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studio di consulenza
tributaria e legale

TAX

NEWSLETTER / 1-15 MARCH 2018

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Procedural laws on how to file a request of ruling as in compliance with Art. 11 of Law dated 27 July 2000, No.212 (Charter of Taxpayers' Rights), with Art. 2 of Legislative Decree dated 14 September 2015, No. 147 and with Art. 6, paragraph 2, of Legislative Decree dated 5 August 2015, No. 128 and for the purposes of Art. 24- <i>bis</i> of the Decree of the President of the Republic dated 31 December 1986, No. 917 (TUIR – Italian Income Tax Act). Measure of the Revenue Agency dated 1 March 2018, Prot. No. 47688/2018	
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LEGISLATION

1.1

Procedural laws on how to file a request of ruling as in compliance with Art. 11 of Law dated 27 July 2000, No.212 (Charter of Taxpayers' Rights), with Art. 2 of Legislative Decree dated 14 September 2015, No. 147 and with Art. 6, paragraph 2, of Legislative Decree dated 5 August 2015, No. 128 and for the purposes of Art. 24-bis of the Decree of the President of the Republic dated 31 December 1986, No. 917 (TUIR – Italian Income Tax Act). Measure of the Revenue Agency dated 1 March 2018, Prot. No. 47688/2018

The Revenue Agency, with the Measure at issue, intervened on the issue of requests of ruling by providing certain operative instructions on how the filing must be made.

The Taxpayer's Service Department (*Divisione Contribuenti*) now becomes the sole body which the ruling is to be filed before. In order to ensure a gradual shift to the new model, and in order to comply with the provisions of the Charter of Taxpayers' Rights, it will be possible for the Regulatory Coordination Central Direction and the Cadastral, Cartography and Real Estate Services Central Direction to provide answers to the requests of ruling already filed until 31 March 2018. The certified email address will at the same strength be unified: all requests of ruling shall now be sent to the address: interpello@pec.agenziaentrate.it.

Requests of rulings by subjects already part of the cooperative compliance regime shall comply with what provided for by the guidelines specified in the form of acceptance of the regime as far as the certified email address is concerned (see to such extent Measure of the Director of the Revenue Agency dated 14 April 2016).

1.2

Entering into force of the Convention between the Government of the Italian Republic and the Government of the Republic of *Panama* for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, additional protocol, executed in *Rome* and the City of *Panama* on 30 December 2010 (Italian Official Gazette No. 60, 13 March 2018)

With Press Release published on the Italian Official Gazette No. 60, 13 March 2018, the Ministry of Foreign Affairs and International Cooperation informed that the Convention between the Government of the Italian

Republic and the Government of the Republic of *Panama* for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income did enter into force. The Agreement was executed with Law dated 3 November 2016, No. 208, duly published in the Official Gazette No. 272 on 21 November 2016.

1.3

Vouchers for digitalisation. Decrees of the Ministry of Economic Development dated 14 March 2018

On 14 March 2018, the Ministry of Economic Development published the list of businesses entitled to the “*vouchers for SMEs digitalisation as per executive Decree dated 24 October 2017*”¹. The benefit is recognised to SMEs for all activities that will implement digitization projects of business processes and technological modernization (i.e. purchase of software, hardware and / or specialist services that improve business efficiency or modernisation of processes, or development of e-commerce solutions). Each business can benefit from a single voucher of not more than 10.000 Euro, up to 50% of the total eligible costs.

The rules entered into force with Decree dated 23 September 2014.

¹ The Executive Decree dated 24 October 2017 fixed the terms and modalities in order to request access to the benefits.

GUIDANCE

2.1

Tax assistance by CAF (*Centro di Assistenza Fiscale* – Centre providing tax assistance services) and by withholding agents – Direct assistance – Form 730-4 – Adjustments. Ministerial Circular dated 12 March 2018, No. 4/E

The Fiscal Administration, with Circular No. 4, provided clarifications with reference to the flow of accounting information as resulting from the Forms 730-4 (provided to the Revenue Agency by subjects providing tax assistance services and from Forms filed directly by the taxpayers through the online portals).

The following issues are the core of the comments:

- *E-filing of all accounting information proper of the Form 730-4*: with specific reference to the section CT – Unified Return, it is specified that, in light of the fact that Unified Returns must be filed no later than 7 March², “it will no longer be possible to add the section CT within the Unified Return from mid-March in order to control the acquisition of data from the e-filing of the Form 730-4”. Hence, only data communicated before such date shall be taken into consideration;
- Termination of the contract establishing the subject in charge of receiving the data resulting from the Form 730-4;
- *730-4 data online flow*;
- *Receipt of the e-filing*;
- *Failure to provide (electronically) the Form 730-4 in case of direct filing*;
- *Request of re-filing*;
- *Preventive checks*;
- *Adjustments to be made*;
- *Refusal of the adjustment request*.

A timeline of the 730-4 flow at issue is also provided within the Circular.

² The terms is postponed should this become due on a Saturday or Sunday or in case of festive day. Unified Returns filed no later than 5 days from the eventual rejection are considered as timely filed.

CASE LAW

3.1

Capital gains from sale of family-run business – Supreme Court, Judgement dated 9 March 2018, No. 5726

Judgement No. 5726 intervenes on the taxation in case of capital gains from the sale of a family-run business. Such capital gains, owned for a period of at least three years and compliant with Art. 54 of the TUIR (Italian Income Tax Act) may be subject to a substitutive tax whose rate is at 19% (see to such extent, Art 1 of Legislative Decree No. 358/1997).

In addition, in light of the fact that the taxpayer, for the case at issue, did apply the 19% substitutive tax in its Income Tax Return (as per Art 1 of Legislative Decree No. 358/1997), *“the capital gains those realized shall be fully assigned to the owner of the family-run business”*.

3.2

Tax crimes – Supreme Court, Judgement dated 13 March 2018, No. 11034

Judgement No. 11034 underlines that the subject who issues *“counterfeit invoices”* and uses the same for the purposes of a business of which he is the owner shall be liable of both crimes notwithstanding the fact that the two businesses opted for the Domestic Tax Consolidation Regime. As in compliance with the law at issue (Art. 117 and subsequent of the TUIR – Italian Income Tax Act), judges clarified that *“Art. 2 of Legislative Decree No. 74/2000 can only apply to returns referring to each single company as solely in such returns can counterfeit negative elements (resulting from the use of counterfeit invoices or documents referring to non-existing operations) be found”*³. The consolidation return (CNM Form) filed by the consolidating company is consequently excluded from the crime.

³ Referred to as *“Fraudolent Return due to the use of counterfeit invoices or documents referring to non-existing operations”*.

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 MARCH 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