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Tax Strategy & Benefits

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How Can Tax Kick Start Economies Around the Globe

And They're Off!

How Tax Systems are Being Used to Kick-Start Economies in the Wake of the Pandemic

Tax policy is often used to incentivize certain behaviors and discourage others.

Tax credits and tax rate reductions can encourage spending on research and development, promote investment into manufacturing operations, and stimulate hiring. In contrast, limitations on tax benefits can be used to discourage activities, such as acquisitions with the sole purpose of utilizing target losses, migrating intellectual property outside of the home country, and environmentally unfriendly activities.

As governments face stalling economies in the face of the pandemic, while at the same time seeing significantly reduced tax revenues, they will need to creatively use their tax systems to identify changes that will stimulate an economy while still raising much needed tax revenue.

The below summarizes tax concepts that a few jurisdictions around the world – the United States, the United Kingdom, Germany, Italy, and Spain – have considered or have implemented to address these issues.

United States

In the US, economic stimulus measures to date have focused on provisions to allow more generous and flexible use of net operating losses (NOLs), accelerate certain tax credit refunds, reduce limitations on the deductibility of interest expense, and modify the rules on charitable contributions to allow enhanced deductibility. These provisions were part of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), a US$2 trillion comprehensive legislation package intended to stimulate the US economy. While the CARES Act was a start, the Democratic-controlled House, Republican-controlled Senate, and Trump administration have all indicated that additional tax incentives are required to further stimulate the economy. Achieving a bipartisan consensus in a divided US Congress will be difficult, however, especially in a pivotal – and hotly contested – presidential election year. Democrats have criticized some of the more business-friendly tax provisions in the CARES Act, while Republicans have cautioned against ballooning the federal deficit even further. With that context in mind, below is a discussion of possible economic stimulation tax incentives that could be considered.

Incentivizing US Manufacturing

Over the years, US politicians have advocated for various ways to increase US manufacturing operations. Recently, specific COVID-19 related measures have been promoted, including ideas such as encouraging the US production of medical supplies and products related to high-tech shipbuilding and microelectronics. The rationale behind this push is to have products located closer to their place of use, particularly during difficult times such as a pandemic. Although a reduction in the corporate tax rate is often touted as the best way to encourage US manufacturing, a rate cut alone may not be enough because the overall cost of production needs to remain efficient. For example, even though the corporate tax rate was significantly reduced from 35% to 21% in 2017 as part of the Tax Cuts and Jobs Act (TCJA), the US has not seen a large increase in US manufacturing operations since it was enacted at the end of 2017. In fact, some non-US companies have been discouraged from establishing US manufacturing operations due to provisions such as the Base Erosion and Anti-Abuse Tax (BEAT). In addition, to pay for some of the tax cuts in the TCJA, Congress included a provision to require research and development expenses to be amortized over 5 or 15 years, rather than allowing a deduction in the year the expense is incurred. Many US companies are pushing to reverse this to allow immediate expensing as they have concerns that this would significantly discourage investment in R&D, particularly as it relates to manufacturing. These issues are an indication that a reduced corporate tax rate, without more, would not be sufficient incentive for companies to realign their supply chains. In addition, the high cost of manufacturing in the US remains a hindrance to many companies. Therefore, it might be necessary to combine a lower manufacturing tax rate with other incentives, such as cash rebates, bonus depreciation, or targeted tax credits that would further reduce the cost of US manufacturing and make the economic burden of shifting operations to the US sustainable.

Encouraging Mergers and Acquisitions

While some House Democrats have suggested a ban on merger and acquisition ("M&A") transactions is necessary to prevent the whales from swallowing up the minnows during these difficult days, others believe that more M&A activity would be best for the overall economy. With private equity firms estimated to be sitting on some US$2.5 trillion of "dry powder" but cautious to make asset purchases in such uncertain and volatile economic times, the Trump administration has suggested that a reduction in capital gains tax rates would encourage additional investment activity – including M&A.

Another avenue of potential M&A-incentivizing tax legislation could focus on loosening certain tax limitations that apply post-acquisition. Under present law, when a target corporation's ownership changes due to a merger or acquisition, the surviving corporation is typically limited in its ability to use the target's pre-change tax attributes, including NOL carryovers and certain built-in losses, to offset post-change taxable income. Specifically, Section 382 of the Code imposes an annual limitation on how much of the target's pre-change losses may be used to offset the surviving corporation's income in a post-change year. To the extent that pre-change NOLs exceed that year's limitation, the remaining pre-change NOLs must be carried forward to the next year to offset income (which again is subject to the Section 382 annual limitation). Some methods to encourage M&A transactions could include temporarily reducing or eliminating both the Section 382 annual limitation on loss usage post-acquisition and limitations on the carryover of tax attributes.

