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# TAX

NEWSLETTER / 16-30 JUNE 2018

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## LEGISLATION

### 1.1

**Implementation of Art. 1, paragraphs from 634 to 636, of Law dated 23 December 2014, No. 190 – Communication to promote spontaneous fulfillment from subjects who failed to file the VAT return or the same was partially filed limitedly to the VA section – Measure dated 28 June 2018, No. 129515**

With the Measure at issue, the Financial Administration determined the modalities with which the “*information related to issued invoices suggesting that the VAT return has not been filed for fiscal period 2017 or that the same was filed only with reference to the VA section*” are going to be provided to the taxpayer and to the Tax Police (even through the use of computerized instruments).

In addition, the modalities available to the taxpayers on how to request information to the Revenue Agency or communicate elements, facts or circumstances by the latter unknown have been therein provided.

### 1.2

**Postponement of mandatory e-invoicing on fuel supplies – Legislative Decree dated 28 June 2018, No. 79 – Published in the Italian Official Gazette dated 28 June 2018, No. 148**

Law Decree dated 28 June 2018, No. 79, on the “*Postponement of mandatory e-invoicing on fuel supplies*” was published on the Italian Official Gazette No. 148 on 28 June 2018.

The Decree, in force as from 29 June 2018 (day immediately after the day of publication into the Official Gazette), envisages that the e-invoicing concerning fuel supplies made by petrol stations by subjects VAT liable (Art. 1, paragraph 920, of Law dated 27 December 2017, No. 205 – 2018 Budget Law) will be mandatory now starting from 1 January 2019 (and no longer from 1 July 2018).

## GUIDANCE

### 2.1

#### **Tax credit for R&D investments – Art. 3, of Law Decree dated 23 December 2013, No. 145 and subsequent amendment – Ministerial Resolution dated 22 June 2018, No. 46/E**

With Resolution No. 46/E/2018, the Revenue Agency provided clarifications with reference to the possibility to benefit from the tax credit for R&D investments as per Art. 3 of Law Decree dated 23 December 2013, No. 145 (converted with amendments by Law dated 21 February 2014, No. 9)<sup>1</sup> incurred by companies operating in the organization of exhibitions and congresses.

With reference to the case at issue, the investments regard the design, coding and realization of software, web services, mobile apps and tech structures for the realization of exhibitions. The Ministry of Economic Development (MISE), upon request of the Financial Administration, ruled that the investments at issue cannot qualify for the benefit as lacking of the requisites of innovation and of financial risk (as well as that of technical failure) on which R&D investments are grounded. In addition to the above, the Ministry clarified that *"the activities carried out by the company ALFA (company issuing request of ruling) are in practice – even with reference to preparatory activities – ordinary activities carried out within the scope of investments in fixed assets. Such investments are included among investments in instrumental assets (tangible and intangible) used in the ordinary business of the company to be treated in the financial statements as immobilizations"*. This is true also for investments in intangible assets such as licenses for software and development of preexisting or new software in support of the ordinary activity<sup>2</sup>.

### 2.2

#### **Ruling - Article 11, paragraph 1, lett. a), Law dated 27 July 2000, No. 212, IRI (business income tax) option for fiscal year 2017 – Postponement – Non-sufficient down payment of the council supplement IRPEF – Ministerial Resolution dated 22 June 2018, No. 47/E**

Resolution No. 47/E/2018 provided clarifications with reference to IRPEF (Income Tax on Natural Persons)

<sup>1</sup> See on the issue Ministerial Circulars dated 16 March 2016, No. 5/E and the one dated 27 April 2017, No. 13/E.

<sup>2</sup> The MISE, in making reference to Circular dated 9 February 2018, No. 59990, clarified that *"according to classification criteria [...] set under the Frascati Manual, activities related to the development of software and business information systems which exploit already known methods and existing instruments, new functions destined to the final user related to preexisting instruments, the creation of websites or software by using preexisting instruments, standard encryption methods, data security checks, customizations of products do for a specific purpose not qualify as R&D activities"*.

down payments made by taxpayers who opted for the so called IRI regime<sup>3</sup>. It is specified that, in the event that the payment is insufficient only with regard to the postponement of the IRI regime to FY 2018<sup>4</sup>, (as in compliance with the principle of the taxpayers' good faith – Art. 10, Law dated 27 July 2000, No. 212) sanctions for not sufficient payment as per Art. 13 of Legislative Decree dated 18 December 1997 cannot be challenged. This interpretation is duly in line with the interpretation provided by the Fiscal Administration with Ministerial Resolution No. 176/E/2003.

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<sup>3</sup> According to the regime "Business income, business income realized by self-employed persons, partnerships and by limited liability company with limited owners does not concur to the formation of the total income of the owners – according to the principle of taxation for transparency envisaged for IRPEF subjects (Art. 5 of the TUIR Italian Income Tax Act) – but shall be subject to separate taxation of business income, at a rate aligned with the IRES rate (24%) as long as the same remains within the business sphere".

<sup>4</sup> See Law dated 27 December 2017, No. 205 (2018 Budget Law).

## CASE LAW

### 3.1

#### **Payment in instalments – interests on sanctions – Supreme Court, Tax Department, Ordinance dated 22 June 2018, No. 16553**

With Ordinance dated 22 June 2018, No. 16553, the Supreme Court clarified that Art. 2, paragraph 3, of Legislative Decree 472/1997 which established that “*sanctions do not accrue interests*” is valid also for payments in instalments where interests are determined alike the ordinary one. The rule at issue must be considered as exceptional, hence in case of payment in installments, applicable sanctions do not accrue interests for late payment.

### 3.2

#### **Failure to declare income generate abroad – Tax residence in Italy – Supreme Court, Sez. VI, Ordinance dated 25 June 2018, No. 16634**

With Ordinance dated 25 June 2018, No. 16634, the Supreme Court clarified that subjects registered under the tax registers of resident population are to be considered, in compliance with what established by Art. 2 of the Decree of the President of the Republic No. 917/1986, as resident; therefore, they qualify as subject tax liable in Italy. Therefore, the sole registration under the official register is sufficient, with no further assessment, to prove residency in Italy, there being no exception even if the residency is transferred to a foreign country but there is no cancellation from the Italian register (see also Court of Cassation, No. 21970/2015).

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 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](mailto:UFFICIOSTUDI@STUDIOPIROLA.COM)