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EUROPEAN

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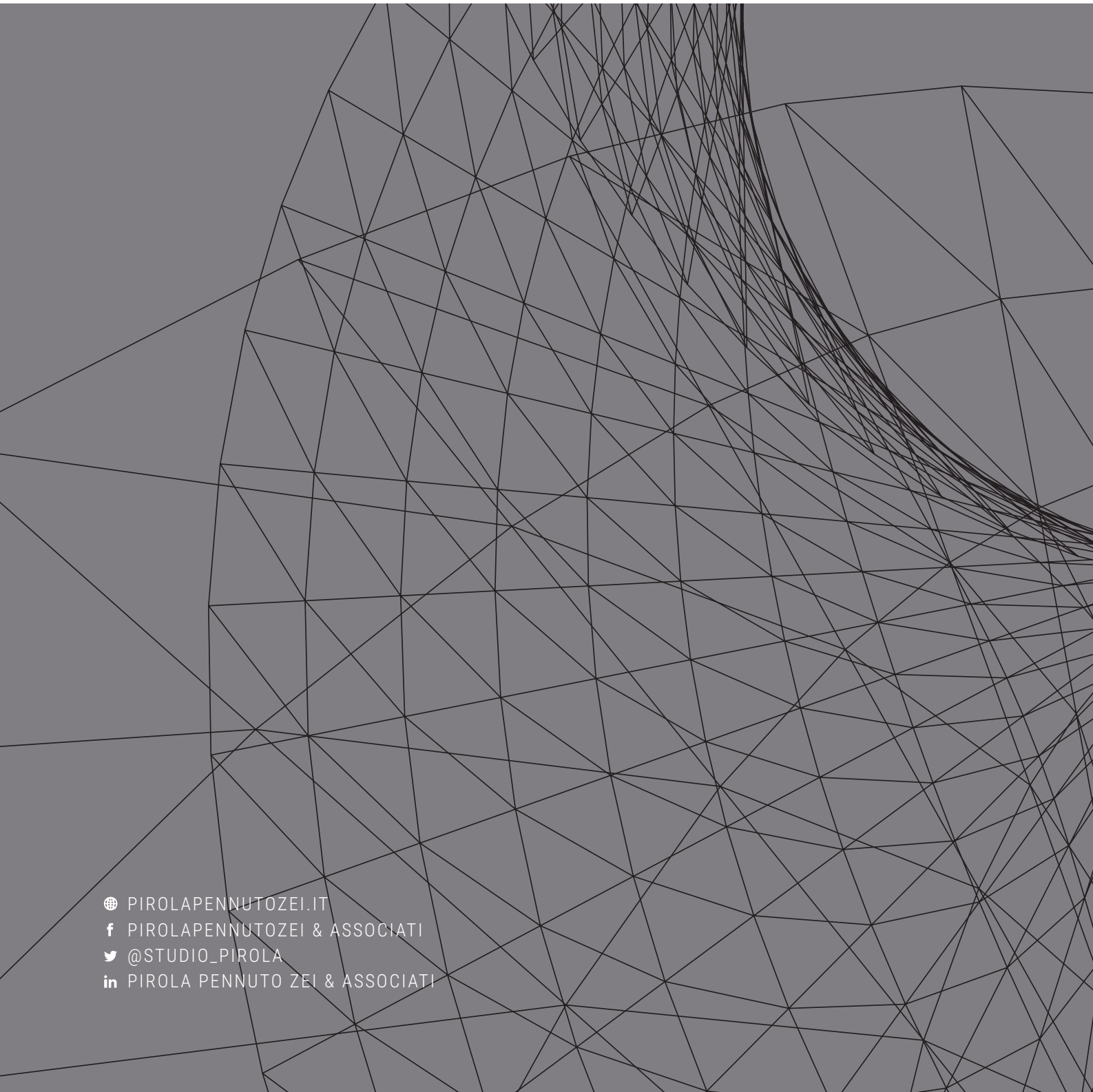

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PRESS RELEASE

1.1

European Council Press release dated 2 October 2018 - Taxation: *Liechtenstein* and *Peru* meet commitments, Palau removed from list of uncooperative jurisdictions

On 2 October 2018 the European Council stated that *Liechtenstein* and *Peru* have complied with all the commitments on tax cooperation: specifically, they have completed the necessary reforms to comply with all the tax good governance principles identified at EU level and set out in the conclusions adopted by the Council in December 2017. As a consequence, the two countries will be removed from annex II of the conclusions.
Moreover, "*Palau has made commitments at a high political level to remedy EU concerns. EU experts have assessed those commitments. As a consequence, Palau was moved from annex I of the conclusions to annex II, which includes jurisdictions that have undertaken sufficient commitments to reform their tax policies.* Implementation of its commitments will be carefully monitored by the Council working group responsible for the listing process ('*code of conduct group*').

To-date six jurisdictions remain on the list of non-cooperative jurisdictions: *American Samoa, Guam, Namibia, Samoa, Trinidad* and *Tobago* and the *US Virgin Islands.*
Whereas the list is revised at least once a year, the code of conduct group can recommend an update at any time.

We refer to the following documentation as well:

- September 2018 note on changes to the EU list of non-cooperative jurisdictions;
- Council webpage on the code of conduct group;
- December 2017 Council conclusions on the EU list of non-cooperative jurisdictions.

