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## **Subject: Liquidity Decree: Main measures aimed at facilitating access to credit by enterprises and professionals**

In this issue of our Taxnews, we shall describe some of the measures that were introduced by the Liquidity Decree (Law-Decree 23/2020) and by the previous Cure Italy Decree (Law-Decree 18/2020) to facilitate access to credit and that have obtained the European Commission's authorization, which was necessary to guarantee that they are fully operational. In particular, we shall illustrate the broadening of the guarantee granted by the Central Guarantee Fund for SMEs and the new SACE (the Italian export credit agency) guarantee.

### **1. The Central Guarantee Fund for SMEs**

Art. 13 of the Liquidity Decree further strengthens the guarantee granted, **free of charge**, by the Central Guarantee Fund for SMEs (cf. issue 8/2020 of our Taxnews), by entirely rewording the rule established by art. 49 of the Cure Italy Decree, which has been repealed.

The guarantee provided by the Fund is a benefit provided by the Ministry for Economic Development, funded partly with European resources; it can be activated only in respect of a loan granted by banks, leasing companies, and other financial intermediaries for the benefit of enterprises and professionals.

In derogation from the Fund's ordinary rules, the particular benefits illustrated below shall apply temporarily until December 31, 2020.

#### **1.1 Enterprises and professionals that will benefit by the guarantee**

The new guarantee, which will be granted free of charge, will be available to all enterprises (and professionals) that have **up to 499 employees**, and all natural persons who engage in entrepreneurial activities or arts or professions.

In particular, the maximum amount guaranteed for each individual enterprise has been raised (consistently with the European Union's rules) to 5 million euros.

The guarantee can also be granted to enterprises that are currently involved in a crisis settlement procedure. In fact, the Decree allows the guarantee to be accessed by enterprises which, at a date later than December 31, 2019: a) were admitted to the **procedure** for arrangement with creditors, with business continuity, referred to in art. 186-bis of the Bankruptcy Law; b) stipulated restructuring agreements under art. 186-bis of the Bankruptcy Law; or c) have presented an attested plan such as is referred to in art. 67 of the aforesaid law.

The parties indicated above can access the guarantee provided that, at April 9, 2020, they had no more exposures that would lead to their classification as "deteriorated exposures," nor had any amounts in arrears that arose after the application of the granting measures, and that the bank, based on the analysis of the debtor's financial situation, may reasonably assume that the loan will be fully repaid at its expiry date. In any case, enterprises that have exposures classified as "non-performing loans" as per banking regulations cannot access the guarantee.

**The guarantee is also granted** to final beneficiaries whose exposures to the lender, at the date at which they requested the guarantee, are classified as "probable default" or "deteriorated loans past due or in arrears," as per paragraph 2, Part B, of the Bank of Italy's circular no. 272 dated July 30, 2008, as amended and supplemented, provided that the said classification **was not applied before January 31, 2020**.

#### **1.2 Characteristics and coverage of the Central Fund's guarantees to which the beneficiaries can access**

Given the 5-million euros ceiling allowed for each beneficiary of the guarantee, and the requirements referred to in the above paragraph 1.1, it is possible to access **three types of guarantee**, with different characteristics and requirements:

b) **guarantee with 100% coverage** (whether direct or reinsured) for loans of up to 25,000 euros to SMEs and natural persons who engage in entrepreneurial activities, arts or professions, whose business was **damaged** by the Covid-19 emergency (as by self-certified statement). The form for requesting the guarantee is attached hereto.

The guarantee is granted in relation to **new loans** disbursed by banks, financial intermediaries (referred to in art. 106 of the Banking Code), and by other parties authorized to grant loans, provided that the repayment of capital does not start before 24 months after the loans were made, that their duration does not exceed 72 months and that their **amount does not exceed 25% of the beneficiary's revenue as reported in the last filed financial statements or in the last tax return** filed before the request for the guarantee was submitted, or, for beneficiaries formed after January 1, 2019, as reported in other appropriate documentation, including self-certifications; **in any case, the amount of such a loan shall not exceed 25,000 euros**.

In the case of a direct guarantee or, in the case of reinsurance, of a comprehensive guarantee premium, the interest rate applied by a financial intermediary to a guaranteed loan must only take into account the coverage of the sole costs

for preliminary procedures and for the management of the financial transaction, and in any case must not exceed the "Rendistato" rate, having residual duration from 4 years and 7 months to 6 years and 6 months, plus the difference between the CDS banks at 5 years and the CDS ITA at 5 years, as defined in the framework agreement for the retirement pension-guaranteed financial advance referred to in art. 1, paragraphs 166 to 178, of Law 232 dated December 11, 2016, increased by 0.20%.