Relaxing Debt Rules

Borrowed money, by definition, has to be repaid. Its receipt does not result in taxable income at the time the borrower receives loan proceeds. If, however, the debt obligation is later reduced or canceled, the borrower is treated as realizing an economic benefit, which is taxable under Section 61(a)(12) of the Code as "income from discharge of indebtedness" – commonly known as cancellation of debt income ("CODI"). CODI may be excluded from gross income in certain bankruptcy proceedings where debt is discharged in a Chapter 11 reorganization, Chapter 7 liquidation, or Chapter 13 bankruptcy. Adverse tax consequences also may apply when cash-strapped companies pay off their creditors by issuing new equity. In 2020, many borrowers who may not yet be in the midst of one of the aforementioned bankruptcy proceedings will likely need their debts to be modified or cancelled due to their inability to make payments. In order to reduce the negative tax impacts associated with debt modification, some tax provisions that could be enacted to include the ability to cancel debt without creating CODI, allow debt to be modified without creating a taxable event, and suspend the rules related to Applicable High Yield Discount Obligations.

Other Provisions

Other provisions that have and could be implemented include the following:

- Extended deferral of time to pay tax obligations
- Reducing the time required to obtain tax refunds
- Further reduction in payroll taxes and/or offsetting payroll taxes with rebates
- Rebates and credits to promote environmentally sustainable operations and incentivize green technology

Looking ahead to opportunities for some of these tax policy concepts to become the law of the land, Senate Republicans are beginning to assemble their next coronavirus relief package, sometimes referred to as the "Phase 4" relief package. This piece of legislation is the Senate's response to the House Democrats' Phase 4 coronavirus relief proposal. Senate Majority Leader Mitch McConnell (R-KY) wants Congress to complete work on the Phase 4 bill by the time Congress leaves Washington D.C. for its annual August recess, which is set to begin on July 31 for the House and August 7 for the Senate. This is an ambitious timetable that will involve intense negotiations over the coming weeks over certain provisions, potentially incorporating some of the aforementioned tax incentives to spark economic growth.

Without a doubt, the looming US presidential election on November 3 casts a shadow over all current policymaking discussions on Capitol Hill, and will be a key inflection point for the future of US tax policy. While some of the currently contemplated tax policy proposals may make it into legislation this year, some may be pushed into 2021 – potentially under a new administration. Presumptive Democratic nominee Joe Biden, combined with the existing Democrat-led House and a possible Democrat-led Senate, all point to fundamentally different direction for tax policy that will reverberate across the world.

On the heels of the insinuation from the Democrats that lobbyists exerted improper influence on the BEAT regulations, came the Democratic presidential primaries, with every major candidate characterizing the 2017 Tax Cuts and Jobs Act, in part, as a giveaway to corporations. As 2020 progresses and the presidential election nears, we should expect to hear more explicit plans from the Democrats on how exactly the BEAT regulations should be revised to ensure corporations pay their "fair share" and how the lobbying and legislative process can be "cleaned up" to reduce the perceived outsized influence of corporations in the regulatory process.

The US, as well as other governments around the world, will need to give serious consideration to methods for stimulating their economies in the short term, with an understanding that longer term tax revenues will be impacted.

United Kingdom

As in many other locations, the COVID-19 pandemic has hit the UK hard. The UK government's response has (so far) focused on helping UK businesses survive. The aim has been to protect liquidity and cash-flow, to ensure viable businesses are able to 'bridge' across the crisis.

The economic effect of the pandemic has been numbing. The total cost of government intervention packages stands at around £193bn as of mid-July. At the end of May, year-on-year tax receipts had fallen by 43%, while central government spending had risen 48%. The Bank of England predicts government borrowing could top £350bn in 2020. National debt at the end of May 2020 stood at £1,950.1bn, equivalent to 100.9% of the UK's total GDP; the first time it has exceeded 100% since 1963.

