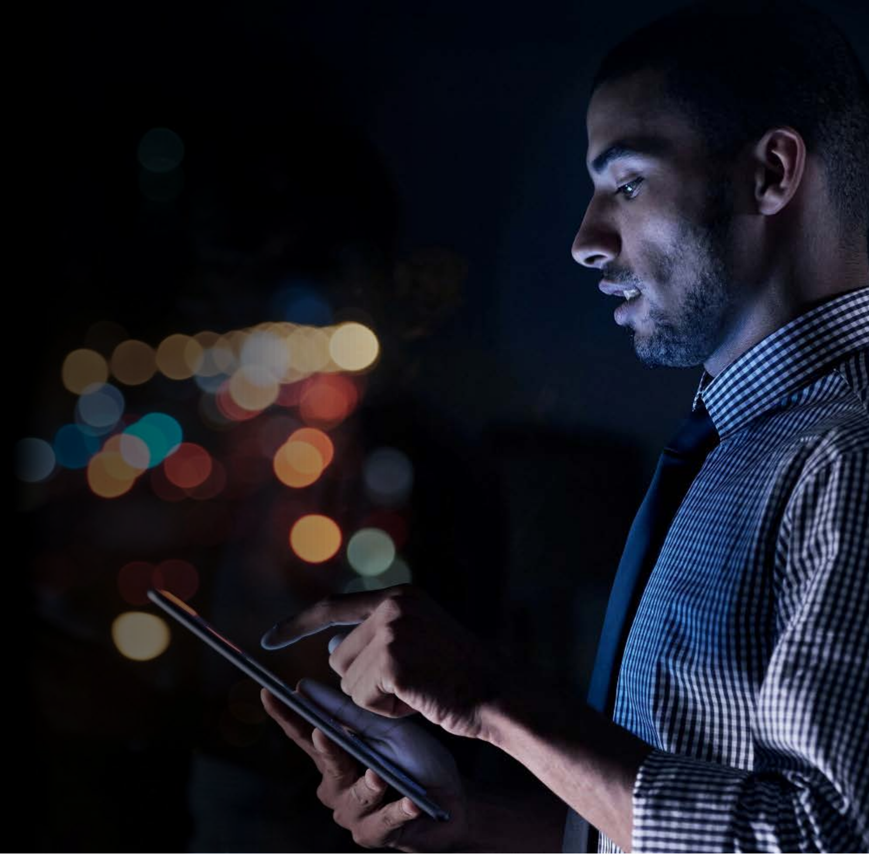
Italy: 2021 Budget Law



Tax & Legal Alert

5 February 2021

Offices

Milan
Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona
Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna
Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence
Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genoa
P.zza della Vittoria 15/12, 16121
T: +39 010 5702225

Naples
Via F. Caracciolo 17, 80122
T: +39 081 662617

Padua
Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia
Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara
P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome
Via Curtatone 3, 00185
T: +39 06 809631

Turin
C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona
Via Leone Pancaldo 68, 37138
T: +39 045 8114111

This Tax & Legal Alert summarizes the main changes made to tax, labor and corporate law by article 1 of Law no. 178 of 30 December 2020 (the '2021 Budget Law'), published in the Ordinary Supplement to Official Gazette no. 322 on 30 December 2020 and in force since 1 January 2021.

Contents of this alert:

1. Tax measures

1.1 Tax credits

1.1.1 Tax credit for investment in new capital goods - Article 1 (1051-1052)

A tax credit is confirmed for investments in new capital goods made from 16 November 2020 to 31 December 2022 or – if by 31 December 2022 the order has been accepted by the seller and a down payment of at least 20 percent has been made – 30 June 2023.

Companies are excluded from this tax credit if they have gone into voluntary or compulsory liquidation, have been declared bankrupt, or have an arrangement with creditors and have gone out of business. They are also excluded if they are undergoing processes leading to the declaration of one of these situations.

To be eligible for the tax credit, companies must be compliant with the rules on occupational health and safety and those on the payment of social security contributions.

Further details of this tax credit are given below.

1.1.2 Tax credit for investment in new capital goods - Article 1 (1053-1063)

The 2021 Budget Law renews the tax credit for investments in new capital goods(1) but makes significant changes on several fronts. Instead of being renewed annually, as in the past, the relief is now available for a two-year or longer period (see above). In addition, the percentage of the costs that can be taken as a tax credit, the type of capital goods covered by the rule and the amount of eligible expenses change. However, it is important to note that this incentive, only just approved, will soon be the subject of a further intervention, which, according to the specialist press, should substantially modify the extent of the credit, the types of goods eligible for aid and the time frame.

In the meantime, the bonus takes the form of a tax credit for investments made by any enterprises resident in Italy, including Italian permanent establishments of foreign entities, regardless of their legal form, economic sector, size and tax regime.

The incentive applies to goods that meet three requirements: they must be new, they must be capital goods, and they must be for facilities located in Italy, even if they have been purchased abroad. The size of the tax credit ranges widely and depends on the window in which the purchase is made(2), the type of asset and the amount of expenditure incurred.

However, in general, the following rules apply(3).

— For ordinary tangible assets and (a new detail compared to last year) ordinary intangible assets → the tax credit amounts to 10 percent/15 percent (depending on the expenditure bracket) in the first window and 6 percent in the second.

— For 4.0 tangible assets indicated in Attachment A to Law no. 232/2016 → the tax credit amounts to 50 percent/30 percent/10 percent (depending on the expenditure bracket) in the first window and 40 percent/20 percent/10 percent (depending on the expenditure bracket) in the second.

— For 4.0 intangible assets indicated in Attachment B to Law no. 232/2016 → the tax credit amounts to 20 percent of the cost at any time between 16 November 2020 and 31 December 2022.

As already mentioned, however, the above rates, spending brackets and limits are set to change in the coming weeks: a new decree is expected, which is likely to favor investment in 4.0 assets at the expense of investment in ordinary assets.

In order to take advantage of the tax credit, it is necessary to keep, on pain of forfeiting the tax relief, appropriate documentary evidence that the eligible costs have actually been incurred and have been correctly calculated. It is also necessary for invoices and other documents related to the purchase of the assets to include an express reference to paragraphs 1054-1058 of article 1 of the 2021 Budget Law.

Additionally, in the case of Industry 4.0 investments, unless the unit acquisition cost of the asset does not exceed EUR300,000 (in which case a statement by the legal representative is sufficient), the taxpayer must obtain and retain a certified appraisal or certificate confirming that the assets (i) satisfy the necessary technical requirements, (ii) are interconnected(4).

In line with the previous version of the benefit, a recapture mechanism applies in the event that the assets are sold or transferred to production facilities located abroad by 31 December of the second year following that in which they become operative or interconnected. This is the tax credit introduced by the 2020 Budget Law in the wake of previous benefits known as 'hyper' and 'super' depreciation.

(1) This is the tax credit introduced by the 2020 Budget Law in the wake of previous benefits known as 'hyper' and 'super' depreciation.

(2) As explained above, the overall time frame extends from 16 November 2020 to 31 December 2022. A first window closes in December 2021 (or in June 2022 if the seller has accepted the order and a down payment of at least 20 percent of the acquisition cost has been made) and a second window closes in December 2022 (or in June 2023 if the seller has accepted the order and a down payment of at least 20 percent of the acquisition cost has been made).

(3) With, for each category of assets, a cap on the amount of expenditure eligible for relief.

(4) 'Interconnected' assets (basically digitally controlled/operated equipment and machinery) exchange information with a business's computerised production management system or supply network.

