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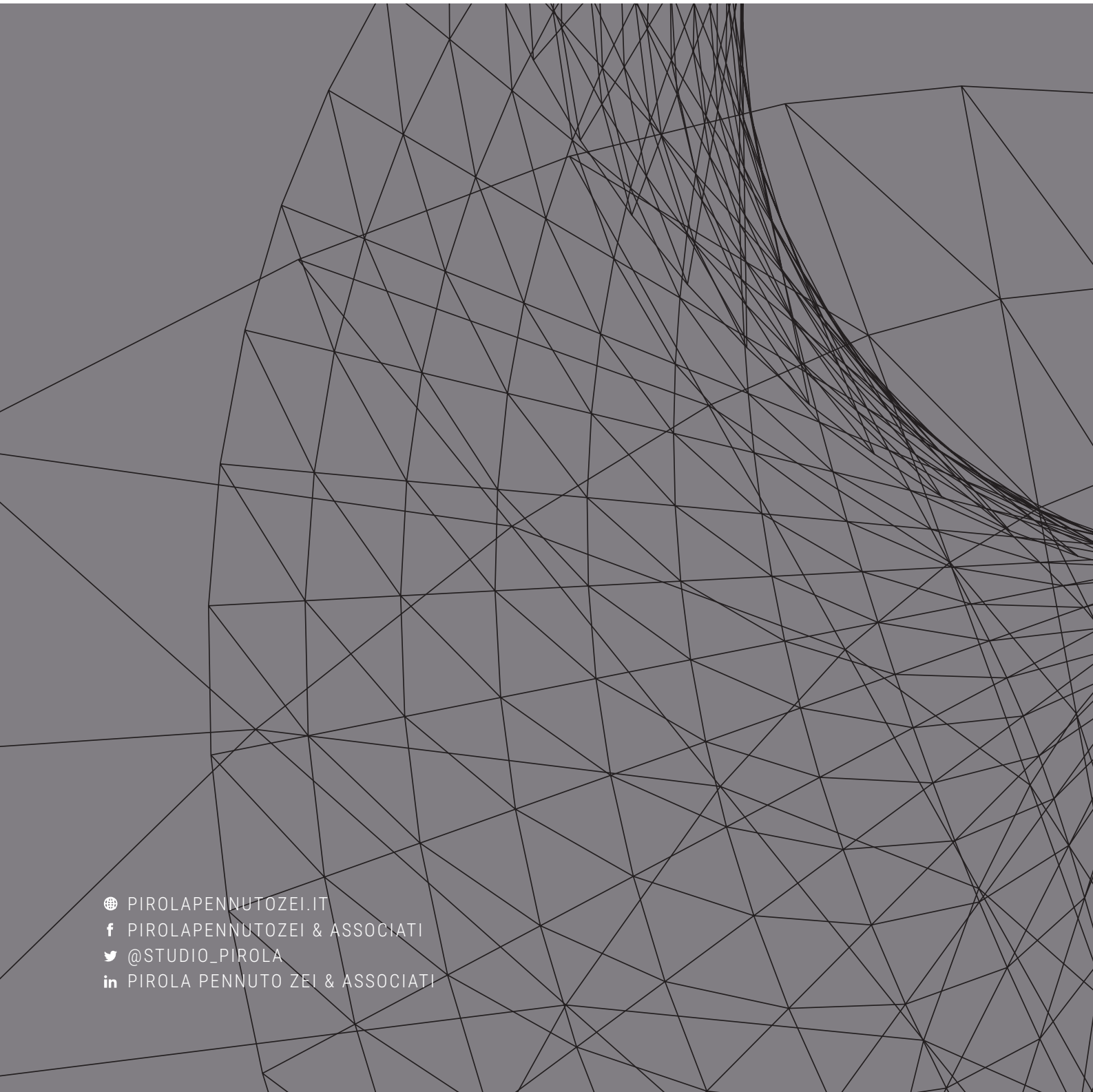
# EUROPEAN

## NEWSLETTER / JUNE 2018



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# LAW

## 1.1

### VAT: European Commission welcomes adoption of new tools to combat fraud in the EU

On 22 June 2018, the European Commission has welcomed the agreement reached by EU Member States today on new tools to close loopholes in the EU's Value Added Tax (VAT) system. These new rules aim to "*build trust between Member States so that they can exchange more information and boost cooperation between national tax authorities and law enforcement authorities*". In practice, the new rules will strengthen cooperation between Member States, enabling them to tackle VAT fraud more quickly and more efficiently, including on fraud that takes place online.

These new rules[1] do follow up on the Commission's proposals for a deep reform of the EU VAT system presented in October 2017, and the VAT Action Plan towards a single EU VAT area presented in April 2016.

