

Italy: Support Decree 2

Tax & Legal Alert

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Decree Law no. 73 of 25 May 2021, introducing "urgent measures, prompted by the COVID emergency, to support businesses, employment and the professions, as well as liquidity, healthcare and local services".

The following document summarizes the main tax and employment measures introduced by Decree Law no. 73 of 25 May 2021, which was published in Official Gazette no. 123 on 25 May 2021 and came into force on 26 May 2021 (the 'Sostegni-bis Decree' or 'Support Decree 2').

Support Decree 2 must be converted into law within 60 days of its publication in the Official Gazette and may undergo changes during the conversion process.

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1. Tax measures

1.1 Grants for economic operators - Article 1

Article 1 of Support Decree 2 introduces new grants for economic operators affected by the COVID-19 health emergency.

A. The first type of grant⁽¹⁾ is for those having an active VAT number on 26 May 2021 that have submitted an application and received a grant under Support Decree 1⁽²⁾. These parties do not have to take any steps to obtain the grant, which will be issued automatically without the need for the taxpayer to submit further applications. The amount of the grant will be the same as that already paid⁽³⁾ and it will be issued in the same manner chosen in the original application, i.e. credited to a bank account or recognized as a tax credit.

B. The second type of grant⁽⁴⁾ is for all parties that pursue a business, trade or profession and produce agricultural income, provided they have a VAT number, are resident or established in Italy and have revenues or a remuneration of no more than EUR10 million. This grant is an alternative to Grant A above and is not available for parties whose VAT number was inactive on 25 May 2021. More specifically, **those that have already benefited** from the grant available under Support Decree 1 (see previous paragraph) may receive this possibly higher grant⁽⁵⁾, in which case the grant already paid or recognized in the form of a tax credit by the Revenue Agency will be deducted from it. What also differentiates this Grant B from Grant A is the manner in which it is calculated. While in the calculation of the grant available under Support Decree 1 the average monthly turnover decrease was determined by comparing the figures for calendar year 2020 with those for calendar year 2019, in this alternative system the grant is due if the average monthly amount of turnover and remuneration for the period 1 April 2020 - 31 March 2021 was at least 30 percent lower than the amount calculated over the period 1 April 2019 - 31 March 2020. The awarding of Grant B is not automatic; thus it will be necessary to submit an application. Since it is possible that the Revenue Agency will have already awarded and credited Grant A while the application is pending, Grant B will be issued to the applicant in the form of a credit for the difference. If the fall in turnover recorded in the second period (1 April 2020 - 31 March 2021) is greater than that of the first period (1 April 2019 - 31 March 2020), applicants will be entitled to an increased grant, determined by applying a specific coefficient to this difference.

(1) Introduced by paragraphs 1 to 4 of article 1.

(2) The first 'Support Decree' was Decree Law no. 41 of 22 March 2021.

(3) In other words, the same amount as that already paid under article 1 of Support Decree 1.

(4) Introduced by paragraphs 5 to 9 of article 1.

(5) Determined pursuant to paragraph 5 of article 1.

The coefficient will vary according to the volume of revenues or remuneration of the second fiscal year prior to that in progress on 26 May 2021 and will be:

- 60 percent if the volume of revenues or remuneration does not exceed EUR100,000;
- 50 percent if the volume of revenues or remuneration is greater than EUR100,000 but less than EUR400,000;
- 40 percent if the volume of revenues or remuneration is between EUR400,000 and EUR1 million;
- 30 percent if the volume of revenues or remuneration is greater than EUR1 million but less than EUR5 million;
- 20 percent if the volume of revenues or remuneration is greater than EUR5 million but less than EUR10 million.

A. The third type of grant⁽⁶⁾ is for those that did not benefit from the grant under Support Decree 1 but recorded a decrease in turnover of at least 30 percent between 1 April 2020 and 31 March 2021 compared to the same period of the previous year. The mechanism is the same as for Grant B but the coefficients are higher⁽⁷⁾: 90 percent, 70 percent, 50 percent, 40 percent and 30 percent with respect to the same brackets of revenues/remuneration. For all parties, Grant C may not exceed EUR150,000.

