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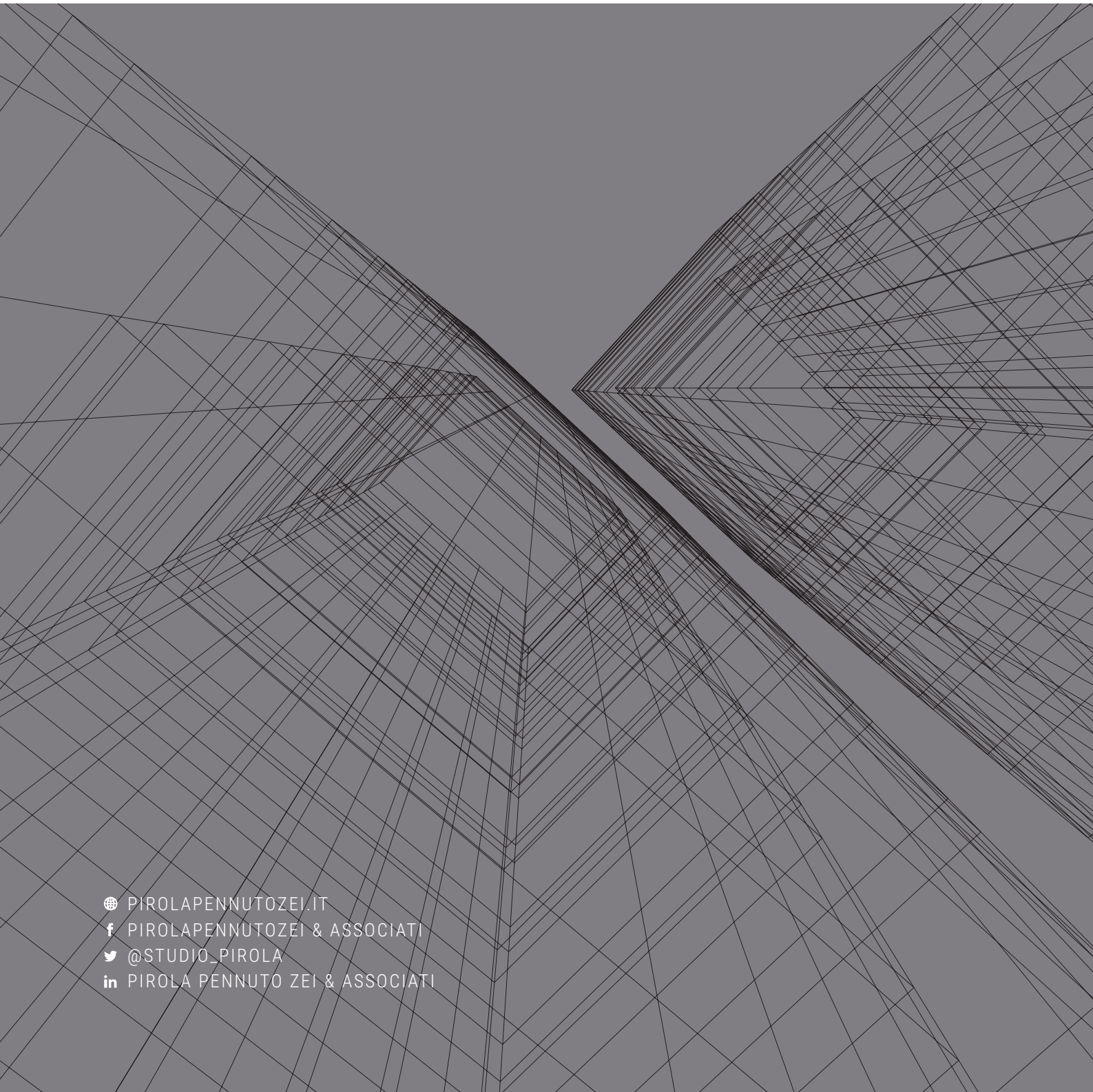
TAX

NEWSLETTER / 16-30 SEPTEMBER 2019



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GUIDANCE

1.1

Requests for a tax ruling procedure (*Summary for the period 16 – 30 September 2019*)

In the reference period the following requests for a ruling procedure were published.

