

# **Law Decree 23/2020 – New provisions on access to credit and further interventions**



Law Decree n. 23 dated 8 April 2020 (“Urgent measures on access to credit and tax fulfilments for businesses, special powers in strategic industries and interventions on health and labour and extension of procedural deadlines”) contains a series of provisions aimed at supporting the liquidity of companies, small owner-operated businesses, self-employed and professionals. Moreover, the Decree includes further provisions on tax and corporate matters. Said Decree, which follows the previous one issued in March (so-called *Cura Italia* Decree) aims at strengthening the law provisions introduced to face the emergency situation originating from the Covid-19 outbreak. The most significant measures introduced are outlined below:

## Measures on liquidity

### State guarantees on loans granted by banks - Art. 1

Art. 1 of Law Decree n. 23 is aimed at guaranteeing the necessary liquid funds to businesses with registered office in Italy, affected by the Covid-19 outbreak, through the issuance of guarantees by SACE (the Italian State-owned company operating in the financial and insurance sector and specialised in particular in credit insurance) in favour of banks, national and international financial institutions and other authorised entities operating in Italy, on loans granted in any form to businesses, until 31 December 2020. The financial commitment by SACE S.p.A cannot exceed Euro 200 billion, of which at least 30 billion should be addressed to support small and medium enterprises, as defined by the European Commission Recommendation n. 2003/361/EC, including self-employed and professionals having a VAT number, who have entirely used their guarantee fund for SMEs. Therefore, it is provided for that SMEs can access the SACE guarantee only after having reached the maximum limit available to obtain the coverage granted by the SMEs Fund. In order to obtain the guarantee, it is necessary for the applying companies to meet the subjective requirement of not being classified among distressed businesses as per the EC definition at 31 December 2019 and not having impaired positions, as defined by the EU legislation, towards the banking system at 29 February 2020.

The duration of the loans granted should not exceed 6 years and it is provided for the possibility of a pre-amortisation of the loan for a period not exceeding 24 months.

The amount of the secured loan cannot exceed the higher between the following amounts:

- 25% of 2019 turnover, as resulting from the approved Financial Statements or from the income tax return
- twice the 2019 staff costs borne by the company, as resulting from the Financial Statements or from certified data, should the Financial Statements not have been approved yet.

Each applying company will have to commit itself so that the other companies with registered office in Italy belonging to the same group do not approve the distribution of dividends or the repurchase of own shares in 2020, manage their employment levels through trade union agreements and allocate the loan to cover staff costs, to make investments or as working capital in production facilities and entrepreneurial activities located in Italy.

The maximum percentage of guarantee is equal to:

- 90% of the amount of the loan for businesses with less than 5,000 employees in Italy and a turnover up to Euro 1.5 billion;
- 80% of the amount of the loan for businesses with a turnover between Euro 1.5 and 5 billion or with more than 5,000 employees;

- 70% of the amount of the loan for businesses with a turnover exceeding Euro 5 billion.

The procedure to access the guarantee is “simplified” for businesses with less than 5,000 employees in Italy and a turnover up to Euro 1.5 billion; other companies (there are only 130 companies in Italy with a turnover exceeding Euro 1.5 billion) will need to wait for a specific Decree by the Ministry of Economics and Finance, in accordance with the Ministry for Economic Development; in both cases it will be up to the credit institutions to process the loan applications. In other words, the applying company submits its application to the bank, which in case of a positive outcome, applies in turn to SACE to obtain the guarantee.

The latter processes the application and issues a code so that the bank can, in turn, issue the loan. As mentioned above, the procedure for bigger companies will be more complex: a specific Decree by the Ministries of Economics and Finance and Economic Development is needed. In order to speed up the procedure and facilitate the coordination of all the subjects involved, ABI (the Italian Banking Association) issued a press release on 10 April 2020 to inform it had took part in a meeting promoted by the Ministry of Economic Development with representatives of Microcredito Centrale (a banking institution) and Confidi (a consortium providing guarantees to help business access credit) to help identify the quickest and simplest operating procedures to enact the provisions adopted by the Government with Law Decree n. 23 dated 9 April.

