



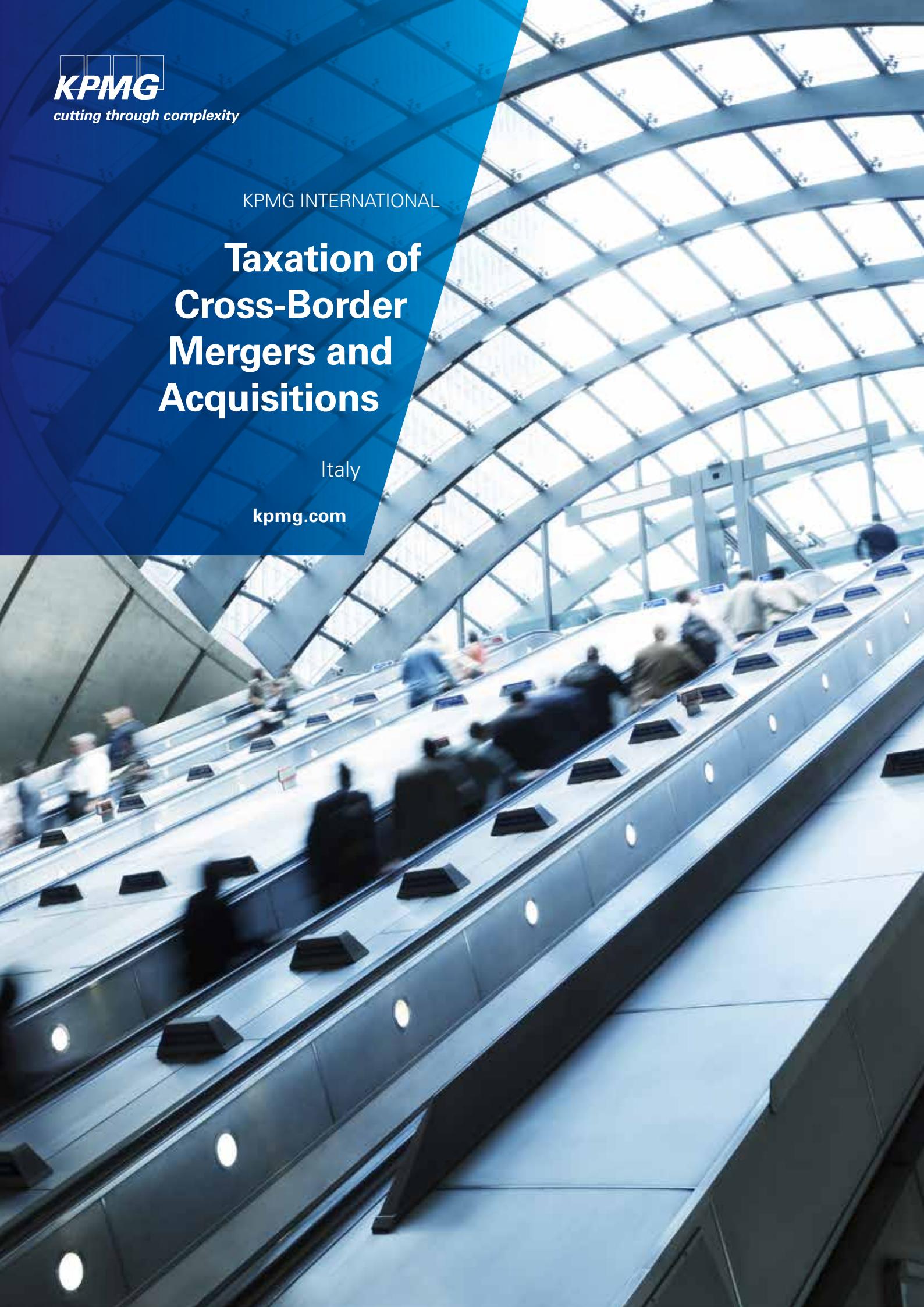
cutting through complexity

KPMG INTERNATIONAL

Taxation of Cross-Border Mergers and Acquisitions

Italy

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Italy

Introduction

Italy imposes no special tax regulations for mergers and acquisitions (M&A), which are principally governed by the Italian Consolidated Income Tax Code (Presidential Decree no. 917/86, referred to as the ITC).

As a general rule, resident companies are subject to corporate income tax (*imposta sul reddito delle società* – IRES) and regional tax on productive activities (*imposta regionale sulle attività produttive* – IRAP). The basic IRES rate is 27.5 percent (34 percent for oil, gas and electrical energy companies). The basic IRAP rate is 3.9 percent. IRAP rates vary according to the region where the company operates; higher rates apply to banks, financial institutions and insurance companies as well as other specific industries.

This chapter describes the main tax issues to be considered when structuring a cross-border acquisition and is based on the tax rules applicable up to January 2014.

Accounting and legal issues are outside the scope of this chapter, but some of the key points to be considered when planning a transaction are summarized.

Recent developments

The following summary of Italian tax issues is based on current tax legislation and includes the relevant amendments introduced by Law Decrees no. 145/2013 and Law no. 147/2013.

