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Business Leases and Inventories: Open Issues and Solutions

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ABSTRACT: The business rental contract is increasingly common in the business environment. Very often, when an entrepreneur wishes not to sell the business but not to carry out the business activity himself, he resorts to the business rental as this guarantees a fixed income and the certainty that at the expiry of the contract, the business will revert to his assets. Within this issue is a topic of particular doctrinal and operational interest: inventories. This accounting item can have two accounting methods that reflect two different ways of understanding inventories. The article will explain the most relevant features of the business lease contract and focus on the two accounting methods of recognising inventories under this contract: the ownership method and the availability method.

KEYWORDS: business leases, inventories, building leases.

1) THE BUSINESS LEASE CONTRACT: SPECIAL FEATURES

Business leasing is a contract that is becoming increasingly common in the conduct of various business activities. In Italy, there is a general regulation of business leasing, and only one article concerning business leasing refers to the rules on usufruct. To identify a unanimously accepted definition of business leasing, it is appropriate to refer to the judgment of the Court of Cassation of 7 November 1983, number 6572, which stated that "business leasing is a contract by which a party grants 1/3 the right to use its business considered as a unitary complex of movable and immovable property, tangible and intangible, organised unitarily for the production of goods and services in return for the payment of a periodic fee and a fixed period." In this regard, it should recall that for the Italian legislator, the company, according to Article 2555 of the Civil Code, is a complex of assets organised by the entrepreneur to exercise the business.

It is clear from the definition of a business lease given above that, in this type of contract, there are two parties: the lessor and the lessee. Since the lease does not in any way include the sale of the assets, it is clear that in applying this type of contract, there is neither a transfer of the business nor the constitution of a right in rem, as is the case for example, when the usufruct of the company is transferred.

A company's lease falls under the general law of lease, which in Italy is regulated by the civil code in articles 1615 et seq. The content of these articles reflects, in general terms, the range of the laws of almost all economically developed nations concerning the lease and, in particular, the lease of business.

In summary, article 1615 of the Civil Code states that 'when the lease has as its object the enjoyment of a productive thing, movable or immovable, the tenant must manage it following the economic destination of the thing and the interest of production. With the lease contract, the lessor, according to Article 1617, is obliged to deliver the property with its accessories and appurtenances in a state to serve the use and production for which it is intended. The lessor may request the termination of the contract if the lessee does not allocate the necessary means for the management of the property, if he does not observe the rules of good technique, or permanently changes the property's destination. Article 1619 stipulates that the "landlord may ascertain at any time, even by access to the premises, whether the tenant is serving its obligations. Subsequently, Article 1620 of the Civil Code stipulates that the tenant may take initiatives that produce an increase in income from the property, provided that they do not impose obligations on the landlord or cause him harm and are following the interests of production."-The landlord, according to the rule contained in Article 1 6 and 21, is obliged to carry out extraordinary repairs at his own expense during the tenancy, the others being the responsibility of the tenant. ".

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Article 1622 of the Civil Code stipulates that if the execution of repairs that are the responsibility of the landlord causes the tenant to lose more than one-fifth of the annual income or, in the case of a lease not exceeding one year, one-fifth of the total income, the tenant may demand a reduction of the rent because of the decrease in income or, depending on the circumstances, termination of the agreement. "According to Articles 1, 6, and 24, the tenant may not sublet the property without the consent of the landlord; the right to sublet includes the right to sublet does not include the right to assign the lease.

Comparing the laws of most economically developed European countries, it is clear that the rules laid down by the Italian legislature are, in substance, the provisions that distinguish the laws of business leasing and renting in general in almost all the legislations of the countries as mentioned above. The various laws contain slight differentiations that do not affect the main rules underlying this type of obligation.

From what has been said so far, it can therefore be seen that, in general terms, business leasing is a contract:

-consensual in that the right of enjoyment of the third party's asset transferred to the lessee derives from the meeting of two wills to be freely expressed, namely of the lessor and the lessee,

-an interconnection of reciprocity links synallagmatic insofar as the services envisaged for the business lease contract. The exclusive enjoyment of the business that is assigned in full to the lessee is balanced by the lessor's obligation to pay the periodic rent

- with continuous periodic performance as the relationship covers a period generally lasting several years and in any case exceeding one year in 99% of cases

-which also provides for the assignment of the company insofar as the legislator has provided that the company, i.e. the name used by the entrepreneur for the business relating to a specific company, is assigned to the tenant for the duration of the lease. Art. 2561 states that the usufructuary of the business must operate it under the company name, and the following article makes it clear that the provisions of the previous article also apply in the case of business leasing.

