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1. INTRODUCTION

Both resident and non-resident entities are subject to corporate income tax ("CIT" or "IRES") at a rate of 24%. Resident legal entities are taxed on their worldwide income while non-resident entities are subject to tax only on Italian sourced income.

a. Forms of Legal Entity

The Italian resident legal entities liable to corporate income tax are (i) companies (joint-stock corporations, limited liability companies, partnerships limited by shares, cooperative companies and mutual insurance companies and *societas Europaea*) and (ii) legal entities other than companies (including, for instance, certain governmental entities) and trusts, whether or not their sole or main business purpose is the exercise of business activities, regardless the nature of the business activity, as well as undertakings for collective investment. Partnerships (simple partnerships, general partnerships and limited partnerships) other than partnerships limited by shares are fiscally transparent and are not liable to corporate income tax. Indeed, the partners are taxed on their share of the partnership's profits.

b. Taxes, Tax Rates

For Italian tax resident entities, the corporate income tax is levied on the profit/loss before tax as shown in the financial statements, increased by positive adjustments and decreased by negative adjustments in accordance with tax regulations.

For non-Italian resident entities, the corporate income tax is levied on the single income derived in Italy. In case of non-Italian resident companies having a PE in Italy, such companies are subject to IRES with respect to the taxable income attributable to the PE.

In addition, Italian tax resident entities are subject to IRAP (regional tax on productive activities) that is levied on a taxable base that is computed depending on the type of taxpayer and on the type of activity carried out, so there are specific rules for companies, banks and financial institutions, insurance companies, partnerships and sole proprietorships. For commercial and manufacturing companies the standard rate is 3.9% and is levied on the taxable base computed as the difference between the revenues and costs recorded under letters A) and B) of the Profit and Loss accounts drawn up according to Italian GAAP with add-backs for certain costs.

For non-financial holding companies, the standard rate is 4.65% and it is levied on the sum between (i) the taxable base described for commercial and manufacturing companies and (ii) the difference between positive and negative interests (negative interests are deductible in the limit of 96% of their amount).

Non-resident companies having a PE in Italy are also subject to IRAP.

2. RECENT DEVELOPMENTS

a. General Comments

The Legislative Decree No. 142 of 29 November 2018, published on 28 December 2018, implemented the ATAD Directives n. 1164/2016 and 952/2017. Such Decree amended (i) the interest expenses deduction rules (see section VI.c), (ii) the exit and entry tax rules, (iii) the CFC regulation (see section VIII.b) and (iv) the tax regime applicable to foreign dividends and capital gains (see section VII.c). In addition, the Decree introduced new provisions targeting hybrid mismatches (see section VI.d).

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Italian Budget Law for 2020 introduced a 3% digital service tax ("Italian DST") on revenues deriving from certain digital services provided to users located in Italy, which applies to entities that meet certain revenue thresholds. Italian DST applied from 1 January 2020, without the need for any ministerial implementing decree, and will be repealed once measures agreed at international level to tax the digital economy enter into effect (sunset clause). According to the explanatory notes of Budget Law for 2020, Italian DST is inspired by the European Commission Directive Proposal of 21 March 2018 (EU DST Proposal). Italian DST applies to resident and non-resident entities, which meet, individually or at group level, the following conditions in the previous calendar year: (i) total amount of worldwide revenues not lower than EUR 750 million; (ii) total amount of revenues deriving from qualifying digital services provided to users located in Italy not lower than EUR 5.5 million. Therefore, an entity is subject to Italian DST on taxable revenues realised in 2020, if revenues realised in 2019 exceed both thresholds. In line with article 3 of the EU DST Proposal, Italian DST applies to revenues deriving from the provision of the following digital services: (i) the placing on a digital interface of advertising targeted at users of that interface, (ii) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users and (iii) the transmission of data collected about users and generated from users' activities on digital interfaces.

The regime providing for an allowance for corporate equity ("ACE"), namely a deduction from corporate income tax of a deemed interest computed by applying a certain rate to the net equity increases arising after 2010, has been reinstated by Italian Budget Law for 2020 with effect from fiscal year 2019. Starting from fiscal year 2019 the rate applicable in computing the ACE benefit is 1,3%.

Law Decree no. 124/2019 and Legislative Decree no. 75/2020 introduced a number of criminal tax offences (e.g. offence of fraudulent tax return through the use of invoices or other documents for inexistent transactions; offence of issuing of invoices or other documents for inexistent transactions and cross border significant VAT frauds) in the context of corporate criminal liability as set forth under Legislative Decree no. 231/2001.

Legislative Decree no. 49/2020 implemented Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. The new provisions will apply to mutual agreement procedure requests submitted from 1 July 2019 onwards in relation to questions of dispute regarding income or capital earned in a tax year commencing on or after 1 January 2018.

Legislative Decree no. 100/2020 implemented Directive 2018/822 (DAC6) amending the European Union Mutual Assistance Directive as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Reporting deadlines are generally in line with the deadlines provided by DAC6, taking into account also Directive 2020/876, which provides for an optional deferral of time limits because of the COVID-19 pandemic.

Italian tax authorities' Regulation 23 November 2020 has amended the rules on Transfer Pricing documentation providing specific requirements in order to benefit from penalty protection in case of transfer pricing adjustments. The new rules apply from fiscal year 2020.

b. Covid tax measures

Italy has introduced various tax measures and incentives to address the economic effects of the coronavirus outbreak such as tax credits (e.g. tax credit for expenses incurred in renting business properties, tax credit for capital contributions in certain companies, tax credits for expenses incurred for sanitising and adapting workplaces), deferral of tax payments, agreements with certain Countries (Austria, France, Switzerland) on the taxation of frontier workers.

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Among the Covid tax measures, article 110 of Law Decree 104/2020 introduced the possibility for Italian GAAP companies to step-up in the 2020 financial statements the values of tangible and intangible fixed assets as well as participations, provided that the mentioned assets are included in the 2019 financial statements. The step-up can be executed only for accounting purposes or also for tax purposes, in the latter case a 3% substitute tax is due. Higher tax values are recognised for amortisation/depreciation purposes starting from fiscal year 2021, while for capital gain/loss purposes from fiscal year 2024.

The equity reserve posted in the 2020 financial statements against the step up is taxable in case of distribution (unless a further 10% substitute tax is paid to render this reserve freely distributable). In addition, both Italian GAAP and IAS/IFRS companies can realign the tax value of tangible and intangible fixed assets (including goodwill) as well as participations included in the 2019 financial statements to their higher accounting value.

A 3% substitute tax is due on the difference between the accounting value and the tax value of the mentioned assets. Following the realignment, higher tax values are recognised for amortisation/depreciation purposes starting from fiscal year 2021, while for capital gain/loss purposes from fiscal year 2024.

