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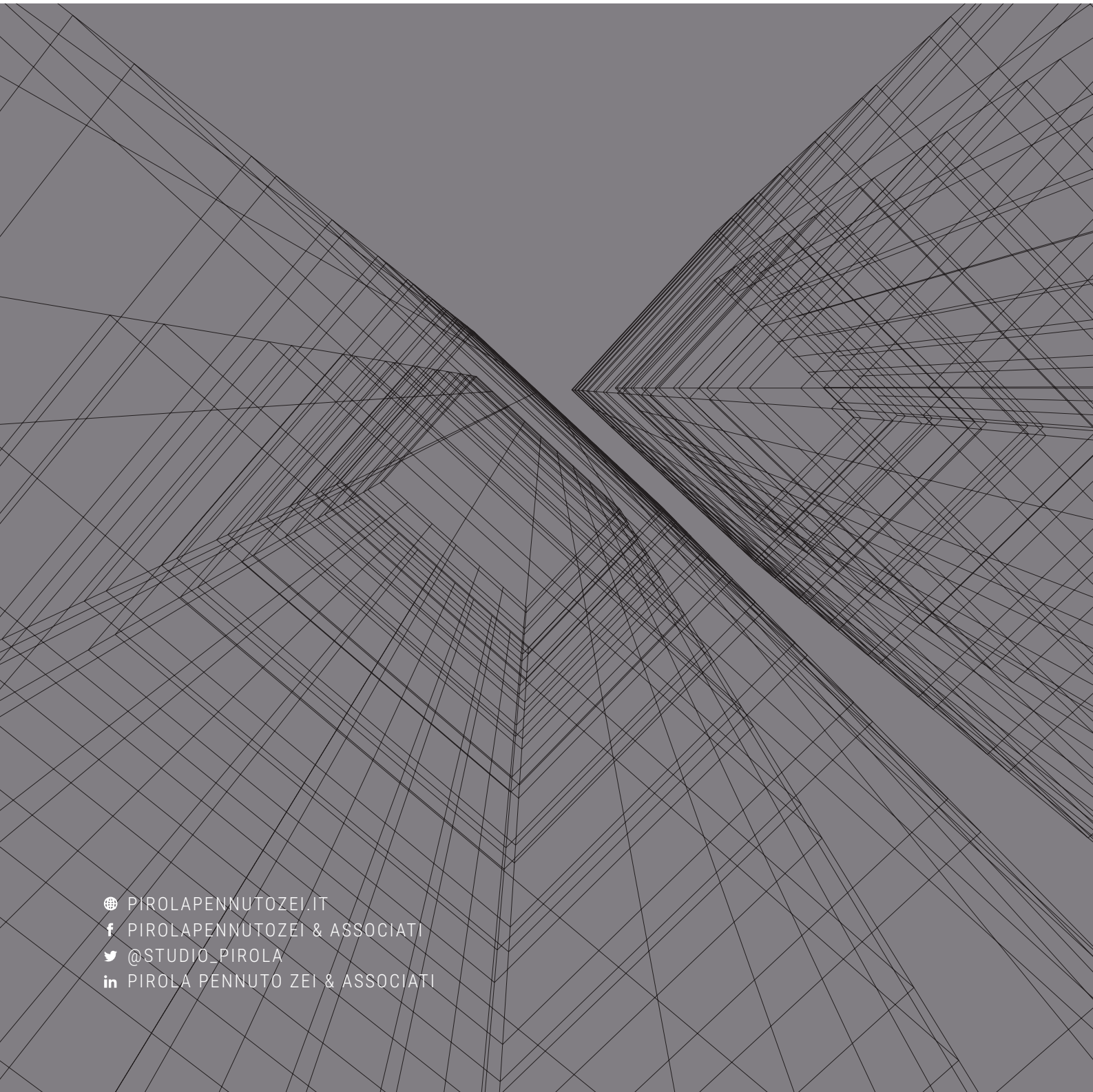

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LEGISLATION

1.1

Law No 12 of 11 February 2019 - "*Conversion into law, with amendments, of decree law No 135 of 14 December 2018, containing urgent support and simplification provisions for companies and the public authorities*" – was published in Italian Official Journal No 36 of 12 February 2019

Law No 12 of 11 February 2019, which converted into law decree law No 135 of 14 December 2018 (containing urgent support and simplification measures for companies and the public authorities) was published in Italian Official Journal No 36 of 12 February 2019 and introduced changes to tax legislation and administrative simplification provisions.

We summarize below some of the main changes.

Rottamazione-ter

The outstanding tax liabilities assigned for collection to the Revenue Agency's tax collection office and still unpaid at 7 December 2018, may be settled via the *rottamazione-ter* procedure (Decree Law No 119 of 23 October 2018), according to which the aggregate amounts of the liabilities referred to in article 3 (23) of decree law No 119/2018 are payable on the following deadlines:

- 30% by 30 November 2019;
- the remaining amount in equal instalments (plus interest at the rate of 2% p.a.) falling due on 28 February, 31 May, 31 July and 30 November of 2020 and 2021.

Hyper-depreciation/amortization

The cost of automated warehouses connected to factory management systems (referred to in Annex A to law No 232 of 11 December 2016) eligible for hyper-depreciation, also includes the cost of the automated racking systems which form an integral part of the building structure (and which for this reason, are also relevant for the determination of the land registry value of the building).

VAT and sales platforms

A taxable person who – through an electronic interface such as a virtual market, a platform, a website or similar means – facilitates remote sales of cell phones, gaming consoles, tablets, PCs and laptops imported from third Countries or jurisdictions, having an intrinsic value not exceeding Euro 150, will be considered to have received and sold such products.