-which provides for the obligation to use all the assets of the business without changing their destination and in such a way as to preserve the efficiency of the organisation of the facilities and the usual stocks. If he does not fulfil this obligation, the contract may be dissolved.

- which provides for the written form for a particular purpose: Article 2556 stipulates that contracts having as their object the transfer of ownership or the enjoyment of the business only have to be evidenced in writing. This does not exclude that for individual assets comprising the company, such as immovable or registered movable property, the written form may be required not only as proof but also for the contract's validity.

It is worth pointing out that there is a significant difference between the lease of a business and the rental of a property, even if it is sometimes possible to note the presence of interpretation errors regarding the type of contract stipulated between the parties. As indicated above, the lease of a business is characterised by a series of obligations incumbent on the lessee, which, if not observed, can lead to the dissolution of the contract. As Aricò (2000) points out, the transfer of a business does not necessarily presuppose the entrepreneur's right to own all the company's assets. Instead, the dissociation between the ownership of the assets and the power of disposition over them frequently occurs. The emblematic case is represented by the real estate in which the business is conducted.

The legislature has regulated the automatic succession in the lease with the introduction of Article 36 of Law No. 392 of 27 July 1978, when the lease events are linked to the transfer of the entire business complex. The same article also grants the tenant, again in the hypothesis of a lease or transfer of the business, the option of subletting the property. In both assumptions, the goodwill indemnity and the right of pre-emption will accrue to the person who will be the tenant at the time of the actual termination of the lease.

Where the lessor is also the owner of the business premises, it is quite possible for the same to be leased, not under a separate lease agreement, but as an integral part of the business complex, so that the business premises are also taken into account in the rental fee.

Jurisprudence grasps the discretional element between the business and the commercial lease of immovable property with appurtenances in investigating the subjective part. In the former, the subject matter of the contract consists of a unitary complex of organised assets and the immovable property is considered in a complementary relationship with the other assets (dynamic aspect); in the latter, the immovable property is considered in its individuality with a principal function (static element).

The distinction assumes particular relevance concerning the applicability of the special rules on leases (Law No. 392/78 and subsequent amendments).

The inapplicability of the binding discipline of the law mentioned above in the hypothesis of leasing a business (think of the field of duration, goodwill indemnity, and the right of pre-emption) is unquestionable so that the tenant is not protected by law and must defend its position in the formulation of the contractual regulation."

Since the rules on usufruct apply to the lease of a business, as has already been pointed out, "the tenant must manage the business without changing its purpose and in such a way as to preserve the efficiency of the organisation and facilities the regular stocks.

If he fails to fulfil this obligation or arbitrarily ceases to manage the holding, Article 1015 shall apply.

The difference between the inventories at the beginning and end of the usufruct is settled in money, based on the current values at the end of the usufruct' (Art. 2561 Civil Code).

Particularly relevant are the issues connected with business leases and employment relationships existing when the contract is signed. Article 2112 analytically regulates the issue of subordinate and pending employment relationships and, having strong links with the public law regulation of dismissal, cannot be derogated from contractual autonomy. This issue is regulated in a differentiated manner in the various countries, so what Article 2112 of the Italian Civil Code establishes is not necessarily present in the other legislations, unlike what happens with the issues described in the preceding pages, which, as noted, are regulated in almost the same way in all the laws of economically developed countries ready Article 2112 - Maintenance of workers' rights in the event of a transfer of a business, states that 'In the event of a transfer of a business, the employment relationship continues with the transferee and the worker retains all the rights deriving from there.

The transferor and the transferee are jointly and severally liable for all claims the worker had at the time of the transfer. Utilising the procedures outlined in Articles 410 and 411 of the Code of Civil Procedure, the employee may allow the transferor to be released from the obligations arising from the employment relationship.

The transferee shall be bound to apply the economic and regulatory treatments provided for in the national, territorial and company collective agreements in force at the date of the transfer until their expiry unless they are replaced by other collective agreements applicable to the transferee's undertaking. The substitution effect occurs exclusively between collective understandings of the same level.

Without prejudice to the possibility of exercising the right to termination under the legislation on dismissals, the transfer of a business does not constitute grounds for dismissal. An employee whose working conditions undergo a substantial change in the three months following the business transfer may resign with the effects in Article 2119, first paragraph.

