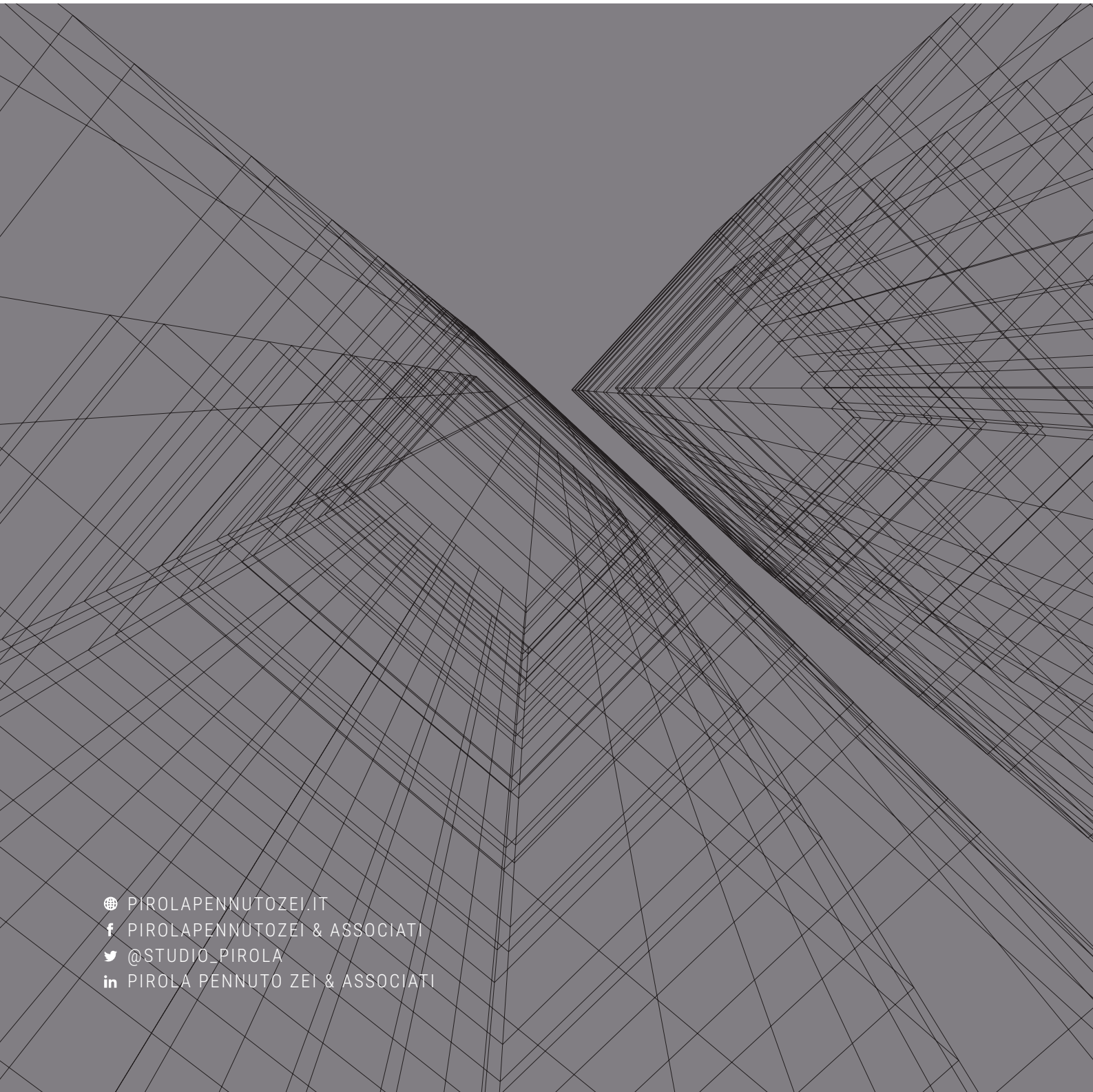
Pirola
Pennuto
Zei
& Associati

studio di consulenza
tributaria e legale

TAX

NEWSLETTER / 1-15 APRIL 2018



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

Pirola Pennuto Zei & Associati
studio di consulenza tributaria e legale

INDEX

LEGISLATION

GUIDANCE

BACK TO TABLE OF CONTENTS ↑

Pirola Pennuto Zei & Associati
studio di consulenza tributaria e legale

INDEX

CASE LAW

LEGISLATION

1.1

VAT Group. Decree dated 6 April 2018

On 6 April 2018, the Ministry of Economy and Finance issued a Decree, not yet published on the Official Gazette, on VAT Group regulations (see to this extent Article 1, paragraph 24, of Law No. 232/2016 which introduced Articles from 70-*bis* to 70-*duodecies* (Title V-*bis* referred to as "*VAT GROUP*") after Article 70 of the VAT Decree in order to implement Art. 11 of the CE Directive 2006/112).

The Decree is thus structured:

Establishment of a VAT Group

Taxable subjects established in the Italian territory, carrying out business or professional activities which are closely bound to one another by financial, economic and organizational links (see to such extent Art. 70-*ter* of the VAT Decree), may exercise the option and opt for the establishment of a VAT Group. The above requirements shall be met at the moment the option is exercised and however from the 1 July of the year preceding the one in which the option is exercised. The VAT Group is identified with a single VAT number (associated to each subject forming the Group) to be indicated in each Return or documentation VAT relevant. The Revenue Agency is under the obligation to make all information necessary to prove the validity of the number and of data pertaining to the subjects of the Group available to anyone issuing request.

Rights and obligations of the VAT Group

As envisaged under Art. 2 of the Decree, obligations and rights resulting from the application of the VAT rules would be, respectively, in the hand or in favor of the VAT Group from the moment in which the Option becomes effective.

The right to purchase goods or services VAT free is exercised:

- by the Group, even if accrued by the subjects in the year preceding the entering in the Group;

- by each subject pursuant to the termination of the VAT Group, proportionally on the operations referring to each subject.

Obligations and rights resulting from the application of the VAT rules would be, respectively, in the hand or in favor of each subject should these refer to a period prior to the entering of the Group or subsequent to the expiry of the Group. The VAT credit accrued but not used by the Group is requested in refund prior to the termination of the Group, or it is deducted by the representative subject of the Group from the periodic liquidations or from the yearly Return.

