as well as discos, dance halls, nightclubs, gaming rooms and billiard halls; c) entities that manage lottery sale outlets, lotteries, betting, including the management of machines and related equipment; d) entities that organize courses, fairs and events, including those of an artistic, cultural, recreational, sporting and religious nature; (e) persons managing catering activities, ice-cream parlours, pastry shops, bars and pubs; f) entities that manage museums, libraries, archives, historical places and monuments, as well as botanical gardens, zoos and nature reserves; g) individuals who run day nurseries and day care services for disabled children, educational services and schools for children and first and second level educational services, professional training, sailing, navigation and flying schools, which issue patents or commercial licenses, professional driving

The postponed payments may be made, without the payment of penalties and interest, either in a single instalment, by 31 May 2020, or in a maximum of five monthly instalments of equal amount starting from May 2020.

With reference to national sports federations, sports promotion entities, professional and amateur sports associations and clubs, the payment of withholding tax, withheld at source, in respect of employees, as well as social security and welfare contributions and compulsory insurance premiums, may be made, without the application of penalties and interest, either in a single instalment by 30 June 2020, or in a maximum of five equal monthly instalments starting from June 2020.

The provision specifies that there shall be no refund of payments already made.

V. Article 62 – Postponement of tax and social security contributions payments and compliance deadlines. Postponement of VAT payments for certain taxpayers

Article 62 of the Decree, without affecting the rescheduling of the deadlines for the filing of pre-filled tax returns, as per Article 1 of Law Decree No. 9 of 2 March 2020, introduces for persons having their tax domicile, registered office or place of business in the territory of the State, the postponement of tax compliance obligations, other than tax payments, the duty to apply withholding tax and withholding taxes for regional and municipal additional taxes, for the period from 8 March to 31 May 2020. These obligations may be carried out by 30 June 2020 without the application of penalties. However, no payment by instalments is permitted.

For VAT registration holders with their tax domicile, registered office or operating headquarters in the territory of the State and a turnover not exceeding 2 million euros in the tax period prior to the entry into force of the Decree, there is a postponement of tax self-payments, expiring in the period between 8 March 2020 and 31 March 2020, relating to withholding taxes on income from employment and similar income, withholdings for the regional and municipal additional tax, value added tax, social security and welfare contributions, as well as premiums for compulsory insurance. These payments must be made, without the application of penalties and interest,

schools; h) individuals who carry out non-residential social assistance activities for the elderly and disabled; i) spas as per Law 24 October 2000, n. 323 of 24 October 2000, and centers for physical well-being; l) entities that manage amusement parks or theme parks; m) entities that manage bus, railway, underground, maritime or air stations and terminals; n) entities that manage land, air, river, lake and lagoon goods shipping and passenger transport services, including the management of funiculars, cable cars, gondolas, chairlifts and ski-lifts; o) entities that manage land, sea, river, lake and lagoon transport rental services; p) entities that manage rentals of sport and recreational equipment or of structures and equipment for events and shows; q) individuals that carry out activities as guides or other tourist assistance; r) non profit entities pursuant to Article 10 of Legislative Decree No. 460 of 4 December 1997 enrolled in the relevant registries, pro bono organizations and associations enrolled in the relevant regional registries and of the Provinces of Trento and Bolzano, that, entirely or for the most part, carry out one or more activities of general interest provided for by Article 5, paragraph 1, of the Legislative Decree No. 117 of 3 July 2017'.

either in a single instalment by 31 May 2020, or in up to five equal monthly instalments, starting in May 2020. No reimbursement is provided for any amounts already paid.

Postponement of VAT payments applies, regardless of the VAT turnover or earnings, to taxpayers carrying out business and self-employment activities, and that have their tax domicile, registered office or operating headquarters in the Provinces of Bergamo, Cremona, Lodi and Piacenza.

Finally, persons who have their tax domicile, registered office or operating headquarters in the territory of the State, and revenues or compensation not exceeding 400.000 euros in the tax period preceding that in progress at the date of entry into force of the Decree, are exempt from withholding tax on income from self-employment, as well as on commissions relating to commission, agency, brokerage, trade representation and business proxies recognized in the period between the date of entry into force of the Decree and 31 March 2020, provided that in the previous month they did not incur expenses for employment or similar services. The amount of withholding taxes not paid by the withholding agents shall be paid, without the application of penalties and interest, directly by the taxpayer, either in a single instalment by 31 May 2020, or in a maximum of five equal monthly instalments starting from May 2020.

