

COVID-19

Revenue Agency Circular no. 8/E of 3 April 2020
Revenue Agency Circular no. 9/E of 13 April 2020

Revenue Agency clarifications to Decree-Law no. 18 of 17 March 2020 and Decree-Law no. 23 of 8 April 2020

The Revenue Agency has provided its comments (in Q&A form) on the changes introduced by Decree-Laws no. 18 of 17 March 2020 and no. 23 of 8 April 2020 – hereinafter the First Decree-Law and the Second Decree-Law respectively – which provide measures to protect companies from a severe cash flow crisis in connection with the COVID-19 emergency.

We summarize below the key issues concerning the suspensions of tax payments and tax compliance obligations and those regarding the available incentives and tax credits.

ISSUE OF INVOICES FOR SUSPENDED ACTIVITIES

The issue of invoices is not included among suspended obligations.

However, the suspension applies if the notice of cash receipts (to be made after the issue of the cash register receipt for sales) was legally deferred to a later time; the suspension also applies to the monthly online transmission of cash receipt information, for economic operators with sales of less than 400 thousand Euro which do yet use a cash register with an online connection (*registratore telematico*) or the Revenue Agency's web procedure, and which continue to issue cash register receipts or *ricevute fiscali* (receipt for tax purposes).

The 60-day term for the online transmission of details of cash receipts from vending machines may qualify for the suspension.

(answer no. 1.7, Circular 8/E)

NOTA BENE

The exemption for reasons of force majeure (pursuant to article 6(5) of Legislative Decree no. 472 of 18 December 1997) may apply if the tax office were to establish that there are actually the elements of a case of force majeure.

SUSPENSION OF PAYMENT OBLIGATIONS

COMPANIES CARRYING OUT MORE THAN ONE BUSINESS ACTIVITY

In order to benefit from the suspension under article 61 of the First Decree-Law, the suspended activities must constitute **the company's core business** (that is to say, the activity from which the company derived the largest amount of revenue or fees in the latest fiscal year for which a tax return was filed).

(answer no. 1.2, Circular 8/E)

COMPANIES WITH AN ATECO CODE NOT INCLUDED IN THE LIST MENTIONED BY RESOLUTION No. 12/E OF 18 MARCH 2020

Entities that do not carry out any of the activities identified by the ATECO codes listed in Resolutions n. 12/E/2020 and 14/E/2020 may qualify for the suspensions under article 61 of the First Decree-Law, provided that their activity *de facto* falls within the scope of one of the listed business categories.

(answer no. 1.3, Circular 8/E)

VAT GROUP/VAT GROUP SETTLEMENT

The suspension under article 61 of the First Decree-Law also applies to the VAT payments due by the VAT Group's parent company.

To this end, it is simply necessary that the members of the VAT Group carry out one or more of the activities referred to in article 61(2) and (3) of the Decree, provided that the revenue derived therefrom constitutes the largest share of the aggregate revenue realized by all group companies¹.

(answer no. 1.4, Circular 8/E)

DECLINE OF SALES RELEVANT FOR THE PURPOSE OF THE SUSPENSION OF PAYMENTS

The suspension of the payments due in April and May 2020 shall be determined on the basis of the decline in sales or cash receipts occurred:

- ◆ in March 2020 compared to March 2019 (for payments falling due in April 2020), and
- ◆ in April 2020 compared to April 2019 (for payments falling due in May 2020).

The date to be taken into account is the date of the transaction.

(answers no. 2.2.1 and no. 2.2.5, Circular 9/E)

ENTITIES NOT REQUIRED TO ISSUE AN INVOICE

As regards the entities eligible for the suspension under article 18 of the Second Decree-Law² (see our earlier notes) – where there is no obligation to issue an invoice or a notice of cash receipts – the reference to sales and cash receipts should be extended to revenues and fees. The taxpayer may therefore consider its revenue and fees in order to determine its eligibility for the suspension of tax payments.

¹ A similar reply was given with regard to the VAT group settlement (answer no. 1.5 of Circular 8/E).

² The entities eligible for the suspension of tax payments are registered not-for-profit organizations carrying out socially useful activities, volunteer work organizations registered in the regional registers and the registers of the autonomous provinces, and the associations for social promotion, registered with the national and regional registers and the registers of the Trento and Bozen autonomous provinces, which solely or principally carry out an activity in the public interest.

