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Subject: Tax incentives established for enterprises by the “Cure Italy” Decree

Continuing our description of the new tax rules established by the Cure Italy Decree (Law-Decree 18 of March 17, 2020), in this issue we shall deal with some **tax relief measures** that have been introduced for **enterprises** and self-employed workers in order to tackle the Covid-19 crisis.

1. Tax credit for small shops and stores that pay rent

Parties that perform as enterprises (whether companies or one-person firms) and pay rent for premises that are listed in cadastral category **C/1 (stores and small shops)** will be entitled, for 2020, to a **tax credit amounting to 60% of their March 2020 rent**. This tax credit may be used only to counterbalance other taxes, social-security contributions and INAIL premiums as per Legislative Decree 241/1997.

However, this tax credit is **not available** for enterprises whose business is listed as “essential” – retail businesses including pharmacies, parapharmacies and stores that sell critical foodstuffs – in Annexes 1 and 2 to the Decree of the President of the Council of Ministers (DPCM) issued on March 11, 2020, and whose activity has therefore not been suspended.

2. A 30% tax credit for advertising investments made in 2020

The Cure Italy Decree modified the tax credit rules for the advertising investments referred to in art. 57-bis of Law-Decree 50/2017, by introducing what amounts to a special regime for 2020. In particular, the Decree established that, **only for 2020**, the tax credit will be granted, at the same terms and to the same parties, in the

sole amount of 30% of the overall value of advertising investments made, and in any case within the limits set by the European Union’s Regulations and in conformity with the established budgets (normally, the amount of the tax benefit is 75% of incremental advertising investments).

It should be remembered that the benefit is available to **enterprises, self-employed workers** and non-commercial organizations for investments in advertising campaign on the daily and periodical press (even online), and on local TV and radio stations, whether analogical or digital.

The following expenses are **excluded** from the tax credit: purchase of spaces in programming or editorial palimpsests to publicize or promote teleshopping of goods and services of any type; broadcasting or buying radio and/or TV commercials, ads or promotional spaces for forecasting, gaming or betting services with cash winnings, and vocal messaging or chat lines with surcharged services; advertising graphics on physical billboards, periodical paper flyers, advertising on billboards, vehicles or equipment, advertising via posters and displays, advertising on screens in movie theaters, advertising via social media or online platforms, and advertising banners on online portals. The new provision also establishes that, for the purposes of the concession of the tax credit, the rules contained in the regulation referred to in the DPCM 9 dated May 16, 2018, still apply to businesses not exempted by the provision itself.

To be able to access the credit, interested parties must submit, via the specific form:

- the “communication for accessing the tax credit,” with the data pertaining to the investments made or to be made in the tax-credited year; and
- the “self-declaration concerning the investments made,” declaring that the investments indicated in the communication for accessing the tax credit were actually made in the tax-credited year and that they meet all the relevant requirements.

For FY 2020, the Cure Italy Decree established that the telematic communication for accessing the tax credit pursuant to art. 5.1 of the DPCM 90 dated May 16, 2018, must be submitted in the period from September 1 to September 30, 2020 (the previous rules remain in effect).

Hence, this communication has to be submitted to the Presidency of the Council of Ministers’ Department for Information and Publishing, using the telematic services made available by the Revenue Agency (the procedure is accessed by clicking on “Communicate” in the section of the authenticated area “Services for”) either directly or via a party authorized to use the Agency’s telematic services; if the party requesting the credit is part of a corporate group, its communication may be submitted via a company belonging to the same group. The Decree expressly establishes that telematic communications submitted between March 1 and March 31, 2020

(the “ordinary” submission period), **remain valid in any case.**

3. Speedy grants for enterprises that start to produce or supply medical equipment

A tender has been issued for enterprises that propose to produce or supply medical equipment. The State will cover up to 100% of the loan, up to a ceiling of 800,000 euros, advancing 60% of the sum within five days, without requesting guarantees or preliminary procedures. Requests can be submitted starting on **March 26**, as established by ordinance no. 4/2020 issued by the Special Commissioner for the Emergency and published in the Official Gazette no. 78 of March 24, 2020. These are the first incentives authorized by the European Union to combat the Covid-19 crisis, and are intended for enterprises that propose to produce and supply medical equipment, such as ventilators and personal protection equipment (face masks, goggles, protective clothing and safety suits).

Technically speaking, the tender states that the granted loan will amount to 75% of the eligible expense. However, if a requesting enterprise manages to complete the investment in fifteen days, the loan becomes a 100% free grant. If an enterprise takes thirty or sixty days to complete the investment, the percentage of the grant falls to respectively 50% and 25%. For long-term projects, from the sixtieth day onward, the incentive will consist of a subsidized no-interest long-term loan covering 75% of the borrower’s investment plan, repayable over seven years.