The favorable provisions under Article 1 of the Decree of the Minister of Finance of 24 February 2020, published in the Official Gazette No. 48 of 26 February 2020, for persons with tax domicile, registered office or operating headquarters in the municipalities outlined in Annex 1 to the Decree of the President of the Council of Ministers of 1 March 2020 (c.d. "red zone", including the municipalities of Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini, Vo'), are still applicable.

VI. Article 63 – Employees Bonus

Article 63 of the Decree grants a bonus of 100 euros to public and private employees with a total income of previous year not exceeding 40,000 euros and who continue to work at their workplace during the period of the health emergency. The bonus is calculated according to the number of days worked at the workplace in March 2020. The bonus will not form part of the taxable base for the purposes of income tax and will be awarded automatically by the employer, in the salary for the month of April, or in any case by the dates provided for the year-end adjustment mechanisms. Employers will recover the premium paid by offsetting it in the tax return and payment of taxes, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997.

VII. Article 64 – Tax credit for workplace sanitization costs

Article 64 of the Decree introduces a tax credit in favor of all those who carry out business, artistic or professional activities in order to encourage the sanitization of the working environment, as a measure to contain the contagion of the COVID-19 virus.

This credit will be recognized for the 2020 tax period, to the extent of 50% of the cost borne and provided of receipt for sanitization work of working environments and tools, up to a maximum of 20,000 euros for each beneficiary. The tax credit is capped at 50 million euros for the year 2020.

The Minister for Economic Development, in agreement with the Minister for the Economy and Finance, must adopt, within thirty days of the date of entry into force of the law converting the Decree, the implementing provisions of this Article.

VIII. Article 65 – Tax credit for shops and stores

Article 65 of the Decree recognizes a tax credit in favor of all business operators other than those who carry out activities identified as essential by the provisions contained in Annexes 1 and 2 of the Decree of the President of the Council of Ministers of 11 March 2020, (e.g. pharmacies, para pharmacies, points of sale of basic foodstuffs, etc.).

This credit will be recognized, for 2020, to the extent of 60% of the lease rent related to March 2020 for buildings falling under cadastral category C/1 and will be used exclusively by way offset, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997.

IX. Article 66 – Gifts in support of the COVID-19 epidemiological emergency

Article 66 of the Decree introduces a tax deduction of 30%, up to a maximum of 30,000 euros, for gifts made in 2020 by individuals and non-commercial bodies in favor of the State, regions, local authorities, bodies or foundations and associations legally recognized as non-profit-making, aimed at financing the measures to cope with the COVID-19 epidemiological emergency.

Article 66 of the Decree also provides for the deductibility from income of gifts made in 2020 by individuals with business income.

For the purposes of the regional business income tax, gifts are deductible in the year in which the payment is made.

The above gifts may be made in cash or in kind. In order to determine the value of the gifts in kind, Articles 3 and 4 of the Decree of Ministry of Labour of 28 November 2019 apply, to the applicable extent.

X. Article 67 – Suspension of the periods relating to the activities of the offices of the tax authorities

Article 67 of the Decree provides for the suspension, in favor of the tax authorities' offices, from 8 March 2020 to 31 May 2020, of: (i) the periods relating to settlement activities (with the exclusion, as specified in the Explanatory Statement, of tax settlement and formal audit activities), audit, assessment, collection and litigation; (ii) the periods for replying, also following the submission of additional documentation, to the rulings referred to in Article 11, of Law No. 212 of 27 July 2000; (iii) the periods for replying to the request for access and the consequent request to enter the cooperative compliance regime, as per Article 6, of Legislative Decree No. 128 of 5 August 2015; (iv) the periods for replying to a new investments ruling request, as per Article 2, of Legislative Decree No. 147 of 14 September 2015; (v) the periods related to the request for the enhanced cooperation and collaboration procedure, as per Article 1-bis, of Law Decree No. 50 of 24 April 2017; (vi) the periods related to the request for prior agreement for companies with international activities, as per Article 31-ter, of Presidential Decree No. 600 of 29 September 1973; (vii) the periods related to income reduction adjustments for settlements between associated entities with international activity, as per Article 31-quater of Presidential Decree No. 600 of 29 September 1973; (viii) the periods related to the elective regime for reduced taxation on income deriving from the use of certain intangible assets (so-called patent box), as per Article 1, paragraphs 37-43, of Law No. 190 of 23 December 2014. The aforesaid periods, including those for the regularization of the above-mentioned applications, will resume as of 1 June 2020.

