

Pandemic Emergency: new laws and opportunities for Groups operating in Italy

Clever Desk webinar

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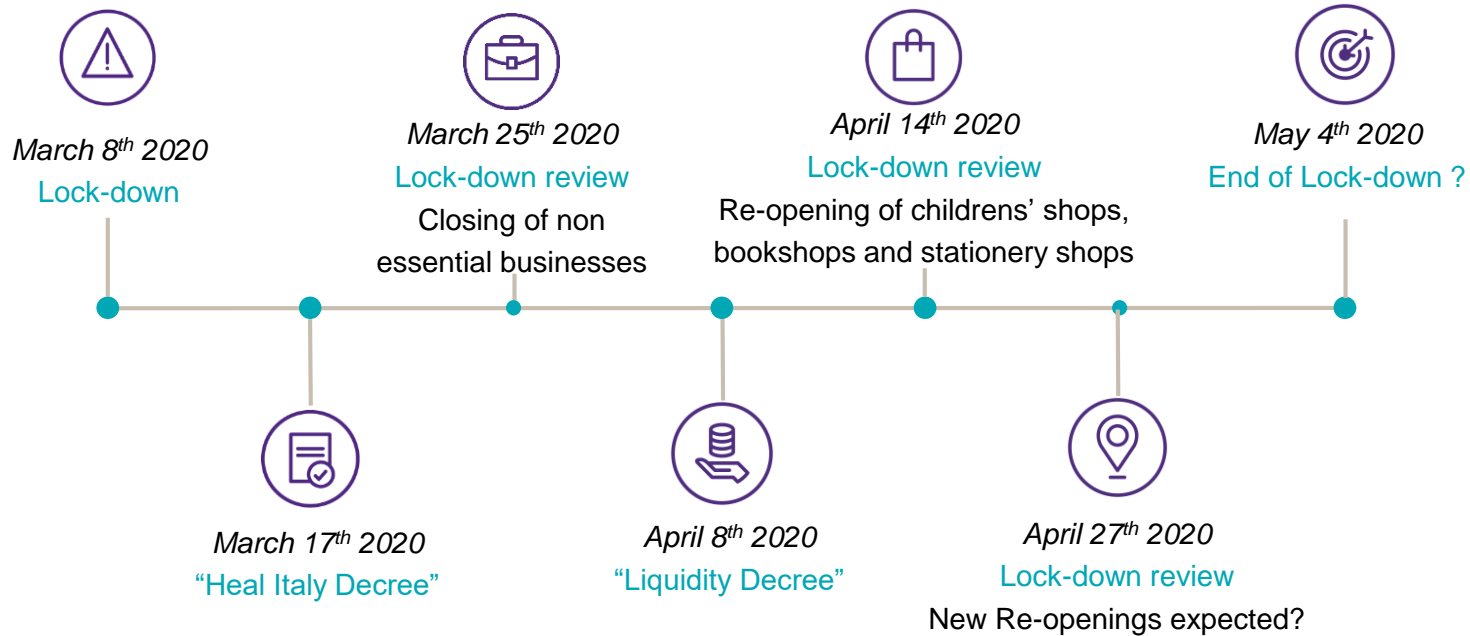


Agenda

- Legislation
- Lock-down and Re-opening
- Corporate Provisions
- Tax Provisions and Litigation
- Financial provisions
- Labour provisions

As is snapshot

COVID-19 Emergency timeline



Legislation

- **Law Decree** March 17, 2020 n. 18 (so called “Heal Italy Decree” or “March Decree”) published on the Italian Official Gazette n. 70 of March 17, 2020 and to convert into Law within May 16, 2020
- **Law Decree** April 8, 2020 n. 23 (so called “Liquidity Decree”) published on the Italian Official Gazette n. 94 of April 8, 2020 and to convert into Law within June 7, 2020.

