



COVID-19: 'Liquidity Decree' introduces further urgent measures to support business and export

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This Tax & Legal Alert summarizes the main measures introduced by Law Decree no. 23 of 8 April 2020, which was published in Official Gazette no. 94 of 8 April 2020 and came into force the next day (the 'Liquidity Decree').

The Liquidity Decree has to be converted into law within 60 days of publication. Amendments might be made during the conversion process.

The 'Cure Italy Decree' cited in this letter means Law Decree no. 18/2020 of 17 March 2020.

This Tax & Legal Alert covers the following four topics:

- 1. Tax payments and tax compliance**
- 2. Tax litigation**
- 3. Companies, special powers and litigation**
- 4. Measures to support export**

1. Tax payments and tax compliance

1.1 Deferral of tax payments and social security contributions (Article 18)

The deferral of payments applies to certain taxpayers whose fiscal domicile, registered office or operations center is in Italy:

- Businesses or professionals with **revenues of less than EUR50 million** in the previous fiscal year: if they have suffered a **fall in turnover of at least 33 percent** in March 2020 compared to March 2019 and in April 2020 compared to April 2019.
- Businesses or professionals with **revenues of more than EUR50 million** in the previous fiscal year: if they have suffered a **fall in turnover of at least 50 percent** in March 2020 compared to March 2019 and in April 2020 compared to April 2019.
- Businesses or professionals that started up after 31 March 2019.

If the above conditions are met for March and April 2020, the deadlines for payments due in April and May 2020 respectively are extended for:

- withholding and similar taxes;
- VAT;
- social security contributions and mandatory insurance premiums.

Payments of withholding and similar taxes and of social security contributions and mandatory insurance premiums have also been deferred for non-profit entities, including charities and recognized religious bodies pursuing their institutional, non-business activities.

In the case of VAT payments due in April and May 2020, businesses and professionals whose fiscal domicile, registered office or operations center is in the provinces of Bergamo, Brescia, Cremona, Lodi or Piacenza are eligible for the deferral on one condition only: that they have suffered a fall in turnover of at least 33 percent in March 2020 compared to March 2019 and in April 2020 compared to April 2019 (no revenue thresholds).

In all the above cases deferred payments can be made either in a lump sum by 30 June 2020 or in up to five equal monthly instalments. The first instalment is due by 30 June 2020. Any amounts already paid are not refundable.

The Liquidity Decree also addresses the case of taxpayers operating in industries heavily impacted by the COVID outbreak, e.g. operators in the tourism and hospitality industries, travel agents, tour operators, event organizers, providers of vehicle hire and passenger transport services, cultural entities, betting offices, and non-profit organizations. For these operators, the Liquidity Decree confirms article 61 of the Cure Italy Decree, which had extended the deadlines for payments of withholding and

similar taxes, social security contributions and mandatory insurance premiums falling due by 30 April 2020. The deferred payments can be made either in a lump sum by 1 June 2020 or in up to five equal monthly instalments (the first one being due by 1 June 2020).

For sports associations and sports the extension introduced by article 61 of the Cure Italy Decree applies to payments falling due by 31 May 2020. The deferred payments can be made in a lump sum by 30 June 2020 or in up to five equal monthly instalments (the first one being due by 30 June 2020).

1.2 Extension of deadlines for payments to be made to the tax authorities and to the public administration (Article 21)

Payments to be made to the tax authorities and public administration by 16 March 2020 (already postponed to 20 March 2020) will be regarded as being made on time - and thus will not be subject to any interest or penalties - if they are made by **16 April 2020**.

1.3 Payment of stamp duties on e-invoices (Article 26)

The payment of stamp duties on e-invoices - normally due quarterly by the 20th day of the next month (e.g. 20 April 2020 for Q1 2020) - can be made:

- for Q1, by the payment deadline for Q2, if the stamp duty for Q1 is lower than EUR250;
- for Q1 and Q2, by the payment deadline for Q3, if the overall stamp duty for Q1 and Q2 is lower than EUR 250.