Furthermore, a taxable person who – through an electronic interface such as a virtual market, a platform, a website or similar means – facilitates sales of cell phones, gaming consoles, tablets, PCs and laptops in the EU by a taxable person not established in the EU to a non-taxable person, will be considered to have received and sold such goods.

GUIDANCE

2.1

Tax ruling request pursuant to article 11(1)(a) of law No 212 of 27 July 2000 on Article 15 of the EU/Switzerland agreement of 26 October 2004. Ruling No 57 of 15 February 2019

The Italian Revenue Agency issued a ruling on article 15 of the EU/Switzerland Agreement of 26 October 2004 (i.e., article 9, following the Protocol of amendment published in the EU Official Journal on 19 December 2015), according to which dividends paid by subsidiary companies to parent companies are not subject to taxation in the source State if the conditions imposed by the Agreement are met.
With particular regard to the condition that both companies must be subject to corporation tax (without being exempted), it has been confirmed that Swiss companies which are exempt from at least one of the taxes due (municipal, cantonal and federal taxes) by operation of the law or pursuant to specific administrative measures, do not meet the condition.

As already stated in Ministerial Resolution No 93/2007, Swiss companies that wish to take advantage of the Parent-Subsidiary Directive (as stated in article 15 of the EU/Switzerland Agreement) must not benefit from an exemption at any of the three levels of direct taxation in place in Switzerland (municipal, cantonal and federal taxes).

2.2

Article 11(1)(a) of law No 212 of 27 July 2000 – Treatment of smart meters and relevant installation costs for hyper-depreciation purposes. *Principio di diritto* No 2 of 1 February 2019

Smart meters may be eligible for the incentive only if they operate at the level of machines and components of a productive system stricto sensu, provided that the relevant production process does not constitute the direct corporate object of companies engaged in the gas distribution sector.

The Revenue Agency provided such clarification consistently with the Ministry for economic development's statements to the effect that smart meters are eligible for hyper-depreciation as they may classified as "*smart components, systems and solutions for the management, efficient use and monitoring of energy and water consumption with a view to emission reduction* (Annex A to law No 232/2016). In particular, as clarified in the Ministry for economic development's circular No 177355/2018 (*Paragraph 6*), eligible

solutions are those interacting with machines and components of the productive system, with the exclusion of assets which, albeit having similar functions, interact with general equipment, or for other purposes.

Directly attributable ancillary costs are included in the determination of the cost relevant for hyper-depreciation (article 110(1)(b) of the Italian Income Tax Code); such costs are identified having regard to Italian accounting principle OIC 16, regardless of the accounting principles adopted by the company (Resolution No 152/E/2017).

The cost of the smart meters will be depreciated for tax purposes as provided by article 102(1) and (2) of the Italian Income Tax Code, and hyper-depreciation will be determined at the rates established by Ministerial Decree of 31 December 1988.

2.3

Tax incentives for the investment in innovative SMEs – article 27 of decree-law No 179 of 18 October 2012, converted into law No 221 of 17 December 2012; article 4 of decree-law No 3 of 24 January 2015, converted into law No 33 of 24 March 2015. *Principio di diritto* No 4 of 12 February 2019

The Revenue Agency provided clarification concerning the tax incentives on the investment in innovative SMEs (article 27 of decree law no 179 of 18 October 2012), which provides for the tax and social security exemption of employment income deriving from the award of financial instruments (or other rights or incentives providing for the award of financial instruments) and the exercise of option rights awarded for the acquisition of financial instruments issued by innovative start-up companies and/or certified incubators. Paragraph 3.1.2 of Ministerial Circular No 16/E/2014 included directors, employees or quasi-employees of innovative start-up companies and/or certified incubators among the persons eligible for the incentive.

The Revenue Agency stated that "*[…] in the event that in 2018 the stock options issued by an innovative SME registered with the relevant register in 2017 are offered not to an employee of such company but to the employee of a subsidiary of the innovative SME, the lack of an employment agreement results in non-eligibility for the incentive and therefore the income deriving from the difference between the value of the stock options at the time of exercising the right and the price paid by the employee will be relevant tax purposes*".

2.4

Compensation for damages paid as part of settlement agreements – Article 6(2) of the Italian Income Tax Code (Presidential Decree No 917 of 22 December 1986) – Article 11 of law No 212 of 17 July 2000 - *Principio di diritto* No 7 of 12 February 2019

The Revenue Agency pronounced on the relevance for tax purposes of compensation paid under settlement agreements: if the damages paid are assessed as the difference between the purchase price of shareholdings[1] and the relevant sale price ("*corresponding to the capital gain on the sale of the shares*"), such amount is relevant for IRES as it adjusts the original purchase price, "*resulting in the corresponding decrease of the capital gains available for offset in the tax return*".

1 Including as a result of the conversion of bond issues.

CASE LAW

3.1

Convenience Companies issues – Italian Supreme Court – section VI - decision -No 4019 of 12 February 2019

In decision No 4019, the Italian Supreme Court specified that for the purposes of Convenience Companies issues, the notion of the "*impossibility to realize revenue, stock increases and proceeds*" (provided by article 30 of Law No 724/1994) must not be intended in absolute terms but having regard to market conditions. It is up to the taxpayer to prove the existence of objective conditions owing to which the operating company test could not be met and the minimum presumed income attained (along the same lines, decisions No 5080 of 28 February 2018 and No 16204 of 20 June 2018).

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TAX NEWSLETTER | 1-15 FEBRUARY 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 FEBRUARY 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