The UK's path through the pandemic will be mapped by three phases:

- **Survival**
- **Stimulus**
- **Sustainability**

Survival (Phase One)

The survival phase has been characterized by protecting:

- **Jobs**
- **Liquidity**

To protect jobs, the government has been paying up to 80% of wages for furloughed employees, plus the costs of employer national insurance (NI) and pension contributions, under the Coronavirus Job Retention Scheme (CJRS). The CJRS is reinforced by a parallel plan for self-employed businesses, the Self-Employment Income Support Scheme (SEISS), together with measures to enhance benefits (e.g., expanded Statutory Sick Pay).

To protect cash-flow, four main government-backed loan schemes were created for businesses of different sizes:

- **Bounce Back Loans Scheme (BBLS)**

  Loans of up to £50,000 or 25% of turnover which are available to all businesses (although mainly SMEs, micro businesses and other businesses requiring smaller loans), with the first 12 months of interest payments covered by government with the lender covered by a 100% government guarantee

- **Coronavirus Business Interruption Loan Scheme (CBILS)**

  Loans of up to £5m, available to smaller businesses with a turnover under £45m, with the first 12 months of interest payments covered by government, and a government-backed partial guarantee against the outstanding balance for the lender

- **Coronavirus Larger Business Interruption Loan Scheme (CLBILS)**

  Loans of up to £200m, available to mid-sized and larger UK businesses with a group turnover of more than £45m, and a government-backed partial guarantee (80%) against the outstanding balance for the lender

- **Future Fund**

  Convertible debt scheme for UK-based companies for loans up to £5m (provided amounts are matched by investor co-investment)

Business rates (a form of local tax charged on most non-domestic properties and calculated according to their value) were waived for all businesses in the retail, hospitality and leisure sectors for the whole of 2020-21, and grants paid to smaller businesses.

The only significant tax measures implemented during the Survival phase included:

- **VAT Deferral**

  UK businesses were able to defer the payment of VAT due for three months, through to June 30.

  Since the measure was a deferral only, the VAT is still due and must be paid (in full) on or before March 31, 2021.

- **Self-Assessment Payments On Account Deferral**

  Self-employed businesses are able to defer income tax Self-Assessment payments on account (normally due at the end of July 2020) to January 2021.

- **Targeted VAT Rate Cut**

  The VAT system has been used to provide targeted relief for specific sectors. These include:

  – Waiving import VAT (and duties) on critical medical supplies

  – A temporary zero-rate on Personal Protective Equipment (PPE) on supplies made during the period from May 1 to October 31, 2020.

The government has ignored calls for a general cut in the standard rate of VAT to boost consumer spending. There are good reasons to reject those calls. The benefit of rate cuts are rarely passed to the consumer and so can only have a marginal effect on consumer behavior. Where the benefit is not passed on, rate cuts will generally assist businesses that are already operating most successfully (i.e., those making the greatest volume of supplies), and not necessarily those in most need of assistance. However, focusing VAT cuts in targeted sectors (such as those outlined below) can be a powerful stimulus tool.

Stimulus (Phase Two)

Moving businesses off government support while 'unlocking' economic recovery and, at the same time, controlling the virus will require careful management and skillful timing. However well designed a tax (or any other stimulus) policy is, it can only be effective if the health of the nation has been sufficiently restored (and restrictions sufficiently relaxed) to enable business to take advantage of renewed confidence.

On July 8, the Chancellor delivered a 'Summer Economic Update' with the main focus still on jobs. The UK's 'Plan for Jobs' outlines substantial measures designed to both protect and create employment opportunities. The gradual withdrawal of the CJRS (and other support measures) will expose distressed (and possibly very highly leveraged) businesses to what will be the deepest recession in UK history.

Tax announcements were limited although the Chancellor did unveil two new measures:

- **Creating Jobs: Residential Stamp Duty Land Tax SDLT**

  To reinvigorate the housing market, the first £500,000 of consideration paid on a purchase of a residential property will be free from SDLT until March 31, 2021.

  Questions exist over who actually benefits from changes in SDLT, but the overall effect should be to stabilize property prices and encourage growth in transaction numbers by unleashing pent-up demand.

- **Protecting Jobs: VAT**

  To protect jobs in the hospitality and tourism sector, until January 12, 2021, the VAT rate will be cut from the standard rate (20%) to the reduced rate (5%), for supplies of both:

  – Food and non-alcoholic drinks from restaurants, pubs, bars and cafés

  – Accommodation and admission to attractions

The next (and most significant) part of Phase Two will not be set out until the Budget, and Spending Review, both scheduled for the autumn.