The most significant amendments are as follows:

- For 2014, 2015, and 2016, the deductible percentage for the notional interest deduction on equity injections (ACE) has been set at 4, 4.5 and 4.75 percent, respectively.
- The 0.25 percent substitute tax on medium and long-term bank loans is no longer compulsory.

These tax changes for M&A deals are summarized in the following sections.

Asset purchase or share purchase

Generally, an acquisition may be structured as an asset deal or a share deal. The tax implications of these two structures are different.

Purchase of assets

An asset deal allows the buyer to acquire only the assets actually needed, leaving the unwanted assets and liabilities behind. An asset deal may be used when a target company has significant contingent tax liabilities because it reduces the risk. In fact, as a general rule, the buyer of a business unit is jointly liable with the seller for the tax liabilities of the year of acquisition (up to the acquisition date) and the two previous years. However, the liability of the buyer is limited to the lower of:

- the value of the business unit acquired
- the tax debts of the seller already assessed by the tax authorities or under assessment at the date when the transaction takes effect.

For this purpose, the buyer may apply for a certificate from the Italian tax authorities, attesting the extent of the tax debts. In this case, the buyer's liability is limited to the amounts shown on the certificate. If the certificate is not issued within 40 days of application or does not show any tax liability, the buyer of the business unit does not face any tax risk.

Moreover, specific warranties may be included in the sale and purchase agreement to protect the buyer.

In an asset deal, the book value of the assets is stepped up (for accounting and tax purposes) at the level of the buyer. The new book value is equal to the consideration paid for the business unit. The seller realizes a taxable capital gain equal to the difference between the sale price and the tax basis of the business unit. The 27.5 percent IRES on the capital gain can be spread over a five-year period if the business unit has been held by the seller for more than 3 years.

Essentially, in an asset deal, the seller is fully subject to tax on the capital gain realized, while the buyer obtains an increase in the tax basis of the assets purchased. This means that the future effective tax rate of the buyer is generally lower in an asset deal than in a share deal (mainly because of higher depreciation).

Purchase price

For accounting purposes, it is necessary to apportion the total consideration among the assets acquired. It is generally advisable for the transfer deed to specify the allocation, which is normally acceptable for tax purposes provided it is commercially justifiable.

Goodwill

If the price exceeds the fair market value of the assets comprising the business unit, the buyer may register this difference as goodwill in its accounts, subject to the impairment test. Normally, the amortization of goodwill is tax-deductible over 18 years for IRES and IRAP purposes.

In the case of International Financial Reporting Standards (IFRS) adopters and other specific cases, the amortization of goodwill can be deducted even if it is not reflected in profit and loss.

Depreciation

The tax depreciation of tangible assets is linked to and cannot be higher than accounting depreciation. The maximum annual tax depreciation rate is established by a ministerial decree for categories of similar assets, based on a normal period of use, and is different for each production sector.

Tax attributes

Tax losses and other possible tax attributes are not transferred in an asset deal. They remain with the selling company. However, the seller may use the tax losses to offset any capital gain realized.

Value added tax

According to Italian valued added tax (VAT) law, a transfer of assets is not taxable when a business unit is sold, so the selling company should not charge VAT when transferring a business unit.

It is the long-standing opinion of the tax authorities that a business unit consists of a group of assets and liabilities constituting an independent business activity.

Registration taxes

Normally, the disposal of a business unit is subject to registration tax of 3 percent.

This tax rate is increased to 9 percent for real estate and 12 percent for agricultural land included in the business unit.

Where different registration tax rates apply to different groups of assets included in the business unit and a specific price is agreed for the assets, any liabilities included in the business unit are allocated to the different groups of assets on a pro rata basis, so that each group of assets is subject to the same tax rate. If a specific price is not settled for the assets, the highest tax rate applies.

The tax basis for registration tax purposes is the fair market value of the business unit transferred.

The fair market value of the assets transferred is subject to assessment by the registration tax office. Therefore, it is advisable to obtain an appraisal from an independent expert in advance so that documentary evidence is on hand in the event of a tax assessment.

Purchase of shares

In a share deal, the capital gain realized by the Italian selling company may be 95 percent tax-exempt, provided the participation exemption requirements are met.

The purchase of a target company's shares does not result in an increase in the base cost of that company's underlying assets, and there is no deduction of the difference between the underlying net asset values and the consideration paid.

However, it is possible to step-up the tax basis of the target's underlying assets where, after closing, there is a merger between the acquisition vehicle and target company or, in certain cases, even without a merger.

Tax indemnities and warranties

In a share deal, the purchaser takes over the target company together with all its related liabilities, including contingent liabilities. Therefore, the purchaser normally requires more extensive indemnities and warranties than in the case of an asset acquisition.

Tax losses

Tax losses may be offset against up to 80 percent of taxable income in each year. Any difference can be carried forward indefinitely. If tax losses are incurred in the first 3 years of activity and they refer to a new business, they can be offset against 100 percent of the taxable income. Losses may not be carried back.