<b>Beneficiaries</b>	<b>Companies with less than 5,000 employees in Italy and a turnover up to Euro 1.5 billion</b>	<b>Companies with more than 5,000 employees in Italy or with a turnover between Euro 1.5. and 5 billion</b>	<b>Companies with a turnover exceeding Euro 5 billion</b>
State guarantee	90%	80%	70%
Limitations	Clauses on dividends, employment, made in Italy		
Costs	Preliminary fees + for SMEs: depending on the amount granted, 0.25% for the 1st year, 0.5% for the 2nd and 3rd year, 1% for the 4th, 5th and 6th year; for bigger companies: 0,5% for the 1st year, 1% for the 2nd and 3rd year, 2% for the 4th, 5th and 6th year		
Procedure	The business files an application to the bank, which evaluates and resolves upon granting the loan; if the resolution is positive, the bank files an application for a guarantee to Sace, which processes it and issues a unique identifying code for the loan		
Refund	6 years		

### Central guarantee fund for SMEs - Art. 13

At the beginning of the Covid-19 outbreak, the Government - with art. 49 of the *Cura Italia* Law Decree - already provided for a central guarantee fund for SMEs, which has now been repealed by art. 13 of Law Decree n. 23. This is aimed at renewing and temporarily strengthening, until 31 December 2020, the fund under art. 2, para. 100, letter a) of Law n. 662 dated 23 December 1996, broadening its scope to include:

- companies with a number of employees not exceeding 499: (i) - by increasing the coverage of the direct guarantee up to 90% of the total amount of each financial operation (80% until the authorisation by the European Commission is obtained); (ii) by increasing the coverage of the reinsurance guarantee up to 100% (90% until the authorisation by the European Commission is obtained) of the total amount of each financial operation already guaranteed by Confidi or by another guarantee fund, upon condition that the guarantees issued by the latter institutions do not provide for the payment of a premium for the credit risk assumed;
- companies with a number of employees not exceeding 499 and revenues not exceeding Euro 3.2 million, negatively impacted by the Covid-19 emergency, as per the self-assessed declaration: these are allowed to combine the 90% direct guarantee with another form of coverage for the remaining 10% granted by Confidi or by another subject authorised to issue guarantees.

The amounts of the financial operations covered by a guarantee can never exceed Euro 5 million and they cannot, in any case, exceed the lower among the following thresholds: the double of the annual expense for employees; 25% of the total turnover of the beneficiary; the amount needed for investments in the next 12 months (18 months for SMEs).

- Subject to authorisation by the European Commission, within the limit of 25% of the amount of revenues and only in favour of SMEs and individuals carrying out a business activity or practicing arts or other professions, whose operations have been negatively impacted by the Covid-19 emergency, as per the self-assessed declaration: a guarantee covering 100% of new loans is eligible, both as a direct guarantee and as a reinsurance.

As concerns the interest rates to be applied to guaranteed loans, an upper limit is provided for only for loans up to Euro 25,000, to be calculated only by applying a complex formula based on the so-call Rendistato index plus 0.5%, which, to date, is equal to a rate between 1.2% and 1.9%.

In order for the guarantee to be issued, it is necessary for the applying businesses to possess the subjective requirement of not having, at 31 January 2020, exposures classified as “unlikely to pay” or “non-performing” (“scadute o sconfinanti deteriorate”).

The banks will evaluate the eligibility of the financing only upon submitting their economic-financial data.