1.4 Free supplies of pharmaceutical products (Article 27)

In the case of free supplies of pharmaceutical products made for 'compassionate' purposes (as per the Ministry of Health Decree of 7 September 2017), the legal concept of 'presumption of sale' does not apply. The transaction is treated as if the goods have been disposed of and therefore is not subject to VAT. The fair market value of such products is excluded from the computation of VAT taxable turnover.

1.5 Possibility of paying advance instalments of tax based on estimates (Article 20)

To help taxpayers whose taxable income has fallen, the Liquidity Decree allows the calculation and payment of advance instalments of IRPEF, IRES and IRAP using the 'forecasting' rather than the 'historical' method. This means - just for the tax year subsequent to that in progress on 31 December 2019 - that penalties and interest will not be applied if an advance payment is lower than that based on the taxpayer's previous income tax and IRAP returns. The maximum deviation allowed is 20 percent.

1.6 Amendments to the tax credit for sanitization costs (Article 30)

The rules introduced by the Cure Italy Decree have been extended to include the costs of:

- purchasing PPE (e.g. surgical masks, FFP2 and FFP3 face masks, gloves, face shields and protective eyewear, boiler suits and boots);
- exposure to biological agents or to ensure that people are at a safe distance from each other (e.g. dividers and safety panels);
- hand cleansers and disinfectants.

The tax credit amounts to 50 percent of the costs incurred up to 31 December 2020 and is capped at EUR20,000 per beneficiary.

2. Tax litigation

2.1 Special tax litigation measures (Article 29)

The Liquidity Decree establishes that parties must serve and submit case documents electronically. This provision supersedes the previous rules, under which the system for tax cases commencing before 1 July 2019 is paper-based. In addition, article 29 stipulates that requests for stamp duty payments must be served to the taxpayer by certified email.

Finally, article 29 aligns the appeal deadlines and the document filing deadlines for taxpayers and tax authorities (see article 36 below).

2.2 Additional extension of time limits in tax litigation (Article 36)

The Liquidity Decree extends until 11 May 2020 the time limits postponed by Law Decree no. 11/2020 and confirmed by the Cure Italy Decree (still to be converted into law) (see our Tax & Legal Alert of [10 March 2020](#) and of [20 March 2020](#)).

According to the Liquidity Decree, between 9 March 2020 and 11 May 2020:

- the deadlines to bring appeals before the first-level tax court and to reach compromises with the Revenue Agency's legal team about disputes whose value in controversy is less than EUR50,000 have been suspended;
- tax litigation hearings have been postponed until after 11 May 2020;
- court deadlines (such as those for submissions of documents) have been suspended.

From 12 May 2020 to 30 June 2020, to prevent close contact between people and the spreading of the virus, tax courts are required to adopt certain organizational restrictions.

3. Companies, special powers and litigation

3.1 Temporary measures to support business liquidity (Articles 1-13)

3.1.1 Guarantees issued by SACE, the Italian Export Agency (Article 1)

To ensure the necessary liquidity of businesses based in Italy and affected by the outbreak of Covid-19, SACE⁽¹⁾ may provide, until 31 December 2020, guarantees to authorized lenders that issue loans to these affected businesses.

3.1.2 Beneficiaries and terms and conditions

Both large businesses and SMEs can access the guarantees. Self-employed workers and freelance professionals with a VAT number, if they have already used up their entitlement to the SME Guarantee Fund managed by Mediocredito Centrale, can also access them.

3.1.3 Conditions of issue

The following conditions are imposed.

- The guaranteed loans must have a maximum duration of six years.
- On 31 December 2019 the borrower must not have been in financial difficulty and on 29 February 2020 its borrowings must not have been listed in the banking system as NPLs.
- The amount of the guaranteed loan must not exceed the greater of:
 - 25 percent of the borrower's annual turnover in 2019
 - double the borrower's payroll cost in 2019.

