COVID-19: 'August Decree'
Urgent measures to support employment and the economy

Tax & Legal Alert
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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 Adelaide Ristori 38, 00197
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 alert summarizes the main tax and legal measures introduced by Law Decree no. 104 of 14 August 2020, which was published in Official Gazette General Series no. 203 of 14 August 2020 - Ordinary Supplement no. 30 (hereafter, the 'August Decree' or simply the 'Decree') and entered into force on 15 August 2020. The August Decree will have to be converted into law within 60 days of publication. Amendments might be made during the conversion process.

This Tax & Legal Alert covers the following topics:

1. Measures to support and relaunch the economy

1.1 Measures pertaining to 'supporting and relaunching the economy' (Article 60)

The Decree refinances some instruments in support of enterprises, such as:

— the contributions provided for the purchase of plant and equipment for production purposes by small and medium enterprises (measure known as '*Beni strumentali - Nuova Sabatini*');

— the relief allowed as the non-repayable grant or the soft loan to promote the implementation of development projects (the '*Contratti di Sviluppo*');

— the Fund for safeguarding employment and for the continuation of business activities. In accordance with the Decree, this Fund, regardless of the number of employees of the enterprises in question: (i) is directed at saving and restructuring also enterprises holding assets and relationships of strategic relevance for the national interest; (ii) operates, in case of authorization of the six-month extension of the Ordinary Redundancy Scheme, for the costs to be borne in relation to the aforesaid extension;

— the voucher for the purchase of innovation consulting services ('Innovation Manager Voucher');

— the Fund for promoting the launch and development of cooperative companies ('*Nuova Marcora*' measure);

— the IPCEI Fund to support enterprises participating in the implementation of important projects of shared European interest.

To support these measures, total costs amounting to EUR 774 million are considered for 2020 and EUR 1,000 million for 2021.

1.2 Extension of grace period for SMEs under Article 56 of Law Decree no. 18 of 2020 (Article 65)

The Decree provides an extension to 31 January 2021 of the financial support measures per Article 56, Paragraph 2, Letters a), b) and c), Paragraph 6, Letters a) and c) and Paragraph 8 of Law Decree no. 18/2020, converted with amendments by Law no. 27/2020 ('Cure Italy Decree') with reference, *inter alia*, to revocable credit/loans issued in view of advances on receivables, to non-instalment loans, to mortgages and other loans with repayment in instalments and to the guarantee to be applied on a dedicated special section of the Guarantee Fund for SMEs to cover the above transactions. For enterprises already eligible for the aforementioned measures before the entry into force of the Decree, this extension shall be applied automatically without formalities; the 18 month time interval prescribed by the aforementioned Article 56 for the initiation of execution procedures by the intermediaries shall start elapsing from the new deadline provided by the Decree.

Lastly, an extension to 31 January 2021 is provided for the suspension prescribed by Article 37-*bis* of Law Decree no. 23/2020, converted, with amendments, by Law no. 40/2020 ('Liquidity Decree') with reference to the reports of non-performing loans made by the intermediaries to the Central Credit Register of the Bank of Italy involving enterprises benefiting from the aforementioned support measures.

1.3 Simplified execution of banking and insurance agreements (Article 72)

The Decree extends to 15 October 2020 the provisions of Article 4 of Law Decree no. 23/2020, converted, with amendments, by Law no. 40/2020 ('Liquidity Decree') and of Articles 33 and 34 of Law Decree no. 34/2020, converted, with amendments, by Law no. 34/2020 ('Relaunch Decree'), that allow the execution of banking, insurance and financial agreements, as well as of those relating to postal savings bonds with simplified procedures and without the simultaneous presence of the signatories.

2. Corporate measures

2.1 Simplified procedures for company shareholders' meetings (Article 71)

For shareholders' meetings for joint-stock companies, limited joint-stock companies, limited liability companies, cooperative companies and mutual insurance companies, convened no later than 15 October 2020, the simplified procedures provided by Article 106 of Law no. 27/2020 shall continue to apply (electronic or correspondence vote - meeting attendance through telecommunication means - for cooperative banks and cooperative credit banks, cooperative companies and mutual insurance companies, meeting attendance through designated representative).