Beneficiaries	SMEs and individuals carrying out a business activity or practicing arts or other professions	Companies with up to 499 employees and turnover up to Euro 3.2 million	Companies with up to 499 employees
State guarantee	100%	90% State + 10% Confidi	90% direct guarantee 100% reinsurance guarantee (80% and 90% respectively, until the EU authorisation is obtained)
Limitations	Loan not exceeding 25% of revenues and in any case not higher than Euro 25,000	Loan not exceeding 25% of the turnover	Maximum yearly guaranteed amount of Euro 5 million and in any case not higher than 25% of the turnover for FY 2019
Costs	Free access to the fund + interest rate with cap (to date, equal to 1.2% as estimated by the Ministry of Economics and Finance)	Free access to the fund. Maximum rate not specified	
Procedure	Self-declaration on the damages suffered due to the COVID-19 emergency. No evaluations by the Fund	Evaluation of the economic and financial profile carried out by the Fund, with the exception of the evaluation of the trend of the last few months	
Refund	Refund to start not earlier than 2 years, with a duration of 6 years	Not specified	

### Loans issued by Istituto per il Credito sportivo (Italian institution financing sport facilities) - Art. 14

In addition to the measures devised for the sports sector already included in Law Decree n. 18 dated 17 March 2020, art. 14 of the Decree under analysis extends, until the end of the current year, the guarantee fund for

sporting venues, separately managed by the Istituto per il Credito Sportivo, to include also loans for liquidity needs - currently excluded - of National Sports Federations, sports associations, sports promotion bodies, amateur sports associations and companies. To this end, a specific sector of the abovementioned fund is set up, with an endowment of Euro 35 million for 2020.

## **Execution of contracts and simplified communications - Art. 4**

Art. 4 concerns the operations of financial institutions during the epidemiological emergency caused by the spread of COVID-19 and it is aimed at guaranteeing that the contracts relevant to the services and products offered can be executed also via non certified emails, by providing a copy of a valid identity document of the contractor and making reference to a contract identifiable in an unambiguous way. It is the responsibility of financial institutions to keep such documentation in their files, together with the relevant contract, in such a way as to guarantee their security, integrity and impossibility to be modified. The provision requiring to deliver a copy of the contract to clients is met by the providing them with a copy of the text on a durable medium. The hard copy of the contract will be delivered to the client at the first opportunity, once the state of emergency will be over.

## **Provisions on corporate matters**

### **Temporary measures on share capital reduction and loans to companies - Artt. 6 and 8**

As far as company law is concerned, art. 6 cancels the effect of the norms of the Italian Civil Code which impose measures to companies having to reduce their share capital due to losses, whereas art. 8 provides for that shareholders' loans granted within 31 December 2020 are not to be subordinated to suppliers and other unsecured creditors.

## **Provisions on Financial Statements**

### **Temporary measures on financial reporting standards - Artt. 7 and 8**

Financial reporting standards have also been amended following the peculiar moment we are living; in particular, Art. 7 provides for that the evaluation of items according to the principle of the going concern should be made with reference to the financial statements closed before 23 February 2020, i.e. the date in which the first crisis-related measures entered into force. Those companies which at that date showed no signs of danger as for their going concern, will carry out their evaluations basing on the principle of the going concern, except for what provided for under OIC accounting standard n. 29 on events occurred after the FY closing date, providing information on the nature and outcomes on said events on the assets, financial and economic situation.

## **Provisions on distressed companies and insolvency proceedings**

### **Deferment of the entry into force of the Code of corporate crisis and provisions on insolvency proceedings - Artt. 5 and 9**

Law Decree n. 23 dated 8 April 2020 also intervenes on art. 389 of Legislative Decree n. 14 of 2019 introducing the new Code of corporate crisis by deferring its entry into force from 15 August 2020 to 1 September 2021.