Invoicing and certification of payments

The operations intercurred between subjects belonging to the VAT Group do not qualify as sale of goods or provision of services. With reference to invoices related to the purchase of goods or provision of services issued towards the VAT Group, the representative subject or each subject shall provide the suppliers with the Group VAT Number, as well as the fiscal code of each buyer.

Registration, liquidation and payment

The Decree specifies that offsetting output VAT with credits accrued by the subjects belonging to the Group referring to taxes or levy different from VAT is not allowed. In addition, the tax credit, yearly or trimestral, accrued by the VAT Group cannot be offset with debts connected to taxes different from VAT of the subjects belonging to the Group.

Periodic liquidation and returns

The representative subject is in charge of:

- communication of data of invoices issued, received and registered, and related credit notes (see to this extent Art. 21 of Law Decree dated 31 May 2010, No. 78 – converted by Law dated 30 July 2010, No. 122) and communication of data as per Art. 1, Legislative Decree No. 127/2015;
- communication of data of periodic VAT liquidations as per Art. 21-*bis* of Law Decree No. 78/2010.

Moreover, the representative is the subject who must file the VAT Return.

VAT Refund

VAT refunds are dealt with under Article 6 of the Decree.

Vat refunds falling within the scope of the VAT Group must be executed upon request of the representative subject as in compliance with Art. 38-*bis* of the VAT Decree. Article 6 envisages, among others, that, with specific reference to the refunds, the specific self-declaration on the equity/revenues conditions of the taxpayer (requested in order to receive the refund) shall certify that all social security contributions and insurance contributions are duly paid by all subjects participating to the Group.

VAT surplus requested in refund in the yearly Return can be assigned upon delegation of the subjects participating to the Group (see Articles 1260 and subsequent od the Italian Civil Code).

Transitory dispositions

In case the option is exercised for the very first time, the effects are valid in year 2019 provided that the request was filed no later than 15 November 2018.

As already anticipated, the Decree has not been published in the Italian Official Gazette yet.