B. The fourth type of grant⁽⁸⁾, which can be considered as the 'final' one, is available for the same parties that are entitled to Grants A, B and C (i.e. 2019 revenues of less than EUR10 million). This last grant, which, according to the wording of Support Decree 2, is not an alternative to the other types, does not require an active VAT number; reference must be made instead to parameters related to the economic performance of the business. Grant D may be due if there is a decrease in the economic result of the fiscal year in progress on 31 December 2020, compared to that of the fiscal year in progress on 31 December 2019 (the minimum percentage decrease will be identified by an ad hoc decree). The amount of the grant will be based on the difference between the economic result of the fiscal year in progress on 31 December 2020 and that of the fiscal year in progress on 31 December 2019, net of any other COVID-19 grants received.

For all parties, Grant D may not exceed EUR150,000.

(6) Introduced by paragraphs 10 to 15 of article 1.

(7) Article 1 (10) of Support Decree 2.

(8) See paragraphs 16 to 24 of article 1.

To obtain Grant D, the relevant parties must submit an application to the Revenue Agency - only electronically, under penalty of forfeiture - within 30 days of the opening of the electronic submission procedure. The procedures for submitting the application, the information to be provided, the submission deadline and any other necessary details will be defined by the director of the Revenue Agency.

The application for Grant D may be submitted only if the tax return for the fiscal year in progress on 31 December 2020 is submitted by 10 September 2021.

Grants B, C and D do not constitute taxable income and are not included in the value of net production for IRAP purposes.

The taxpayer can elect to receive the whole of Grants B and C in the form of a tax credit, to be used exclusively as an unrestricted offset by submitting an F24 form exclusively through the electronic system made available by the Revenue Agency. This election cannot be changed later.

1.2 Urgent measures for the textile and fashion industry and for other economic activities particularly affected by the COVID-19 emergency - Article 8

One of the emergency measures introduced last year⁽⁹⁾ was a tax credit for fiscal year 2020, to be used exclusively as an offset in the following fiscal year (2021). The credit amounted to 30 percent of the portion of the closing inventory⁽¹⁰⁾ that exceeded the average closing inventory recorded in the three previous fiscal years and, for 2021, EUR45 million was earmarked to cover this relief.

Considering the continuation of the emergency prevention and containment measures and the persistence and worsening of the harmful effects suffered by businesses in the textile and fashion industry due to the absence of tourism and the continuous closure and reopening of businesses, Support Decree 2 establishes that this benefit will also apply to the fiscal year in progress on 31 December 2021, and makes the consequent amendments to the original provisions.

Those original provisions did not become operative, due to failure to issue the implementing interministerial decree. This failure was attributable to the difficulty in implementing the model outlined by the provisions, which Support Decree 2 aims to simplify, while also updating the resources required to tackle the requirements that have arisen in the meantime due to the continuation of the COVID-19 emergency.

In order to more effectively combat the negative effects on closing inventories caused by the emergency measures put in place to contain the pandemic, the expenditure on this measure will be increased by EUR50 million for fiscal year

(9) By article 48-bis of Decree Law no. 34 of 19 May 2020.

(10) As referred to in article 92(1) of the Italian Income Tax Code.

2020 (which therefore increases from the original EUR45 million to EUR95 million for 2021, the credit in question being recognized in the year following that of accrual) and EUR150 million will be allocated for the application of the measure in the current fiscal year (applicable for 2022 for the same reasons as above). The calculation of the costs of this measure takes into account the analyses conducted by the associations that are most representative of the industry. Fashion was one of the industries most affected by the pandemic in 2020.

Finally, in order to facilitate the application process and enable businesses to rapidly benefit from the tax credit, the Revenue Agency has been delegated to establish, in line with the type of benefit, the application procedures and deadline.

1.3 Postponement of the Plastic Tax until 1 January 2022 - Article 9

The date on which the Plastic Tax will come into force has been definitively postponed⁽¹¹⁾ to 1 January 2022 (it had already been postponed to 1 July 2021)⁽¹²⁾.

The Plastic Tax is a consumption tax on single-use items made out of plastic, referred to Italian as '*Manufatti con Singolo Impiego*' or 'MACSI'. The new tax will apply⁽¹³⁾ to MACSI: (i) made, even partially, out of plastics consisting of synthetic organic polymers (including plastic sheets, film and strips); (ii) not created, designed or put into the market to be transferred more than once or to be re-used for the same purpose; (iii) which serve or are used to contain, protect, handle or deliver goods or foodstuffs.

More specifically⁽¹⁴⁾, MACSI are all (i) items, made even partially out of plastics, that enable the sealing/closing, sale or labelling of MACSI or of products made entirely out of materials other than plastics; (ii) semi-finished products (including preforms) made even partially out of plastics and used in the production of MACSI. However, there will be an exemption from the Plastic Tax for MACSI that are (i) compostable; (ii) predefined medical devices; (iii) used to contain and protect medicinal preparations.