Art. 9 of the Decree extends by six months the terms of fulfilment of insolvency proceedings and approved restructuring agreements expiring in the period included between 23 February 2020 and 31 December 2021, whereas, as concerns the approval of insolvency proceedings and of pending restructuring agreements at 23 February

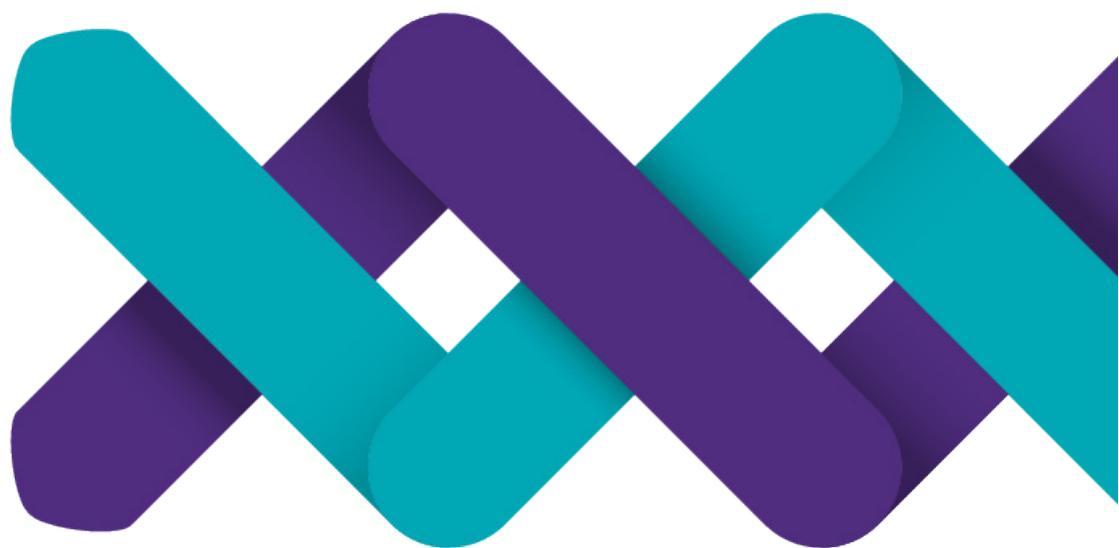
2020, it provides for the possibility for the debtor to file with the court, up to the hearing for the approval, an application for the granting of a term not exceeding 90 days to file a new plan and a new proposal of composition with creditors or a new restructuring agreement.

With the exception of applications for bankruptcy filed by public prosecutors with a request for protective measures in order to avoid possible dissipations, the Decree provides for a general bar to prosecutions of all application for bankruptcy, including applications filed directly by entrepreneurs for their own bankruptcy. The suspension is valid in the period included between 9 March 2020 and 30 June 2020, after which it will again be possible to submit applications.

## Provisions on tax matters

### **Suspension of tax and social security payments - Art. 18**

The Decree includes an update on the measures concerning the suspension of the payment of taxes and social security contribution relevant to April and May 2020. The table below summarises the main provisions:



**Table 1**

Taxpayer categories	Withholdings pursuant to articles 23 and 24 of Presidential Decree no. 600/1973	Social security contributions	VAT
<p>Subjects carrying out a business activity, art or profession having their tax domicile, registered office or operating office is located in Italy:</p> <ul style="list-style-type: none"> <li>• whose revenues or considerations did not exceed 50 million Euros in the tax period preceeding that in which the Decree came into force;</li> <li>• whose turnover or considerations decreased by at least 33% in March 2020 compared to the same months of the previous FY;</li> <li>• whose turnover or considerations decreased by at least 33% in April 2020 compared to the same months of the previous FY.</li> </ul>	<p>Payments due in April and May 2020 be due by 30 June 2020 in a single payment or through a maximum of 5 equal instalments starting from June 2020.</p>		
<p>Subjects carrying out a business activity, art or profession having their tax domicile, registered office or operating office is located in Italy:</p> <ul style="list-style-type: none"> <li>• whose revenues or considerations were higher than 50 million Euros in the tax period preceeding that in which the Decree came into force;</li> <li>• whose turnover or considerations decreased by at least 50% in March 2020 compared to the same months of the previous FY;</li> <li>• whose turnover or considerations decreased by at least 50% in April 2020 compared to the same months of the previous FY.</li> </ul>			
<p>Subjects carrying out a business activity, art or profession having their tax domicile, registered office or operating office is located in Italy: who started their business activity, art, or profession after 31 March 2019.</p>			



