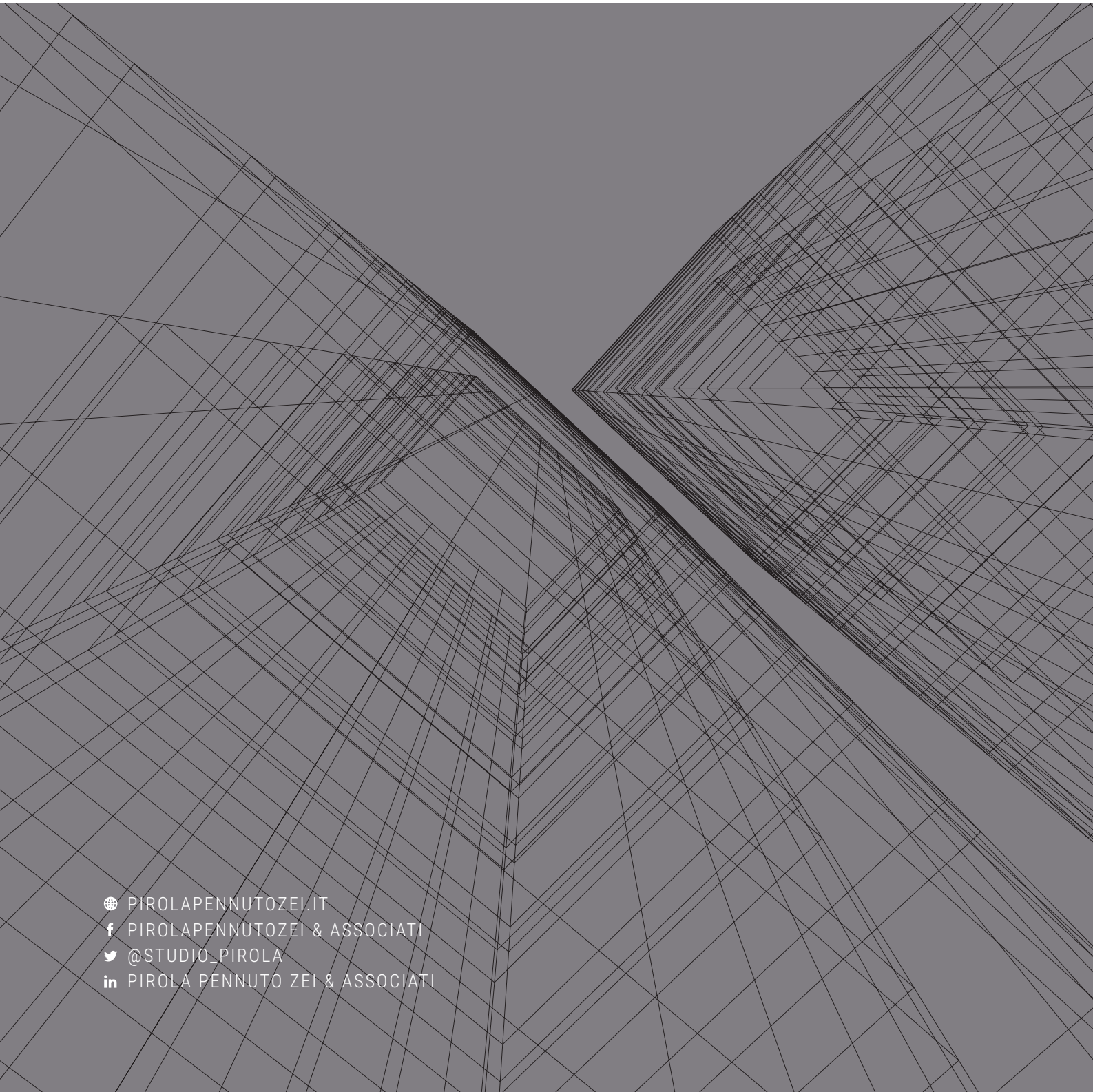
Pirola
Pennuto
Zei
& Associati

studio di consulenza
tributaria e legale

TAX

NEWSLETTER / 1-15 JULY 2019



PIROLAPENNUTOZEI.IT
PIROLAPENNUTOZEI & ASSOCIATI
@STUDIO_PIROLA
PIROLA PENNUTO ZEI & ASSOCIATI

Pirola Pennuto Zei & Associati
studio di consulenza tributaria e legale

INDEX

LEGISLATION

1.1 3
Decree of 7 May 2019. Procedures to implement tax incentives in respect of the investment in innovative start-up companies and innovative small- and medium-sized companies (Official Journal no. 156 of 5 July 2019)