Explained very simply, the Plastic Tax will apply to the production, sale and (from inside or outside the EU) importation of these items and the tax rate will be EUR0.45 per kilogram of virgin plastic contained in the MACSI. The tax point will be the time of release for consumption in Italy or of importation from outside the EU.

The following parties will be obliged to pay the tax: i) manufacturers; ii) sellers of MACSI produced on their behalf by manufacturers; iii) importers; vi) purchasers of MACSI originating from EU countries; v) EU sellers in the case of MACSI purchased by private consumers in Italy.

It will be necessary to submit a quarterly return containing all the details necessary to calculate the tax liability⁽¹⁵⁾.

(11) By article 9(3) of Support Decree 2.

(12) By article 1(1084)(i) of Law no. 178/2020 (the 2021 Budget Law).

(13) Under article 1(634) of the 2020 Budget Law (as subsequently amended by the 2021 Budget Law).

(14) According to article 1(635) of the 2020 Budget Law.

(15) Article 1(641) of the 2020 Budget Law.

The tax must be paid in a single instalment⁽¹⁶⁾, by the filing deadline for the return, and can be offset against other taxes.

Non-resident and non-established persons must pay the tax through a tax representative, who will be jointly liable with them.

If the tax is lower than EUR25, there will be no obligation to pay it or to submit a tax return.

The penalty for missing payments will range from twice to five times the amount of tax due and will not be less than EUR250⁽¹⁷⁾. Late payment of the Plastic Tax will result in a 25 percent increase in the tax due and a minimum EUR150. Late submission of the quarterly returns will result in a penalty ranging from EUR250 to EUR2,500.

1.4 Amendments to the VAT rules for bad debt relief - Article 18

Support Decree 2 introduces the possibility of claiming VAT relief on bad debts at the beginning of an insolvency/bankruptcy procedure rather than the end.

Under the new rules, a supplier is entitled to issue a credit note⁽¹⁸⁾:

- a) from the date when a customer becomes 'subject' to an insolvency/bankruptcy procedure, i.e. from the date when the bankruptcy judgment becomes enforceable, or the judge orders the liquidation of the debtor's assets, or the debtor enters into a composition with creditors or goes into extraordinary administration;
- b) following unsuccessful foreclosure procedures.

A customer subject to an insolvency/bankruptcy procedure as described in point a) above does not have to adjust its VAT position upon receiving the credit note from the supplier.

If the customer later settles the debt, the supplier must rectify its VAT position by issuing a new debit note to account for the VAT.

These changes apply to insolvency/bankruptcy procedures started after 26 May 2021.

1.5 Changes to the rules on the tax credit for new capital goods - Article 20

The 2021 Budget Law had already extended the scope of the tax credit⁽¹⁹⁾ for investments in capital goods ('ordinary' tangible or intangible assets, as well as the '4.0' tangible and intangible assets indicated in Attachment B to Law no. 232 of 11 December 2016), by establishing that investments made by businesses between 16 November 2020 and 31 December 2022 would be eligible for the tax credit⁽²⁰⁾. It could only be used in an F24 payment form to offset taxes in three equal annual instalments; however, businesses with revenues of less than EUR5 million could use it in a single instalment.

(16) In accordance with article 17 of Legislative Decree no. 241/1997

(17) Article 1(650) of the 2020 Budget Law.

(18) In accordance with article 26(2) of Presidential Decree no. 633/72.

(19) Originally introduced by Law no. 160/2019.

(20) Article 1 (1051-1063) of the 2021 Budget Law.

Support Decree 2⁽²¹⁾ extends the possibility of using the tax credit for investments in 'ordinary' tangible assets (i.e. assets other than those indicated in Attachment A to Law no. 232 of 11 December 2016) in a single instalment. In other words, the possibility of using the tax credit more quickly - previously granted only to businesses with revenues of less than EUR5 million - has been extended to those whose revenues exceed this threshold, but only in the case of investments in 'ordinary' tangible assets.

1.6 Annual limit on the offsetting of VAT credits - Article 22

For fiscal year 2021 only, the amount of VAT credits that can be offset against other taxes and contributions or claimed as a refund through the 'fast-track' procedure is capped at EUR2,000,000 (currently EUR700,000).

