STUDIO BALDI
ASSOCIAZIONE PROFESSIONALE
Tax & Accounting firm

BALDI & PARTNERS
Financial Advisor

Studio legale Baldi
associazione professionale
Legal firm

Studio Baldi News

Fortnightly Newsletter

Monday 17th September 2012 - Number 5

TRANSFER PRICING: YEAR-END PRICE ADJUSTMENTS ARE DANGEROUS

The Supreme Court (sentence no. 11949 of 13.7.2012) has ruled that a price adjustment charged to an Italian company and applied by a company not resident in Italy, both companies being controlled by the same parent company, is not justified and therefore not deductible. In the case in question, on the basis of the transactions carried out in the year, the non-resident company changed the normally applied prices. Since the Italian company has not been able to justify the extra charges, the Supreme Court has ruled against their deductibility. The fact that the extra charge occurred at the end of the year and that the Italian company was (evidently) unable to provide documentation supporting the criterion for the calculation of the transfer prices has apparantly been significant to the case.

ATTENTION NEEDED REGARDING VIES REGISTRATION FOR EUROPEAN COMMUNITY OPERATIONS

As already pointed out on a number of occasions, failed VIES (VAT Information Exchange System) registration implies, for European Community operators, application of the <origin principle> (VAT payable by the seller/service provider) rather than the <destination principle> (VAT payable by the buyer/transferee). The main consequence of failed registration with the aforementioned system on the part of an Italian supplier (of goods and/or services), is therefore the obligation to apply (Italian) VAT. Even though it may seem paradoxical, the European Community customer may have serious difficulty in obtaining reimbursment of the tax paid. It is therefore absolutely essential that this registration is carried out before completing European Community operations (purchases and sales). Application for VIES registration must be forwarded at least 30 days before the completion of European Community operations.

AMENDEMENTS TO THE "DEVELOPMENT" DECREE (LEG. DEC. No. 83/2012)

Changes introduced during conversion of the "Development" Decree into law include an increase in the maximum turnover to € 2 million for taxpayers that have the right to opt for <IVA per cassa>. This provision allows such taxpayers to pay the tax only after having received payment of the relative invoice, while (another change) the receiver of the goods or service may deduct the tax upon receipt of the invoice, even if it is not yet paid. The tax, in any case, becomes payable a year after completion of the relevant operation. Another amendment relates to the possibility of expensing small credits (with fiscal value) without the need for any supporting documentation. The limit is € 2,500 (for each credit) for small companies and double this amount for other companies.

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

LAW 231/2001: LIABILITY ALSO FOR ENVIRONMENTAL OFFENCES

One very delicate aspect of Law no. 231/2001 relates to environmental offences, but not only with regards to enterprises that carry on typically "risky" activities, but also to all those (that is, all other enterprises) that dispose of any form of waste (including paper, glass, plastic, toner, electrical and electronic components, etc.), for which protocolls have to be set up and suitably divulged. There is also an indirect risk factor which has so far been undervalued. This concerns, for example, enterprises that perform services (in the broadest sense) for entities that carry out activities potentially harmful to the environment without having suitable knowledge about the requirements and authorisations pertaining to their customer. To give an example, even though it may arouse some concern, the ABI (the Italian banking association) has warned members about lending money to such enterprises as those described above.

EMPLOYMENT REFORM

Law no. 92 of 28 June 2012 reforming the labour market, in force from **18.07.2012**, has introduced numerous changes that, in consideration of their importance, we will analyse separately.
For cases of dismissal (only on objectively just grounds and only with regards to companies that employ more than 15 workers) there is now the obligation **to seek settlement before the Territorial Employment Office.**
In the event of dismissal for objectively just grounds, the employer has the obligation to set up a preventative procedure before the Territorial Employment Office, declaring their intention to terminate employment and illustrating the grounds.
This procedure involves an attempt at settlement, during the course of which alternative solutions to termination of employment will be considered, unless **both parties, by mutual agreement,** prefer not to continue with discussions aimed at reaching an agreement.
If the attempt fails, the employer may communicate dismissal to the parties.
The employer may also communicate dismissal to the parties if a settlement is reached, and which provides for agreed termination of employment.
In conclusion, an employer may dismiss the worker(s) upon the unsuccessful obligatory attempt at reconciliation or once twenty days have elapsed from convocation before the reconciliation Commission.