



On the 16th of March 2020, the Italian Government approved the Law-Decree No. 18 of 17 March 2020 (hereinafter called the Decree) to counteract the current liquidity crisis following the spread of COVID-19. According to the Article 55 of the Decree, if a company transfers by the 31st of December 2020 for consideration receivables, both commercial and financial, due from defaulting debtors, it may convert into a tax credit the deferred tax assets ("DTA") relating both to tax losses (without applying the 80% limit) not yet used at the date of the transfer and to the surplus of Allowance for Corporate Equity ("ACE") not yet deducted. The conversion must be done proportionally to the receivables transferred.

The Decree applies both to the financial sector and to other economic sectors and is aimed at supporting companies in terms of liquidity to face the current situation characterized by financial economic instability.

THE TAX INCENTIVE INTRODUCED BY ART. 55 OF THE DECREE

The Article 55 of the Decree establishes that assignments of impaired receivables made for consideration by 31st of December 2020 allows the transformation of DTA, even if not booked in the financial statements, which gives a facilitating nature.

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The disposals must be done within the 31st of December 2020 by companies to third parties of (commercial or financial) monetary claims overdue by more than 90 days.

From a subjective point of view, the tax incentives do not apply:

- 1) to the companies for which has been assessed a state of severe financial distress or insolvency (according to Article 17 of Legislative Decree no. 180/2015 and Article 2, paragraph 1, let. b) of Legislative Decree no. 14/2019);
- 2) to the disposals of receivables between companies which have a directly or indirectly relationship of control (as defined by Article 2359 Civil Code).

Apart from these exclusions, the rule applies to all companies without any limitation concerning the activity carried out (so it is applicable both to industrial and banking and financial companies).

From an objective point of view, the rule is applied only to companies that have carried forward within the current financial year or tax losses (Article 84 of Italian Tax Code, "ITC") or a surplus of ACE (Article 1, par. 4, Law Decree. n. 211/2011).

Consequently, the convertible DTAs are those relating to:

- ✓ tax losses that can be carried forward pursuant to Article 84 of ITC, without application of the limits provided of the rule for entities benefiting from a profit exemption scheme;
- ✓ the amount of the ACE which at the date of the assignment of the receivables has not yet been deducted from the taxable income.

The amount of DTAs that can be converted into tax credits is equal to the 20% of the face value of the transferred receivables. Moreover, the maximum qualifying amount of transferred receivables is 2 billion Euro of face value. In case of corporate groups, that limit must be calculated at the group level.

In addition, the transformation of DTAs into tax credits is considered effective from the date of the assignment of the credits. Therefore, starting from the receivables disposal date, the seller can no longer carry forward tax losses and surplus of ACE in relation to which the corresponding DTAs have been converted into tax credit.

Such tax credits may be:

- a) used to offset certain tax and social security liabilities without any amount limitation, according to Article 17, Legislative Decree No. 241 of 9 July 1997
- b) transferred at face value to other group companies through the procedure set forth by Article 43-ter of Presidential Decree No. 602 of 29 September 1973.

Moreover, the residual portion of the tax credit left after *the offsetting*, may be claimed for refund.

The tax credits arising from the conversion of DTAs must be shown in the tax return. They are not interest-bearing and are not taxable for CIT nor IRAP tax purposes.

Furthermore, it must be noticed that this option, in the cases where the same amount of deferred tax assets does not correspond to an effective advance payment of taxes (the so-called Type 2 DTA), establishes a payment of 1.5% fee on the amount of deferred tax assets converted into tax credit.