The issuance of this guarantee, as is also indicated in the ABI (Italian Banks Association) Circular dated April 9, 2020, **is automatic and free of charge, with no evaluation of its merit by the Guarantee Fund**. Hence, a bank will be able to issue the loan with only a formal assessment of the borrower's possession of the necessary requirements, without having to wait for the outcome of the preliminary procedures by the manager of the Guarantee Fund;

- a) **100% guarantee (of which 90% direct and 10% by Confidi** or any other parties authorized to issue guarantees) for enterprises whose turnover does not exceed 3,200,000 euros and whose business has been **damaged** by the Covid-19 emergency (as per self-certified statement). This guarantee is granted for loans amounting to no more than 25% of the beneficiary's revenue (hence within the ceiling of 800,000 euros);
- c) **direct guarantee increased to 90%** of the amount of each financial transaction, for financial transactions with up to 72 months duration. This guarantee applies to the greatest of the following three parameters, that therefore represent the ceiling of the financial transactions to which the guarantee can apply:

1. double the beneficiary's annual expense for wages (including social-security charges and the cost of personnel that works at the enterprise's premises but is formally registered in the subcontractors' payroll) in 2019 or in the last available year. If an enterprise was formed on or after January 1, 2019, the amount of the loan cannot exceed the annual expenses for wages expected for the first two years of business;
2. 25% of the beneficiary's total turnover in 2019;
3. the amount needed to cover the working capital costs and investment costs for the next 18 months in the case of SMEs, or the next 12 months in the case of enterprises with no more than 499 employees; the necessary amount is attested to by a self-certified statement rendered by the beneficiary.

The Fund's guarantee is also available to loans related to **renegotiations of a beneficiary's debt**, both in reference to the **direct** guarantee and for reinsurance, in the amount of respectively **80%** and **90%** of the value of the guarantee issued by the counter-guaranteed party (provided that the guarantees issued by such party do not exceed the 80% maximum coverage limit). In both cases it is required that the new loan include the disbursement of additional credit in favor of the beneficiary amounting to at least 10% of the amount of the existing agreed-upon debt of the renegotiated loan.

For **real estate investments in the tourist and hotel sector and in the real estate business one** whose duration is at

least 10 years and whose amount is at least 500,000.00 euros, the Fund's guarantee can be combined with other types of guarantees acquired on the loans.

As regards **guarantees on specific loan portfolios**, even without a repayment schedule, intended for enterprises damaged by the Covid-19 emergency, or that belong for at least 60% to specific sectors and supply chains affected by the epidemic, the share of the junior tranche covered by the Fund can be raised by 50%, which can be further increased by 20% if other guarantors intervene.

## 2. The new guarantee granted by SACE

To ensure the necessary liquidity to enterprises headquartered in Italy and affected by the Covid-19 epidemic, SACE is temporarily allowed, up to December 31, 2020, and according to the criteria and conditions established in art. 1 of the Decree (summed up below), to grant guarantees on loans given in any form to the aforesaid enterprises by banks, Italian and international financial institutions and other parties authorized to issue loans in Italy.

The budget assigned to this measure amounts to a financial commitment of 200 billion euros, of which at least 30 billion to be allocated to supporting SMEs (including self-employed workers and professionals who hold a VAT account), as defined by the European Commission's Recommendation no. 2003/362/EC.

### 2.1. Who can obtain the SACE guarantee and the conditions required of them

The SACE guarantees are available to enterprises of all sizes, provided that, as explained by the ABI Circular of April 9, 2020, **SMEs must have used up the maximum available limit for obtaining coverage from the Guarantee Fund for SMEs** (cf. the above paragraph 1). Moreover, a beneficiary enterprise:

- at December 31, 2019, must not have been classified as an enterprise in difficulty, as defined by the European Community;
- at February 29, 2020, must not have had deteriorated exposures (as defined by European regulations) to banks.

An enterprise that obtains the guarantee must also undertake the following commitments:

- **to not approve**, neither its own behalf nor on behalf of any other enterprise, headquartered in Italy, that belongs to its same Group, **the distribution of dividends or the repurchasing of its own shares in 2020**;
- **to manage its occupational levels via agreements with labor organizations**.

