

Italy enacts “Liquidity Decree” to further manage COVID-19

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Executive summary

On 8 April 2020, Italy's Law Decree n. 23, referred to as the “Liquidity Decree” (the Liquidity Decree or the Decree), was published in the *Official Gazette* and entered into force on the following day. The Decree will have to be converted (with potential changes) into Law within 60 days from its publication to remain in force.

The Liquidity Decree introduces a second set of economic measures in response to the COVID-19 crisis following the first provisions introduced with Law Decree n. 18/2020 (Heal Italy Decree).¹ Among other measures, the Decree provides for additional deferments of tax and social contribution payments as well as for state guarantees for bank loans to enterprises. The state guarantee system is estimated to generate an overall injection in the Italian market of new liquidity of €400 billion. Guarantees should cover bank loans up to: (i) 100% (within a limit of €800k) for enterprises with not more than 499 employees; (ii) 90% for enterprises with not more than 5,000 employees and with a €1.5 billion maximum turnover; and (iii) 70/80% for larger corporations.

Detailed discussion

General deferment of tax payments

As established by the Heal Italy Decree, payments of taxes and social security contributions due on 16 March were postponed to 20 March 2020. As a new measure, the Liquidity Decree further extends the above-mentioned term to 16 April 2020 (with no penalties and interest for taxpayers who had not met the original 20 March date).

Deferment of payments for enterprises and self-employed experiencing a turnover reduction

As a new measure, the Liquidity Decree provides that withholding tax (WHT) payments on employment income, social security contributions and Value Added Tax (VAT)² payments, originally due for the period between 1 April and 31 May 2020 by enterprises and the self-employed with a previous fiscal year (FY) turnover not higher than €50 million who experienced a turnover reduction of at least 33% in March and April (compared to the same months in 2019), is deferred to 30 June 2020 (in full or in five equal monthly installments). For VAT payments only, enterprises and the self-employed located in specific areas (e.g., Bergamo, Cremona, Lodi and Piacenza provinces) can benefit from such deferment even if their previous FY turnover was higher than €50 million.

The same deferment applies to enterprises and the self-employed with a previous FY turnover higher than €50 million that experienced a turnover reduction of at least 50% in March and April (compared to the same months in 2019). This deferment also applies to all enterprises and self-employed who started their activities as of 1 April 2019, irrespective of any other prerequisites.

Deferment of payments for small enterprises

As established by the Heal Italy Decree, for professionals and enterprises (with their fiscal domicile, registered office or place of business in Italy) with a previous FY turnover not exceeding €2 million, payments of VAT and WHT on employment and similar income, including social security contributions, due during the period between 8 March 2020 and 31 March 2020, are postponed to 31 May 2020 (with the possibility to pay in full or in five equal installments). This measure is not affected by the Liquidity Decree.

Deferment of payments of stamp duties linked to electronic invoicing

As a new measure, the Liquidity Decree provides that the self-employed and enterprises can postpone the payment of stamp duties linked to electronic invoicing without penalties and interest as follows: (i) the stamp duty due for the first quarter of FY 2020 can be paid within the deadline referred to the second quarter if the tax due is lower than €250; and (ii) the stamp duty due for the first and second quarters of FY 2020 can be paid within the deadline referred to the third quarter if the cumulative tax due is lower than €250.

Deferment of payments for taxpayers located in qualified areas

As established by the Heal Italy Decree, for taxpayers with their fiscal domicile, registered office or place of business in the Bergamo, Cremona, Lodi and Piacenza provinces, VAT payments originally due during the period between 8 March 2020 and 31 March 2020 are deferred irrespective of their turnover threshold. Such payments are due by 31 May 2020 in full, or in five equal installments starting from May 2020. This measure is not affected by the Liquidity Decree.

Suspension of WHT levied on small taxpayers

As already established by the Heal Italy Decree, professionals and other qualifying taxpayers with previous FY turnover not higher than €400,000, are not subject to WHT (where applicable) for the income derived during the period between 17 March 2020 and 31 March 2020 if they did not bear employment expenses during the previous month (this should be attested through a self-declaration). As a new measure, the Liquidity Decree extends the relevant period to 31 May 2020.

Also, the Heal Italy Decree provided that WHT equivalent amounts are due directly by the mentioned taxpayers by 31 May 2020 (in full or in five equal installments starting from May 2020). As a new measure, the Liquidity Decree postpones such payments to 31 July 2020 (in full or in five equal installments starting from July 2020).

Deferment of payments for qualifying sectors

As established by the Heal Italy Decree, for taxpayers engaged in qualifying business sectors (e.g., tourism, sport, entertainment, art, culture, education, transport, food, non-profit) and with their tax domicile, registered office or place

of business in Italy, payments of VAT due on March 2020 and WHT on employment and similar income and social security contributions originally due during the period between 8 March 2020 and 30 April 2020 (30 May 2020 for sports associations and clubs for WHT on employment income and social security contributions) are deferred.