Losses cannot be carried forward where:

- the majority of the voting rights of the company are transferred
- in the tax year in which the transfer occurs, or in any of the two preceding or subsequent periods, the activity of the company changes from the activity that generated the losses.

This restriction does not apply where the loss-making company had, in the tax year preceding the transfer, at least 10 employees and gross revenues and personnel costs higher than 40 percent of the averages of the two previous years.

Pre-sale dividend

In certain rare circumstances, the seller may prefer to realize part of the value of its investment as income by means of a pre-sale dividend. The rationale is that the dividend may be subject to a lower effective rate of Italian tax and reduce the proceeds from, and thus the gain on, the sale, which may be subject to higher tax. The position is not straightforward, however, and each case must be examined on its facts.

Registration tax

The sale of shares is generally subject to a fixed registration tax of 200 Euros (EUR).

Share-for-share deal (contribution of a significant shareholding)

Where an acquisition is made by the purchase of shares in exchange for the issue to the seller of the purchaser's shares (i.e. a contribution of shares) and the transaction is accounted for at book value, the gain may be rolled over into the new shares, thus enabling the seller to defer the Italian capital gains tax liability, in accordance with the following rules.

This regime applies only if a significant shareholding is transferred. A significant shareholding is a group of shares carrying more than 20 percent of the voting rights in an unlisted company (or more than 10 percent in a listed company). Further, both the seller and the purchaser should be Italian companies.

In this case, the deemed selling price is equal to the higher of:

- the book value of the shares received by the seller (i.e. the contributing company) in exchange for the contributed significant shareholding
- the book value of the significant shareholding in the accounts of the purchaser (i.e. the receiving company).

If the transaction is based on book values and both of the aforementioned values are equal to the book value of the significant shareholding in the accounts of the contributing entity, no taxable capital gain arises.

In certain cases, tax neutrality may be achieved even where the seller or the purchaser is a company resident in the European Union (EU).

Step-up of values

It is possible to step-up the tax basis of the target's underlying assets where, after closing, there is a merger between the acquisition vehicle and the target company. In this case, the step-up of the tax basis of the underlying assets is possible if the following substitute taxes are paid:

- 12 percent on the first EUR5 million of the higher amount
- 14 percent on the next part, up to EUR10 million
- 16 percent on the part exceeding EUR10 million.

Alternatively, Law Decree no. 185/2008 introduced the possibility of stepping-up the tax basis of goodwill, brands and other intangible assets by paying a substitute tax of 16 percent. In this case, goodwill and brands are amortized over a minimum period of 10 years instead of 18 years.

In certain cases, it is also possible to step-up the goodwill, patents and other intangible assets whose value is included in the acquisition cost of a controlling participation.

Choice of acquisition vehicle

Several potential acquisition vehicles are available to a foreign purchaser, and tax factors may influence the choice. There is no capital duty on the introduction of new capital into an Italian company or branch (only the EUR200 registration tax applies).

Local holding company

Typically, an Italian holding company is used where the purchaser wishes to ensure that interest expenses are offset against the target's taxable profits through a tax-consolidation or merger, in accordance with the earnings-stripping rules explained further on in this chapter.

Among the different types of Italian legal entities, those most commonly used as special purpose vehicles are:

- limited liability companies (Srl)
- joint stock companies (SpA).

Limited liability company (Srl)

A limited liability company (*società a responsabilità limitata* or Srl) is the most common form of company in Italy. Srls are corporate entities with legal status and may have one or more members. In this type of company:

- The capital is divided into quotas.
- The minimum capital is EUR10,000.
- The quotaholders must pay in at least 25 percent of the nominal value of the capital at incorporation.
- It is possible to have a sole quotaholder. In this case, the capital must be fully paid-in upon incorporation.
- If expressly provided for in the articles of association, the capital can also be contributed in kind (i.e. in the form of receivables or any other asset with an economic value). In this case, the quotas corresponding to the contributions must be fully paid-in and the contributor must obtain a sworn appraisal from an expert appointed by the company. A contribution of services is also possible where allowed by the company's articles of association. In this case, the capital corresponding to such contributions must be fully covered by the value of the services and the contributor must provide a bank guarantee equal to the value of the services.

Srl quotas cannot be listed on Italian stock markets.

Joint stock company (SpA)

A joint stock company (*società per azioni* or SpA) is a corporation with legal status.

In this type of company:

- The capital is divided into shares.
- The minimum share capital is EUR120,000.
- The shareholders must pay in at least 25 percent of the nominal value of the capital upon incorporation.
- It is possible to have a sole shareholder. In this case, the share capital must be fully paid-in upon incorporation.
- If expressly provided for in the articles of association, the capital can also be contributed in kind (i.e. in the form of receivables or any other asset with an economic value). In this case, the shares corresponding to such contributions must be fully paid-in and the contributor must obtain a sworn appraisal from a court-appointed expert. The contribution of services is not allowed.

The shares in an SpA may be listed on the Italian stock markets. Therefore, in large transactions, an SpA may be the preferred legal form for an acquisition vehicle.

Foreign parent company

A foreign purchaser may choose to make the acquisition itself, perhaps to shelter its own taxable profits with the financing costs.

