legalitax
STUDIO LEGALE E TRIBUTARIO

PROVISIONS REGARDING EXTRAORDINARY AND URGENT MEASURES TO COPE WITH THE EPIDEMIOLOGIC EMERGENCY CAUSED BY COVID-19

Update of March 13, 2020

BUSINESS ISSUES
TAX ISSUES
LABOUR LAW ISSUES
PRIVACY ISSUES
CORPORATE ISSUES

BUSINESS ISSUES

As known, on March 11, 2020 the Prime Ministerial Decree ordered the suspension of retail commercial activities, as well as of catering services, with the only exceptions specifically outlined in the same Decree, as measure to cope with and contain the infection caused by COVID-19.
We received many requests from the large-scale retail and from companies and real estate funds regarding the possibility that the tenants may legitimately suspend the payment of rents or decrease the related amount, that concerns the premises where the activities subject to the interdiction measures are carried out.

In relation to the above, since the possibility to suspend the performances due to force majeure is not expressly regulated by Italian law and in order to exhaustively answer the question, we specify that it is necessary to examine the contract in detail, in order to assess the existence of possible clauses of force majeure or hardship and to coordinate the contractual discipline with the provisions on leases and business leasing, as well as with the code-related regulations on sudden total impossibility, even if temporarily, of the performance or of its sudden excessive onerousness.

Today, the main provisions are all contained in the Law Decree no. 9 of March 2, 2020.

More specifically, in addition to further measures for which reference is explicitly made to the analysis of the concerned provisions, the mentioned Decree foresees at Article 1 (general provision applicable to all national territory):

- the postponement from March 9 to March 31, 2020 of the deadline for the electronic transmission to the Italian Revenue Agency of the income tax statements issued to employees by their companies for the year 2020 related to the tax period 2019 of those individuals who are due to submit the income tax return by the 730/2020 form. The electronic transmission of the income tax statements issued to employees by their companies for the year 2020, containing exclusively exempt incomes or incomes that cannot be declared through pre-filled statement of income, may occur by November 2, 2020;
- the confirmation of the deadline of March 31, 2020 for the delivery to the taxpayers-substituted of the income tax statements issued to employees by their companies for the year 2020 and of the other certifications of the withholding agent related to the tax period 2019;
- the postponement from March 9, 2020 to March 31, 2020 of the transmission of the flows of information concerning the accounting results of the income tax returns with the 730 form to the withholding agents through the services of the Italian Revenue Agency;
- the postponement to March 31 of the deadline for the electronic transmission to the Italian Revenue Agency of the data concerning the deductible and detractable expenses to be used for the drawing up of the income tax returns, whose deadline is expired last February 28. Healthcare costs remain excluded from the postponement, because these had to be sent by January 21, 2020;
- the consequent postponement from April 15, 2020 to May 5, 2020 of the deadline for the availability of the pre-filled income tax returns by the Italian Revenue Agency;
- the advance application of all new deadlines related to 730 forms to the year 2020 that should have been applied since 2021. Accordingly, the 730/2020 form related to the year 2019 may therefore be submitted by September 30, 2020, independently of the adopted method of submitting (*i.e.* direct, through withholding agent, Caf (fiscal assistance centres), qualified professional).

To be thorough, we would also point out that Articles 2, 5 and 7 contain further provisions regarding the territories and municipalities belonging to the so called *former* "red zone".

In particular, Article 2, concerning natural persons with residence or with executive offices in the so called *former* "red zone"[1], or concerning legal persons with registered offices or administrative headquarters located therein, provides that the payment terms due from February 21 to April 30, 2020 originating from notices of payments issued by tax collection agents and from verification notices, are suspended.

Nevertheless, it should be carefully noted that, unless otherwise specified in the future, such payments, subject of suspension, shall be made in a single tranche within the month next to the conclusion of the suspension period and no refund shall be made for the amounts that have been already paid.

The aforementioned provisions also apply to the assessment reports issued by the Customs Agency and to the related collection procedures and to all the injunction activities as per Italian Royal Decree No. 639 of April 14, 1910.

1 The municipalities set out in attachment 1 of the Prime Ministerial Decree of March 1st, 2020, that is in the Italian region of Lombardy: Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini, in the Italian region Veneto: Vò, result to be part of the so called *former* "red zone".