An amount of equity reserves equal to the realignment is deemed to be fully taxable in case of their distribution (unless a further 10% substitute tax is paid to render these reserves freely distributable).

3. SHARE ACQUISITION

a. General Comments

A share deal is an agreement transaction whereby a seller transfers shares or quotas of a company which owns the business or the assets the purchaser is interested in, (generally) for cash consideration. The transaction may concern an existing company or a newly incorporated company in which the relevant business is first included through an extraordinary transaction (i.e a spin off or a demerger).

As a share acquisition is an equity transaction, it does not directly affect the assets of the company the shares of which are transferred (target company).

Italian companies are entitled to benefit from a 95% participation exemption (i.e only 5% of the capital gain on the disposal of shares in another company is subject to corporate income tax) if the following requirements are met:

- the shareholding has been held at least since the first day of the 12th month prior to the disposal;
- the shares were booked by the seller as a long-term investment (fixed financial asset) in the first balance sheet of its holding period (no minimum percentage is required);
- the owned company is not resident in a jurisdiction which has a privileged tax regime;
- the owned company is carrying on a real business activity (e.g. other than real estate companies or intangible portfolio companies).

The requirement under iii) must be met over the entire holding period or over the previous 5 tax years where the buyer is not an associated entity. If this condition is not met, the company can still prove (through a tax ruling) that the holding of the shares in the low-tax company has not resulted, since the beginning of the holding period, in shifting income to the low-tax regime. If no tax ruling application has been filed or if the outcome of the tax ruling was negative, the taxpayer can still take the position that the acquisition of the shares in the low-tax company was not made to shift income to the low-tax regime, but it has to disclose the information in its income tax return. However, where the entity is established in a jurisdiction which has a privileged tax regime, if the resident controlling company proves that the non-resident entity carries on a substantial economic activity supported by staff, equipment, assets and premises, the capital gain realised is fully subject to CIT but an indirect tax credit is granted for foreign taxes paid by the non-resident entity on relevant income.

The requirement under iv) must be fulfilled throughout the three fiscal years prior to the sale.

Capital losses realised upon the disposal of shares that qualify for the participation exemption are not deductible in the hands of the corporate seller.

If the requirements provided for the participation exemption regime are not satisfied, the capital gain upon disposal of shares is fully subject to CIT at the ordinary rate in the same year or, if the shares were booked as fixed financial assets in the last three financial years, in equal instalments over a period up to five years. In this case, corporate sellers may fully deduct capital losses arising from the disposal of shares that would not be eligible for the participation exemption.

In case the seller is non-resident in Italy, see section 7.c.

Capital gains are not subject to IRAP.

b. Tax Attributes

In principle, tax losses can be carried forward without any time limit but can be used to offset only 80% of taxable income in any subsequent year. Tax losses realised in the first three years from the establishment of the company can be carried forward without any time limit and can be used to fully offset the taxable income in any subsequent year provided that they relate to a new business activity.

In order to tackle the abusive trading of tax losses, limitations on the carry forward of tax losses apply when the following conditions are both met:

- a majority of the voting shares in the loss company is transferred, and
- the main activity carried out by the company is changed from the one carried out in the fiscal years when losses were suffered. The change in the activity has to occur in the fiscal year in which the shares are transferred, during the previous two years, or the following two years.

Nevertheless, even if the above conditions are met, a company can still carry forward losses if (i) it did not reduce employees below 10 units during the two years preceding the transfer of shares and (ii) it satisfies the so called “vitality test”. The vitality test is satisfied if the company’s P&L account of the fiscal year preceding the one in which the change of control occurs shows both gross receipts (and other proceeds deriving from the main activity) and labour costs (and related social security contributions) higher than the 40% of the average of the same receipts and costs of the two previous financial years.

No limitations on the carry forward of the tax losses occur in case of change of business activity in the absence of any transfer of shares.

c. Tax Grouping

The Italian tax consolidation regime provides for the determination of a single taxable basis, which is the sum of the taxable bases of the group entities, taken into consideration at their full amount, irrespective of the percentage of participation held by the consolidating company. As a consequence, taxable profits and losses realised by each company during the period of tax consolidation are offset. Conversely, tax losses suffered by each company before entering the domestic tax consolidation can be utilised only by the company that incurred them.

Other benefits of the regime are that (i) certain tax attributes (such as excess interest limitation) not used by the company creating them can be surrendered to the fiscal unity and (ii) the limitations to carry forward the tax losses in case of merger do not apply to the tax losses incurred during the consolidation when the merger occurs between consolidated entities.

In order to apply for the tax consolidation regime, the following condition must be met:

- the parent entity must hold, directly or indirectly, more than 50% of the share capital of the subsidiary and must be entitled, directly or indirectly, to more than 50% of the profits. Said percentages should be computed taking into consideration the de-multiplication effect due to a chain control and excluding the shares without voting rights (and the profits related to them).
- the parent and the subsidiaries must have the same fiscal year;
- the election must be made jointly by the parent and by each subsidiary;
- the election for the domestic tax consolidation must be made in the tax return filed in the first fiscal year to which the consolidation applies; and
- each subsidiary must elect to be domiciled for tax purposes at the domicile of the parent company.

An non-Italian resident company may apply for the tax consolidation regime as consolidating entity if (i) is resident in a country that has a tax treaty in force with Italy that allows an adequate exchange of information, and (ii) carries on a business activity in Italy through a permanent establishment, whether or not this permanent establishment has, among its assets, the shares in the resident subsidiaries.

In addition, a non-resident company that does not have a permanent establishment in Italy and, directly or indirectly, controls two or more Italian resident subsidiaries may opt for the horizontal tax consolidation regime if, among others:

- it is a resident of a Member State of the European Union or an EEA State having a double tax treaty in force with Italy that allows an adequate exchange of information between the competent tax authorities; and
- it is incorporated under one of the legal forms as listed in the Annex I, Part A, to the Parent-Subsidiary Directive.

Upon certain conditions, also newly acquired companies can adhere to the Italian tax consolidation regime, as consolidated companies, starting from the year in which the consolidating company or entity acquires its control.

The above regime applies only for CIT purposes, whereas IRAP remains applicable on a stand-alone basis.

d. Tax Free Reorganisations

Once the share acquisition has been performed, the companies may decide to carry out a corporate restructuring.

Italian law provides for a tax-neutral regime applicable to some qualifying corporate restructurings, such as mergers and de-mergers. Under this tax-neutral regime, capital gains taxation is deferred, and the acquiring entities receive a carryover basis in the assets acquired.

More in particular, the merger of Italian resident companies is a tax neutral transaction. Therefore, the merger would not give rise to taxable gains or deductible losses on the assets of the merged company.

