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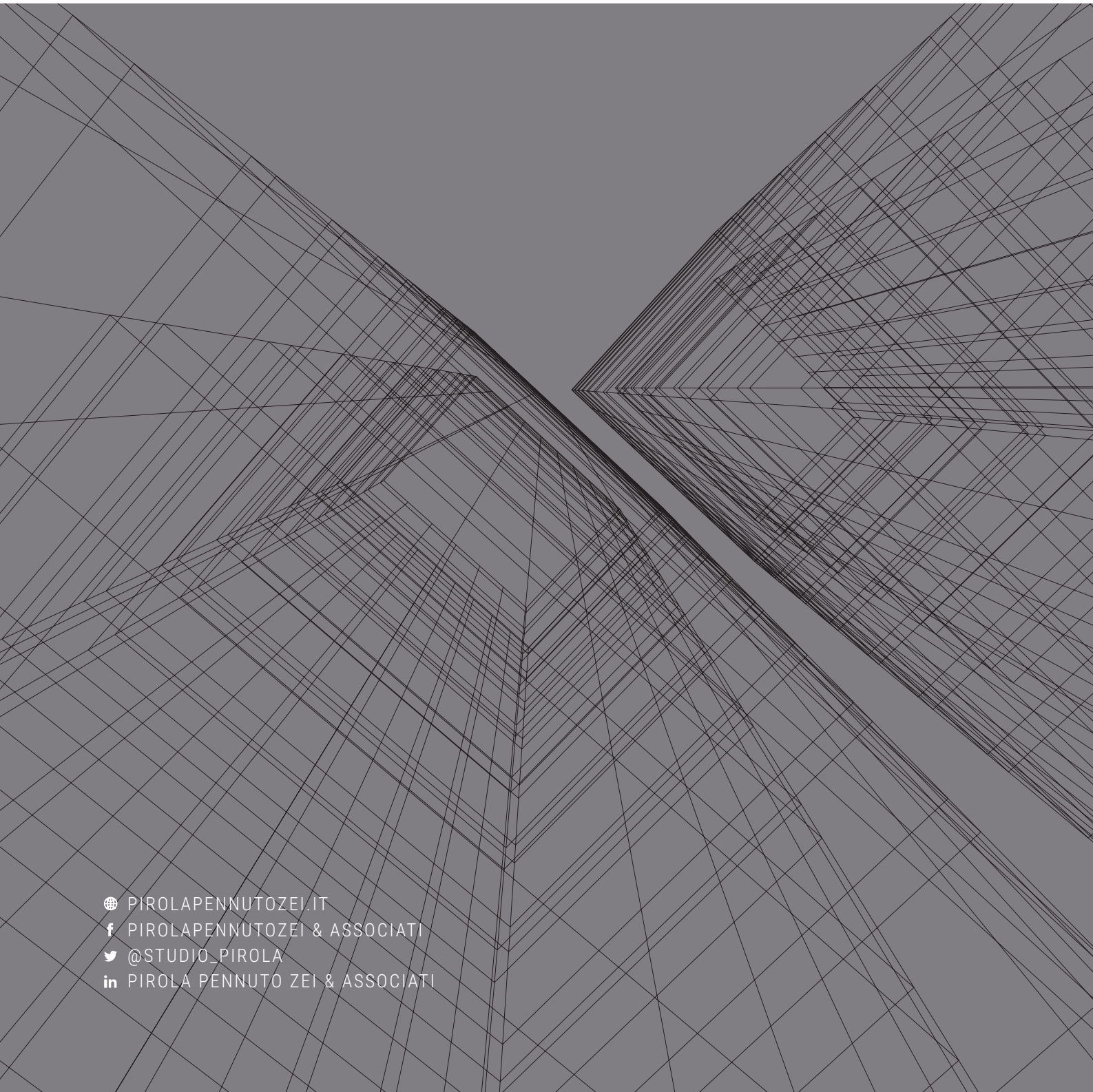
TAX

NEWSLETTER / 1-15 JUNE 2018



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LEGISLATION

1.1

Approval and implementation of the Form to request access to the regularization procedure related to assets and sums held abroad as per Article 5-*septies* of Law Decree dated 16 October 2017, No. 148, converted with amendments by Law dated 4 December 2017, No. 172 – Measure of the Director of the Revenue Agency dated 1 June 2018, Prot. No. 110482/2018

With Measure No. 110482/2018, the Revenue Agency approved the official Form to request regularization of assets and sums held abroad as per Article 5-*septies* of Law Decree dated 16 October 2017, No. 148, converted with amendments by Law dated 4 December 2017, No. 172.