Taxpayer categories	Withholdings pursuant to articles 23 and 24 of Presidential Decree no. 600/1973	Social security contributions	VAT
<p>Non-commercial entities (including entities of the Third sector) and eligible entities recognised by the Civil Code carrying out institutional and general-interest activities not as business activities</p>	<p>Payments due in April and May 2020 be due by 30 June 2020 in a single payment or through a maximum of 5 equal instalments starting from June 2020.</p>	<p>na</p>	
<p>Subjects carrying out a business activity, art, or profession whose tax domicile, registered office, or operating office is located in Bergamo, Brescia, Cremona, Lodi and Piacenza:</p> <ul style="list-style-type: none"> <li>• whose turnover or considerations decreased by at least 33% in March 2020 compared to the same months of the previous FY;</li> <li>• whose turnover or considerations decreased by at least 33% in April 2020 compared to the same months of the previous FY.</li> </ul>	<p>Evaluation of applicable provisions for each single case under this table)</p>	<p>Payments due in April and May 2020 be due by 30 June 2020 in a single payment or through a maximum of 5 equal instalments starting from June 2020.</p>	

**Table 2 - Suspensions according to Cura Italia decree that are still effective**

Taxpayer categories	Withholdings pursuant to articles 23 and 24 of Presidential Decree no. 600/1973	Social security contributions
<ul style="list-style-type: none"> <li>• subjects managing stadiums, sports facilities, gyms, dance/fitness/body-building clubs and facilities, sports centres, swimming pools and centres;</li> <li>• subjects managing theatres, concert halls, movie theatres, including ticket services and performance supporting activities, as well as discos, ballrooms, nightclubs, amusement arcades and billiard halls;</li> <li>• subjects managing lottery and betting centres, including the management of related machines and equipment;</li> <li>• subjects organizing courses, fairs and events, including artistic, cultural, game, sports, and religious ones;</li> <li>• subjects managing restaurants, ice-cream shops, bakeries, bars and pubs;</li> <li>• subjects managing museums, libraries, archives, historical places and monuments, botanical gardens, zoos and nature reserves;</li> <li>• subjects managing nurseries and daily assistance services for disabled minors, education services and schools for children, first and second level education services, professional training courses, sailing/navigation/flying schools, which issue licenses or commercial licenses, professional driving schools;</li> <li>• subjects carrying out social assistance activities without accommodation for the elderly and disabled people;</li> <li>• thermal companies under law dated 24 October 2000, no. 323, wellness centres;</li> <li>• subjects managing amusement parks or theme parks;</li> <li>• subjects managing bus/train/underground stations, ports, or airports;</li> <li>• subjects managing land/air/sea/river/lake/lagoon transport services of goods and people, including the management of funiculars, cableways, cable railways, chairlifts, and ski-lifts;</li> <li>• subjects managing the hire of land/sea/river/lake/lagoon transport means;</li> <li>• subjects managing hire services of sports and recreational equipment, or structures and equipment for exhibitions and shows;</li> <li>• subjects carrying out touristic guide and assistance activities;</li> <li>• social utility not-for-profit organizations under art. 10 of legislative decree no. 460/1997 registered in the proper registers, volunteering organizations registered with the regional and provincial under Law no. 266/1991, and social promotion associations registered with the national, regional and Trento and Bolzano provincial registers under art. 7 of Law no. 383/2000, which exclusively or mainly carry out one or more activities of general interest provided under art. 5, para. 1 of legislative decree no.117/2017;</li> </ul>		<p>Payments relevant to the period between 2 March 2020 and 30 April 2020 will be due by 31 May 2020 in a single payment or through a maximum of 5 equal instalments starting from May 2020.</p>
<p>Touristic and accommodation entities, travel and tourism agencies, and tour operators</p>		
<p>National sports federations, sports promotion entities, sports associations and companies, either professional or amateur</p>		<p>Payments relevant to the period between 2 March 2020 and 31 May 2020 will be due by 30 June 2020 in a single payment or through a maximum of 5 equal instalments starting from June 2020.</p>

