



# Benefit corporations

Family Office and Private Client  
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This Alert summarises the main features of benefit corporations and the tax credit available under article 38-ter of Italy's Relaunch Decree, as recently amended by the *Milleproroghe* Decree<sup>(1)</sup>, to offset the costs of setting up (or converting a company into) a benefit corporation.

## Benefit corporation basics

Benefit corporations were introduced in Italy in 2015 by the 2016 Budget Law<sup>(2)</sup>.

Based on this law<sup>(3)</sup>, the term benefit corporation refers to a company which, in the pursuit of a business activity, not only seeks to generate and divide up a profit but also to pursue one or more purposes for the common good, operating in a responsible, sustainable and transparent manner for the benefit of individuals, communities, territories, the environment, cultural and social heritage, organisations and associations, and other stakeholders<sup>(4)</sup>.

Whereas the sole aim of traditional companies is to distribute dividends to shareholders, benefit corporations are the expression of a paradigm shift: their corporate purpose, in addition to profit-making, is to create a positive social impact.

While, according to Italian legislation, benefit corporations are allowed to include the term '*società benefit*' in their company name, they are required to specifically identify their aims in their corporate purpose. Furthermore, since benefit corporations are not in themselves a separate type of enterprise, their chosen legal form must be a partnership (*società di persone*), company (*società di capitale*) or cooperative company (*società cooperativa*) and they are subject to the general laws applicable to these types of entities, as well as to the rules specifically dedicated to benefit corporations.

(1) Decree Law no. 34/2020 (the Relaunch Decree), converted into Law no. 77/2020, was recently modified by Law no. 21/2021, which converted Decree Law no. 183/2020 (the *Milleproroghe* Decree) into law.

(2) More precisely, by article 1 (376-384 ) of Law no. 208/2015 (the 2016 Budget Law).

(3) Article 1 (376 ) of the 2016 Budget Law.

(4) Article 1 (378) of the 2016 Budget Law clearly states that operating for the common good means the pursuit, in the course of the benefit corporation's business activity, of one or more positive effects, or the reduction of negative effects, for one or more of the categories indicated in paragraph 376.

Benefit corporations must be managed in a manner that balances the interests of the shareholders, the pursuit of the common good and the interests of the different stakeholders listed above, as indicated in the articles of association<sup>(5)</sup>. To this end, one or more *individuals must be appointed with the specific task of pursuing the common good*.

Failure to observe the above management model could constitute non-compliance with statutory obligations or the articles of association and give rise to liabilities that could be pursued in the forms and ways established by the Italian Civil Code for each type of company.

Benefit corporations are also required to prepare an annual report detailing their pursuit of the common good, attach it to their financial statements, and publish it on their website (if any).

### Advantages of benefit corporations

Benefit corporations are a highly effective way of encouraging people to buy into the company's mission in the *long term* and creating *shared value*.

They are also particularly useful in helping everyone to keep sight of the corporate purpose in the event of **a change in leadership**, the entry of new investors, or share capital increases.

Moreover, benefit corporations offer the security of a solid vision even if the company undergoes a **generational shift** or becomes publicly traded.

### Tax credits available under article 38-ter of the Relaunch Decree

Benefit corporations do not currently benefit from a special taxation regime and are thus subject to the ordinary rules, according to their legal status.

However, to encourage the spread of benefit corporations nationwide, article 38-ter of the Relaunch Decree offers a contribution in the form of a tax credit equal to 50 percent of the costs of setting up (or converting a company into) a benefit corporation. Qualifying costs are those incurred between 19 July 2020 and 31 December 2020.

The tax credit is awarded for spending of up to EUR7 million and is subject to the conditions and limits established under EU regulations on "*de minimis*" aid<sup>(6)</sup>.

Recently **the Milleproroghe Decree**, by amending article 38-ter of the Relaunch Decree, **has extended the cut-off point for eligible costs from 31 December 2020 to 30 June 2021**.

(5) See article 380 of the 2016 Budget Law.

(6) Regulation (EU) No 1407/2013; Regulation (EU) No 1408/2013 for enterprises operating in the agriculture sector; Regulation (EU) No 717/2014 for enterprises operating in the fishery and aquaculture sector.

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