Reply n. 384 (Miscellaneous profits deriving from the sale of securities under usufruct and revolving usufruct (usufrutto con patto di rotatività) – Article 67 and 68 of Italian Income Tax Code approved by Presidential Decree no. 917/1986 – Article 11(1)a) of Law no. 212/2000

In its reply the Revenue Agency dealt with the usufruct (articles 978 and subsequent of the Civil Code) consisting of an entity's (*usufruttuario*) right to enjoy the use and advantages of another entity's (bare owner) property, with the obligation not to change its intended use. Revolving usufruct (*usufrutto rotativo*) – which can be assimilated to the usufruct of the totality of movable assets – envisages the fully or partial substitution of the asset. In order to determine the capital gain or loss, deriving from the sale for a consideration of a security subject to usufruct, the consideration must be allocated between the *usufruttuario* (tenant for life) and bare owner based on the value of the usufruct right and of the bare ownership at the date of the sale […].

As regards fiscal monitoring obligations (see article 4 of Decree Law no. 197/1990), reference has been made to Ministerial Circular no. 38/E/2013 and Ministerial Resolution no. 142/E of 30 December 2010. Please also refer to Reply no. 386 ("*Fiscal monitoring obligations and VAT on foreign financial assets - Article 11, par. 1, a), Law no. 212/2000*).

Reply no. 385 (Non-application of the withholding tax on the proceeds of real estate funds – Article 7(3), Decree Law no. 351/2001 – Article 11(1), a), Law no. 212/2000)

The tax ruling has further examined the case of failure to apply the withholding tax on the proceeds of real estate funds and specified that for tax purposes par. 3 of article 7 of Decree Law no. 351/2001 prescribes a regime of non-taxability of the proceeds deriving from Italian real estate funds earned by foreign collective investment undertakings, provided they are incorporated in States and territories included in

Ministerial Decree dated 4 September 1996 and subsequent amendments and supplements (white-listed countries). According to the regulations in force in the foreign State in which they are incorporated, foreign collective investment undertakings are entities fulfilling the substantial requirements and pursuing the same purposes of investment of the Italian funds and undertakings, regardless of their legal status and although not being liable to taxation, provided that a supervision is carried out in respect of the fund or undertaking or the entity in charge of managing it. With regard to this, as specified in Ministerial Resolution no. 54/2013, the non-taxability regime applies even if the foreign investor fully holds the shares, along with foreign investors with the same requirements, of special-purpose vehicles making the investment, provided that they are resident in white-listed countries.

With regard to VAT, please note Replies no. 387 (*Tax ruling on article 11(1), a) of Law no. 212/2000, - adjustment note – settlement agreement*) and 389 (*Tax ruling on article 11(1), a), of Law no. 212/2000 – Date of the invoice for provision of services*). The latter prescribes that the regulations allowing the issuing of a single invoice in order to disclose the provisions of services in a given month refer to the provisions for which the tax is payable which on a general basis coincides with the payment of the consideration (see article 6(3), par. 1 of the VAT Decree).

Some aspects of e-invoicing, specifically the expense accounts of employees on business trips, have been analysed in Reply no. 388 (*Article 11, par. 1, a), Law no. 212/2000 – Ministerial Decree dated 17 June 2014*).

CASE LAW

2.1

Tax assessment – Financial inspections - Italian Supreme Court, Tax dept., Decision no. 23859 of 25 September 2019

By Decision no. 23859 of 25 September 2019, the Italian Supreme Court reiterated the principle of law based on which, with regard to Income Taxes, the (relative) legal presumption of the availability of additional income inferable from the bank accounts cannot be referred to the business or self-employment income earners, but it is extended to all taxpayers. However, according to the Constitutional Court decision no. 228/2014, money withdrawals are material solely *vis-à-vis* business income earners, while payments are material *vis-à-vis* all taxpayers, which can demonstrate that such banking operations are already included in the income taxed or are immaterial (see Italian Supreme Court Decisions no. 29572/2018 and 1519/2017).

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TAX NEWSLETTER | 16-30 SEPTEMBER 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 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