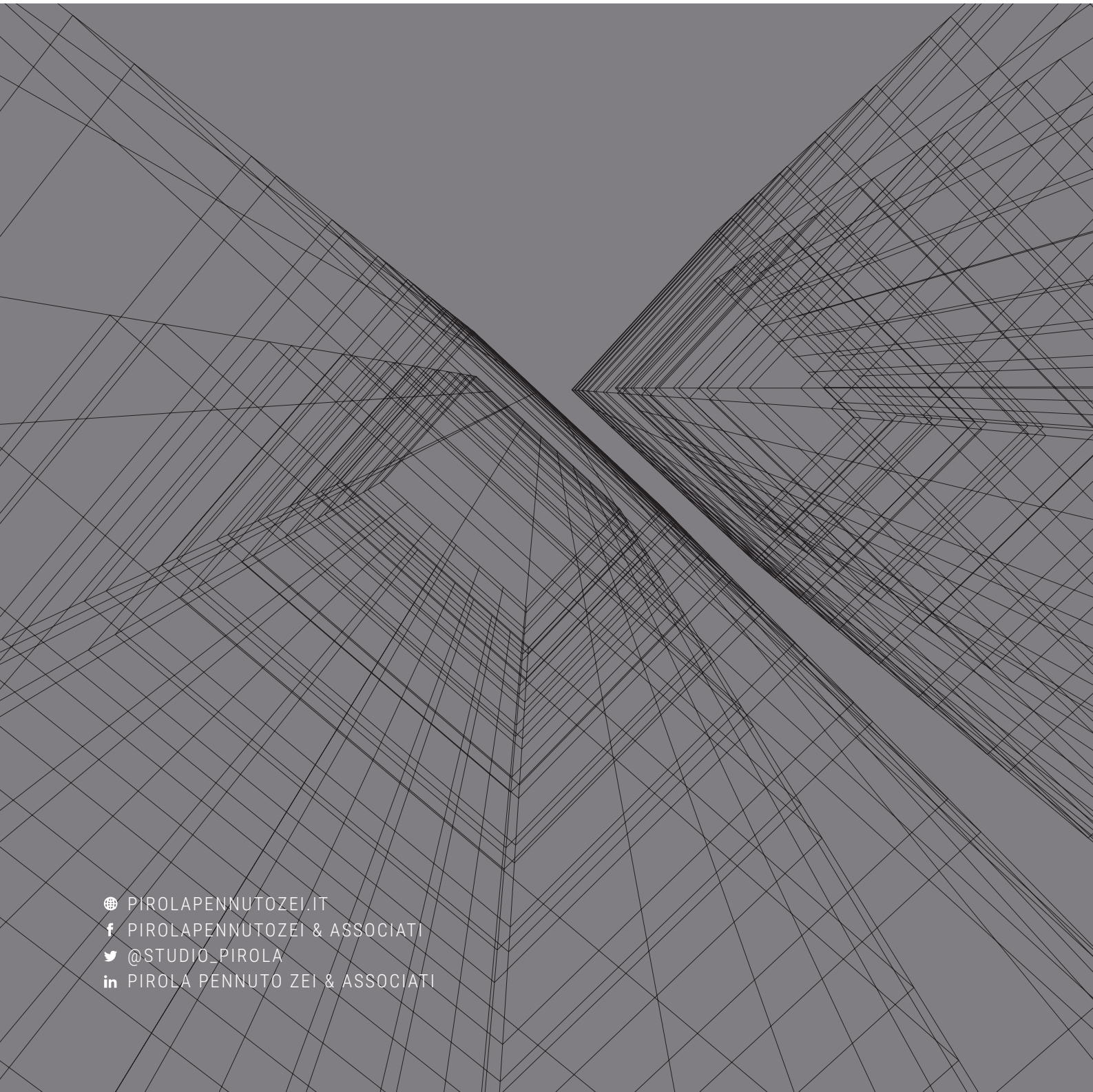
Pirola
Pennuto
Zei
& Associati

studio di consulenza
tributaria e legale

TAX

NEWSLETTER / 1-15 JANUARY 2018



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

Pirola Pennuto Zei & Associati
studio di consulenza tributaria e legale

INDEX

LEGISLATION

GUIDANCE

CASE LAW

LEGISLATION

1.1

Law dated 27 December 2017, No. 205 (2018 Budget Law). E-invoices - Further implications

Law dated 27 December 2017, No. 205 (2018 Budget Law) referred to as "*Bilancio di previsione dello Stato per l'anno finanziario 2018 e bilancio pluriennale per il triennio 2018-2020*" was published in the Italian Official Gazette, Ordinary Supplement No. 62, on 29 December 2019. The most important measures introduced by 2018 Budget Law were examined in the Tax Newsletter 16-31 December 2017, to which reference is made. The present document makes specific reference to the further implications concerning e-invoicing as per paragraph 909, Article 1 of the Law.

