

## Newsalert

Tax Department

Law Decree No. 73 of 25 May 2021 (published in the Official Gazette No. 123 of 25 May 2021) – s.c. “Sostegni-*bis* Decree”

Main tax provisions

### Introduction

Law Decree No. 73 of 25 May 2021, published in the Official Gazette No. 123 of 25 May 2021, introduces "Urgent measures related to COVID-19 emergency for businesses, job, young, health and services to the territory" (s.c. “Sostegni-*bis* Decree”).

Among the main tax measures, we highlight:

#### **Extension of the tax credit for rental fees on non-residential properties and for the lease of going concern (Art. 4)**

Article 4 of Sostegni-*bis* Decree provides for an extension of the tax credit for rental fees on non-residential properties and for the lease of going concern, introduced by Article 28 of Law Decree No. 34 of 19 May 2020, as converted into Law No. 77 of 17 July 2020 (“Rilancio Decree”) and subsequent amendments.

In particular, Article 4, para. 1 of Sostegni-*bis* Decree provides that companies active in the tourism field, travel agencies and tour operators can benefit from such allowance with reference to the lease fees paid until 31 July 2021, provided that they have registered revenues reductions equal to at least 50% of the revenues registered on the same months of 2019.

Such allowance had already been extended in favour of the abovementioned entities until 30 April 2021 pursuant to Article 1, para. 602 of Law No. 178/2020 (“**2021 Budget Law**”).

Moreover, Article 4, para. 2 of *Sostegni-bis* Decree extends the allowance also to the lease fees paid between January 2021 and May 2021 by entities and by individuals carrying out business activities or professional activities, under conditions that:

- a) in 2019 they registered revenues not higher than € 15 mln;
- b) the average amount of revenues registered between 1 April 2020 and 31 March 2021 is lower than 30% of the average of revenues registered between 1 April 2019 and 31 March 2020. Such condition is not required to those entities and individuals that began their business activity starting from 1 January 2021.

Lastly, the allowance is applicable also to non-commercial entities, including third sector and recognized religious entities, in relation to lease fees paid between January 2021 and May 2021.

## **Capital gain exemption deriving from the sale of participations in innovative start-up companies and SMEs (Art. 14)**

Article 14 of *Sostegni-bis* Decree grants a tax benefit in favour of individuals holding interest in innovative start-up companies, as defined by Article 25 of Law Decree No. 179/2012, and innovative SMEs, as defined by Article 4 of Law Decree No. 3/2015.

In particular, pursuant to Article 14, para. 1 and 2, capital gains realized by individuals (not holding the shareholding in the context of an entrepreneurial activity) upon the transfer of the interest held in innovative start-up companies and SMEs, are exempted from Italian income taxes in case such interest *i)* has been acquired from 1 June 2021 to 31 December 2025 and *ii)* has been held for at least three consecutive years. The tax exemption on capital gains is applicable to the disposal of participations issued as a result of cash contribution in the context of a share capital increase or accounted as share premium reserve including the conversion of convertible bonds into newly issued shares or quotas.

Article 14, para. 3, extends the exemption regime also to capital gains deriving from any disposal of interest into the share capital of Italian resident

partnerships and companies, other than simple partnerships or assimilated entities, as well as of non-resident companies or entities, in case and to the extent that the relevant capital gain is used to subscribe the share capital of innovative start-up companies and SMEs within one year from the disposal, and in any case until 31 December 2025.

## **VAT recoverability on uncollectable receivables in case of insolvency procedures (Art. 18)**

Article 18 of *Sostegni-bis* Decree amends Article 26 of Presidential Decree No. 633/1972 (“**VAT Decree**”), which allows to operate a reduction of VAT taxable basis through the issuance of a credit note in case of uncollectable receivables due to insolvency procedures.

In particular, for insolvency procedures started after the entering into force of *Sostegni-bis* Decree (*i.e.*, 26 May 2021), the reduction of VAT taxable basis is allowed starting from the opening of the procedure (while in the past Italian VAT law required the conclusion of the same).

In case of payment in whole or in part of the receivable after the opening of the insolvency procedure and of the reduction of VAT taxable basis through the issuance of a credit note, the creditor would increase the VAT taxable basis accordingly and the debtor would be entitled to deduct the VAT paid, pursuant to Article 19 of VAT Decree.