If the foreign parent company is an EU company, there is no withholding tax (WHT) on dividends distributed by the Italian target company, provided that the requirements indicated in the EU Parent-Subsidiary Directive are fulfilled (see this chapter's information on WHT on interest).

Non-resident intermediate holding company

If the foreign country taxes capital gains and dividends, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with Italy. However, the purchaser should be aware that certain anti-avoidance rules apply if the structure is designed mainly to obtain tax benefits.

Local branch

The target company (assets or shares) can also be acquired through a branch of a foreign company. Under Italian law, a foreign company may establish one or more branches (permanent establishments) in Italy, but branches cannot be considered as autonomous legal entities. From a corporate tax perspective, branches of non-resident companies are normally treated as resident corporations and taxed on their local profit.

Joint venture

Italian joint ventures are normally companies in which the joint venture partners hold shares.

Choice of acquisition funding

A purchaser using an Italian acquisition vehicle to make a cash acquisition needs to decide whether to fund the vehicle with debt, equity or a hybrid instrument combining debt and equity. The principles underlying these approaches are discussed later in this chapter.

Debt

The principal advantage of debt is the potential tax-deductibility of interest, as dividend payments cannot be deducted. Another potential advantage of debt is the deductibility of expenses, such as guarantee fees, when computing trading profits for tax purposes.

Interest expenses may be offset against target profits by means of a tax-consolidation or merger. If interest cannot be offset immediately (because there are insufficient taxable profits in the target), the resulting losses can be carried forward and offset against future profits by means of a tax-consolidation or merger (subject to certain limits).

To minimize the cost of debt, there must be sufficient taxable profits against which interest payments can be offset. For this purpose, other companies within the group (both in Italy and abroad) may also be relevant (see this chapter's information on deductibility of interest).

Normally, an Italian company is used as the acquisition vehicle, funding the purchase by borrowing from a related party or a bank.

Recently, the tax authorities have aggressively challenged the deduction of interest in case of leveraged buy-out transactions, mainly when the acquisition is indirectly made by a foreign entity.

The position of tax authorities does not seem grounded. Therefore, at the moment, there should be strong arguments to support the deductibility of interest, also in light of a recent case addressed by the Supreme Court.

Deductibility of interest

Interest expenses (other than capitalized interest expenses) are fully deductible up to an amount equal to the interest income accrued in the same tax period. Any excess over that amount is deductible to the extent of 30 percent of gross operating income (roughly equal to earnings before interest, taxes, depreciation and amortization – EBITDA).

Any interest expenses exceeding 30 percent of EBITDA may be carried forward for deduction in subsequent tax periods, to the extent that the net interest expenses (i.e. those exceeding interest income) accrued in such tax periods are less than 30 percent of each period's EBITDA.

The portion of EBITDA not offset through the deduction of interest expenses and financial charges pertaining to a period may be added to the EBITDA of subsequent tax periods.

Where a company is part of a domestic tax consolidation arrangement (see this chapter's information on group relief/consolidation), any non-deductible interest expenses (i.e. the portion exceeding 30 percent of EBITDA) may be used to offset the taxable income of another company within the tax-consolidation group, if that company's own EBITDA has not been fully offset through the deduction of its own interest expenses.

For the purpose of computing the deductible amount of net interest expenses within the tax unit only, 30 percent of the EBITDA of non-resident companies may be taken into account, to the extent it exceeds the companies' net interest expenses. For this purpose, the companies must meet the same requirements for tax consolidation as Italian companies.

Withholding tax on interest

No WHT is due on interest payments made by Italian companies to Italian banks. Instead, interest payments to non-resident companies are subject to 20 percent WHT.

The WHT may be reduced or eliminated under certain provisions of tax treaties or EU directives. WHT is not levied on:

- intercompany financing between an Italian parent company and its EU subsidiary
- intercompany financing between an Italian company and its EU affiliate directly held by the same EU parent company.

The EU subsidiary or affiliate must be the beneficial owner (i.e. not merely an intermediary or an agent).

WHT generally does not apply to corporate bonds listed on a regulated market or multilateral trading facility.

Equity

A purchaser may use equity to fund its acquisition. An equity increase is normally subject to the EUR200 registration tax.

Under domestic law, WHT of 20 percent applies to dividends paid by Italian companies to foreign companies. The ordinary WHT rate is reduced to 1.375 percent if the recipient of the dividend is an EU-resident company or a company resident in a country within the European Economic Area (EEA). Further, if the EU Parent-Subsidiary Directive requirements are met (e.g. the EU parent company holds at least 10 percent of the shares for more than one year), there is no WHT on dividend payments.

Deductibility of notional cost of equity

Italian resident companies may deduct from their taxable base a notional interest computed on the new equity, that is, the amount of increase in equity over a 2010 base equity amount.

For IRES purposes, the deduction is equal to a percentage of the equity increase. For 2014, 2015 and 2016, the deductible percentage is increased to 4, 4.5 and 4.75 percent, respectively.

Dividends not deductible for Italian tax purposes.

