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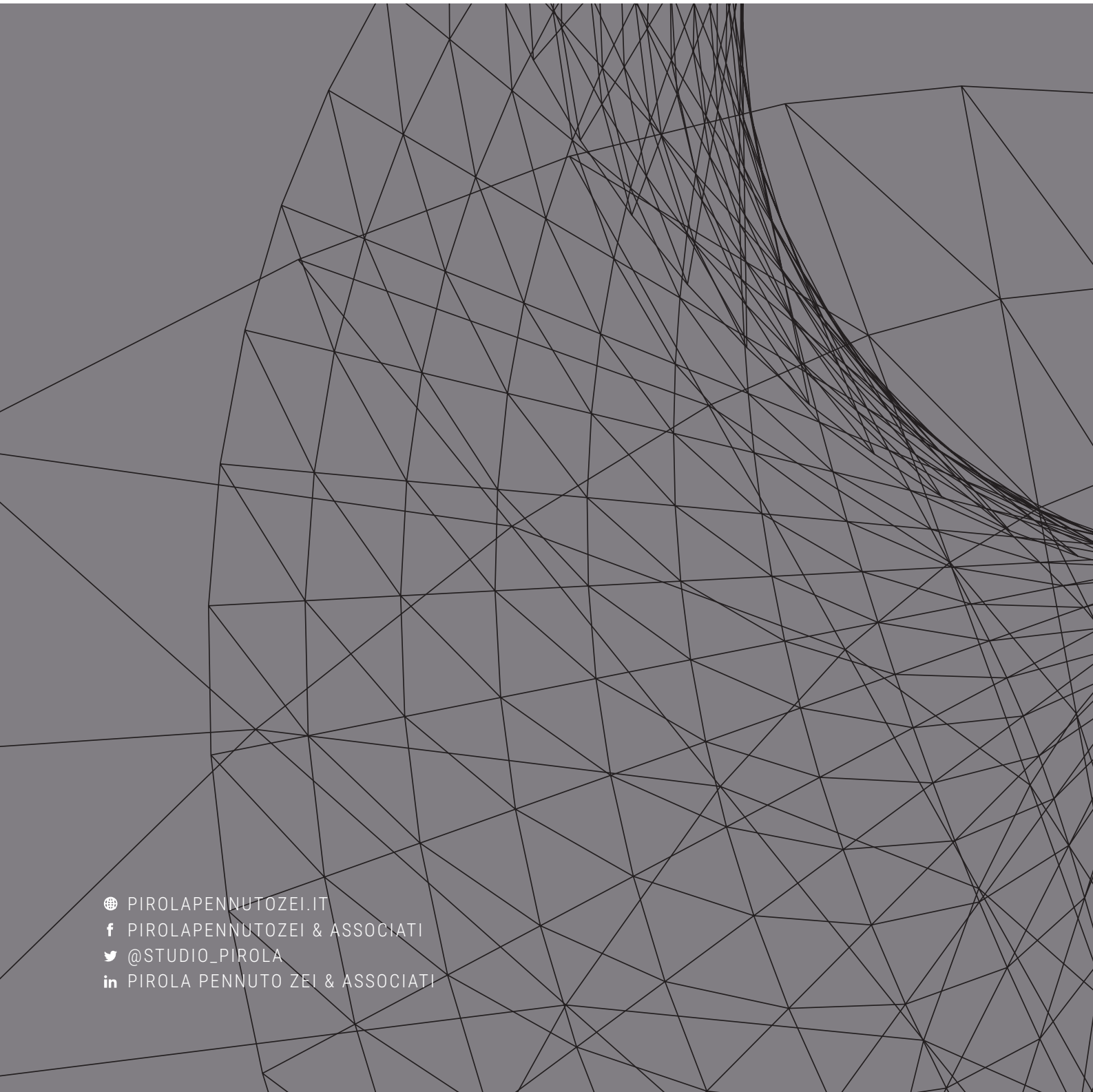
EUROPEAN

NEWSLETTER / APRIL 2018



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INDEX

LAW

EU COURT OF JUSTICE

BACK TO TABLE OF CONTENTS ↑

LAW

1.1
VAT - MOSS Portal

On 19 April 2018, the EU Commission updated the website concerning the so called MOSS *(Mini One Stop Shop)*[1], on Telecommunication, Broadcasting and Electronic (TBE) services in the EU.

As in compliance with Council Directive 2006/112, amended by Council Directive 2008/8, taxable subjects performing electronic services (already subject to the VIES regime) or telecommunication/broadcasting services (TBE) in favor of European operators (B2C) are entitled to use the "*Mini one Stop Shop*" or "*Mini Sportello Unico* ("*MOSS*") portal in order to fulfil VAT related obligations.

The MOSS Portal, in force from 1 October 2014, becomes effective pursuant to the implementation of Directive No. 112/2016, as amended by Directive No. 2008/8, and the new territorial principles applying to VAT as from 1 January 2015.

The EU Commission website explains what TBE services are, in which Member State they are subject to VAT and how the MOSS can be used to declare and pay VAT on these services.

The page is articulated as follow:

- *Register to MOSS;*
- *Declare and Pay VAT in MOSS;*
- *Record keeping and audits in MOSS;*
- *Leaving MOSS.*

1 Both taxable subjects located in EU (EU Regime) and those located outside the EU (non-EU Regime) are entitle to access the MOSS services. The regime is optional but, once entered, the regime must be applied in all Member States. The MOSS applies to the following online executed B2C operation: 1) telecommunication services; 2) television and radio broadcasting services; 3) electronically supplied services (see Annex II of Council Directive 112/2006/EU) – such as for example design of web sites, and web *hosting,* supply of images, texts, games, music.