1.1.3 Extension to 30 June 2021 of certain tax credits for investments made up to 30 December 2020 in order to consolidate the equity base of medium-sized companies - Article 1 (263-264)

The 2021 Budget Law has extended this tax credit[5] so that it covers capital increases approved and made by 30 June 2021.

More specifically, medium-sized companies can claim a tax credit equal to 50 percent of the portion of losses that exceeds 10 percent of their equity (gross of those losses). The tax credit is capped at 30 percent of the capital increase (or 50 percent in the case of capital increases approved and implemented in the first half of 2021).

This tax credit can only be used to offset taxes[6] from the tenth day after the date of investment, after the financial statements for financial year 2020 have been approved and no later than 30 November 2021.

The extension to 30 June 2021 does not apply to the tax relief governed by paragraphs 4 to 7 of article 26 of the Relaunch Decree[7]: therefore, those that subscribe for and pay the capital increase can claim the tax credit, equal to 20 percent of the investment, if that capital increase is made by 31 December 2020.

Moreover, the 2021 Budget Law has – within the framework of rules governing the fund set up to assist SMEs (the '*Fondo Patrimonio PMI*', which is managed by Invitalia – extended to 30 June 2021 the possibility of subscribing for certain bonds or debt securities newly issued by companies that, among other requirements, have no more than 250 employees. The amount of bonds/debt securities that can be subscribed for is capped at three times the amount of the approved capital increase or, if lower, 12.5 percent of the company's revenues.

These changes will apply to applications submitted after 31 December 2020.

1.1.4 Tax credit for investments in the South of Italy - Article 1 (171-172)

In 2015 a tax credit was introduced[8] for business entities that purchase, even through leasing contracts, new capital goods (machinery, installations and other equipment) to be used in manufacturing facilities located in the southern regions of Italy: Campania, Puglia, Basilicata, Calabria, Sicily, Sardinia, Molise and Abruzzo. The 2021 Budget Law extends this tax credit to 31 December 2022.

The tax credit is not available for certain business sectors – i.e. steel, coal, shipbuilding, synthetic fibers, transport (including infrastructure), energy production and distribution (including infrastructure) – or for the credit, financial and insurance sectors.

The tax credit is calculated as a percentage of the cost of the new eligible investments. For each investment project, the qualifying costs are capped at:

— EUR3 million in the case of small businesses;

— EUR10 million in the case of medium-sized enterprises;

— EUR15 million in the case of large companies.

The tax credit is granted to the maximum extent permitted by the 2014-2020 Regional Aid Map[9].

— For the regions of Calabria, Puglia, Campania, Sicily, Basilicata and Sardinia, the maximum aid intensity is 45 percent for small enterprises, 35 percent for medium-sized enterprises, and 25 percent for large enterprises.

— For the regions of Abruzzo and Molise, the maximum aid intensity is 30 percent for small enterprises, 20 percent for medium-sized enterprises, and 10 percent for large enterprises.

Within the European limits on aid, the tax credit can be combined with the *de minimis* and other state aid available for the same investments.

The taxpayer must apply to the Revenue Agency for the tax credit and can use it exclusively to offset tax bills[10], starting from the tax year in which the investments are made. The tax credit must be properly reported in the relevant tax returns.

1.1.5 Enhanced tax credit for research and development in Southern Italy - Article 1 (185-186)

In order to more effectively incentivize technological advances in production processes and investment in R&D by companies operating in the regions of Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily, for 2021 and 2022 there is an enhanced tax credit for investment in certain R&D activities[11], including COVID-19 R&D projects that directly involve production facilities located in these regions. The size of the tax credit depends on the size of the enterprise and is:

— 25 percent for large enterprises, with at least 250 employees and annual turnover of at least EUR50 million or total assets of at least EUR43 million;

— 35 percent for medium-sized enterprises, with at least 50 employees and annual turnover of at least EUR10 million;

— 45 percent for small enterprises, with fewer than 50 employees and annual turnover or annual total assets not exceeding EUR10 million.

The higher tax credit is applied in compliance with the limits and conditions established by Commission Regulation (EU) No 651/2014 of 17 June 2014.

(5) Introduced by article 26 of the 'Relaunch Decree' (Decree Law no. 34 of 19 May 2020).

(6) As per article 17 of Legislative Decree no. 241/1997.

(7) Decree Law no. 34 of 19 May 2020.

(8) By article 1 (98-108) of Law no. 208 of 28 December 2015.

(9) As amended by European Commission Decision C (2016) 5938 final of 23 September 2016.

(10) As per article 17 of Legislative Decree no. 241 of 9 July 1997.

(11) Those defined in article 1 (200) of Law no. 160 of 27 December 2019.

1.1.6 Advertising bonus - Article 1 (608)

The 2021 Budget Law has confirmed and refinanced for 2021 and 2022 the mechanism introduced in 2020[12] for calculating the so-called 'advertising bonus'. The tax credit is therefore equal to 50 percent of the total advertising investments made during the year of reference in daily newspapers and periodicals, including digital ones, regardless of any increases compared to the previous year. As usual, should the tax credit claims exceed the amount of allocated resources, these will be distributed on a percentage basis among all the qualifying claimants.

A new development is that, over the next two years, the incentive will not apply to advertising placed with local television and radio stations, whether they broadcast in analog or digital. Through article 186 of Law Decree no. 34/2020, which inserted paragraph 1-*ter* in article 57-*bis* of Law Decree no. 50/2017.

1.1.7 Digital services tax credit - Article 1 (610)

Last year the Relaunch Decree introduced[13], for 2020, a special digital services tax credit, equal to 30 percent of the actual cost of purchasing (i) server-related, hosting and development/maintenance services for digitally published newspapers and magazines, and (ii) the information technology needed to manage connectivity.

The tax credit, which was capped at EUR8 million for 2020, cannot be combined with any other form of domestic, regional or European relief for the same items of expenditure, or with the subsidy available in Italy to publishers of daily newspapers and magazines.

This tax credit can be used, solely to offset taxes, by duly registered publishers of newspapers and magazines that employ at least one worker on a permanent contract.

The 2021 Budget Law has extended the tax credit for digital services to 2021 and 2022, on the same terms and conditions as before. The cap has been raised to EUR10 million for both 2021 and 2022.

1.1.8 R&D tax credit - Article 1 (1064) (a-h)

The 2021 Budget Law extends to 31 December 2022 and enhances the tax credit for investments in research and development, technological innovation and other innovations, introduced by the 2020 Budget Law.

The tax credit can be taken by all enterprises resident in Italy, including Italian permanent establishments of foreign entities, regardless of their legal form, economic sector, size and tax regime. The eligible costs are those incurred in the following activities:

A. Fundamental research, industrial research and experimental development in areas of science or technology.[14]

B. Technological innovation in areas – other than science and technology – that could contribute to the development of new or substantially enhanced products or production processes[15].

C. Aesthetic and other designs created – with a view to planning and producing new products and samples – by firms operating in various product sectors – textiles, fashion, footwear, eyewear, gold, furniture and furnishings, ceramics[16].

The tax credit varies according to the type of activity:

i. For Category A activities, the tax credit is 20 percent, with an annual cap of EUR 4 million.

ii. For Category B activities, the tax credit is:

   — 10 percent for technological innovation, with an annual cap of EUR2 million;

   — 15 percent for digital innovation, with an annual cap of EUR2 million;

   — 15 percent for ecological transition, with an annual cap of EUR2 million.

iii. For Category C activities, the tax credit is 10 percent, with an annual cap of EUR2 million.

