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EUROPEAN

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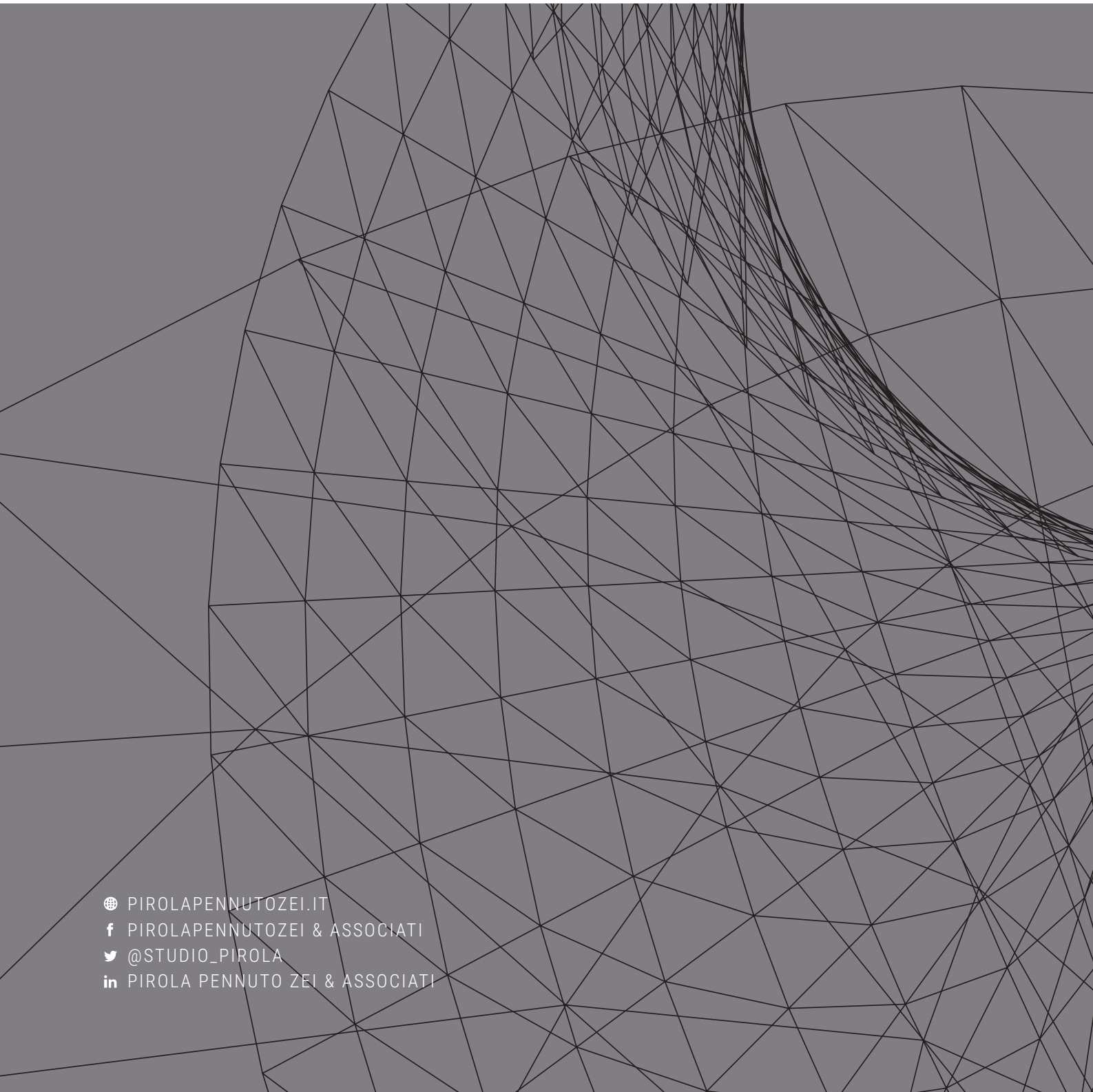

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EU COMMUNICATIONS

1.1

MTIC Fraud Gap estimation - Missing Trader Intra Community (MTIC) fraud

The Report "*The concept of Tax Gaps Report III: MTIC Fraud Gap estimation methodologies*" concerning VAT frauds[1], was published on 12 November 2018. The topic had already been analyzed in the following papers:

- "*The Concept of Tax Gaps - Report on VAT Gap Estimations*", and
- "*The Concept of Tax Gaps - Report II: Corporate Income Tax Gap Estimation Methodologies*".