For the purposes and effects of this Article, a transfer of a business shall mean any operation which, because of a contractual transfer or merger, involves a change in the ownership of an organised economic activity, whether for profit or not, which existed before the transfer and which preserves its identity in the transfer, irrespective of the type of negotiation or the measure based on which the transfer is carried out, including usufruct or lease of the business. The provisions of this Article shall also apply to the transfer of part of a business, understood as a functionally autonomous articulation of an organised economic activity, identified as such by the transferor and the transferee at the time of its transfer.

Suppose the transferor concludes with the purchaser a contract of employment whose performance is carried out using the transferred branch of the business. In that case, a solidarity regime operates between the contractor and the subcontractor...".

Based on this article, it is, therefore, inadmissible to introduce into the contract the option of termination by the grantor or the agreement contrary to the automatic sub-entry into contracts of employment. Only the employee can terminate the relationship if the prerequisites are met.

From the previous, it can be understood how, with the leasing of a business, a separation occurs between the ownership of the transferred business complex and the enjoyment of the business. The lessor, therefore, while remaining the owner of the leased company, is replaced in the exercise of entrepreneurial management by a third party, i.e. the lessee who acquires the status of an entrepreneur. All this occurs based on a right of enjoyment which, as noted above, unlike usufruct, is personal and not actual.

As noted in the preceding pages, the lease of a business always provides for a term generally of a multi-year nature. The non-definitive character of the transfer of the entrepreneurial activity to the tenant may, however, at times be part of a more complex operation that provides, at the outset, for the creation of a right of enjoyment of the tenant employing a lease that may, however, change in status over time. The parties to the lease contract may attach an option agreement for the company's purchase with the tenant himself as the subject who chooses the preferred option. In this case, at the expiration of the lease contract, the tenant can exercise the option and become the company's owner, according to the terms and conditions contained in the option agreement of the company initially leased. In this case, the business lease can almost be considered a trial period for the tenant to verify the actual profitability of the business he is managing under the lease terms. If this profitability is sufficient to think about absolute ownership and if there is, in the lease contract, the option to purchase the business, the tenant will decide to buy the business permanently, becoming the owner and continuing to be the entrepreneur of the company.

If the business lease contract is concluded, based on the regulatory provisions of the observations made above, the following clauses should be listed, as a minimum:
-Object and inventory: to describe the company or business unit and all the assets that will lease (e.g. machinery, shares, etc.)
-Real estate: to choose how to manage the premises in which the activity is carried out
-Prohibition of competition: to oblige oneself not to undertake initiatives that may mislead customers
-Duration: to provide for the end of the relationship. It may also envisage the possibility of automatic renewal may.
Fee: to stipulate the amount and method of payment of instalments (cost)
-Management obligations: to indicate all the commitments undertaken by the new manager
-Guarantees: to provide guarantees in favour of the owner and at the expense of the tenant
-Prohibition of subletting and assignment: to prohibit renting or assigning the contract to other parties without the written consent of the owner
-Redelivery and final inventory: to establish the rules for the redelivery of the company's assets and to provide for a sum in the event of differences between the initial and final inventory (we will return to this subject in the next paragraph
-Purchase option (optional clause): to allow the tenant to decide, by a specific date, to purchase the business (or the branch) at a predetermined price

2) INVENTORIES IN BUSINESS LEASES

Concerning the issue of business leasing, of particular importance is the issue concerning the inventories that every company must have to efficiently and effectively continue to run the business. Concerning stocks, problems are connected with the viewpoint according to which these assets are analysed. Before addressing this issue, it should note that the business rental contract provides that the tenant must carry out the business activity in such a way as to safeguard the company itself. As has been stated in the preceding pages, various obligations are incumbent on the tenant, for example, those of ordinary maintenance of the multi-year assets, since the company can only function well and can only achieve satisfactory profitability and financial objectives if interventions are carried out that keep the entire production and sale of the assets up to date. Concerning multi-year assets, all scholars and legislators agree that it must carry out ordinary maintenance to prevent the company from going down a path of decay in terms of efficiency and management effectiveness.
To ensure the concrete exercise of the entrepreneurial activity, there is, therefore, the possibility, or rather the obligation, of the tenant to use all the productive factors that make up the leased business, not only concerning the capital goods but also to use employees, to avail himself of collaborators, and to put in place all those operations that guarantee the proper functioning of the complex of goods represented by the business.
The tenant must therefore carry out the entrepreneurial activity with the diligence of the so-called good entrepreneur, and it is only natural that within the scope of the activity carried out, the tenant is obliged to provide for the modernisation and replacement of those assets that would render the entire production obsolete. All this will be taken into account at the end of the lease in the eventual sum of money that the entrepreneur must give the tenant for expenses incurred more than the minimum due and therefore falling within the end-of-tenancy settlement. As pointed out in the preceding pages, extraordinary costs fall on the landlord. In contrast, ordinary expenses fall on the tenant, and it should note that each author highlights the difficulty of making a clear distinction between the two types of costs in the case of remarkable maintenance work. This is not the place to deal with this issue, as the subject and focus of this paragraph are the inventories. Still, it is necessary to highlight the difficulties that may arise regarding real estate as these assets are generally an essential element in the company's lease. Referring the reader to the previous paragraph to understand what happens when the ordinary expenses are particularly relevant, we will now proceed to the analysis focused on inventories. This issue raises particular problems also of an accounting nature.

