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TAX

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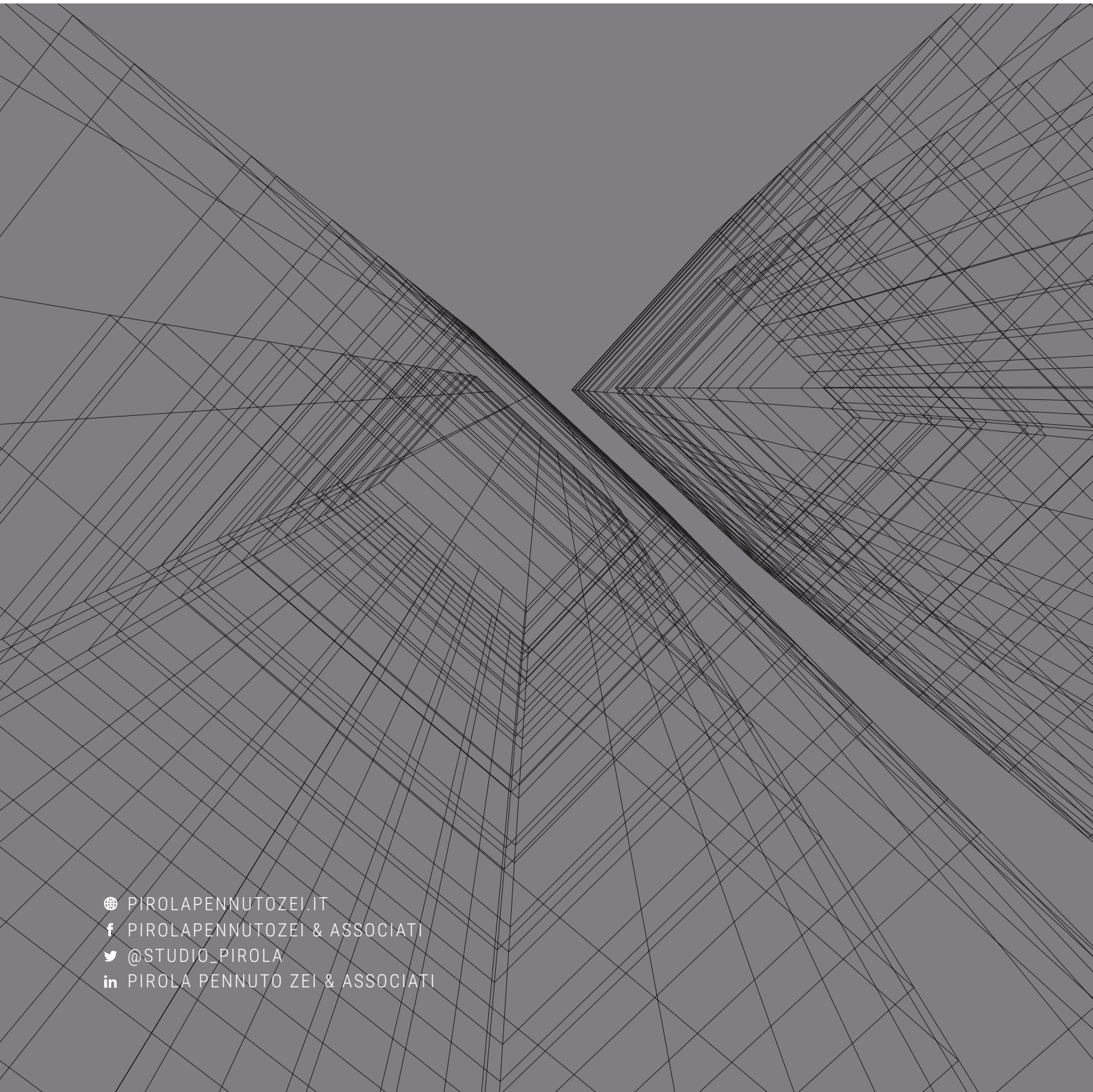

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GUIDANCE

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GUIDANCE

1.1

Tax ruling pursuant to article 11(1), a), Law no. 212 of 27 July 2000. Request for clarification on the correct coordination between the regulations on VAT Group included in chapter V-*bis* of Presidential Decree no. 633 of 26 October 1972 and the Decree of the Ministry of Economy and Finance of 6 April 2018 and regulations on invoicing of transactions prescribed by Presidential decree no. 633 of 26 October 1972, with reference to purchase invoices received from the VAT Group. Ministerial Resolution no. 72/E of 1 August 2019

In the case at issue, interpretation clarification was requested in respect of the coordination between the regulations on VAT Group (see Chapter V-*bis* of VAT Decree) and the regulations on the invoicing of transactions; in particular, it was requested to consider as valid, for the purposes of registration for VAT deduction, the invoices received for sales of goods and provision of services to the VAT Group not showing the VAT number of the Group but the VAT number of the individual member prior to joining the VAT Group.