2.2 Business combinations to safeguard business continuity (Article 75 - Paragraphs 1, 2, 3)

The following provisions shall apply to business combinations communicated no later than 31 December 2020:

a. subject to Articles 2 and 3 of Law no. 287/1990, no. 287, business combinations, not regulated by Council Regulation (EC) No 139/2004 of 20 January 2004, pertaining to enterprises operating in markets characterized by the presence of highly labour-intensive services, as defined by Article 50 of Legislative Decree no. 50/2016, or of general economic interest in accordance with Article 14 of the Treaty on the Functioning of the European Union, that recorded accounting losses in the last three years and that, also as a result of the effects of the health emergency, could cease their activity, fulfil significant general interests of the national economy and, therefore, are authorized to deviate from the procedures prescribed by Law no. 28/1997.

b. The aforesaid enterprises shall communicate the business combinations in advance to the Italian Competition Authority, while proposing suitable behavioural measures to prevent the risk of imposition of prices or other contractual conditions that would be burdensome for users as a consequence of the transaction.

The Authority, with its own resolution, adopted no later than thirty days from the communication, taking into account the opinion of the Ministry of Economic Development and of the Industry Regulation Authority, shall prescribe the aforesaid measures with the amendments and additions deemed necessary to protect competition and users, also taking into account the overall sustainability of the transaction.

2.3 Amendments to Article 64-bis of Legislative Decree no. 58/1998 (Article 75 Paragraph 4)

The Decree prescribes that Consob may oppose the acquisition, *"for any reason (...) directly or indirectly"*, of significant shares in the capital of market management companies (like *Borsa Italiana*), if it would jeopardize the *"sound and prudent management of the market, assessing inter alia the quality of the potential purchaser and the financial soundness of the acquisition project"*.

The Decrees sets at 10%, 20%, 30% or 50% the thresholds of voting or capital rights, whose attainment requires notification to Consob of purchase of the share.

3. Tax measures

3.1 Additional division into instalments of suspended payments (Article 97)

Alternatively to the provisions of the Relaunch Decree (see Articles 126 and 127 that prescribed payments no later than 16 September 2020, all at once, or in four instalments starting from the same date), the rule provides an additional division of suspended payments into instalments. In particular, 50% of suspended amounts may be paid all at once no later than 16 September or divided into a maximum of four instalments of equal amounts starting from 16 September 2020.

The remaining 50% may be paid, without penalties and interest, in up to twenty-four monthly instalments of equal amount, with the first instalment paid no later than 16 January 2021. Any amounts already paid are not refundable.

3.2 Postponement of enforced collection (Article 99)

The law postpones, from 31 August 2020 to 15 October 2020, the ending date of the suspension of the payments, deriving from payment notices, from enforcement notices relating to tax and non-tax revenues, as well as the ending date of the suspension of the allocation obligations deriving from third party seizures carried out by the collection agent with regard to amounts due as salaries, wages, other indemnities relating to employment, including those due as a result of termination, and as pensions, indemnities in lieu of pension, or of pension allowances.

3.3 General revaluation of business assets and of 2020 shares (Article 110)

Article 110 allows enterprises to revaluate, for accounting purposes only, tangible and intangible assets, excluding those which the enterprise is intended to produce and trade, as well as shares in subsidiaries and associates in accordance with Article 2359 of the Italian Civil Code constituting fixed assets, resulting from the financial statements for the current year as at 31 December 2019.

The purpose is to allow enterprises to adjust the accounting representation of the assets to their actual values, without waiving the negative nature of the revaluation for the purposes of the tax recognition of the higher values attributed to the assets.

With respect to the most recently introduced voluntary revaluation regulations (i.e. those in paragraphs 696-*et seq.* of Article 1 of Law no. 160 of 27 December 2019), the revaluation of Article 110 provides the possibility of recording the higher value of the assets in the financial statements, without any tax recognition for the higher value (in other words, any revaluation carried out in the financial statements shall not necessarily entail a corresponding revaluation of a tax nature, compliance with the substitute tax being necessary for this purpose).