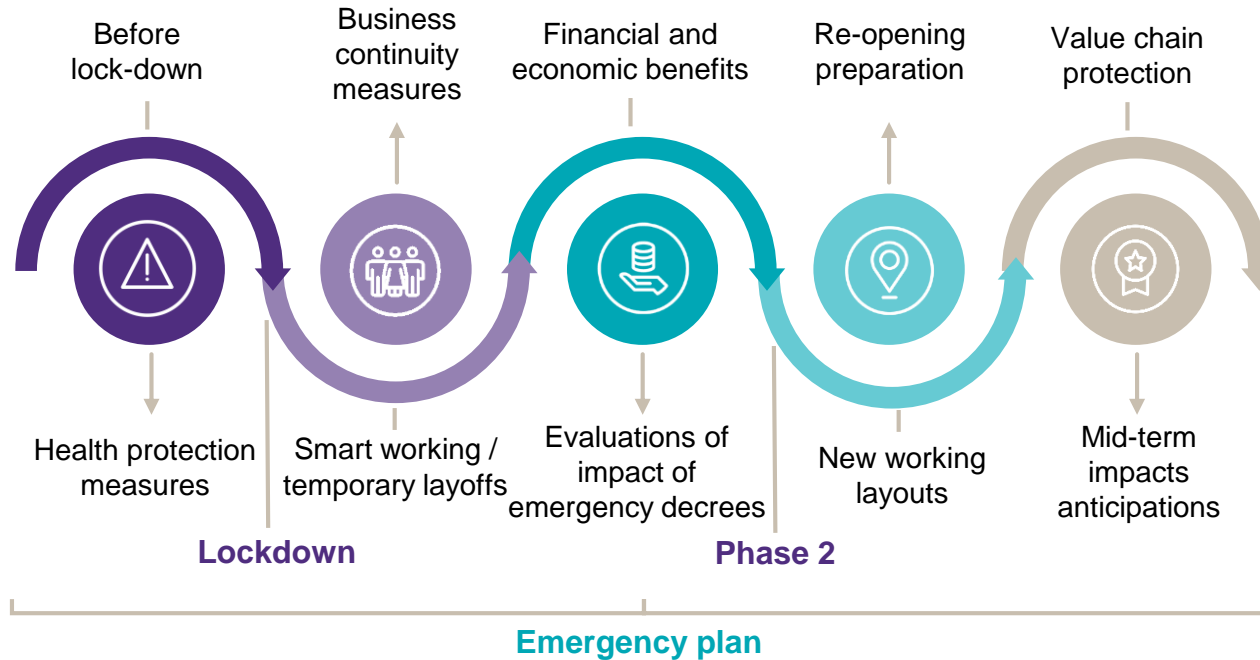
Clarifications provided by the **Italian Tax Authority** with following **Circular letters**:

- n. 6 of March 23, 2020
- n. 7 of March 27, 2020
- n. 8 of April 3, 2020
- n. 9 of April 13, 2020
- n. 10 of April 16, 2020

Regional disposals locally enacted (e.g. Lombardy, Emilia Romagna and Veneto).

Lock down and Re-opening

Business evaluations in an emergency framework



The Relevance of ATECO Code

Essential Businesses

Only some businesses (those considered “essential”) **were allowed to continue their operations** throughout the lock-down.

All others were ordered to suspend their activities unless they can be continued working from home (to allow that, a specific provision was contained in the Heal Italy Decree to consent **generalized smart working** even if not regulated by relevant employment agreements).

Essential businesses were identified according to their ATECO Code (i.e. the national version of the NACE, the European classification of economic activities).

ATECO means ATtività ECONomica (i.e. Economic Activity) and it is an alfa-numeric code allocated to a business on registration and start-up - introduced in this form in 2007. The code is used by ISTAT for statistics by ITA for tax reference and by INPS for SSC.

Given the above, also in view of the re-opening, **it is key that local businesses declare the correct ATECO code associated with the current activity they carry on.**

Corporate provisions

Corporate law provisions

(1)

- **Shareholders' meetings** for *S.p.a.*, *S.a.p.a.* and *S.r.l.* can be called within an extended term of **180 days** after the closure of the fiscal year (instead of ordinary 120 days);
- Shareholders' (and Board of Directors') meetings can be held through conference calls and **electronic and postal voting** applies also in absence of a specific clause in the bylaws;
- Italian Civil Code measures consequential to the **reduction of share capital** amount **due to losses** are not applicable for year 2020;
- The business continuity (presence of a **going concern**) of corporations should be evaluated with regard to their situation **before February 23, 2020**.

Corporate law provisions

(2)

- **Shareholders' loans** granted within December 31, 2020 are not subordinated to suppliers and other unsecured creditors;
- New rules introduced by **Code of corporate crisis** will be applicable starting from September 1, 2021 (instead of August 15, 2020);
- An **extension of six months** is granted for
 - filing insolvency proceedings and approved restructuring agreements expiring between February 23, 2020 and December 31, 2021
 - approving insolvency proceedings and pending restructuring agreements at February 23, 2020;
- All **bankruptcy applications** are **suspended** between March 9, 2020 and June 30, 2020.