### 2.2. Characteristics of the SACE guarantee

This guarantee is at first sight, explicit, irrevocable and compliant with the requirements established by the rules of prudential oversight in order to mitigate credit risk; it **covers new loans granted to an enterprise after April 9, 2020** (when the Liquidity Decree went into force), as regards capital, interest and ancillary costs, **up to the maximum guaranteed amount** (specified below). The Italian government acknowledges its own guarantee at sight, explicit, unconditional and irrevocable.

### 2.3. Loans admitted to the SACE guarantee

The SACE guarantee covers **new loans made by December 31, 2020**, lasting not more than 6 years, with the possibility for enterprises to avail themselves of an early repayment period lasting up to 24 months. The amount of the **loan assisted by the guarantee cannot exceed the larger** of the following amounts:

- 25% of the enterprise's turnover in 2019, as recorded in the approved financial statements or in the tax return;
- double the amount of the cost for the enterprise's personnel in 2019, as recorded in the financial statements or by the certified data if the enterprise has not yet approved its financial statements. If the enterprise started its business after December 31, 2018, reference is made to personnel costs expected for the first two years of business, as documented and attested to by the enterprise's legal representative.

**The loan covered by the guarantee has to be used** to pay the costs of personnel, investments or working capital, used in production facilities and for entrepreneurial activities located in Italy, as documented and attested to by the beneficiary enterprise's legal representative.

**Commissions must be limited** to recovering costs, and the **cost of the loan covered by the guarantee** must be lower than the cost that would have been required by the lending bank for transactions having the same characteristics but lacking the guarantee.



This lower cost of the loans covered by the guarantee must be at least equal to the difference between the cost that would have been required by the lending bank for transactions having the same characteristics but lacking the guarantee (as documented and attested to by the legal representatives of the aforesaid lending parties) and the cost actually applied to the enterprise.

#### **2.4. Coverage percentages of the SACE guarantee**

The **guarantee's maximum coverage percentage**, jointly and proportionally shared by the guarantor and the guarantee for losses incurred due to non-repayment of the loan, is:

- a) 90% of the amount of the loan for enterprises that have fewer than 5,000 employees in Italy and whose turnover is below or equal to 1.5 billion euros;
- b) 80% of the amount of the loan for enterprises whose turnover is between 1.5 billion and 5 billion euros, or that have more than 5,000 employees in Italy;
- c) 70% of the amount of the loan for enterprises whose turnover is above 5 billion euros.

The limit of the guaranteed loan (cf. the above paragraph 2.3) and of the aforesaid relative coverage percentage is identified based on the value of the enterprise's turnover in Italy and of the costs for personnel it has incurred in Italy, or on a consolidated basis if the enterprise belongs to a Group.

#### **2.5. Cost of the SACE guarantee**

Unlike the guarantee granted by the Central Guarantee Fund for SMEs, which is free of charge, the SACE guarantee has a cost. In particular, the **annual commissions** owed by enterprises to SACE for its guarantees are:

1. for loans to SMEs: in relation to the guaranteed amount, 25 base points during the first year, 50 base points during the second and third years, and 100 base points during the fourth, fifth and sixth years;
2. for loans to enterprises whose size is not that of SMEs: 50 base points during the first year, 100 base points during the second and third years, and 200 base points during the fourth, fifth and sixth years.

#### **2.6. Procedures for accessing the SACE guarantee**

A "simplified" procedure has been put in place for enterprises that have **fewer than 5,000 employees in Italy and whose turnover is less than 1.5 billion euros**: an enterprise who wishes to obtain the guarantee has to submit its request for a guaranteed loan to the lending party (e.g., a bank) which, if it decides to grant the loan, shall forward the enterprise's request to SACE in order to obtain its guarantee.

For enterprises whose **turnover and number of employees are higher than the aforesaid thresholds**, the granting of the guarantee is decided by the Economy and Finances Minister who, after consulting the Minister for Economic Development, and based on the preliminary documentation received from SACE, issues a specific decree. The Minister takes into account the beneficiary enterprise's role with respect to some areas and profiles that are important in Italy:

contribution to technological development, participation in the country's logistics and supply networks, influence on critical and strategic infrastructure, impact on employment levels and on the labor market, and specific weight within a strategic production chain. This ministerial decree can also increase the guarantee's coverage percentages to the percentage limit just above the one established for the beneficiary enterprise's type of transaction, provided that the enterprise fulfils the specific obligations and conditions, indicated in the decision, regarding the aforesaid areas and profiles.

Our firm will be happy to provide our customers with any clarification and assistance they may wish.



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