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TAX

NEWSLETTER / 16-30 SEPTEMBER 2018

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LEGISLATION

1.1

Approval of form AGI/1, declaration of formation of the VAT group and relevant instructions – Revenue Agency Director Enactment No 215450 of 19 September

By this Enactment, the Tax Authorities approved Form AGI/1 named “*Declaration of formation of the VAT group and relevant instructions*” to be used when submitting the declarations provided by title V-bis of Presidential Decree No 633 of 26 October 1972. This Form, and the relevant instructions, can be downloaded from the internet website www.agenziaentrate.gov.it

Article 1(24) of law No 232 of 11 December 2016, added title V-bis VAT group to the VAT Decree, according to which taxable persons established in Italy which carry out a business or practice a craft or a profession and meet all of the financial, economic and organizational conditions under article 70-ter of Presidential Decree No 633/1972 may form a VAT Group.

The Decree by the Ministry of Economy and Finance of 6 April 2018 provided the relevant implementation rules.

GUIDANCE

2.1

Tax ruling - Article 11(1)(a), law No 212 of 27 July 2000 – Notification of particulars of invoices issued and received – Article 21 of decree law No 78 of 31 May 2010 – Resolution No 68/E of 21 September 2018

Resolution No 68/E/2018 provided clarification on the notification of particulars of invoices issued referred to in article 21 of Decree Law No 78/2010, converted into law No 122 of 30 July 2010. The taxpayer who filed the relevant tax ruling request was a local authority in charge of providing direct integrated water services and issuing quarterly “bills-invoices” (*bollette-fatture*) (pursuant to Ministerial Decree No 370 of 24 October 2000) for water supply, water treatment and sanitary sewer services; the authority asked whether such bills-invoices had to be reported in the “*Notification of particulars of invoices issued and received*”. The Resolution stated that given the fact that invoices and bills were considered as equivalent instruments, there were no elements for exempting the bills-invoices from the obligation to include them in the Notification. It also specified that in this case, the bills-invoices for water supply, water treatment and sanitary sewer services (regarded as invoices for all intents and purposes) were subject to the reporting obligation only if issued to taxable persons.

2.2

Tax ruling pursuant to article 11 of law No 212 of 27 July 2000 – Transfer to Italy (*Impatrio*) of the persons referred to in article 16 of legislative decree No 147 of 14 September 2015 – Work provided in Italy and abroad for multinational companies – Resolution No 72/E of 26 September 2018

Revenue Agency Resolution No 72/E/2018 provided clarification on the tax incentive for the “*impatriates*” referred to in article 16 of legislative decree No 147 of 14 September 2015.

The applicant is an Italian national resident in the United Arab Emirates (UAE) and registered with the Register of Italian nationals resident abroad (*Anagrafe degli italiani residenti all'estero - AIRE*) since 10 May 2016.

Until 1 April 2016, he worked for an Italian company (A) member of a group (B). On 3 April 2016 the individual moved to the UAE and entered into an employment agreement with company C, which in 2017 became part of a multinational group (D) and was controlled by company B.



GUIDANCE

The Tax Authority clarified that, pursuant to the special tax regime for “*impatriates*”¹, the applicant (who had entered into a separate contract with group D) could qualify for the beneficial treatment under article 16(2) of legislative decree 147/2015, “*it being immaterial that he worked abroad with companies that are part of the same group*”.

¹ Ministerial Decree of 26 May 2016 identified the individuals eligible for the tax incentive (on the matter, Ministerial Resolution No 51/E/2018 specified that “*since paragraph 2 provides for a minimum 2-year period of work abroad, we are of the opinion that 2 fiscal years is the minimum length of residence abroad to be met by these individuals in order to be regarded as non-Italian-resident and thus be eligible for the beneficial tax regime*”).

CASE LAW

3.1

Business income – Liability to tax of off-balance-sheet transactions – Limitations – Court of Cassation, Decision No 22942 of 26 September 2018

By decision No 22942 of 26 September 2018, the Italian Supreme Court stated the following principle of law: *“off-balance sheet transactions (in this specific case, forward currency derivatives) carried out by persons other than credit or financial institutions are taken into account in the determination of income pursuant to article 103-bis(2-bis) of the Italian Income Code only if they were recognized, according to ordinary civil code rules, in the annual accounts”*. If instead they were recorded in memorandum accounts, the recognition of the gains and losses arising from the transactions would be made in accordance with article 76 of the Italian Income Tax Code, in the wording in force at the relevant time.

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 SEPTEMBER 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