



---

## Client Alert | Tax & Regulatory

---

Italy

### COVID-19 epidemiological emergency and incentives to support businesses

March 2020

#### Conversion of deferred tax assets into tax credits following the transfer of non-performing loans

Article 55 of Law Decree of 17 March 2020 no. 18 introduced in Italy relevant provisions aimed at encouraging the sale of non-performing loans for consideration. The provisions, applicable to all types of companies<sup>1</sup>, are particularly effective when thinking to the banking sector, where the issue of non-performing loans (NPLs) entails specific regulatory aspects in addition to taxation ones.

By enhancing the measures contained in art. 2, paragraphs 55 to 58 of Law Decree of 29 December 2010 no. 225, these provisions extend the possibility of converting deferred tax assets into tax credits, even when such assets have not been budgeted due to failure to pass the probability test, relating to both (i) tax losses - which can be carried forward pursuant to art. 84 of Presidential Decree of 22 December 1986 no. 917 (Italian consolidated income tax act) - and (ii) the aid to economic growth - which can be carried forward pursuant to art. 1, par. 4 of Law Decree of 6 December 2011 no. 201<sup>2</sup>. Such conversion allows to anticipate the use of the deferred tax assets which, otherwise, would have been usable in subsequent years only.

From a regulatory perspective, in accordance with the provisions of EU Regulation no. 575 relating to prudential requirements for credit institutions, the conversion of deferred tax assets into tax credits allows the transferor bank to improve its capital requirements. This results into an increase in both the regulatory capital - own funds - and the total capital ratio (TCR), in addition to an improvement in the NPL ratio.

<sup>1</sup> Companies that are failing (*stato di dissesto*) or risk failing (*rischio di dissesto*) in the meaning of art. 17 of Legislative Decree of 16 November 2015 no. 180 (regulation on the recovery and resolution of credit institutions), or companies which are in a state of insolvency (*stato di insolvenza*) in the meaning of art. 5 of the Royal Decree of 16 March 1942 no. 267 (Italian bankruptcy law) or art. 2, par. 1, lett. b) of Legislative Decree of 12 January 2019 no. 14 (Italian crisis and insolvency code) are excluded from the benefit.

<sup>2</sup> Law Decree of 6 December 2011 no. 201 has been converted with amendments into Law of 22 December 2011 no. 214.

---

Milano

Roma

London

Brussels

Shanghai

Nctm Studio Legale  
Via Agnello 12  
20121 Milano

T +39 02 72551.1  
F +39 02 72551.501  
C.F e P.IVA: IT 12988470154

Nctm opera nel Regno Unito come Nctm LLP  
e in Belgio come Nctm Association d'avocats.  
L'elenco soci è disponibile su [www.nctm.it](http://www.nctm.it)



From a tax point of view, the conversion allows the transferor bank to benefit in advance from tax credits, which are not subject to IRES (corporate business tax)/IRAP (regional business tax) and can be used to offset payments due for taxes and contributions. Said tax credits can also be assigned - intragroup or to third parties - or requested for refund, as an alternative to set-off.

The incentive is based on the assumptions that (i) the NPLs have been assigned in 2020 and (ii) the assignees are entities external to their group<sup>3</sup>. The tax incentive is positively affected by (iii) the notion of non-performing loan adopted by the Italian legislator - which includes non-performing receivables, unlikely to pay and past-due accounts and/or debts for over ninety days. Nonetheless, the tax incentive has been limited by the Italian lawmaker (iv) in the amount of deferred tax assets which can be converted into tax credits: tax losses and the aid to economic growth, in relation to which deferred tax assets have accrued - and which, therefore, can still be carried over to the date of the receivables assignment - are recognised, for the purposes of the conversion, only up to 20% of the nominal value of the assigned receivables. Furthermore, the assigned receivables are recognised only up to a nominal value of € 2 billion. For groups of companies such limit must be determined at the group level and not for each corporate entity. By way of example, in the event of sale of an NPL portfolio with a nominal value of € 1 billion, the basis for calculating the tax incentive is equal to € 200 million - *i.e.* 20 percent of the nominal value of the sold portfolio - and the tax incentive is equal to € 55 million, if the applicable IRES rate is considered to be 27.5 percent (24 percent in terms of ordinary corporate business tax (*IRES ordinaria*) and 3.5 percent as an additional corporate business tax (*addizionale IRES*)). We hope there will be room for amendments when the Law Decree will be converted into law.

Moreover, in order to overcome any EU concerns regarding compatibility with state aid rules, the conversion of deferred tax assets into tax credits is (v) subject to the exercise of an option by the transferor bank pursuant to art. 11, par. 1 of Law Decree of 3 May 2016 no. 59. However, such an option may have already been exercised in order to benefit from the similar provisions of the aforementioned Law Decree no. 225/2010<sup>4</sup>. The option may entail - and in most cases does entail - the incurring of a charge, which can be determined based on the combined provisions of Law Decree no. 18/2020 and Law Decree no. 59/2016

\*\*\* \*\*

*The information and comments contained in this Newsletter are not intended as legal advice and are provided for information purposes only. Although we took all possible precautions in drafting these comments, our firm assumes no responsibility as to the accuracy of the*

<sup>3</sup> Such provision does not apply to receivables assignments that occur between companies that are linked to each other by control relationships in the meaning of art. 2359 of the Italian civil code and to companies controlled, even indirectly, by the same entity.

<sup>4</sup> Law Decree of 3 May 2016 no. 59 has been converted, with amendments, into Law of 30 June 2016 no. 119.

Nctm



*information herein. Readers are invited, if interested, to ask for a legal opinion on the issues dealt with and, for that purpose, every member of our staff will be fully available to provide assistance.*

---

Milano

Roma

London

Brussels

Shanghai

Nctm Studio Legale  
Via Agnello 12  
20121 Milano

T +39 02 72551.1  
F +39 02 72551.501  
C.F e P.IVA: IT 12988470154

Nctm opera nel Regno Unito come Nctm LLP  
e in Belgio come Nctm Association d'avocats.  
L'elenco soci è disponibile su [www.nctm.it](http://www.nctm.it)