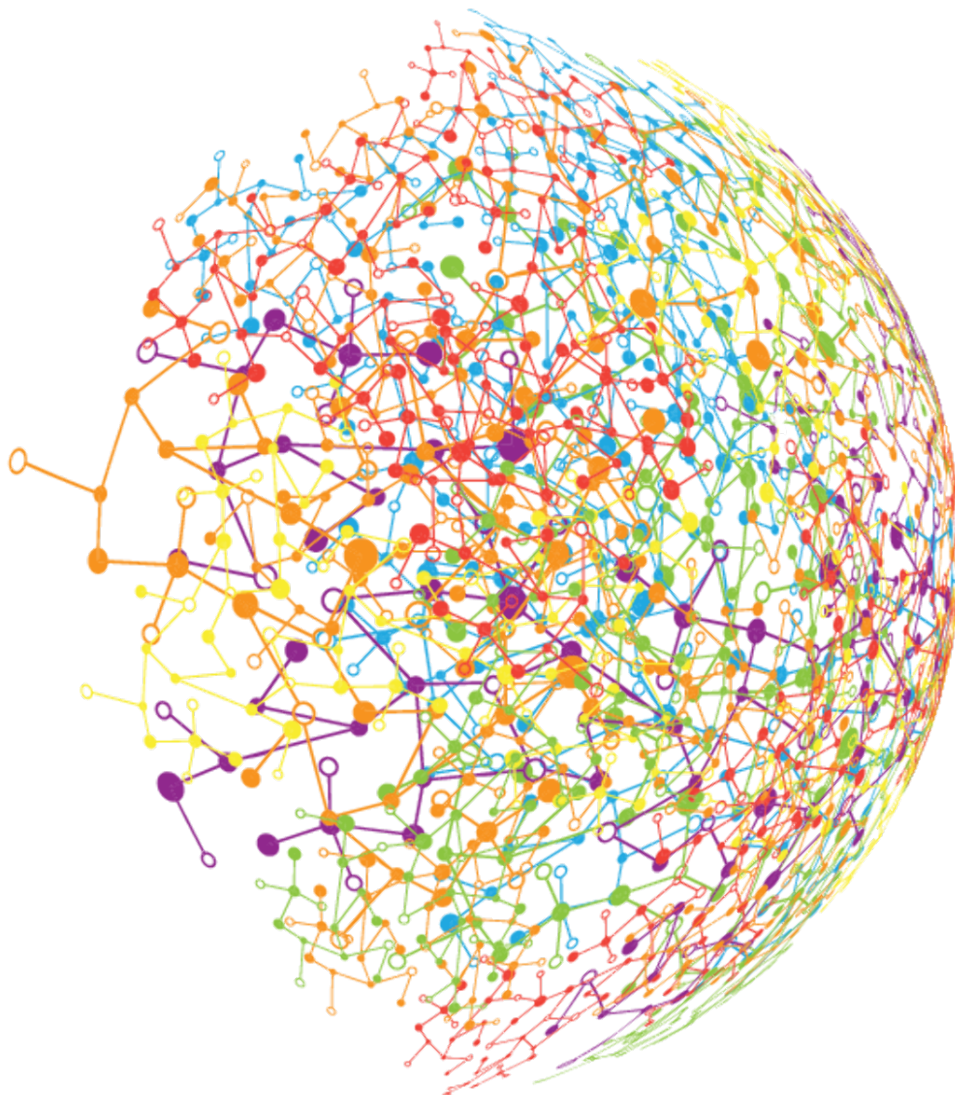


Studio Tributario e Societario



Covid-19 | Tax Alert | N. VI

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Deloitte.

Tax and Statutory Law

The Law Decree no. 34 dated May 19, 2020, has been converted into law with amendments by the Law no. 77 dated July 17, 2020. Here below please find the main amendments and for the comments to the original provisions please refer to our Tax Alert no IV.

Step up of the costs of participations and lands owned by individuals

(Art. 137, Law n. 77, July 17, 2020, effective since July 19, 2020)

The Conversion Law confirms that participation and lands owned by individuals can be stepped up, for the purposes of computing the capital gain. The purchase value of unlisted share investments and lands held as of July 1, 2020 by said subjects can be stepped up with the payment of a substitute tax equal to 11%. The Law has postponed the payment to November 15, 2020, (instead September 30, 2020 as originally provided by the Decree) also by three installments. An appraisal shall have to be prepared within the same deadline.

Local Real Estate Tax abolishment

(Art. 177, Law n. 77, July 17, 2020, effective since July 19, 2020)

The first advanced payment of the Local Real Estate Tax due on June 16, 2020, shall not be paid by the owners of hotels, campings, B&B and similar, if the relevant business activity is actually carried out, by the owners of bathhouse (on sea, lakes, rivers) or owners of thermal sites. The Conversion Law extends the exemption to certain real estates utilized mainly for exhibitions.