4. Tax credit for sanitization of workplaces

For 2020, the Decree assigns enterprises and self-employed workers a specific tax credit amounting to 50% of documented expenses (not exceeding 20,000 euros) incurred to sanitize workplaces and operating equipment in order to contain the Covid-19 virus. The pertinent implementation provisions will be established by a specific decree to be issued by the Ministry for Economic Development.

5. Last-Resort Income Fund which can also be used by self-employed workers

Considering that free professionals registered with forms of mandatory private social security – that is, essentially professions governed by “professional associations” – cannot benefit from the once-only indemnity of 600 euros for the month of March that the Cure Italy Decree established for, among others, free professionals who hold a VAT account and are registered with the Italian social security’s separately managed fund (see issue no. 4 of our Taxnews). **The Decree has provided for the establishment of a “Last-Resort Income Fund for workers whose activity has been damaged by the Covid-19 virus.”**

It should be noted that, according to the Italian social security institute (INPS), the allowance of EUR 600 is also payable to commercial agents, even though they are registered with a mandatory private social security.

The workers that can avail themselves of this fund, which was established in the budget of the Ministry of Labor and Social Policies, are **employees, domestic workers and self-employed workers**

who, due to the Covid-19 epidemic, have **ceased, reduced or suspended their activity or employment relationship**. As regards self-employed workers, the Decree specifies that the benefits of the Fund are intended for professionals “registered with the mandatory private-law social security organizations” referred to in Legislative Decree 509/1994 (CNPADC, Inarcassa, CIPAG, ENPAM, etc.) or with the Interprofessional Social-Security Funds referred to in Legislative Decree 103/1996.

The purpose of the Fund is to guarantee recognition of indemnities, **within the budget of 300 million euros in 2020 (two hundred of which are assigned to self-employed workers)**. The Decree issued by the Minister of Labor and Social Policies on March 28, 2020 has defined the **criteria and the procedures to assign the indemnities in question (also amounting to 600 euros)**. The application must be submitted by April 30, 2020 according to the scheme prepared by the individual private social security institutions. Exceptionally, considering the epidemiological emergency situation, these indemnities **will be granted as income support to professionals registered with mandatory private-law social-security organizations**. They shall not form part of their taxable income, cannot be combined with other indemnities and are not granted to people who receive “citizenship income.”

6. Incentives for airline companies

Considering that Covid-19 has damaged the entire aviation industry, the Decree has established specific compensation measures for damages suffered due to Covid-19 for enterprises that hold a license for air transportation of passengers issued by the Italian Agency for Civil Aviation (ENAC) and that at March 17, 2020 (the date on which the Decree was issued) discharged public service obligations, so that they can continue their activity. A ministerial decree will issue the rules whereby these aid measures will be implemented, though their enactment will be in any case subject to authorization by the European Commission under art. 108.3 of the Treaty on the Functioning of the European Union.

7. Transformation of deferred tax assets (DTAs) on losses and Aid for Economic Growth (ACE) into tax credits for companies that sell uncollected credits – benefit extended to the whole country

The Decree has completely rewritten art. 44-bis of Law-Decree 34/2019 (the so-called “Growth” Decree), titled “Tax incentive to promote growth in southern Italy.” The aim is to encourage the transfer of enterprises’ deteriorated credits (whether of a commercial nature or loans) by making it possible to **transform a portion of the deferred tax assets related to tax losses and to the ACE benefit**, even if they are not listed in the financial statements, into a tax credit for an amount that is proportional to the value of the deteriorated credits that are transferred to third parties.

The major change made by the Cure Italy Decree is that this tax benefit, which was previously reserved only to southern Italian enterprises that at January 1, 2019, had their legal headquarters in the regions of Campania, Puglia, Basilicata, Molise, Calabria, Sicily or Sardinia, and that had decided to participate in a merger, split-off or transfer of their enterprise or of a branch thereof, **has now been extended to the whole country and no longer requires participation in a business combination**. As indicated in the report that illustrates the Decree, this intervention immediately reduces the tax burden of such enterprises by allowing them to advance to this year the use – in the form of tax credits – of these sums, which they would otherwise have used in later years.

7.1 How to calculate the DTA benefit

As regards companies that by December 31, 2020, transfer credits due from defaulting debtors (credits expired by more than 90 days), the new rule makes it possible to transform into tax credit a portion of the DTAs related to:

- a) fiscal losses that can be carried forward and that at the date of the transfer have not yet been calculated to reduce taxable income under art. 84 of the TUIR (the Italian income tax code);
- b) the amount of notional return that exceeds the overall net income for the purposes of the ACE benefit (art. 1.4 of Law-Decree 201/2011) and that at the date of the transfer had not yet been deducted or used as tax credit.

It should be noted that in order to make it possible to fully achieve the rule’s objectives, the Decree establishes that,

for the sole purposes of the relevant application, the limits referred to in the second sentence of the first paragraph of art. 84 of the TUIR, concerning parties that enjoy profit exemption, shall not apply; hence, the amount of loss carried forward to be considered cannot be reduced by the amount of exempted profits.