As a consequence, the merging company would inherit the same tax values of the merged company's assets and liabilities as these had before the merger, i.e there is no step -up in the tax value of assets. In addition, the merging company would take up all tax attributes and obligations of the merged company (e.g. depreciation/amortisation, value of inventory, tax credits, tax deferral on capital gains, reserves and provisions).

Same principles are applicable to de-mergers.

In transactions which allow the transfer of tax attributes (like mergers and de-mergers), particular attention has to be paid to the limitation rules which apply to tax losses and excess interest carried forward.

The main caveat in tax-neutral restructurings is the new rule regarding "abuse of law" (Article 10-bis of Law n. 212/2000) which is applicable to transactions lacking economic substance which realise undue tax benefits and consequently can be disallowed by the tax administration.

In particular, such qualifies as abusive "one or more transactions lacking any economic substance which, despite being formally compliant with the tax rules, achieve essentially undue tax advantages."

Transactions are deemed to lack economic substance when they imply facts, actions and agreements, even related to each other, that are unable to generate significant business consequences other than tax advantages. Indicators of lack of economic substance, are the inconsistency between the qualification of the individual transactions and their legal basis as a whole and the choice to use certain legal instruments not consistent with the ordinary market practice.

Tax advantages are deemed to be undue where they consist of benefits that, even if not immediate, are achieved in conflict with the purpose of the relevant tax provisions and the principles of the tax system.

In any case, a transaction is not abusive if is justified by not-negligible business purposes (other than of a tax nature) including those aimed at improving the organisational and managerial structure of the business.

In any case, it seems that the Italian tax authorities, with recent Resolutions, are becoming more permissive in this regard by allowing business restructuring (such as de-merger followed by sale of the participations) previously considered as abusive.

Taxpayers may request a ruling to determine whether a planned transaction may constitute abuse of law. No criminal charges would be imposed on the "abuse of law" behaviour.

If after the share deal the target company is subsequently merged with the acquiring company, the possible merger deficit (*disavanzo di fusione* – i.e the difference between the cost of cancelled shares and the book value of the net assets of the absorbed company) can be used to step up the value of the assets from an accounting point of view. Such step up is not relevant for tax purposes unless the company exercises one of the following options regarding, in full or in part, one or more assets:

- the absorbing company is entitled to step up the tax value of the tangible and intangible assets received by paying a substitute tax at the rate of 12% on the portion of the step-up in value up to Euro 5 million, 14% on the portion of the step-up from Euro 5 million to Euro 10 million, and 16% on the portion of the step-up in value exceeding Euro 10 million. The option for the step-up can be elected in the tax return of the year in which the merger occurs or in that of the following tax year. The stepped-up tax values are effective starting from the fiscal year in which the option is exercised, subject to a recapture rule if the assets are disposed within the four fiscal years following the one in which the option is exercised;
- according to another specific provision, the step up may affect the tax value of intangible assets (goodwill, trademarks and other intangible assets) and is granted by paying a substitute tax of 16%. This specific regime allows the taxpayer to apply a depreciation period of 5 years for deducting goodwill and trademarks instead of the ordinary 18 years period. The substitute tax must be paid within the deadline for the payment of the CIT due for the fiscal year in which the merger occurs (i.e the last day of the 6th month of the following fiscal year). The stepped-up tax values are effective starting from the fiscal year in which the substitute tax is paid, subject to a recapture rule if the assets are transferred within the fourth fiscal year following the one in which the option is exercised. The higher depreciation/amortisation can be deducted starting from the fiscal year following the one in which the substitute tax is paid;
- in addition, if the absorbing company inherits a participation from the absorbed company and includes it in its consolidated financial statement (CFS), the step up may affect the values of goodwill, trademarks and other intangibles recognised in such CFS and implicitly embedded in the value of that participation. The step up at stake is notional and can be deducted by the absorbing company. This regime can be applied in the same periods and is subject to the same recapture rules already mentioned under (ii) but the depreciation/amortisation can be deducted starting from the second fiscal year following the one in which the substitute tax is paid.

Please note that the differences between tax and accounting values existing in 2019 financial statements may be realigned in the 2020 financial statements with the payment of the substitute tax mentioned above.

Moreover, given that the same step up regime, as described above under (iii), is generally allowed where the qualified participation is acquired for consideration in a share deal, if the Italian acquiring company does not merge the target, but includes it in its consolidated financial statement, the step-up regime can be applied.

e. Purchase Agreement

The Sale and Purchase agreement would typically include a standard suite of warranties and indemnities on the basis that in a share sale the historical tax liabilities move with the entity to the purchaser, as such suitable protections are typically required.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In a share deal, a financial transaction tax at a 0.2% rate applies to transfers of shares of joint stock companies (società per azioni) having their legal seat in Italy, even if not carried out on financial markets. The financial transaction tax applies to any transfer of shares for consideration (i.e not only sales, but also exchanges and contributions of shares fall, in principle, within the scope of this tax). If the transfer takes place on regulated markets or multilateral trading facilities, the tax rate is reduced to 0.1%.

The tax is due by the purchaser and must be levied by the intermediaries which are involved in the execution of the transaction (e.g. banks, fiduciary companies and investment companies, public notaries involved in the drawing up or authentication of deeds). The tax on financial transactions does not apply to the transfer of shares between companies of the same group nor to the transfers arising from corporate/business restructurings.

In addition, the transfer of shares is exempt from VAT and a fixed registration tax of Euro 200 is levied.

g. “Purchase accounting” applicable to share acquisitions

No specific rules are applicable.

h. Share Purchase Advantages

The capital gain realised by the seller can be subject to a reduced income tax burden depending upon the type of seller; particularly, it could be beneficial for domestic companies (when the conditions for the participation exemption regime are applicable) and for foreign companies (if a double tax treaty relief for capital gains is applicable).

In a share deal the tax attributes carried forward (losses, interests paid exceeding limits, tax credits, etc.) stay with the company acquired and can be part of the deal, even if they are subject to certain limitation rules aimed to avoid the “trade” of attributes; please note that if the majority of the shares of a company are transferred and there is a change in the company’s activity prior or after such transfer, the prior years’ tax losses expire unless certain requirements are met.

A share deal is not subject to indirect taxes, unless the shares of an Italian joint stock company (*società per azioni*) are sold, in which case a 0.2% tax (Tobin tax) has to be applied.

i. Share Purchase Disadvantages

In a share deal all the contingent tax liabilities remain in the company whose shares are sold for the statute of limitations period, i.e until December 31st of the fifth year following the filing of the tax return for 2016 onwards (for fiscal years until 2015 the reference is to the fourth year subject to a potential extension to eighth year in case of criminal proceedings) and therefore the buyer should in principle seek guaranties of the tax risks.

In a share deal, in principle there is no step up of the value of assets unless certain extraordinary transactions are carried out and/or a specific option is exercised which implies the payment of a substitute tax.