The revaluation shall be carried out in the financial statements of the year following the one current as at 31 December 2019 (financial statements referred to the year 2020 for enterprises whose financial year coincides with the calendar year).

The revaluation may be carried out distinctly for each asset; unlike the previous similar relief measures, therefore, it is not necessary for it to involve all assets in the same homogeneous category.

The higher accounting value attributed to assets by effect of the revaluation may, however, also be recognized for tax purposes starting from the year following the one with reference to which the revaluation was carried out. This option is recognized through the payment of a substitute tax of income taxes, of the IRAP regional tax and of any surtaxes in the measure of 3% for depreciating and non-depreciating assets.

Therefore, starting from the year following the one in which the revaluation is carried out, the depreciation charge, including financial depreciation, of the revalued assets and the maintenance, repair, modernization and transformation expenses are commensurate to the new value of the assets.

Similarly, the positive balance resulting from the revaluation may be recognized - also only in part - through the payment of a substitute tax of income taxes, of the IRAP regional tax and of any surtaxes in the measure of 10%.

The above substitute taxes shall be paid in no more than three equal instalments of which the first one no later than the date prescribed for payment of the balance of income taxes relating to the tax period with reference to which the revaluation is made, and the others with due date no later than the one respectively prescribed for the payment of the balance of income taxes related to subsequent tax periods.

In case the asset object of the revaluation is sold, attributed to the shareholders or transferred before the first day of the fourth financial year following the one in which the revaluation is carried out, for the determination of the taxable gain it is required to make reference to the value of the asset before the revaluation itself.

4. Interventions in support of employment

4.1 Ordinary social safety nets

The Deviation Decree of August 2020 further extended the duration of social safety nets, allowing employers who suspend or reduce work activities due to events connected with the Covid-19 pandemic, to request the ordinary wage supplement scheme or to access the ordinary allowance due to 'COVID-19 emergency', or to access the Redundancy Scheme for Exceptional Cases for no more than nine weeks, which may be increased by nine additional weeks, for periods from 13 July 2020 to 31 December 2020.

If employers have already requested wage supplement periods in accordance with Law Decree no. 18 of 17 March 2020, converted with amendments by Law no. 27 of 24 April 2020, the authorization for which we have received, and they occur, even partially, in periods following 12 July 2020, they shall be allocated (if authorized) to the first nine weeks recognized by the new August decree.

The second *tranche* of the additional nine weeks of the scheme will be recognized exclusively to employers for whom the first nine-week *tranche* has already been fully authorized, and the authorized period has elapsed. Employers requesting the second nine-week *tranche* shall pay an additional contribution determined on the basis of the comparison between the business revenues of the first half of 2020 and that of the corresponding half of 2019, amounting to:

— 9% of the total remuneration that would have been paid to the worker for hours not worked during the suspension or reduction of working activities, for employers whose revenues contracted by less than 20%;

— 18% of the total remuneration that would have been paid to the worker for hours not worked during the suspension or reduction of working activities, for employers whose revenues did not decline.

The additional contribution shall not be due by employers whose revenues contracted by twenty percent or more and for those who started business activities after 1 January 2019.

Employers requesting the second *tranche* of nine weeks of social safety net shall submit to INPS a request self-certifying the revenue contraction. INPS will authorize wage supplement schemes and, on the basis of the self-certification attached to the application, it will identify the portion of the additional contribution the employer shall have to pay starting from the pay period following the granting of the wage supplement. Without self-certification, INPS shall apply the 18% rate.

Applications to access wage supplement schemes shall be sent to INPS, under penalty of forfeiture, no later than the end of the month following the one in which the period of suspension or reduction of working activities started. Upon first application, the forfeiture deadline shall be set no later than the end of the month following the one in which the law decree entered into force.

If direct payment of the wage supplement benefits by INPS is requested, the employer shall send to INPS all the data necessary for payment or for the balance of the wage supplement no later than the end of the month following that of the wage supplement period, or, if later, no later than thirty days from adoption of the authorizing measure. Upon first application, said deadlines moved to the thirtieth day following the entry into force of the August Decree if the latter date follows the above deadline. Once these time intervals have elapsed without results, the employer shall pay the benefit and its connected expenses.