1.2

Approval of the synthetic indexes of tax reliability related to economic activities of manufactures, the services sector, commerce, professional activities and approval of specific territoriality. Decree dated 23 March 2018 (Official Gazette No. 85/2018 – Ordinary Supplement No. 18)

On 23 March 2018, the Ministry of Economy and Finance did approve the Decree on the synthetic indexes of tax reliability.

The Decree intervened also on the tax reliability scores (scale from 1 to 10), as well as on the beneficial regime envisaged by paragraph 11, Art. 9-*bis* of Law Decree No. 50/2017[2]. Article 4 of the Decree intervenes on parameters and on the sector studies (in Italian, "*studi di settore*"), which shall be no longer in force.

2 The beneficial regime envisages, among other, the exemption from the issuance of the conformity permit in order to offset VAT credits for amounts not exceeding Euro 50.000 per year and to offset IRAP and Direct Taxes credits for amounts not exceeding Euro 20.000 per year. The exemption applies also to the conformity permit or guarantee for VAT refunds not exceeding Euro 50.000 per year.

GUIDANCE

2.1

Request of legal advice. VAT treatment to be applied to services offered by custodian banks pursuant to the issuance of Legislative Decree No. 71 dated 18 April 2016. Ministerial Resolution dated 6 April 2018, No. 26/E

The Revenue Agency, with the Resolution at issue, provided clarification on the VAT regime applicable to compensations for services rendered to asset management companies (*SGR*)[2] by UCIs custodian banks. Some amendments have been made to the regulation at issue, and more in specific to the duties of the *UCIs* depositary (as introduced by Legislative Decree No. 71/2016 which implemented EU Directive 2014/91 and intervened on Article 48 of the *TUF*[3]).

More in specific, the possibility envisaged for asset management companies to delegate the calculation of the so called *NAV* based on the "*model of entrustment*" has been eliminated. Such activity can be carried out by the depositary on behalf of the manager only under "*externalization regime*".

The Resolution specifies that, due to the above mentioned changes, the 28,3% rate as fixed by Resolution No. 97/E/2013 is no longer fit to represent the services VAT liable of the overall services provided by the custodian banks. According to the Revenue Agency, indeed, such rate *[…] was inclusive of the NAV calculation, according to the model of entrustment […]*". In light of the above, the operators are now under the obligation to specify the nature of the different services, as well as the VAT regime the same shall be subject to. The Resolution specifies that, due to the uncertainty arisen and the compliance of most operators to what provided by above mentioned Resolution No. 97/E/2013, no administrative sanction will apply for fy 2017.

---

2 See also Resolution No. 97/E/2013 which specifies that, if the compensation is fixed in one amount notwithstanding the different nature of the services (liable to VAT or Vat exempt) rendered by the custodian bank, the incidence of taxable services must be equal to 28,3 % of the compensation.

3 Legislative Decree No. 71/2016 intervened also on Article 48 of the *TUF* – Consolidated Law on Finance (later amended by Article 2, paragraph 41, of Legislative Decree dated 3 August 2017, No. 129), by eliminating the possibility for asset management companies to entrust the custodian bank with the calculation of the value of the quota of *UCIS* (*NAV* calculation according to "*the regime of entrustment") "the sole option being the possibility to delegate such activity to the custodian bank under the regime of externalization: provided […] that the duties proper of the depositary and other duties that may be in conflict be separated form a hierarchical and functional perspective*". See also Measure of the Bank of Italy dated 23 December 2016.

2.2

Iper-depreciation – Further clarifications on the terms to obtain the sworn expert appraisal by the business. Article 1, paragraph 11, of Law dated 11 December 2016, No. 232. Ministerial Resolution dated 9 April 2018, No. 27/E

Resolution No. 27/E provided clarifications on the issue of iper-decpreciation and the terms to obtain the sworn expert appraisal as requested within the scope of "*Industry 4.0*"[4] (with specific reference to the sworn appraisal, see Art. 1, paragraph 11, of 2017 Budget Law as amended by Article 7-*novies* of Law Decree dated 29 December 2016, No. 243, converted with amendments by Law No. 18/2017). The above mentioned Paragraph 11 envisages that "*in order to benefit for the provision as per paragraphs 9 and 10, the company must provide a statutory declaration issued by the legal representative as in compliance with the Decree of the President of the Republic dated 28 December 2000, No. 445 containing the Consolidation Act on legislative and regulatory provisions regarding administrative documents or for assets whose acquisition cost is higher than 500.000 Euro each, a sworn appraisal by an engineer or professional duly listed under its specific register or a conformity declaration issued by a certified body specifying that the asset meets all technical requirements in order for the same to be included under the lists as per Attached A and B of the law and that the asset is connected to the business*".