The mentioned payments are due by 31 May 2020 (30 June 2020 for sports associations and the like for WHT on employment income and social security contributions) in full or in five equal installments starting from May 2020 (30 June 2020 for sports associations and the like for WHT on employment income and social security contributions). No penalties and interest apply. No refund is available for payments that were already made.

This measure is not affected by the Liquidity Decree.

Deferment of payments for the gaming sector

As established by the Heal Italy Decree, the payment of the Gaming Tax (*Prelievo erariale unico* or "PREU") originally due by 30 April 2020 is postponed to 29 May 2020 and can be executed in equal monthly installments plus legal interest (accruing on a daily basis). The first installment is due by 29 May 2020 and the subsequent ones by the end of any following month, with the last one due by 18 December 2020.

This measure is not affected by the Liquidity Decree.

Forecast method for income tax advance payments

The Liquidity Decree provides that no penalties and interest apply for FY 2020 if taxpayers relying on the forecast method make underestimated advance payments within a range of 20%. The forecast method is an alternative to the historical method (which is not based on a forecast of the current FY income but rather on the previous FY reported income) to pay advance payments on direct taxes, i.e., corporate income tax (*Imposta sui redditi delle società* or IRES), regional tax on productive activities (*Imposta regionale sulle attività produttive* or IRAP) and personal income tax (*Imposta sulle persone fisiche* or IRPEF).

Deferment of collection

As already established by the Heal Italy Decree, payments originally due during the period between 8 March and 31 May 2020 arising from a variety of collection deeds such as tax

bills, tax assessment notices, bills issued by Social Security Contributions Authorities, etc. are postponed to 30 June 2020. A deferment is also available for the installments due according to certain Tax Amnesty Programs introduced in the past years. This measure is not affected by the Liquidity Decree.

General deferment of tax filings

As already established by the Heal Italy Decree, tax filings (other than tax payments) due during the period between 8 March 2020 and 31 May 2020 are postponed to 30 June 2020. As a new measure, the Liquidity Decree specifically introduces, as an additional extension, the possibility to file the compensation certificate (*Certificazione unica*) by 30 April 2020 (rather than by 31 March).

Suspension of administrative procedures

As already established by the Heal Italy Decree, any deadline of administrative procedures started as of 15 February 2020 was suspended until 15 April 2020. As a new measure, the Liquidity Decree further extends such suspension to 11 May 2020.

As also already established by the Heal Italy Decree, the validity of any tax certificate expiring during the period between 31 January and 15 April 2020 is extended to 15 June 2020 (this should also apply to certificates issued by foreign tax authorities³). This measure is not affected by the Liquidity Decree.

Conversion of DTAs into tax credits⁴

As already established by the Heal Italy Decree, companies willing to dispose by 31 December 2020 of receivables unpaid for more than 90 days can claim a partial conversion into tax credits of existing, although possibly unrecognized, Deferred Tax Assets (DTAs) associated with: (i) tax losses carried forward; and (ii) excess notional interest deduction carried forward. Tax credits resulting from the above conversion can be: (i) offset without any limit against tax payables, (ii) assigned within the same group or to third parties, and (iii) can be asked for refund. This measure is not affected by the Liquidity Decree.

Suspension of tax authorities' activities

As already established by the Heal Italy Decree, the ordinary terms for tax audits, tax assessments, tax collection and tax litigation are suspended from 8 March 2020 to 31 May 2020.

The suspension also applies to:

1. The ordinary terms for the tax authorities to reply to ruling requests, and to the filing of supplementary documentation
2. The reply to the admission request to the Cooperative Compliance Regime
3. International ruling procedures
4. Transfer Pricing downward adjustment procedures
5. Patent box procedures

This measure is not affected by the Liquidity Decree.

Extension of the statute of limitations

As already established by the Heal Italy Decree, the ordinary statute of limitations for FY 2015 (which should have expired on 31 December 2020) is extended by two additional years, with the result that tax authorities will be able to audit FY 2015 until 31 December 2022. While this measure is not affected by the Liquidity Decree, based on an amendment proposed in the process of conversion into Law of the Heal Italy Decree, such an extension could be repealed.

Tax litigation terms

As established by the Heal Italy Decree, tax court hearings were postponed to a date after 15 April 2020 and the terms for filing any appeals before tax courts of first instance and other procedures were suspended until 15 April 2020.

As a new measure, the Liquidity Decree replaces the above term of 15 April 2020 with 11 May 2020.

Tax credit for workspace and work instrument sanitation

As already established by the Heal Italy Decree, a tax credit for FY 2020 has been introduced in the amount of 50% of the expenses sustained by enterprises and qualifying self-employed for the sanitation of workspaces and work instruments. As a new measure, the Liquidity Decree extended such tax credit regime also to the expenses sustained for the purchase of COVID-19 personal protection equipment (PPE). Each taxpayer can claim a credit on a maximum amount of €20,000 expense (i.e., €10,000 maximum tax credit). The overall government budget for this measure is capped at €50 million for FY 2020.

