

# COVID-19

## Decree Law no. 41 of 22 March 2021

### ***“Urgent measures concerning support to businesses and economic players, work, healthcare and territorial services in connection with the COVID-19 emergency”***

Decree Law no. 41 of 22 March 2021, introducing *“Urgent measures concerning support to businesses and economic players, work, healthcare and territorial services in connection with the COVID-19 emergency”* – *“Decreto Sostegni”* - was published in Italian Official Journal no. 70 of 22 March 2021 and entered into force on 23 March 2021.

We summarize below the main tax measures introduced by the decree.

#### Article 1

### **NON-REFUNDABLE GRANT TO ECONOMIC PLAYERS AND EXTENDED DEADLINE FOR FILING THE PRE-COMPLETED VAT RETURN**

The Decree introduced a non-refundable grant for economic players.

#### ELIGIBLE TAXPAYERS

1. VAT registered taxpayers are resident or established in Italy, who carry out a business or a profession or earn income from farming activities (referred to in article 32 of the Italian Income Tax Code) and whose revenue or fees **did not exceed 10 million Euro** in 2019;
2. Start-up companies;
3. Non-commercial entities, including third-sector entities and civilly recognized religious bodies, with regard to the commercial activities carried out by them.

#### **IMPORTANT:**

**Persons whose activity ceased on 23 March 2021, who registered for VAT after 23 March 2021, the public bodies referred to in article 74 of the Italian Income Tax Code and the persons referred to in article 162-bis of the Italian Income Tax Code (i.e., financial intermediaries and holding companies) are not eligible for the grant.**

## AVAILABLE BENEFIT

The non-refundable grant is determined by applying one of the following **percentages** to the difference between the average monthly turnover (or fees) for 2020 and the average monthly turnover (or fees) for 2019:

- ✓ **60%** for entities whose revenue or fees do not exceed Euro 100,000;
- ✓ **50%** for entities with revenue or fees higher than Euro 100,000 and up to Euro 400,000;
- ✓ **40%** for entities with revenue or fees higher than Euro 400,000 and up to Euro 1 million;
- ✓ **30%** for entities with revenue or fees higher than Euro 1,000,000 and up to Euro 5,000,000;
- ✓ **20%** for entities with revenue or fees higher than Euro 5,000,000 and up to Euro 10,000,000.

### NOTA BENE

**In order to be eligible for the non-refundable grant, the monthly average revenue and fees for 2020 must be at least 30% less than the monthly average revenue and fees for 2019. To determine the relevant amount, reference should be made to the date on which the sale or service supply was made.**

**Entities who registered for VAT starting from 1 January 2019 are eligible for the grant even if the 30% decline in the average monthly turnover is not met.**

**In order to determine their available grant, the percentage is applied to the loss of average monthly turnover solely for the months following the month of VAT registration.**

The amount of the grant for any entity, including those who registered for VAT starting from 1 January 2020, **cannot exceed Euro 150,000** and the minimum amount payable is **1,000 Euro for natural persons and 2,000 Euro for all other persons.**

To obtain the grant, the taxpayers concerned will have to file a specific application with the Revenue Agency, the contents of which was established by Revenue Agency Enactment no. 77923/2021 of 23 March 2021, as amended by Enactment no. 82454/2021 of 29 March 2021.

The Enactment specified that the application should be filed between **30 March 2021 and 28 May 2021**<sup>1</sup> (mandatory deadline).

The grant shall be **credited to the bank account** identified by the IBAN stated in the application, registered in the name of the individual or other person who applied for the grant.

**As an alternative**, at the taxpayer's irrevocable choice, the non-refundable grant will be given in the form of a tax credit available for offset only.

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<sup>1</sup> In the event of error, a new application in lieu of the prior one may be filed during this period. The latest application filed supersedes all earlier ones in respect of which the grant was not paid out or the relevant tax credit granted.

## NOTA BENE

Article 1(11) **abrogated** the non-refundable grant for business operators based in shopping centers and industrial manufacturers of foods and beverages (see our earlier communications).

**State Aid measures** - *Communication from the 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 amended.*

Paragraphs (13) through (17) of Article 1 contain provisions concerning the State Aid measures<sup>2</sup>, listed below, which are subject to the conditions and limits provided by **Section 3.1** « *Limited amounts of aid*»<sup>3</sup> and **Section 3.12** «*Aid in the form of support for uncovered fixed costs*»<sup>4</sup> of the Communication from the 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*».