In the end, the payments for individuals (located in the "red zone") who adhered to the procedure of facilitated definition of the fiscal charges entrusted to tax collection agents (Articles 3 and 5 of the Decree Law No. 119 of October 23, 2018 and Article 16-*bis*, paragraph 1, letter b), No. 2 of the Decree Law No. 34 of April 30, 2019 and Article 1, paragraph 190 of the Law No. 145 of December 30, 2018) are postponed.

In relation to the tourist accommodation businesses, the travel and tourism agencies and the tour operators that have tax domicile, registered offices or executive office in the State's territory, Article 8 of the Decree Law No. 9 of March 2, 2020 provided the suspension from March 2 (date of entry into force of the mentioned Decree Law) to April 30, 2020 of:

- terms related to the payments of the deductions at source that, pursuant to Articles 23, 24 and 29 of TUIR (Italian Tax Consolidated Text), the aforementioned individuals operate as withholding agents;
- terms related to the fulfilments and payments of the social security contributions and of the premiums for the compulsory insurance.

The payments referred to the previos period, shall be made, without the application of fines or interests, in a single tranche by May 31, 2020.

Moreover, for the above-mentioned individuals having tax domicile, registered offices or executive offices in the municipalities identified in Attachment 1 of the Prime Ministerial Decree of March 1st, 2020, no changes occur to the provisions of Article 1, paragraph 3 of the Decree of the Minister for the Economy and Finance of February 24, 2020, published in the Official Gazette, General Series No. 48 of February 26, 2020.

Nothing has been provided yet with reference to the possible postponement of the terms of submission of the VAT return, related to the tax period 2019, currently planned for April 30, 2020.

Carrying on with analysis on tax litigation matter, with general application throughout the national territory, the Government, by means of Articles 1 and 2 of the Decree Law No. 11 of March 8, 2020, enacted a set of urgent provisions to cope with the epidemiological emergency caused by COVID-19 regarding the functioning of civil and criminal law. Such provisions, as expressely provided for by the law, are also applicable, where compatible, to the proceedings related to the tax commissions.

Pursuant to the above-mentioned Article 1, paragraph 1, from March 9 (day following the entry into force of the mentioned Law Decree) to March 22, the hearings of tax proceedings (as well as civil and criminal hearings, to which reference should be made to the specific report for the related exceptions) pending in all legal offices are deferred on the Court's own motion to a date after March 22.

From March 9 to March 22 are also suspended the terms for the accomplishment of any action inherent to the deferred proceedings, pursuant to Article 1, paragraph 1, of the Decree Law No. 11 of March 8, 2020. Moreover if the expiry of such terms starts during the suspension period, the same start is deferred at the end of such period.

Attention should be paid to the fact that, after reading textual data of the regulation, it results that the deadlines to consider as suspended are exclusively those related to the proceedings whose hearings, planned in the suspension period (March 9-22), result deferred on the Court's own motion. In this regard, it should be noted that the related explanatory memorandum clarifies the general scope of the provision that makes reference to all pending (civil, criminal and tax) proceedings and processes «*even when the hearing in the period concerned is not scheduled) providing the suspension of all terms for the fulfillment of any court proceeding, included the notices of appeal».*

TAX ISSUE

With reference to the performance of services inside the legal offices, Article 2 of Decree Law No. 11 of March 8, 2020, grants the heads of such offices the power (after the necessary consultations), in the period between March 23 and May 31, 2020, to adopt the following measures:

- limitation of access to the public;
- limitation of opening hours to the public, or the closure (for the offices that do not offer urgent services);
- regulation for the access to services, with prior booking, even through telephone or telematic means of communication, as well as through any other measure aiming at avoiding assemblage;
- the adoption of binding guidelines for the schedule and the discussion of hearings;
- the celebration of hearings in camera;
- the provision of the conduct of the hearings that do not require the presence of individuals different from the representatives of the parties and by the parties by means of remote connections;
- the provision of postponement of hearings to a date after May 31, 2020.
- the conduct of the hearings that does not require the presence of individuals different from the representatives of the parties by means of electronic exchange and filing of written notes containing the only applications and conclusions, and the subsequent adoption of the court order outside the hearing.

Update of March 13, 2020

We highlight directive of March 12, 2020 of the Central Direction of the Italian Revenue Agency, issued after the Prime Ministerial Decree of March 11, 2020, pointing out that the winding-up activities, control, assessments, accesses, inspections and verifications, collection and tax litigation from the Italian Revenue Agency's offices are suspended, unless that for such activities the limitation and prescription periods are imminent (or the time-limits are suspended on the basis of expressed regulatory provisions).