Although equity offers less flexibility should the parent subsequently wish to recover the funds it has injected, the use of equity may be more appropriate than debt in certain circumstances, for example, where:

- The target is loss-making, and it may not be possible to obtain immediate tax relief for interest payments.
- An appropriate mix of debt and equity is required to maximize interest deductions according to earnings stripping rules.
- There are non-tax grounds for preferring equity, such as where a higher level of equity may be preferable for commercial reasons.

Finally, bear in mind that mergers, demergers and contributions of business units are neutral transactions that do not trigger corporate income tax for companies or their shareholders.

Other considerations

Concerns of the seller

The tax position of the seller may have a significant influence on any transaction. Each case must be examined on its facts. Normally, 95 percent of capital gains realized by companies on the alienation of shares or financial instruments equivalent to shares are exempt from tax.

This exemption applies where:

- The interest has been held from at least the first day of the 12th month preceding the alienation (the 'last in, first out' – LIFO – method applies).

- The interest is classified as a financial asset in the first financial statements closed after the acquisition.
- Since at least the beginning of the third financial year preceding the alienation, the owned company has engaged in a business activity in a country not on the blacklist.

Company law and accounting

M&A deals usually include transactions such as mergers, demergers and contributions in kind.

According to the Italian Civil Code, a merger involves the absorption of one company by another company. In particular, a merger leads to the termination (without liquidation) of one or more corporations and the transfer of their assets and liabilities to the absorbing company.

There are two types of mergers in Italy:

- All the companies are absorbed and their assets and liabilities are contributed to a newly incorporated company (*fusione propria*). The shareholders of the absorbed companies receive shares in the new company in exchange for their shares in the absorbed company.
- An existing company absorbs one or more companies (*fusione per incorporazione*). The shareholders of the absorbed companies receive new shares from the absorbing company.

In the demerger of a company, all or some of its businesses are contributed to one or more other companies. The beneficiary companies may be newly incorporated or they may already exist.

The shareholders of the demerged company receive new shares issued by the companies to which the assets and liabilities are contributed.

In a contribution in kind (such as the contribution of business units or shareholdings), a company transfers assets to another company, receiving shares issued by the recipient in return.

A sworn appraisal by a court-appointed expert is a prerequisite for contributions of business units (for Srls, the expert can be appointed by the contributing company). The appraisal should describe the contributed assets and liabilities, the value assigned to each item and the criteria used for the appraisal. The contribution deed must be executed by a notary public.

Under Italian Generally Accepted Accounting Principles (GAAP), these transactions are normally recorded at book value, without any step-up. When preparing their financial statements, Italian companies generally should use Italian GAAP, as set out in the Italian Civil Code and interpreted by the Italian Accounting Organization (OIC).

In some cases, Italian companies may adopt IFRS to prepare their accounts. These accounting standards provide for a step-up of the book values of the assets involved in a business combination, where certain conditions are met.

Finally, a common issue in transaction structuring is financial assistance. Broadly speaking, it is illegal for a company (or one of its subsidiaries) to give financial assistance, directly or indirectly, for the acquisition of that company's shares. Therefore, it is necessary to evaluate the rules carefully when structuring the financing of the deal and its security package.

Group relief/consolidation

Italian groups can opt for a domestic tax consolidation regime if the Italian resident companies are controlled by an Italian company. A non-resident company can only be head of the tax-consolidated group if all the following conditions are met:

- It is resident in a tax treaty country.
- It carries on a business activity in Italy through a permanent establishment.
- The Italian subsidiaries are registered in the accounting books of the permanent establishment.

The main advantage of tax consolidation is that 100 percent of the tax losses incurred by one or more companies of the group can be immediately offset against the taxable income of other companies of the group. Any consolidated tax losses that result can be used to offset up to 80 percent of the consolidated taxable income in subsequent years.

Losses incurred before consolidation cannot be offset against the taxable income of other tax-consolidated companies. These tax loss carry forwards can only be offset against the taxable income of the company that incurred the losses.

Another advantage of tax consolidation is that the portion of interest expenses exceeding 30 percent of EBITDA (see this chapter's information on deductibility of interest) and generated after a company's inclusion in the tax-consolidated group may be used to offset the taxable income of another group company. This only applies where that other company's EBITDA has not been offset through the deduction of its own interest expenses.

To join a tax group, a subsidiary must have been directly or indirectly controlled by the parent company since the beginning of the financial year in which the option for tax consolidation is exercised (control requirement).

As group membership is optional, it is possible that not all the Italian subsidiaries potentially qualifying for tax-consolidation would join the group. The domestic tax consolidation regime is irrevocable for a period of 3 years. There are specific rules on the interruption of the consolidation regime. For example, it is interrupted if the control requirement is no longer met or there are certain merger/demerger transactions during the three-year period.

Each consolidated company is liable for any tax liabilities, penalties and interest assessed by the tax authorities on its income. However, the controlling company is liable not only for its own tax liabilities but also – jointly and severally – for the tax liabilities, penalties and interest of each of the consolidated companies.