It was specified that the VAT Group receiving an invoice reporting a wrong VAT number, although it is the company's VAT number valid prior to its joining the VAT Group, for the purposes of registration and the exercise of the right to deduct the related VAT must take actions in order to regularize it. In fact, the invoice received by the VAT Group reporting the VAT number of the individual company prior to its joining the VAT Group must be considered irregular and accordingly must be regularize according to the procedures prescribed by article 6(8)b) of Legislative Decree no. 471/1997 (see the Enactment of the Director of the Revenue Agency of 30 April 2018, reg. no. 89757/2018, par. 6.4).

However, taking into consideration that this issue is governed by European Community regulations and is new in the Italian legal system and that consequently there are some difficulties as regards interpretation and application, in view of the objective uncertainty and the operational difficulties, incorrect conducts carried out prior to the publication of the resolution, if any, can be disregarded, provided that they have not entailed the failure to pay the tax due.

1.2

Directives and guidelines on preventing and tackling tax evasion and on the activity related to consultancy, litigation and protection of the tax credits. Circular no. 19 of 8 August 2019

The Circular provided clarification on the prevention and tackling of tax evasion and on the consultancy activity (i.e. managing the tax ruling requests) by the Revenue Agency.

In particular, the instructions provided refer to either individuals and companies, including international activities. On this regard, the Revenue Agency provided clarification on the administrative cooperation on tax issues, utilization of data deriving from the automatic exchange of information, preliminary agreements and settlement of international tax disputes and the beneficial tax regime "*Patent Box*".

As regards the automated exchange of information, in the last few years the types of automated exchange of information have developed and in particular with regard to:

- information on income (see European Directive 2011/16/EU, *DAC1*);
- information on financial accounts, according to the Common Reporting Standard (CRS). The Circular states that this information refers to the financial accounts held by individuals and entities other than individuals, including the identification of the account, its balance and the income credited thereto, and is exchanged based on European Directive 2011/16/EU, as amended by European Directive 2014/107/EU (DAC2), as well as the relevant multilateral and bilateral agreements;
- cross-border preliminary tax ruling requests and agreements on transfer pricing. This information is exchanged based on BEPS Action 5 and European Directive 2015/2376/EU (*DAC3*);
- information deriving from the Country-by-Country reporting (CbCR) – see European Directive 2016/881/EU (*DAC4*), implementing *BEPS* Action 13.

The Circular provided clarification with regard to the tax ruling requests on new investments (pursuant to article 2 of Legislative Decree no. 147 of 14 September 2015) – comments thereon are included in Ministerial Circular no. 25/E/2016 – and the cooperative compliance regime.

1.3

Tax ruling request pursuant to article 11(1) of Law no. 212 of 27 July 2000 – Article 51(1) of Italian Income Tax Code – Taxability, in the hands of the employees, of the monitoring service of sensitive data provided by the employer. Resolution no. 77/E of 12 August 2019

In the case at issue, the applicant company wanted to distribute in Italy dark web monitoring services with the aim of preventing and minimizing potential damages deriving from identity theft and of other sensitive data.

The Revenue Agency specified that data monitoring service offered by the company to employees is not fiscally relevant in the hands of the employees; the company, in its capacity as withholding agent, is not required to apply the related withholding taxes, pursuant to article 23 of Presidential Decree no. 600/1973.

Reference was made to the following documents:

- Ministerial Circular no. 326 of 23 December 1997 (par. 2.1), on insurance policies and premiums paid by the employer;
- Ministerial Circular no. 55 of 4 March 1999 (par. 2.2), on the tax treatment of social security contributions paid by the employer;
- Ministerial Resolution no. 178/E of 9 September 2003;
- Ministerial Resolution no. 357/E of 7 December 2007, on the tax treatment of the reimbursement of costs of telephone connections for telework staff.