1.2 5
Electronic sending of data on the daily consideration pursuant to article 6-*ter* of legislative decree no. 127/2015, as amended by article 12-*quinquies* of decree law no. 34/2019, converted by Law no. 58/2019. Enactment dated 4 July 2019, reg. no. 236086/2019

GUIDANCE

2.1 6
Resolution no. 65/2019. Article 4-*bis* of Decree Law no. 193/2016 – Further clarification related to the correct issue of adjustment notes

2.2 6
Resolution no. 67/2019. Transfer of excesses of interest payable to the group taxation in the event of accumulated losses at the time the company becomes a member of the tax group

2.3 7
Tax ruling requests (Summary of 1- 15 July 2019)

CASE LAW

3.1 9
Registration tax – Italian Supreme Court's decision no. 18520 of 10 July 2019

BACK TO TABLE OF CONTENTS ↑

LEGISLATION

1.1

Decree of 7 May 2019. Procedures to implement tax incentives in respect of the investment in innovative start-up companies and innovative small- and medium-sized companies (Official Journal no. 156 of 5 July 2019)

Decree of 7 May 2019 prescribed the procedures to implement the tax incentives in respect of the investment in innovative start-up companies and innovative small- and medium-sized companies (see article 29 of Decree Law no. 179/2012 and article 4 of Decree Law no. 3/2015). The provisions prescribed by the Decree apply to the investments made in the tax periods subsequent to that in progress at 31 December 2016.

As prescribed by article 4 of the Decree at issue (entitled "*Tax incentives*"), Personal Income Tax (*IRES*) taxable entities may deduct from the gross tax an amount of 30% of the material contributions made as to an amount not higher than Euro 1,000,000 in each single tax period. With regard to the partners of Italian partnerships (*società in nome collettivo and società in accomandita semplice*) the amount subject to deduction is determined in proportion to the respective profit sharing; the above threshold of Euro 1,000,000 applies with reference to the cash contribution made by the company.
IRES taxable entities may deduct from their aggregate income an amount of 30% of the material contributions made as to an amount not higher than Euro 1,800,000, in each single tax period. If the deduction is of an amount higher than the aggregate income reported, the excess may be added to the amount deductible from the aggregate income of the subsequent tax periods, but not after more than three tax periods, up to its amount.
For companies and entities which are members of the Domestic Group Taxation, the above mentioned excess may be deducted from the group's aggregate income reported up to its amount. The exceeding portion thereof is added to the amount deductible from the aggregate income of the subsequent tax periods, not after more than three tax periods, reported by the individual companies up to its amount. Excesses generated prior to the tax period in which the option for group taxation is exercised are not attributable to the latter and may be deducted from the aggregate income reported by the individual companies.

Tax incentives may be utilised up to an aggregate amount of contributions not higher than Euro 15,000,000 for each single qualifying innovative start-up company or innovative small- and medium-sized company.

For the purposes of the calculation of such maximum amount, all contributions subject to tax incentive received by the innovative start-up company or the small- and medium-sized company are relevant.
With reference to the qualifying non-resident innovative start-up companies or innovative small- and medium-sized companies exercising in the territory of the State a business activity through a permanent establishment, tax incentives apply in respect of the portion of increases of the capital funds of the above mentioned permanent establishments.