The paragraph does not specify any deadline within which such documentation must be provided in order to access the benefit. According to the Resolution, if the documentation is provided on the fiscal year subsequent to the one in which the connection requirement is met (this requirement is fundamental in order to access the benefit), the benefit can be accessed from the fiscal year in which the documentation is acquired. On other terms, providing the required documentation on a year subsequent to the actual realization of the connection requirement implies a postponement of the moment in which the benefic can be accessed (see to such extent the example provided at pag. 3 of the Resolution).

4 See Ministerial Circular No. 4/E/2017.

2.3

Ruling Art. 11, paragraph 1, lett. a), Law dated 27 July 2000, No. 212 – Clarifications on the joint-stock companies fiscal regime which opted for the cadastral taxation as per Art. 1, paragraph 1093, of Law dated 27 December 2006, No. 296. Ministerial Resolution dated 11 April 2018, No. 28/E

The Revenue Agency intervened on the tax regime applicable to joint stock companies which opted for the cadastral taxation regime (Article 1, paragraph 1093, of Law dated 27 December 2006, No. 296) More in specific, the themes analyzed are:

- Domestic Tax Consolidation regime: there being no specific measure envisaging that agricultural companies which opted for the cadastral taxations are excluded from the possibility to enter a tax group, it must be concluded that the requesting company – i.e. limited liability company which, even under cadastral regime, continues to realize profits as envisaged by Art. 3 of Ministerial Decree No. 213/2017 – can opt for the tax consolidation regime;
- Aid for Economic Growth (ACE) benefit: the overall income of the fiscal unit net of the quota related to the agricultural company equals to the "*calculation basis of the global income compared to the ACE deduction attributed by each company of the group*";
- capital gains and capital losses connected to real estates: the requesting company is allowed to divide capital gains from the sale of real estates realized as the cadastral taxation regime is in force into installments – as in compliance with Art. 86, paragraph 4, of the Italian Income Tax Act (TUIR) – provided that the requirements envisaged by law be met (see also Ministerial Circular No. 50/E/2010);
- Interest payable regime (Art. 96 of the TUIR): it is specified that, "*if the cadastral taxation regime is in force, paragraph 4, Article 96 of the TUIR cannot be applied*[5]*, it being true that, should the company terminate the above mentioned regime, and being all condition met, […] the requesting company may deduct non-deductible as resulting from the Tax Return "2016 SC Modello Unico*"".

For the sake of completeness, the Resolution intervenes also on the meaning of agricultural company and on the connected requirements (first and foremost, the communication of the exercise of the cadastral taxation option).

5 The paragraph specifies that *"Interest payable and similar financial costs that cannot be deducted in a given tax period shall be deducted from the income of the subsequent tax periods, if and insofar as the amount of the interest payable and similar relevant costs in such periods exceeding the interest payable and similar revenues is less than 30% of the relevant gross operating earnings*".

2.4

Press Release dated 12 April 2018. Request of ruling: addresses to which the request is to be sent

The Revenue Agency, with the Press Release at issue, specified the addresses to which the request of ruling have to be sent (see on the issue Measure dated 1 March 2018). On the issue, it is specified that:

- Large-sized subjects, non-resident subjects, individuals willing to more their tax residence in Italy availing themselves of the substitute tax on incomes realized abroad and taxpayers filing the ruling on new investments shall file the request of ruling before the Section "*Taxpayer's Compliance and Enforcement of the Revenue Agency*". This can be made in person, by handing the request at the offices of the Agency, via mail through registered letter with advice of receipt, via certified email address PEC *(interpello@pec.agenziaentrate.it)*, or via email by non-resident subjects *(div.contr. interpello@agenziaentrate.it)* herein included individuals willing to more their tax residence in Italy availing themselves of the substitute tax on incomes realized abroad and taxpayers filing the ruling on new investments which do not have an intermediary domiciliated in the State territory;
- Subjects which are under a cooperative compliance regime must file the request before the office "*Ufficio Adempimento Collaborativo*" of Section "*Taxpayer's Compliance and Enforcement – Large Business Taxpayers*", via certified email address PEC *(dc.acc.cooperative@pec.agenziaentrate.it)* or via email *(dc.acc.ucc@agenziaentrate.it)* by non-resident subjects or subjects who do not own a certified email account; the request can also be handed at the offices in person or sent via mail through registered letter with advice of receipt.

CASE LAW

3.1

Cross-examination – Tax evasion – Supreme Court, Ordinance dated 9 April 2018, No. 8619

With Ordinance dated 9 April 2018, No. 8619, the Supreme Court clarified that, pursuant to the introduction of Law 205/2017 (*2018 Budget Law*), the fiscal administration is under the obligation to start a cross-examination with the taxpayer in case the tax payer is challenged of having eluded stamp duty through the reclassification of a series of operations as sale of business[6]. The Supreme Court specified that "*[…]a preventive cross-examination is mandatory only if the failure to perform the same nullifies the deed […]*"; the obligation of Tax Authorities to put in place a preliminary dialogue with the taxpayer before issuing any tax assessment or tax payment request (in Italian: "*contraddittorio endoprocedimentale*") is true in presence of tax harmonization as long as the taxpayer duly reported all the reasons he would have supported in its defense (see Judgment, Joint Sessions, No. 28243/2015).

3.2

Inspections at the business premises – Guarantees – Limits – Supreme Court, Judgement dated 4 April 2018, n. 8246

Wit Judgement No. 8246, the Supreme Court clarified that, in the event that the documentation as requested by the Revenue Agency is directly handed by the taxpayer spontaneously at the offices of the Agency[7], the drafting of a minute is not required. Hence, the notice of assessment can be issued prior to the 60 days term. The Judgement specifies that "*when it comes to the rights and guarantees of the taxpayers subject to tax inspection, failure to comply with paragraphs 1 and 3 of Art. 12 of Law. 20.7.2000 n. 212*[8]*, […] may imply […] the annulment of the act only if inspectors did access the premises*

6 See, for instance, Judgement No. 28064/2017.

7 With specific reference to the case at hand, no inspection had been carried out at the business premises.

8 According to which all accesses and inspections to be performed at the premises of a business carrying out commercial, industrial, agricultural, artistic or professional activities must be based on actual needs of control and inspection. These must be performed, with the exception of extraordinary and urgent matters to be duly documented, during the working hours and must cause the minimum harm to the regular performance of the business as well as to the commercial/professional relationships of the taxpayer. Upon request of the taxpayer, the examination of administrative accounting documents can be carried out at the premises of the inspectors, or at the premises of the experts who assist the same.

of the business failing to comply with their duty or research and collection to be performed on site, this excluding the case of inspections carried out in different locations" (on the theme of notifications "ante tempus", see also Judgements No. 28390/2013 and No. 18184/2013).

The Supreme Court intervened also on the issue of the so called tax amnesty (in Italian "*condono fiscale*").

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 APRIL 2018

RIFERIMENTI NORMATIVI, PRASSI E GIURISPRUDENZA AL 15 APRIL 2018.
LA PRESENTE NEWSLETTER ILLUSTRA LE PRINCIPALI NOVITÀ FISCALI E ALCUNE QUESTIONI DI INTERESSE GENERALE, E RAPPRESENTA DUNQUE UNO STRUMENTO MERAMENTE INFORMATIVO, IL CUI CONTENUTO NON VA UTILIZZATO COME BASE PER EVENTUALI DECISIONI OPERATIVE.
PER ULTERIORI INFORMAZIONI, VI INVITIAMO A CONTATTARE IL VOSTRO PARTNER DI RIFERIMENTO O AD INVIARE UN'EMAIL A UFFICIOSTUDI@STUDIOPIROLA.COM