As well as clarifying the eligible costs, the 2021 Budget Law introduces a new obligation to certify the technical report.

Moreover, for the tax credit to be recognized, the company must obtain a certificate from an auditor, attesting that the eligible expenses have actually been incurred and correspond to the company's accounting records. In the case of companies not required by law to carry out statutory audits, up to EUR5,000 of the related expenditure is added to the tax credit (without prejudice, however, to the above limits).

1.1.9 Industry 4.0 training - Article 1 (1064) (i-l)

The 2021 Budget Law extends the tax credit for 4.0 training to 31 December 2022, also expanding the range of eligible costs in accordance with article 31 (3) of Regulation (EU) No 651/2014. From now on, the following costs will therefore be considered in the calculation of the tax relief:

— trainers' personnel costs, for the hours during which the trainers participate in the training;

— trainers' and trainees' operating costs directly relating to the training project;

— costs of advisory services linked to the training project;

— trainees' personnel costs and general indirect costs (administrative costs, rent,) for the hours during which the trainees participate in the training.

(12) Through article 186 of Law Decree no. 34/2020, which inserted paragraph 1-*ter* in article 57-*bis* of Law Decree no. 50/2017.

(13) Article 190 of Decree Law no. 34 of 19 May 2020.

(14) See article 1 (200) of the 2020 Budget Law.

(15) See article 1 (201) of the 2020 Budget Law.

(16) See article 1 (202) of the 2020 Budget Law.

This tax credit is available to:

i. ‘small enterprises’, which can claim a tax credit equal to 50 percent of the eligible expenses and capped at EUR 300,000 per annum;

ii. ‘medium-sized enterprises’, which can claim a tax credit equal to 40 percent of the eligible expenses and capped at EUR 250,000 per annum;

iii. ‘large enterprises’, which can claim a tax credit equal to 30 percent of the eligible expenses and capped at EUR 250,000 per annum.

For all these enterprises, the tax credit rises to 60 percent if the trainees are underprivileged or very underprivileged employees (the annual caps remain the same).

1.1.10 Extension of tax credit for non-residential rental payments - Article 1 (602)

The tax credit for rental paid for business premises by travel agencies and tour operators has been extended to 30 April 2021.

1.1.11 Tax credit for the adaptation of workplaces to COVID-19 legislation - Amendments - Article 1 (1098 to 1100)

In May of last year a tax credit was introduced[17] for expenses incurred in the adaptation of workplaces.

The tax credit (which was capped at EUR80,000) amounted to 60 percent of the expenses incurred in 2020 for:

— the implementation of measures necessary to comply with health and safety regulations on preventing the spread of the virus;

— investments in innovation, including the development or purchase of work-related tools and technologies and the purchase of equipment to check the temperature of employees.

The tax credit, subject to submission of a specific form to the Italian Revenue Agency[18], can be used in the F24 payment form to offset other taxes or transferred, even partially, to other parties, between 1 January and 31 December 2021.

Compared with the previous measure, the 2021 Budget Law has made significant changes: it is now possible to use the F24 form to offset taxes, or to transfer the tax credit to a different party, exclusively between 1 January and 30 June 2021.

In Resolution no. 2 of 11 January 2021, the Italian Revenue Agency clarified that tax code ‘6918’ must be used in the ‘*Erario*’ section of the F24 form, indicating ‘2021’ as the year of reference (‘*anno di riferimento*’).

The clarifications provided by the Italian Revenue Agency, through Circular no. 20/E of 10 July 2020, remain unchanged. Therefore:

a. the limits on offsetting established by article 1 (53) of Law no. 244/2007 (regarding the tax credits to be indicated in the RU section of the income tax return) and by article 34 of Law no. 388/2000 (regarding tax credits used to offset other taxes in the F24 form) do not apply;

b. the tax credit and its corresponding uses must be indicated in the RU section of the income tax return for FY2020, specifying both the amount offset in the F24 form and the amount transferred to third parties;

c. the limits imposed in the Communication from the European Commission of 19 March 2020 (C[2020] 1863 final: ‘Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak’, as subsequently amended) apply.

1.1.12 Extension of the period of application of the tax credit supporting the ‘Made in Italy’ label - Article 1 (131)

Tax support for the ‘Made in Italy’ label has been extended to cover tax years 2021-to 2023. This 40 percent tax credit has also been extended to include networks of agricultural enterprises, including those set up as cooperatives or consortiums. The tax credit is available for the creation and implementation of IT infrastructure that will enhance electronic trading and, more in general, boost the potentiality of distance selling to final clients based outside Italy. It is also available for the creation, where necessary, of virtual bonded and customs warehouses in order to increase export opportunities and export volumes.

Guidelines will be issued by the Italian Revenue Agency to define the tax credit criteria and requirements.

1.1.13 Tax credit for advisory expenses incurred in the listing of small and medium-sized companies - Article 1 (230)

The tax credit available for advisory expenses incurred in the listing of small and medium-sized companies on regulated stock exchanges or multilateral European trading systems has been extended to 31 December 2021[19].

To be eligible for the tax credit, the advisory services must be supplied by a third-party provider and must not be ordinary or recurrent ones or connected to the ordinary business of the company.

The tax credit is equal to 50 percent of the costs/expenses and is capped at EUR500,000.

The tax credit can only be used to offset other tax payments from the financial year subsequent to that in which the company has been listed.

(17) By article 120 of Law Decree no. 34 of 19 May 2020 (the ‘Relaunch Decree’).

(18) In Resolution no. 2 of 11 January 2021, the Revenue Agency specified that the form must be submitted by 31 May 2021.

(19) This tax credit was originally introduced by the 2018 Budget Law.

1.1.14 Tax credit for donations - Article 1 (536-539)

A tax credit has been introduced for donations made during 2021 or 2022. The minimum eligible donation is EUR100,000 and the maximum tax credit is 100 percent in the case of small and micro enterprises, 90 percent in the case of medium sized companies and 80 percent in the case of large companies. Eligible donations are those made in the form of scholarships or of support for management training provided by public or private universities and other higher education institutions.

1.1.15 Extension of the 110 percent 'Ecobonus' tax credit - Article 1 (66-74)

The 'Ecobonus' tax credit is for energy-efficiency and anti-seismic improvements made to buildings and has been extended to 30 June 2022 (from the previous deadline of 31 December 2021). The tax credit matching the part of the expenditure incurred in 2022 must be taken in four annual installments.

1.2 Direct taxation

1.2.1 Foreign investment fund taxation - Article 1 (631-633)

There are two significant changes to the previous rules.

First, the 2021 Budget Law amends article 27(3) of Presidential Decree no. 600/1973 by stating that the 26 percent withholding tax on dividends does not apply to those paid to (i) foreign collective investment funds compliant with Directive 2009/65/EC (the UCITS Directive), or (ii) funds that are not compliant with the UCITS Directive but are established in an EU or EEA Member State which allows an adequate exchange of information for tax purposes, provided that the manager of the non-compliant fund is subject to supervision in its foreign country of establishment according to Directive 2011/61/EU (the AIFM Directive).

Second, the 2021 Budget Law states that capital gains and losses on 'qualifying' shareholdings[20] realized by foreign collective investment funds that meet the above requirements will not be subject to tax in Italy.

Before these changes, dividends paid by resident companies to foreign collective investment funds were subject to 26 percent withholding tax and capital gains from the sale of equity investments in resident companies were taxed in Italy[21].

