STUDIO BALDI
ASSOCIAZIONE PROFESSIONALE
Tax & Accounting firm

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VAT: SELF-INVOICING IN THE EVENT OF NOT RECEIVING THE SUPPLIER'S INVOICE

If the (resident) seller/supplier's invoice is not received within four months from completion of the relevant transaction, the (resident) transferee/customer has a further 30 days to regularise the invoicing situation. In the event of failure to do this, the transferee/customer risks a sanction of 100% of the invoice amount, with a minimum of € 258. The regularisation procedure involves the following: - issue of a self-invoice in two copies, giving indication of the details of the seller/supplier, including their VAT number and a reference to art. 6, paragraph 8, of Leg. Dec no. 471/1997; - payment of the VAT which the seller/supplier would have had to charge for recovery; transmission of the self-invoice and the receipt of VAT payment to the competent Tax Office according to the domicile of the transferee/customer. If regularisation does not occur within four months plus thirty days, the transferee/customer may opt for voluntary tax return correction, before the deadline for sending the VAT return relating to the year in which the irregularity took place, provided that tax controls are not under way. The reduced sanction is 12.5%, with a minimum of € 32, and statutory interest is also payable.

USE OF ASSETS: ASSIGNMENT OF CARS ALSO DURING THE YEAR

In highly untenable cases of company car use on the part of company directors-shareholders, it is advisable to assign the cars for both business and private use (of the users themselves) through a resolution of the general meeting or board of directors, depending on the relevant powers, possibly also with retroactive application (1.1.2012). This operation would permit the blatant use of the vehicle on the part of the director, with limited costs, without the danger of assessment of a different income for the director-shareholder (art. 67 of the Italian consolidated law on income tax).

BINDING MEDIATION IS INCONSTITUTIONAL

In a press release issued on Wednesday, the Supreme Court ruled the constitutional illegitimacy of Leg. Dec. 28/2010 relating to the obligation to attempt mediation for the following areas: common holder issues, rights over real estate, division, inheritances, family agreements, tenancy, free loans, leasing businesses, compensation for damages resulting from the circulation of land and water vehicles, medical liability and liability for libel, and insurance, banking and financial contracts. The ruling, which only refers to the excess of government delegation and not to the concept of mediation itself, implies that judges may no longer postpone a trial on the basis of failure to start mediation proceedings. There is no effect on already executed legal relations.

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

V.A.T. FRAUD: THE GOOF FAITH OF AN UNAWARE THIRD PARTY IS REWARDED

The Supreme Court has finally rewarded the good faith of a taxpayer that has acquired goods from a supplier who then fails to pay the VAT charged on the invoice. In the case in question, the supplier found guilty of fraud had at their disposition a far from insignificant technical-production structure with staff, offices and means of transport. At this point the judges of "legitimacy" held the conduct of the plaintiff (who, with normal business diligence could not have been aware of the fraudulent intention of the supplier) to be legitimately acceptable. This ruling (no. 18009 of 19.10.2012) is in line with the recent approach of the European Court of Justice (21/6/2012), which expressly provides, in such cases, that the onus of proof falls to the tax authorities, "… being unable to require particular efforts on the part of the taxpayer that has deducted the tax". We have to hope that the same enthusiasm, with which the Supreme Court implements rulings of the European Court of Justice favourable to the tax office, will now also be applied in favour of the taxpayer.

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.

RESIGNATIONS

The Consolidated Act (issued with Leg. Dec. of 26.03.2001) is integrated with Consensual Termination of Employment; **resignations and consensual termination of employment** of a female worker during pregnancy, of a male and female worker during **the first 3 years** of their child's life and of a male and female worker during **the first 3 years** of receiving an adopted or fostered child, **must be approved by the relevant Territorial Employment Office**.

For all other male and female workers, resignations and consensual termination of employment must be approved:

- through the male or female worker signing the receipt of the "UniLav" termination of employment form sent to the Employment Agency, that is, directly on the Online Compulsory Communication form printed after sending;
- through approval at the competent Territorial Employment Office or Employment Agency for the territory.

The employer that receives the notice of resignation informs the Employment Agency online and within 30 days invites the worker to undersign the aforementioned communication. The worker has 7 days to respond to the invitation and to undersign the communication. During this period the worker has two alternatives: either do nothing and the resignation becomes valid by tacit consent, or oppose the resignation, offering their services, and therefore requesting to return to work.