3.1.4 Additional conditions for large companies

If the borrower has over 5,000 employees in Italy or a turnover of more than EUR1.5 billion, the issue of the guarantee is subject to:

- a resolution by the lender, approving the loan request (this is also required for those businesses below the above thresholds);
- a decision taken by Decree of the Minister of the Economy and Finance – after consultation with the Minister for Economic Development – on the basis of the preliminary investigation conducted by SACE.

3.1.5 Obligations of borrowers in return for guarantees

The borrower must undertake:

- not to approve the distribution of dividends or the repurchase of shares during 2020 (this also applies to any other company based in Italy and belonging to the same group);
- to manage employment levels via trade union agreements;
- to use the guaranteed loan to cover staff costs, investments or working capital in plants and business activities in Italy.

(1) SACE SpA is Italy's Export Credit Agency.

3.1.6 Details of the guarantee and the amounts guaranteed

This guarantee covers the following percentages:

- a) 90 percent of the amount loaned to businesses with less than 5,000 employees in Italy and turnover of up to EUR1.5 billion;
- b) 80 percent of the amount loaned to businesses with a turnover of between EUR1.5 and EUR5 billion or with more than 5,000 employees in Italy;
- c) 70 percent of the amount loaned to businesses with a turnover of more than EUR5 billion.

The loan guarantees provided by SACE will not exceed a total of EUR200 billion (of which at least EUR30 billion is allocated for SMEs).

3.2 Guarantees issued by Cassa Depositi e Prestiti (Article 1)

Subject to a decree of the Minister of Economy and Finance, the state will act as the ultimate guarantor for banks and other authorized lenders in Italy. It will do so in respect of guarantees issued by *Cassa Depositi e Prestiti* (already or by 31 December 2020) for portfolios of loans made by the above lenders to businesses based in Italy which have seen a reduction in turnover due to the outbreak of COVID-19. The guarantees must be issued in such a way as to allow the authorized lender to issue new loans.

3.3 Central SME Guarantee Fund (Article 13)

Until 31 December 2020, the following measures will apply.

- a) Guarantees issued by the SME Guarantee Fund will be free of charge.
- b) The maximum amount guaranteed per single borrower, in compliance with EU regulations, will be EUR5 million.
- c) Borrowers with no more than 499 employees are eligible for a guarantee.
- d) Subject to authorisation by the European Commission, the SME Guarantee Fund will directly guarantee 90 percent of any loan whose duration does not exceed 72 months and whose amount does not exceed certain thresholds established in the Liquidity Decree; in the case of reinsurance, however, the amount guaranteed by the SME Guarantee Fund will be 100 percent of that already guaranteed by Confidi or any other guarantee fund, provided that the first guarantee does not provide more than 90 percent coverage and does not require payment of a premium that includes a remuneration for the credit risk.
- e) Subject to authorisation from the European Commission, new loans issued by authorized lenders to SMEs or individuals whose business, trade or professional activity has been affected by the COVID-19 outbreak are eligible for 100 percent coverage by the SME Guarantee Fund, through a direct guarantee or reinsurance. This is on condition that the loans provide for the start of repayment of the capital no

earlier than 24 months after the date of issue, do not have a duration of more than 72 months and do not exceed EUR25,000.

- f) In the case of borrowers whose revenues do not exceed EUR3.2 million and whose business activities have been affected by the COVID-19 outbreak, the guarantee described in point d) can be combined with an additional guarantee, issued by an entity authorised to issue guarantees and covering up to 100 percent of the loan. This guarantee can be issued for loans which do not exceed 25 percent of the beneficiary's revenue.
- g) All administrative deadlines connected with transactions covered by the SME Guarantee Fund have been extended for three months.