This contrasted with the treatment of collective investment funds established in Italy, which, despite being considered as taxable persons for IRES purposes[22], do not pay any tax on their income, as they are expressly exempt from income taxes[23] provided they are subject to forms of prudential supervision.

This absence of equivalent tax treatment was challenged by the European Commission, which began an investigation (EU Pilot 8105/15/Taxu), on the grounds that such treatment is contrary to the free movement of capital, a principle established in article 63 TFEU. The rationale for the recently introduced changes is therefore to resolve this conflict between EU and domestic legislation.

With regard to the effective date of the changes, these new provisions are effective with regard to dividends received and capital gains realized from 1 January 2021.

However, because EU principles and interpretations of them by the Court of Justice take immediate effect, refund claims that are not time-barred will remain legitimate under EU law, as they are related to taxes applied on the basis of national legislation that conflicts with the Treaties.

1.2.2 Introduction of the possibility to roll back the effects of advance tax rulings to previous financial years; introduction of entry fees - Article 1 (1101)

The 2021 Budget Law has amended the existing legislation on advance tax rulings for multinational enterprises[24], which are designed to give them advance certainty about selected international tax issues, including transfer pricing, permanent establishment recognition and profit attribution, exit/entry tax quantification, and the tax treatment of dividends, interest and royalties.

Under the new legal framework, the effects of such rulings can be rolled back to include one or more financial years still open to assessment under the applicable statute of limitations, if the underlying legal and factual circumstances were no different then and those years are not undergoing any tax audit.

These new provisions also apply to advance tax rulings resulting from mutual agreement procedures reached with foreign tax authorities, provided that the taxpayer has requested this in the advance tax ruling application and the competent authorities of the foreign states agree to roll back the effects of the agreement to previous years.

In both cases, where necessary, the taxpayer can roll back the effects of the advance tax ruling by following the self-reporting process known as '*ravvedimento operoso*' or by submitting a supplementary tax return, without the application of any penalty.

(20) Qualifying shareholdings are those referred to in article 67(1)(c) of the Italian Income Tax Code.

(21) Under article 23(1)(f) of the Italian Income Tax Code.

(22) Because of their inclusion among the taxable persons indicated in article 73 of the Italian Income Tax Code.

(23) Under article 73 (5-*quinquies*) of the Italian Income Tax Code.

(24) Governed by article 31-*ter* of Presidential Decree no. 600/73.

Multinational enterprises will only be able to access the advance tax ruling procedures by paying an entry fee, which will vary according to the multinational group's overall turnover, as shown in the table below. Governed by article 31-*ter* of Presidential Decree no. 600/73.

Group turnover	Fees
< EUR100 million	EUR10,000
≤ EUR750 million	EUR30,000
> EUR750 million	EUR50,000

In the case of an agreement renewal request, the entry fee is halved.

1.2.3 Revaluation of business assets - Article 1 (83)

In the summer of 2020 new rules were introduced[25] with regard to the revaluation and realignment of business assets. Based on the original scheme introduced 20 years earlier[26], the new rules included some interesting changes and a particularly attractive rate of substitute tax (3 percent of the increase in value).

The 2021 Budget Law has supplemented last year's new rules by extending the realignment regime to include goodwill and other intangible assets reported in financial statements for financial years in progress on 31 December 2019. More specifically, for tax purposes it is possible to 'validate' the increase in the tax bases of the qualifying assets – by paying the fixed 3 percent tax that substitutes IRES, IRAP and any surtaxes – if the assets are reported in the financial statements for the financial year in progress on 31 December 2019 and are still recognized in the financial statements for the following financial year (the 2020 financial statements in the case of calendar-year taxpayers). The maximum increase in value that can be validated for tax purposes under the realignment regime is the difference between the book value as reported in the financial statements and the tax basis of the business assets.

An amount corresponding to the increase in value of the assets, net of the substitute tax, must be credited to a reserve (using available reserves or tying up capital if there are none) and taxation is deferred until the reserve is distributed. As an alternative to paying tax on future distributions from the reserve it is possible to pay a 10 percent substitute tax when setting it up.

1.2.4 Income tax reduction for revenue from businesses in Special Economic Zones - Article 1 (173-176)

Tax relief has been introduced for new business initiatives in Special Economic Zones ('SEZ')[27]. Such initiatives can benefit from a 50 percent reduction in income tax for seven financial years, staring from that of start-up.

Enterprises will lose the right to this tax relief and will have to return the amounts they have already received unless, for at least ten years, they:

a. keep the business in the SEZ;

b. safeguard the jobs created in the SEZ.

Moreover, they cannot be in liquidation or subject to a winding-up procedure.

This tax relief is subject to the limits and conditions imposed by Regulation (EU) No 1407/2013 on the application of articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

1.2.5 Extension to 2021 of the possibility of revaluating the purchase value of land and equity interests - Article 1 (1122-1123)

It is possible to step up the purchase cost of land and equity interests in unlisted companies by paying a substitute tax of 11 percent. This regime has been extended to 2021, provided that:

a. the land or equity interests are owned by the taxpayer on 1 January 2021;

b. an expert appraisal of the assets is prepared and certified no later than 30 June 2021;

c. the substitute tax is paid on the increase in value in one installment no later than 30 June 2021 or in three equal installments, plus interest, no later than 30 June 2021, 30 June 2022 and 30 June 2023 respectively. In this second case, the payment of the first instalment gives effect to the revaluation and the taxpayer can immediately use the new purchase value to calculate the capital gain.

1.2.6 Tax relief for business combinations - Article 1 (233-243)

The 2021 Budget Law has introduced rules to facilitate business combinations achieved through mergers, demergers and contributions. This is a temporary form of relief available for mergers, demergers and contributions approved by shareholder meetings, or by other competent internal bodies, between 1 January and 31 December 2021.

The surviving/receiving company (in a merger process) or the transferee (in a demerger or contribution process) is now able to convert into a tax credit a proportion of deferred tax assets (DTAs) for: (i) tax losses incurred and not yet used by the financial year prior to that in progress on the date the transaction becomes legally effective; (ii) ACE surpluses accrued up to the financial year prior to that in progress on the date the transaction takes legal effect, and not yet deducted or converted into a tax credit to be used for IRAP purposes on that date.

(25) By article 110 of Law Decree no. 104/2020.

(26) By Law no. 342/2000.

(27) As defined in Law Decree no. 91/2017.

To claim the tax relief, the companies participating in the transaction must satisfy certain operating and independence requirements. In particular, (i) they must have been operating for at least two years, (ii) they must not be members of the same corporate group, (iii) the equity interest held by one of them in the other must not exceed 20 percent, (iv) they must not be subsidiaries[(28)], even indirectly, of the same company.

The amount of DTAs and ACE surpluses convertible into a tax credit cannot exceed 2 percent of the total assets of the companies participating in the merger or demerger, as reported in their balance sheets[(29)]. In the case of a contribution, the convertible amount cannot exceed 2 percent of the total transferred assets.

Although the rules cap the amount of DTAs that can be converted into a tax credit, the taxpayer can convert a lower amount. Conversion takes place in two stages: one quarter of the amount is converted into a tax credit on the date the transaction becomes legally effective; the remaining three-quarters are converted on the first day of the financial year subsequent to that in progress on the effective date.

The tax losses and ACE surpluses corresponding to the converted DTAs can no longer be (in the case of tax losses) deducted from taxable income or (in the case of ACE surpluses) deducted or converted into a tax credit to be used for IRAP purposes from the date on which the transaction takes legal effect.