### **State Aid measures**

- ❖ *Articles 24 (provisions concerning IRAP – regional tax – payments) 25 (non-refundable grant), 120 (tax credit to adjust workplaces), 129-bis (direct tax and excise tax provisions in the Municipality of Campione d'Italia) and 177 (exemptions from municipal property tax – IMU – for companies in the tourist industry) of Decree Law no. 34 of 19 May 2020;*
- ❖ *Article 28 (tax credit in respect of rental payments for non-residential property and for the lease of a business concern) of Decree Law no. 34/2020;*
- ❖ *Article 78(1) (exemptions from municipal property tax – IMU – for companies in the tourist and entertainment industries) of Decree Law no. 104 of 14 August 2020; article 78(3) of Decree Law no. 104 of 14 August 2020 solely with regard to the municipal property tax due in 2021;*
- ❖ *Articles 1 (Non-refundable grant for VAT registered entrepreneurs engaged in the economic sectors affected by the new restrictive measures), 1-bis (Non-refundable grant for VAT registered entrepreneurs engaged in the economic sectors affected by the new restrictive measures per Prime Minister decree of 3 November 2020), 1-ter (Extension of the application of article 1 to other business activities), 8 (tax credit in respect of rental payments for non-residential property and for the lease of a business concern), 8-bis (tax credit in respect of rental payments for non-residential property and for the lease of a business concern, regarding the undertakings affected by the new restrictive measures per Prime Minister decree of 3 November 2020), 9 (Cancellation of the second instalment of municipal property tax - IMU – for the properties and relevant appurtenances where the activities referred to in the ATECO codes listed in Annex 1 are carried out), 9-bis (Cancellation of the second instalment of municipal property tax – IMU – for the properties and relevant appurtenances where the activities referred to in the ATECO codes listed*

<sup>2</sup> See our earlier messages.

<sup>3</sup> The Communication from the Commission “*Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance*” (2021/C 34/06) published in the Italian Official Journal no. C 34 of 1 February 2021 provides, under Section 3.1 that **the overall aid cannot exceed 1.8 million Euro per undertaking** (270,000 Euro per undertaking active in the fishery and aquaculture sector or 225,000 Euro per undertaking active in the primary production of agricultural products).

<sup>4</sup> Section 3.12 provides for an overall aid of **10 million Euro per undertaking**.

*in Annex 2 are carried out), 9-ter(1) (Identification of the persons exempt from the payment of the municipal property tax – IMU – and provisions in support of commercial concerns) of Decree Law no. 137 of 28 October 2020;*

- ❖ *Articles 2 (Non-refundable grant for providers of restaurant services) and 2-bis (tax credit for lease payments) of Decree Law no. 172 of 18 December 2020;*
- ❖ *Article 1(599) (concerning the municipal property tax – IMU) and 1(602) (concerning the tax credit in respect of rental payments for non-residential property and for the lease of a business concern) of law no. 178 of 30 December 2020;*
- ❖ *paragraphs 1 to 9 of “Decreto Sostegni” (i.e., non-refundable grant discussed above) and paragraphs 5 and 6 of article 6 of Decreto Sostegni (reduction of electricity bills and of the special Italian State TV – RAI – fee).*

### NOTA BENE

The state aid measures listed above, used on the terms and within the limits laid down in Section 3.1, may be **cumulated** by each company with other Aid authorized pursuant to the same Section.

The undertakings qualifying for such State Aid which **also** intend to take advantage of Section 3.12 of the Communication, provided that the relevant conditions are met, are subject to the conditions and limits laid down in such Section. To this end, undertakings shall submit a **self-declaration form** certifying the existence of the conditions under Paragraph 87<sup>5</sup> of Section 3.12.

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<sup>5</sup> **NOTA BENE:** Pursuant to this Paragraph, if such measures (i.e., Aid in the form of support for uncovered fixed costs) constitute aid, the Commission will consider them compatible with the internal market on the basis of Article 107(3)(b) TFEU provided the following conditions are met: a. The aid is granted no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 1 March 2020 and 31 December 2021, including such costs incurred in part of that period ('eligible period'); b. The aid is granted on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019; c. Uncovered fixed costs are the fixed costs incurred by undertakings during the eligible period which are not covered by the profit contribution (i.e. revenues minus variable costs) during the same period and which are not covered by other sources, such as insurance, temporary aid measures covered by this Communication or support from other sources. The aid intensity shall not exceed 70% of the uncovered fixed costs, except for micro and small companies (within the meaning of Annex I of the General Block Exemption Regulation), where the aid intensity shall not exceed 90% of the uncovered fixed costs. For the purpose of this point, the losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid shall be determined after realisation of the losses on the basis of audited accounts or, with appropriate justification provided by the Member State to the Commission (for example in connection with the characteristics or size of certain type of undertakings) on the basis of tax accounts. Any payment exceeding the final amount of the aid shall be recovered; d. The overall aid shall not exceed EUR 10 million per undertaking. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures remains below the overall cap of EUR 10 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge; e. The aid under this measure shall not be cumulated with other aid for the same eligible costs; f. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019. In derogation to the above, aid can be granted to micro or small enterprises (within the meaning of Annex I of the General Block Exemption Regulation) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid or restructuring aid.

