

Italian Law: Emergency Legislation for COVID-19

Article By:

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1. Introduction

The current economic situation due to the epidemiological emergency from Coronavirus Disease 2019 (COVID-19) (the COVID-19 Emergency) led the Italian government to issue on May 19, 2020 the Decree-Law no. 34/2020 (so called *Decreto Rilancio*) (the Decree). This GT Alert provides a summary of some of the main legislative measures contained in the Decree specifically aimed at supporting Italian companies.

2. Main legislative measures concerning the financial support to Italian companies

The legislative provisions concerning financial support to Italian companies are contained in Chapter 1 of Title 2 of the Decree, entitled “*Support for companies and the economy*”.

2.1 Non-repayable grant¹

The main features of the non-repayable grant (*contributo a fondo perduto*) are the following:

- Beneficiaries:
 - entrepreneurs;
 - self-employed workers;
 - holders of agricultural income (*titolari di reddito agrario*).

- Conditions for the non-repayable grant:

in order to benefit of the non-repayable grant companies shall meet the following requirements:

- remuneration or revenues related to the fiscal year 2019 not higher than Euro 5

million;

- remuneration or revenues related to April 2020 lower than 2/3 of remuneration or revenues related to April 2019².

- Amount of the grant:

the amount of the grant is determined by applying the following percentage to the difference between the revenues for April 2020 and the revenues for April 2019 as follows:

- 20% for companies with revenues or remuneration not exceeding Euro 400,000.00 in the fiscal year 2019;
- 15% for companies with revenues or remuneration between Euro 400,000.00 and Euro 1,000,000.00 in the fiscal year 2019;
- 10% for companies with revenues or remuneration between Euro 1,000,000.00 and Euro 5,000,000.00 in the fiscal year 2019.

- Exclusions:

- companies whose business activity ceased on March 31, 2020;
- public entities pursuant to Article 74 of the Italian Consolidated Tax Act (*Testo Unico delle Imposte sui Redditi*);
- financial intermediaries pursuant to Article 162-*bis* of the Italian Consolidated Tax Act;
- recipients of benefits pursuant to Articles 27 and 38 of the Law Decree no. 18/2020 (so called *Cura Italia*); and
- employees and self-employed workers registered with the statutory social security institutions (accountants, lawyers, etc.).

2.2 Tax credit on contribution in cash in execution of a capital increase³

A Tax Credit (*credito di imposta*)⁴ is granted for contributions in cash (*conferimenti in denaro*) to companies (including cooperatives and European companies referred to in the Regulation no. 2157/2001/EC) in execution of a capital increase. The main features are:

- Beneficiaries include companies which:

- have accounted revenues deriving from the sale of goods, services and raw materials of more than Euro 5 million and less than Euro 50 million;
- have suffered, due to the COVID-19 Emergency, in March and April 2020, an overall reduction of revenues of at least 33% compared to the same period of the previous year;

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- have resolved and implemented, after May 19, 2020, and within Dec. 31, 2020, a capital increase, fully paid-in.
 - Conditions for the tax credit:
 - the shareholding resulting from the cash contribution shall be held until Dec. 31, 2023;
 - no distribution of reserves of any kind before Dec. 31, 2023. The distribution of reserves before the period indicated leads to the loss of the tax credit and the obligation of the recipient to refund the amount deducted, together with interest.
 - Amount of the tax credit:
 - 20% of the amount of the contribution in cash;
 - the maximum amount of the contribution in cash on which to calculate the Tax Credit shall not exceed the amount of Euro 2,000,000.00.
 - Exclusions:
 - financial intermediaries referred to in Article 162-*bis* of the Italian Consolidated Tax Act.

2.3 Subscription of financial instruments by SME's Capital Fund⁵

The *SME's Capital Fund* is aimed at subscribing bonds or debt securities issued by companies (Financial Instruments) with maturity of six years.

- Conditions for the subscription of Financial Instruments by SME's Capital Fund:

in order to subscribe the Financial Instruments, the companies shall have, *inter alia*:

 - the requirements for the granting of the tax credit referred to in paragraph 2.2;
 - revenues deriving from the sale of goods, services, and raw materials of more than Euro 10 million and less than Euro 50 million;
 - regularly paid their tax obligations;
 - complied with all the applicable regulations on construction, urban planning, labor, safety at work and environmental protection: and
 - less than 250 employees.
- The companies shall also:
 - not resolve or make, distribution of reserves or shares buyback and not repay shareholders loans until the full repayment of the Financial Instruments;

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- use the financing for supporting cost of personnel, investments or working capital to be used in production sites or entrepreneurial activities in Italy; and
 - provide a periodic report to Invitalia.
 - Amount of the measure:
 - the lower amount between three times the amount of the capital increase⁶ and 12.5% of the amount of the issuing company's revenues in year 2019 (*ricavi della società emittente*).

