



CMS Tax Alert Italia

Suspension of deadlines for payments relating to enforceable tax assessment notices and for tax settlement agreements

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"Cura Italia Decree": with Circulars No. 5/E and No. 6/E of 20 March and 23 March 2020 respectively, the Italian Revenue Agency provided initial clarification on certain aspects of great interest such as the envisaged suspension of deadlines for the payment of sums due on the basis of tax assessment notices and for the deadlines relating to tax settlement procedures.

In its Circular No. 5/E of 20 March 2020 (hereinafter "**Circular No. 5**"), the Italian Revenue Agency provides initial clarifications relating to suspension of deadlines for the payment of amounts due following the serving of so-called "enforceable" tax assessment notices, pursuant to Articles 83 and 68 of Decree-Law No. 18 of 17 March 2020 (the so-called "*Cura Italia*" Decree, hereinafter "**the Decree**"), while in its Circular No. 6/E of 23 March 2020 (hereinafter, "**Circular no. 6**") clarifications were provided on the suspension time limits and on how the tax settlement procedure would be conducted during the suspension period.

Circular No. 5: suspension of deadlines for payment for enforceable tax assessment notices

Firstly, Circular No. 5 states that, pursuant to Article 29 of Decree-Law No. 78/2010, referred to in Article 68 of the Decree, tax assessment notices issued by the Italian Revenue Agency - once the 60-day period has passed for appealing to the Tax Commissions without payment of the sums in question - constitute an enforceable order, entitling the Italian Revenue Agency to initiate forced collection without the need for prior issue of the roll and serving of the payment injunction.

That said, Circular No. 5 observes that Article 83, paragraph 2, of the Decree provided for suspension of the deadline for appealing at first instance before the Tax Commissions from 9 March to 15 April 2020, with the consequence that the deadline for payment cited in the tax assessment notices, known as "enforceable" notices, being inextricably linked to the deadlines for lodging an appeal - both in the event of acquiescence and in the event of lodging an appeal in relation to the sums due provisionally - is also suspended for a period of 38 days.

Conversely, according to Circular No. 5, the longer suspension period until 31 May provided for by Article 68 of the Decree^[1] cannot apply to the payment deadline in question. In fact, the Italian Revenue Agency believes that the suspension of the payment deadline resulting from the tax assessment notices referred to in the aforementioned Article 68 should refer only to tax assessment notices that have already been passed to the Italian Revenue Agency's Collections Department for the enforcement proceedings.

Basically, with regard to enforceable tax assessment notices, Circular No. 5 considerably narrows the scope of application of the suspension for the longer period of 85 days provided for by Article 68 of the Decree, arguing that it should relate only to debts already passed to collection agents.

The restrictive interpretation adopted by the Revenue Agency in limiting the scope of Article 68 of the Decree solely to payments of sums already passed to collection agents indirectly highlights a further series of cases for which no suspension of payment deadlines appears to be envisaged.

Purely by way of example and without limitation, it must be noted that – based on the interpretation provided in Circular No. 5 and subject to changes at the time of conversion into law of the Decree – the following should be excluded from the payment deadline suspension^[2]:

- a) payments of sums, including in instalments, resulting from the notification of irregularities following automated checks (known as “36-bis” and “54-bis”) or formal checks (known as “36-ter”) on tax returns “tax payment slips” pursuant to Articles 2 and 3 of Legislative Decree No. 462, 18 December 1997.
- b) payments of sums, including in instalments, due on the basis of tax settlement agreements (Article 8 of Legislative Decree 218/1997);
- c) payments of instalments (after the initial instalment), relating to payment plans in progress following acquiescence to enforceable tax assessment notices (Article 15 of Legislative Decree No. 218/1997);
- d) payments of sums, including in instalments, deriving from an agreement reached in judicial conciliation (Article 48-ter of Legislative Decree No. 546/1992).

Particular attention must be given to the fact that, in the cases considered above in points b), c) and d), failure to pay one of the scheduled instalments leads to forfeiture of the benefit of paying in instalments and entry on the roll of the sums outstanding for the entire amount, in addition to the imposition of penalties for failure to pay 45% of the sums due by way of unpaid tax, or, for the so-called “tax payment slips” referred to in letter a), entry on the taxpayers roll of the amounts outstanding for the entire amount, plus interest and full penalty of 30% (cf. Article 15-ter of Presidential Decree No. 600/1973 and Article 48-ter of Legislative Decree No. 546/1992).