1.4

Exemption from withholding tax on interest and other proceeds deriving from medium and long term loans to companies – Article 26(5*bis*) of Presidential Decree no. 600 of 29 September 1973. Ministerial Resolution no. 76/E of 12 August 2019

The Resolution amended article 26(5-*bis*) of Presidential Decree no. 600/1973 and specified that, from a subjective perspective, the foreign entities to which the exemption from the withholding tax on interest and other proceeds deriving from medium and long term loans to companies prescribed by par. 5-*bis* above include foreign institutional investors, although not being liable to taxation, as prescribed by article 6(1)b) of Legislative Decree no. 239/1996, which are subject to supervision in the foreign State where they have been incorporated. As specified in Ministerial Circular no. 23/E of 1 March 2002 foreign institutional

investors are entities which, regardless of the legal status and of the tax treatment of income in the State where they have been incorporated, have as corporate object the performance and management of investments on their behalf or on behalf of third parties.

Solely the foreign institutional investors subject to supervision in the foreign States where they have been incorporated are material; the supervision must be verified with reference to either the investor or the entity in charge of the management, depending on the prudential supervision adopted in the State where the entity has been incorporated (see Ministerial Circulars no. 2/E/2012 and 19/E/2013). Moreover, foreign institutional investors must be incorporated in States and territories which allow an adequate exchange of information – so called white listed countries – according to Ministerial Decree dated 4 September 1996 and subsequent amendments.

In the case at issue, the Revenue Agency deemed that foreign funds fall within the foreign institutional investors to which the above mentioned par. 5-*bis* refers, taking into consideration that they are foreign collective investment undertakings:

- with the legal status of limited partnership;
- incorporated in the United Kingdom;
- of which the managing entity is a company incorporated in the Bailiwick of Guernesey and subject to
- the supervision by the Guernsey financial services commission (Gfsc).

1.5

Article 4 of Decree law no. 34 of 30 April 2019 converted with amendments into Law no. 58 of 28 June 2019 – Amendments to the regulations on Patent box, as per article 1, par. from 37 to 45, of Law no. 190. Resolution no. 81/E of 9 September 2019

This Resolution provided clarification regarding the regulations on Patent box, recently amended by article 4 of Decree law no. 34/2019, converted with amendments into Law no. 58/2019 (so-called Decree Growth), with specific reference to reporting obligations.
Please remember that starting from the tax period in progress at the date of entry into force of the Decree Growth (i.e. 1 May 2019), entities engaged in the conduct of business exercising the option for the Patent box regime may decide, instead of adopting the procedure under article 31-*ter* of Presidential Decree no. 600/1973, if applicable, to determine and report the qualifying income, by providing the information necessary to determine the income by way of the required documentation.

It was specified that the entities subject to IRES of which tax period does not coincide with the calendar year in progress at 1 May 2019 [expiring prior to 31 December 2019] which utilise the form "*Redditi 2019-SC*" or the form "*Redditi 2019-ENC*", exercise the option under par. 1 of the regulation and, at the same time, notify that they hold the required documentation by providing code *"1"* in the field "*Situazioni particolari*" of the line "*Altri dati*" of the tax return.

Moreover, the entities with a tax period not coinciding with the calendar year in progress at 1 May 2019 [expiring prior to 31 December 2019], not required to start the procedures prescribed by article 31-*ter* of Presidential decree no. 600/1973, may notify that they hold the documentation necessary to benefit from the tax incentive, by filling in the field "*Situazioni particolari*" with code "*2*".

On this regard, please see the Enactment of the Director of the Revenue Agency Reg. no. 658445/2019 (named "*Attuazione della disciplina di cui all'articolo 4 del Decreto legge 30 aprile 2019, n. 34, convertito, con modificazioni, dalla Legge 28 giugno 2019, n. 58, pubblicata nella Gazzetta Ufficiale – Serie Generale – n. 151 del 29 giugno 2019 (Suppl. ordinario n. 26), concernente le modifiche alla disciplina del Patent Box, di cui all'articolo 1, commi da 37 a 45, della Legge 23 dicembre 2014, n. 190*").

This Enactment also specified that the required documentation includes a document, consisting of sections A and B showing the data and information listed below:

Section A

i. Organisation chart of the company, including the associated firms and corporate reorganizations: this information may be provided in one or more organization charts plus an explanation of the corporate reorganisations, purchases and sales, if any, occurred in the tax period to which the Patent box regime refers;
   [omitted]

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TAX NEWSLETTER | 1° AUGUST - 15 SEPTEMBER 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 SEPTEMBER 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