

▪ Newsletter 2003-01

GIURISPRUDENZA

Court of Justice of the European Communities - Cause C - 208/00

Capacity to have rights of European Companies

State of establishment cannot deny legitimatio ad processum to a company, legally constituted in its own country, appealing a different domestic law. The Court specified that the application of the principle of real place cannot determine any preclusion to the exercise of right of establishment (i.e. loss of legitimatio ad causam).

GIURISPRUDENZA

Redazione e revisione di contratti e transazioni internazionali

Court of Justice of the European Communities - Cause C - 334/00

Pre-contractual liability

Interruption of pre-contractual negotiations in bad faith determines possibility to proceed for pre-contractual liability. In this case, the plaintiff may choose between defendant and alternative forum.

GIURISPRUDENZA

Redazione e revisione di contratti e transazioni internazionali

Corte di Cassazione - Sentenza 11189/2002

Termination of agency contract allowance

Indemnities dues in accordance with Collective Economic Agreements (Accordi Economici Collettivi) and proportioned to commissions received during the labour relation, do not prevent agent to proceed for the biggest amount provided by art. 1751 c.c.: according to this article, allowance is related to how many clients are brought.

GIURISPRUDENZA

Diritto civile e contenzioso

Corte Costituzionale - Sentenza n. 522, December 6th 2002

Free release of executive copy of a judgement

Italian Corte Costituzionale declared that denying release of an executive copy of a judgement prior payment of registration tax unconstitutional.

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Diritto civile e contenzioso

Corte di Cassazione - Sentenza 11921/2002

International lis alibi pendens

For international lis alibi pendens, Brussels Convention, art. 21, provides that the second Court having seising of the case must suspend the trial.

On this regard, Corte di Cassazione specified that denied suspension by the second Court may not affects the action brought in advance in Italy.

In any case it is possible to assert one's claims at foreign legal order.

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Diritto civile e contenzioso

Corte di Cassazione - Sentenza 11921/2002

Automatic recognition of foreign judgement

All judgements issued in one of Brussels Convention Member States are automatically recognised: no further decree is required.

COMMENTI

Arbitrati Nazionali ed Internazionali

New Regulations of the Camera Arbitrale della CCIAA di Firenze

Rapid and documental arbitration

Rapid arbitration may be used for controversies within Euro 50,000 worth and single arbitrator must decide within three months maximum term. Costs are 20% lower.

In documental arbitration, only written documents are used: parties release personal audience, witness examination and discussion. This procedure may be used for controversies within Euro 25,000 worth and the arbitrator has to issue an arbitral award within two months. Costs are 30% lower.

COMMENTI

Diritto civile e contenzioso

Review of the Code of Legal Ethics

National Bar Association (Consiglio Nazionale Forense), October 26th 2002

The Code of Legal Ethics was recently amended by the National Bar Association. Websites may now be used by law offices to provide legal advices with respect of some limits: provision of personal data, tax payer's code, Bar Association membership, person in charge of legal liability and fees.

Forbidden information are: third person data, client name, single service price and free advices.

COMMENTI

Diritto della fiscalità internazionale

Economic Downturn Provides Multinationals with Window of Opportunity For Tax-Advantaged

The shifting of business activities cross-border constitutes a taxable disposition of some or all of the pre-existing business goodwill. However, there have been successes in the formulation and implementation of strategies that minimize such tax exposure.

These strategies involve the creation of contemporaneous documentation which demonstrates that the restructure is in the best economic interest of the local company and not merely of the group as a whole.

COMMENTI

Diritto della fiscalità internazionale

IRS and U.S. Treasury Department Temporary Regulations

The Internal Revenue Service and the U.S. Treasury Department have issued temporary regulations requiring corporations to notify their shareholders and the IRS when they move their headquarters offshore or are required by a foreign company.

The new reporting requirements will increase the IRS' access to information about these transactions and will also remind shareholders of the tax consequences to them from the transactions the company undertook during the year.

COMMENTI

Diritto della fiscalità internazionale

New Tax Savings Opportunities for "Related Groups"

A new loss transfer system in Singapore offers significant potential savings for some groups of related companies.

From 2003 loss items that were incurred but not utilized by one member of a related group can potentially be used by another member. To benefit from the group relief system, two or more Singapore incorporated companies must meet the government's definition of members of a group, have met certain shareholding and distribution requirements and have the same accounting year-end.

COMMENTI

Diritto della fiscalità internazionale

Adjusting for Devaluation

Under a tax reform proposal of the Argentinean Government, tax articles that regulate adjustment for inflation for tax purposes would be completely eliminated and the corporate income tax rate would be temporarily reduced from 35% to 30% for fiscal years ended between March 31, 2002 and February 28, 2003.

In cases where the income tax for that period has already been paid, the amount paid in excess could be credited against future income tax liabilities and other taxes.

COMMENTI

Diritto della fiscalità internazionale

Lula's Tax Program

Since his election, incoming president Luiz Ignacio Lula de Silva has continued to identify tax reform as a high priority. Reforms must reduce the tax burden on manufacturers and exporters, consolidate Brazil's 50 some taxes and create a nationwide value added tax. Lula also backs the elimination of Brazil's much condemned "cascade" effect of corporate social security taxes that are charged at every stop along the production chain.

COMMENTI

Diritto della fiscalità internazionale

Seychelles tax holiday

The rapidly expanding financial sector, linked to the establishment of the Seychelles International Business Authority and a suite of progressive laws facilitating the establishment of offshore structures and encouraging inward investment, is now a significant element of the economy.

International Business Companies cannot trade within the Seychelles or own real estate there. Anyway they benefits from a range of other facilities including: exemption from local taxation; no requirement to file financial statements (but a company must keep records to reflect its financial position); trust legislation; efficient aircraft and shipping registries; provision for the formation and domiciliation of mutual funds and captive insurance companies; an Industrial trade zone for manufacturing and service companies benefiting from zero taxation; streamlined application procedures and the ready availability of work and resident permits.

LEGISLAZIONE

Diritto della fiscalità internazionale

Risoluzione dell'Agencia delle Entrate 289/E, September, 6th 2002

Direct Identification of VAT Foreign Taxpayer System

Foreign VAT taxpayer may now operate directly without fiscal representative. Their taxpayer code must first be cancelled and then a new model ANR/1 can be produced.

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