With specific regard to the issue of inventories in the context of business leases, it may recall that Article 2561, which deals with usufruct but is referred to by Article 2562, which deals with business leases and which refers entirely to the preceding article, establishes that there is an obligation on the lessee to maintain the average level of inventories. It is immediately apparent that the concept of 'normal stockholding' is not objective since it is not difficult to define pragmatically and unambiguously when a stock level may be said to be expected. In this regard, it should note that all scholars agree that stocks should be kept as low as possible due to their high management costs. However, it is evident that despite this consideration, a certain amount of stock is necessary for production stoppages to occur due to the lack of raw materials or items that should be in stock and that do not appear. Regardless of this managerial consideration, however, it should note that the fact that the code requires the tenant to maintain the usual amount of stock means that the tenant is under an obligation to preserve the value of the business in operation, which, for it to at least maintain its value or, hopefully, increase it, must also include stock management. Before addressing the

various theses on stock accounting in the context of the lease agreement, it should point out that the sentence in Article 2005 61 requiring the tenant to maintain average stockholding also serves to prevent the tenant from presenting the landlord with a business with excessively high or abnormally low stock at the end of the lease. In both cases, the landlord, who would have to take over his company at the end of the lease, would find himself in a highly delicate management situation ap. in the presence of abnormally large stocks, he would find himself managing an inventory which might be challenging to dispose of and which might cause losses shortly. One does not need to go any further to understand how this situation is not an acceptable one managerially.

On the other hand, it is managerially unacceptable for stock to be practically non-existent at the end of the contract because, in this case, the owner returning to run his own business would be forced to rebuild a warehouse in a short time, and this could result in the need to purchase goods at high prices due to the urgency of building up a warehouse of average size that could manage effectively and efficiently. Therefore, the concept of normality in the quantity of goods that must make up the warehouse is not objective. Despite this, one can identify a . that can be considered in the specific case of the rented company as a regular warehouse. The warehouse that must return at the end of the contract must be able to fall within this. Otherwise, one is faced with an abnormal warehouse due to its size being too small or too large compared to those around, which identifies the normal quantity of goods that the company should have as stock.

Since between the stock received when the lease period begins and the stock that the tenant will have to give to the landlord at the end of the contract, there are certainly differences; the code establishes that the difference in value must be dealt with at the level of congruous remuneration that one of the two parties to the contract must give to the other. In this regard, the Court of Cassation, on 28 January 2002, with sentence no. 983, ruled that "it is well known that article 256, about the last paragraph of article 2561, provides that in the leasing of the company, the difference between the inventory consistencies at the beginning and the end of the lease relationship and settled in money, based on the current values at the end of the lease. The inventory consistencies are the elements that structure the company's entity and way of being. It is the difference between the inventory stocks at the beginning and the end of the rental relationship and the measure of the elements in their entity and in their way of structuring the company at the moment of the termination of the relationship, compared to those that as a whole made up the company at the beginning of the relationship. This difference is not only quantitative but also qualitative, i.e. relating not only to the extent but also to the manner of being of the structural elements of the holding".

This rule applies if there are inventories at the beginning of the lease and if these are missing. Any stocks subsequently created by the tenant of the business fall immediately into the ownership of the tenant-owner of the business, and their value is to be adjusted, together with the value of all other assets constituting the business, upon the termination of the relationship. It is clear that depending on the initial value of the assets given to the tenant and the final value of the assets returned to the owner; the relationship may be one of debit or credit in the hands of the tenant vis-à-vis the owner of the business subject to the lease.

After these brief remarks concerning inventories in the context of business leases, it is necessary to point out that there are two views concerning this accounting item on which the method of recording inventories in the accounts depends.

In contrast to the so-called 'ownership' method, there is the so-called 'availability' method. Adhering to one or the other view has significant consequences in the accounting area.

The ownership method assumes that the inventories remain the property of the owner of the leased business and, for this reason, must remain on the lessor's balance sheet. In this case, the inventories are not recognised in the lessee's balance sheet but will only be disclosed in the lessee's notes to the accounts.

Adopting this method requires that the inventories forming part of the business unit that is the subject of the business lease continue to be recognised in the lessor's financial statements. While the lessee, as the assets are consumed, acknowledges a provision against which a reserve for inventory differences is created. In this case, in the course of business, the lessee recognises, following normal accounting rules, the purchases of raw materials, ancillary materials, semi-finished goods and merchandise and, at the end of the lease term, reverses the provision for inventory differences recognised at the time of consumption of the inventories received at the beginning of the lease and recognises, at the same time, liability for restitution.

The availability method, on the other hand, while recognising that all the assets of the business are owned by the owner of the company and not by the lessee, provides for the recognition of the inventories in the lessee's balance sheet based on the principle of substance over form. Suppose this method of accounting for inventories is adopted. In that case, the lessee acknowledges the inventories existing at the start of the lease as an expense and recognises a liability to the lessor as a balance sheet liability. A return liability must be recognised as a balancing entry in this case.

During the life of the leased business, if the availability method is adopted, the inventories must be recognised under the normal way of identifying stocks. The stocks must also include assets purchased by the enterprise and not consumed. Since, according to

this methodology, the inventories appear in the balance sheet of the lessee, it must delete these items from the balance sheet of the business owner with simultaneous recognition of a receivable from the lessee.
At the end of the lease term, the tenant transfers the inventories to the owner, eliminating the stocks from its balance sheet and the debt created at the start of the lease. The landlord, for its part, performs the opposite operation: it takes over the inventories and eliminates the debt created at the commencement of the lease to the tenant.
The difference between the initial and final value of the inventories gives rise to a debt or credit on the part of the tenant..

In Italy, in the pre-2016 period, all scholars agreed on the need to apply the ownership method, also because the code required that, in the balance sheet memo note, the total amount of commitments, guarantees and contingent liabilities not disclosed in the balance sheet be indicated, with an indication of the nature of the collateral provided; existing commitments in respect of pensions and similar obligations, as well as commitments to subsidiaries, associates, and parent companies and companies controlled by the latter, are separately disclosed. In the period before 2016, Italian regulations concerning financial statements required only company-owned assets to be recognised in the balance sheet; therefore, adopting the ownership method was undoubtedly the most appropriate accounting method for applying the regulations in force.
In 2016, Italian legislation, like that of many countries that have IAS/IFRS as their ultimate reference, made the principle of substance over form a mandatory regulation.
At the same time, to make the national accounting standards issued by the Organismo Italiano di Contabilità (Italian Accounting Board) consistent, Principle No. 13 Inventories states this rule:
"16. Assets held in inventory are recognised initially when the risks and rewards associated with the acquired asset are transferred. 17 The transfer of risks and rewards normally occurs when the title is transferred following the contractually agreed terms. 18 If, under specific contractual provisions, the date when the transfer of risks and rewards occurs and when a title is transferred do not coincide, the date when the transfer of risks and rewards occurs shall prevail. Inventories may include, by way of example but are not limited to: a) inventories at the company's factories and warehouses, excluding those received from third parties for viewing, trial, processing and storage, etc. b) inventories owned by the company at third parties on consignment, processing, trial, etc. c) materials, goods and products purchased that have not yet been received but are in transit when, according to the terms of purchase, the risks and rewards associated with the asset purchased have already been transferred to the company (e.g. delivery of the supplier's factory or warehouse). 19. Advances paid to suppliers for purchasing goods included in inventories".
A similar amendment was made to OIC Standard No. 16 concerning tangible fixed assets.
The two cited OIC standards thus establish that tangible fixed assets and goods included in inventories are initially recognised at the date on which the transfer of the risks and rewards connected to the asset acquired takes place, which prevails over the date on which title is transferred, where the two moments do not coincide.
If one analysis in depth the civil law regulations currently in force in Italy and considers the mandatory introduction of the principle of the prevalence of substance over form, it would be led to affirm that, to apply the civil law regulations correctly, it would be appropriate to use the availability method to recognise inventories in the context of a business lease contract. In reality, this is not the case since, in substance, all companies continue to apply the ownership method, thus leaving aside the principle of the prevalence of importance over form. It should be noted that this circumstance should not be surprising as the association of Italian companies, whose name is Assonime, issued a circular in 2017 in which it stated that" the introduction of the postulate of the prevalence of substance over form is not sufficient reason to apply the international standard IAS 17 on the subject of leasing and rental and leasing contracts continue to be recognised according to the usual approach of merely charging the fees to the profit and loss account".
Therefore, the ownership method is currently preferred in Italy, with inventories being recognised only in the leased business's balance sheet. The entries mentioned above are shown in the tenant's balance sheet.
And it should note that the Supreme Court has approved this principle in its Order No. 14864 of 13 July 2020. This order states that "inventories constitute - unless otherwise agreed upon by the parties and where not considered in isolation concerning their functional destination, which in the present case is not the case - assets at the service of the business and, therefore, belonging to all intents and purposes to the business as a whole, with the consequence that, in the event of leasing of the business, they remain with the lessor, who transfers to the lessee only the personal right to use the productive asset (business), with the result that the possibility of an autonomous act of sale of the inventories subject to VAT is excluded;
and indeed, the provisions of Article 2561 of the Italian Civil Code, on the subject of the usufruct of the company, applicable in similar cases of the lease, provides that "the usufructuary of the company must operate it under the company name. He must manage the business without changing its purpose and in such a way as to preserve the efficiency of the organisation and facilities and the normal stocks. If he fails to fulfil this obligation or arbitrarily ceases to manage the business, Art. 1015 shall apply. The

