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tributaria e legale

TAX

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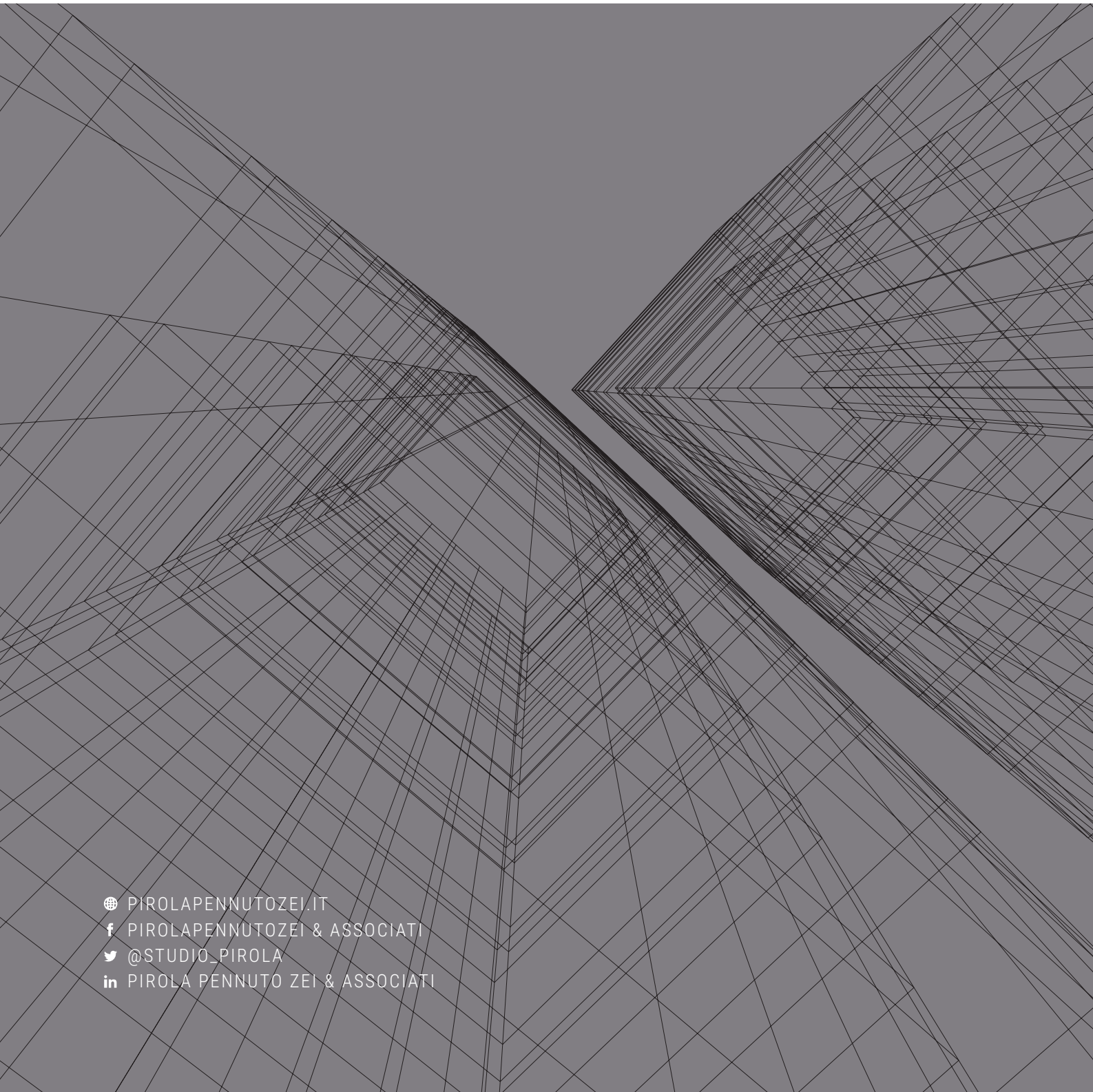

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LEGISLATION

1.1

Modalities and criteria for the granting of tax benefits for incremental advertising investments in newspapers, magazines and on local television and radio stations, pursuant to Article 57-*bis*, paragraph 1 of Law Decree dated 24 April 2017, No. 50 converted with amendments by Law dated 21 June 2017, No. 96. Decree of the President of the Council of Ministry dated 16 May 2018, No. 90 (Official Gazette No. 170 24/7/2018)

Decree No. 90/2018 provided for the implementation of the tax credit to support incremental advertising investments made in newspapers and on local radio-television stations, regulating the aspects described below.

Subjective scope

Businesses or self-employed persons, irrespective of their legal nature, company size and accounting system, as well as non-commercial entities can benefit from a tax credit in relation to investments in advertising campaigns in the daily and periodical press (including that made on-line), as well as on local, analogue or digital television and radio stations, made starting from 1 January 2018, whose value exceeds for at least 1% the similar investments made on the same media in the previous year. This percentage increase refers to the total investments made with respect to the previous year on the media mentioned above. The same subjects can benefit from the tax credit exclusively on the incremental advertising investments in the daily and periodical press (also on-line) made from 24 June 2017 to 31 December 2017, provided that their value exceeds at least 1% the amount of the similar investments made by the same subjects on the same media in the corresponding period of 2016.