### **Extension of the exclusion from withholding taxation - Art. 19**

The Decree extends the possibility to apply for the exclusion from withholding taxation pursuant to articles 25 and 25-bis also to income and considerations received in the period included between 17 March and 31 May 2020. Therefore, the decree extends the time scope of application of the provisions introduced by *Cura Italia* Decree, which is entirely reported in the Decree under examination. Specifically, subjects having their domicile for tax purposes, registered office or operating office in Italy and normally subject to withholding taxation pursuant to articles 25 and 25-bis (e.g. withholdings on income from self-employment, commissions for agency, intermediation, commercial agency and business procurement relationships) can ask their tax withholding agents (e.g. principal) to be excluded from such withholdings with reference to income and considerations received in the period included between 17 March and 31 May 2020.

Amounts not withheld will have to be paid directly by the taxpayer (i.e. recipient) who benefitted from this option by 31 July 2020 (or, if paid by instalments, up to 5 monthly instalments of equal amount starting from July 2020).

- they have recorded revenues and considerations for an amount not exceeding Euro 400,000 in the tax period preceding the one in which the Decree entered in to force
- ii) they bore no expenses for subordinate or similar employment in the month preceding the one in which they received the considerations to be subject to the tax benefit.

Taxpayers willing to opt for this tax benefit need to issue a declaration (to their withholding tax agents), certifying that they meet the required conditions and committing to pay the amount due at the set deadline.

### **“Previsional method” for tax advance payments - Art. 20**

The decree provides the non-application of penalties and interest if tax advance payments, calculated on a previsional basis, are at least equal to 80% of the amounts actually due basing on the tax return and of IRAP. These dispositions are applicable for advance payments due on IRPEF, IRES, and IRAP.

These provisions apply exclusively to advance payments due for the tax period following the current one at 31 December 2019.

### **Relief from time limits for payments - Art. 21**

Payments due to public administrations by 20 March 2020 – in consideration of the amendments introduced by art. 60 of *Cura Italia* decree – are considered as paid within the terms if fulfilled by 16 April 2020. These dispositions are applicable to all taxpayers.

### **Provisions on the terms for the submission and electronic filing of *Certificazione Unica* 2020 return - Art. 22**

*Certificazione Unica* 2020 returns can be i) submitted to concerned persons and ii) electronically filed with the Revenue Agency by 30 April 2020 without the application of any penalties.

### **Extension of validity of the certifications exempting from obligations in contract works - Art. 23**

Certificates issued to companies for the purposes under art. 17-bis, para. 5 of Legislative Decree no. 241/1997 (so-called DURF), by 29 February 2020, are valid and effective up to 30 June 2020.

### **Terms for tax benefits on the first house - Art. 24**

The terms provided in order to obtain the tax benefit on the so-called “first house” are suspended in the period from 23 February 2020 and 31 December 2020. As indicated by the Revenue Office in its guide to the Decree, the main terms that fall within this suspension refer to:

- transfer of the residence to the town where the purchased house is located
- purchase of another property to be used as main dwelling in case the first house is sold within 5 years from its purchase
- re-sale of the first house, in case of concessional purchase of a new house
- purchase of a first house after selling the previous one and obtainment of a credit equal to taxes paid on the previous purchase (or on the new one, if lower).