The tax credit can be used, with no restrictions on the amount, to offset tax bills[(30)]; alternatively, it can be transferred to third parties or to group affiliates, or claimed as a refund[(31)].

The conversion of DTAs into a tax credit is subject to payment of a fee amounting to 25 percent of the DTAs. This fee must be paid in two installments: 40 percent within 30 days of the date on which the transaction becomes legally effective; 60 percent in the first 30 days of the financial year subsequent to that in progress on the effective date.

1.3 Indirect taxation

1.3.1 Reduced 10 percent VAT rate for ready meals - Article 1 (40)

The reduced VAT rate of 10 percent for supplies of food and beverages also covers takeaways and home-delivery supplies of ready meals and dishes that have been cooked, roasted, fried or otherwise prepared. This clarification also applies retroactively.

1.3.2 VAT exemption for COVID-19 diagnostic medical devices and vaccines - Article 1 (452-453)

From 1 January 2021 to 31 December 2022, the supply of COVID-19 diagnostic medical devices[(32)] and services closely linked to those devices are exempt from VAT, with deductibility of VAT paid at the preceding stage[(33)].

In addition, from 20 December 2020 to 31 December 2022, the supply of COVID-19 vaccines, authorized by the EU Commission or by the Member States, and services closely linked to those vaccines, are exempt from VAT, again with deductibility of VAT paid at the preceding stage[(34)].

1.3.3 Additional VAT rules for vessels used for navigation on the high seas and for pleasure boats - Article 1 (708-712)

The 2021 Budget Law introduces the following rules with respect to VAT relief[(35)] for supplies of vessels used for navigation on the high seas, supplies of motorized equipment, and supplies of services related to such vessels, etc.

a. A vessel qualifies as used for navigation on the high seas if, in the previous year (or in the year concerned if the vessel is being used for the first time), more than 70 percent of the distance sailed was on the high seas (that is, beyond the 12 nautical mile limit).

b. To claim the zero-rated relief, the customer must attest that the vessel is used for navigation on the high seas by electronically submitting a special declaration to the Revenue Agency[(36)]. The reference number assigned by the Revenue Agency to this attestation must appear on the supplier's invoices. The same number will have to be indicated in the customs declaration in the event of importation.

(28) Within the context of the definitions of control given in article 2359 (point 1 of the first paragraph) of the Italian Civil Code.

(29) The balance sheet referred to in article 2501-*quater* of the Italian Civil Code.

(30) As per article 17 of Legislative Decree no. 241/1997.

(31) Under article 43-*bis* (transfer to third parties) and article 43-*ter* (intra-group transfer) of Presidential Decree no. 602/1973.

(32) Satisfying the requirements imposed by EU Directive 98/79/EC and by Regulation (EU) 2017/745 of the EU Parliament and EU Council, or by harmonized EU legislation.

(33) This derogates from article 124(1) of Decree Law no. 34 of 19 May 2020, which sets a reduced 5 percent VAT rate.

(34) This provision derogates from the Italian VAT Act (point 114, Table A, Part III), according to which medicinal products ready for human use are subject to a reduced VAT rate of 10 percent.

(35) That provided by article 8-*bis* of the Italian VAT Act.

(36) Based on a form published by the Revenue Agency.

With respect to point b), a supplier who issues a zero-rated invoice without the customer attestation or without having checked on the Italian Revenue Agency website that it has been filed, will face a penalty ranging from 100 percent to 200 percent of the VAT.

The customer faces the same penalty in the event of a false attestation.

The Director of the Italian Revenue Agency should issue an implementing decree by 2 March 2021 and the rules should become effective for supplies made from 1 May 2021.

The same decree will also approve the form needed to declare the use, within the territory of the EU, of B2C long-term pleasure boat chartering/leasing services. In the event of a false declaration, the customer will face a penalty of 30 percent of the excess VAT due.

1.3.4 Airlines operating chiefly on international routes - Article 1 (713)

Airlines that operated chiefly on international routes in FY 2019[(37)] are deemed – due to the COVID-19 restrictions – to have done the same in FY 2020.

1.3.5 Provisions combating fraud by habitual exporters - Article 1 (1079-1083)

In order to combat fraud, the tax authorities will carry out in-depth checks to verify compliance with the requirements for VAT-free purchases made by habitual exporters (especially the threshold – so called 'plafond').

Should the tax authorities detect an infringement, the habitual exporter will be precluded from issuing letters of intent through the Revenue Agency's electronic channels and the supplier will be unable to issue an electronic invoice showing the reference number of the invalid letter of intent.

An implementing decree should be issued by the Director of the Italian Revenue Agency.

1.3.6 Tax receipt lottery - Article 1 (1095)

The Budget Law confirms that, to participate in the tax lottery, payments will have to be made electronically (meaning that payments in cash will not entitle the consumer to participate).

The starting date of the tax lottery has been postponed[(38)] from 1 January 2021 to a date to be established by an implementing decree issued by the Italian Customs and Monopolies Agency and the Italian Revenue Agency. This implementing decree will also detail the technical and other requirements.

Retailers who refuse to include the lottery codes of customers wishing to participate in the lottery will not be subject to penalties; however, starting from 1 March 2021 the consumer will be able to report any such retailer in a specific section of the Italian Customs and Monopolies Agency website, accessible by the tax police.

1.3.7 Simplification for taxpayers who have opted for quarterly settlements - Article 1 (1102)

Taxpayers who have opted for quarterly VAT settlements can post their invoices in their VAT sales ledgers by the end of the month following the quarter in which the transactions have been carried out and with reference to that quarter.

1.3.8 Reporting of cross-border transactions ('Esterometro') - Article 1 (1103-1104)

Cross-border transactions carried out from 1 January 2022 will have to be reported electronically through the SdI system ('Sistema di Interscambio') currently used to transmit electronic invoices and in the same format as electronic invoices, i.e. XML format.

Starting from the same date, the frequency of reporting will change as follows.

— Sales to non-established entities: the report is due by the invoicing deadline, i.e. within 12 days of the tax point.

— Purchases from non-established entities: the report is due by the 15th of the month following that in which the invoice is received.

A penalty of EUR2 per invoice (capped at EUR400 per month) will apply for failure to submit a report or for submission of an incorrect one. However, if the submission is made or amended within 15 days of the deadline, the penalties will be reduced by 50 percent and capped at EUR200.

1.3.9 Stamp duty on electronic invoices - Article 1 (1108)

For electronic invoices issued through the SdI system ('Sistema di Interscambio'), a supplier is jointly liable with its client for the payment of stamp duty, also when the invoice is issued by a third party on its behalf.

1.3.10 Electronic storage and transmission of daily payments - Article 1 (1109-1114)

For omitted/incomplete/late certification and transmission of daily payments there is a penalty equal to 90 percent of the VAT; previously the penalty was 100 percent of the VAT. However, if the omitted/incomplete/late transmission of the daily payments has not impacted the VAT settlements – i.e. if, despite the incorrect or omitted reporting of the daily payments, the taxpayer has punctually and correctly remitted the VAT to the treasury – the penalty will be EUR100 for each transmission and, in this case, the single-penalty mechanism ('*cumulo giuridico*') will not apply (this is different from the current rules).

(37) Under article 8-*bis* (1)(c) of the Italian Vat Act.

(38) By Law Decree no. 183 of 31 December 2020.

1.3.11 Plastic tax: postponement and corrective measures - Article 1 (1084-1085)

The 2021 Budget Law has postponed the introduction of the plastic tax in Italy to 1 July 2021.

