

# Studio Baldi News

## Fortnightly Newsletter

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### **IRES (Corporate Income Tax)-IRPEF (Personal Income Tax): STARTUP INCENTIVES**

Important concessions are on the way for anyone buying shares or investing in the share capital of so-called “innovative start-up” companies. The law (art. 29 of the “sviluppo-bis” (development-bis) decree soon to be published in the Official Gazette) defines such companies as ones which invest at least 30% of total costs in research and development or in which a third of the workforce are researchers, graduates or university students. The concession involves a personal income tax deduction for individuals (19-25%) and a deduction for persons with business income (20-27%) proportionate to the amount invested, which may not exceed 500 thousand euros for individuals and 1.8 million euros for persons with business income. The concession is planned for the period 2013-2015, but shall be forfeited if the shareholding is held for less than two years.

### **CASH-BASED VAT: IN FORCE FROM 1.12.2012**

The decree implementing the new “Cash-based VAT” system was issued on 16.10.12. Starting from 2013, there will be the possibility for taxable persons or entities with a turnover of no greater than € 2 million to pay VAT due on income-generating transactions, no longer with reference to the issue of the invoice, but rather, upon receipt of the relative income. For those opting for this system, VAT on purchases can only be deducted after payment to the supplier. The system in question shall not, on the other hand, affect the deduction of VAT on the part of the transferee – customer (of these persons or entities), which may apply the deduction also before payment. Reference must, however, be made to Leg. Dec no. 83/2012 on the invoices issued by those opting for this system.

### **NEW RULES FOR EU OPERATIONS FROM 2013**

The draft of the Leg. Dec. implementing Community Directive 2010/45 includes a number of new rules regarding VAT which will be applied from 1 January 2013, and which we can summarise as follows: - the obligation for generalised invoicing, also for non-territorial sales and services, also made to extra-EU persons or entities; - the fulfilment of VAT obligations exclusively through the integration of the EU seller/service provider’s document; - the VAT number of a national or EU transferee/customer, or the tax code of a national person or body not acting as a taxable person or entity, must always appear on issued invoices; - for general services provided in the EU area, invoices must be issued within 15 days from the month following the month in which the relative operation is completed (this also applies to intra-Community sales of goods). As a consequence of this last modification, the term for spontaneous regularization, in the event of failed receipt of the purchase invoice, moves to the 15th day of the third month following execution of the transaction.

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## THE CENTRAL CRITERION OF ECONOMIC INTEREST IN THE DEFINITION OF TAX RESIDENCE

A person is considered as resident in Italy for tax purposes if they maintain economic ties and relations predominantly in Italy, even though they may have moved their registered residence abroad, with this location perceived as the centre of their social and personal life. In other words, the existence of economic interests is also used in defining a person's "centre of vital interests" and is significant for tax purposes.

This is how the Liguria Regional Tax Office, in ruling no. 87 issued 13 July 2012, expressed its opinion regarding the question of how to determine the tax residence of persons registered with AIRE (the official register of Italian citizens living abroad), in particular all those that are settled in "tax havens".

In the case in question, a taxpayer was challenged about the omitted tax return relating to incomes of various nature received in Italy, including income treated as employment income. Following the assessment, the taxpayer provided evidence of the transfer of their registered residence to the Principality of Monaco, claiming to be registered with AIRE, submitting documents relating to the use of current accounts, car registration, use of public utilities and honours received which demonstrated their effective presence in the Monegasque territory; the aim was to give grounds to the assumption as per art.2 paragraph 2-bis of the Consolidated Act.

The Tax Office affirmed, for their part, that the person received income from an employer resident in Italy, possessed property in Italy and had family ties in Italy. Even though, on one hand the Tax Commission accepted that the person's formal residence was in Monaco, on the other hand the Commission considered that there was insufficient evidence to rule that the "centre of vital interests" of the person lay in the Principality. This conclusion arises from the fact that the documents submitted indicated that the person's economic interests were predominantly located in Italy.

In essence, the "centre of vital interests" criterion appears to be interpreted in the sense that, for the purpose of determining the tax residence of a person, it is necessary to make reference to the country where, on the basis of evidence submitted, the person has sufficient income to indicate the prevalence of interests.

## ELEMENTS OF THE EMPLOYMENT REFORM

### NEW SUMMARY PROCESS IN LABOUR DISPUTES

The new summary process applies to disputes regarding appeals against dismissals with reference to the provisions of art. 18 of Law 300/1970 8 (Workers' Statute) for employers that have more than 15 employees, and to disputes involving the need to settle issues regarding to the nature of the employment relationship.

Judgement is initiated by appeal and the date of the hearing is fixed for within the following 40 days, with the term for notification of the appeal and of the decree being less than 25 days before the hearing. The term for the defendant's appearance before the court is not less 5 days from the date of the hearing.

Having completed the summary process procedures, the judge accepts or rejects the appeal through an immediately executive ruling.

Opposition against the ruling may be raised before the court within thirty days from the notification or from communication if earlier.

The new process therefore allows for the closure of proceedings in rapid time, thereby safeguarding the positions both of the employer and of the worker.