The August Decree makes no mention, nor does it refer to the procedure for opening the Redundancy Scheme (information and union consultation phase, as well as joint review if required), which shall therefore be deemed unnecessary.

4.2 Exemption from payment of social security contributions

Private sector employers, with the exclusion of the farming sector, who do not request wage supplement schemes for the additional new 18 weeks (*tranches* of nine weeks each), but who have already benefited, in May and June 2020, from COVID-19 wage supplement schemes, without prejudice to the rate for computing pension benefits, shall be exempted from paying the social security contributions due by them, for up to four months, usable until 31 December 2020, for twice the hours of wage supplement already received in the months of May and June 2020, with the exclusion of the premiums and contributions due to INAIL, recomputed and applied on a monthly basis. The exemption shall also be allowed for employers who requested wage supplement periods in accordance with Law Decree no. 18 of 17 March 2020, converted with amendments by Law no. 27 of 24 April 2020 as amended, occurring, even partially, in periods following 12 July 2020.

Until 31 December 2020, employers, excluding the farming sector, who hire employees with permanent agreements (excluding apprenticeship agreements and household work agreements) shall be allowed, without prejudice to the rate for computing pension benefits, total exemption from payment of the social security contribution due by them, for up to six months starting from the hiring date, with the exclusion of premiums and contributions due to INAIL, within the maximum limit of an exemption amount of EUR 8,060 on an annual basis, recomputed and applied on a monthly basis. This exemption will also be allowed in case of transformation of the employment agreement from temporary to permanent, if it occurs after the date of entry into force of the present decree and it may be cumulated with other exemptions or reductions of the financing rates prescribed by current laws and regulations, within the limits of the social contribution due.

For the purposes of obtaining contribution relief, hires of employees who had a permanent employment agreement with the same enterprise in the six months preceding their hiring shall be excluded.

4.3 Prohibition to terminate collective and individual employment agreements for justified business reasons

Employers who have not fully benefited from wage supplement schemes connected with the COVID-19 pandemic per Article 1 of the August Decree may not terminate employees for justified business reasons (regardless of the number of employees) or initiate redundancy and collective termination procedures and any pending procedures initiated after 23 February 2020 shall also be suspended, barring any cases in which the personnel affected by the withdrawal, already employed in the contract, are re-hired following the take-over of a new contractor according to the law, the national collective employment agreement, or a clause in the contract.

These preclusions and suspensions shall not apply to cases of terminations caused by the definitive cessation of the activities of the enterprise, consequent to the liquidation of the company without even partial continuation of the activity, if during the liquidation there is no sale of a complex of assets or activities that may constitute a transfer of a firm or of a business unit in accordance with Article 2112 of the Italian Civil Code, or in cases of corporate collective agreement, stipulated by the unions that are comparatively most representatives at the national level, incentivizing employment termination, limited to workers who participated in the aforesaid agreement.

The termination prohibition shall not apply in cases of terminations carried out in case of bankruptcy, when the provisional operation of the enterprise is not envisioned, or when its cessation is decided. If provisional operation is decided for a specific business unit of the firm, terminations involving sectors not included therein shall be excluded from the prohibition.

Employers who in 2020 proceeded with terminations for a justified business reason may revoke the withdrawal at any time, provided that they concurrently request the wage supplement scheme, from the initial effective date of the termination. In this case, the employment shall be deemed to be resumed without interruption, without expenses or penalties for the employer.

The prohibition to terminate for justified business reasons and the start of redundancy and/or collective termination procedures shall also apply for employers who benefited from the contribution exemption deriving from the failure to request additional weeks of wage supplements (nine+nine) provided by the August Decree.

In this case, the violation of the prohibition to terminate and initiate redundancy or collective termination procedures shall cause the revocation of the contribution exemption with retroactive effectiveness and the impossibility to submit a wage supplement application for the additional 18 weeks (nine+nine).

Contacts

KPMG in Italy

Tax & Legal

E: it-fmksamarketing@KPMG.IT