

Suspension of administrative and judicial proceedings



Focus on...

Here below we summarise some aspects concerning terms and deadlines within tax proceedings, introduced by Law Decree 18/2020 and Law Decree 23/2020.

Provisions on tax litigation proceedings

Postponement of hearings - All hearings scheduled from 9 March 2020 to 11 May 2020 are postponed ex officio until after 11 May 2020. If the term is to be counted backwards and falls – in whole or in part – within the suspension period, the hearing or the activity from which such terms starts is deferred, so to allow for the term to be observed.

Exceptions for which the suspension does not apply:

- proceedings for the precautionary suspension of the provisional enforceability of disputed judgments
- interlocutory proceedings aimed at suspending the effects of the judgement under appeal
- interlocutory proceedings aimed at suspending enforceability in judgements against the Regional Tax Commission concerning sanctioning measures
- proceedings aimed at adopting precautionary measures as registering a mortgage or enforcing a seizure.

Suspension of proceedings' deadlines/terms

- The running of times for litigation activities is suspended, for all parties (taxpayers and Tax Authorities) for the period between 9 March 2020 to May 11 2020.

Should the term be supposed to start running within the suspension period, the beginning of said term is automatically deferred to 12 May 2020. This suspension concerns any court proceedings, including:

- the filing of the appeal;
- the filing of the appeal and counter-claim for the Supreme Court; the filing of the notice of resumption before the Provincial or Regional Tax Commission
- the appearance before the Court of the claimant and the appellant
- the appearance before the Court of the respondent and the appellee, as well as the filing of the interlocutory cross-appeal
- the integration of the grounds of appeal;
- the filing of the complaint against presidential measures
- the transmission, by the Office, of the observations on the appeal for compliance submitted by the taxpayer.

Exceptions for which the suspension does not apply:

- time limits relating to the aforementioned interlocutory proceedings
- appeal deadlines originally expiring between 24 October 2018 and 31 July 2019, which have already been automatically suspended for a period of 9 months, according to the rules and regulations of the facilitated settlement of pending disputes
- deadlines for the payment, also in instalments, of the amounts due as a result of the tax assessment settlement agreement
- deadlines for the payment, also in instalments, of the amounts due following judicial conciliation
- deadline of 31 May 2020 for the payment of the fifth instalment relating to the facilitated settlement of pending litigations.

Suspension of the time-limits/terms/deadlines for bringing an appeal at first instance and for the mediation procedure -

The time limit for the taxpayer to notify the filing of appeal proceedings at first instance shall be suspended for the period from 9 March 2020 to 11 May 2020.

For the same period, all the deadlines relating to the complaint-mediation procedure (preparatory to an appeal whose value of less than 50 thousands Euro), are also suspended, that is

- the 90-day deadline for the conclusion of the mediation procedure
- the term of 30 days from the end of the mediation procedure, provided for the filing of the initiating appeal with the Provincial Tax Commission
- the 20-day deadline for the payment of the total amount, i.e. the first instalment of the amounts due on the basis of the mediation agreement reached between the parties (the suspension does not operate, however, for any instalments subsequent to the first one).

Suspension of proceedings' deadlines/terms and tax assessment settlement agreement -

The question of the eligibility to combine the suspension of the procedural/judicial time-limits in compliance with Law Decree "Cura Italia" and that of the time-limits for the filing an appeal after the establishment of the tax assessment settlement agreement remains uncertain (although, it should be noted, that the Inland Revenue issued a favourable opinion on this). The uncertainty arises from the fact that such cumulation/combination:

- seems to lack a supporting regulatory framework: art. 7-quater, c. 18, Law Decree 193/2016 provided for cumulability/combination only *with the period of holiday suspension of the judicial activity*
- is inconsistent with the orientation of the case-law of the supreme court which, even after the introduction of the above

mentioned rule, has continued to pronounce itself in the sense of non-cumulation/non-combination (e.g.. Cass. no. 7386/2019);

- does not even seem to have been clearly superseded considering that, upon being turned in to law, paragraph 20 of Article 83 of the Italian Law Decree "Cura Italia" provided for the suspension of the time limits for the performance of mediation, assisted negotiation and all out-of-court settlement proceedings in civil matters. The nature of those latter activities and proceedings is indeed different from that of the tax assessment settlement agreement and it does not seem possible for these activities to overlap. First, the tax assessment settlement agreement is an administrative procedure to avoid tax litigation. Moreover, on the other hand, the tax assessment settlement agreement has no transaction/composition or negotiation nature, for the tax claim is unavailable and the tax administration cannot negotiate it. On the contrary, the tax assessment settlement agreement is a unilateral act, i.e. the expression of the right to tax that in the presence of new factual and legal elements - brought by the taxpayer within the granted timeframe - can lead to a recalculation of the tax claim.



Provisions on the suspension of deadlines relating to the activities of the Tax Authorities

Suspension of the deadlines for the activities of the offices - For the Inland Revenues, from 8 March 2020 to 31 May 2020, the following deadlines are suspended:

- liquidation, control, assessment and collection
- reply to ruling requests, also to be provided following to the presentation of the supplementary documentation, and invitation to regularise them
- notification of admission to the collaborative compliance regime
- completion of the cooperation and enhanced cooperation procedure for the definition of the tax payables of any possible permanent establishment in Italy of companies belonging to multinational groups

- advance pricing agreements with companies having international activities
- recognition of the downward income adjustment to implement the agreements reached with the competent authorities of foreign States, following Mutual Agreement Procedures under international conventions against double taxation or under the Arbitration Convention, following the conclusion of assessments carried out within international cooperation activities and whose results are shared by the participating States and at the taxpayer's request, against a final upward adjustment in accordance with the principle of free competition made by a State with which a convention for the avoidance of double taxation is in force
- advance agreement procedures for the application of the optional "patent box" regime.

Cases in which the suspension does not apply:

- deadline for notifying the refusal of the facilitated settlement of pending disputes
- deadline for activities relating to refunds, including the request for documentation deemed useful for carrying out the investigation.

Two-year postponement of limitation and prescription terms - The original version of art. 67 of the "Cura Italia" Decree provided for the extension until 31 December 2022 of all limitation and prescription deadlines - expiring in 2020 - relating to the activities of Tax Authorities with respect to those taxpayers who may benefit from the suspension of tax obligations and payments.

Once turned into law, this extension was removed and replaced with the suspension - in favour of the Tax Authorities - of the limitation and prescription terms, for a period of time corresponding to the suspension of the payment terms granted to taxpayers.



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