STUDIO BALDI
ASSOCIAZIONE PROFESSIONALE
Tax & Accounting firm

BALDI & PARTNERS
Financial Advisor

Studio legale
Baldi
associazione professionale
Legal firm

Studio Baldi News

Fortnightly Newsletter

Monday 16th July 2012 - Number 4

REGISTRATION OF COMPANY SALE AND TRANSFER OF SHARES

The Provincial Tax Commission of Milan (sentence no. 168 of 21.5.2012) has established that tax avoidance does not apply, for the purpose of Registration Duty, for the sale of a company and the subsequent transfer of shares acquired, as provided for by art. 176, 3rd paragraph of the Consolidated Act. The motivation of the Commission's decision is that the operations carried out are not censurable since the aim of tax avoidance "… is not a predominant and absorbing element in such operations", and therefore, in order to attain a "real economic objective", it is permissible to pursue the least costly fiscal procedure.

EEC VAT: TRANSFER OF NON-OWNED GOODS

A situation which often occurs is one in which, for example, an Italian operator acquires goods in Germany and delivers them, on their own account, to a warehouse, say, in France. In this case, there is no "intra-Community triangular trade" since the tax debtor may not be defined as a taxpayer in the country to which the goods are sent (France). It is, therefore, an intra-community acquisition, with taxation in Italy, unless the Italian operator is identified (for VAT purposes) also in France. In this latter case, the tax debit shall be settled in that country. Identification in France is certainly advisable if the Italian operator intends to sell the goods in France.

FRAUDULENT BEHAVIOUR ALSO WITH "UNDER-THRESHOLD" CHEQUES

The Supreme Court (sentence no. 25667 of 3.7.2012) has found a defendant guilty of fraudulent behaviour for withdrawing a significant sum of money from a fiduciary deposit, seeking to avoid enforcement actions by using a number of bank drafts of amounts "under the threshold". Although formally legal, the operation was censured because it was carried out with the sole aim of avoiding traceability, and therefore control of the flow of money, circumventing the safeguards and precautions arranged by the creditor.

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

DEPRECIATION AND BUSINESS RENTAL

As is well-known, the right to depreciate fixed assets in a business rental (except in the event of an express departure from the provisions as per art. 2561 of the Civil Code) falls to the lessee. In practice, the latter applies the grantor's depreciation policy; in the event, however, that the lessor has not properly kept a fixed asset register, the lessee may depreciate up to a maximum of 50% of the original cost of the fixed asset. Italian accounting principles (OIC no. 19) establish, however, that it is not a true depreciation, but rather allocation to a provision with the intention of restoring the value of the leased assets. In drawing up the financial statements, the lessee must not, therefore, use line B10 (depreciation and write-downs), but rather, B13 (provisions), while the corresponding double entry is in B3 (recovery fund). In general principle, line B13 (having a decreasing effect) should not be significant in the calculation of taxable income for IRAP purposes (regional corporate tax). In all events, the financial authority has recognised its deductibility.

IMPLEMENTATION DECREES FOR AMOUNTS RECEIVABLE FROM THE PUBLIC ADMINISTRATION

On 25 June implementation decrees were issued for the settlement of amounts owed to private enterprises by Regions, Local Government Bodies and National Health Service Bodies with regards to business relations for the provision of services, supplies and contract work. The first decree sets out the methods for certifying the credit, for the moment in paper form, but which will also be computerised form when the procedure is ready. The debtor administration shall issue the credit certification within 60 days, which shall serve as the basis for the liquidation of the debt (transfer, advance payment, etc.). The second decree provides for the possibility of offsetting the above debt (subject to certification) with amounts owing to the public administration, assessed arrears for state, regional, local taxes and social security, pension and INAIL (national government agency for insurance against work-related injuries) contributions.

CREDIT LOSSES: BROADER SCOPE OF DEDUCTIBILITY

Credit losses deriving from "debt restructuring agreements" are automatically fiscally deductible, in the same way as for losses on amounts receivable from persons or bodies subject to insolvency proceedings. This has been established by the "development decree" (Leg. Dec. no. 83/2012, art. 33, paragraph 5). This is not the case for losses deriving from "recovery plans certified by a qualified professional", which relate to a specific situation aimed at the restructuring of a debt position and the recovery of the company's profitability. It should be noted that the provisions pursuant to art. 101, paragraph 5 of the Consolidated Act also apply to amounts receivable from foreign debtors subject to insolvency proceedings, provided that the proceedings are substantially similar to the proceedings provided for by our legal system.

FROM 2013 LOWER CAR-RELATED DEDUCTIBLE COSTS

The labour market reform decree provides, from 2013, for a significant reduction in the deductibility of car-related costs for enterprises and professionals. Excluding the case in which the car (in strict terms) is used for particular activities during the financial period, such as driving schools, car rental, etc, the deductible percentage falls from 40% to 27.5%. Taking account that the maximum "fiscal" cost of every vehicle is € 18,075.99, the depreciable amount will therefore fall to € 4,970.89 (27.5% of 18,075.99). For employee "benefit" cars, the deductible limit drops from 90% to 70%. No change is planned for the deductibility of business agents' cars. No changes have been announced, for the moment, regarding the percentage of deductible VAT.

Please note that the forwarding of Studio Baldi News will be suspended for holidays and will regularly resume in September