Moreover, certain changes to the rules have been introduced:

— MACSI products (single-use products that are used for packaging, protection or delivery of goods or foodstuffs and that are made, totally or partially, out of synthetic organic polymers) now include 'preforms' (an intermediate product which, for example, can be transformed through a blow molding process into certain products, such as bottles).

— The parties liable to the plastic tax now include operators (resident or non-resident) on behalf of whom MACSI are produced by others.

— The tax-exemption threshold (and exemption from the related quarterly return) is increased to EUR25 (from the previous EUR10).

— Fiscal representatives appointed by non-resident and non-established taxable persons are jointly and severally liable for the payment of the plastic tax.

The Italian Budget Law also introduces lighter penalties for missing or late payments and for failure to file the quarterly return. However, it extends the inspection and assessment powers of the Italian Custom and Monopolies Agency.

The Italian Customs and Monopolies Agency will issue implementing regulations (to explain, for example, the MACSI identification criteria and the content of the quarterly return). It will also indicate, together with the Italian Revenue Agency, the additional details to be shown on the sale and purchase invoices.

1.3.12 Sugar tax: postponement and corrective measures - Article 1 (1086)

The Budget Law has postponed the introduction of the so-called sugar tax (tax on the consumption of sugary drinks) in Italy to 1 January 2022.

Moreover, the new provisions identify as taxable persons – in addition to manufacturers and refineries – those resident or non-resident operators which sell sugary drinks produced on their behalf by manufacturers and refineries to Italian customers.

The Budget Law also introduces lighter penalties for missing and late payments and for failure to file the quarterly return.

1.4 Tax measures affecting individuals

1.4.1 Extension to 2021 of deductions for building renovations, energy-efficiency improvements, the purchase of furniture, and the renovation of facades - Article 1 (58-59)

For expenses incurred up to and including 31 December 2021, the following are extended to 2021:

a. The 50 percent IRPEF deduction for building renovations[39].

b. The 65 percent IRPEF and IRES deductions for energy-efficiency improvements[40].

c. The so-called *'bonus mobile'* IRPEF deduction[41] for the purchase of furniture and major household appliances for a property undergoing renovation. In addition to the extension of the deduction to 2021, the maximum amount of expenditure on which the tax benefit can be calculated has been raised from EUR10,000 to EUR16,000. In practice, the 50 percent *'bonus mobile'* deduction is calculated on a maximum amount of expenditure of EUR10,000 until 31 December 2020 and EUR16,000 from 1 January 2021, irrespective of the amount of expenditure incurred for building renovation. The extended *'bonus mobile'* deduction can only be claimed:

    — by those who are also claiming the IRPEF deduction for building renovation work started on or after 1 January 2020;

    — for documented expenditure incurred in 2021;

    — for the purchase of furniture and major household appliances with an energy-efficiency standard not lower than A+ (A for ovens), used to furnish the renovated property.

d. the 90 percent deduction for the renovation of building facades (the so-called *'bonus facciate'*)[42].

1.4.2 Changes to the tax rules for workers moving to Italy ('impatriati' regime) - Article 1 (50)

The '*impatriati'* regime, which is normally applicable for five financial years, can be extended by a further five years subject to certain conditions. Under the pre-existing rules, this extension is possible for workers who satisfy one of the following requirements and whose new residency in Italy dates from 30 April 2019 or after.

— The worker supports at least one child (minor or dependant), including any child in their care prior to adoption.

(39) As referred to in article 16-*bis* (1) of the Italian Income Tax Code.

(40) As per article 14 of Law Decree no. 63/2013.

(41) As per article 16 (2) of Law Decree no. 63/2013.

(42) As per article 1(219-223) of Law no. 160/2019.

- The worker purchases at least one residential property in Italy, after their move there or in the 12 months beforehand (the property can be purchased directly by the worker, or by their spouse, live-in partner or children, even jointly).

In such cases, the taxable income in the second five-year period is 50 percent (rather than 30 percent).

In the case of a worker supporting at least three children (minors or dependants), including any child in their care prior to adoption, only 10 percent of the worker's income is taxable in the second five-year period, i.e. 90 percent exemption(43).

Following the changes introduced by the 2021 Budget Law, the possibility of extending the '*impatriati*' regime for a further five-year period has been extended (on the same terms outlined above – minor/dependant or purchase of residential property) to include workers who became residents of Italy before 30 April 2019 and satisfy both of the following requirements as well.

- They must be enrolled in AIRE (the register of the Italian resident population) or be nationals of EU Member States.
- They must have been using the '*impatriati*' regime on 31 December 2019(44).

To benefit from the five-year extension, the 2021 Budget Law requires workers who became residents of Italy before 30 April 2019 to pay one of the following.

- Ten percent of the employment or self-employment income qualifying for the exemption and earned in Italy in the financial year prior to that in which the worker opts for the extension, if the individual, when exercising the option, has at least one child who is a minor (even a child in their care prior to adoption) or has become the owner of at least one residential property in Italy, after moving to Italy or in the 12 months beforehand, or becomes such an owner within 18 months of exercising the option (the property can be purchased directly by the worker, or by the spouse, live-in partner or children, even jointly). If this payment is not made, the worker must return the additional tax relief but will not suffer any sanctions.
- Five percent of the employment or self-employment income qualifying for the exemption and earned in Italy in the financial year prior to that in which the worker opts for the extension, if the individual, when exercising the option, has at least three children who are minors (even if in their care prior to adoption) and becomes or has become the owner of at least one residential property in Italy, after moving to Italy or in the 12 months beforehand, or becomes such an owner within 18 months of exercising the option (the property can be purchased directly by the worker, or by the spouse, live-in partner or children, even jointly). If this payment is not made, the worker must return the additional tax relief but will not suffer any sanctions.

How this election can be made will be defined in an Italian Revenue Agency statement of practice to be issued within 60 days of the entry into force of the new rules.

2. Employment measures

2.1 Exemption from contributions for the hiring of under 35s - Article 1 (10 and 12)

The 2021 Budget Law introduces an exemption from social security contributions for the hiring of under 35s on permanent contracts and for the conversion of their fixed-term contracts into permanent ones in 2021 and 2022. Businesses will be fully exempted from these contributions for up to 36 months and the exemption will be capped at EUR6,000 per year.

For the hiring of under 35s in a production plant or unit located in Abruzzo, Molise, Campania, Basilicata, Sicily, Puglia, Calabria or Sardinia, the exemption will be granted for a maximum of 48 months.

The exemption can be claimed by employers who do not – in the six months before or in the nine months after hiring an under 35 – dismiss an individual worker for justified business reasons or make any collective dismissals of workers with the same job title in the same production unit.

The relief is granted under the 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'(45) and the new Italian rules are subject to authorization by the European Commission.

2.2 Reduced contributions for the hiring of women - Article 1 (16-19)

There is a reduction in social security contributions for the hiring of women on employment contracts (even fixed-term ones) in 2021 and 2022. With the exception of INAIL premiums and contributions for accident insurance, employers are exempted from 100 percent of the overall contributions for 12 months (18 months if women are hired or moved onto permanent contracts). The maximum exception is EUR6,000 per year.

The hirings must result in a net increase in the company's head count, calculated as the difference between the number of workers employed in each month and the average number of workers employed over the previous 12 months.

(43) The 90 percent exemption does not apply to 'professional sportspeople' (these people fall within the scope of Law no. 91/1981). In their case, the tax relief always consists in an exemption of 50 percent of their income from taxation.