The deal may not include all the assets/liabilities of a company and therefore a preliminary carve out into a specific company may be needed which might have some tax costs. However, the contribution of a going business into a company in exchange for shares is a tax neutral transaction that does not change the tax values of the companies involved and allows the seller in principle the possibility to apply the participation exemption regime on the subsequent sale of the new shares.

4. ASSET ACQUISITION

a. General Comments

Such transaction concerns the acquisition of single assets or more frequently of a going concern previously identified between the parties.

The sale of a going concern may give rise to a taxable capital gain or a deductible tax loss, determined as the difference between the sale price (net of any directly attributable ancillary expenses) and the tax value of the business, which is included in the ordinary CIT basis. If the seller has owned the business for more than 3 years, it may elect to tax the capital gain in equal instalments over a period of up to 5 years. Any capital gain or capital loss is not relevant for IRAP purposes.

The sale of single assets is subject to almost the same rules. However, in such a case, the capital gain (loss) is also relevant for IRAP purposes.

b. Purchase Price Allocation

In the case of acquisition of single assets, the buyer may not book any goodwill for either accounting or tax purposes, but it may step up the value of the single assets acquired to their purchase price and depreciate/amortise them accordingly.

In the case of acquisition of a going concern, the buyer must book the assets purchased according to the value agreed between the parties. A specific portion of the price paid may be attributed to the goodwill. If the buyer and the seller just indicate the overall consideration paid for the business and, therefore, they do not clearly identify the price paid for any individual asset that belongs to the business, the purchase price allocation must be coherent with the fair value of the assets. In any case, there are no specific rules for allocating the purchase price to the individual assets included in the business.

c. Tax Attributes

In an asset deal the tax attributes (tax losses or unused interest) remain on the selling company as are usually not transferable to the buyer.

However, in some cases, certain tax attributes, such as VAT plafond (which is the right of exporters to purchase goods and services without being charged VAT by their suppliers), are transferred to the buyer along with the relating business unit or assets.

d. Tax Free Reorganisations

The transfer of a going concern may be realised by way of transfer of the business to be sold into a specific Newco and then sale of the shares of such Newco.

This can be done through the contribution of the going concern to a Newco in exchange for Newco's shares, which is a fully tax neutral transaction because (i) for the receiving company the tax cost of the assets received is the same as for the contributing company and (ii) for the contributing company the tax cost of the Newco shares received is equal to the original tax cost of the net assets contributed. The receiving company may optionally step up the assets for tax purposes by applying the substitute tax provided by the optional regimes (see section 3d.).

The contributing company may subsequently benefit from the 95% participation exemption on a sale of the Newco shares to a third party even before the one-year minimum holding period has passed, if the going concern was held for that period. The contribution in kind followed by the sale of Newco shares is explicitly ruled by the law as a non-abusive practice for income tax purposes.

From an indirect tax point of view the contribution in kind in exchange for shares is subject to a fixed amount (Euro 200) for registration tax purposes (and for cadastral/mortgage tax purposes if buildings are involved). According to the new article 20 of the Registration tax code, the decision of the Constitutional Court no. 158/2020 and recent Italian tax authorities' resolutions, the transaction should not be recharacterised as a direct sale of going concern and no abuse of law may be assessed in the absence of merger between the purchasing company and the NewCo.

e. Purchase Agreement

No specific rules are applicable.

f. Depreciation and Amortisation

As a consequence of the assets acquisition, the buyer may step up the tax value of the assets received to the price paid. Consequently, the buyer may amortise and depreciate the assets on their new tax values.

In general, tangible assets may be depreciated only on a straight-line basis and the maximum yearly rates of depreciation cannot exceed the ones set by the Ministry of Economy and Finance. The rate depends on the type of property and on the sector of the taxpayer's activity. Amortisation of intangible assets is subject to specific rules, depending on the nature of the asset.

If part of the purchase price paid is attributed to the goodwill, such value is recognised for accounting and tax purposes. From an accounting viewpoint, the goodwill acquired can be amortised over its useful life, or, if such life cannot be reliably estimated, over at most 10 years. For tax purposes, the goodwill must be amortised over no less than 18 financial years.

g. Transfer Taxes, VAT

In an asset deal, indirect taxes depend upon the type of transaction.

If a going concern is transferred, no VAT is applicable and a registration tax is applied on the market value of the assets transferred, including goodwill, net of liabilities transferred, as reported in the accounting books of the company. The applicable tax rate depends on the nature of assets transferred. Movable property, goodwill, patents and trademarks, inventory, etc., are taxed at the rate of 3%, while real estate assets are taxed mainly at the rate of 9%. In any case, if the purchase price is not specifically allocated to the various assets transferred, the registration tax is levied at the highest rate among those applicable to such assets. Mortgage and cadastral taxes are levied at Euro 50 each when an immovable property is included in the going concern.

The transfer of single assets (i.e not a business as a going concern), by a VAT-taxable person will likely be subject to VAT. In case of transfer of a real estate, registration, mortgage and cadastral taxes are levied either proportionally or in a fixed amount depending on the kind of immovable property (commercial or residential) and the VAT regime applied (exempt or subject to VAT).

The sale of a commercial building is VAT exempt. However, the transaction is subject to VAT when:

- the vendor is the construction enterprise or has performed substantial building works and the sale occurs within 5 years from the end of the construction/renovation; or
- the vendor has explicitly opted in the deed of transfer for the application of the VAT.

The sale of a residential building is VAT exempt. However, the transaction is subject to VAT when:

- the vendor is the construction enterprise or has performed substantial building works and the sale occurs within 5 years from the end of the construction/renovation;
- the vendor is the construction enterprise or has performed substantial building works, the sale occurs after 5 years from the end of the construction/renovation and it has explicitly opted for the application of the VAT;
- the sale of social housing when the application for VAT have been expressed in the deed of transfer.

h. Asset Purchase Advantages

The buyer obtains the step-up for tax purposes in the tax depreciable basis of assets transferred corresponding to the purchase price paid allocated to each asset.

The tax attributes (tax losses or undetected excess interest expenses) remain with the selling company and are not transferred to the buyer, and this may represent an advantage for the seller in particular if the conservation of such tax attributes in a share deal is not possible due to the rules on "trade" in tax attributes.

The contingent tax liabilities relating to the assets or the going concern transferred remain, as a general rule, with the selling company. However, pursuant to Article 14 of Decree no. 472/1997, the buyer of a going concern is jointly and severally liable with the seller for the most recent tax liabilities in an amount not exceeding the value of the assets. A tax certificate stating the amount of tax liabilities attached to the going concern can be requested from the Italian tax authorities and the buyer's liabilities are limited to the amount stated in the certificate. These liability rules do not apply if the asset deal occurs in a pre-bankruptcy regulated procedure.

i. Asset Purchase Disadvantages

The capital gain (loss) realised by the selling company is taxable (deductible) for corporate tax purposes at IRES ordinary rates (in the case of assets owned for more than three years, the gain may be deferred over at most five fiscal years) and is not subject to IRAP if the asset deal consists of a going concern.