3.4 Measures regarding the interplay between SACE and Cassa Depositi e Prestiti S.p.A. (Article 3)

In order to maximise synergies and increase the efficiency of the system supporting exports, the internationalisation of businesses and the revival of the economy, SACE and Cassa Depositi e Prestiti will jointly agree on industrial and commercial strategies.

The Ministry of the Economy and Finance and/or the Ministry of Foreign Affairs and International Cooperation must be consulted in advance by Cassa Depositi e Prestiti about the management of its interest in SACE, and by SACE itself about important business decisions.

3.5 Urgent measures regarding the exercise of special powers in sectors of strategic importance (Articles 15, 16 and 17)

3.5.1 Golden powers (Article 15)

Previous rules have been amended so that notice of certain transactions must be given to the Prime Minister's Office in accordance with the 'Golden Power' Decree⁽²⁾. Those transactions are ones involving companies that hold assets and interests in sectors of strategic importance⁽³⁾, including – in the financial sector – the banking and insurance industries. Other crucial areas are critical infrastructure (e.g. energy, transport, communications), critical technologies (e.g. AI, cybersecurity, aerospace), access to sensitive information, and media.

(2) More specifically, in accordance with article 5(2) of Law Decree no. 21/2012, converted with amendments into law by Law no. 56 of 11 May 2012 and better known as the 'Golden Power Decree'.

(3) Those indicated in article 4(1) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

The transactions of which notice must be given are:

- a) acquisitions of equity interests in the above companies;
- b) resolutions, steps or measures taken by a business that holds assets and interests in the above sectors, if these result in changes in the ownership, control, availability or use of those assets;
- c) acquisitions of:
 - equity interests by foreign purchasers, including EU buyers, that result in acquisition of control of the company;
 - equity interests by non-EU foreign purchasers who thereby acquire at least 10 percent of the voting rights or capital and invest EUR1 million or more in the acquisition.

3.5.2 Measures triggered by failure to comply with notification requirements (Article 16)

Certain articles of the 'Golden Power' Decree have been amended so that, if the notification rules are breached, the Prime Minister may, without giving any notice, start proceedings to exercise the special powers granted to him by that decree.

3.5.3 Changes to the rules on notification of substantial interests as per article 120 of Legislative Decree no. 58 of 24 February 1998 (Article 17)

The wording of the Finance Act has been amended by eliminating the phrase "with high market capitalization", previously used in the description of listed companies, including SMEs, in respect of which CONSOB is authorized by the Finance Act to lower the reporting threshold for substantial interests.

The Finance Act⁽⁴⁾ also establishes that when an interest of 10, 20 or 25 percent or more is purchased in a listed company, the shareholder that exceeds these thresholds must declare what steps it intends to take in the next six months. The Liquidity Decree allows CONSOB to establish a further 5 percent threshold for companies whose shares are held by a particularly large number of investors.

3.6 More specifically, article 120(2-bis) of Legislative Decree no. 58 of 25 February 1998 has been amended.

3.6.1 Changes to company law

Reduction of capital (Article 6): between 9 April and 31 December 2020, the rule on the reduction of share capital will not apply. Therefore, it will not be necessary to reduce a company's capital because of losses or, if it falls below the statutory minimum level, raise it. Nor will reduced or lost capital constitute grounds for winding up a company.

Preparation of financial statements (Article 7): when preparing financial statements for the year in progress on 31 December 2020, it will be possible to do so on a going concern basis, if the business was treated as a going concern in the financial statements for the previous year (i.e. financial years ending before 23 February 2020). This measure will also apply to financial statements for years ending by 23 February 2020 and not yet approved.

Shareholder loans (Article 8): the mechanism by which shareholder loans are repaid only after the claims of other creditors have been settled will not operate between 9 April and 31 December 2020. This rule also applies to intercompany loans (where there is management and coordination of one company by another).

3.6.2 Insolvency measures

Business Crisis and Insolvency Code (Article 5): the entry into force of Legislative Decree no. 14/19 (the Business Crisis and Insolvency Code) has been postponed to 1 September 2021.