HM Treasury is presumably planning to gauge how the economic recovery unfolds in order to tailor any additional intervention as much as possible. Even so, it is expected the Chancellor will unveil a number of measures to support the longer-term recovery. The Budget is likely to detail government plans for investment in public services, to support innovation and growth-enhancing infrastructure (under a new National Infrastructure Strategy), to seize global opportunities, to 'level up' regional inequality across the UK and (finally) implement the UK's new Industrial (and Digital) Strategy.

In other words, the economic response to Covid-19 will be wrapped-up in the underlying domestic priorities that won Boris Johnson's government the general election in December 2019.

In the autumn Budget, tax policies are likely to support several key objectives for the UK's economic recovery. In each core policy area, tax is likely to have a role. The government's priorities include:

- **Tackling Climate Change through a Green recovery** – tax policy options might include new tax incentives to promote investment in net zero technology and industries, and (building on the introduction of a plastics packaging tax in 2022) a new, broad-based tax on carbon emissions to dissuade polluting activities and suppress demand for polluting products.
- **Increasing opportunity with new jobs and skills** – tax policy options might include a temporary easing of employers' NI contributions for jobs retained, new apprenticeships or under new trainee schemes.
- **Backing businesses** – tax policy options might include an extension (or reintroduction) of tax payment deferral measures (e.g., for VAT or quarterly payments of corporation tax); and the time-limited relaxation on restrictions on the (currently, one-year) carry-back of losses (incurred during the pandemic) to prior profitable years, thereby providing companies with an immediate tax rebate.
- **The future of industry: Innovation and Technology** – tax policy options might include enhanced and/or accelerated research and development (R&D) tax credits or reliefs; new enterprise zones, benefitting from accelerated expensing (possibly an immediate 100% deduction) for capital expenditure and/or a relaxation on the restrictions on interest deductibility; and a targeted reduction in VAT rate for particular business sectors or products to stimulate demand (or subsidize that sector or the development of that product).
- **The UK 'open for business'** – tax policy options might include new and enhanced incentives for investment in UK businesses.

Sustainability (Phase Three)

The government remains committed to fiscal sustainability and healthy public finances. It has promised further details on its plans for a sustainable and balanced fiscal policy for the autumn Budget. The cost of government intervention to combat Covid-19, added to the indirect cost of the hit to tax-revenues, is without precedent. The additional challenges presented by the imminent end of the Brexit Transition period complicate matters further.

As outlined above, however, the government has 'doubled-down' on its commitment to spend big (exploiting low interest rates on borrowing) on infrastructure, tackling climate change, and innovation, to "build the foundations now for future prosperity."

At the same time, the government is adamant that the core tax promises in the Conservative Party Manifesto – not to raise the rates of income tax, VAT or National Insurance – will be honored. The Prime Minister has also ruled out "attacking our great companies … or launching some punitive raid on the wealth creators" and rejected the suggestion that a Wealth Tax might be introduced in the UK.

Such is the scale of the deterioration in the public finances, tax revenue raising measures seem almost inevitable in the medium term. The same Manifesto included a promise to "redesign the tax system so that it boosts growth, wages and investment and limits arbitrary tax advantages for the wealthiest in society".

No further details were provided but, as with the transition from Phase One to Two, the timing of any move from Phase Two to Three, will also need to be carefully managed. Much will depend on the strength of the rebound in economic confidence, GDP, productivity and, on the back of all of that, tax revenues.

As the UK recovers from COVID-19, 'escapes' from the European Union, and starts to remake its economy, while attempting to stake its 'new' place in the world as a truly 'Global Britain', the UK could be on the brink of its most fundamental tax reform program in a generation.

Although the UK government has, necessarily, had to respond to Covid-19, it is not seeking merely to build back what it had before the pandemic. Alongside Brexit, the pandemic has afforded the UK an opportunity (and justification) to embark on the most thorough reorientation of the British economy in at least 40 years. It is not characterized by protectionism, tariffs and trade wars, but rather by a renewed enthusiasm for globalization, free trade and diversification of supply chains beyond Europe. Whether it proves a prosperous path remains to be seen but as the UK economy changes shape so, inevitably, must UK tax policy.

Germany

In order to address the COVID-19 crisis, the Federal government has deployed the largest financial support program in German history totaling some EUR 353bn (USD 400bn), as well as providing guarantees of EUR 819bn (USD 927bn). It is expected that further financial support will be provided as further issues are identified. In addition, the states (*Länder*) have adopted programs to support regional needs.