When the asset deal is realised through the transfer of a going concern, no VAT is applied and the value of the going concern, net of liabilities, is subject to a registration tax. Other ancillary taxes are due when real estate is involved; the transfer taxes are usually paid by the buyer, but both parties are jointly and severally liable for the payment of registration tax (which is generally applied at a 3% rate, except for real estate assets which are mainly subject to 9%).

5. ACQUISITION VEHICLES

a. General Comments

The Italian Civil Code ("ICC") specifically allows MLBO (Merger Leverage Buy Out) transactions. In particular, under Article 2501-*bis* of the ICC, in case of a MLBO transaction:

- the merger plan must set out the financial resources available to repay the company's financial indebtedness post-merger;
- a report by the independent auditor of one of the companies involved in the merger must certify the correctness of the accounting figures contained in the merger plan;

- a report by the boards of directors of each of the companies involved in the merger must illustrate and justify the merger from an economic and legal standpoint, and contain an economic and financial plan demonstrating the sustainability of the post-merger indebtedness; and
- a report by an independent expert must attest that the above boards of directors' sustainability analysis is reasonable.

b. Domestic Acquisition Vehicle

Generally, in leveraged buyout transactions ("LBO"), the acquisition of a target company is normally carried out through a newly set up Italian resident special purpose vehicle ("SPV) which is funded partially by equity – generally of minimum amount – and partially by debt. After the acquisition, the SPV and the target company are usually merged – either in the form of direct merger or reverse merger – with the purpose of (i) push down the debt and (ii) transfer the tax deduction of the interest expenses from the SPV to the company resulting from the merger. Such restructurings are allowed from both a tax and civil perspective.

Alternatively, if the target company is not merged into the SPV, the two companies elect for the tax consolidation regime which allows to offset (i) the SPV's tax losses against the target's taxable income and (ii) the SPV's excess interest against the target's excess 30% EBITDA.

Italian tax authorities' guidelines no. 17/2019 clarified that, in the context of an MLBO transaction, if the SPV qualifies as a pure holding company it does not have the right to deduct input VAT.

c. Foreign Acquisition Vehicle

In LBO transactions, the Italian SPV may be held by a foreign holding company. In such a case, particular attention should be given to its substance in order to avoid risks of assessments from the Italian tax authorities (see section 14.b.).

d. Partnerships and joint ventures

The use of partnerships as domestic acquisition vehicles is not advisable due to the joint and unlimited liability of the partners for the social obligations.

Partnerships (simple partnerships, general partnerships and limited partnerships) other than partnerships limited by shares are fiscally transparent and are not liable to corporate income tax. Indeed, the partners are taxed on their share of the partnership's profits.

e. Strategic vs Private Equity Buyers

No specific rules are applicable.

6. ACQUISITION FINANCING

a. General Comments

In principle, taxpayers are free to finance the acquisition by way of capital or debt.

However, the Italian tax authorities with the Circular Letter No. 6/2016 have clarified that shareholder loans may be recharacterised when their economical and juridical substance allow to align them to equity contributions, that is to say when – having regard to the specific economical and juridical context – the investment would not be expected to be structured by providing for a shareholder loan instead of an equity contribution.

More in particular, a shareholder loan might be recharacterised into equity when, for example:

- payment of interest and repayment of capital must occur after the repayment of capital and interests of third-party debts;
- financial covenants of third-party debt treat shareholders loans as equity;
- payment of interest and repayment of capital is subject to the same constraints as provided for distributions of dividends and equity reserves.

b. Equity

Resident companies and permanent establishments of non-resident entities may benefit from an allowance for corporate equity (so called "ACE"), which consists in a deduction from corporate income tax of a deemed interest computed by applying a certain rate to the net equity increases arising after 2010 (equity contributions and undistributed profits less reductions of equity with respect to shareholders). Starting from fiscal year 2019 the rate applicable in computing the ACE benefit is 1,3%.

For dividends paid to non-resident shareholders, see section 7.c.

c. Debt

As a consequence of the implementation of the ATAD Directives n. 1164/2016 and 952/2017, the rules concerning the deductibility of interest expenses have been amended with effect starting from 2019. According to the new Article 96 of the Italian tax code, net interest expenses (i.e interest expenses less interest income), including those capitalised in the cost of the assets, are deductible up to an amount equal to 30% of EBITDA. The EBITDA shall be calculated by applying the tax rules and, therefore, by considering the items of the profit and loss account in accordance with the provisions regarding the determination of the taxable business income.

Interest expenses exceeding the 30% EBITDA threshold is not deductible in the relevant fiscal year but is carried forward to the following fiscal years – without any time limit – and may be deducted in a subsequent fiscal year if and to the extent 30% of EBITDA is higher than net interest expense in that fiscal year. If 30% of EBITDA exceeds net interest expense, such excess can be carried forward for a maximum of five years to offset future excess interest. On the other hand, interest income exceeding the interest expenses may be carried forward to subsequent taxable periods and used to compensate future interest expenses.

In addition, excess interest expense generated by one company in a tax consolidation may be offset against the excess 30% of EBITDA of another company of the tax consolidation. In other terms, the computation of the non-deductible interest is performed at the level of the single entity but the amount, in principle, not deductible on a stand-alone basis may be transferred to the consolidating entity and deducted if and to the extent another company has excess of 30% EBITDA.

No other limitation rules apply in Italy even in the case of a thinly capitalised company.

The above is applicable only for CIT purposes while for regional tax ("IRAP") interest expenses cannot be deducted.

The rules described apply to entities subject to CIT, with the exclusion of banks and financial undertakings (for which interest expenses are entirely deductible) and insurance companies or parent companies of insurance groups (for which interest expenses are deductible up to 96% of their amount).

In case of interest expenses paid by enterprises to non-resident persons, the zero WHT is applied if the interest is paid on a loan that qualifies as medium-long term debt and the lender is a (i) financial institution established in a EU Member State, (ii) insurance company established and authorised under the law of a EU Member State, (iii) foreign institutional investor, whether or not subject to tax, set up in a country included in the Italian white list and subject to regulatory supervision in its country of establishment.