(44) The changes do not apply to 'professional sportspeople' (see previous footnote).

(45) Section 3.1, Communication from the Commission, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C/2020 1863, as subsequently updated.

The relief is granted under the 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'[46] and the new Italian rules are subject to authorization by the European Commission.

2.3 Contributions relief fund for self-employed workers and professionals - Article 1 (20-22)

To reduce the impact of the Covid-19 emergency on self-employed workers and professionals and to stimulate recovery, a contributions relief fund has been set up. Initial funding of EUR1 billion has been provided for 2021 and the fund will be used to finance a partial exemption from the social security contributions payable by:

— self-employed workers and professionals registered with INPS and professionals registered with compulsory social security and welfare funds, if their total income did not exceed EUR50,000 in fiscal year 2019 and their turnover or fees in 2020 dropped by at least 33 percent compared with 2019;

— retired doctors, nurses and certain other workers[47] returning to work during the Covid-19 health emergency.

INAIL premiums for accident insurance are not covered by the relief fund.

One or more inter-ministerial decrees will define the exemption criteria and procedures, as well as the percentage of spending to be allocated, on an exceptional basis, to professionals registered with the compulsory social security and welfare funds indicated in Legislative Decree no. 509/1994 and Legislative Decree no. 103/1996, as well as the allocation criteria.

2.4 Return to work of mothers - Article 1 (23, 25, 364)

To support the return of mothers to work and help them balance work and family commitments, the 2021 Budget Law has allocated an extra EUR 50 million to the Family Policies Fund[48]. This will be used to support and enhance organizational measures adopted by businesses to help mothers return to work after the birth of a child.

An inter-ministerial decree will define how these resources are to be allocated.

2.5 Paternity leave - Article 1 (25, 363, 364)

Compulsory and optional paternity leave have been extended to cover stillbirths.

The statutory length of compulsory paternity leave has been raised from seven to 10 days for 2021. Moreover, a father may take an additional day of leave, in agreement with the mother and using one of her days of statutory maternity leave.

2.6 Lower contributions in the South of Italy - Article 1 (161-169)

In order to contain the dramatic effects of the Covid-19 epidemic on employment in very socially and economically disadvantaged areas of Italy, and in order to safeguard employment levels, a partial exemption from contributions has been introduced for 2021-2029 for private-sector employers operating in the regions of Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily.

The exemption amounts to:

— 30 percent of the social security contributions to be paid up to 31 December 2025;

— 20 percent of the social security contributions to be paid for 2026 and 2027;

— 10 percent of the social security contributions to be paid for 2028 and 2029.

For the period 1 January – 30 June 2021, the relief is granted under the 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'[49]. For the period 1 July 2021 - 31 December 2029, the relief is subject to authorization from the European Commission.

2.7 Renewal of fixed-term contracts - Article 1 (279)

There has been an extension to 31 March 2021 of the deadline for the renewal and/or extension of fixed-term contracts (once-only renewal and for a maximum period of 12 months) even when the normal grounds[50] for such renewals do not apply. These normal grounds are (i) temporary and objective needs, unrelated to the ordinary business activity; (ii) the need to replace absent workers; (iii) other needs connected to temporary, sharp and unexpected increases in ordinary business.

(46) Section 3.1, Communication from the Commission, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C/2020 1863 final.

(47) Those referred to in Law no. 3/2018.

(48) The fund is governed by article 19(1) of Decree Law no. 223/2006.

(49) Section 3.1, Communication from the Commission, Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C/2020 1863, as subsequently updated.

(50) Those set out in article 19(1) of Legislative Decree no. 81/2015, as subsequently amended.

2.8 Extension of COVID-19 social safety nets - Article 1 (299-303, 305-308, 312-314)

In order to offer wider job protection in 2021, the Ordinary Furlough Scheme (*CIGO*), the Exceptional Furlough Scheme ('*CIG in deroga*') and the Ordinary Allowance ('*assegno ordinario*') introduced as a result of the Covid-19 emergency have been extended by a further 12 weeks. That 12-week period must fall between:

— 1 January and 31 March 2021 in the case of CIGO;

— 1 January and 30 June 2021 in the case of the *assegno ordinario* and *CIG in deroga*.

Any periods of furlough previously applied for and authorized(51), if falling even partially in periods subsequent to 1 January 2021, will be allocated to this additional 12-week period.

Private-sector employers (except for those in the agricultural sector) who do not apply for these furlough schemes will be entitled to a partial exemption from social security contributions, for a maximum of eight weeks. This benefit can be taken up to 31 March 2021 but cannot exceed the hours of furlough granted in May and June 2020. It is applied on a monthly basis.

All these benefits are also available in respect of workers hired after 25 March 2020, if they are still on the company's books on 1 January 2021.

2.9 Ban on dismissals until 31 March - Article 1 (309-3011)

The ban on individual dismissals for justified business reasons and on collective dismissals (and the suspension of dismissal procedures already underway) has been extended until 31 December 2021.

However, this ban does not apply if the grounds for dismissal are:

— the definitive cessation of a business activity, following the liquidation of a company without continuation, even partially, of the activity (provided that during the liquidation process there is no transfer of a group of assets or activities that could constitute a transfer of the business or part of the business(52));

— bankruptcy and either (i) the cessation of business has been ordered by a court or (ii) the business is not being run on a provisional basis (if a court has ordered the provisional continuation of a specific part of the business, workers can be dismissed in the other parts of the business);

— collective internal agreements incentivizing the termination of employment contracts (solely in respect of those workers who sign the agreement).

2.10 Active labor market policies and job-reintegration voucher - Article 1 (324-327)

By reinforcing active labor market policies and reforming social security nets, Italy intends to help people transition to new employment. To facilitate this process, a fund has been set up, with EUR500 million allocated for 2021.

Also in 2021, a national 'Workers Employability Guarantee' scheme ('*Garanzia di occupabilità dei lavoratori*' - GOL) will be launched with a view to getting people back/into work, by providing them with specific training and other services under active labor market policies(53).

Within 60 days, a ministerial decree will be issued to define the services offered under GOL. For 2021, until the new national scheme is up and running, workers can use job-reintegration vouchers(54) to access Job Centre services if they fall within any one of the following categories:

— they have been furloughed(55);

— their employment contract has been suspended and they have been laid off because the company's business activity has ceased;

— they have been receiving NASpI or DIS-COLL unemployment benefits for more than four months.

2.11 The '*contratto di espansione interprofessionale*' scheme - Article 1 (349)

The 2021 Budget Law renews this experimental regime, which, as part of an urgent package of economic measures ('*Decreto Crescita*') introduced in 2019, replaced the old '*contratto di solidarietà espansiva*' scheme(56). Initially introduced for 2019 and 2020, the new scheme aims to support generational change within big companies undergoing reindustrialization and reorganization.

The scheme supports innovation of production through a mixture of measures that include:

i. a plan to recruit qualified and specialized workers with the skills that the business needs in order to remain competitive;

ii. incentives to retire up to five years earlier than normal, for workers who are no more than 60 months away from retirement on grounds of age, who have the necessary level of contributions, and who accept the early-retirement proposal;

iii. a training plan for employees who need to be upskilled, especially in technology.

(51) Under article 12 of last year's relief package (Decree Law no. 137/2020).

(52) As defined in article 2112 of the Italian Civil Code.

(53) Under article 20 of Legislative Decree no. 150 of 14 September 2015.

(54) Those governed by article 23 of Legislative Decree no. 150 of 14 September 2015.

