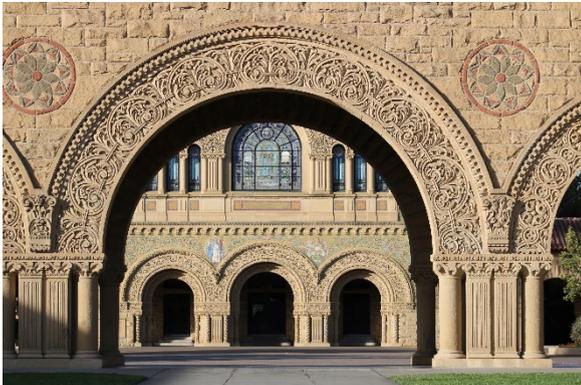


# Covid-19 measures: waiver of the Italian regional tax on production activities

The Italian measures adopted in connection with the COVID-19 pandemic include specific rules concerning the Regional Tax on Production Activities (IRAP) payment.



## IRAP waiver: the main requirements

In a nutshell, if several conditions are met then neither the IRAP balance for the FY in progress on 31.12.2019 nor the IRAP first instalment for the following FY have to be paid (Article 24, Law Decree 19th May 2020, No. 34 - hereafter the "Law Decree").

To benefit from the IRAP waiver, the following conditions must be met:

- » the taxpayer must be different from banks and other financial institutions, insurance companies, public administrations and public bodies;
- » the taxpayer must have an amount of revenue no higher than EUR 250 million in the FY ending on 31.12.2019. Given the absence of any specific requirement, such a threshold should be checked at the single company level.

In light of the above, **the measure discriminates in favour of the beneficiaries**

**as compared to other undertakings in a comparable factual and legal situation** (those being undertakings above the respective ceilings or being part of sectors (or engaging in activities) not covered by the measure) that remain subject to the payment of IRAP. The Italian authorities have not provided any justification for this discrimination based on the nature or the general scheme of the tax system. Accordingly, **the tax advantage is selective.**

## The "Temporary Framework"

Due to its selectivity, the measure falls within the scope of application of EU State aid rules and so must be applied in compliance with the limits and conditions set out in the EU Communication of 19 March 2020 C(2020)1863 final "Temporary framework for state aid measures to support the economy in the current emergency of the COVID-19" and subsequent amendments.

In particular, the IRAP waiver has been designed to meet the requirements of a specific category of aid ("Limited amounts of aid" described in Section 3.1 of the Temporary Framework).

According to Section 3.1 of the "Temporary Framework", the following additional conditions should be met:

- a) the overall aid does not exceed EUR 800,000 per undertaking; the ceiling has

then been increased to EUR 1.8 million per undertaking (see the informal consolidated version of the "Temporary Framework" of 28 January 2021);

- b) aid may not be granted to undertakings that were already in difficulty on 31st December 2019 (for the definition of "undertaking in difficulty" reference should be made to Article 2(18) of Regulation (EU) No. 651/2014, Article 2(14) of Regulation (EU) No. 702/2014 and Article 3(5) of Regulation (EU) No. 1388/2014);
- c) the aid is granted no later than 31st December 2020; the period has then been extended until 31st December 2021 (see the informal consolidated version of the "Temporary Framework" of 28 January 2021).

In light of the above, the following points will be further explored:

- » the State aid ceiling and timeframe to be taken into consideration;
- » the notion of "undertaking".

### "Temporary Framework" version - State aid ceiling and timeframe to be taken into consideration

Considering that:

- » the most recent measures taken by the Italian government in the context of the Covid-19 pandemic have confirmed – among others – that Article 24 of the Law Decree applies in compliance with the limits and conditions set out in the EU Communication of 19 March 2020 C(2020)1863 final *"Temporary framework for state aid measures to support the economy in the current emergency of the Covid-19"* and subsequent amendments (see Article 1(13) of Law Decree 22nd March 2021, No. 41); and

- » the explanatory report to Article 1 of Law Decree 22nd March 2021, No. 41, has clarified that the State Aid ceiling under Measure 3.1 of the Temporary framework per undertaking is EUR 1.8 million in the period from 1st February 2020 to 31st December 2021;

it could be argued that **the new conditions apply in terms of the ceiling and timeframe.**

### State aid ceiling "per undertaking" and territorial requirement

The aid limit applies "per undertaking". This means that the maximum limit will not be checked focusing on the (separate) company (i.e. single entity approach) but considering the entire, relevant "undertaking", which to some extent will lead to an analysis at the group level.

According to the Italian clarifications (see Circular letter DPE-0005531-P-18/06/2020), for the definition of "undertakings" reference will be made to point 11, of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU 2016/C 262/01, in which "Several separate legal entities may be considered to form one economic unit for the purposes of the application of State aid rules. That economic unit is then considered to be the relevant undertaking. In this respect, the Court of Justice considers the existence of a controlling share and other functional, economic and organic links to be relevant" (see also the Judgment of the Court of Justice of 10th January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04; Judgment of the Court of Justice of 16th December 2010, *AceaElectrabel Produzione SpA v Commission*, C-480/09 P).

However, for multinational enterprises having entities located worldwide, the territorial

scope must be checked to identify the relevant "undertaking".

In this respect, it should be pointed out that:

- » the most recent measures taken by the Italian government in the context of the Covid-19 pandemic have clarified that as far as the notion of "undertaking" is concerned reference must be made to the definition provided by the EU Regulations related to the "de minimis" rule (see Article 1(17), Law Decree 22nd March 2021); and
- » the Regulation (EU) 1407/2013, related to the "de minimis" rule, has provided an exhaustive list of clear criteria for determining when two or more enterprises within the same Member State are to be considered as a single undertaking.

In light of the above, even if there are no specific clarifications concerning the territorial requirement of the Temporary Framework, **it may be assumed that the focus will be on the "one economic unit" including the companies being established within the same EU Member State**, i.e. the ceiling will be checked at the country level (see Association of Italian Joint Stock Companies, Circular Letter No. 10/2021).

### State aid adopted during Covid-19 pandemic

Additional information about the Temporary framework, including the list of the State aid measures implemented by each EU Member State during the COVID-19 pandemic, can be found on the [European Commission's website](https://ec.europa.eu/competition-policy/state-aid/coronavirus_en)

- » [https://ec.europa.eu/competition-policy/state-aid/coronavirus\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus_en).

The following link contains additional information about the State aid rules and the COVID-19 pandemic:

[https://ec.europa.eu/competition-policy/state-aid/latest-news\\_en](https://ec.europa.eu/competition-policy/state-aid/latest-news_en)

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