These financial support programs sit alongside a host of non-financial measures addressing COVID-19 related issues, such as allowing annual general meetings to be conducted online and the obligation to file for insolvency which is suspended to September 30, 2020 if caused by COVID-19.

The financial programs provide relief for almost all affected businesses, individuals, and situations, some examples of which include:

- Non-redeemable grants, loans/guarantees or the government taking up equity stakes in businesses ranging from multinational companies (MNCs) to small and medium sized enterprises (SMEs), including the self-employed and freelancers;
- Financial support for businesses reducing working hours of employees;
- Financial support for families and single parents, including child support;
- Support for the development of a COVID-19 vaccine and medicines; and
- Tax relief.

In terms of tax relief, the main objective is to boost the liquidity of businesses. The below summarizes the key relief measures that have been advanced in Germany.

Deferral of Tax Payments

All businesses can apply for temporary and interest-free deferral (otherwise, a 6% interest rate) of income tax, corporate tax, VAT and trade tax provided the financial distress is caused by COVID-19. The approval of the deferrals will not be made subject to strict conditions and businesses do not have to document the financial distress in detail. The deferral does not apply to tax withheld on employee wages and to capital gains tax.

Tax Advance Payments

In addition to the above, all businesses may request a reduction of their income tax, corporate tax and trade tax prepayments to reflect the expected reduced taxable income in 2020. Tax installments already paid in 2020 may be redeemed accordingly.

Loss Carry Back to 2019

Businesses that will incur losses in 2020 will be able to set off the expected losses from their taxable income of 2019. Consequently, they will be entitled to a refund of the respective taxes paid for 2019.

Tax Enforcement Measures

Enforcing the payment of overdue taxes will be waived until the end of 2020. Penalties for late payment of taxes during this period will be waived as well (otherwise, a 12% interest rate). This applies to income tax, corporate tax, wage tax and VAT. As trade tax is a local tax, many municipalities (such as Frankfurt) have suspended trade tax enforcements similar to the federal relief mentioned above.

Customs and Excise

The above tax relief measures will also apply to import VAT, excise and insurance taxes that are administered by the customs authority.

Tax Exemption for Employee Bonuses and Furlough Support

Employee bonuses up to EUR 1,500 for 2020 will be tax exempt, while 80% of the furlough support paid by the employer will be tax and social security exempt until December 31, 2020.

Reduced VAT Rates

The standard VAT rate of 19% will be reduced to 16% from July 1 to December 31, 2020. The reduced rate of 7% will be lowered to 5%.

Reduced VAT Rates for Food Outlets

All food outlets, including restaurants, are generally subject to the standard VAT rate of 19% on consumption of food and beverages. The VAT rate will be reduced to 7% on consumption of food (not beverages) from July 1, 2020 to June 30, 2021.

Italy

Following the spread of the COVID-19 pandemic, the Italian government has enacted a series of emergency regulations, namely:

- Law Decree No. 18/2020, (the “Cure Italy Decree”), as converted into law by Law No. 27/2020
- Law Decree No. 23/2020 (the “Liquidity Decree”), as converted into law by Law No. 40/2020, and
- Law Decree No. 34/2020, (the “Rilancio Decree”).

All three measures are aimed at ensuring the stability of the Italian economy.

These Decrees focus on different issues, but are similar by introducing amendments to the ordinary functioning of the Italian tax system. The tax system has been extensively modified during the emergency period, in order to avoid a shortage of liquidity, by reducing financial assets required for paying taxes and social contributions.

The Italian government has implemented a series of measures that have focused primarily on suspension of payments and postponements of tax obligations. It has also introduced incentives for investments by companies and smaller businesses, as well as measures to support the liquidity of companies.

The main fiscal measures implemented by the Italian government to stimulate the economy are outlined below.

Suspension of Payments

Deadline for Tax Payments

Pursuant to Article 60 of the Cure Italy Decree, as subsequently amended by Article 21 of the Liquidity Decree, the deadline for all payments due to public administrations, including social security contributions and compulsory insurance premiums, originally set on March 30, 2020, has been postponed to April 16, 2020, with all taxpayers able to benefit from this measure.

Extension of Deadline for Payment of VAT, Withholding Taxes and Contributions for Taxpayers

Deadlines for payment of withholding taxes on income from employment and similar income, social security, welfare contributions, premiums for compulsory insurance and VAT, due by taxpayers on March 2020 (between March 8, 2020 and March 31, 2020), are postponed until September 16, 2020.

