



Newsletter

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Legal-Tax
Company law and taxation

**“Manovra correttiva” [Austerity Bill] -
Law converting Decree Law
no. 138 of 13 August 2011**

Law no. 148/11, the law converting Decree Law no. 138/11 (*manovra correttiva*), containing “urgent measures for stabilisation and development”, came into force on 17 September 2011.

A brief examination of the most important measures introduced by the law is provided below.

Anti-money laundering measures

Measures aimed at combating money laundering have long included a ban on transferring cash and bearer bonds worth more than a limit provided for by law [Legislative Decree no. 231 of 21 November 2007].

This amount has been changed various times, most recently with the Decree Law [August *manovra correttiva*], which reduced the limit from Euro 5,000 to Euro 2,500.

Considering that the change took place during the summer, the Legislator ruled that fines for violations of this ban could not be imposed on transactions taking place from 13 [the date on which the decree law came into force] and 31 August.

The deferred application of penalties only regards transfers of between Euro 5,000 and Euro 2,500.

Mediation aimed at conciliation

With Legislative Decree no. 28 of 4 March 2010, the Legislator established rules governing mediation aimed at conciliation [see Newsletter 2/10].

In summary, the Law states that, in certain cases, a party who intends to sue another party must engage in an attempt at conciliation before a body accredited by the Ministry of Justice.

The conciliation phase is a necessary condition for proceedings to be brought before an ordinary judge, in the event the conciliation is unsuccessful.

The ‘*manovra correttiva*’, as amended on conversion into law, added a rule stating that a judge will impose a financial penalty on any party that does not participate in conciliation proceedings without a justified reason.

Note that the rules governing conciliation proceedings are currently being assessed by both constitutional judges and the European Union Court of Justice.

Liberalisations and examples

With the austerity measures in question, the

Legislator has stated that Regions, Provinces, Municipalities and professional associations must change their regulations to remove “*undue restrictions on access to and the carrying on of professions and business activities*”. The term “restrictions” refers, for example, to:

- limitations on the number of persons authorised to carry on a business all over Italy or in a certain geographical area, without this number being directly or indirectly determined on the basis of population or other requirement criteria;
- imposition of minimum distances between premises assigned to the carrying on of a professional or business activity;
- bans on carrying on a business in more than one office or in one or more geographical areas;
- permitting only certain categories to carry on a business or prohibiting the sale of some products to certain categories;
- imposing restrictions on carrying on a business by indicating the legal form the operator must take;
- imposing minimum prices or commissions for the supply of goods or services, regardless of the direct or indirect determination of a profit coefficient or other percentage-based calculation;
- obligation to supply specific services complementary to the activity performed.

Individual businesses may be excluded, entirely or partially, from the lifting of these restrictions, with a decree issued by the Prime Minister, based on a proposal put forward by the competent Ministry, in agreement with the Ministry of the Economy and Finance, and having discussed the exclusion with the antitrust authority, within four months of 17 September 2011.

In compliance with Directive 2006/123/EC of the European Parliament and Council, taxi services and charter rentals of vehicles with a driver, carried out exclusively with M1 category vehicles, are excluded from the lifting of restrictions.

As regards the ‘*segnalazione certificata di inizio attività*’ [SCIA - certified notice of commencement of business] and the ‘*denuncia e dichiarazione di inizio attività*’ [DIA - report and statement of commencement of business], the Law clarifies that these do not constitute tacit approval that are subject to appeal. To object to such notices it is necessary to ask the public authorities to carry out inspections and, if no action is taken, by appealing against the ‘silence’ of the public authorities, in accordance with the code of administrative process.

Traceability of refuse

The law converting Decree Law no. 138 of 13 August 2011 reintroduced the System to check the traceability of refuse [SISTR], establishing 9 February 2012 as the deadline for its implementation.

‘Solidarity contribution’

An additional tax of 3% will be applied on taxable income exceeding € 300.000.

This rule applies with effect from 1 January 2011 and until 31 December 2013, but may be extended until a balanced budget is achieved.

The solidarity contribution is deductible from overall income.

VAT

The ordinary VAT rate on transfers of goods and supplies of services has been raised to 21%.

The new rate applies to transactions performed from 17 September 2011, the date the conversion law comes into force.

The 4% and 10% rates have not changed.

Dummy companies and loss-making companies

With effect from the tax period after the period in which the conversion law comes into force (i.e. from 2012 for companies whose tax year coincides with the calendar year) an increase of 10.5% will be applied to the ordinary IRES rate.

This increase applies to:

- non-operating companies;
- companies that, despite exceeding the minimum requirements provided for by the rules governing dummy companies, declare tax losses for three consecutive financial years;
- companies that, in a three-year period made tax losses in two years and in the other year declared profits lower than the minimum provided for by the rules governing dummy companies.

The exemptions from the rules governing dummy companies nevertheless continue to apply.

Regime governing company assets available for use by partners

With effect from the tax period after the period in which the conversion law comes into force, costs relating to company assets assigned to partners free of charge or for an annual fee lower than the market value for such use, will be non-deductible from business income; furthermore, the difference between the market value and the fee paid will form part of the taxable basis of the user.

In allow correct fiscal checks to be performed, the company or partner must communicate to the Revenue Agency the details relating to the assets, following procedures that will be established by the Director of the Revenue Agency.

Reduction in penalties for persons using payment methods other than cash

Businesses and freelance professionals earning revenues or fees of under € 5 million, who exclusively use payment methods other than cash will be granted a reduction of 50% on penalties imposed for violations relating to direct tax and VAT returns, provided these tax

returns contain indications to identify the relationships between these subjects and the financial operators.

Amnesties and regularisations

Within sixty days of the conversion law coming into force, those who have taken advantage of the amnesties or regularisations provided for by Law no. 289 of 2002 and who have not paid in full the amounts due will receive a demand for payment of the outstanding amount by 31 December 2011.

In the event of a further breach, the penalties will be raised and a check will be carried out by the Revenue Agency.

For those who took advantage of the VAT amnesty, the time limits for assessment existing as at 31 December 2011 have been extended by one year.

Criminal tax offences

For certain types of criminal tax offence the thresholds for punishment have been lowered: amount of tax not paid, amount of

false costs declared, amount of income not declared.

VAT warehouses

The removal of goods from VAT warehouses may be performed only by taxpayers who:

- have been registered with the Chamber of Commerce for at least one year;
- prove that they are effectively operational;
- prove that VAT has been paid correctly.

Increase in the IRES surtax for companies in the energy sector

The IRES surtax for companies in the Energy sector has been raised to 10.5% for the three tax years after the year in progress on 31 December 2010.

Taxation of financial income

The tax rate and the substitute tax on certain types of capital income and other financial income have been standardised at 20%.

Contacts**Milan - Headquarters**

Via della Moscova, 3
20121 Milan
Phone +39 02.80673.1
Fax +39 02.89010836

email: info@crowehorwath.it

Milan Caldera

Via Caldera, 21
20153 Milan
Phone +39 02.80673.1
Fax +39 02.40914959

Rome

Largo Chigi, 5
00187 Rome
Phone +39 06.697757.1
Fax +39 06.69775720

Turin

Corso V. Emanuele II, 71
10128 Turin
Phone +39 011.50940.1
Fax +39 011.5094020

Venice

Viale Ancona, 26
30172 Venice
Phone +39 041.290571.1
Fax +39 041.2905770

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