Tax provisions and litigation

Tax provisions and litigation

New provisions have been set in terms of:

1. General deferment of tax payments
2. Deferment of collections and tax filings
3. Advanced tax payments calculation
4. Deductions and Tax credits FY 2020
5. Suspension of administrative procedures and Tax Authority activities
6. Tax litigation and suspension of some administrative activities

1. Deferment of tax payments

(1)

Withholdings, Social Security Contribution and Value Added Tax

Payments due between **April 1 and May 31, 2020** related to:

- Withholdings tax on employment income and professional remunerations (**WHT**)
- Social Security Contribution (**SSC**)
- Value Added Tax (**VAT**)

can be made **within June 30, 2020** (in one payment or in 5 equal amount installments starting from June 30, 2020) by subjects which carry on a business activity, art or profession having their **tax domicile, register office** or **operating office in Italy**, if their **turnover** in March and April 2020 decreased by at least:

- **33%** respect of March and April 2019 for subjects with revenue and considerations 2019 **not exceeding € 50 ML**;
- **50%** respect of March and April 2019 for subjects with revenue and considerations 2019 **exceeding € 50 ML**.

1. Deferment of tax payments

(2)

Special provisions:

1. Qualified industries mostly affected by the lock-down
2. Business located in Bergamo, Brescia, Cremona, Lodi and Piacenza
3. Small business (up to 2 ML 2019 turnover but only re: March payments)
4. Suspension of WHT on small taxpayers

2. Advanced tax payments calculation

Advanced tax payments due for the current FY based on provisional method calculation are neither subject to penalties nor interests if the amount paid is **at least equal to 80%** of the amount due according to the CIT (IRES) and Regional Tax (IRAP) returns for FY 2020.

3. Deferment of collections and tax filings

Deferment of collections

Payments arising from collection deeds such as tax bills, tax assessment notices, SSC bills (ivi included payments on installments) due between March 8 and May 31, 2020 are deferred to June 30, 2020.

Deferment of Tax filings

Tax filings due between March 8 and May 31, 2020 are automatically deferred to June 30, 2020. 2019 Compensation statements (“Certificazioni Uniche or CU”) due by March 31, 2020 can be filed within April 30, 2020.

4. Deductions and Tax credits FY 2020 (1)

Conversion of Deferred Tax Assets (DTAs) in new Tax Credit

Companies with receivables unpaid for more than 90 days can claim a tax credit if they sell these receivables at discount and have:

- Tax losses carried forward
- Excess of notional interest deduction (Aid to Economic Growth - Italian “ACE”) carried forward.

The **24%** tax credit is obtained by converting tax losses or ACE excess.

The conversion is capped to 20% of the face value of sold receivables.

The emerging tax credit can be:

- Offset against tax payables without limits
- Assigned within the same group or to third parties
- Claimed for refund.

A 1.5% duty will be due in the FY following the conversion.

4. Deductions and Tax credits FY 2020 (2)

Tax credit for shop leases

A tax credit of 60% of the amount paid for leasing shops and retail spaces (**cadastral category C/1**) for **March 2020** is granted to all subjects which carry on a business activity in Italy. Said tax credit is only available through offsetting with other taxes/SSC due.

Tax credit for advertising

A tax credit for advertising on newspapers, magazines, television and radio broadcasters is granted at 30% of the value of expenses sustained in 2020 up to a cap of € 27.5 ML.

An electronic application must be filed between September 1 and September 30, 2020.

This Credit is conditioned to EU limits.

Tax credit for sanitization of working environments (special Decree expected)

A tax credit of 50% of the expenses sustained, up to a maximum expense of € 20 k, is granted for:

- workspaces and work instruments sanitization;
- COVID-19 personal protection equipment (PPE) purchase.

Tax credit for COVID-19 related donations

- A full deduction is allowed for all expenses sustained in FY 2020 supporting the limitation of COVID-19 spread.

5. Suspension of administrative procedures and Tax Authority activities

Administrative procedure

All deadlines to administrative activities originally expiring between February 15 and May 11, 2020 are suspended till May 12, 2020.

The validity of all certificates (including certificates issued by foreign Tax Authorities) originally expiring between January 31 and June 15, 2020 is extended till June 15, 2020.