The Form[1] can be used by individuals:

- resident in Italy for tax purposes who previously resided in a foreign country and registered with the Civil Registry of Italian citizens living abroad (*Anagrafe Italiani Residenti all'Estero or AIRE*); or
- who performed work activities abroad on a continuous basis in frontier zones and neighboring areas,

willing to commence a spontaneous disclosure procedure to regularize declaration violations[2] related to taxes on income and taxes on the value of financial assets held abroad (*IVAFE*) with respect to undeclared financial assets and sums held on bank accounts and foreign saving books on 6 December 2017[3] if derived from foreign employment and professional income or from the sale of real estate held in the country where the individual has worked on a permanent basis.

The request, if already filed, can be integrated until 31 July 2018 by ticking the specific section in the Form.

1 To be filed no later than 31 July 2018.

2 As per Art. 4, paragraph 1, of Law Decree No. 167/1990, converted with amendments by Law dated 4 August 1990, No. 227.

3 Date on which Law 172/2017 entered into force.

1.2

Entitlement to the beneficial regime envisaged by Art. 10 of Law Decree dated 6 December 2011, No. 201 converted with amendments by Law dated 22 December 2011, No. 214 and changes to the forms related to the parameters to be used for fiscal period 2017 - Measure of the Director of the Revenue Agency dated 1 June 2018, Prot. No. 110050/2018

With the Measure at issue, the Revenue Agency established the criteria in order to access the beneficial regime as envisaged by Art. 10 of Law Decree dated 6 December 2011, No. 201 converted with amendments by Law dated 22 December 2011, No. 214.

It is therein specified that access to the regime is subject to the taxpayer:

- declaring, even after the adjustments, revenues or compensations equal to or higher than that resulting from the statistics-based tax assessments (so called, "*studi di settore*");
- being in compliance with communication obligations relevant to the statistics-based tax assessments (all relevant data must be provided);
- being in line with the specific indicators applicable as envisaged by measures on statistics-based tax assessments.

1.3

Authorizations for the use of e-invoicing services. Measure of the Director of the Revenue Agency dated 13 June 2018, Prot. No. 117689/2018

The Director of the Revenue Agency, with the Measure at issue, provided clarifications related to the new service of provision of the bidimensional bar code (*QR code*) in order to automatically have access to information VAT relevant and to the address selected by a subject VAT owner where to receive e-invoices.

The *QR-Code* can be generated also by an intermediary having been granted with the proxy to use one of the following services: "*Access to and acquisition of e-invoices or electronic copies*", "*Registration of the e-address*", "*Access to VAT relevant data*", "*tax box delegated*".

GUIDANCE

2.1

Article 5-*septies* of Law Decree dated 16 October 2017, No. 148, converted with amendments by Law dated 4 December 2017, No. 172 - "*Measures to improve spontaneous declaration of incomes generated abroad*". Ministerial Circular dated 13 June 2018 No. 12/E

Circular No. 12/E provides operative indications on how to implement Art. 5-*septies* of Law Decree dated 16 October 2017, No. 148 on "*Measures to improve voluntary disclosure of incomes generated abroad*". The article includes a new form of voluntary cooperation (herein after the procedure) which differs significantly from the so called voluntary disclosure.

The procedure makes reference to:

- Failure to comply with declaration obligations for tax monitoring purposes with reference to activities or sums held in Black List countries for fiscal periods from 2017;
- Failure to comply with declaration obligations with reference to incomes generated by activities or sums held in Black List countries and not decalred from fiscal period 2009 (in case the return is filed) or 2007 (in case the return had not been filed)[4].