Investments qualifying for a beneficial tax treatment - article 3

Tax incentives apply to the cash contributions recorded under the item of the Share capital and the share premium reserve of the innovative start-up companies, of the small- and medium-sized companies or the corporations mainly investing in such qualifying companies, including after the conversion of convertible bonds into new shares. Tax incentives also apply to investments in collective investment entities, as prescribed by article 1(2)e) of the Decree under examination. The offsetting of accounts receivable at the time of subscribing the capital increase, not including the accounts receivable resulting from the sales of assets or provisions of services other than those prescribed by article 27 of the Decree law no. 179/2012, are considered a cash contribution. Contributions deriving from the conversion of convertible bonds are relevant in the tax period in progress at the date in which the conversion occurs.
As prescribed by article 2(2) of the Decree, the qualifying investments can be indirectly carried out through Collective Investment Entities (*Organismi di Investimento Collettivo del Risparmio - OICR*), or other corporations mainly investing in innovative start-up companies or small- and medium-sized companies. In the latter case (corporations with shares not listed on a regulated market or a negotiation multilateral system), tax incentives apply in proportion to the investments made in the innovative start-up companies or innovative small- and medium sized companies, as shown in the financial statements closed in the FY in which the qualifying investment has been made.

Conditions for qualifying for a beneficial tax incentive - article 5

Article 5 prescribes the conditions in order to benefit from the tax incentive. For instance, it requires the entities involved to receive and hold a copy of the investment plan of the qualifying innovative start-up

company or small- and medium-sized company, including the detailed information on the subject of the activity, the related products, as well as the expected or current trend of sales and profits.

Finally, article 6 of the Decree governs the cases of forfeiture of the tax incentives.

1.2

Electronic sending of data on the daily consideration pursuant to article 6-*ter* of legislative decree no. 127/2015, as amended by article 12-*quinquies* of decree law no. 34/2019, converted by Law no. 58/2019. Enactment dated 4 July 2019, reg. no. 236086/2019

The above mentioned Enactment referred to Decree Law no. 34/2019 – converted by Law no. 588/2019 – which amended par. 6-*ter* of article 1 of Legislative Decree no. 127/2015 (regarding the electronic sending of data on the daily consideration).

Specifically, in order to enable the entities which not yet have an electronic cash register to fulfil the obligation to send the data on daily consideration within the extended terms prescribed by the regulation, the Enactment set out further procedures for sending the data which can be adopted in the transitional period prescribed by article 2(6-*ter*) of Legislative Decree no. 127/2015.

GUIDANCE

2.1

Resolution no. 65/2019. Article 4-*bis* of Decree Law no. 193/2016 – Further clarification related to the correct issue of adjustment notes

The Resolution (including as a result of the instructions provided by Ministerial Resolution no. 58/E of 11 June 2019) provided further clarification on the issue of VAT adjustment notes. In particular, the Revenue Agency was asked whether the issue of an adjustment note based on article 26 of VAT Decree, by way of OTELLO 2.0 procedure, is essential either in the cases of sales without application of VAT (see article 38-*quarter,* par. 1, of VAT Decree) and in the cases of right to refund the applied tax (see article 38-*quarter,* par. 2).
Resolution no. 58/E/2019 (which confirmed that "*cumulative*" adjustment notes are not allowed) clarified that par. 1 of article 26 above governs the cases in which after the issue of an invoice the taxable amount, or the tax, increases for any reason.

It specified that the invoice may be corrected by issuing an increasing adjustment note, solely by way of OTELLO 2.0 system and individual adjustment notes must be issued for each single invoice issued, since cumulative notes are not allowed.

2.2

Resolution no. 67/2019. Transfer of excesses of interest payable to the group taxation in the event of accumulated losses at the time the company becomes a member of the tax group

This Resolution clarified that when a company elects the option for Domestic Group Taxation it may transfer to the fiscal unit the excesses of interest payable not deductible in the tax period, in the event of accumulated losses when it becomes a member of the tax group (as already explained in Ministerial Circular no. 19/E/2009). The Ministerial Resolution commented on the related regulations (article 96 of Italian Income Tax Code, specifically par. 7 and article 118(2)) and the pronouncements (the above mentioned Ministerial Circular no. 19/E, par. 2.6) and provided the following example: "*a company records in its profit and loss account interest payable as to 200 and revenues as to 40, accordingly its result is a loss of 160. From a tax perspective, due to the non-deductibility of interest payable, the company has a taxable amount of 40. Assuming that the company has become a member of a tax group and that the*