During the period of suspension, the filing of ruling requests and legal advice referred to in the previous paragraph is permitted exclusively by telematic means.

From 8 March 2020 to 31 May 2020 there is also a suspensions of activities other than those which cannot be postponed or are urgent, such as responding to requests for telematic searches of assets subject to seizure (Articles 492-bis of the Italian Civil Code; Articles 155-quater, 155-quinquies and 155-sexies of the Implementing Provisions of the Italian Civil Code), and responses to requests for access to administrative deeds (Article 22 of Law No. 241 of 7 August 1990; Article 5 of Legislative Decree 33 of 14 March 2013).

Lastly, with reference to the limitation periods for the activities of the offices of the tax authorities, Article 12 of Legislative Decree No. 159 of 24 September 2015 is applicable. However, the law is not clear on whether only paragraph 1 of Article 12 applies, or also paragraph 2 (which provides for the extension of the limitation periods relating to the activities of the offices of tax authorities, the social security and assistance bodies and collection agents, until 31 December of the second year following the end of the suspension period).

XI. Article 68 – Postponement of the deadlines for payment of the debts administered by the collection agent

Article 68 of the Decree provides for the postponement of deadlines for payments that expire in the period from 8 March 2020 to 31 May 2020, deriving from (i) tax bills issued by the collection agents; (ii) the notices of assessment and executive acts issued by the Revenue Agency, by the Customs and Monopolies Agency and by local Authorities; (iii) debit notices issued by social security institutions; (iv) injunctions issued by the local authorities. The aforementioned must be settled in a single payment by 30 June 2020 and there will be no refund of what has already been paid.

With reference to the limitation periods relating to the activities of the offices of the tax authorities, Article 12 of Legislative Decree No. 159 of 24 September 2015 is applicable. The interpretative uncertainties highlighted in Section X above with respect to Article 67 remain in a similar fashion also with respect to Article 68.

There is also a deferral to 31 May 2020 of the payment of the sums due under the pending voluntary settlement of tax bills procedure (so-called *Rottamazione ter*) and / or the pending remission of tax bills procedure (so-called *Saldo e stralcio*), expiring on 28 February 2020 and 31 March 2020, respectively.

Finally, notifications of write-offs in respect of the instalments entrusted to collection agent falling due in 2018, 2019 and 2020 must be made by 31 December 2023, 31 December 2024 and 31 December 2025 respectively.

For the sake of completeness, we highlight that, according to the wording of this provision, the postponement does not seem to apply to the deadlines for the payment of amounts due under certain liquidation notices (*i.e. avvisi bonari* and *inviti*) and instalment plans connected to settlement agreements.

XII. Article 69 – Postponement of payments in the gaming sector

Article 69 of the Decree provides for the postponement to 29 May 2020 of the deadlines for the payment of the tax levy on equipment suitable for lawful gaming and the payment of the relevant license fee otherwise due by 30 April 2020. The amounts due may be paid in equal monthly instalments, on which interest would accrue. The first instalment must be paid by 29 May and the following instalments by the last day of each month, with the last instalment to be paid by 18 December 2020.

Payment of license fees for the extension of *Bingo* licenses is suspended from March and throughout the period of suspension of activity.

Finally, the deadlines for the call for betting and *Bingo* bids, the tenders for entertainment equipment and the entry into force of the Single Gaming Register are

extended by six months, in view of the slowdown in administrative activities due to the onset of the health emergency.

XIII. Article 70 – Strengthening the Customs and Monopolies Agency

Article 70 of the Decree provides for the strengthening of the resources allocated to the remuneration of overtime work of the staff of the Customs and Monopolies Agency, in view of the significant commitments arising from the increase in control activities at ports, airports and internal customs in relation to the COVID-19 health emergency. The resources allocated are increased by eight million euros from the Agency's own funding.