Transfer pricing

Under Italian tax law, transfer pricing of transactions between multinational enterprises or, in certain cases, between Italian companies in the same tax group, must be at fair market value. This means that the price of each intercompany transaction, if it implies an increase in the taxable base, should be equal to the consideration that would have been applied for goods and services of the same or similar type in free market conditions and at the same stage in the distribution chain.

Starting in 2010, where companies prepare transfer pricing documentation that meets certain requirements, the tax authorities cannot impose penalties connected with transfer pricing tax adjustments in tax audits.

Foreign investments of a local company

Under controlled foreign company (CFC) legislation, profits generated by foreign companies (associates and subsidiaries) resident in blacklisted countries are fully taxed in the hands of the Italian parent company, even if not distributed. However, this treatment does not apply where the Italian parent company is able to obtain a prior tax ruling issued by the tax authorities, proving one of the following:

- The CFC's main activity in the country where it is located is a real business activity (actual business activity test). For this purpose, it is necessary to prove that the CFC's business is mainly conducted in the country where it is established (i.e. the business activity should predominantly involve local customers and/or suppliers). CFCs engaging in financial, banking and insurance activities should prove that most of their investments or revenues are generated in that country.
- At least 75 percent of the CFC profits are generated and taxed in a country not on the blacklist (effective taxation test).

The CFC rules also apply to foreign companies, wherever they are located (including in the EU), where they derive more than 50 percent from any of the following:

- management, holding or investment in securities, shares, loans or other financial activities
- sale or licensing of intellectual property rights
- supply of services (including financial services) to related entities.

In these cases, the foreign income is directly taxed in the hands of the Italian parent company where the actual taxation of the foreign company is less than 50 percent of the taxation theoretically applicable in Italy.

The CFC rules may not apply where the Italian parent company can prove, by means of a prior tax ruling, that the foreign company is not an artificial structure aimed at obtaining tax advantages.

Anti-avoidance rules

Pursuant to the Italian Tax Assessment Code (Article 37-bis of Presidential Decree no. 600/73), certain transactions often performed in the course of M&A may be considered tax avoidance. In such cases, the tax authorities may disallow the transactions and assess taxes and penalties accordingly.

These transactions include:

- transfers of business units
- contributions of assets
- disposals of shareholdings
- mergers and demergers
- distributions of reserves
- transfers of receivables
- transactions involving securities and other financial instruments
- intragroup asset transfers under the tax consolidation regime.

Essentially, anti-avoidance rules apply where such operations have only minor economic or business reasons and are aimed at circumventing legal obligations and obtaining tax reductions or refunds to which the company would not be otherwise entitled. In such cases, the tax authorities can reassess the fiscal benefits of the operations.

Supreme Court rulings have strengthened the application of the anti-avoidance rules by introducing the concept of abuse of tax law. Consequently, many cases outside the scope of Article 37-bis of Presidential Decree no. 600/73 could still be considered as tax avoidance because they are treated as an abuse of tax law. In particular, a contribution of a business unit followed by the sale of shares may be subject to registration tax like a direct sale of a business unit.

Dormant company rule

A company is considered dormant where, in a fiscal year, its revenues are lower than the sum of the following items:

- 2 percent of the average tax value of the company's financial assets over the past 3 years
- 6 percent of the average tax value of the company's real estate assets over the past 3 years
- 15 percent of the average tax value of the company's remaining assets over the past 3 years.

If a company is considered to be dormant, a higher IRES rate of 38 percent is applied to a notional income computed on the basis of the assets recorded in the company's balance sheet. In case of a tax-consolidated group, the notional income cannot be offset against losses of other group companies.

A calculation similar to that described earlier in this chapter is used for IRAP purposes. Other limits also apply for VAT purposes.

An entity also is considered dormant in a fiscal year where it has had tax losses in the three previous years or tax losses in 2 years and income lower than the above-mentioned notional income in a third year. Certain exemptions may apply.

Financial transactions tax

A financial transactions tax (FTT) is levied on transfers of ownership of shares issued by Italian resident companies, regardless of the place of residence of the parties involved or the place where the contract was executed. The taxable basis is the consideration paid. The standard FTT rate is 0.2 percent, reduced to 0.1 percent for transactions executed on regulated markets or in multilateral trading facilities established in an EU Member State or an EEA country that is included on the whitelist. The FTT is payable by the transferee.

Comparison of asset and share purchases

Advantages of an asset purchase

- Step-up in the tax basis of the assets, so higher depreciation/amortization (including goodwill).
- Previous tax liabilities of the seller are only partially transferred to the purchaser; in certain cases, they may be fully eliminated.
- Possible to acquire only part of a business.
- Possible for the seller to shelter the capital gain against its own tax loss carry forwards, if any.

Disadvantages of an asset purchase

- Possibly unattractive to the seller, especially if a share sale would be partially exempt, thereby increasing the price.
- Higher transfer duties usually arise.
- Higher corporate income tax on capital gains.
- Benefit of any residual losses incurred by the target company remains with the seller.

