

Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

EUROPEAN

NEWSLETTER / DECEMBER 2018

🌐 PIROLAPENNUTOZEI.IT
f [PIROLAPENNUTOZEI & ASSOCIATI](#)
🐦 [@STUDIO_PIROLA](#)
in [PIROLA PENNUTO ZEI & ASSOCIATI](#)

PRESS RELEASES

1.1	3
Common EU list of third country jurisdictions for tax purposes	

EUROPEAN COURT OF JUSTICE

2.1	5
Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Articles 19 and 29 and Article 135(1)(l) – Transfer of a totality of assets or part thereof – Exemption for lettings of immovable property – Rental contract concerning an immovable property used for commercial purposes and the movable property necessary for that use – Supply of services relating to that immovable property which gave rise to the deduction of VAT – Adjustment. Decision of 19 December 2018, Case C-17/18, Virgil Mailat, Delia Elena Mailat, Apcom Select SA	

PRESS RELEASES

1.1

Common EU list of third country jurisdictions for tax purposes

In its press release dated 4 December 2018, the European Commission provided an update on the EU List of non-cooperative jurisdictions.

As specified by the Commission "*this list is part of the EU's work to fight tax evasion and avoidance and aims to create a stronger deterrent for countries that consistently refuse to play fair on tax matters*".

The following fact sheet summarizes the recent evolution of the list:

- **23 January 2018:** Eight jurisdictions were removed from the list of non-cooperative jurisdictions, following commitments made at a high political level to remedy EU concerns. Barbados, Grenada, the Republic of Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates were moved to a separate category of jurisdictions subject to close monitoring;
- **13 March 2018:** The Council removed Bahrain, the Marshall Islands and Saint Lucia from the black list and added the Bahamas, Saint Kitts and Nevis and the US Virgin Islands;
- **25 May 2018:** The EU Council removed the Bahamas and Saint Kitts and Nevis from the list of non-cooperative jurisdictions;
- **2 October 2018:** The Council found Liechtenstein and Peru compliant with all their commitments and removed Palau from the black list;
- **6 November 2018:** The Council removed Namibia from the black list;
- **4 December 2018:** The Council found Andorra and San Marino compliant with all their commitments.

The criteria adopted by the EU Commission to determine the level of cooperativeness of jurisdictions – which were established during the November 2016 ECOFIN Council – are: tax transparency, fair taxation, implementation of OECD BEPS measures, substance requirements for zero-tax countries.

On the matter, the following documentation may be of interest:

- Detailed explanation of the methodology and the scoreboard;
- External Strategy for Effective Taxation;
- EU anti-tax avoidance requirements on financing and investment operations.

EU COURT OF JUSTICE

2.1

Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Articles 19 and 29 and Article 135(1)(l) – Transfer of a totality of assets or part thereof – Exemption for lettings of immovable property – Rental contract concerning an immovable property used for commercial purposes and the movable property necessary for that use – Supply of services relating to that immovable property which gave rise to the deduction of VAT – Adjustment. Decision of 19 December 2018, Case C-17/18, Virgil Mailat, Delia Elena Mailat, Apcom Select SA

The concept of «transfer of a totality of assets or part thereof», within the meaning of Article 19 of the VAT Directive, must be interpreted as covering the transaction by which a building which was used for commercial purposes is let with all the capital equipment and inventory items used for those purposes, when the lessee pursues those activities under the same name. Article 135(1)(l) of the VAT Directive must be interpreted as meaning that a lease contract for an immovable property which was used for commercial purposes and for all capital equipment and inventory items necessary for that use constitutes a single supply in which the letting of the immovable property is the principal supply.

The request for a preliminary ruling concerned the interpretation of articles 19 and 29 as well as article 135(1)(l) of Directive 2006/112/CE and was filed as part of criminal proceedings on tax avoidance grounds against two individuals and the commercial company they were directors of, *Apcom Select SA*.

The EU judges analyzed the notion of «*transfer of a totality of assets or part thereof*» pursuant to article 19 of the VAT directive, which must be interpreted as covering the transfer of a business or an independent part of an undertaking, including tangible elements and, as the case may be, intangible elements which, together, constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity (see, to that effect, the *Zita Modes e Schriever* judgments). In particular “*in order to find that there has been a transfer of a business, or of an independent part of an undertaking, all of the elements transferred must, together, be sufficient to allow an independent economic activity to be carried on [...]*”; the question whether there must be both movable and immovable assets among those elements must be assessed in the light of the nature of the economic activity at issue. Thus, where an economic activity does not require the use of particular premises or of premises equipped with fixtures necessary for the pursuit of the economic activity, there may be a transfer of a totality of assets within the meaning

of the first paragraph of Article 19 of the VAT Directive even without the transfer of ownership of an immovable asset.

The EU judges also ruled on the matter of complex services (see judgement in the *RR Donnelley Global Turnkey Solutions Poland* case): a supply must be regarded as a single supply where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, whereas a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 DECEMBER 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