Tax credit discipline

The tax credit is equal to 75% of the incremental value of the investments made, raised to 90% in the case of micro-enterprises, small and medium-sized enterprises and innovative start-ups. The tax credit is alternative and cannot be combined - in relation to the same expense items - with any other benefit provided for by state, regional or European legislation, unless "*subsequent provisions of the same source do not explicitly provide for the cumulability of the benefits*". This tax credit can only be used for offsetting

purposes and must be indicated in the Income Tax Return relating to periods in which the credit is accrued and in the Income Tax Returns relating to the subsequent tax periods up to that in which the compensation is concluded.

Eligible investments

Incremental investments eligible to the benefit are those related to the purchase of advertising spaces and commercial advertisements - made exclusively in daily and periodic newspapers - published in paper or in digital format, or in local, analogical or digital, television and radio programming. On the contrary, the tax credit is not recognized for costs incurred for the purchase of spaces within the broadcast programming in order to advertise or promote teleshopping of goods and services of any type, as well as for radio and television spots for advertisement or promotions relating to betting, gaming or betting services with money winnings, voice mail or chat-line services with over-premium services.

Limits and conditions of the benefit

The benefit is granted in compliance with the limit of budgetary resources annually allocated, which constitutes the ceiling of expenditure to be distributed[1]. Expenses are considered incurred in accordance with the provisions of Art. 109 of the TUIR (Italian Income Tax Act). The same must result from a certificate issued by the subjects entitled to issue the conformity permit referring to the data shown in the tax returns, or by the subjects who carry out the statutory audit of the accounts (as in compliance with Article 2409-*bis* of the Italian Civil Code).

Access to the benefit

In order to access the credit, the interested parties must submit a specific electronic communication, containing the data indicated under Art. 5 of the Decree (for example, the total cost of advertising investments made or to be made, the percentage and the total amount of the advertising investment

1 Paragraph 1 of Art. 4 of the Decree provided for special rules in the case of insufficient resources available, providing that "*in case of insufficient resources available compared to the requests eligible, these shall be distributed among the beneficiaries in proportion to the tax credit due [...] with an individual limit per subject equal to 5 percent of the total annual resources allocated to investments in newspapers, and to 2 percent of the annual resources allocated to investments on local radio and television stations [...]*".

realized or to be realized with the comparison with the previous year) in the period from March 1 to 31 of each year. By April 30 of each year, the Department for Information and Publishing of the Presidency of the Council of Ministers will form a list of the subjects requesting the tax credit, with an indication of any provisional percentage of allotment in case of insufficient resources, as well as the amount theoretically usable by each subject after the realization of the incremental investment.

For year 2018, the above-mentioned electronic communication must be presented starting from the sixtieth day and within the ninetieth day following the date of publication of the Decree in the Official Gazette.

Checks and causes of revocation

Article 6 of the Decree regulates the causes of revocation: the tax credit is revoked if the non-existence of one of the envisaged requirements is ascertained, or if the submitted documentation contains untrue elements or if the statements made are false. On the other hand, the partial revocation of the tax credit is made only in case the assessments made reveal elements that solely affect the entity of the benefit granted.

On 31 July 2018, the Italian department for Information and Publishing ("*Dipartimento per l'Informazione e l'Editoria*") of the Presidency of the Council of Ministers approved the e-form to be used and the procedure to be followed in order to obtain the tax credit for additional investments in newspaper, magazine and local TV and radio advertising. The "*declaration of investments made*" ("*Dichiarazione sostitutiva relativa agli investimenti effettuati*") in order to qualify for the benefit in 2017 and the "*notification of tax credit eligibility*" ("*Comunicazione per l'accesso al credito d'imposta*") in order to qualify for the benefit in respect of 2018 investments, will have to be filed separately in the period between 22 September and 22 October 2018, whereas the "*declaration of investments made*" ("*dichiarazione sostitutiva relativa agli investimenti effettuati*") in order to qualify for the benefit in 2018 will have to be filed between 1 and 31 January 2019.

GUIDANCE

2.1

Treatment of tax and social contribution credits – Art. 182-*ter* of regal Decree dated 16 March 1942, No. 267, as amended by Art. 1, paragraph 81, of Law dated 11 December 2016, No. 232. Ministerial Circular dated 23 July 2018, No. 16

With Ministerial Circular No. 16/E/2018, the Financial Administration provided clarifications on the treatment of tax and social security credits within the scope of the procedures for an arrangement with creditors known as "*concordato preventivo*". It is specified that the new rules on tax and social security credits apply to all procedures started from 1 January 2017 and to procedures whose proposal, as at 1 January 2017, has not been voted or accepted (see also Judgement of the Supreme Court No. 21474/2017).