2.4 Tax credit on losses exceeding the net asset (*patrimonio netto*)⁷

A tax credit is granted on losses exceeding the net asset. The main features are:

- Condition for the grant:
 - condition for the tax credit referred to in paragraph 2.2 above;
 - condition for the subscription of financial instruments by SME's Capital Fund referred to in paragraph 2.3 above;
 - no distribution of reserves of any kind before January 1, 2024.
- Amount of the grant:
 - 50% of the losses exceeding 10% of the net asset, up to 30% of the capital increase referred to in paragraph 2.2 above.

2.5 Pool of Assets by Cassa Depositi e Prestiti for financings of companies generating revenues higher than € 50 million per year⁸

Cassa Depositi e Prestiti S.p.A. (CDP) is authorized to create a pool of assets (*patrimonio destinato*) referred to in Article 2447-bis of the Italian Civil Code (so called *Patrimonio Rilancio*) (the CDP Pool of Assets) made of contributions of assets by the Italian Ministry of Economy and Finance. In return for these contributions, CDP will issue participating financial instruments in favor of the Italian Ministry of the Economy and Finance.

- Financing activity by the CDP Pool of Assets: the Pool of Assets will carry out its financing activity preferably through:
 - subscription of convertible bonds;
 - subscription of capital increases; and
 - purchase of company's shares, including those with shares listed on regulated markets.

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- Condition for companies to obtain the measure: in order to benefit of the financing by the CDP Pool of Assets, the companies shall:
 - have their registered office in Italy;
 - not operate in the banking, financial, or insurance sector; and
 - have an annual revenue higher of Euro 50 million.
 - the other criteria to have access to the investments by CDP's Pool of Assets will be set forth in Law Decree.

 - Features of the CDP Pool of Assets:
 - the activities of the CDP Pool of Assets may also be financed through the issuance of equity securities or other debt financial instruments on the pool of assets;
 - investment operations carried out by CDP on the CDP's Pool of Assets and all the activities related thereto do not trigger statutory or contractual change of control clauses or similar provisions;
 - independent and separate from the CDP's assets;
 - no executive actions by the CDP's creditors will be allowed on the Pool of Assets;
 - no executive actions by the Pool of Asset's creditors will be allowed on the assets of CDP;
 - the loans, guarantees or the payments made in connection with the activities of the CDP's Pool of Assets are not subject to revocatory action (so called *azione revocatoria*);
 - the CDP's Pool of Assets expires in 12 years from its creation.

2.6 Refinancing of facilitated loan for innovative start-ups⁹

Additional resources equal to Euro 100 million for the year 2020 are allocated to the refinancing of the facilitated loans (*finanziamenti agevolati*) - pursuant to the Decree of the Minister of Economic Development no. 264 of Nov. 13, 2014 (the Ministerial Decree) - to innovative start-ups in the form of facilitated loans (the Facilitated Loans).

- Condition for the Facilitated Loans are eligible for the Facilitated Loans for innovative start-ups that have carried out an investment plan, *inter alia*, in the following:
 - plant, machinery, and technological equipment;
 - patents and licenses; and
 - design and development of IT architectural solutions and technological production

facilities.

- Features of the Facilitated Loans:
 - no guarantee;
 - interest rate of 0%; and
 - maximum duration of eight years.

The Decree also provides a series of tax incentives in the form of tax deductions for natural persons investing in the corporate capital of an innovative start-up¹⁰.

¹Article 25 of the Decree.

²Please note that to properly determine the amount of the remuneration or revenues referred to in paragraph 2.1, reference is made to the date on which the sale of goods and services was carried out.

³Article 26 of the Decree.

⁴The tax credit is granted up to a maximum of € 2 billion for year 2021

⁵Article 26 of the Decree.

⁶The capital increase not lower than € 250,000.00

⁷Article 26 of the Decree.

⁸Article 27 of the Decree.

⁹Article 38 of the Decree.

¹⁰Article 38 of the Decree.

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