Compositions with creditors and restructuring agreements (Article 9): the series of new measures can be summarized as follows.

- i. **Deadlines for the implementation of court-approved compositions with creditors and restructuring agreements:*** these deadlines are extended by six months if they fall between 23 February 2020 and 31 December 2021 (resulting in rescheduling of the related payment obligations).
- ii. **Court proceedings to approve compositions with creditors and restructuring agreements, already pending on 23 February 2020:*** the debtor may, no later than the date of the hearing fixed to approve the proposed composition with creditors or restructuring agreement:
 - submit a motion to obtain a new deadline (maximum 90-day extension) for the submission of a new plan and proposal for the composition or a new restructuring agreement.
 - unilaterally modify the originally proposed schedule, provided that the new timings are no more than six months later than the original ones and that there are real and justified reasons for rescheduling.
- iii. **Debtors who have applied for interim proceedings (known as a 'concordato in bianco') or who are negotiating a restructuring agreement:*** in cases where debtors have already obtained an automatic stay of enforcement and precautionary measures sought by individual creditors, they can apply for a further maximum 90-day extension of the interim proceedings or of the negotiations if the deadline for the conclusion of the relevant process is expiring and cannot be extended. This is possible even when a bankruptcy petition has been submitted. The debtor must provide proof that the extension is needed as a result of events connected with the COVID-19 epidemic.

(4) More specifically, article 120(2-bis) of Legislative Decree no. 58 of 25 February 1998 has been amended.

Bankruptcy (Article 10): bankruptcy and insolvency applications filed between 9 March and 30 June 2020 are blocked, with the exception of those submitted by public prosecutors and seeking precautionary measures and injunctions.

Between 9 March and 30 June 2020, calculation of the following has been suspended:

- the statute of limitations for bringing revocatory actions;
- the one-year limit (running from the date of deregistration) by which a bankruptcy application can be filed for a company that has discontinued its operations.

3.6.3 Further measures affecting court proceedings (Article 36)

The Liquidity Decree postpones until after 11 May 2020:

- all hearings in civil and criminal proceedings currently pending before any courts;
- all time limits in civil and criminal proceedings.

These had already been postponed until after 15 April.

4. Measures to support export (Article 2)

The Liquidity Decree boosts measures to support export, releasing up to **EUR200 billion** for the internationalization of Italian businesses

Article 2 assigns the role of promoting the **internationalization** of Italy's production sector to SACE, with a focus on sectors of strategic value to the Italian economy, in terms of employment and spin-offs for the economic system as a whole, and on countries of strategic importance.

This article also provides for the appointment of an **Export Public Financial Support Committee** within the Ministry of Finance.

In particular, the following can be financed at a reduced rate:

- Feasibility studies to assess opportunities to make a commercial or production investment in countries outside of the EU.
- The strengthening of exports of SMEs that have generated at least 35 percent of their turnover abroad over the last three years.
- The development of e-commerce via the use of a

marketplace or an IT platform.

- Participation in trade fairs, exhibitions and business missions in new international markets.
- Training of personnel on site in investment initiatives outside of the EU.
- Training and temporary placement of qualified professionals (i.e. Temporary Export Managers) to implement internationalization projects in countries outside the EU.
- The creation of business structures in foreign markets.

A co-insurance system has also been introduced. Applications and financing will be dealt with by SACE, which will remain the sole guarantor of 10 percent of the transactions it guarantees/insures. The ultimate guarantor of the remaining 90 percent will be the state. This new mechanism will apply to commitments assumed by SACE between 9 April and 31 December 2020, authorized by decree of the Minister of the Economy and Finance, and will enter into full force on 1 January 2021.

The financing system also offers new opportunities and support for the organization of exports and related company training, enabling the adoption and implementation of customs simplification tools already provided for by EU customs regulations. The aim is to increase competitiveness in various international markets during Phase 2 recovery.

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