This measure applies to different categories of taxpayers:

- Taxpayers in the most affected industries – broadly, taxpayers in the tourism sector (e.g., travel agencies and tour operators) whose tax domicile, registered office or place of management is in Italy, and taxpayers in the fields of sports, arts and culture, transport, restaurants, education and assistance and management of fairs and events- pursuant to Article 61 of the Cure Italy Decree and Article 127 of the Rilancio Decree;
- Taxpayers with significant reductions in their revenues, pursuant to Articles 18 and 19 of the Liquidity Decree and Article 126, paragraph 1, of the Rilancio Decree.

  More precisely, the measure applies to:

  - Companies and professionals with tax domicile, registered office or place of management in Italy, whose revenue in March and/or April 2020: (a) was at least 33% lower than their revenue in March and/or April in the previous year (if their 2019 revenues did not exceed Euro 50 million) or (b) was at least 50% lower than their revenue in March and/or April in the previous year (if their 2019 revenues did exceed Euro 50 million);
  - Companies and professionals who started their business after March 31, 2019;
  - Non-commercial entities, incorporated third-sector entities and civilly recognized religious organizations that perform non-business activities.
- Small businesses, pursuant to Article 62 of the Cure Italy Decree and Article 127 of the Rilancio Decree. The measure applies to all companies registered in Italy, with revenue lower than EUR 2m in 2019, and to companies registered in the provinces of Bergamo, Brescia, Cremona, Lodi or Piacenza (i.e., the areas most affected by the spread of COVID-19), regardless of revenues.

Non-Application of Penalties or Interest in the Case of Insufficient Advance Payments

Pursuant to Article 20 of the Liquidity Decree, penalties and interest do not apply in the case of insufficient advance payments of IRPEF (Personal Income Tax), IRES (Corporate Income Tax) and IRAP (Regional Tax on Productive Activity), if the amount paid for the fiscal year 2020 is equal to at least 80% of payments actually due on the basis of the tax return.

Extension of Time Limits for Tax Compliance

Pursuant to Article 62, paragraphs 1 and 6 of the Cure Italy Decree, for taxpayers whose tax domicile, registered office or place of management is in Italy, time limits expiring between March 8, 2020 and May 31, 2020, are extended to June 30, 2020.

Extension of the Terms for Payment to Public Administration

Pursuant to Article 60 of the Cure Italy Decree and Article 21 of the Liquidity Decree, the deadlines for payment to Public Administrations, including those related to social contributions and premium for compulsory insurance expiring on March 16, 2020, are postponed to April 16, 2020, without application of penalty and interest.

Postponement of Tax Obligations and Incentives

IRAP (Regional Tax on Productive Activity) Payments

Pursuant to Article 24 of the Rilancio Decree, companies with revenue up to EUR 250m in the fiscal year 2019, are exempt from the payment of:

- The IRAP balance relating to fiscal year 2019;
- The first IRAP instalment, equal to 40% of the advance payment of IRAP related to the year 2020.

This measure does not apply to banks and other financial institutions, nor to insurance companies or public administrations and bodies.

Non-repayable Grant (*Contributo a fondo perduto*)

Pursuant to Article 25 of the Rilancio Decree, the Italian Revenue Agency will award a non-repayable contribution to companies that meet certain requirements.

The amount of the grant will be determined applying one of the following percentages to the amount resulting from the difference between the amount of turnover for April 2020 and the amount of turnover for April 2019:

- 20% for companies with revenue not exceeding EUR 400,000 in the tax period prior to May 19, 2020 (the date of entry into force of the Liquidity Decree);
- 15% for companies with revenue between EUR 400,000 and EUR 1m in the tax period prior to May 19, 2020;
- 10% for companies with revenue between EUR 1m EUR 5m in the tax period prior to May 19, 2020.

The grant will be awarded to companies subject to the following conditions:

- Revenue must not exceed EUR 5m in the tax period prior to the then current tax period as at May 19, 2020;
- Save for start-ups, the amount of revenue in April 2020 must be less than 2/3 of the amount of revenue in April 2019.

Tax Credit for Cash Contributions and Investments in Permanent Establishments in Italy and in Collective Investment Undertakings

Pursuant to Article 26 of the Rilancio Decree, investors who carry out capital increases by means of cash contributions to companies whose registered office is in Italy are entitled to a tax credit corresponding to 20% of cash contributions made. The aforementioned companies have to meet a series of requirement, such as, revenues related to productive activities and the sale of shareholdings must be between EUR 5m and EUR 50m in 2019 fiscal year. Moreover, the reduction of revenues in the months of March and April 2020 must not be lower than 33% compared to the same period in the previous year.

