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COMPANIES WITH EFFECTIVE MANAGEMENT OFFICE ABROAD

With sentence 16.10.2012 no. 91/02/12, the Provincial Tax Commission of Treviso has held that a company regulated by Slovakian law which is controlled by an Italian company but whose effective management office is in the foreign state does not have tax residence in Italy.
The Commission excluded the possibility of the Sovakian company being considered as an offshore company as per art. 73 para. 5-bis of the Consolidated Income Tax Law. The law, in fact, considers as resident in Italy foreign companies that hold controlling stakes in Italian companies with share capital or commercial entities if they are either:
- controlled, also indirectly, by persons or entities resident in Italy; or
- administered by a board of directors, or by another equivalent management body, composed mainly of directors resident in Italy.

In the case in question, there no control of Italian companies on the part of the Slovakian company, as a result of which, the law cannot be applied.
The sentence, moreover, excluded that the Slovakian company should be considered as resident in Italy for tax purposes due to the presence in Italy of its administrative office; in the case in question, it was not demonstrated that such an administrative office is situated in Italy, and it was established that this is not determined by the physical place of residence of the directors of the foreign company.

CERTIFICATION OF AMOUNTS RECEIVABLE FROM PUBLIC AUTHORITIES: REDUCED TIME PERIODS

Ministerial Decree 24.9.2012 has modified the previous decree (of 22.5.2012) which dealt with the matter, establishing that Public Authorities have 30 days (and no lobnger 60) to certify amounts payable by them. The same decree also provided: - that the amount payable is certified net of any debtor positions of the claimant with respect to the same body issuing the certification; - that a creditor company may delegate a bank or qualified financial broker with the management of the credit certification.

FORMAL VIOLATIONS FOR THE "REVERSE CHARGE"

The Supreme Court has already established in the past (sentence no. 17588/2010) that violations for failure to integrate inter-European Community invoices may not give rise to the recovery of VAT, since verbal fulfilments are considered as formal, that is, without effect on the tax assessment. Art. 6, paragraph 5-bis of Leg. Dec. no. 472/1997, in fact, provides that violations that do not give rise to any loss of income for the tax office are not punishable. This leads to the question of whether the above principle can also be applied to cases of "internal" <reverse charge> (e.g. building subcontracts), in which the sanction of 3% is limited to the case of the issue of an invoices with VAT, regularly paid.

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ELEMENTS OF THE EMPLOYMENT REFORM

We are continuing with our analysis of the changes introduced by Law no. 92 of 28 June 2012 reforming the labour market, which came into force on 18.07.2012.

TYPES OF CONTRACT

The employment reform has changed a number of types of contract with the aim of achieving a more dynamic labour market, of creating more stable work relations, of making use of apprenticeships and in particular, of combatting the improper use of a number of flexible contractual instruments, such as fixed-term contracts and intermittent employment contracts.

a) The fixed-term contract:

- An exemption from causal obligation has been introduced in the case of the first fixed-term work relationship of a maximum duration of 12 months between an employer and a worker, including fixed-term temporary contracts.
  Alternatively, the reform provides that collective bargaining may establish that the causal obligation does not apply to hirings that occur as part of reorganisation processes within the limit of 6% of the total of workers employed in the same production unit.
- The fixed-term contract may be extended only when the initial duration is less than 3 years.
- For the purpose of calculating the maximum period of 36 months for the stipulation of fixed-term contracts, periods of temporary work involving the worker and the employer (user) are also taken count of.
- The period during which work activities may continue following expiry has been modified to **up to the thirtieth** day (previously the twentieth), if the contract is of a duration of less than six months and to **up to the fiftieth** day (previously the thirtieth), if the contract is of a duration equivalent to or greater than 6 months.
  The employer has the obligation to inform the competent Employment Agency for the territory, within the expiry of the initially fixed term, that the work relationship is to continue after this term, also indicating the duration of the continuation. The means of communication are to be established by a decree of a non-regulatory nature of the Ministry of Employment and by social policies within 1 month of the coming into force of the law.
- In the event of a succession of fixed-term contracts, the minimum interval between one contract and another has been modified, establishing that **sixty** days must pass from the expiry date (previously ten), if the contract is of a duration of up to 6 months, and **ninety** days (previously twenty) if the contract is of a duration equivalent to or greater than six months.
- Collective bargaining contracts may establish a reduction in such periods.
- The reform also modifies the terms for appeal against fixed-term contracts, moving from 60 days to 120 days for extra-judicial appeal, while the filing of a judicial appeal must occur in the following 120 days.
  The new appeal terms shall apply with reference to the termination of fixed-term contracts starting from 1 January 2013.

b) Work placement contracts

The work placement contract has been completely abolished; for hirings up to 31 December 2012, the previous regulations may be applied.