If an entity issues both invoices and notices of cash receipts, the percentage of decrease of sales or cash receipts should be determined having regard to the sum of both.
(paragraph 2, Circular 9/E)

COMPLIANCE OBLIGATIONS IN RESPECT OF PAYROLL WITHHOLDINGS AND OFFSETS IN CONTRACTS AND SUB-CONTRACTS

As regards the compliance obligations in connection with the payroll withholdings and offsets in contracts and sub-contracts referred to in article 17-*bis* of Legislative Decree no. 241 of 9 July 1997 (introduced by article 4 of Decree-Law no. 124 of 26 October 2019):

- ◆ the entities eligible for the suspension of payment obligations (see our earlier notes) qualify for the suspension of the principal's control obligations in respect of payroll withholdings and offsets in contracts and sub-contracts pursuant to article 17-*bis*;
- ◆ if, at the date referred to in article 17-*bis* (i.e., five business day after payment of the withholdings to the State Treasury), the contractor or sub-contractor are entitled to receive payment of their fees, the principal shall not suspend such payment;
- ◆ the principal's control obligation shall arise again at the time of payment or non-payment of the withholdings at the due dates provided for by the law (see our earlier notes).

(answer no. 1.9, Circular 8/E and answer no. 7.1, Circular 9/E)

IMPORTANT!

Pursuant to article 23 of the Second Decree-Law, the certificates of regular tax and social security payments issued to contractors or subcontractors up to 29 February 2020 shall be valid until 30 June 2020.

DETERMINATION OF THE IRPEF, IRES AND IRAP PAYMENTS ON ACCOUNT

To the advantage of taxpayers, Article 20 of the Second Decree-Law provides that the payments on account of FY2020 tax liability may be made using the forecasting method (i.e., based on the expected income for the year), instead of the historical method (i.e., based on the prior year's income) and no interest and penalties shall apply provided that the payments on account made are not less than 80% of the amount that will be actually due per the tax return for the current year.

The Revenue Agency clarified that the rule also applies to:

- ◆ the substitute tax in lieu of income tax and IRAP due by taxpayers who determine their income on a lump-sum basis;
- ◆ the flat tax on rental income, the tax on the value of property held abroad (*IVIE*) or the tax on the value of financial assets held abroad (*IVAFE*).

(Paragraph 4, Circular 9/E)

NOTA BENE

Article 20 of the Second Decree-Law allows taxpayers to take advantage of the voluntary adjustment procedure (*ravvedimento operoso*). Therefore, any non-payment or underpayments may be remedied by paying, in addition to interest, the reduced penalty determined on the basis of the date on which the remedial payment is made (unless notices of deficiencies, tax payment demands or other tax instruments have been issued in this regard).

Thus, if the difference between the payment on account made and the taxpayer's actual tax liability does not exceed 20%, also as a result of the implementation of the voluntary adjustment procedure, the penalty (provided by article 13 of Legislative Decree no. 471 of 18 December 1997) will not apply.

(answer no. 4.2.1, Circular 9/E)

OTHER COMPLIANCE OBLIGATIONS

DEADLINE FOR ONLINE SUBMISSION OF *CERTIFICAZIONE UNICA* 2020 (STATEMENT OF SALARIES AND FEES PAID TO EMPLOYEES AND SELF-EMPLOYED)

The deadline for the online submission to the Revenue Agency of *Certificazioni Uniche* – to report exempt income or income that may not be reported in the pre-completed tax return – is the deadline for filing withholding tax returns, i.e. 2 November 2020 (31 October being a Saturday).

(article 4 of Presidential Decree no. 322 of 22 July 1998)

(answer no. 6.2.1, Circular 9/E)

INTRASTAT LISTS

The 25 March 2020 deadline for filing the February INTRASTAT lists has been postponed to 20 June 2020, without penalties.

However, economic operators may, at their discretion, send the Intrastat lists for the period between 8 March and 31 May 2020 by the regular deadlines.