In the other cases, interest payments to a foreign lender are in principle subject to a final WHT of 26%. However, it is possible to reduce the final WHT by invoking the benefit of the Tax Treaty between Italy and the State of residence of the beneficial owner. In addition, in accordance with the EU Interest & Royalties Directive, interest payments shall be exempt – to the extent of their arm's length value, provided that (i) the lender is the beneficial owner of the interests, (ii) the lender takes one of the legal forms listed in the Annex of the Directive, (iii) the lender is a resident of a Member State, (iv) the lender has maintained a direct minimum holding of 25% in the capital of Italian company for an uninterrupted period of at least 1 year and (v) the lender is subject to corporate income tax. It is worth noting that for financing acquisitions, any bank (or other qualified lenders) loan for a term of more than 18 months that is concluded in Italy is optionally subject to a 0.25% substitute tax (imposta sostitutiva) applied on the amount of the loan. This tax also replaces all other indirect taxes potentially due on guaranties like mortgages, pledges, etc., related to the bank loan whose ordinary tax regime could be (in some cases) much more burdensome.

d. Hybrid Instruments

The Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches.

The provisions of the Decree are, in many cases, almost identical to those of the ATADs and are targeted to hybrid mismatch between associated enterprises, between the head office and the permanent establishment, between two or more permanent establishments of the same entity or arising from structured arrangements that may lead to:

- deduction/non-inclusion (D/NI) outcomes such as (i) "hybrid financial instruments" where a deductible payment is not treated as taxable income under laws of the recipients jurisdiction; (ii) "hybrid transfer" where differences in the tax treatment result in the underlying financial instrument being treated as held by more than one taxpayer; (iii) "disregarded payments made by hybrid entities" where the difference in treatment of the hybrid payer results in a deductible payment being disregarded when received; (iv) "payments made to a reverse hybrid entity" where payments made to an intermediary are not taxable on receipt due to hybrid effect and (v) "disregarded branch structure".
- double deduction outcomes (D/D) such as (i) "deductible payment made by a hybrid entity", (ii) "deductible payment by a dual resident" where a deductible payment made by a dual-resident triggers a second deduction in the other jurisdiction.
- indirect deduction/non-inclusion (indirect D/NI) such as "imported hybrid mismatches" where the effect of a hybrid mismatch between two states is shifted to a third state.

The Decree essentially states that when a hybrid mismatch results in a D/D, (i) if Italy is the investor jurisdiction, the deduction shall be denied in Italy and (ii) if Italy is the payer jurisdiction and the deduction is not denied in the investor jurisdiction, the deduction shall be denied In Italy. In addition, when a hybrid mismatch results in a D/NI, (i) if Italy is the payer jurisdiction, the deduction shall be denied in Italy and (ii) if Italy is the payee jurisdiction and the deduction is not denied in the payer jurisdiction, the amount of the payment shall be included in the taxable income in Italy. Finally, when a hybrid mismatch results in an indirect D/NI, Italy shall deny the deduction of the payment which, directly or indirectly, funds expenditure involving a hybrid mismatch, unless one of the jurisdictions involved in the transaction or series of transactions has made an equivalent adjustment in respect of such hybrid mismatch.

These rules applied generally from tax year 2020. However, the rules addressing reverse hybrid arrangements will only apply from tax year 2022.

e. Other Instruments

In principle, the payment of interest due on bonds is subject to a withholding tax of 26% (Article 26 of the Presidential Decree 600/1973). Such withholding tax may be reduced by the tax treaties currently in force between Italy and the state of residence of the recipient. In addition, under certain circumstances (see Section VI.c), the zero WHT provided by the Interest-Royalty Directive would apply.

In case of Bonds issued by the so called "Large Issuers" (i.e banks, companies listed in regulated markets or admitted to multilateral trading facilities of EU member States or adhering to the EU economic space agreement included in the "white list" and public companies converted into stock companies) a substitute tax of 26% - instead of the withholding tax - must be applied by the intermediaries intervening in the payment (Legislative Decree n. 239/1996).

However, such substitute tax should not be applied to some foreign Investors (entities residents in White Lists countries, international entities or bodies incorporated pursuant to international agreements executing in Italy, central banks or investment bodies managing official reserves of Italy) and some Italian Investors (Capital companies, Cooperative companies, investment funds and pension funds).

In case of Bonds issued by companies different from Large Issuers, the regime provided for the Large Issuers – including the exclusion from the substitute tax for foreign holders – is also applied to (i) bonds that are listed in regulated markets or admitted to multilateral exchange systems of EU member States or adhering to the EU economic space agreement included in the "white list" or (ii) unlisted bonds held exclusively by qualified investors.

f. Earn-outs

In general, earn-outs are considered as part of the purchase price and, therefore, subject to the same tax regime of the capital gains (see section 3.a. and 7.c.).

7. DIVESTITURES

a. Share deal

Italian companies are entitled to a 95% participation exemption (i.e only 5% of the capital gain on the disposal of shares in another company is subject to IRES at the rate of 24%) provided certain conditions are met (please see section 3.a for more details).

Capital losses realised upon the disposal of shares that qualify for the participation exemption are not deductible in the hands of the corporate seller.

If the requirements provided for the participation exemption regime are not satisfied, the capital gain (loss) upon disposal of shares is fully taxable (deductible) for CIT purposes at the ordinary rate. In case of a gain, if the shares were booked as fixed financial assets in the last three financial years, the capital gain may be taxable in equal instalments over a period up to five years.

In case the seller is non-resident in Italy, see section 7.c.

Capital gains are not subject to IRAP.

b. Asset Deal

The sale of a going concern may give rise to a taxable capital gain or a deductible tax loss, determined as the difference between the sale price (net of any directly attributable ancillary expenses) and the tax value of the business, which is included in the ordinary CIT basis. If the seller has owned the business for more than 3 years, it may elect to tax the capital gain in equal instalments over a period of up to 5 years. Any capital gain or capital loss is not relevant for IRAP purposes.

The sale of single assets is subject to almost the same rules. However, in such a case, the capital gain (loss) is also relevant for IRAP purposes.

c. Cross Border

For foreign shareholders the taxation of profit repatriation and of capital gains on exit are relevant.

Outbound dividends are subject to a final WHT of 26%, except in the following cases:

- zero WHT where the EU Parent-Subsidiary Directive 2011/96/EU is applicable
- a 1.375% (reduced to 1.20% for distribution of profits earned from 2017 onwards) WHT on dividends paid to EU companies or to companies of the European Economic Area providing exchange of information, if they are subject to ordinary income tax in their country
- a reduced rate (generally 5% or 10%) may be provided by the applicable tax treaty

As from 1 January 2021 no witholding tax is applied on dividends paid to foreign collective investment funds (“OICR”) settled in EU States or in European Economic Area States and whose managing entity is subject to supervision by the authorities of its foreign State.

Starting from 1 January 2019, capital gains realised on the sale of both substantial and non-substantial participations are subject to a final substitute tax of 26% on the whole amount of the capital gain.