c) Apprenticeship

- A minimum duration of 6 months for the apprenticeship contract has been introduced;
- It is also specified that the apprenticeship regulations continue to be applied also during the notice period.
- For employers that have more than 10 workers, there is the possibility to hire new apprentices, on the condition of the maintenance in service, in the 36 months before hiring, of at least 30% of the workers previously hired with the apprenticeship contract for a first transitory period of 36 months, and starting from **18.07.2015**, of 50%. Work relations terminated by virtue of withdrawal during the trial period or by virtue of resignations or dismissals for just cause must be excluded from the above percentage calculation. If the percentage is not respected, a further apprentice in respect to those already confirmed may be hired in the case of the totally failed confirmation of the apprentices previously taken on.
  It is important to point out that apprentices hired in breach of the aforementioned limits shall be considered as permanent employees from the date of the establishment of the work relationship.
- Starting from **1 January 2013,** an employee may hire apprentices as far as obtaining the ratio of 3 to 2 in relation to qualified and specialised workers. This ratio may not exceed 100% for employers that employ fewer than ten workers.
- The prohibition to hire apprentices with a fixed-term temporary contract is confirmed.

d) Part-Time

- Collective bargaining shall have the task of establishing the conditions and means with which the worker may request the elimination or modification of elastic and flexible clauses.
- Student workers, cohabiting parents with children of an age of no more than 13 years, persons with oncological pathologies and who have a reduced work capacity, workers that have a spouse or parents affected by oncological pathologies and cohabiting family members with a handicap have the right to revoke consent already given to the flexibility clause.
- **The regulation applies from 18.07.2012.**

e) Intermittent Work Contract (so-called "on-call" work)

Through the circular of 18 July 2012 no. 18, the Ministry of Employment gave the first practical indications for intermittent work contracts with the aim of avoiding disputes.

- The employer has the obligation to inform the Provincial Employment Office beforehand by fax, electronic mail (certified, if possible), or by text message that they intend to utilize intermittent employment, the duration of which must not be greater than thirty days.
  Any violations shall imply the application of **an administrative sanction of from € 400 to € 2,400.00** in relation to each worker for which there has been no relevant communication.
  Communications may also relate to a number of workers and may contain information regarding the different days, also non-consecutive, in which work is provided. This period of time may not exceed thirty days; in that case two communications must be forwarded.
  Through circular no. 18, the Ministry has established that the communication can be made on the same day, provided that it is before the work is performed.
- The contract can only be entered into with people who are under 24 or over 55 years of age. **According to the Ministry, violation implies the person is hired full time and on a permanent basis.**
- The possibility to use "on-call" contracts at the weekend and during bank holidays has been abolished.
- Intermittent work contracts already entered into at the date that law 92/2012 came into force cease to have effect after July 2013, that is, once 12 months have elapsed from when the law came into force.
  With regards to this aspect, the Ministry has pointed out that, for the purpose of inspections, the worker that provides their services after the transitional period shall be considered as irregularly employed.

f) Project-based work contracts

- Work relations may no longer be associated with a work programme or phases of a work programme but only with a specific project that must not coincide with the business object of the client.
- The client may withdraw from the contract in advance for just cause or due to the worker's professional unsuitability to complete the project.
- Subordination is assumed when the worker has provided their services in the absence of the above-prescribed requirements, and evidence to the contrary is not permitted.
- The **above provisions shall apply from 18.07.2012.**

g) Other work performed in the form of self-employment

- The reform has established that certain self-employment situations are in fact a form of an on-going collaboration with the client if they have the following characteristics:
  a) The duration of the work performed is greater than 8 months per year;
  b) Income deriving from the collaboration is greater than 80% of the worker's total income;
  c) There is a fixed work station made available by the client.
- Appointments characterised by a high level of skill or technical expertise carried out by workers with a self-employed work income of at least 1.25 times the minimum taxable income are excluded from the above for the purpose of the pension contributions of traders.
- Persons registered with a professional list may maintain relations of a collaboration nature with a client without the requirement for a project, provided that the provision of services is associated with their profession. The regulation is an authentic interpretation and is, therefore, retroactive.

h) Partnership agreements

- **No more than 3** profit-sharing associates may be involved in the same activity, unless they are relatives within the third degree or in-laws within the second degree.
- Partnership agreements with work performance in force when the reform came into force continue until their expiry date if they have been certified by one of the appropriate commissions.
- It has been specifically established that profit-sharing associates that provide their services are considered as dependent employees if they do not effectively participate in the profits of the partnership or do not receive its financial report. Contrary evidence, to be presented by the profit-sharing associate is, however, permitted.

i) Accessory work

Occasional work of an accessory nature is a form of employment introduced with Leg. Dec. 276/2003 (the Biagi reform) subsequently modified and integrated with the aim of extending its application.

Accessory work is a case in itself, not referable to work contracts relating to subordinated employment of self-employment, and is characterised by the performance of work which is of a merely occasional and infrequent nature.

The limit of 5 thousand euros per year within accessory work is possible refers to the total of clients and may not exceed 2 thousand euros for single clients, whether businessmen, traders or professionals.

Public clients may make use of accessory work provided they respect staff cost limits and the internal stability agreement.

Work vouchers already applied for when the law came into force may be used until May 2013.

l) Traineeships

An agreement between the State and the Regions setting out common guidelines with regards to traineeships is expected to be entered into within 180 days from entry into force of the reform.

Such an agreement should identify the means of application and for recognising the rights of the trainee to suitable compensation.