Advantages of a share purchase

- Likely more attractive to the seller from a tax perspective (because the disposal may be partially exempt), so the price may be lower.
- Buyer may benefit from the tax losses of the target company.
- Lower transfer duties are usually payable.

Disadvantages of a share purchase

- Buyer effectively becomes liable for any claims or previous liabilities of the entity (including tax).
- No immediate step-up in the tax basis of the purchased assets, including goodwill.

Italy – Withholding tax rates

This table sets out reduced withholding tax rates that may be available for various types of payments to non-residents under Italy's tax treaties. This table is based on information available up to 5 October 2013.

Source: *International Bureau of Fiscal Documentation, 2014*

	Dividends		Interest ¹ (%)	Royalties ² (%)
	Individuals, companies (%)	Qualifying companies ³ (%)		
Domestic Rates				
<i>Companies:</i>	1.375/20	0	0/12.5/20	30
<i>Individuals:</i>	20	N/A	0/20	30
Treaty Rates				
<i>Treaty with:</i>				
Albania	10	10	0/5 ⁴	5
Algeria	15	15	0/15	5/15 ⁵
Argentina	15	15	0/20	10/18 ⁶
Armenia	10	5 ⁷	0/10 ⁸	7
Australia	15	15	10	10
Austria	15	15	0/10	0/10 ⁹
Azerbaijan	10	10	10	5/10 ¹⁰
Bangladesh	15	10 ¹¹	0/10/15 ¹²	10
Belarus	15	5	0/8	6
Belgium	15	15	15	5
Bosnia and Herzegovina ¹³	10	10	10	10
Brazil	15	15	15	15/25 ¹⁴
Bulgaria	10	10	0	5
Canada	15	5	10	5/10 ¹⁵
China (People's Rep.)	10	10	0/10	10
Croatia	15	15	0/10	5
Cyprus	15	15	10	0
Czech Republic	15	15	0/5	0/5 ¹⁶
Denmark	15	0 ¹⁷	0/10	0/5 ¹⁸

	Dividends		Interest ¹ (%)	Royalties ² (%)
	Individuals, companies (%)	Qualifying companies ³ (%)		
Ecuador	15	15	0/10	5
Egypt	– ¹⁹	–	0/25	15
Estonia	15	5	0/10	5/10 ²⁰
Finland	15	10 ²¹	0/15	–/5
France	15	5 ²²	0/10 ²³	0/5
Georgia	10	5	0	0
Germany	15	10	0/10	0/5
Ghana	15	5	10	10
Greece	15	15	0/10	0/5
Hungary	10	10	0	0
Iceland	15	5	0	5
India	25	15	0/15	20
Indonesia	15	10	0/10	10/15 ²⁴
Ireland	15	15	10	0
Israel	15	10	10	0/10
Ivory Coast	15	15	0/15	10
Japan	15	10 ²⁵	10	10
Kazakhstan	15	5	0/10	10
Kyrgyzstan ²⁶	15	15	0	0
Korea (Rep.)	15	10	0/10	10
Kuwait	0/5 ²⁷	0/5	0	10
Latvia	15	5	10	5/10
Lebanon	15	5	0	0
Lithuania	15	5	0/10	5/10
Luxembourg	15	15	0/10	10
Macedonia (FYR)	15	5	0/10	0
Malaysia	10	10	0/15	15
Malta	15	15	0/10	0/10
Mauritius	15	5	0/–	15
Mexico	15	15	0/15	0/15
Moldova	15	5	5	5
Montenegro	10	10	10	10

	Dividends		Interest ¹ (%)	Royalties ² (%)
	Individuals, companies (%)	Qualifying companies ³ (%)		
Morocco	15	10	0/10	5/10
Mozambique	15	15	0/10	10
Netherlands	15	5/10 ²⁸	0/10	5
New Zealand	15	15	0/10	10
Norway	15	15	0/15	5
Oman	10	5 ²⁹	0/5	10
Pakistan	25	15	30	30
Philippines	15	15	0/10/15 ³⁰	25
Poland	10	10	0/10	10
Portugal	15	15	0/15	12
Qatar	15	5 ³¹	0/5	5
Romania	10	10	0/10	10
Russia	10	5 ³²	10	0
San Marino ³³	15	0	0/13 ³⁴	0/10
Saudi Arabia	10	5	0/5	10
Senegal	15	15	0/15	15
Serbia	10	10	10	10
Singapore	10	10	12.5	15/20
Slovak Republic	15	15	0	0/5
Slovenia	15	5	0/10	10
South Africa	15	5	0/10	6
Spain	15	15	0/12	4/8
Sri Lanka	15	15	0/10	10/15
Sweden	15	10 ³⁵	0/15	5
Switzerland	15	15	12.5	5
Syria	10	5	0/10 ³⁶	18
Tanzania	10	10	15	15
Thailand	20	15	0/10/ ³⁷	5/15 ³⁸
Trinidad and Tobago	20	10	10	0/5
Tunisia	15	15	0/12	5/12/16 ³⁹
Turkey	15	15	15	10
Turkmenistan	15	15	0	0