(answer no. 1.10, Circular 8/E)

SUSPENSION OF TAXING AUTHORITIES' ACTIVITIES

LIMITATION PERIOD FOR TAXING AUTHORITIES' ACTIVITIES

The Revenue Agency has specified that the extension of the limitation period for the taxing authorities' activities (until 31 December of the second year subsequent to the end of the suspension period) pursuant to article 67(4) of the First Decree-Law concerns all activities that are subject to a limitation period. They have provided the following examples:

- ◆ the limitation period for the issue of notices of deficiency (*atti di accertamento* or *atti di rettifica*) for Income taxes and VAT in respect of FY2015 (where a return was filed) or FY2014 (where no return was filed), expiring 31 December 2020, may be extended up to the subsequent two-year period (i.e. will expire on 31 December 2022);
- ◆ the limitation period for registration tax audit and assessment proceedings expiring 26 June 2020 has been extended until 31 December 2022.

The extension of the limitation period applies also to the taxing authorities' activities, which expire at a date other than 31 December (as is the case for Registration Tax).

The suspension pursuant to article 67 of the Decree also applies to notices of deficiency (*Avvisi di liquidazione*) issued in connection with the verification of a taxpayer's entitlement to a tax incentive.

(paragraph 2, Circular 8/E)

LIMITATION PERIOD FOR TAX ASSESSMENT PROCEEDINGS PURSUANT TO ARTICLE 10-BIS OF LAW No. 212 OF 27 JULY 2000

Article 10-bis(7) of Law no. 212 of 27 July 2000 provides that at least 60 days must pass between the tax authorities' request for clarifications in matters of abuse of law (or the expiry of the term available to a taxpayer to answer the tax authorities' request) and the expiry of the limitation period for service of a tax payment demand (or similar instrument). If this is not the case, the deadline for service is automatically extended to ensure that the 60-day period is satisfied.

(answer no. 2.3, Circular 8/E)

DEADLINE FOR SUBMISSION OF THE APPLICATION TO INITIATE A NEGOTIATED SETTLEMENT PROCEDURE

As mentioned in Circular 6/E of 23 March 2020, the Revenue Agency confirmed that applications to initiate a negotiated settlement procedure following service of a notice of deficiency do not qualify for the suspension pursuant to article 67 of the First Decree-Law, but for the suspension pursuant to article 83 of the First Decree-Law (with respect to the term for filing an appeal).

Therefore, both the 90-day suspension of the limitation period for filing an appeal, starting from the date on which the taxpayer submits the application (pursuant to article 6 of legislative decree no 218 of 1997) and the suspension pursuant to article 83 of the decree will apply.

(answer no. 2.7, Circular 8/E)

TAX REFUNDS

The tax offices will continue to examine the refund claims and to request the necessary documentation to this effect, in such a way as to avoid physical movements by the taxpayers and the tax officers.

(answer no. 2.9, Circular 8/E)

FINANCIAL INVESTIGATIONS

The requests for the authorization to ask financial intermediaries, collective investment undertakings, asset management companies and fiduciary companies for data, information and documents regarding dealings with clients pursuant to article 32(1) (7) of Presidential Decree no. 600 of 29 September 1973 and article 51(2)(7) of Presidential Decree no. 533 of 26 October 1972 (the Italian VAT Code) have not been suspended.

(answer no. 2.10, Circular 8/E)

EXTENDED DEADLINE IN CONNECTION WITH THE REQUEST FOR DOCUMENTATION TO PROVE DEDUCTIBILITY OF COSTS INCURRED IN TRANSACTIONS WITH COMPANIES RESIDENT IN BLACK LISTED COMPANIES

The obligation referred to in article 110(11) of the Italian Income Tax Code, concerning the documentation to be submitted to obtain deductibility of costs incurred in transactions with companies resident in black-listed companies, qualifies for the extended deadline pursuant to article 62 of the First Decree Law.

(answer no. 2.17, Circular 8/E)

VALIDITY OF CERTIFICATES OF RESIDENCE ABROAD

The validity of all certificates (e.g., the certificates of tax residence issued by foreign tax authorities for the purpose of the application of the reduced withholding tax rates under domestic or treaty rules), permits, licenses or other authorizations, expiring between 31 January and 15 April 2020, has been extended to 15 June 2020.