Remarks on the Prime Ministerial Decree of March 11, 2020 and first notes about the shared Protocol of regulation of the measures for copying with and containing the spread of the Covid-19 virus in the working environments of March 14 2020 (underwritten by Confindustria (Association of Italian Industries), Confapi (Italian Confederation of Small and Medium Enterprises), Confartigianato (General Confederation of Italian Crafts) / CGIL (Italian General Confederation of Labour), CISL (Italian Confederation of Workers Union), UIL (Italian Trade Union Federation) and by the Government).

The point 7 of Article 1 of the Prime Ministerial Decree of March 11, 2020 renewed, with more detailed indications, the recommendations that have been already formulated in the previous provisions.

In particular, such recommendations regard: *a)* the maximum use of smart working; *b)*encouragement to holidays and paid leaves, as well as of work permits provided for by the collective bargaining; *c)* suspension of activities that are not essential for the production and finally *d)* and *e)* the implementation of measures on health and safety at work.

It is worthwhile to make some general remarks on the above-mentioned recommendations, even in light of what provided by the Protocol signed by the social partners, whose declared purpose is that to provide operational instructions aiming at increasing the validity of the precautionary measures in the working environments and "*to implement the legislator's requirements and the indications of the Health Authority".* Moreover, the Protocol provides that the management of the emergency phase inside the business should, as much as possible, occur in cooperation with company's union representatives (see and Article 8). For this purpose, *"the prior confrontation with the trade union representatives inside the workplaces and for the small enterprises the territorial representatives as provided for by interconfederal agreements should be encouraged"* (as the preamble, at the end).

As regards the holidays, in our opinion, even this last Prime Ministerial Decree does not waive to the general rule on the basis of which the employer may unilaterally impose to his/her employees only to take the unused holidays, that is those that have been not taken related to the 18 months after the end of the year in which these were accrued (unless otherwise provided by the collective bargaining), whilst the use of accrued and/or accruing holiday days must be agreed (without prejudice to the right of the employee to take almost 15 continuous days every year). Having said that, we outline that the obligation also for the employee to perform the labour contract in good faith, in a critical emergency situation, as well as in a situation of drop of the productive activity, the refusal of acceding to the employer's request of using the accrued and accruing holidays (even if unused) without a serious reason, could be considered as unlawful. Each particular case shall be specifically examined. In this respect the Protocol, on the one hand, expressly confirms the government recommendation on the use of the above-mentioned law and contractual regulations, but provides also the enjoyment of periods of unused holidays (even outside the limits highlighted above), that is when there is no possibility to guarantee the employee the paid suspension from work.

We still point out a possible useful value of the Protocol in deflationary terms of future litigations promoted by the employee who complains the imposition of holidays accrued but not used.

As regards work permits and leaves, the specific provisions regarding the related use for each sector, laid down by the collective labour agreements, shall be applied and this without prejudice to the fact that, even in this case, the rules shall be read in light of the recommendation and of the purpose of the Presidential Decree that shall promote their use every time that it may be objectively possible (confirmed even in this case by the above-mentioned Protocol).

The suspension of the activities that are not essential for the production refers to the social shock absorbers and indeed *ad hoc* regulatory measures are expected with thi s regard. In this respect, it should be noted that the consolidated practice and also some judgments on the merits (among others, Court of Bergamo Judgement No. 489 of 30.05.2013), even in the absence of a rule that as a matter of fact requires it, provide that the placement of the worker on unemployment benefits shall be preceded by the use of all available holidays, and that by way of derogation from what in general said in the previous paragraph.

The Protocol on this point, in its preamble, incisively acknowledges that the stipulating parties agree that the continuation of the productive activities may occur only in presence of conditions that ensure to people proper levels of protection and that the reduction or the suspension of the working activity, even if temporary, aiming at the implementation of safety measures of workplaces are hypothesis of legitimate use of social shock absorbers.

As regards measures for health and safety at work protection, the Presidential Decree highlights the necessity that the companies provide to the implementation of the RAD (risk assessment document) in relation to the specific biohazard and however, with circulation of good rules – in our opinion -, whose omission is immediately significant under the negligence profile (pursuant to the contractual responsibility in accordance with Article 2087 of the Italian Civil Code), states also the obligation to respect the minimum distance (1 metre) between individuals, the adoption of individual protection tools (mask, gloves) and collective protection tools (operations of cleaning and disinfection of workplaces).