Tax Credit Relating to Losses Incurred by Companies

Pursuant to Article 26 of the Rilancio Decree, this measure applies to the same companies as those entitled to the tax credit for cash contributions referred to above, and provides for a tax credit, granted to companies benefitting from the contribution, corresponding to 50% of the losses exceeding 10% of net equity, up to 30% of the value of the capital increase.

IRPEF (Personal Income Tax) Deduction for Investments in Innovative Start-Ups and SMEs

Pursuant to Article 38 of the Rilancio Decree, individuals investing in innovative start-ups and small and medium sized enterprises can benefit from an IRPEF deduction corresponding to 50% of the amount invested in the share capital of one or more innovative start-ups. The maximum deductible investment may not exceed EUR 100,000 in each tax year, and the investment must be maintained for at least three years. The measure is in compliance with the "de minimis doctrine" of Regulation (EU) No. 1407/2013 of the European Commission of December 18, 2013.

Liquidity measures

Converting Certain Deferred Tax Assets (DTAs) into Tax Credits

Pursuant to Article 55 of the Cure Italy Decree, upon payment of a 1.5% fee that is deductible for corporate income tax purposes, DTAs arising from tax losses or allowances for corporate equity may be converted into tax credits.

The conversion is limited to an amount not exceeding 20% of the nominal value of non-performing loans transferred to a third party in exchange for consideration no later than December 31, 2020 (even if not booked in the company's financial statements). A cap of EUR 2bn of receivables applies to third-party transfers made by companies that are members of the same corporate group. For the purposes of this provision, non-performing loans are defined as financial or commercial receivables with at least a 90-day payment delay.

The conversion of DTAs into tax credits occurs upon the receivables' transfer. The tax credit can be used to pay current taxes, withholding taxes and social security contributions and any excess can be refunded. The measure applies to all companies, regardless of their size, other than companies that are insolvent.

Tax Credit for Sanitation Purposes

Pursuant to Article 125 of the Rilancio Decree, the Italian government has granted a tax credit equal to 60% of the costs of sanitization of work environments and work equipment borne by businesses for the whole year 2020, as well as the costs for the purchase of personal protective equipment (sanitation of work areas; purchase of detergent and disinfectant; purchase and installation of safety equipment such as thermometers; purchase and installation of devices guaranteeing interpersonal distance safety; PPEs such as medical masks).

The tax credit cannot exceed EUR 60,000 per taxpayer beneficiary of the facility. For companies operating in premises open to the public, the maximum amount of the tax credit is EUR 80,000 per company. The measure applies to all businesses, regardless of their size.

Refund for Expenses Incurred for the Purchase of Personal Protective Equipment (PPE)

Pursuant to Article 43 of Cure Italy Decree, Invitalia (Italian National Agency for Inward Investment and Economic Development) should refund, up to a maximum amount of EUR 50m, up to the 100% of expenses incurred by companies from March 17, 2020 for the purchase of equipment and other PPEs aimed at containing the epidemiological emergency caused by COVID-19.

The maximum amount to be repaid is EUR 500 for each employee and EUR 150,000 per company.

Applications for such measures needed to be submitted by May 18, 2020.

Tax Credit for Leases of Non-Residential Buildings

Pursuant to Article 28 of the Rilancio Decree, a tax credit of 60% of the amount of rent, or payment for the lease or concession of real estate for non-residential use intended for the performance of industrial activity is granted to companies with revenue not exceeding EUR 5m in the tax period prior to May 19, 2020.

The tax credit is granted at the rate of 30% in the case of service contracts for complex services or business leases, including at least one non-residential property intended for the performance of industrial activity.

Eligible companies are those that have signed, as lessee, a lease agreement relating to a building for commercial use, and that have suffered a decrease in revenue of at least 50% compared to the same month of the previous tax period.

Reduction of the VAT Rate for Supplies of Goods Needed for the Containment and Management of the Emergency

Pursuant to Article 124 of the Rilancio Decree, VAT rates are modified as follows:

- VAT exemption, with the right to deduct the tax paid on purchases, limited to supplies provided by December 31, 2020;
- Reduced VAT rate of 5% for supplies provided from January 1, 2021.

The measure applies to all taxpayers and covers only the purchase of certain medical devices and PPE, such as surgical masks, protective gloves, thermometers, and hand disinfectant.