A decree of the Ministry of Economy and Finance shall establish the manner of implementation of the above provisions, to determine, after the grant has been paid out, whether the conditions and limits laid down in Sections 3.1 and 3.12 of the Communication by Commission 1863 *final* referred to above, have been complied with.

### NOTA BENE

For the purposes of the rules under examination, the definition of single undertaking pursuant to the EU *de minimis* regulations applies (cf. Commission Regulation (EU) no. 1407/2013 of 18 December 2013, Commission Regulation (EU) no. 1408/2013 of 18 December 2013 and Commission Regulation (EU) no. 717/2014 of 27 June 2014 for companies in the fishery and aquaculture sector).

## Article 4

### EXTENSION OF THE SUSPENSION OF COLLECTION AGENT'S ACTIVITIES AND CANCELLATION OF TAX PAYMENT DEMANDS

The Decree extended the suspension of the Collection Agent's activities and cancelled tax payment demands.

#### ELIGIBLE TAXPAYERS

Taxpayers concerned.

#### AVAILABLE BENEFIT

The collection agent's activities have been suspended until **30 April 2021** (article 68 of Decree Law no. 18/2020, "*Suspension of the payments to be collected by the collection agent*").

The instalments payable in 2020 and those falling due on 28 February, 31 March, 31 May and 31 July 2021 under the "*rottamazione-ter*" and "*saldo e stralcio*" programs<sup>6</sup> are considered timely paid if payment is made in full:

- ❖ by **31 July 2021**, for instalments payable in 2020;
- ❖ by **30 November 2021**, for instalments payable on 28 February, 31 March, 31 May and 31 July 2021.

Debts of a remaining amount of up to **5,000 Euro**<sup>7</sup> at 23 March 2021 entrusted to the Collection Agents for collection between 1 January 2000 and 31 December 2010 for individuals who in FY2019 earned taxable income of up to **30,000 euro** and for other persons who in the fiscal year in progress at 31 December 2019 earned taxable income of up to **30,000 euro**, are **automatically cancelled**.

<sup>6</sup> Articles 3 and 5 of Decree Law no. 119 of 23 October 2018; article 1(190) and (193) of law no. 145 of 30 December 2018). The extension had been announced in Revenue Agency's press release no. 36 of 27 February 2021.

<sup>7</sup> Including principal, interest and penalties.

## IMPORTANT

This provision **does** not apply:

- to amounts due for the recovery of State Aid, to liabilities arising from rulings of the Italian Court of Audit, to fines and other pecuniary penalties due in connection with criminal sentencing, and
- to the traditional EU resources and VAT collected at importation.

## Article 5

### **ADDITIONAL TAX INCENTIVE AND RATIONALIZATION MEASURES IN CONNECTION WITH THE COVID-19 EMERGENCY**

Additional tax incentive and rationalization measures in connection with the public health emergency have been introduced.

#### ELIGIBLE TAXPAYERS

Persons with an active VAT registration at 23 March 2021, whose 2020 turnover declined by more than 30% compared to their prior year's, per the annual VAT return for FY 2020.

## NOTA BENE

**For persons not required to file the annual VAT return, reference is made to the revenues or fees shown in the Income Tax Return submitted by the deadline for filing the annual income tax return for FY 2020.**

#### AVAILABLE BENEFIT

The decree provides for the "***definizione agevolata***" (*forgiveness of penalties and interest on outstanding taxes due, subject to full payment of tax amount and to relinquishing the right to appeal*) of "*avvisi bonari*" (notification of additional tax due following automated verification of the tax return) for FYs 2017 and 2018.

## IMPORTANT

The Revenue Agency will identify the entities whose turnover, revenues or fees decreased and send them the **settlement proposal**, specifying the additional amount due. The procedure is completed with the payment of taxes, relevant interest and social security contributions, without penalties and additional amounts.

## NOTA BENE

**These provisions apply within the limits and on the conditions set forth in the Communication from the 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 amended.**

We summarize below other provisions introduced by the decree:

- ❖ with regard to the Digital Services Tax, the first time the tax is levied – in respect of transactions taxable in 2020 - it will be payable by **16 May 2021** and the relevant Return will have to be filed by **30 June 2021**;
- ❖ with regard to the fiscal year in progress at 31 December 2019, **e-invoices are considered to have been timely** stored within **three months subsequent** to the standard deadline (per the Finance Ministry's press release no. 49 of 13 March 2021);
- ❖ the deadline for the online filing and the delivery of the ***Certificazione Unica*** (statement of wages and withholdings) has been postponed to **31 March 2021** (per the Finance Ministry's press release no. 49/2021).

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