E-invoicing

The new measures amend Legislative Decree dated 5 August 2015, No. 127 "*Computerized transmission of VAT transactions and control of the supply of goods through vending machine implementing Article 9, paragraph 1, letter d) and g) of law dated 11 March 2014, No. 23*". It is specified that, in order to rationalize the invoicing and registration process, e-invoicing (and related adjustments) through the so called "*Sistema di Interscambio*" system (platform used to transmit e-invoices) shall be mandatory for all transactions performed between persons established/resident in Italy. It will be possible - under specific agreements between the parties – to recur to an intermediary to transmit all e-invoices to the new system, it being understood that the responsibility falls within the scope of the subjects performing the transaction. E-invoices issued to the final user shall be available to the latter through the Revenue Agency telematic portals. A copy of the invoice, in electronic or paper format, shall be provided directly by the subject issuing the invoice.

The user is entitle to waive his/her right to receive the copy of the invoice, either in electronic or paper format.

Taxpayers who fall under the so called facilitated regime (see, to this extent, Article 27, paragraphs 1 and 2, of Law Decree dated 6 July 2011, No. 98) and thus applying a lump-sum regime as per Article 1,

paragraphs from 54 to 89 of Law dated 23 December 2014, No. 190, are excluded from the measures at issue. Subjects as above outlined must transmit the data related to transactions with subjects non-resident within the Italian territory, being herein excluded those transactions for which a customs certificate has been issued or those for which a e-invoice has been received/issued by duly applying the rules as above specified. The e-transmission must be performed no later than the last day of the month following the one in which the document is issued, or in which the document proof of the transaction is received.

The obligation to store (as per Article 3 of Decree dated 17 June 2014, as published in the Official Gazette No. 146/2014) is satisfied for all invoices as well as documents transmitted to the "*Sistema di Interscambio*" system and stored by the Revenue Agency.

Specific measures are envisaged for the supplies of petrol or diesel fuel intended for use as motor fuel whose electronic invoicing obligation will be effective as from 1 July 2018. A specific measure of the Director of the Revenue Agency, together with the Director of the Agency of Customs and Monopolies, shall specify the information to be transmitted, technical rules as well as the terms within which file the transmission and the modalities so as to guarantee data security and preservation. The same Measure could provide the terms and modalities in order to gradually comply with the obligation to store data, duly in consideration of the automation degree of the single plant.

Tracking of payments – Benefits

For taxable subjects who guarantee the tracking of payments received/performed related to transactions whose amount exceed Euro 500, the terms for assessment are reduced of two years.

Administrative and accounting simplifications

In the event that the option to apply the e-storing and the telematics transmission of data related to supply of goods/provision of services is exercised, the Revenue Agency does provide:
a)all information necessary to file the VAT liquidation periodic prospects;
b)a draft of the annual VAT Declaration and of Income Tax Return Form, with related prospect of calculation;
c)drafts of the F24 Forms with specifications of the amount of taxes due, to set-off and to request in refund.

GUIDANCE

2.1

Ruling as per Art. 11, Law dated 27 July 2000, No. 212. Fulfilments related to the exercise of the branch exemption regime option as per Art. 168-*ter* of the Italian Income Tax Act (TUIR) with reference to FY 2016 as in force of the measure of the Director of the Revenue Agency dated 28 August 2017. Ministerial Resolution dated 15 January 2018, No. 4/E

Resolution No. 4/E provides clarifications with specific reference to the branch exemption regime (non-taxability of profits/losses optional regime for PEs of resident companies as per Article 168-*ter* of the Italian Income Tax Act (TUIR)) and more in specific, to the fulfilments to be made pursuant to the exercise of the option for FY 2016. The Revenue Agency, even in light of what provided for in Measure dated 28 August 2017[1], – hereinafter the Measure – intervened on the following aspects.

2017 Income Tax Return SC

In order to determine the profit/loss of the exempt branch, it is necessary to add increases/decreases related to each branch to the statement of assets and liabilities (drafted according to the criteria set forth under Art. 152 of the TUIR – Italian Income Tax Act). The income must be registered within the Income Tax Return of the company separately. The algebraic sum of incomes/losses of all foreign PEs must be indicated under increases (if negative) or decreases (if positive) under lines RF31 and RF55.