Spain

The tax measures undertaken by the Spanish government were mainly focused on self-employed, small, and medium-sized enterprises with a turnover under about EUR 6m the previous year.

Since the state of alarm was enacted on March 14, 2020, the key tax measures adopted to relieve the impact of the COVID-19 pandemic in Spain are summarized below.

Filing and Payment Deadlines Deferral

Since the release of the Royal Decree-Law 7/2020 on March 20, 2020, several rules were passed to defer the deadline for filing and payment of quarterly VAT returns, corporate income tax advance payments and personal income tax returns for qualified taxpayers up to a maximum of EUR 30,000. In addition, several extensions of deadlines in tax procedures before the Tax Authorities were approved.

Stamp Duty Exemption

The deeds of formalization of contractual novation of loans and mortgage loans that occur under Royal Decree-Law 8/2020 were exempted from the gradual quota of notary documents of the modality of documented legal acts of the Tax on Patrimonial Transfers and Documented Legal Acts. In short, these refinancings backed by the Government under the State of Alarm were exempt from stamp duty.

Additionally, Royal-Decree Law 25/2020 on urgent measures for economic construction, approved a set of incentives for the tourist industry, including a moratorium up to 12 months for mortgage payments on real estate assets used in the tourism sector (i.e. hotels and living accommodations) and a Stamp Duty exemption for public deeds documenting such moratorium.

Temporary Zero VAT Rate on Supply of Certain Medical Equipment

A zero VAT rate has been applied between April 23 to July 31, 2020, to supplies, imports and intra-Community acquisitions of medical equipment for use in the treatment of patients with COVID-19.

Corporate Income Tax (CIT) Return Additional Filing and Approval of Annual Accounts

CIT taxpayers who have not approved and drawn up Annual Accounts before the end of the filing period (25 calendar days following the six months after the end of the tax period) maintain their obligation to submit the CIT self-assessment by using the draft accounts available at that time.

Subsequently, once the Annual Accounts have been approved, if the CIT return corresponding to the finally approved Annual Accounts differs from that submitted within the common reporting period, taxpayers will be obliged to submit a new tax return. The deadline for such an extraordinary CIT declaration has been set at November 30, 2020.

Corporate Tax Incentives for the Automotive Sector (RDL 23/2020)

Recently the Government approved a set of economic measures to support car manufacturers. These included the increase of tax credits on technological innovations and the freedom of amortization on investments made in the value chain of electric, sustainable or connected mobility for taxable years commencing in 2020 and 2021.

Tax credits on technological innovation activities have been increased from 12% to 25% in respect of expenses incurred in activities that lead to technological advances in new production processes in the value chain of the automotive sector or to substantial improvements in existing ones.

In addition, investments made in 2020 in the acquisition of new tangible assets (with the exception of immovable property) in the automotive sector are eligible for freedom of amortization up to an amount of EUR 500,000.

Optional Deferral on the DAC6 Implementation

The European Union (EU) has passed a Directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (known as "DAC6") applicable to tax advisors, service providers, and taxpayers.

DAC6 is being progressively implemented in the EU Member States. Nevertheless, as a result of the COVID-19 crisis, the European Commission has made the decision to provide the Member States with the option to defer the entry into force of DAC6.

In consideration of the foregoing, Member States have been allowed:

- To defer the deadline for the first exchange of information, arising out of DAC6, from October 31, 2020 to April 30, 2021;
- To defer the date for beginning the 30 days period for reporting cross-border arrangements from July 1, 2020 to January 1, 2021; and
- To defer the date for reporting 'historical' arrangements (that became reportable from June 25, 2018 to June 30, 2020) from August 31, 2020 to February 28, 2021.

In Spain, the draft bill to implement DAC6 has entered the parliament and should be approved shortly. It is expected, however, that the deadlines for its entry into force will be deferred in accordance with the recent EU decision.

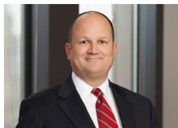
We Can Help

We have a dedicated team of leading tax experts to help you understand, adapt to, and anticipate developments in the world of taxation. From implications of governmental responses to COVID-19 to the challenges posed by the digitalization of the economy, from the impact on global trade to international dispute resolution, and from policy design to implementation and assessing effect, we can help.

We can strategize and support your engagement with national governments, the European Commission and the OECD's Inclusive Framework on BEPS. We look forward to engaging with you as your trusted adviser, as national and international tax law continues to evolve.

Contacts

Global Practice Group Leader



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