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Studio Baldi News

Fortnightly Newsletter

Monday 11th February 2013 - Number 2

ITALY-FORMER YUGOSLAVIAN REPUBLIC: TAXES IN ITALY FOR A STABLE ORGANISATION

The convention (ratified with Law no. 974 of 1984), entered into between Italy and the former Yugoslavian Republic against double taxation relating to income taxes and property taxes, provides that, for the purpose of establishing tax liability in Italy on the business income of a non-resident, a certain degree of stability in the Italian territory is required (a so-called stable organisation), or a trading office which is able (even only potentially) to generate income or, finally, an autonomous business activity with respect to that carried on by the head office. It should be pointed out that, for the direct taxes purpose, the relative tax assessment should be carried out not only on a formal basis, but also, and especially, with reference to the substance of the matter, as recent sentences of the Italian Supreme Court (sentence no. 20597 of 2011 and sentence no. 1103 of 17 January 2013) state.

THE START OF THE TOBIN TAX IN ITALY FROM MARCH 2013

As provided for by art. 1, paragraphs from 491 to 500, of Law no. 228/2012, starting from 1.3.2013, financial transactions will be subject to a tax of 0.22% (from 1 January 2014 the rate will fall? to 0.2%) on the value of the transaction. For transactions made in regulated markets, the rate is 0.12% for 2013 and subsequently 0.1%. Besides sales transactions, exchanges, contributions, assignments and transfers carried out abroad or between non-resident parties will also be subject to the tax. Excluded transactions include (making reference to the most common cases): transfers of stakes in private limited companies and partnerships; the units of mutual funds and participation rights for employees. The taxable person is the person in whose favour the transfer takes place, while banks, trust companies, notaries and other brokers are obliged to pay the tax. For derivatives with a notional value of greater than one million euros, on the other hand, Tobin tax (at a fixed amount) will be applied from July 2013 with a tax ceiling of 200 euros.

THE OFFENCE OF FRAUDULENT ACCOUNTING

A recent sentence of the Supreme Court (no. 3229 of 22.1.2013) has ruled that the offence of false corporate communications should be taken into consideration only when all punishable thresholds provided for by the law have been exceeded. These thresholds envisage: a difference regarding the economic result for the financial period of greater than 5%; a variation in equity of greater than 1%; value estimates, considered singularly, which differ from correct estimates by more than 10%. In the event that it is not possible to measure these quantitative parameters, the judge must assess whether, "the representation of the economic, assets and liabilities and financial situation of the company in the accounts has been altered in a significant way". It should be noted that, after the changes to the law, made through Leg. Dec. 61/2002, there has been a dramatic reduction in accusations regarding this crime in Italy.

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SIGNS OF FAIRNESS ON THE PART OF THE SUPREME COURT

With sentence no. 1429 of 22.1.2013, the Supreme Court has affirmed a general principle in defence of the taxpayer in their relations with the financial authorities, which may be invoked in cases other than the one explicitly ruled upon. The sentence in question criticised the inertia of the public administration which was late in paying expropriation compensation (15 years late), thereby doubly penalising the citizen-taxpayer, since what was received by the latter subsequently (following developments in the legislation) became taxable. Specifically, the Court ruled that the tax law is composed not only of detailed rules, but also of general principles, such as: impartiality, which prevents the Financial Authorities from taking advantage of illegitimate conduct, obliging them to apply the principle of good faith; the protection of fundamental rights which provide that, in the event of infringement, the damaged party must be compensated; the principle of a fair trial which must reach a verdict within a reasonable time period and provide for the right to compensation obtaining, when necessary, the condemnation of the State, also at an international level. There are numerous cases in which such principles can be applied in relations with the public administration.

CLARIFICATIONS REGARDING THE VAT "CEILING"

Despite the recently introduced invoicing obligation, the EU and extra-EU services as per arts. 7 to 7-*septies* of the Decree of the President of the Republic (D.P.R.) no. 633/1972 are not taken account of in establishing the grounds for purchases with tax-deferment, nor in establishing the status as "habitual exporter" (which is acquired by achieving at least 10% of turnover in non-taxable transactions, excluding sales with tax deferment pursuant to art. 8 letter c of D.P.R. no. 633/1972). For the latter case, these types of services are in any case to be excluded also from the turnover. The only concession for the operator that carries out this type of transaction is the possibility of requesting an annual or infra-annual reimbursement upon exceeding 50% of the turnover, together with operations outside the field of arts. 7 to 7-*septies* and non-taxable operations.
The theme is of particular interest for Italian subsidiaries whose activity consists exclusively of the provision of services to a foreign head office: these companies do not satisfy the status of "habitual exporter", and therefore cannot make purchases with tax-deferment. In any case, the VAT credit which accumulates by virtue of internal purchases may, as we've said, be requested as a reimbursement (or used as an offset) also during the year.

ANTI-MONEY LAUNDERING OBLIGATIONS OF ITALIAN CHARTERED ACCOUNTANTS

Italian chartered accountants have the obligation of anti-money laundering reporting with regards to their clients which have committed tax offenses when the "criminality threshold" of 50,000 euros per year is exceeded. This is the case, for example, of failure to pay certified withholdings or failed payment of VAT. Pursuant to art. 2, paragraph 1, letter c- of Leg. Dec. no. 231/2007, the obligation to report applies, among other things, to "the use of assets derived from a criminal activity", considering any conduct supplementary to the crime as such. On the other hand, the Tax Office and the Italian Finance Police have also always given a literal interpretation to the law, considering the crime of money laundering not only as the introduction of fresh money (derived from the crime) into the capital of a business, but also as simple "tax saving". Moreover, in the subsequent phase of judgement, the existence of criminal intent has only been excluded in sporadic cases in times of temporary and serious business difficulties.