

COVID-19

Revenue Agency Circular no. 10 of 16 April 2020

Revenue Agency clarification to Decree-Law no. 18 of 7 March 2020 and Decree-Law no. 23 of 8 April 2020

Tax litigation proceedings

The Revenue Agency has commented on the main changes introduced by Decree-Law no. 18 of 17 March 2020 (article 83) and by Decree-Law no. 23 of 8 April 2020 (article 36) – hereinafter the First Decree-Law and the Second Decree-Law respectively – on the postponement of hearings and the extension of the limitation periods in tax litigation proceedings.

We outline below the most significant clarifications provided by the Revenue Agency.

POSTPONEMENT OF HEARINGS

Hearings in tax proceedings scheduled between 9 March 2020 and 11 May 2020¹ will not be held (see our earlier messages).

IMPORTANT

There are some exceptions to the postponement of hearings pursuant to article 83, comma 1 of the First Decree-Law. As regards tax litigation proceedings, these exceptions include, *inter alia*, the proceedings whose postponement could cause severe harm to the parties and the proceedings regulated by articles 283, 351 and 373 of the Italian Code of Civil procedure concerning the suspension of the execution of decisions appealed against (including tax court rulings).

Other exceptions to the rule on the deferral of hearings scheduled between 9 March and 11 May 2020, on the grounds that postponement could cause severe harm to the parties, concern:

- ◆ the precautionary proceedings aimed at suspending the effects of an instrument appealed against (articles 47, 52, comma 2 last period, and article 62-*bis*, comma 1, last period of Legislative Decree no. 546/1992);
- ◆ the precautionary proceedings for the suspension of judgements before the Regional tax court concerning penalty-inflicting measures (article 19 of Legislative Decree no. 472/1997);
- ◆ the proceedings aimed at adopting precautionary measures such as raising a mortgage or making a precautionary attachment (article 22 of Legislative Decree no. 472/1997).

¹ The First Decree-Law had originally set this date at 15 April 2020.

SUSPENSION OF LIMITATION PERIODS FOR TRIAL PROCEEDINGS

CASES TO WHICH THE SUSPENSION APPLIES

The limitation periods for the following actions in tax litigation proceedings have been suspended between 9 March 2020 and 11 May 2020:

- ◆ filing of an appeal (article 51, comma 1 and article 38, comma 3 of Legislative Decree no. 546/1992);
- ◆ submission of an appeal with the Italian supreme court and of a counter-appeal (articles 325, 327 and 370 of the Italian Code of Civil procedure);
- ◆ submission of a request for new proceedings after a case has been sent back to the Provincial or Regional court for re-examination (article 63 of Legislative Decree no. 46/1992);
- ◆ entry of appearance by appellant (article 22, comma 1 and article 53, comma 2 of Legislative Decree no. 546/1992);
- ◆ entry of appearance by respondent and application for an interlocutory appeal (article 23, comma 1 and article 54 of Legislative Decree no. 546/1992);
- ◆ adding new grounds for appeal (article 24 of Legislative Decree no. 546/1992);
- ◆ filing of a complaint against presidential measures (article 28 of Legislative Decree no. 546/1992);
- ◆ appeal by a taxpayer demanding that the Revenue Agency comply with a Court decision (*ricorso per ottemperanza*, pursuant to article 70, comma 5 of Legislative Decree no. 546/1992).

The limitation periods for any actions to be taken *vis-à-vis* jurisdictional bodies and court secretariat's office² are considered to be suspended between 9 March and 11 May 2020.