EU COURT OF JUSTICE

2.1

Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Place of intra-Community acquisition — Article 42 — Intra-Community acquisition of goods that are the object of a subsequent supply — Article 141 — Exemption — Triangular transaction — Simplification measures — Article 265 — Correction of recapitulative statement. Judgement dated 19 April 2018, Case 580/16, *Firma Hans Bühler KG* vs *Finanzamt Graz-Stadt*

Article 141(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that the requirement laid down in that provision is met where the taxable person is resident and identified for value added tax (VAT) purposes in the Member State from which the goods are dispatched or transported, but that taxable person uses the VAT identification number of another Member State for that specific intra-Community acquisition.
Articles 42 and 265 of Directive 2006/112, as amended by Directive 2010/45, read in conjunction with Article 263 of Directive 2006/112, as amended by Directive 2010/45, must be interpreted as precluding the tax authorities of a Member State from applying the first paragraph of Article 41 of Directive 2006/112 solely on the ground that, in the context of an intra-Community acquisition, made for the purposes of a subsequent supply in the territory of a Member State, the recapitulative statement, referred to in Article 265 of Directive 2006/112, as amended by Directive 2010/45, was not submitted in good time by the taxable person identified for value added tax (VAT) purposes in that Member State.

This request for a preliminary ruling concerns the interpretation of Article 141(c) and Articles 42 and 265 of Council Directive 2006/112/EC of 28 November 2006 as amended by Council Directive 2010/45/EU.
The request was made in the course of a dispute between *Firma Hans Bühler KG* and the *Finanzamt Graz-Stadt* (City of *Graz* Tax Office, *Austria*) concerning the payment of value added tax (VAT) on transactions carried out between 2012 and 2013.

The clarifications provided concern the interpretation of Article 141(c)[2] which states that the goods object

2 Article 141 of the VAT directive states that each Member State shall take specific measures to ensure that VAT is not charged on the intra-Community acquisition of goods within its territory, made in accordance with Article 40, where the following conditions are met: a) the acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State b) […]; c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply; d) […]; e) […].

of intra-Community acquisitions are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply.
It is specified that, where an acquirer is identified for VAT purposes in several Member States, only the VAT identification number under which he made the intra-Community acquisition must be taken into account in assessing whether the condition laid down in Article 141(c) of the VAT Directive is met. This anticipated, Article 141(c) must be interpreted as meaning that the requirement laid down in that provision is met where the taxable person is resident and identified for VAT purposes in the Member State from which the goods are dispatched or transported, but that taxable person uses the VAT identification number of another Member State for that specific intra-Community acquisition.

The EU Court of Justice intervenes also on the issue of recapitulative statements (Article 265 of the VAT Directive) to be provided in presence of "*chain*" transactions (to this extent, see Judgements *VSTR and Euro Tyre*).

2.2

Reference for a preliminary ruling — Taxation — Directive 2006/112/EC — Common system of value added tax (VAT) — Deduction of input tax — Right to a refund of VAT — Transactions relating to a tax period that has already been the subject of a tax inspection which has concluded — National legislation — Possibility for the taxable person to correct tax returns which have already been covered by a tax inspection — Precluded — Principle of effectiveness — Fiscal neutrality — Legal certainty.
Judgement dated 26 April 2018, Case C-81/17, *Zabrus Siret SRL*

Articles 167, 168, 179, 180 and 182 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, and the principles of effectiveness, fiscal neutrality and proportionality must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, by way of derogation from the five-year limitation period imposed by national law for the correction of value added tax (VAT) returns, prevents, in circumstances such as those in the main proceedings, a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.

This request for a preliminary ruling has been made in proceedings between *Zabrus Siret SRL* and the Romanian Public Finance Administration concerning whether the taxable person may correct value added tax (VAT) returns in order to claim the right to deduct VAT[3].
The referring court has requested whether the principles of effectiveness, fiscal neutrality and proportionality must be interpreted as precluding national legislation, (such as that at issue in the main proceedings) which, by way of derogation from the five-year limitation period imposed by national law for the correction of value added tax (VAT) returns, prevents a taxable person from making such a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.

Preliminarily, it is assessed that, according to settled case-law, the right of taxable persons to deduct is a fundamental principle of the common system of VAT established by the EU legislature (see, inter alia, Judgments *Mahagében* and *Dávid* and *Paper Consult*). As the Court has repeatedly held, the right of deduction provided for in Article 167 et seq. of the VAT Directive may not, in principle, be limited.

The following principles have been stated:

- the fact that national legislation deprives the taxable person of the opportunity to correct his VAT return by shortening the time available to him for that purpose is incompatible with the principle of effectiveness, fiscal neutrality and proportionality;
- in accordance with the principle of proportionality, Member States must employ means which, whilst enabling them effectively to attain the objective pursued by national legislation, are the least detrimental to the principles laid down by EU legislation (Judgment *Sosnowska*);
- in view of the dominant position which the right of deduction has in the common system of value added tax, a penalty consisting of an absolute refusal of the right of deduction appears disproportionate where no evasion or detriment to the budget of the State is ascertained (see Judgement *EMS-Bulgaria Transport*).

Such conclusions are duly compliant with EU Court of Justice Judgement *Fatorie* dated 6 February 2014.

3 The right to deduct VAT is, in Romanian law, subject to the general limitation period of five years. Such right is subject to a shorter limitation period in the event of a tax inspection. It is no longer possible for the taxable person to correct VAT returns for tax periods that have already been the subject of inspection by the tax authorities.

Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

Via Vittor Pisani, 20
20124 Milano

T. +39.02.669951
F. +39.02.6691800

info@studiopirola.com
www.pirolapennutozei.it

EUROPEAN TAX NEWSLETTER | APRIL 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 APRIL 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM