

## THE SALE OF A CLIENT LIST IS NOT A TRANSFER OF BUSINESS

The sale of a client list, in and of itself, is not tantamount to a transfer of business, according to a ruling by the Regional Tax Court of Lombardia (decision No. 2379, issued on 24 May 2018).

Pursuant to article 2112 of the Italian Civil Code, a transfer of business occurs in the context of "*any transaction that, following a contractual sale or merger, implies a change of ownership of any organised business activity, whether or not for profit, which pre-existed at the time of the transfer and retains its identity, irrespective of the type of business or of the reason underpinning such transfer.*"

In absence of an autonomous business activity, therefore, it is not possible to have a transfer of business. Moreover, for there to be a transfer of business, the transferred autonomous business activity must retain its identity, as it existed before the transfer.

The Regional Tax Court affirmed the first-degree decision, specifying that the sale of a client list is not a transfer of business, even if certain employees of the transferor, without any representative powers, are later hired by the transferee.

### THE RULING OF THE REGIONAL TAX COURT

The Italian Tax Authority had reclassified the sale of a client list as a transfer of business for tax purposes. The transferee company lodged a complaint before the Provincial Tax Court against the Authority's decision, arguing that a client list does not constitute a business activity with functional autonomy.

The first-instance Provincial Tax Court ruled in favour of the taxpayer and concluded that the sale of the client list did not involve a transfer of "*a business activity with a stable functional autonomy*". The Tax Court also found that the Italian Tax Authority had not shown that "*the client list and the two employees involved constituted an organised business activity able to*

#### Key Issues

- The transfer of a client list alone is not a transfer of business
- Functional autonomy of the transferred business is the essential element for determination
- Even if employees, without any authority to represent the transferee company, are acquired after the transfer of the client list, the transaction is not a transfer of business

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*autonomously produce income"*, as necessary to qualify a sale as a transfer of business.

The Italian Tax Authority appealed the decision before the Regional Tax Court on grounds that included the fact that the overall transaction - which included two employees – constituted a transfer of a going concern able to autonomously produce income, and as such it could be classified as a transfer of business.

The second degree Regional Tax Court denied the appeal, ruling that the employees: (i) were not transferred simultaneously with the client list; rather they were hired later by the transferee and (ii) had no authority to represent the transferee company, given they were responsible solely for activities in support of the commercial business, in and of itself unsuitable to autonomously produce income for the company.

These circumstances persuaded the Regional Tax Court to find that the employees were not essential to classify the sale as a transfer of business, given that it had not been necessary to transfer them simultaneously with the client list to maintain the commercial relationships with the clients.

This ruling is consistent with another recent decision issued by the Italian Supreme Court (No. 1679) on 24 January 2018, which clarified that it is possible to have a transfer of business "*in case of transfer of an organised group of employees provided with specific skills, coordinated and organised among themselves, who perform activities related to goods and services easily identifiable*".

## CONCLUSIONS

The ruling of the Regional Tax Court confirms that the functional autonomy of the activities transferred is an essential element to classify a transaction as a transfer of a business: "*functional autonomy is the ability to support a productive purpose at the time of the transfer. The transferred assets must be able to support this production with their own functional and organisational means and need to perform the services within the transferee's organisation without any material integration*" (Supreme Court No. 1679/2018).

## CONTACTS



**Simonetta Candela**  
Partner

**T** +39 02 8063 4245  
**E** [simonetta.candela@cliffordchance.com](mailto:simonetta.candela@cliffordchance.com)



**Marina Mobiglia**  
Senior Associate

**T** +39 02 8063 4339  
**E** [marina.mobiglia@cliffordchance.com](mailto:marina.mobiglia@cliffordchance.com)

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Clifford Chance, Piazzetta M.Bossi, 3, 20121  
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