The document focused in particular on the jurisprudence, at EU and domestic level, elaborated with reference to:

- *Treatment of VAT credit in a procedure for an arrangement with creditors*[2]: the EU Court of Justice, with Judgement C-546/14, affirmed that a procedure for an arrangement with creditors without tax settlement ("*transazione fiscale*"), which provides for a VAT credit reduction, is permissible if an independent expert states that those creditors would not receive better treatment if the trader went bankrupt. The limitations to VAT reduction previously envisaged within the scope of the procedure at issue shall no longer be valid with reference to those procedures stated but not yet voted as at 1 January 2017, date in which the amendments to the law entered into force.
- *Treatment of withholdings in a procedure for an arrangement with creditor;*
- *Treatment of VAT credit in a Procedure discharging bankrupt natural persons from debts (*"*esdebitazione*"*)* (Circular commented the Judgement of the EU Court of Justice dated 16 March 2017, Case C-493/15);
- *Procedure for an arrangement with creditors and offences for omission of payments:* as the obligation

2 To such extent, see the regulatory changes made with Law Decree No. 83/2015 and with Art. 1, paragraph 81, of Law No. 232/2016, which made significant changes to the rules governing procedures for an arrangement with creditors applicable to companies undergoing financial distress, also in light of the interpretative context outlined by the EU jurisprudence. With particular reference to the scope of application of the new Article 82-*ter* of the Bankruptcy Law, reference should also be made to the clarifications provided by the Ministerial Circulars No. 40/E/2008 and No. 19/E/2015.

of full payment of VAT has ceased, the offense envisaged by Art. 10-*ter* of Legislative Decree No. 74/2000 (omitted payment of VAT) does not exist if the omitted payment occurred after the admission of the debtor to the arrangement with creditors (see also the Judgment of the Supreme Court No. 52542/2017).

Furthermore, some clarifications were provided with reference to the over-indebtedness regime (i.e. procedures for the settlement of the over-indebtedness crisis).

2.2

Assignment of credits corresponding to the deduction due for energy efficiency measures as well as for interventions related to the adoption of anti-seismic measures - Articles 14 and 16 of Law Decree dated 4 June 2013, No. 63 – further clarifications. Ministerial Circular dated 23 July 2018, No. 17/E

The revenue Agency provided further clarifications with reference to the credit assignment corresponding to the deduction due for energy efficiency measures as well as for interventions related to the adoption of anti-seismic measures (see Articles 14 and 16 of Law Decree dated 4 June 2013, No. 63, and Ministerial Circular No. 11/2018). Please makes reference to the main clarifications provided:

- in case of works carried out by a company belonging to a Consortium, or to a network of companies, the credit corresponding to the deduction can also be transferred to other members (even if they did not perform the work), or directly to the Consortium or the Network. It is specified that assignments to financial institutions and financial intermediaries are excluded, as well as financial companies that are part of the Consortium or the Business Network;
- if the service provider uses a sub-contractor to perform the work, "*the assignment of the credit ... [may] be carried out also in favor of the latter or, again, in favor of the person who supplied the materials necessary to perform the work, being in any case subjects who have a link with the intervention and, therefore, with the relationship that gave rise to the deduction*".

Furthermore, the Circular made it clear that the connection with the ratio from which the deduction derives must be assessed both with reference to the original assignment of the credit and to the subsequent on

CASE LAW

3.1

Assessment – Supreme Court, Tax Section, Ordinance dated 24 July 2018, No. 19613

With Ordinance dated 24 July 2018 No. 19613, the Supreme Court made it clear that the loans made by the shareholders are to be considered capital increases that increase the value of the company participation. In fact, according to the Court, in light of Art. 38, paragraphs 4 and 5 of the Decree of the President of the Republic No. 600/1973, expenses for capital increases shall mean any payment made for this purpose, with the consequence that such capital increases also include shareholder loans and all other forms of capitalization, to be considered expenses for which there has been an effective financial outlay by the taxpayer.

3.2

Business income – Deductibility of costs – inherence - Supreme Court, Tax Section, Judgement dated 17 July 2018, No. 18904

With Judgement No. 18904, the Supreme Court intervened on the issue of uneconomic costs and on the issue of whether such costs are inherent to the business activity. In particular, the judges affirmed that the principle of inherence of deductible costs is derived from the notion of business income and expresses a correlation between costs and business activities actually exercised, translating into a qualitative judgment, which is independent of from utilitarian or quantitative evaluations. The taxpayer is the subject responsible to provide proof of the inherence of a cost to the business activity (i.e., for instance, its existence and nature). With reference to VAT, the inherence of a cost cannot be ruled out on the basis of a fairness assessment of the same, unless the Financial Administration proves its macroscopic uneconomic nature and it qualifies the same as an indicator of the absence of connection between the cost incurred and business activity.

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TAX NEWSLETTER | 16-31 JULY 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JULY 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY TAX 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