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tributaria e legale

TAX

NEWSLETTER / 16-31 MARCH 2018

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LEGISLATION

1.1

Amendments to the information to be transmitted for the periodic VAT liquidations as in compliance with Art. 21-*bis* of Law Decree dated 31 May 2010, No. 78 and subsequent amendments. Measure of the Revenue Agency. Prot. No. 62214 dated 21 March 2018

The Revenue Agency, with Measure Prot. No. 62214, added further information to the ones already envisaged in the Communication of periodic VAT liquidations data (see Art. 21-*bis* of Law Decree No. 78/2010) and approved a new version of the Form¹. The new Form must be used for all communications referring to the first trimester 2018, whose deadline is fixed on the last day of May pursuant to Article 21-*bis* of above-mentioned Law Decree No. 78.

The information to be provided are listed under Annex A of the Measure.

¹ Which is going to substitute the one provided for under Measure dated 27 March 2017.

GUIDANCE

2.1

Productivity bonuses and company welfare - Art. 1, paragraphs from 182 to 190, Law dated 28 December 2015, No. 208 (2016 Stability Law), as amended by Art. 1, paragraphs 160 - 162, Law dated 11 December 2016, No. 232 (2017 Budget Law), by Art. 55 of Law Decree dated 4 April 2017, No. 50, converted with amendments by Law dated 21 June 2017, No. 96 and by Art. 1, paragraphs 28 and 161, of Law dated 27 December 2017, No. 205 (2018 Budget law). Ministerial Circular dated 29 March 2018, No. 5/E

Circular No. 5/E – drafted by the Revenue Agency together with the Ministry of Labor and Social Policy – provides clarifications referring to the productivity bonuses² and to the business welfare, as in compliance with Art. 1, paragraphs from 182 to 190 of 2016 Stability Law, as amended by 2017 Budget Law and by 2018 Budget Law³. It is first specified that in the event that the benefit is recognized by the employer who did ascertain the actual accomplishment of the employee (to which the bonus is subject to) only after the settlement of withholding taxes, the employer shall produce a new *Certificazione Unica* (annual declaration) on which basis the employee shall apply the 10% substitute tax on the advance payments, or on the advance performance bonuses in the income tax return. The late filing of such certification is not subject to sanctions. As clarified within the Circular, *“the tax benefit [...] can be applied also to the eventual prepayment performed by the company provided that, at the moment of recognition of the benefit, the increase in productivity, quality, efficiency and business innovation as provided by the employment agreement can be ascertained”*.

The limit refers to each tax period. It must be taken into account that, as provided by 2017 Budget Law, the maximum amount that can be object of the benefit is fixed at gross 3.000 Euro, social security contributions being excluded. The amount is fixed Euro 4.000 for those business where employees are

² Private-sector employees are those included in the regime in question. The 2016 Stability Law concerns recipients of private sector employment income of up to Euro 50,000 in the year prior to the year of receipt; the new limit is Euro 80,000. Employment income limit shall mean employment income subject to progressive taxation and not that subject to substitute taxation and to performance bonuses subject to substitute taxation (being herein excluded tax exempt bonuses).

³ See more in specific, Art. 1, paragraphs 160 - 162, Law dated 11 December 2016, No. 232 (2017 Budget Law), Art. 55 of Law Decree dated 4 April 2017, No. 50, converted with amendments by Law dated 21 June 2017, No. 96 and Art. 1, paragraphs 28 and 161, of Law dated 27 December 2017, No. 205 (2018 Budget law): these are the prosecution of what started by Law dated 28 December 2015, No. 208, Article 1, paragraphs 182-190 (2016 Stability Law) on the non-taxation of performance bonuses and business welfare. See, to such extent, also Ministerial Circular No. 28/2016.

included equally; this apply only to employment agreements executed no later than 24 April 2017⁴. For agreements executed after such term, Law Decree 50/2017 envisages a 20% reduction of the contribution rate to be paid by the employer for the invalidity, old age and survivors benefits on a quota not exceeding Euro 800⁵.

The Circular intervenes also on the following themes (by providing examples in support):

- Goods and services as a substitute of performance bonus as per Art. 51, paragraph 4, of the TUIR (Italian Income Tax Act);
- Granting of business vehicles as a substitute of performance bonuses: should the employee be eligible to the benefit and request that the bonus be substituted, as in compliance with paragraphs 182 and subsequent of Art 1 of 2016 Stability Law, with a vehicle owned by the company, the amount established on a lump sum basis and not the amount corresponding to the use of the vehicle (for the sake of example, the lease) shall contribute to the formation of the of employment income;
- Loans as a substitute of the bonus;
- Lease, use or commodatum of buildings as a substitute of the bonus;
- Granting of free journeys to railway sector employees as a substitute of the bonus;
- Complementary pension scheme contributions as a substitute of the bonus;
- Medical assistance contributions to bodies having the exclusive business scope of medical assistance as a substitute of the bonus;
- Shares as a substitute of the bonus⁶.

It is lastly specified that the benefit is recognized also to business group in the event that the recognition

4 Such limits must be computed by considering all bonuses received during the year even if the same are received as participation to the profits of tax-exempt bonuses, it being irrelevant the fact that the same are received pursuant to different agreements or by different employers or that the same are accrued in different periods.

5 Also the same shall be considered on an annual basis. In case the employee, during the year, has been subject to more than one employment agreement, the benefit can be used by the subsequent employer until the limit of Euro 800 plafond is exhausted.

6 The conversion, wholly or in part, of the productivity bonuses into shares of the company/employer or group does not generate taxable income: 1) either if the option is recognized solely to a group of employees rather than to the whole personnel, as long as this is in compliance with what provided within the employment agreement (of the single company and/or of the regional territory); 2) either if the value of the shares exceeds the limit of Euro 2.065,83 envisaged for each tax period; i.e. shares granted for Euro 5.065,83 (2.065,83 + 3.000 of converted bonus); 3) either if the same shares are repurchased by the issuing company/employer; 4) either if the same are sold prior to the elapsing of three years from the moment of conversion of the productivity bonus to be subject to substitute tax. The sale of shares shall qualify as "miscellaneous income" as in compliance with Art. 67 of the Italian Income Tax Act (TUIR).



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of the bonus is subject to the reaching of the group business goal. The benefit is recognized only to companies which are resident in the Italian territory, or to companies which are not resident but do carry out business in the Italian territory.

CASE LAW

3.1

Tax Assessment – Supreme Court, 21 March 2018, No. 7011

Judgement No. 7011 intervenes on the theme of the tax assessment and clarifies that sending the appeal or the instance in a closed envelop, even if no specification regarding the content is provided, rather than in a bundle without envelop as expressly provided for by Art. 20 of Legislative Decree No. 546/1992, qualifies as a mere irregularity if the content of the envelop and the traceability of the same are not challenged, being otherwise duty of the appealing subject / subject requesting instance to prove groundlessness of the objection made (see to such extent Judgement of the Supreme Court No. 19864/16).

The Judges restated the shared orientation that, when referring to tax assessments, *“if the taxpayers fails to provide the documents at the administrative stage, such documents cannot be later produced during the litigation procedure, as per Decree of the President of the Republic No. 600/1973, Art. 32, only if the taxpayer is timely and specifically invited to provide the same, the Administration being the subject responsible, and specifically informed of the consequences of his not complying with the request”* (see Ordinance of the Supreme Court No. 27069/16).

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 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