Tax credit for retail spaces

As already established by the Heal Italy Decree, a tax credit was introduced for an amount of 60% of the rental fee paid in March 2020 for retail spaces (i.e., C/1 cadastral category). The tax credit is only available to offset other taxes and cannot be claimed by enterprises operating in the so called "essential activities" such as pharmacies and food shops. This measure is not affected by the Liquidity Decree.

Donations – deductibility for corporate income tax

As already established by the Heal Italy Decree, Italian entities subject to corporate income tax are allowed to deduct for both IRES and IRAP, any donations made in favor of the State, regions, local entities, public bodies or institutions, foundations and non-profit organizations. The deduction of such expenses for IRAP purposes is allowed under a cash basis principle. The donation made by individuals and by non-commercial entities can be offset against the income tax due for an amount equal to 30% of the relevant expense up to €30,000.

This measure is not affected by the Liquidity Decree.

Tax credit for advertising expenses

As already established by the Heal Italy Decree, a tax credit was introduced equal to 30% of the incremental advertising expenses made in FY 2020 via press, television and radio broadcast. Such tax credit is recognized within a maximum limit to be determined by the Italian Government and is subject to the relevant European Union limits. This measure is not affected by the Liquidity Decree.

Extension of terms for approving 2019 financial statements

As already established by the Heal Italy Decree, companies are allowed to call the ordinary shareholders' meeting to approve the 2019 financial statements within 180 days of the end of the financial year as opposed to 120 days. As a consequence, all company meetings for the approval of the 2019 financial statements may be called by 28 June 2020. Also, it is allowed for all members to attend the shareholders' meeting by means of telecommunications, even in exception to the provisions of the by-laws. This measure is not affected by the Liquidity Decree.

Endnotes

1. See EY Global Tax Alert, [Italy enacts "Heal Italy Decree" to manage COVID-19](#), dated 20 March 2020.
2. As clarified by the Italian tax authorities with Circular n. 8 of 3 April 2020, deferments that specifically require an Italian domicile, registered office or place of business in Italy do not apply to Italian VAT registrations of non-established taxable persons.
3. This point was confirmed by the Italian tax authorities with the above-mentioned Circular n. 8 of 3 April 2020.
4. See EY Global Tax Alert, [Italian NPLs and UTPs: Conversion into tax credits of Deferred Tax Assets associated with tax losses carried forward and other deferred deductions](#), dated 18 March 2020.

For additional information with respect to this Alert, please contact the following:

Studio Legale Tributario, International Tax and Transaction Services, Milan

- ▶ Marco Magenta marco.magenta@it.ey.com
- ▶ Savino Tatò savino.tato@it.ey.com
- ▶ Simone De Giovanni simone.de-giovanni@it.ey.com
- ▶ Davide Bergami, *Transfer Pricing* davide.bergami@it.ey.com

Studio Legale Tributario, Financial Services Office, Milan

- ▶ Marco Ragusa marco.ragusa@it.ey.com
- ▶ Paolo Zucca paolo.zucca@it.ey.com
- ▶ Antonfortunato Corneli antonfortunato.corneli@it.ey.com
- ▶ Giancarlo Tardio giancarlo.tardio@it.ey.com

Studio Legale Tributario, International Tax and Transaction Services, Rome

- ▶ Daniele Ascoli daniele.ascoli@it.ey.com

Studio Legale Tributario, Business Tax Advisory, Rome

- ▶ Giacomo Albano giacomo.albano@it.ey.com

Studio Legale Tributario, Indirect Taxes, Rome

- ▶ Nicoletta Mazzitelli nicoletta.mazzitelli@it.ey.com

Studio Legale Tributario, International Tax and Transaction Services, Bologna

- ▶ Mario Ferrol mario.ferrol@it.ey.com

Studio Legale Tributario, Florence

- ▶ Angelo Rabatti angelo.rabatti@it.ey.com

Studio Legale Tributario, Torino

- ▶ Marco Bosca marco.bosca@it.ey.com

Studio Legale Tributario, Treviso

- ▶ Stefano Brunello stefano.brunello@it.ey.com

Studio Legale Tributario, Business Tax Advisory, Verona

- ▶ Alexia Pinter alexia.pinter@it.ey.com

Ernst & Young LLP (United Kingdom), Italian Tax Desk, London

- ▶ Domenico Borzumato dborzumato@uk.ey.com

Ernst & Young LLP (United States), Italian Tax Desk, New York

- ▶ Emiliano Zanotti emiliano.zanotti2@ey.com
- ▶ Andrea Ajovalasit andrea.ajovalasit1@ey.com
- ▶ Luigi Caltagirone luigi.caltagirone1@ey.com

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