

Relaunch Decree: novelties on recapitalisation to face the Covid-19 outbreak



Focus on...

Capital strengthening for middle-size enterprises

Among the measures provided for by the so-called Relaunch Law Decree (Law Decree no. 34/2000), several tax provisions aim at fostering the recapitalization process of those companies that most of all have suffered alarming economic and financial rebounds due to the COVID-19 pandemic emergency, i.e. medium-sized companies.

In this context, the various Government's provisions include tax credit mechanisms provided for by Art. 26 of the Decree, whose main feature we briefly outline below.

Tax credit to ease contributions - Art. 26, paragraph 4

Paragraph 4 in Art. 26 introduces a specific tax credit applicable in case a contribution is made – to be paid by the end of the current calendar year – in companies who resolved upon a capital increase strictly within December 31, 2020, and that meet the following conditions:

1. they do not fall within the definition under art. 162-bis of the TUIR, the Italian Income Taxes Consolidated Text (financial intermediaries and holding companies), also excluding insurance companies;
2. their revenues range between 5 and 50 million euros in FY 2019;
3. they recorded a reduction in revenues – further to the COVID-19 pandemic emergency – in March and April 2020, equal to at least 33% of the amount of revenues attained in the previous FY.

The amount of revenues under the conditions b) and c) above shall have to be considered on a consolidated basis, should the company belong to a Group.

The tax credit shall be 20% of the investment, and the maximum eligible contribution shall not exceed 2,000,000 euros. Consequently, the maximum achievable tax credit will be up to 400,000 euros. The calculated credit could be used, by the contributing taxpayer, in the tax return or for offsetting purposes, in compliance with art. 17 of Legislative Decree n. 241/1997.

In this first version of the regulation - which entered into force on May 19 - companies that directly or indirectly control the transferee company, are subject to common control or are associated with it, or are controlled by the transferee company, are excluded from the tax benefit. Therefore, unless further clarifications or amendments are made in the conversion into Law, contributions eligible for the tax credit shall be, by way of example, contributions by individuals (in this case, even if they are majority shareholders) and/or the so-called minority shareholders.



The allowance, in order to be kept, is conditional on i) detention of shareholdings - arising from the contribution made - until December 31, 2023 and ii) until the same date, the impossibility, for the transferee company, to distribute any kind of reserve. The non-compliance with any of these two conditions implies, for the beneficiary of the tax credit, the refund of the benefit itself plus the relevant legal interest rates. It is important to highlight that, currently, no specific sanction applies.

Investments in permanent establishments of companies with registered offices in Member States of the European Union or in countries belonging to the European Economic Area can also benefit from the tax credit measure. In those cases, the rule does not expressly provide that the investment must directly affect the PE's endowment fund. We hope for a clarification from the authorities on this aspect as well as on other technical issues related with this benefit.

The tax credit does not contribute to the formation of the taxable income; neither does it contribute for income tax purposes, nor for regional production tax purposes. Additionally, its offset is neither subject to the thresholds of general offsetting (Euro 700,000 euros and Euro 1 million, only for 2020), nor to the thresholds of the tax credits to be reported in the "quadro RU" section (Euro 250,000).

Tax credit from economic losses - art. 26, paragraph 8

Companies meeting the conditions under letters a), b) and c) above are granted a tax credit equal to 50% of losses exceeding 10% of the net equity, gross of the losses, up to 30% of the capital increase to be resolved upon and fully paid by December 31, 2020.

This credit shall be acknowledged only further to the approval of the financial statements for FY 2020 and the benefit calculated shall not exceed the amount of 800,000 euros.

A mandatory condition for maintaining the benefit is, also in this case, the impossibility to distribute reserves of any kind prior to January 1, 2024. Moreover, all companies, in order to benefit from this favourable measure, shall comply with additional requirements. These are, e.g. i) regularity of social security contributions and tax payments and ii) compliance with specific conditions regarding directors, partners and beneficial owners (as these individuals shall not have received, in the last five years, a final judgement for income taxes or VAT breaches, should the additional penalty of prohibition to hold Public Office have been applied).

This tax credit too does not contribute to the taxable income; neither does it for income tax purposes and for regional production tax purposes either. Additionally, its offset is neither subject to the thresholds of general offsetting (Euro 700,000 euros and Euro 1 million, only for 2020), nor to the thresholds of the tax credits to be reported in the "quadro RU" section (Euro 250,000).

Expenditures thresholds and implementing measures

The measures above, in addition to receiving approval from the European Union, are limited to the threshold of 2 billion euros of public expenditure. A specific Decree by the Ministry of Economy and Finance, to be issued by next June 18, will set forth the terms and conditions for the application of the tax credits as well as for the supervision of the public expenditure threshold.

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 - for further details on any issues concerning COVID-19.