(55) Under the 'CIG' scheme governed by article 24-*bis* of Legislative Decree no. 148 of 14 September 2015.

(56) Introduced by Legislative Decree no. 148/2015.

The 2021 Budget Law changes the scheme by extending it to businesses that have at least 500 employees (companies previously had to have at least 1,000 employees in order to access the scheme). It can also be activated by businesses that have at least 250 employees if the company provides early-retirement options to workers who are nearing pension age.

2.12 Pensions - Article 1 (336, 339, 345, 350)

Some of the main provisions are listed below.

— The 'Woman's Option' has been extended to include 2021 and allows women to retire at the age of 58 (59 if they are self-employed) if they have paid 35 years of contributions by 31 December 2020;

— The '*Ape sociale*' scheme will continue to run on an experimental basis throughout 2021. This allows certain categories of disadvantaged workers to receive an allowance until they qualify for a pension.

— The so-called '*isopensione*' scheme, which allows workers in overstaffed businesses to take early retirement if they will qualify for a pension within seven years of termination, has been extended up to 2023.

— With regard to cyclical 'vertical' part-time contracts (meaning those under which the individual works full hours but only on certain days of the week, month or year), weeks in which the individual does not work must be included in the calculation of the years of service qualifying for pension purposes. If a part-time contract ends before 1 January 2021, recognition of periods not worked in full is subject to a special application, accompanied by appropriate documentation.

2.13 Special subsidy for self-employed workers (*'indennità straordinaria di continuità reddituale e operativa - ISCRO'*) - Article 1 (386 - 401)

Pending the reform of social security nets, a special experimental subsidy called ISCRO has been introduced for the three-year period 2021-2023. It can be claimed by individuals who satisfy the following requirements: (i) they are enrolled in the '*gestione separate*' pension scheme[57]; (ii) they are self-employed[58]; (iii) they do not receive a pension (and are not insured under other compulsory schemes); (iv) they do not receive payments under the guaranteed minimum income scheme ('*reddito di cittadinanza*').

The benefit amounts to 25 percent of the worker's last six months of income (as certified by the Italian Revenue Agency) and is paid by INPS in six monthly instalments, ranging from EUR250 to EUR800 per month.

The ISCRO application must be submitted online to INPS by 31 October of each year in the three-year period 2021-2023. Submission of the application (which is allowed just once in the three-year period) is conditional on the worker:

— having had, on the date of application, an active VAT number for at least four years, for the activity with respect to which the worker is enrolled in the '*gestione separate*' pension scheme;

— having earned, from self-employment, in the year prior to the application, an amount of income lower than 50 percent of the average income earned over the second to fourth years prior to the application;

— having declared in the year prior to the application a level of income not higher than EUR8,145 (revaluated each year);

— being up-to-date with their compulsory social security contributions.

2.14 Fragile workers - Article 1 (481-484)

The rules protecting fragile workers during the pandemic[59] have been extended so as to cover the period 1 January - 28 February 2021. Under these rules, absences must be treated as equivalent to hospitalization in cases where public-sector or private-sector workers are certified by the competent medical bodies as being at risk because they are suffering from an immune system disorder or cancer or are undergoing life-saving therapies. Such workers include those recognized as being severely disabled.

3. Measures to assist companies

3.1 Credit measures

3.1.1 Suspension of the maturity date of negotiable instruments - Article 1 (207)

The 2021 Budget Law has suspended[60] until 31 January 2021 the maturity date of bills of exchange, drafts and other negotiable instruments of credit ('*titoli di credito*') falling due between 1 September 2020 and 31 January 2021.

Protests or equivalent processes already initiated in that period will be automatically cancelled and amounts already collected will not be repayable.

(57) The INPS fund referred to in article 2(26) of Law no. 335/1995.

(58) As defined in article 53(1) of the Italian Income Tax Code.

(59) These rules were introduced by article 26(2) and (2-*bis*) of the 'Cura Italia' Decree (Decree Law no. 18/2020).

(60) As per article 11 of Decree Law no. 23 of 8 April 2020.

3.1.2 Multilateral offsetting of trade receivables and payables shown on e-invoices - Article 1 (227, 228)

The 2021 Budget Law has introduced a requirement[61] for the Italian Revenue Agency to make an online platform available so that taxpayers can offset receivables and payables shown on e-invoices and deriving from commercial transactions between them (with the express exclusion of public authorities[62]).

Offsetting through this online platform will have the same effect as extinguishing the obligation in the way required by the Italian Civil Code and is allowed up to an amount equal to the obligation itself. This is on condition that neither of the parties that are offsetting the items are going through a court-authorized insolvency or debt-restructuring process or have lodged certified recovery plans at the trade register.

The rules on late payment in commercial transactions[63] still apply to the original outstanding debt.

Secondary legislation will lay down the implementation procedures and terms of service for the online platform, after consultations have been held with, among other bodies, the Data Protection Authority.

3.1.3 Extension of the support for insurers of trade receivables - Article 1 (232)

Last year SACE S.p.A. was authorized to guarantee registered credit insurers of short-term trade receivables that it would cover 90 percent of pay-outs made as a result of claims related to trade receivables maturing between 19 May 2020 and 31 December. This rule has been extended by the 2021 Budget Law to 30 June 2021[64].

3.2 Loss of share capital

3.2.1 Further support for businesses - Article 1 (266)

This paragraph of the 2021 Budget Law fully replaces article 6 of Decree Law no. 23/2020 (as converted into Law no. 40/2020) and introduces additional paragraphs. The original first paragraph, which remains, introduced temporary rules on the reduction of share capital by removing, up to 31 December 2020, the obligations that the Italian Civil Code imposes on companies in connection with losses of share capital resulting from losses incurred in financial years ended by 31 December 2020. That paragraph also removes the grounds for dissolving such companies when their share capital falls below the statutory minimum level and for dissolving cooperative companies when they lose their capital.

The new rules specify that the cut-off point by which the loss must be reduced to less than one-third is the fifth subsequent financial year (and not the first subsequent financial year). The shareholder meeting that approves the financial statements for that year must reduce the share capital proportionally to the losses.

Moreover, if the loss results in the share capital falling below the statutory minimum level, the directors must immediately call a shareholder meeting. As an alternative to an immediate reduction in the share capital and its simultaneous increase to a level not below the statutory minimum, the meeting can postpone these decisions until the end of the fifth subsequent financial year.

The shareholder meeting that approves the financial statements for that year must proceed to approve the capital reduction and increase. Until the date of that meeting, the normal grounds for dissolving a company due a reduction or loss of capital will not apply.

The losses must be clearly reported in the notes to the financial statements, using tables to show their origins and the variations during the financial year.

(61) By adding a new paragraph 3-*bis* to article 4 of Legislative Decree no. 127 of 5 August 2015 (concerning the online reporting of VAT transactions and the monitoring of goods sold through automatic dispensers).

(62) Those referred to in article 1(2) of Law no. 196 of 31 December 2009.

(63) As laid down in Legislative Decree no. 231 of 9 October 2002.

(64) The 2021 Budget Law has amended article 35 of Decree Law no. 34 of 19 May 2020 (Urgent Measures to Support Healthcare, Employment and the Economy, as well as Social Policies connected with the Covid-19 Epidemic).

Contacts

KPMG in Italy, Tax & Legal

Tax & Legal Professional Practice Team
E: it-fm-tpp@kpmg.it

kpmg.com/it

kpmg.com/it/socialmedia

Tax & Legal Alert / KPMG in Italy / 5 February 2021