The procedure can be accessed by individuals fiscally resident in the territory (or their heirs) who returned in Italy[5] after performing work activities (self-employed or subordinate employment) abroad on a continuous basis who were previously registered with the Civil Registry of Italian citizens living abroad (*Anagrafe Italiani Residenti all'Estero or AIRE*) or performed work activities abroad in frontier zones and neighboring

4 Reads the Circular: "*Take, for instance, a taxpayer listed under the AIRE and resident in the Maldives until year 2009 who moves its residency back to Italy starting from fiscal year 2010. In the event that this individual continues to have ongoing activities – originated by self-employment of from subordinated employment carried out in a continuous way in the country subject to a facilitated tax regime and therein held – is entitled to file request of regularization not only for years ordinarily envisaged by the law (from 2012 to 20126) but also for year 2010 and year 2011 for which the terms are doubled; thus, the tax monitoring violations can be regulated so can eventual Irpef and IVAFE violations pertaining to the years the taxpayer has spent in Italy after its return*".

5 With reference to subjects returned to Italy, the status of residency is verified if Art. 2 of the TUIR is duly met, i.e. the taxpayer must spend the majority of the tax period (ordinarily 183 days) in the Italian territory.

areas[6]. They can thus regularize the activities and sums held abroad[7] in breach of the rules regarding tax monitoring derived from employment or self-employment abroad.[8] In addition to violations related to taxes on income (IRPEF – taxes on individuals - down payments and IRPEF substitutes) violations related to IVAFE (taxes on the value of financial assets held abroad) can be regularized as well. Taxes related to real estate held abroad (IVIE) cannot be regularize as based on the assumptions of ownership of the same (see Art. 19, paragraphs 13 to 17, of Law Decree No. 201/2011).

The Circular provided clarifications also related to:

- Filing of the request to access the procedure;
- Provision the documentation in support f the request (the request must be filed together with a report whose filing is due on 31 July 2018);
- Payment and determination of amounts due – the amount equals to 3% of the assets' value on 31 December 2016[9], covering taxes, interest and penalties due. The payment can be made singularly no later than 31 September 2018 or in three equal monthly instalments. If this is the case, interests must be added (See Decree of the Ministry of Economy of Finance dated 13 December 2017). The amount due cannot be set-off as per Art. 17 of Legislative Decree No. 241/1997;
- Closure of the procedure and related effects;
- Negative outcome of the procedure related effects.

6 See Ministerial Circular No. 28/E/2011.

7 Reference to sums and activities held abroad deposited in foreign current accounts and savings books shall include all foreign activities of financial nature subject to tax monitoring measures (see guideline on how to fil the RW Section of the return).

8 Sums resulting from the sale of real estate located in the foreign country where the individual has worked on a permanent basis herein included, provided that the same generated financial activities held in the same state which have not been declared for tax monitoring purposes.

9 In the event that the amount held is equal to 0, or negative, as at 31 December 2016, the 3% rate must be computed on the value registered as at 31 December of the first year preceding 2016 reporting a positive value (i.e. higher than 0).

CASE LAW

3.1

Taxable base – Inherence of costs – Supreme Court, Sez. VI, Ordinance dated 11 June 2018, No. 15115

With Ordinance No. 15115, the Supreme Court expressed the following principle of law: "*in order to determine the taxable base for IRAP purposes as pursuant to Art. 5 of Legislative Decree No. 446/97, amended in the wording by Art. 1, paragraph 5, of Law No. 244/2007, applicable ratione temporis to the case at issue, the principle of derivation of costs from the profit and loss account does not exclude the assessment of the inherence of the same [...]*". This duly in line with the position of the Court *"which favorites a substantial interpretation of the measures at issue with specific reference to the proper allocations of non-complaint items in the profit and loss account*". (see Cass. 10 January 2013, No. 400, 30 September 015, No. 19148 and 15 December 2017, No. n. 30149).

3.2

Business income – Costs of production - Inherence - Supreme Court, Judgement dated 6 June 2018, No. 14579

With Judgement No. 14579, the Supreme Court clarified that costs of production (related to marketing and advertising activities) incurred by an Italian company for the services rendered by a foreign company part of the same group can be deducted. The Court, after providing general clarifications on the "*concept of inherence*", underlined that the recent jurisprudence seems to have drifted away from the criterion of the relation between costs and congruity of the same, hence putting Article 109 of the TUIR Italian Income Tax Act – on which the concept of inherence is based – aside.

More in specific, it is assessed that the principle of inherence must be interpreted as expression of the fact that costs need to made direct reference to the activity carried out, thus excluding unrelated costs, and not to the advantages, even potential or indirect, carried by the same for the activity. Therefore, the congruity of the costs has no relevance as the validation is qualitative and not quantitative.

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TAX NEWSLETTER | 1-15 JUNE 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 JUNE 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