As it can be read in the Press Release published on 4 October 2017, the VAT fundamental principles are and shall be the following:

- *Tackling fraud:* VAT will now be charged on cross-border trade between businesses. Currently, this type of trade is exempt from VAT, providing an easy loophole for unscrupulous companies to collect VAT and then vanish without remitting the money to the State;
- *One Stop Shop:* it will be simpler for companies that sell cross-border to deal with their VAT obligations thanks to a "*One Stop Shop*";
- *Greater consistency:* a move to the principle of "*destination*" whereby the final amount of VAT is always paid to the Member State of the final consumer and charged at the rate of that Member State. This has been a long-standing commitment of the European Commission, supported by Member States. It is already in place for sales of e-services;
- *Less red tape.*

1 They will be enforced as from 1 January 2010 as the implementation of the automated access to the information collated by the customs authorities and to vehicle registration data will require new technological development.

The Commission restated the concept that VAT is a major and growing source of revenue in the EU, raising over €1 trillion in 2015, which corresponds to 7% of EU GDP.

# EU COURT OF JUSTICE

## 2.1

**Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Articles 2, 9 and 168 — Economic activity — Direct or indirect involvement of a holding company in the management of its subsidiaries — Letting of a building by a holding company to its subsidiary — Deduction of input tax — VAT paid by a holding company on expenditure incurred in acquiring shares in other companies. Judgement of the Court (Seventh Chamber) dated 5 July 2018, *Marle Participations SARL* v *Ministre de l'Économie et des Finances*, Case C-320/17**

*Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the letting of a building by a holding company to its subsidiary amounts to 'involvement in the management' of that subsidiary, which must be considered to be an economic activity, within the meaning of Article 9(1) of that directive, giving rise to the right to deduct the value added tax (VAT) on the expenditure incurred by the company for the purpose of acquiring shares in that subsidiary, where that supply of services is made on a continuing basis, is carried out for consideration and is taxed, meaning that the letting is not exempt, and there is a direct link between the service rendered by the supplier and the consideration received from the beneficiary. Expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the subsidiaries' management by letting them a building and which, on that basis, carries out an economic activity has to be regarded as belonging to its general expenditure and the VAT paid on that expenditure must, in principle, be capable of being deducted in full.*

*Expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management of only some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the VAT paid on that expenditure may be deducted only in proportion to the expenditure which is inherent in the economic activity, in accordance with the apportionment criteria defined by the Member States, which, when exercising that power, must have regard to the aims and broad logic of that directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the national courts to ascertain.*

This request for a preliminary ruling concerns the interpretation of Articles 2, 9 and 168 of Council Directive

2006/112/EC of 28 November 2006 on the common system of value added tax. More in specific, this request has been made in proceedings between *Marle Participations SARL* and *Minister for the Economy* and Finance (*France*) concerning the deductibility of the value added tax (VAT) paid by the applicant in the main proceedings in respect of expenditure relating to the acquisition of securities.

Considering the questions referred, the Court specified that an activity is, as a general rule, categorized as 'economic' where it is permanent and is carried out in return for remuneration which is received by the person carrying out the activity. Moreover, it is clear from the Court's case-law that, within the framework of the VAT system, taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is stipulated, and that a supply of services is effected for consideration only if there is a direct link between the service provided and the consideration received.

More specifically, as regards a holding company's right of deduction, the Court has previously held that a holding company does not have the status of taxable person and, accordingly, does not have the right to deduct tax when it has as its sole purpose the acquisition of shares in other undertakings and does not involve itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder (see judgments *Larentia, Minerva* and *Marenave Schiffahrt*).
The mere acquisition and holding of shares in a company is not to be regarded as an economic activity, within the meaning of the VAT Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because "*any dividend yielded by that holding is merely the result of ownership of the property*".
However, the position will be otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the interests are held without prejudice to the rights held by the holding company as shareholder (see, *inter alia,* judgments *Floridienne* and *Berginvest, Cibo Participations* and *Portugal Telecom*).

It is apparent that the involvement of a holding company in the management of companies in which it has acquired a shareholding constitutes an economic activity, within the meaning of Article 9(1) of the VAT Directive, "*in so far as it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive, such as the supply by a holding company to its subsidiaries of administrative,*

*accounting, financial, commercial, information technology and technical services*" ( these examples are not exhaustive).

The judges specified that the term 'involvement of a holding company in the management of its subsidiary' must, accordingly, be understood as covering all transactions constituting an economic activity, within the meaning of the VAT Directive, performed by the holding company for the benefit of its subsidiary.

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# EUROPEAN TAX NEWSLETTER | JUNE 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 JUNE 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY 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