The described amendments are compliant with EU provisions (Article 90, section 2, of Directive No. 2006/112/CE – VAT Directive), that give Member States the right to determine at which conditions the reduction of the VAT taxable basis through the issuance of credit notes is allowed.

## **Disposal of unpaid receivables: conversion into tax credits of DTAs related to tax losses carried forward and other deferred deductions (Art. 19)**

Article 19, para. 1 of *Sostegni-bis* Decree provides for the extension to 31 December 2021 of the tax incentive introduced by Article 44-*bis* of Law Decree No. 34/2019 (s.c. “**Crescita Decree**”), applicable in case of disposal of receivables against defaulting debtors.

The tax incentive grants the possibility to convert deferred tax assets ("DTAs"), related to tax losses and ACE deductions<sup>1</sup> carried forward, into a tax credit which is offsetable against other taxes.

The Sostegni-*bis* Decree did not provide any amendment to the limitations envisaged by the Crescita Decree in relation to the maximum amount of DTAs convertible into tax credits (*e.g.* up to 20% of the nominal value of the disposed non-performing receivables).

The tax credits resulting from the abovementioned conversion can be:

- used to offset, without any quantitative limitation, other taxes or duties;
- transferred to parties belonging to the same group or, following the filing of a specific claim, to third parties;
- requested for tax refund by means of a specific claim to be filed to the competent Tax Authority.

## **Incentives for business combinations: conversion into tax credits of DTAs arising from tax losses and other deferred deductions (Art. 19)**

Article 19, para. 8 of Sostegni-*bis* Decree introduces an amendment to Article 1, para. 233 of 2021 Budget Law, aimed at supporting business combinations between SMEs not belonging to the same group, carried out by means of mergers, demergers or contributions.

In general, such tax provision allows the company resulting from the business combination to convert into tax credits a portion of DTAs related to:

- (i) tax losses accrued until the tax period prior to the one in which the business combination is effective from a juridical standpoint (not already used to offset taxable income);

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<sup>1</sup> The allowance for corporate equity regime ("ACE - *Aiuto alla Crescita Economica*") provides for a deduction from IRES taxable basis of an amount of deemed interest equal to the notional return on equity contributions (Article 1 of Law Decree No. 201/2011, converted into Law No. 214/2011).

- (ii) ACE deductions, accrued until the tax period prior to the one in which the business combination is effective from a juridical standpoint (not already deducted or transformed into tax credits).

The tax credit resulting from the conversion is non-interest bearing and can be offset, without any limitations, with other taxes, transferred to third parties or requested for refund.

Pursuant to Article 19, para. 8 of Sostegni-*bis* Decree, such conversion can be carried out provided that the project for the business combination is approved by the competent administrative body (*i.e.*, board of directors) between 1 January and 31 December 2021 (previously a formal resolution of the shareholders' meeting in the same time frame was required).

## **Super ACE (Art. 19)**

Article 19, para. 2 and *seq.* of Sostegni-*bis* Decree introduces a measure aimed at supporting capital injections into Italian companies, applicable only for 2021 tax period (s.c. "Super ACE").

The tax benefit is equal to 15% of the increase (up to € 5 mln) of share capital and of profit reserves (*e.g.*, shareholders' contributions, undistributed profits set aside to reserves, shareholders' waivers of receivables) recorded at the end of the 2021, compared to the capital existing at the end of 2020.

As specified in the explanatory notes of Sostegni-*bis* Decree, any capital increase (compared with the one existing as of 31 December 2010) exceeding the € 5 mln threshold would allow the company to benefit from the ordinary ACE regime.

The Super ACE can be deducted from IRES taxable basis or converted into a tax credit that can be offset with other taxes with no limitations, claimed for refund or transferred to third parties (*e.g.*, banks).

Beneficiaries that intend to be entitled to the conversion into tax credit shall file a specific communication before the Italian Tax Authority.

The Italian Tax Authority will issue guidelines, to be adopted within thirty days from the entering into force of the Law converting the Sostegni-*bis* Decree, defining the terms of the communication to be filed, as well as the procedures to follow in case of transfer of said tax credit.

Lastly, the provision introduces a special recapture mechanism in order to avoid merely temporary cash injections aimed at obtaining the tax benefit.

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