2017 IRAP Form (Regional Tax on Productive Activities)

The net value of production of the exempt branch, to be deducted from the net value of production of the company must be determined analytically from the statement of assets and liabilities of the foreign PE[2]. More in specific, the net value of production of the exempt branch must not be included in the IRAP taxable base and must be registered under one of the boxes available or line "*other variation*" by using the code "*99*".

1 The Measure contains rules implementing the new regime of branch exemption, with specific reference to the fulfillments falling within the resident company. Some of the specifications do not match with the 2017 Return Form having the latter been approved prior to the publication of the Measure.

2 As based on criteria indicated under Article 152, paragraph 2, of the Italian Income Tax Act (TUIR).

Deduction of owned invested capital (ACE) Prospect (ACE) - Schedule RS

Such prospect ("*Prospetto ACE*") is related to the reporting of data necessary to calculate the ACE benefits to which a given company is entitled to, to be specified in the Schedule RS of the 2017 Income tax Returns.

The overall notional yield related to foreign permanent establishments cannot exceed the overall notional yield of the company. The exceeding part shall be allocated according to the notional yield of each permanent establishment. The notional yield of each branch must be required under the box "*overall yield*" of the prospect of that specific branch, net of the exceeding part competence of the branch.

Multiple permanent establishments in a foreign country

In order to exercise the option and to determine the exempt income, it is assumed that only one permanent establishment is located abroad – being herein excluded the hypothesis for which the single production unit located abroad does fulfil all assumptions of the CFC rules. Should the production unit (selected as the exempt PE) meet the assumptions of the CFC rules, the company must identify a different identification code proper of a different production unit in order to identify the exempt branch.

Foreign tax credit

With specific reference to foreign tax credits, eventual positive tax surplus that can be carried forward must be deducted from taxes due in Italy. It has been specified that, in order to assess domestic and foreign tax surplus, "*it is necessary to distinguish tax surplus of exempt PEs from tax surplus resulting from other foreign incomes by filing more section of the Schedule CE*".

The Resolution specifies that the terms for filing the Income Tax Return have been postponed to 31 October 2017. In order to implement the clarifications of the Resolution, an integrative/substitutive return[3] can be filed no later than 90 days from 31 October 2017 (i.e. no later than 29 January 2018). In force of the objective uncertainties due to the discrepancies existing between the 2017 Return Forms and the Measure, sanctions will not apply should the Returns filed be non-compliant with the clarifications provided.

3 As in compliance with Art. 2 of the Decree of the President of the Republic dated 22 July 1998, No. 322.

CASE LAW

3.1

Tax offence – Supreme Court, Judgement dated 9 January 2018, No. 232

With Judgement No. 232, the Supreme Court intervened on the issue of company demerger and fraudulent underpayment of taxes as in compliance with Art. 11 of Legislative Decree 74/2000[4]. More in specific, it is herein specified that, for the purposes of the offence at issue, even a single act of demerger can qualify "*as a fraudulent act/counterfeit whose goal is to obtain undue tax advantages as object of the offence at issue if considered not only at the moment in which the operation is executed but also in connection with subsequent operations performed in the aftermath*". Reference is herein made also to judgements dated 19 February 2015, No. 7618 and Judgement dated 3 July 2015, No. 28241.

3.2

Tax collection – Supreme Court, Judgement dated 11 January 2018, No. 440

Judgement No. 440 specifies that the Revenue Agency/Tax Collection Agent has no power in arranging the payment in instalments of a tax debt if the tax collect has not been granted by the tax administration – for the case at hand, the Municipality of Rome – with the possibility to arrange payment in instalments of the amounts listed under the tax roll.

More in specific, according to the judges, the Revenue Agency/Tax Collection Agent had no authority to grant the payment in instalments as "*the Municipality of Rome, according to the law in force, wanted to have full control on the requests issued by taxpayer to be granted with the possibility to pay in instalments*" (see also Supreme Court, Judgements No. 23587/2016, No. 15026/2014 and No. 11682/2007).

4 The fraudulent underpayment of taxes does qualify as dangerous offence, as integrated by acts of fraud or counterfeit whose scope is to conceal assets (either owned or others') which justify acts of recovery by Tax Administrations.

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 JANUARY 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 JANUARY 2018.
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