XIV. Article 71 – Publicity for waiver of postponements

Article 71 of the Decree allows taxpayers who voluntarily waive the postponements provided for by the Decree to request that their decision will be published on the institutional website of the Ministry of Economy and Finance, in order to gain an advantage in terms of their reputation in the public eye.

XV. Article 83 – Urgent provisions concerning the rescheduling of hearings and postponement of deadlines in civil, criminal, tax and military proceedings, suspension of the limitation period in criminal proceedings and extension of sessions of the Criminal Court (*Corte di Assise*)

Article 83 of the Decree provides for the rescheduling to a date subsequent to 15 April 2020 of hearings, originally set for the period between 9 March 2020 and 22 March 2020, relating to civil, criminal, tax and military proceedings, except for the exceptions set out in paragraph 3 (concerning, for example, hearings relating to specific cases falling within the jurisdiction of the Youth Court, cases relating to alimony/maintenance payments, cases relating to adoption and disqualification proceedings, hearings validating arrest orders, etc.).

All procedural time limits, including deadlines for the notification of proceedings before the Court (including appeals before the Tax Courts of first instance, also in case of pre-litigation resolution procedure pursuant to Article 17-*bis* of Legislative Decree No. 546 of 31 December 1992), enforcement and appeal procedures, are suspended until 15 April 2010; where the start of the relevant time period would begin

during the period of such suspension, it will instead begin on 15 April 2020. In addition, when the deadline is calculated looking back in time and entirely or in part falls during the suspension period, the related hearing or activity is postponed so that such deadline can be respected.

Furthermore, Article 83 allows the heads of judicial offices to adopt provisions to cope with the epidemiological emergency, such as the limitation of public access to judicial offices and the management of hearings telematically provided that the effectiveness of the adversarial process is guaranteed, and the payment of court fees exclusively by telematic means.

Finally, with regard to criminal proceedings, specific provisions are provided with respect to limitation periods, notifications and sessions of the *Corte di Assise* and the *Corte di Assise di Appello*.

XVI. Article 98 – Urgent extraordinary measures to support the printing industry

Article 98 of the Decree extends, for the period 2020-2022, the tax credit for advertising investments, as provided by Article 57-bis of Law Decree No. 50 of 24 April 2017, to a single amount of 30% of the value of the investments made (instead of the previous limit of 75% of incremental investments only).

For 2020, there is a six-month deferral of the deadline for the filing of the related telematic communication, which may consequently be submitted, in the ordinary manner, in the period between 1 and 30 September 2020. In any case, telematic communications transmitted in the period between 1 and 31 March 2020 remain valid.

In addition, with reference to the so-called “tax credit for newsstands” introduced by the 2019 Budget Law, and most recently amended by the 2020 Budget Law (Article 1, paragraph 806, Law No. 145 of 30 December 2018), Article 94 – for 2020 – provides for the following: (i) an increase from 2,000 to 4,000 of the maximum amount of the tax credit that can be used by each beneficiary; (ii) the extension of the types of expenses that can be offset by including expenses for electricity supply services, telephone and Internet connection services, as well as newspaper home delivery services; and (iii) the extension of the measure to press distribution companies that supply newspapers and/or periodicals to resellers located in Municipalities with a population of less than 5,000 inhabitants and in Municipalities with a single point of sale.

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For further information, please reach out to your usual Chiomenti contact.

Contacts

Raul-Angelo Papotti

Partner – Chiomenti
Tax Department
T. +39 02 72157 855
raul.papotti@chiomenti.net

Antonino Guida

Counsel – Chiomenti
Tax Department
T. +39 02 72157 851
antonino.guida@chiomenti.net

Carlomaria Setti della Volta

Senior Associate – Chiomenti
Tax Department
T. +39 02 72157 418
carlomaria.setti@chiomenti.net

Giovanni Carpenzano

Of Counsel – Chiomenti
Tax Department
T. +39 02 72157 459
giovanni.carpenzano@chiomenti.net

Irene Pellecchia

Counsel – Chiomenti
Tax Department
T. +39 02 72157 859
irene.pellecchia@chiomenti.net