difference between the inventory at the beginning and the end of the usufruct is settled in money, based on the current values at the end. Now, it appears evident how the obligation to adjust the difference in the consistency of the inventories is functional to guarantee (also under the placement of this obligation at the end of the civil law provision) the "normality" of the endowment of the inventories, so that once "his" company has been taken over, the owner can immediately return to exercising the business activity or just as immediately rent it out to others, or whatever, without interruptions to the action itself that could compromise the goodwill and the very operation... ... such assets shall therefore always remain subject to the covenant and subsidiary discipline of the Civil Code regarding the transfer and lease of the business unit considered as a whole about all its components unless the parties have agreed otherwise. The enquiry as to the legal classification of the assets included in the inventories, as assets belonging to the business complex, must therefore be carried out to identify the applicable tax regime by seeking the 'real cause of the transaction and the interests pursued by the contracting parties, in this regard, the mere fact that the assets forming part of the business are the subject of multiple and diachronic acts of negotiation is irrelevant since in such a case the Judge must jointly assess the various agreements entered into between the parties and verify whether they are altogether aimed at achieving or maintaining the unitary destination of the assets in the service of business activity (see Corte Cass. 5^ sez. 16.4.2010 no. 9162, See in particular Corte Cass. 5^ sez. 12.5.2008 no. 11769, which recognises a single contract for the sale of a company in the functional connection of two separate transfer agreements concerning the sale of the company and the sale of inventories and raw materials).

The separation of the "static situation of belonging" of the assets constituting the company from the "dynamic situation of management" of the company (id est between the owner of the right of ownership - in the present case M.E. di L.E. & c. s.a.s. and the owner of the fundamental or personal right of enjoyment of the company complex - in the present case L.G. in this case L.G.) allows the owner, who ceases to be an entrepreneur, to maintain or increase the patrimonial value of the company by avoiding the risks and responsibilities that fall on the entrepreneur, who is only the lessee of the company; - in the face of this interest attributable to the cause of the contracts of enjoyment of the company, the obligation on the lessee to manage the company "without changing its destination and in such a way as to preserve the efficiency of the organisation and plants and the normal stock" (art. 2561 recalled by Art. 2562 of the Civil Code), as already mentioned. It follows as a logical consequence that the same usufructuary or tenant is required to use and also dispose of such assets (plant, equipment, stocks) where this is necessary for the proper performance of the company's management obligation; ..... - the provision of the Civil Code, therefore, contrary to the opinion of the territorial judges, does not identify - unless otherwise agreed between the parties, which is not in the record here - an autonomous case of negotiation (concerning the transfer of assets/stock) distinct from the contract concerning the grant of the use of the business, but is intended to regulate, because of the "circulating" nature of such assets, only one of the aspects of the same restitutory obligation incumbent on the concessionaire (for the tenant see Article 1590 of the Civil Code) arising from the business lease contract. The assets organised for the operation of the business, including inventories, considered as a unitary business complex, have never been transferred to the lessee but remain in the hands of the lessor who grants to the lessee only the personal right to exploit the productive asset (business) following the economic-functional destination imparted to such assets by the lessor, the lessee is obliged at the end of the contractual term to return the business to the lessor. This obligation, because of the different nature or function of the assets of the business complex, cannot but be fulfilled differently, depending on whether such assets are intended to last in time (non-consumable) or are intended to be used in the production or commercial cycle of the business (consumable): it, therefore, appears logical, in the latter case, that the obligation to return the business incumbent on the lessee is fulfilled in a generic form employing the payment of the "tandem", otherwise making it impossible for the lessee of the business to manage the business;