other companies which are members of the tax group transfer to the fiscal unit a gross operating income of that amount, in the absence of accumulated losses, the company may transfer to the tax group the entire amount of non-deductible interest payable for the year, of 200. In that tax period, accordingly, the company transfers to the tax group a taxable income of 40 and interest payable of 200, thus resulting in the group's taxable amount of -160. Otherwise, if the company has incurred tax losses at the time of becoming a member of the tax group, the amount of accumulated losses reducing the income for the year must be deducted from the amount of non-deductible interest payable to be transferred to the tax group. We assume that the company has accumulated losses of 50 at the time it becomes a member of the tax group which have not been incurred in the first three tax periods from its incorporation and, accordingly, can be used according to the limits prescribed by article 84(1) of Italian Income Tax Code. In this case, the parent company reduces its income by 80% of its amount (and i.e. 32) and consequently transfers to the fiscal unit a taxable amount of 8 and non-deductible interest payable on an individual basis net of the amount of the accumulated losses utilized to reduce its income (200-32) and i.e. of 168. The result of the amounts transferred to the fiscal unit to determine the group's taxable amount (taxable income of 8 and interest deductible from the group's taxable amount of 168) is -160 in this case as well".

2.3

Tax ruling requests (Summary of 1- 15 July 2019)

The Revenue Agency issued the following Replies in the reference period:

- no. 229 of 12 July, entitled "*Article 11, (1), a), Law no. 212/2000. Reporting and payment obligations in respect of registration taxes and substitute taxes on loans in the event of merger by absorption. Article 15 of Presidential Decree no. 642/1972 and articles from 15 to 20 of Presidential Decree no. 601/1973*";
- no. 236 of 15 July, on the withholding tax on the proceeds resulting from foreign alternative investment funds (*FIA – Fondo di investimento alternativo* – see article 10 *ter,* par. 2, of Law no. 77/1983);
- no. 235 of 15 July, on the tax regime of *società di investimento a capitale fisso* (*Sicaf*) (see article 73(5-*quinquies*) of Italian Income Tax Code and Ministerial Circular no. 21/E of 10 July 2014);
- no. 233 of 15 July, on individual long-term saving plans;
- no. 238 of 15 July on contributions toward operating expenses;
- no. 231 of 12 July on the transfer of a company's bare ownership right (article 3(4-*ter*) of Legislative Decree no. 346/1990).

The Revenue Agency also issued several Replies on VAT, and specifically:

- no. 222 of 1 July on the regulations on VAT Group (also see Ministerial Circular no. 19/E/2018);
- no. 224 of 5 July, entitled "*Public contract between the Italian waste service management entities (ARO and SRR) and the winner of the tender – Staff secondment – Recharge of the aggregate cost – VAT treatment*";
- no. 225 of 5 July 2019, of the VAT treatment of the transfer of passengers made by boat (additional services);
- no. 228 of 12 July (VAT treatment of the amounts recharged within a Consortium); please also see Reply no. 234 of 15 July on the VAT treatment of public contributions paid to a special consortium;
- no. 237 of 15 July, on the professional training services provided free of charge (see article 3 of VAT Decree). Please see the European court of Justice's decisions C-283/12, *Serebryannay vek EOOD*, and the case-law mentioned therein, and C-11/15, *Cesky Rozhlas*).

CASE LAW

3.1

Registration tax – Italian Supreme Court's decision no. 18520 of 10 July 2019

By its decision no. 18520 of 10 July 2019, the Italian Supreme Court stated that the court payment order issued against a debtor by a guarantor who has taken out a surety policy enforced by a creditor to obtain payment of his receivable, is subject to registration tax at the prescribed rate, since the guarantor is not claiming payment of consideration subject to VAT, but is seeking refund of an amount paid by him.

On this matter, please see the following decisions: 19 June 2014, no. 14000, 15 July 2014, no. 16192; 16 July 2014, no. 16306, 16307 and 16308 (see the European Court of Justice decision dated 10 November 2016, case C-432/15, *Bastovà*).

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

TAX NEWSLETTER | 1-15 JULY 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 JULY 2019.
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