Please remind that the provision is applicable under the limitation provided by the Communication of the European Commission dated

March, 19, 2020, C(2020), 1863-final, "Temporary measures of the State's assistance to support the economy under the Covid-19 emergency".

Provisions for the simplification of procedures for the import and validation of surgical masks and personal protective equipment

(Law n. 77, July 17, 2020, effective since July 19, 2020 – introduction of art. 66 bis)

The conversion law, in order to ensure companies the necessary need for surgical masks and personal protective equipment and to support the safe recovery of production activities, for the import and placing on the market of the aforementioned devices has provided the definition of simplified validation criteria, which ensure suitable protective efficacy for specific use until the end of the epidemiological state of emergency from COVID-19. In particular, these criteria will be defined, within 10 days from the date of entry into force of this conversion law: for surgical masks by a technical committee composed by a representative of the Italian Institute of Health (ISS), who chairs it, by a representative designated by the regions, by a representative of the Italian Accreditation Body - ACCREDIA, by a representative of the Italian Standardisation Organisation (UNI) and by a

representative of the notified bodies indicated by the associations of the conformity assessment bodies that are members of the ACCREDIA, for personal protective equipment by a technical committee composed by a representative of the National Institute for Insurance against Accidents at Work (INAIL), who chairs it, by a representative designated by the regions, by a representative of the ACCREDIA, by a representative of UNI and a representative of the notified bodies indicated by the associations of the conformity assessment bodies that are members of the ACCREDIA. Administrative support to the committee is provided by INAIL. Moreover, within 15 days from the date of entry into force of this conversion law, the regions will define the procedures for presenting the validation requests for surgical masks and personal protective equipment and will identify the competent structures for the same validation, using the bodies notified and test laboratories accredited by the ACCREDIA, as well as universities and research centers and specialized laboratories for carrying out tests on products, and will carry out the related checks. It is also specified that the validations carried out in derogation by the ISS and the INAIL in implementation of article 15, paragraphs 2 and 3, decree-law of 17 March 2020, n. 18, converted, with modifications, by the law 24 April 2020, n. 27, remains valid. The ISS and the INAIL remain competent for the definition of the requests received by the aforementioned Institutes up to the fifteenth day following the date of entry into force of the conversion law of this decree, unless the applicant expressly renounces to apply a request to the region.

Transitory provision for statutory financial statement

(Art. 38-quater, Law n. 77, July 17, 2020, effective since July 19, 2020)

The Conversion Law has introduced the following transitory provision for statutory financial statement purposes:

- with regard to the statutory financial statement referred to the business year ended before February 23, 2020, and not still approved, the business continuity has to be evaluated without considering the uncertainties and effects occurred after the year end, without prejudice for all the other information to be made in the explanatory notes and in the management comments, including risks and uncertainties related to event subsequent to the year end and profitable capability of the company;
- with regard to the statutory financial statement referred to the business year running as of December 31, 2020, the business continuity can be evaluated based on the results of the last financial statement referred to the business year ended before February 23, 2020, also in in this case without prejudice for all the other information to be made in the explanatory notes and in the management comments, including risks and uncertainties related to event subsequent to the year end and profitable capability of the company.

The provision shall have effects for civil law purposes only.

Incentives

Incentives to companies in the conversion law of the Decree Law no. 34 of 19 May 2020 – Decreto Rilancio

Grants for the recreational and entertainment sectors

(new Article 25-bis, of Legislative Decree no. 34 of May 19, 2020, introduced by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The Conversion Law introduced Article 25-bis, which, in order to mitigate the economic crisis resulting from the epidemiological emergency of COVID-19, recognizes, to companies operating in the recreational and entertainment sectors, as well as in the organization of parties and ceremonies, the attribution of non-refundable grants within the overall spending limit of 5 million euros for the year 2020. A decree of the Minister of Economy and Finance, to be adopted within thirty days from the date of entry into force of the Conversion Law, in agreement with the Minister of Economic Development, will establish the criteria and procedures for the application of this article, also in order to ensure compliance with the aforementioned expenditure limit for the year 2020, giving priority to companies with a reduction in their turnover, calculated on a monthly

basis, of at least 50 percent compared to 2019.