EU COURT OF JUSTICE

2.1

Request for a preliminary ruling — Common system of value added tax (VAT) — Concept of taxable person — Holding company — Deduction of input tax — Expenditure for consultancy services received for the purpose of the acquisition of another company's shares — Acquiring company's intention to provide management services to the target company — Those services not provided — Right to deduct VAT charged on the services received. Judgement dated 17 October 2018, Case C-249/17, *Ryanair Ltd vs The Revenue Commissioners*

Articles 4 and 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as conferring on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to value added tax (VAT) to that other company, the right to deduct, in full, input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out, provided that the exclusive reason for that expenditure is to be found in the intended economic activity.

The request for a preliminary ruling was filed within the scope of a dispute between *Ryanair Ltd* and the Revenue Commissioners (*Ireland*) concerning the latter's refusal to grant *Ryanair* the deduction of input value added tax (VAT) relating to consultancy services provided to it in the context of a bid to takeover another company.

Ryanair launched a takeover bid for all the shares of another airline; it incurred, on that occasion, expenditure relating to consultancy services and other services in connection with the planned acquisition. Nevertheless, it was not possible to carry out that transaction fully for reasons relating to compliance with competition law, so that *Ryanair* was able to acquire only a part of the share capital of the target company.

In the first place, the European Court of Justice pointed out that a company whose sole object is to acquire shares in other companies without direct or indirect involvement in the management of those companies neither has the status of taxable person nor the right to deduct tax. The mere acquisition and holding of shares in a company do not, in themselves, amount to an economic activity within the meaning of the

Sixth Directive, since 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. It is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, "*if that entails carrying out transactions which are subject to VAT, such as the supply of administrative, financial, commercial and technical services, without prejudice to the rights held by the holding company as shareholder* (see judgments *Larentia + Minerva* and *Marenave Schiffahrt*). Furthermore, since economic activities within the meaning of the Sixth Directive may consist of several consecutive transactions, the preparatory acts must themselves be treated as constituting economic activity (see judgment INZO). Thus, according to the European Court of Justice "*any person with the intention, as confirmed by objective elements, of independently starting an economic activity, and who incurs the initial investment expenditure for those purposes must be regarded as a taxable person* (see judgments *Breitsohl* and *Ablessio*). It follows that a company which carries out preparatory acts which are part of a proposed acquisition of shares in another company with the intention of pursuing an economic activity consisting in involvement in the management of that other company by providing management services subject to VAT must be considered a taxable person, within the meaning of the Sixth Directive. Moreover in order for the VAT paid to be deducted in full, the exclusive reason for the expenditure incurred must be found, in principle, in the intended economic activity, namely the provision to the target company of management services subject to VAT (see judgments *Investrand, Securenta, Larentia + Minerva* and *Marenave Schiffahrt*).

2.2

Request for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 168 and 173 — Deduction of input tax — Vehicle hire purchase transactions — Goods and services used for both taxable transactions and exempt transactions — Origin and scope of the right to deduct — Proportional deduction. Judgement dated 18 October 2018, Case C-153/17, *Commissioners for Her Majesty's Revenue and Customs vs Volkswagen Financial Services (UK) Ltd*

The request was filed within the scope of a dispute between the Commissioners for Her Majesty's Revenue and Customs ('the UK tax authority') and *Volkswagen Financial Services* (UK) Ltd ('*VWFS*') concerning the method applicable for determining the recoverable part of the input value added tax (VAT) incurred by that company in the context of its business consisting inter alia in offering supplies of motor vehicles by hire purchase.

VWFS is a financial company which is wholly owned by *Volkswagen Financial Services AG* and which is part of the *Volkswagen AG* Group, which manufactures and sells motor vehicles under various brands, such as *Volkswagen, Audi* and *Škoda*. The finance offered by VWFS is intended solely for the purchase of vehicles of that group's brands[1].

The European Court of Justice pointed out that it is appropriate to determine whether, for VAT purposes, the various transactions relating to hire purchase supplies (namely the grant of finance and the supply of vehicles) must be treated as distinct transactions which are taxable separately or as single complex transactions, composed of several elements. According to the Court's case-law, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply (see judgment Stadion *Amsterdam*).

Having said that, article 168 and article 173(2)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as follows:

- even where the general costs relating to supplies of moveable goods by hire purchase, such as the supplies at issue in the main proceedings, are passed on not in the amount due by the customer in respect of the supply of the goods concerned, that is to say the taxable part of the transaction, but in the amount of the interest due in respect of the 'finance' part of the transaction, that is to say the exempt part thereof, those general costs must nonetheless be considered, for the purposes of value added tax (VAT), to be a component of the price of that supply;
- Member States may not apply a method of apportionment which does not take account of the initial value of the goods concerned when they are supplied, since that method is not capable of ensuring a more precise apportionment than that which would arise from the application of the turnover-based allocation key.

1 In addition to finance options, that company supports the marketing of those brands' cars by the training of dealers' sales forces. The costs associated with that support are amortised across VWFS's whole operating budget and are not charged to the other group undertakings.

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EUROPEAN TAX NEWSLETTER | OCTOBER 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 OCTOBER 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