(answer no. 2.20, Circular 8/E)

INCENTIVES/ TAX CREDITS

TAX TREATMENT OF DRUG DONATIONS

The arm's length value of donated drugs will not be included in taxable income, whereas the cost incurred for their purchase will be included in tax basis in the year in which the donation is made. (paragraph 11, Circular 9/E)

NOTA BENE

Since the rule (i.e., article 27 of the Second Decree-Law) applies to goods donated under the compassionate help programs (identified by Health Ministry Decree of 7 September 2017) and authorized by the Ethics Committee, by way of derogation from the general principles the input VAT paid on the purchase of the drugs will be deductible from total output VAT.

TAX CREDIT FOR SANITIZATION COSTS AND FOR THE PURCHASE OF PROTECTIVE EQUIPMENT TO BE USED AT THE WORKPLACE

The scope of application of the tax credit pursuant to article 64³ of the First Decree-Law in connection with the costs for the sanitization of working environment and equipment has been extended to include the costs incurred in 2020 for the purchase of personal protective equipment (such as, for instance, *Ffp2* and *Ffp3* surgical face masks, protective gloves, visors, goggles, overalls and footwear), hand detergents or disinfectants, or for the purchase and installation of safety devices to protect workers from accidental exposure to bio-agents or ensure the personal safety distance (protective barriers and panels). (paragraph 13, Circular 9/E)

TAX CREDIT IN CONNECTION WITH RENT PAID FOR STORE PREMISES

Article 65 of the First Decree-Law provides that the tax credit in respect of the rent paid for store premises is 60% of the March rent and will accrue after payment of the rent (as it consists of partial compensation for this cost). (answer no. 3.1, Circular 8/E)

NOTA BENE

Article 65 of the Decree expressly specified that the rented property qualifying for the tax credit must have a C/1 land registry classification (shops). Therefore, rent agreements for property with a different land registry classification - even though used for commercial purposes (e.g., class D/8 property) - do not qualify for the tax credit. (answer no. 3.2, Circular 8/E)

DEDUCTIBILITY OF DONATIONS FROM BUSINESS INCOME

Article 66 of the First Decree-Law provides that donations (in cash or in kind) in support of the measures to mitigate the COVID- 19 emergency made in 2020 by owners of business income are subject to article 27 of Law no. 133 of 13 May 1999, according to which

- ◆ cash donations are wholly deductible;

³ In order to encourage the sanitization of workplaces as a measure to mitigate the spread of COVID-19, article 64 ("Tax credit in connection with workplace sanitization costs") provides that entities carrying out a business or a profession are entitled for FY 2020 to a tax credit corresponding to 50% of the sanitization costs incurred up to Euro 20,000 per person and for a maximum of Euro 50 million for 2020.

- ◆ the value of donated goods – which do not give rise to taxable capital gains or revenue – is not taxable.

For IRAP purposes, donations are deductible in the year in which made.

The deduction is available even if, in the year of the donation, the donor made a loss. Additionally, no VAT will be charged on the donated goods but the donor will be entitled to deduct input VAT on such goods.

(answer no. 5.2, Circular 8/E)

NOTA BENE

Consistently with the purpose of article 66 of the First Decree-Law (encourage donations in support of the activities to contain and manage the COVID-19 emergency), the following are qualifying donations:

- ◆ donations made to the entities expressly listed in article 66 (State, Regions, foundations), and those made through the entities referred to in article 27 of Law no. 133/1999 (and article 66(2) by reference);
- ◆ donations made by private individuals, non-commercial entities and owners of business income, not necessarily through the entities referred to in the rule, but directly to the (public and private) hospitals, medical facilities and healthcare assistance centers involved in the COVID-19 emergency as a result of specific enactments issued by the competent public Authorities.

(answers no. 5.4 and no. 5.5, Circular 8/E)

VAT TREATMENT OF DONATIONS IN KIND

The VAT regime provided by article 6(15) of Law no. 133 of 1999 (according to which donations are treated for VAT purposes as destroyed goods, i.e., they are not subject to VAT, but the donor has the right to deduction) does not apply to all donations referred to in article 66 of the First Decree-Law, but only to those which meet the objective and subjective conditions stated in article 6 of Law 133 of 1999.

(answer no. 5.3, Circular 8/E)

For additional information, please contact:

Pirola Pennuto Zei & Associati – Ufficio Studi

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