- Therefore, the application to the case, as found by the Judges of the merits of Article 2 of Presidential Decree No. 633 of 1972, which refers to gratuitous transfers, is erroneous since, in the present case, the element of the transfer (macro-category in which the gratuitous transfer is placed, micro-category concerning the first of a kind to kind) referred to in Article 6 of Presidential Decree No. 633 of 1972, understood as the transfer of the power to dispose of the asset uti dominus, is defective;

- the conclusion adopted here, then, complies with European Union requirements: Article 5(8) of the Sixth Council Directive 77/388/EEC of 17 May 1977 provides that 'in the case of a transfer for valuable consideration or free of charge or in the form of a contribution to a company of a totality of assets, whether in whole or in part, Member States may regard the transaction as not having taken place and the person who benefits from it as continuing to be the person of the transferor';

-if, therefore, there is no act of supply of the inventories from the lessor to the lessee, there is likewise no act of collection relevant for VAT purposes in the reverse direction, that is to say when the inventories are returned from the lessee to the owner of the business".

In its judgment No. 3425 of 12 February 2020, the Supreme Court affirmed the same principle. The Supreme Court stated that: "It must premise that it is incontrovertible - as it appears from the same reasoning - that with the transfer <4 medicines and other

sanitary" were all "inventoried at the time of the lease", which was unique "and not divisible into "lease" and "business management", nor is the uniqueness of the transaction (which was attached to the inventory report) but only the legal regime of the goods in question. The circumstance, moreover, emerges

The circumstance, moreover, emerges unequivocally from the clauses of the lease contract, reproduced for self-sufficiency in the application, which specifically identified, in the object of the relationship, "everything currently used in the operation of the nursing home".

2.2. On the contrary, from a reading of the contested judgment, it appears that the CTR wanted to separate from the business lease contract the deed of sale of the inventories, finding the negotiated autonomy of the two transactions in the regulation of inventoried goods dictated by Article 2561 of the Civil Code.

2.3. As already noted by this Court for a homologous case (see Court of Cassation no. 20443 of 06/10/2011), such conclusion is in contrast with the civil law notion of a company, according to which the main character of the company is, according to Article 2555 of the Civil Code, "the set of assets organised by the entrepreneur for the exercise of the business", with the result that the central importance of the transfer of the inventories is the "sale of the inventories".

A consequence that the functional element, i.e. the link between the single business element transferred and the business, is of central importance, so that, for tax purposes, only in the absence of this link can the asset be deemed to be transferred autonomously and the transaction subject to VAT (see Court of Cassation no. 33495 of 27/12/2018). It follows that the "reorganisation of the company's assets" is the result of the exercise of the private autonomy of the person who imparts the link of instrumentality to the individual assets by allocating them to the activity of the business, an importance that necessarily also includes the inventories or stocks, which constitute - unless otherwise desired by the parties, which was absent in this case - assets at the service of the business equally subject to the Civil Code rules on the transfer and lease of the company complex, considered as a whole concerning all its components.