However, capital gains on the disposal of a non-substantial participation is not subject to tax in Italy if one of the following conditions is met:

- the sale concerns “non-qualified” participations held in an Italian listed company; or
- the sale concerns “non-qualified” participations held in an Italian company and the seller is a resident of a whitelisted country.

Qualified participations are those representing more than:

- 2% of the voting rights or 5% of the capital (economic rights), in the case of participations in listed companies; or
- 20% of the voting rights or 25% of the capital (economic rights), in the case of other participations.

In any case, the capital gain realised by a foreign company upon disposal of a participation in an Italian company is not taxable in Italy if an applicable tax treaty grants the exclusive right to tax the gain to the State of residence of the holding company.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

A resident company is subject to corporate income tax on a worldwide basis. Foreign income is generally included in the taxable basis to corporate income tax for its full amount.

b. CFC Regime

As a consequence of the implementation of the ATAD Directives n. 1164/2016 and 952/2017, the CFC legislation has been amended. According to the new rules, a foreign subsidiary is considered controlled if the shareholder either holds the majority of voting rights (or sufficient voting rights to exercise an influence over the subsidiary) or is entitled to more than 50% of the subsidiary's profits.

A controlled foreign subsidiary may be subject to CFC rules provided that:

- the foreign entity's effective tax rate is lower than 50% of the effective tax rate that would have been applicable in Italy should the foreign entity be tax-resident in Italy; and
- the proceeds received by the foreign entity are originated for more than 1/3 from passive income sources (interest, dividend, royalties, capital gains) plus financial lease income, assurance, bank and other financial activities, income from low value added sale of goods and provision of services to related parties.

If a foreign subsidiary falls within the CFC legislation its income should be re-determined pursuant to Italian tax rules and taxed in the hands of the Italian shareholder in proportion of its shareholding.

However, the CFC legislation may be disapplied if the shareholder is able to demonstrate that the CFC exercises an effective economic activity in its State of residence by means of personnel, equipment and premises.

c. Foreign branches and partnerships

If a resident company derives income through a foreign permanent establishment, such profits are included in its taxable income. To relieve double taxation, the Italian tax codes provides an ordinary credit system based on a per country limitation, namely the credit is calculated separately with respect to income derived from each foreign country.

Starting from the fiscal year 2016, resident companies may opt for the branch exemption regime according to which income derived through foreign permanent establishments are exempt from corporate income tax. The election cannot be revoked and automatically extends to all of the company's permanent establishments ("all in" principle).

The election should be made when the first foreign permanent establishment is formed and, for already existing permanent establishments, the election should have been made by the end of the fiscal year 2017. For companies already having a foreign PE, the election should have been made before the end of fiscal year 2017. Therefore, such election cannot be made anymore, unless the company liquidates all the existing PE and constitutes new ones.

The Italian branch exemption regime provides rules aimed at recapturing tax losses derived through the permanent establishments in the fiscal years before the election.

If a permanent establishment benefits from a low-tax regime in the foreign jurisdiction (as defined for CFC purposes), the branch exemption regime may trigger the application of CFC rules and, therefore, unless the CFC rules can be disapplied (see Section VIII.b), the permanent establishment's income is not exempted but is imputed to the resident company under the CFC rules.

As far as partnerships are concerned, all foreign transparent entities are treated for Italian income tax purposes as opaque.

d. Cash Repatriation

In general, foreign dividends are treated in the same manner as domestic dividends. This means that 95% of the dividends are not included in the IRES taxable base on the condition that the dividends have not been fully or partially deducted in the country of source. The exemption regime is in line with provisions of the EU Parent-Subsidiary Directive, but it also applies for dividends received from third countries (unless the rule explained below comes into play) at the sole condition that such dividend have not been fully or partially deducted in the country of source.

However, such exemption is not applicable if the non-resident company that distributes the dividends benefits from a low-tax regime. Starting from the fiscal year 2019, a foreign regime is considered as low-tax regime if: (i) in case of controlled subsidiaries, the foreign effective tax rate is lower than 50% of the effective tax rate that would apply if that entity were a tax resident of Italy or (ii) in case of non-controlled subsidiaries, if the nominal foreign tax rate is lower than 50% of the nominal Italian tax rate. In any case, EU or EEA States are not considered as low-tax States.

The full taxation of the dividends is excluded if, alternatively, the taxpayer can prove that (i) the foreign entity carries on a substantive economic activity supported by staff, equipment, assets and premises or (ii) the investment in the foreign entity did not achieve the result of shifting income to low-tax jurisdictions. If the first exception applies, only 50% of the dividends distributed to Italian resident companies are included in the corporate tax base and an indirect tax credit is granted to the controlling shareholder.

In any case, dividends distributed by controlled foreign entities are exempt in Italy up to the amount of profits that have been already taxed in Italy under the CFC rules.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

In the context of MLI (see section 12.), Italy has provisionally decided to apply Article 9(4). Under that provision, gains derived from the alienation of shares (or comparable interests such as interests in a partnership or trust) – which, at any time during the 365 days preceding the alienation, derived more than 50 per cent of their value directly or indirectly from immovable property – may be taxed in the State where the immovable property is situated.

The status of the MLI is described in section 12.

b. CbC and Other Reporting Regimes

Italy has already implemented the recommendation provided by the BEPS Action 13 introducing the obligation of the country-by-country reporting for companies and entities (of an MNE Group whose consolidated annual turnover is at least Euro 750 million) that are (i) the ultimate parent entity of an MNE Group that is resident in Italy for tax purposes, (ii) a subsidiary of an MNE Group, provided that the ultimate parent entity is resident in a State that: 1) has not implemented CbC reporting rules; or 2) does not have a Qualifying Competent Authority Agreement with Italy; or 3) does not exchange information gathered under the CbCR rules. The information to be provided are in line with Section III of Annex III of the Directive 2016/881.

10. TRANSFER PRICING

Pursuant to the Italian transfer pricing rules, for CIT and IRAP purposes any transactions between Italian companies and their foreign related entities should be priced at fair market value. In that respect, proper transfer pricing documentation (master and local file) should be prepared by the resident company.

The existence of the TP documentation must be declared in the tax return by checking the relevant box and would allow the taxpayer to obtain penalty protection. Accordingly, in the absence of TP documentation, if any finding is raised on transfer pricing, the Italian resident company cannot obtain such protection and penalties from 90% to 180% of the unpaid taxes would apply.

Transfer pricing rules in Italy have been reviewed by Law Decree 50 of 24 April 2017 that amended the relevant provisions by rephrasing the arm's length principle as is contained in Article 9 of the OECD Model Tax Convention.

On 14 May 2018, the Italian Ministry of Economy and Finance issued a Decree containing guidelines for the application of the arm's length principle.