As can be read on the European Commission's site "*the Report explains the mechanism of VAT fraud; describes the VAT fraud types, insisting on the MTIC fraud; reviews the MTIC fraud literature; describes VAT fraud estimation methodologies; lists the possible data sources for the estimation of VAT fraud and; reflects on the possibility of a European approach*".

The Report extensively deals with both the schemes[2] put in place to implement VAT frauds and the methods to be used in order to estimate their financial impact (Top-down and Bottom-up approaches); furthermore, it raises a number of observations on the need to adopt a shared common approach to combat VAT frauds, i.e., the Transaction Network Analysis (TNA) approach.

1 As stated by the European Commission, "*VAT is an important tax, contributing to about one fifth of total tax levied by Member States. Almost EUR 150 billion (the VAT Gap) or about 12% of the VAT is lost. Part of the VAT gap can be linked to VAT fraud and evasion*".

2 *VAT rules for intra-Community (IC) transactions; Missing trader intra-Community acquisition fraud (ICA fraud); Missing trader intra-Community (MTIC) fraud - carousel fraud; Missing trader intra-Community (MTIC) fraud - Cross - invoicer; Missing trader intra community (MTIC) fraud - Contra-trading; Triangular VAT fraud; Domestic sales designed as intra-Community supplies.*

EU COURT OF JUSTICE

2.1

Reference for a preliminary ruling – Common system of value added tax (VAT) — Proposed sale of shares in a sub-subsidiary — Expenditure associated with the provision of services acquired for the purposes of that sale — Sale not carried out — Request for a deduction of input tax — Scope of VAT.

Decision dated 8 November 2018 in case C-502/17, *C&D Foods Acquisition ApS* v. *Skatteministeriet*

Articles 2, 9 and 168 of Directive 2006/112 (on the common system of value added tax) must be interpreted as meaning that a share disposal transaction, envisaged but not carried out, such as that at issue in the main proceedings, for which the direct and exclusive reason does not lie in the taxable economic activity of the company concerned, or which does not constitute the direct, permanent and necessary extension of that economic activity, does not come within the scope of VAT.

The request for a preliminary ruling – concerning the interpretation of Council Directive 2006/112/EC of 28 November 2006 - was made in the context of proceedings between C&D Foods Acquisition ApS and the Skatteministeriet (Ministry of Taxation, Denmark) concerning the latter's refusal to grant to that company the deduction of input VAT relating to consultancy services which C&D Foods Acquisition ApS had used in the context of a proposed sale, which was not completed, of shares in a sub-subsidiary to which it provided management and IT services.

After some considerations on the notion of VAT taxable person[3], the ECJ specified that transactions relating to shares or holdings in a company are subject to VAT when they are carried out as part of a commercial share-dealing activity or in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired, or where they "*constitute the direct, permanent and necessary extension of the taxable activity*".

In order for a share disposal transaction to be able to come within the scope of VAT, the "*direct and exclusive reason*" for that transaction must, in principle, be the taxable economic activity of the parent

3 A company which has as its sole purpose the acquisition of holdings in other companies, without it becoming directly or indirectly involved in the management of those companies, is neither a taxable person, within the meaning of Article 9 of Directive 2006/112, nor a person entitled to deduct VAT, within the meaning of Article 168 of that directive. The mere acquisition and ownership of shares do not, in themselves, constitute an economic activity conferring on the holder the status of a taxable person, since those transactions do not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis, as the sole return on those transactions is a possible profit on the sale of those shares (see *SKF* and *Ryanair* judgments).

company in question, or that transaction must constitute the direct, permanent and necessary extension of that activity. That is the case where that transaction is carried out with a view to allocating the proceeds of that sale directly to the taxable economic activity of the parent company in question or to the economic activity carried out by the group of which it is the parent company.

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EUROPEAN TAX NEWSLETTER | NOVEMBER 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 NOVEMBER 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