CASES TO WHICH THE SUSPENSION DOES NOT APPLY

The suspension does not apply:

- ◆ to the precautionary proceedings pursuant to articles 283, 351 and 373 of the Italian Code of Civil procedure, mentioned above;
- ◆ to the cases eligible for the automatic 9-month suspension of the limitation period for appeals (including interlocutory appeals) falling due between 24 October 2018 and 31 July 2019³, granted in connection with *definizione agevolata* of outstanding proceedings (forgiveness of penalties and interest on outstanding taxes due, subject to full payment of tax amount and to relinquishing the right to appeal) pursuant to article 6(11) of Decree Law no. 119 of 23 October 2018 (see below the box marked **IMPORTANT**);
- ◆ to the deadline for notifying rejection of *definizione agevolata* of outstanding proceedings;
- ◆ **to the 31 May 2020 deadline for the payment of the fifth instalment due under *definizione agevolata* of outstanding proceedings (pursuant to article 6, comma 11 of Decree-Law no. 119/2018);**
- ◆ **to the deadlines for payment, including instalment payment, of any amounts due pursuant to a "judicial conciliation" (alternative dispute resolution method).**

² Such as those regarding the publication of the court decision (article 37 of Legislative Decree no. 546/1992).

³ Paragraph 9 of Revenue Agency Circular no. 6/E/2019.

NOTA BENE

According to Italian Supreme Court guidance, the suspension applying to appeals against decisions concerned by a *definizione agevolata* – as is the case for the automatic 9-month suspension pursuant to article 6, comma 11 of Decree-Law no. 119/2018 – cannot be cumulated with other suspensions of limitation periods.

IMPORTANT!

If, as a result of the 9-month suspension, the deadline for filing an appeal against a tax ruling or similar proceedings expires after 11 May 2020, the suspension should not be taken into account.

If a deadline falls due between 9 March and 11 May 2020, it will be automatically moved to 12 May 2020.

SUSPENSION OF THE LIMITATION PERIOD FOR FILING AN APPEAL WITH THE PROVINCIAL TAX COURT AND FOR CONCLUDING A MEDIATION

The limitation period for filing an appeal with the competent provincial tax court and with the court of first instance of Trento and Bolzano shall be suspended between 9 March 2020 and 11 May 2020.

EXAMPLE:

Taxpayer receives a tax payment/tax audit instrument on 14 February 2020:

Original deadline for filing an appeal: 14 April 2020.

New deadline for filing an appeal (as a result of the suspension): 17 June 2020.

The 90-day term for completion of the mediation process (pursuant to article 17-*bis*, comma 2 of Legislative Decree no. 546/1992) for disputes involving amounts not exceeding Euro 50,000, has been suspended.

EXAMPLE:

Mediation started on 21 January 2020:

Original deadline for concluding the mediation process: 20 April 2020

New deadline for concluding the mediation process (as a result of the suspension): 23 June 2020.

NOTA BENE

With regard to the mediation process, the suspension applies both in respect of:

- ◆ **the 30-day period after unsuccessful conclusion of the mediation process, within which an appeal will have to be filed with the provincial tax court (or will no longer be admissible), and**
- ◆ **the 20-day period for payment of the total amount or the first instalment of the amount due pursuant to the mediation agreement reached between the parties.**

The suspension does not apply to instalment payments due pursuant to the mediation agreement after the first.

STARTING DATES THAT FALL WITHIN THE SUSPENSION PERIOD

If a date starts running in the period between 9 March and 11 May 2020, the start of the period will be automatically postponed to 12 May 2020.

EXAMPLE:

The limitation period for appealing runs as of 19 March 2020:
Start date of the limitation period is deferred to 12 May 2020
Original deadline for appeal: 18 May 2020
Extended deadline for appeal (as a result of the suspension): 10 July 2020.

LIMITATION PERIOD CALCULATED BACKWARD

Pursuant to the second last paragraph of article 83, comma 2 of the First Decree-Law, when the limitation period is calculated backwards and covers wholly or partly the limitation period, the date of the hearing or other activity as of which the period starts running is deferred.

NOTA BENE

The suspension also concerns the limitation periods calculated backwards such as:

- ◆ the period for filing documents and briefs (respectively 20 and 10 working days prior to the date of the hearing pursuant to article 32 of Legislative Decree no. 546/1992), or
- ◆ the period for filing a request for a public hearing, to be submitted not later than 10 working days before the date of the hearing (article 33 of Legislative Decree no. 546/1992).

For additional information, please contact:

Pirola Pennuto Zei & Associati – Ufficio Studi

- ◆ **Luca Occhetta:** luca.occhetta@studiopirola.com