Capital strengthening of medium-sized enterprises: extension of benefits to companies in a composition with creditors with business continuity

(Article 26, paragraph 2-bis, of Legislative Decree no. 34 of May 19, 2020, as amended by Law no. 77 of July 17, 2020, effective since July 19, 2020)

Article 26 of Decree Law no. 34 of 19 May 2020 provides for measures to strengthen the capitalization of medium-sized enterprises. The Conversion Law added the new paragraph 2-bis to art. 26, which extends the benefits provided by paragraph 8 and 12 of Article 26, also in favour of companies being in an arrangement with creditors on a going concern basis, which are in a regular contributory and fiscal situation, and with return and instalment plans already in place at the date of entry into force of the “Decreto Rilancio”. These companies will therefore have access to the tax credit for losses registered in 2020 (referred to in paragraph 8 of Article 26) and to the financing granted by Fondo Patrimonio PMI (the SMEs Equity Fund) by means of the subscription of newly issued financial instruments (referred to in paragraph 12 of Article 26).

Tax credit for the rental of buildings for non-residential use and business rental: new additions

(Article 28, of Legislative Decree no. 34 of May 19, 2020, as amended by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The Conversion Law introduced some changes to the tax credit for the rental of property for non-residential use and business concern rental, by providing for the following:

- paragraph 3 of Article 28 of the Decree now states that this incentive is also available, regardless of the volume of revenues recorded in the previous tax period, to travel and tourism agencies and tour operators, in addition to the hotels and agriturismo facilities. To the generality of operators, on the other hand, the tax credit is recognized only if the revenues recorded in the previous year do not exceed 5 million euros;
- the introduction of paragraph 3-bis, which provides for the extension of the tax relief to companies operating in the retail sector with revenues exceeding 5 million euros in the tax period prior to that running at the date of entry into force of the “Decreto Rilancio”. These parties are granted a tax credit equal to 20% of the rent, leasing or concession of property for non-residential use intended for the performance of the activity and,

- in the case of contracts for complex services or business concern rental, a tax credit equal to 10% of the rent paid;
 - in paragraph 5 the elimination of the constraint of the reduction in turnover of March, April and May 2020 (April, May and June for tourist accommodation facilities with seasonal activity) of at least 50% with respect to the same months of the previous tax period, for those subjects who started operations from 1 January 2019 on, and for those with tax domicile or operating headquarters in municipalities with a state of emergency due to calamitous events already in force at the date of the declaration of the state of emergency Covid-19;
 - the introduction to paragraph 5-bis of the possibility for the tenant, in case of rental, to assign the tax credit to the landlord, upon acceptance of the latter, instead of paying the corresponding part of the rent.
- enhancement of activities and information relating to initiatives carried out in order to deal with the emergency arising from COVID-19;
 - in paragraph 3, the introduction of the maximum amount of subsidized loans that each innovative start-up and small and medium innovative enterprise may obtain, which is equal to four times the total amount of resources raised by itself, with a maximum limit of 1 million euros per single investment;
 - in paragraph 9-ter, the maximum amount of investment in start-ups or innovative SMEs eligible to the incentive, was raised from 100 thousand to 300 thousand euros per year, deductible at 50%. The conversion Law stated also that the deduction at hands, up to the said ceiling, has priority over the deduction governed by Article 29 of Decree Law No. 179/2012; the latter can be used instead on the part of the investment exceeding 300 thousand euros. The limits of the EU regulation on de minimis aids apply.

Strengthening the system of innovative start-ups: new additions

(Article 38, of Legislative Decree no. 34 of May 19, 2020, as amended by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The Conversion Law introduced, for the strengthening of the system of start-ups and innovative SMEs, the following changes to Article 38:

- the introduction of paragraph 2-bis which assigns up to 5% of the 10 million euros allocated to support innovative start-ups (as per paragraph 2 of Article 38 of the Decree), to the financing of communication, promotion and

Support measures for the textile, fashion and accessories industry

(new Article 38-bis, of Legislative Decree no. 34 of May 19, 2020, introduced by Law no. 77 of July 17, 2020, effective since July 19, 2020)

In order to support the textile, fashion and accessories industry at a national level, with particular regard to start-ups investing in design and creation, as well as to promote young talents in the textile, fashion and accessories sector that valorise “made in Italy”

products with a high artistic and creative content, the article in question has been included in the conversion law and provides for the attribution of non-refundable grants up to 50 per cent of eligible expenses, within the expenditure limit of 5 million euros for the year 2020. The implementing procedures of this measure will be established with a decree of the Minister of Economic Development, to be adopted within sixty days from the date of entry into force of the converting law of this decree. The effectiveness of the measures provided for in this Article shall be subject to authorisation by the European Commission, in accordance with Article 108, paragraph 3, of the Treaty on the Functioning of the European Union.

Promotion of the system of benefit companies

(new Article 38-ter, of Legislative Decree no. 34 of May 19, 2020, introduced by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The conversion Law added article 38-ter, which, in order to support the strengthening, throughout Italy, of the system of benefit companies (Article 1, paragraph 376 et seq., Law no. 208/2015) recognizes a contribution in the form of a tax credit to the extent of 50 percent of the costs of incorporation of, or transformation into, benefit companies incurred from the date of entry into force of the law converting this decree until 31 December 2020. The tax credit is recognised within the maximum amount of EUR 7 million (which is the expenditure limit), and in accordance with European legislation on de minimis aids.