Although the position expressed by Circular No. 5 in question does not appear to comply at all with the regulatory rationale and the need to grant taxpayers a moratorium on tax payments at this particular time of

^[1] Article 68 of the Decree, entitled “Suspension of the deadlines for payment of the debts passed to collection agents”, in paragraph 1 provides that “*With respect to tax and non-tax revenue, the deadlines for payments due in the period from 8 March to 31 May 2020, deriving from payment injunctions issued by collection agents, as well as from the tax assessment notices envisaged in Articles 29 and 30 of Decree-Law No. 78 of 31 May 2010 are suspended*”, i.e. those arising, *inter alia*, from enforceable assessment notices.

^[2] Except for taxpayers who, as of 21 February 2020, had their tax domicile in one of the municipalities of the so-called “red zone” identified in Annex 1 to the Ministerial Decree of 1 March 2020.

difficulty, one cannot fail to take note of the fact that, as things stand, the approach of the Revenue Agency necessarily encourages prudence, including in light of the serious consequences that may arise in the case of payments deemed to have been omitted or delayed.

Circular No. 6: suspension of deadlines for tax settlement applications

Circular No. 6 specifically deals with the subject of tax settlement, providing clarification on the suspension of deadlines and on the procedural methods during the period of suspension.

With regard to suspending the deadlines, Circular No. 6 – confirming and extending information incidentally provided in a different context in Circular No. 5 (in particular, in footnote No. 3 of the latter) – clarifies that the suspension of the deadline for lodging an appeal from 9 March to 15 April 2020, cited in Article 83 of the Decree, also relates to expiry of the deadline for submitting a tax settlement application pursuant to Article 6, paragraph 2 of Legislative Decree No. 218/1997 (i.e. the application submitted by the taxpayer following the serving of a tax assessment notice), as well as the additional period of ninety days for lodging an appeal following the submission of a tax settlement application.

Clarification is important because, with particular reference to the case of the tax settlement proceedings already in progress on 9 March 2020, it confirms that the suspension pursuant to Article 83 of the Decree is added to the ordinary 90-day suspension period for lodging an appeal, similar to the case for summer break ^[3].

Circular No. 6 also enlarged on the coordination of the provisions of Article 83 with the further provision set out in Article 67 of the Decree, which establishes that "*The deadlines for liquidation, control, assessment, collection and litigation activities by the offices of the tax authorities are suspended from 8 March to 31 May 2020*". In this regard, Circular No. 6 observes that the above provision does not suspend or exclude the activities of said offices, but exclusively governs the suspension of deadlines relating to control and assessment activities. As Circular No. 6 states, "*the Revenue Agency's offices have been instructed not to carry out the above activities, in order not to encourage physical displacement by taxpayers and their representatives as well as by employees*".

In light of these observations, the objective difficulties of coordination between the longer suspension afforded by Article 67 and the shorter suspension afforded by Article 83 are actually addressed by reference to the principle of collaboration and good faith between the tax authorities and the taxpayer^[4]. Circular No. 6 states, "*where there is a concrete shared interest in carrying out the tax settlement procedure, it is possible, from the standpoint of "cooperation and good faith" between tax authorities and taxpayers, to meet these requirements wherever possible*".

In this regard, Circular No. 6 then provides some operational information on how to manage tax settlement procedures during this particular emergency, prioritising the need to protect the health of the Agency's employees, taxpayers and their representatives and, therefore, avoiding physical contact and displacement by "remotely" managing procedures and meetings. Circular No. 6 also specifies that the detailed instructions provided for meetings to be held remotely, together with related minuting and signing activities, may be adapted on a case-by-case basis to any other procedure that requires the participation or agreement of the taxpayer.

^[3] Circular no. 6 provides an example of a tax assessment notice served on 21 January 2020 for which a tax settlement application was filed on 20 February 2020 (i.e. 30 days after the notice), clarifying that the deadline for lodging the appeal expires in this case on 27 July 2020, thereby adding the ordinary 90 days suspension provided for by Article 6, paragraph 3, of Legislative Decree No. 218/1997 to the ordinary 60 days for an appeal, as well as the additional 38 days of suspension provided for by Article 83 of the Decree.

^[4] Paragraph 1 of Article 10 of Law No. 212 of 27 July 2000 reads: "*Relations between the taxpayer and the tax authorities are based on the principle of collaboration and good faith*".

Finally, Circular No. 6 reminds that the 20-day deadline provided for by Article 8 of Legislative Decree No. 218/1997 for payment of the sums (or the first instalment) due as a result of a tax settlement agreement is not subject to suspension, thus explicitly confirming - at least in this case - information indirectly obtainable from Circular No. 5 (see above).

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