2. Employment measures

2.1 Freeze on redundancies extended to 31 December but only for employers who are claiming COVID-19 wage subsidies - Article 40 (3 - 6)

Support Decree 2 confirms the general freeze on individual and collective redundancies but only for employers who, as of 1 July 2021, claim wage subsidies (i.e. the ordinary 'CIGO' subsidy and the special '*CIG in deroga*' wage subsidy). In these cases, the ban on starting dismissal procedures remains in force for the duration of wage subsidies used up to 31 December 2021. Redundancy procedures started after 23 February 2020 are also suspended over the same period.

From 1 July 2021, businesses that use the 'CIGO' subsidy will be exempted from paying the normal contribution that this entails.

It is expressly stated in law that the freeze on redundancies does not apply in cases where:

- the redundancies are due to the definitive closure of the business (this includes closure caused by a company being put into liquidation without any continuation of the business activity);
- there is an internal collective bargaining agreement, signed by the most representative national trade unions, which incentivizes the termination of those workers who adhere to the agreement;
- the redundancies are made as a result of bankruptcy and (i) the business is not being run on a provisional basis, or (ii) there is a court order that the business should be wound up (if, by court order, a specific part of the business is being run on a provisional basis, workers in other sectors of the business can be made redundant);

(21) By adding paragraph 1059-bis to article 1 of Law no. 178/2020.

- the workers already deployed under a supply agreement are rehired - in accordance with the law, a national collective bargaining agreement or a clause in the supply agreement - by the new contractor that takes it over.

2.2 Further wage-subsidy measures - Article 40 (1-2)

Support Decree 2 allows employers that have suffered a 50 percent decrease in turnover in the first half of 2021 compared to the first half of 2019 to enter into collective company agreements to reduce working hours for a maximum duration of 26 weeks between 26 May and 31 December 2021, with the aim of maintaining employment levels in the recovery phase after the COVID-19 emergency.

The average hourly reduction may not exceed 80 percent of the daily, weekly or monthly hours of the workers covered by the collective agreement. For each worker the overall reduction in working hours may not exceed 90 percent over the entire period covered by the collective agreement.

Employees working fewer hours will receive special wage subsidies, amounting to 70 percent of the total remuneration that they would have received for the hours not worked, plus the corresponding social security contributions.

Employers using these subsidies are not required to pay the additional contributions.

2.3 Re-employment contract - Article 41

Support Decree 2 introduces, from 26 May to 31 October 2021, an exceptional 're-employment contract': an open-ended employment contract aimed at encouraging the reintegration of unemployed workers into the labor market during the recovery phase after the COVID-19 emergency.

Use of the re-employment contract requires – with the consent of the worker – an individual six-month onboarding project to ensure that the worker acquires the professional skills needed for the new working environment.

The penalties envisaged by current legislation for unlawful dismissal apply during this onboarding period.

At the end of the onboarding period the parties may withdraw from the contract, with a notice period starting from when onboarding is completed.

If neither party withdraws from the contract, the relationship will continue as an ordinary open-ended employment contract.

Private employers (except those employing agricultural and domestic workers) that hire workers under a re-employment contract are granted full exemption from all of the employer's share of the social security contributions, excluding INAIL premiums and contributions, for a maximum period of six months and up to a maximum amount of EUR6,000 per year, recalculated and applied on a monthly basis.

This exemption from the payment of contributions applies to private employers that have not, in the six months prior to hiring, made any individual dismissals for justified business reasons or collective dismissals in the same production unit.

The exemption will be revoked and the benefits already taken will have to be returned if (i) the new worker is dismissed during or at the end of the onboarding period, or (ii) within six months of their hire there is a collective dismissal or individual dismissal for justified business reasons of a worker employed in the same production unit, in the same capacity and on the same contractual level as the new hire.

For the purposes of calculating the residual exemption period, the above revocation will have no effect with respect to other private employers that hire the worker under article 41. If the worker resigns, the benefit is granted for the actual duration of the employment relationship.

2.4 Extension of the special wage guarantee fund for business termination - Article 45

This exceptional measure is designed to support workers during the recovery phase after the COVID-19 emergency.

Subject to a further agreement, to be executed by the Ministry of Labor and Social Policies with the participation of the Ministry of Economic Development and the particular region concerned, from 26 May 2021 to 31 December 2021 an extension of six months may be authorized for enterprises of particular strategic and regional importance, if they have started to wind up their business and have encountered particular difficulties in completing the process and safeguarding employment.

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