For the purposes of transforming the DTAs into tax credits, the benefit in question has **two limits**:

- 1) the maximum amount for which the components that can generate transformable DTA can be considered cannot exceed 20% of the face value of the transferred credits;
- 2) for parties that belong to corporate groups, the face value of credits transferred before December 31, 2020, relevant for the purposes of the benefit, cannot exceed 2 billion euros. This limit is calculated taking into account all the transfers made by parties belonging to the group, i.e., companies connected through control relationships pursuant to art. 2359 of the Civil Code and companies controlled directly or indirectly by the same party.

For example, a company that transfers credits amounting to 500,000 euros will be able to transform into a tax credit only a portion of DTAs relative to 100,000 euros of the components indicated in the law; considering an IRES rate of 24%, this portion amounts to 24,000 euros.

7.2 Which companies are not eligible for the benefit and how the tax credit for DTAs is managed and used

This benefit does not apply to credit transfers between companies belonging to the same group and to companies for which a state or risk of instability (art. 17 of Legislative Decree 180/2015) or of insolvency (art. 5 of the bankruptcy law and art. 2 of the Code of enterprise crisis and insolvency) has been ascertained.

The transformation into a tax credit occurs at the date on which the credit transfer becomes effective. Starting from that date, the transferor:

- cannot, for the purpose of reducing its taxable income, calculate the losses referred to in art. 84 of the TUIR and related to the overall DTAs that can be transformed into a tax credit;
- cannot deduct nor utilize, by means of a tax credit, the ACE surpluses related to the overall DTAs that can be transformed into a tax credit.

Tax credits arising from the transformation do not generate interest. They can be used, with no limit to the amount, to balance other taxes in the F24 form, or can be transferred or their refund can be requested. Tax credits must be recorded in the income tax returns and do not contribute to an enterprise's income nor to its IRAP taxable base.

The conversion of assets into DTAs is subject to the exercise of the option referred to art. 11 of Law-Decree 59/2016. This option entails the payment of an annual payment if the amount of DTAs does not correspond to an actual tax payment (this is the case when taxes

paid are higher than or equal to the tax deferred assets). It should be noted that it is not necessary for this option to have been already exercised at the date of the credit transfer, as long as it is exercised by the end of the fiscal year in course at the date on which the credit transfer goes into effect. The option will be effective as of the year following the one in which the credit transfer goes into effect.

8. Suspension of deadlines for payments entrusted to the collection agent

The Cure Italy Decree has suspended the deadlines for the payment of the **payment orders** issued by the collection agents that fall due between **March 8 and May 31, 2020**; payments already made will not be reimbursed.

The following are likewise suspended:

- enforceable assessment notices issued by the Revenue Agency (after the deadline for filing appeals);
- charge notices issued by the social- security agencies (INPS), which have the value of enforcement orders;
- enforceable assessment acts issued by the Customs and State Monopolies Agency;
- the fiscal injunctions issued by territorial authorities referred to in Royal Decree 639/1910 on coercive procedures for the collection of government capital revenues;
- executive orders that local authorities can issue under art. 1.792 of Law 160/2019 in order to collect both capital revenues and taxes.

The suspended payments will have to **be made in a single installment** by the end of the first month following the suspension period, i.e., **by the end of June 2020**.

It should be noted that according to Circular no. 5 of March 20, 2020, issued by the Revenue Agency, which gave a very restrictive interpretation of Article 68 of the Cure Italy Decree, the enforceable assessment notices issued by the Revenue Agency are not included in the extension of payments to June 30, 2020. Such extension, in fact, may only concern any instalments requested in respect of the aforementioned executive assessment notices.

The provision does not contain any reference to an extension of payments due for acts any than those expressly listed. In particular, there is no mention of the notices of irregularity (the so-called “friendly request” notices) sent by the Revenue Agency for the purposes of automated liquidation pursuant to articles 36-bis of Presidential Decree 600/1973 and 54-bis of Presidential Decree 633/1972 or following formal verifications carried out as per art. 36-ter of Presidential Decree 600/1973.

The payment deadlines originally set at February 28, 2020, for the so-called “rottamazione-ter” (referred to in Law-Decrees 119/2018 and 34/2019), and at March 31, 2020, for the facilitated settlement of debts of natural persons who are in a serious and proven condition of economic difficulty (Law 145/2018, the so-called “saldo e stralcio”),

have been extended to **May 31, 2020**.

The Decree establishes that art. 12 of Legislative Decree 159/2015 shall be applied, hence: a) during the suspension period, the collection agent will not notify payment demands, and b) the suspension of the deadlines for the payment demands and the other acts listed above for parties affected by exceptional events also entails for the same revenues, and for the corresponding length of time, the suspension of deadlines for obligations, including court proceedings, as well as the suspension of statute of limitations deadlines as regards liquidations, verifications, assessments, litigations and collections for the benefit of taxation agencies, social-security agencies and collection agents.

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



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