Tax credit for non-participation in trade fairs and commercial events

(new Article 46-bis, of Legislative Decree no. 34 of May 19, 2020, introduced by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The conversion Law added article 46-bis, which increases by 30 million euros, for year 2020, the resources available to the tax credit for participation in trade fairs and exhibitions (Article 49, Decree No 34/2019), already addressed, for the same year, to the costs incurred by companies to participate in fairs and events abroad cancelled due to the pandemic (Article 12-bis, Decree No 23/2020, "Decreto Liquidità"). The additional amounts are intended for companies other than small and medium-sized enterprises and operators in the trade fair sector, with reference to compensation for damages caused by cancellation or non-participation in trade fairs and events in Italy.

Granting of a tax credit to limit the negative effects on final inventories in the textile, fashion and accessories sector

(new Article 48-bis, of Legislative Decree no. 34 of May 19, 2020, introduced by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The conversion Law added article 48-bis, which recognizes a tax credit equal to 30% of the value of the final inventories (referred to in Article 92.1 of the Decree no. 917 of 22 December 1986) exceeding the average of the same value recorded in the three years preceding the one in progress on the date of entry into

force of the COVID-19 emergency Decree of 9 March 2020, in favour of those subjects carrying out business activities in the textile and fashion industry, footwear production and leather goods (textile, fashion and accessories). The method and criteria applied for the valuation of final inventories in the tax period to which the incentive relates must be consistent with those used in the three tax periods considered for the purposes of the average. The tax credit is recognized until the available resources amounting to 45 million euros are exhausted. Companies that are not subject to a statutory auditing and do not have a board of statutory auditors must obtain a certification of the stock of inventories, issued by a statutory auditor. By means of decree of the Minister of Economic Development, in agreement with the Minister of Economy and Finance, the criteria for the correct identification of the economic sectors in which the beneficiaries of the tax credit operate will be established and the procedures and criteria for the implementation of this article will be defined, also in order to comply with the expenditure limit of 45 million euros. The provisions of this Article shall apply in accordance with the limits and conditions laid down in the European Commission Communication C(2020) 1863 final of 19 March 2020 on "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak".

Disposal of tax credits recognized by measures issued to deal with the emergency by COVID-19: new additions

(Article 122 of Legislative Decree no. 34 of May 19, 2020, as amended by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The assignment of tax credits deriving from provisions introduced to deal with the health emergency (rents for shops; rents for non-residential buildings and business leases; adaptation of work environments; sanitation and purchase of protective equipment), introduced until 31 December 2021, was extended by the Conversion Law also to the lessor or grantor, against a discount of the same amount on the rent.

Tax credit for the sanitation and purchase of protective equipment: new additions

(Article 125, of Legislative Decree no. 34 of May 19, 2020, as amended by Law no. 77 of July 17, 2020, effective since July 19, 2020)

The Conversion Law confirms the tax credit equal to 60% of the expenses incurred in 2020 to sanitize the workplace and the tools used for the activity, as well as to purchase personal protective equipment and equipment suitable to guarantee the health of workers and consumers, in favour of subjects carrying out business activities, arts and professions, non-commercial entities, including Third Sector entities and civilly recognised religious bodies, and extends the incentive also to non-business accommodation facilities of a non-business nature provided that they are in possession of the identification code to be used in any communication on the offer and promotion of services to consumers

referred to in article 13-quater, paragraph 4, of Decree Law no. 34 of 30 April 2019, converted, with amendments, by Law no. 58 of 28 June 2019. The conversion law clarifies that this tax credit, does not contribute to the formation of tax base for both income tax and IRAP tax, and it is not relevant for the purposes of Articles 61 and 109, TUIR regarding interest and negative income components deduction limitations.

enterprises) of the eligible expenditures.

Tax credit for research and development activities in the areas of Southern Italy and the regions affected by the earthquakes in the years 2016 and 2017: new additions

(Article 244 of Legislative Decree no. 34 of 19 May 2020, as amended by Law no. 77 of 17 July 2020, effective since 19 July 2020)

The Conversion Law confirms the increase in the tax credit for investments in research and development activities (Article 1, paragraph 200, Law 160/2019) already allowed for companies operating in Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardegna and Sicilia, and extend the same increase also to those enterprises operating in the regions of Lazio, Marche and Umbria affected by the seismic events of 2016 (24 August, 26 and 30 October) and 2017 (18 January). For the above entities the bonus, allowed to the generality of taxpayers in the amount of 12% of eligible costs, is increased up to 25%, 35% and 45% (respectively for large, medium and small



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