STUDIO BALDI
ASSOCIAZIONE PROFESSIONALE
Tax & Accounting firm

BALDI & PARTNERS
Financial Advisor

Studio legale Baldi
associazione professionale
Legal firm

Studio Baldi News

Fortnightly Newsletter

Monday 11th February 2013 - Number 4

TOBIN TAX MADE IN ITALY INTRODUCED FROM 1 MARCH 2013

The Ministerial Decree 21.2.2013 that establishes how the tax on financial transactions introduced by art. 1, paragraphs 491 to 500 in law no. 228/2012 is to be applied, will soon be published in the Official Gazette.
The tax is imposed on shares and other equity instruments issued by companies resident in the country, and equity-based derivatives. With rare exceptions, the tax liability is incurred at the same time as the effective transfer. The following (among others) are excluded from application of the tax: newly issued shares, shares received as a result of inheritance or donation, allotments involving the distribution of profits or reserves, transfers within Groups (art. 2359 of the Civil Code) and transfers deriving from restructuring operations. For 2013, the tax rate is 0.22%, reduced to 0.12% for transfers in regulated markets. The tax is to be paid by the brokers, including notaries, within the 16th day of the month following that of the transfer of ownership. For a temporary period, for transfers in March, April and May, the tax is to be paid by 16.7.2013. The tax is not deductible either from IRPEF-IRES (Italian income tax or corporation tax) or from IRAP (Italian regional corporate tax).

CONTACTS

Matteo Bedogna
Partner
Tax, accounting and financial
+39.0522.271220
matteo.bedogna@studiobaldi.it

Francesca Baldi
Partner
Legal
+39.0522.271343
f.baldi@baldilaw.it

INTRAGROUP SERVICES ARE DEDUCTIBLE IF THE BENEFICIARY HAS NO STRUCTURE

With sentence no. 4510 of 22.2.2013 the Supreme Court has ruled on the deductibility of costs for services composed of "group services and management agreements" provided by a holding company to other companies of the Group. According to the Tax Office, in the case in point, as often occurs, the costs were neither documented nor pertinent, putting, as a consequence, their existence in doubt. The judges of legitimacy accepted the defence's arguments, since the appellant company was able to demonstrate that it was without suitable staff to carry out the activity in question, requiring the assistance of the holding company.

TRANSFER PRICING AND TAX AVOIDANCE

The Supreme Court has established, with sentence no. 4927 of 27 February 2013, that fixing transfer prices abroad which are below the parameters established by ministerial circulars (which in turn take account of OSCE guidelines) is tax avoidance. The Supreme Court has clarified that the cost of services provided and of goods and services received must be valued on the basis of their respective "normal value" in order to contrast so-called "transfer pricing", which is subject to specific directives on the part of the OSCE. "Normal value" is defined it as the average sum paid for the same kind of goods and services, in conditions of free competition and at the same stage of marketing, at the time and

in the place that the goods or services were acquired or provided, or, if this is not possible, the time and place nearest thereto.

STABLE ORGANIZATION: CONFIRMATION OF SUBSTANTIVE REQUIREMENT

With sentence no. 1103 of 17 January, the tax division of the Supreme Court ruled that a Slovene citizen that runs a ski hire business in Italy with a stable organisation is subject to VAT, since what is important is the territory of the State where and when the services are provided. The Supreme Court unequivocally affirmed that the following elements are required for the business income of a non-resident legal entity to be taxable (with regards to VAT, on the other hand, in accordance with the sixth directive no. 77/388/Cee, the services are taxable in the member State where the registered office of the business activity carried on by the provider of the service is situated):

- a presence which is based in the territory of the other contracting State and furnished with a certain stability
- a business office able, also only in potential terms, to generate income
- an autonomous activity compared to that carried on by the head office.

In the case in question, it was established that the Slovenian operator in Italy is subject to tax on the income generated. The Supreme Court (sentences 7682/2002, 6799/2004 and 20597/2011) has, moreover, clarified that the "assessment of the requirements for being considered as a stable business, or stable organisation, including that of being a branch or as participating in the conclusion of contracts – or only negotiations – in the name and on behalf of the foreign company (also excluding a power of representation in the true sense of the word), must be performed not only in formal terms, but also – and especially – in substantive terms (Supreme Court, ruling 10925/2002).

Readers should note that as from next month the Studio Baldi Newsletter will be issued on a monthly basis. In addition, a section will be inserted dedicated to readers' questions which may be sent to the address: info@studiobaldi.it