The Protocol widely operates and provides further details to establish the rules to which the companies shall comply with on health and safety matter, covering all main aspects of life in a company and that, if unimplemented, could, even in our opinion, legitimate the refusal of the worker to perform the working activity.

PRIVACY ISSUE

As regards privacy aspects, it is important to always consider the limits established by the provisions related to the personal data protection.

To this regard, on March 2, 2020, the Data Protection Authority issued a special media alert regarding the collection of information in relation to the presence of symptoms of Covid-19 and the last movements of visitors, users and employees.

In particular, the Data Protection Authority recommends to limit as much as possible the implementation of collection practices put in place on systematic and indiscriminate basis. The Data Protection Authority indeed explains in the media alert that the activities of prevention of Covid-19 spreading should be limited to the bodies institutionally delegated to guarantee the compliance with the public health rules, including the healthcare professionals and the system deployed by the Civil Protection.

Therefore, any containment measure taken by the employer shall respect the principle of minimization of data collection, therefore collecting data deemed as essential in order to allow the efficiency of the adopted measures.

Now, the emergency provision adopted in the last few weeks provides that anyone in the last 14 days who staied in the epidemiological danger zones, as well as in the townships of the former red zone or has close contacts with persons tested positive for Covid-19 must inform the local health authority, also through the family doctor, who will carry out the medical examinations provided for as, for instance, the self-isolation.

Therefore the obligation of the employee to inform the employer of any dangerous situation for health and safety on the workplace remains essential.

.

The Commission of the Notarial Bar of Milan – in absence of a regulatory intervention that recognizes in the current emergency situation, the possibility to avail itself of the longer six months period for the approval of the financial statements 2019 – developed a very recent principle (No. 187) on the simplification of the modalities of the conduct of assembly meetings through telecommunication means. From the principle of the Milanese notaries - which makes reference to and broads an indication provided by the notaries of Triveneto (three Italian northeast regions) in consideration of the current emergency situation - it is possible to obtain the following information:

- the possibility to carry out assembly meetings through telecommunication means even in absence of provisions of the By-law, emphasizing, in this regard, as set out in Article 1, letter q of the Prime Ministerial Decree of March 8, 2020 on the issue of adoption *"in the carrying-out of meetings,* [of] *modalities of remote connection" whenever possible";*

- the possibility that the speech in meeting through telecommunication means may involve all participants, included the chairman of the meeting, being sufficient that the secretary is present in the place indicated in the notice of call. Having said that, exceeding the statutory provisions, that, in accordance with the notarial procedure, require that both the chairman of the meeting and the person responsible for drawing up the minutes are present in the place of calling of the meeting.

Currently – and in absence of legislative provisions indicating the epidemiological emergency, considered in itself as one of the particular needs pursuant to Articles 2364 and 2478-*bis*, of the Italian Civil Code – it shall be considered that, as reasons that make become necessary to take advantage of the longer time limit of 180 days from the closure of the financial year for the approval of the financial statements, circumstances – connected to , or as a consequence of such emergency – that forbids to the Company's administrative structure to provide in time or to close the draft of the financial statements 2019 - should be indicated.

DISCLAIMER

The information contained in this document must not be considered as exhaustive, nor is it intended to express an opinion or provide legal or tax advice, nor does it exclude the need to obtain specific opinions on individual cases.

THE CONSULTANCY FIRM

LEGALITAX is an integrated firm with 90 professionals, including 25 *partners*, lawyers and accountants. The law firm, with offices in Rome, Milan, Padua and Verona, provides its clients with legal and tax expert advice in response to all the needs of companies in the various stages of their existence. The clients are primarily Italian and foreign companies that invest and operate in Italy.

Milan

Piazza Pio XI, 1
20123 Milan
T +39 02 45 381 201
F +39 02 45 381 245
milano@legalitax.it

Rome

Via Flaminia, 135
00196 Rome
T +39 06 8091 3201
F +39 06 8077 527
roma@legalitax.it

Padua

Galleria dei Borromeo, 3
35137 Padua
T +39 049 877 5811
F +39 049 877 5838
padova@legalitax.it

Verona

Via Antonio Locatelli, 3
37122 - Verona
T +39 045 809 7000
F +39 045 809 7010
verona@legalitax.it