### **Simplification of the payment of stamp duty - Art. 26**

The Decree introduces a simplification of the payment of stamp duty on issued invoices, when the duty amount due is not relevant. In particular, stamp duty can be paid without any penalties or interest:

1. for quarter 1, within the terms provided for the payment of the duty relevant to quarter 2 of the reference solar year, if the amount of the duty due on electronic invoices issued in quarter 1 is lower than Euro 250;
2. for quarter 1 and 2, within the terms provided for the payment of the duty relevant to quarter 3 of the reference solar year, if the amount of the duty due for electronic invoices issued in quarter 1 and 2 is lower than Euro 250.

### **Amendments to the tax regime of profits distributed to partnerships (società semplici) - Art. 28**

Art. 28 introduces updates on the tax regime applicable to profits distributed to so-called *società semplici* partnerships. Specifically, even non-resident subjects are now included within the scope of the regulation. These regulations, first introduced with Law no. 157/2019, provide taxation of dividends received by *società semplici* on each recipient shareholder.

### **Tax credit for the purchase of protection devices in working places - Art. 30**

A tax credit is granted in relation to the purchase of individual protection devices and other safety equipment, aimed at protecting workers from the accidental exposition to biological agents and ensure security distance between people. The procedures to determine and benefit from the credit fall within the provisions concerning the tax credit for the sanitization of work environments introduced by art. 64 of *Cura Italia* decree. Therefore, the credit will be granted as equal to 50% of justified costs incurred up to a maximum amount of Euro 20,000 for each beneficiary. The criteria and procedure to use such credit will be indicated in a decree of the Ministry of economic development.

## Provisions on tax litigation proceedings

### **Provisions on tax litigation proceedings and notification of penalty impositions related to the unified payment, and litigation activities of tax authorities - Art. 29**

In order to facilitate a full digitalization of tax litigation proceedings, the decree provides the obligation, even for disputes started basing on paper fulfilments and still pending according to the same procedures, to notify and file subsequent deeds through electronic procedures. Even judgments will be notified electronically to the parties in the proceedings.

It is also provided that notices of the imposition of penalties due to the omitted or partial payment of the unified payment due by the parties can be notified by the first and second instance courts through certified email to the selected address or, if this is missing, by filing it with the competent court's secretary or clerk office.

Lastly, the suspension term – originally provided up to 15 April 2020 and now extended to 11 May 2020 – is unified for all tax litigation-related activities of taxpayers and of tax authorities (e.g. notification and filing of the originating application, appeal and cross appeal, filing of counter-deductions, filing of short replications, memorials, and documents).

### **Provisions on trial terms in civil, criminal, administrative, accounting, tax, and military proceedings - Art. 36**

The suspension of terms for the fulfilment of any deed in civil and criminal proceedings – originally provided up to 15 April 2020 – is extended to 11 May 2020.

Similarly, hearings of pending procedures are postponed after 11 May 2020 (originally 15 April 2020), except for criminal procedures in which the maximum terms for preventive detention expire within six months after 11 May 2020. The extension of suspension applies also to proceedings before tax and military courts, as well as to the functions and activities of the Italian court of audit - *Corte dei Conti*.

As concerns administrative procedures, the terms for the notification of appeals are further extended from 16 April to 3 May 2020. The suspension does not apply to interlocutory proceedings.

### **Provisions on the terms for administrative proceedings and for the effectiveness of administrative acts reaching maturity - Art. 37**

The suspension of mandatory, peremptory, preparatory, interim, final, and executive terms related to administrative proceedings started either by a party or by the competent administration itself – originally provided up to 15 April 2020 – is extended up to 15 May 2020.

The validity of certificates, declarations, permits, concessions, authorizations and any other qualifying act expiring at 15 May 2020 (originally, 15 April 2020), is also extended up to 15 June 2020.

Lastly, the suspension of terms related to disciplinary proceedings of public administration personnel – originally provided up to 15 April 2020 – is extended up to 15 May 2020.

Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - [bgt-grantthornton.it](https://www.bgt-grantthornton.it) - for further details on any issues concerning COVID-19.