2.4. It must then be stressed, about the specific hypothesis of the business lease contract, that the separation between the ownership of the assets (in the hands of the transferor) and the ownership of the right, fundamental or personal, of enjoyment (in the hands of the transferee) fulfils the function of enabling the former to maintain the patrimonial value of the business

without the entrepreneur's risks, to which corresponds the tenant's (or usufructuary's) obligation to manage the business 'without altering its destination and in such a way as to preserve the efficiency of the organisation and facilities and the normal stocks' (Article 1561 of the Civil Code). Precisely with this obligation of profitable business management, the tenant is required to return the business assets to the owner at the end of the contractual term in a condition that does not deteriorate compared to the situation in which he received them: Article 1561.4 of the Civil Code expressly regulates the restitution of the assets initially present by providing that "The difference between the inventory at the beginning and the end of the usufruct [lease] is settled in money, based on the current values at the end of the usufruct [lease]". The lessee, on the other hand, only exercises a personal right of exploitation of the productive asset, i.e. the business, which necessarily takes different forms concerning the diverse nature of the individual business assets, i.e. depending on whether those assets are destined to last over time or to be used in the production or commercial cycle of the business, in which case the obligation to pay the equivalent arises.

On the other hand, the distinction appreciated by the CTR (between the average stock and the stock of goods) is only intended to prevent a situation where the company's efficiency is at risk - and, being a failure to comply with the obligation to "preserve the efficiency of the organisation", may lead to termination for (severe) non-performance of the tenant - but not to introduce a different regime of assignment concerning the universality of the business assets.

2.5. The civil law regulations, therefore, contrary to what was held by the CTR, do not delineate an autonomous figure of sale having as its object the goods in the warehouse; they distinguish, as to the legal condition, between "normal stock" and the complex of goods in the warehouse: the goods organised for the exercise of the business, including the inventories, are considered as a unitary business complex.

It follows that, concerning the case at hand, the making available of the complex of goods (medicines/medicines) falls within the unitary transaction of leasing the business to the taxpayer, excluding the subjection of the goods to VAT and the obligation of self-billing.

3. The following principle of law must therefore be affirmed: "Unless otherwise agreed upon by the parties, and if not considered in isolation concerning their functional destination, inventories constitute assets at the service of the business and, therefore, belong to all effects to the company's remuneration, so that, in the event of leasing of the business, they remain with the lessor, who transfers to the lessee only the personal right to use them.

The lessor transfers to the lessee only the personal right to use the productive asset (business), thus excluding the possibility of an autonomous act of transfer of inventories subject to VAT.

Also, in light of the statements reported in the sentences cited in the preceding pages and issued by the Court of Cassation, i.e. the Court of the last instance in Italy, it can stop that it can adopt the method of ownership in the hypothesis that there is a leased. There are inventories in the company, even if the Civil Code provides for the principle of prevalence over the. The rulings of the Supreme Court of Cassation and the position of the majority of doctrine, which considers this method more appropriate than the availability method concerning the recognition of inventories in the event of a business lease agreement, make it clear that the ownership method is, in essence, the accounting method currently used in Italy and, according to the results of the comparison made with the legislation and practice presently used by many European countries, prevalent in EU countries.

3) CONCLUSIONS

To conclude this brief analysis of the issue of inventories in the context of business leases, it can state that even though there are two specific methods of recognising stocks identified in the so-called ownership method and the so-called availability method. Even though the principle of substance over form is imposed by Italian national and international IAS/IFRS accounting standards, in almost all business lease agreements, inventories are recognised in the accounts according to the ownership method and, therefore, also from an accounting point of view, are considered as the property of the lessor and not of the lessee. Accounting point of view, they are considered to be the property of the lessor and not the lessee. This is the case in the absence of a business lease agreement because, under this type of agreement, all of the business remains the property of the lessor, and the lessee manages assets not owned by him. Among the assets constituting the company, there are also inventories. Still, the principle, which is now legislatively obligatory in Italy, of the prevalence of substance over form could lead one to think that the most appropriate and most widespread principle is the principle of accounting for inventories according to availability. Therefore the recognition method used would be that of so-called availability. The reality, as we have seen above, is different in that, despite the mandatory nature of the principle of substance over form, there are various cases in which this principle is disregarded by all companies, such as in the case of leasing contracts in which all companies recognise the lease payments in the balance sheet without making any mention in the balance sheet of the leased assets. This also happens concerning inventories. The method used by almost all companies is the property method, which is also considered mandatory by the Court of Cassation, which 2020, an order and a ruling reaffirmed this principle. Given the importance of the Court of Cassation's legislation, it is understandable how all companies comply with the Court's statements. Therefore it can say that in Italy, the principle of accounting for inventories in business leases used by all companies is the principle of ownership. A comparison with what happens in the other European countries shows that the situation in these countries is similar to the Italian case ap. the ownership principle and, therefore, the focus of accounting for inventories in the business lease is most widely used nationally and internationally**.**

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