Suspension of terms and submitting ruling requests

The terms for providing outcomes to the requests for a ruling submitted in the suspension period (March 8, 2020 – May 31, 2020) and for the relevant assessment will start from June 1, 2020. During the suspension period, ruling requests can be submitted only through certified email (so called “PEC”) or regular email address (for non resident taxpayers without an approved agent in Italy).

Tax Authority activities and right of access

The ordinary terms for tax audits, tax assessments, tax collection and tax litigation are suspended from March 8 till May 31, 2020.

6. Tax litigation

Extension of the statute of limitation

Limitation and prescription periods originally expiring on December 31, 2020 are deferred to **December 31, 2022** (i.e. tax assessment on CIT/VAT and Individual Tax returns FY 2015 or FY 2014 in case of fling omission at the original deadline). **This provision will likely be removed in the conversion of the “Heal Italy Decree”.**

Payment due as an assessment or tax bill consequences

The payments due between March 8, 2020 and May 31, 2020, as a consequence of:

- tax bills, tax assessment notices and debit notices issued by the Italian Social Security Institute (INPS)
 - an assessments issued by the Customs Office,
- are deferred to June 30, 2020.

Furthermore between March 8 and May 31, 2020 all injunctions issued by the Regional Authorities and Execution proceedings issued by local entities are suspended as well.

Financial provisions

Liquidity support for companies

The most significant measures introduced to support liquidity needs of companies, small owner-operated businesses, self-employed and professional can be considered:

1. Small Medium Enterprises (SMEs) Guarantee Fund;
2. Deferment and suspension of SMEs loans and credits;
3. State guarantees on loans granted by banks and other Financial Intermediaries (FIs);
4. Loans granted by the Italian Credit sport Institution (Istituto per il *Credito sportivo*).

Table 1 – Large Companies Guarantee Fund

Beneficiaries	Companies with less than 5,000 employees in Italy and a turnover up to Euro 1.5 billion	Companies with more than 5,000 employees in Italy or with a turnover between Euro 1.5. and 5 billion	Companies with a turnover exceeding Euro 5 billion
State guarantee	90%	80%	70%
Limitations	Clauses on dividends (no distributions), Shares buyback, employment, “made in Italy”		
Costs	Preliminary fees + for SMEs: depending on the amount granted, 0.25% for the 1 st year, 0.5% for the 2 nd and 3 rd year, 1% for the 4 th , 5 th and 6 th year. For bigger companies: 0,5% for the 1 st year, 1% for the 2 nd and 3 rd year, 2% for the 4 th , 5 th and 6 th 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		

Table 2 - SMEs guarantees on bank loans

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	

Labour provisions

Labour provisions

1. Temporary Lay-off special schemes

Employers who suspend or reduce working activities due to events derived from the COVID-19 emergency can apply for the ordinary redundancy funds or salary supplementary funds (FIS) for periods starting from February 23, 2020 and **for a maximum term of nine weeks** and in any case not later than August 2020.

Applications can be submitted within the end of the 4th month after the working activities were first suspended and **can be retrospective**.

The procedure to apply for such aids is simplified and provides the submission of a communication to trade union organizations via certified email and a possible joint examination to be carried out within three days, even electronically.

Aids can be granted for all **people employed** by the concerned entity **at March 17, 2020**.

The measure is very flexible and it is possible for the employer to cover the difference in net salary (which can be significant, given salary caps apply) to benefit its employees.

2. Extension of document on tax payment regularity (DurF) validity

The validity of DurF issued by February 29, 2020 is extended to June 30, 2020.

Labour provisions

3. Prohibition of Dismissal

Individual and collective terminations for business related reasons are prohibited until May 18, 2020.

4. Special leave for parents and vouchers for baby-sitting

Employees with children under the age of 12 are entitled to 15 days of special leave while schools are closed. An indemnity equal to 50% of salary will be paid by the Italian Social Security Institution.

Employees with children aged 12 to 16 are alternatively entitled to a special unpaid leave to be used until schools reopen.

Alternatively parents can apply for a baby-sitting voucher (€ 600) paid by the Italian Social Security Institution.

5. Injuries and sick leave

COVID-19, contracted at the workplace, is treated as an accident at work.

Time spent in quarantine is treated as sick leave and shall not be taken into account when calculating the maximum duration of guaranteed sick leave.

Q&A

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