	Dividends		Interest ¹ (%)	Royalties ² (%)
	Individuals, companies (%)	Qualifying companies ³ (%)		
Ukraine	15	5 ⁴⁰	0/10	7
United Arab Emirates	15	5	0	10
United Kingdom	15	5 ⁴¹	0/10	8
United States	15	5 ⁴²	0/10	0/5/8 ⁴³
Uzbekistan	10	10	0/5	5
Venezuela	10	10	0/10	7/10
Vietnam	15	5/10 ⁴⁴	0/10	7.5/10 ⁴⁵
Zambia	15	5	0/10	10

Notes:

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. such exemptions are not considered in this column.
2. The rates apply to gross royalties paid (and not to 75 percent, as in non-treaty situations).
3. In general, the ownership of at least 25 percent of the capital in the Italian company is required for these reduced rates.
4. The zero rate applies, inter alia, to interest paid by public bodies.
5. The lower rate applies to copyright royalties, excluding films, etc.
6. The lower rate applies to copyright royalties.
7. The lower rate applies if the Armenian company has owned directly at least 10 percent of the capital (totalling at least US\$100,000 or the equivalent in other currency) of the Italian company paying the dividends for at least 12 months preceding the date the dividends were declared.
8. The zero rate applies to interest paid by a public body paid on bank loans, not represented by bearer instruments.
9. The higher rate applies if the Austrian company owns directly more than 50 percent of the capital in the Italian company.
10. The lower rate applies to royalties for computer software, patents, trademarks etc., and industrial, commercial or scientific equipment etc.
11. The rate applies if the foreign company owns at least 10 percent of the capital in the Italian company.
12. The zero rate applies to interest on public bonds. The 10 percent rate applies to interest derived by a bank or other financial institution (including an insurance company).
13. The treaty concluded between Italy and the former Yugoslavia.
14. The higher rate applies to trademarks.
15. The lower rate applies to royalties for computer software or any patent or information concerning industrial, commercial or scientific experience.
16. The higher rate applies to equipment leasing and royalties for know-how.
17. The rate applies if the Danish foreign company has owned directly or indirectly, as the case may be, at least 25 percent of the capital in the Italian company for at least 12 months.
18. The lower rate applies to copyright royalties, excluding films, etc.
19. The domestic rate applies; there is no reduction under the treaty.
20. The lower rate applies to equipment leasing.
21. The rate applies if the Finnish company owns directly more than 50 percent of the capital in the Italian company.
22. The rate applies if the recipient company has owned at least 10 percent of the capital in the Italian company for at least 12 months.
23. The lower rate applies to interest on public bonds and trade credits, and to interest arising from the sale of equipment.
24. The lower rate applies to equipment leasing and royalties for know-how.
25. The rate applies if the recipient company has owned at least 25 percent of the voting shares in the Italian company for at least 6 months.
26. The treaty with the former USSR remains applicable with respect to Kyrgyzstan, Tajikistan and Turkmenistan.
27. The higher rate applies if the Kuwaiti resident holds 75 percent or more of the capital in the Italian company.
28. The 5 percent rate applies if the Netherlands company has owned more than 50 percent of the voting rights in the Italian company for at least 12 months. The 10 percent rate applies if it has so owned more than 10 percent.
29. The rate applies if the Omani company owns directly at least 15 percent of the capital in the Italian company.
30. The zero rate applies to interest on public bonds. The 10 percent rate applies to interest on other bonds.
31. The 5 percent rate applies if the Qatar company has owned more than 25 percent of the capital in the Italian company for at least 12 months.
32. The rate applies if the Russian company owns directly at least 10 percent of the capital in the Italian company and the value of the holding exceeds US\$100,000.
33. Effective from 1 January 2014.
34. The zero rate applies if the foreign company has owned at least 25 percent of the capital in the Italian company for at least 12 months.
35. The rate applies if the Swedish company owns directly at least 51 percent of the capital in the Italian company.
36. The lower rate applies to interest on any bank loans granted by a bank, on trade credits, and to interest arising from the sale of equipment.
37. The zero rate applies to interest on public bonds. The 10 percent rate applies if the Thai company is a financial institution (including an insurance company) and the Italian enterprise engages in an industrial undertaking. In some cases, there is no limitation under the treaty.
38. The lower rate applies to copyright royalties.
39. The 5 percent rate applies to copyright royalties. The 16 percent rate applies to trademarks, films, and industrial, commercial or scientific equipment.
40. The rate applies if the Ukrainian company owns at least 20 percent of the capital in the Italian company.
41. The rate applies if the UK company controls at least 10 percent of the voting power in the Italian company.
42. The 5 percent rate applies if the US company has owned more than 25 percent of the voting stocks in the Italian company for at least 12 months.
43. The zero rate applies to copyright royalties (excluding computer software, films, tapes, etc.). The 5 percent rate applies to patent royalties. The 8 percent rate applies to films, etc.
44. The 5 percent rate applies if the Vietnamese company owns directly at least 70 percent of the capital in the Italian company. The 10 percent rate applies if the direct holding is at least 25 percent.
45. The lower rate applies to royalties for technical services.

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