In particular, the Decree:

- provides for a definition of "Associated enterprises" which, in line with the Glossary of the 2017 OECD Transfer Pricing Guidelines and art. 9 of the OECD Model Tax Convention;
- provides for an explanation of the "comparability principle" and of the five comparability factors described in paragraph 1.36 of the 2017 OECD Transfer Pricing Guidelines;
- describes the five transfer pricing methods providing guidance, in line with Chapter II of the 2017 OECD Transfer Pricing Guidelines, for the selection of the most appropriate method to be used in the circumstances of the case;
- qualifies, as arm's length range, the range of values resulting from the application of the most appropriate method to independent comparable transactions. However, the Decree does not specify the point within the arm's length range to which the Italian tax authorities must refer in order to make the consequent adjustment (e.g. median or any point in the range);
- introduces the simplified approach for low-value-adding services based on a 5% mark-up on direct and indirect costs.

In addition, on 30 May 2018, the Italian tax authorities released the Regulation implementing the request for unilateral downward Transfer Pricing adjustment (so-called corresponding adjustment). Indeed, according to article 31-quater of Presidential Decree 600/1973, in case of a foreign primary Transfer Pricing adjustment, the Italian tax authorities can recognise a downward adjustment not only in execution of a Mutual Agreement Procedure but also upon formal request by the taxpayer.

Italian tax authorities' Regulation 23 November 2020 has amended the rules on Transfer Pricing documentation providing specific requirements in order to benefit from penalty protection in case of transfer pricing adjustments. The new rules apply from fiscal year 2020.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In general, Italian partnerships are not subject to corporate income tax but are only liable to IRAP. Indeed, for income tax purposes, the taxable income is computed in the hands of the partnership, but it is taxed in the hands of the partners in proportion to their interest in the partnership's profits.

On the other hand, non-resident partnerships are always treated as opaque entities and, therefore, are subject to Italian corporate income tax for income sourced in Italy.

It is worth noting that the Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches (see section 6.d).

b. Use of Hybrid Instruments

According to the Italian tax code, an instrument should be classified for tax purposes as equity when the remuneration is linked entirely to the issuer's profits. In addition, if the issuer is not resident in Italy, the remuneration should not be deductible by the issuer in the foreign jurisdiction.

On the other hand, an instrument should be classified for tax purposes as "bonds or similar securities" when it provides an unconditional obligation to repay the principal amount at maturity and there is no direct or indirect right for bondholders to control or participate in the management of the issuer.

It is worth noting that the Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches (see section 6.d).

c. Principal/Limited Risk Distribution or Similar Structures

There are no specific rules dealing with cross-border business restructuring from a transfer pricing perspective in Italy, nor have the Italian tax authorities issued any specific guidance in this regard. In particular, there is no specific guidance on the conversion of a full-fledged distributor into a commissionaire or low-risk distributor.

However, usually Italy is involved in business restructuring as the "exit-country".

In these cases, the Italian tax authorities tend to focus their analysis on the factual changes in the economic reality of the restructured entity, irrespective of what has been contractually agreed. In principle, if certain functions and risks are stripped out in favour of a foreign affiliate, such a transfer should not itself trigger taxable profit in Italy.

However, the conclusion might be different if, for example, a distributor had recently made significant investments and had not yet been able to obtain a reasonable return thereon. Furthermore, the conclusion might be different if the cross-border business restructuring could be regarded as triggering the transfer of a going concern or as triggering the transfer of an intangible.

d. Intellectual property (licensing, transfers, etc.)

Generally, the transfer of the ownership of intangibles gives rise to a capital gain (loss) that is taxable (deductible) for income tax purposes. In addition, if the intangible is transferred to an affiliated company, the transfer should be at arm's length.

The Italian Budget Law 2015 introduced an optional patent box regime, which grants a 50% exemption to income derived from the exploitation or the direct use of a qualifying IP both for corporate income tax (IRES) and local tax purposes (IRAP). In addition, the regime grants a 100% exemption on capital gains arising from the sale of qualifying IP under certain conditions.

The main aspects of the new patent box include the following.

- Elective: the Italian patent box regime is elective. The election is irrevocable and lasts for five years.
- Qualifying taxpayer: both resident entities and permanent establishments of non-resident entities may opt for the regime (in the case of a non-resident, only if it is resident in a country that has a bilateral tax treaty with Italy and if the exchange of information between Italy and its country of residence is effective).
- Qualifying IP: the regime covers patents, know-how and other intellectual property subject to legal protection. The qualifying IP may be either self-developed or acquired. The regime applies if the taxpayer performs R&D activities to maintain/develop the qualifying IP. The taxpayer may perform R&D activities by itself or it may outsource them to third parties. Beginning in 2017, trademarks are excluded from the patent box regime, whereas they were included before such fiscal year.
- Income exemption: the regime grants a 50% exemption of the gross income derived from the exploitation or the direct use of qualifying IP, both for corporate income tax (IRES) and local tax purposes (IRAP). If the qualifying IP is directly used by the taxpayer, an advance ruling with the Italian tax authorities is required to determine the income allocable to the qualifying IP. However, starting from fiscal year 2019, pursuant to article 4 of Law Decree no. 34/2019, instead of filing a ruling with the Italian tax authorities, taxpayers may opt to directly calculate the amount of qualifying income, indicating all necessary information for such determination in appropriate supporting documentation. "Directly used" means that the taxpayer uses the qualifying IP itself, without licensing it to other entities.
- Capital gain exemption: capital gains arising from the sale of qualifying IP will be totally exempted if at least 90% of the sale's consideration is reinvested, within the following two fiscal years, in the maintenance or development of another qualifying IP. The qualifying IP, as stated above, may be either self-developed or acquired
- OECD "nexus approach": the regime is in line with the OECD "nexus approach." The regime only applies to the amount of income derived from the qualifying IP, which is determined by applying the ratio of (1) R&D expenditures incurred by the taxpayer for maintaining/developing the IP, increased by part of the costs of the acquisition of the IP, if any, to (2) the total cost of producing that IP.

e. Special tax regimes

No specific rules are applicable.

12. OECD BEPS CONSIDERATIONS

Italy signed the MLI during the formal signing ceremony on 7 June 2017 but has not ratified the MLI yet. It is worth mentioning that Italy made the reservation provided in Article 35(7)(a) of the MLI according to which the entry into effect of the MLI occurs 30 days after the notification that Italy has completed "*its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement*".

As far as BEPS Action 6 is concerned, in the MLI Italy expresses its preference to apply PPT only, except for those tax treaties that already contain provisions that deny all of the benefits that would otherwise be provided where the principal purpose or one of the principal purposes of any arrangements or transactions, or of any person concerned with the latter was to obtain those benefits.

According to the PPT, a treaty benefit should be denied when one of the principal purposes of any arrangement or transaction was to obtain those benefits, unless it is established that granting such benefit would be in accordance with the object and purpose of the treaty provision.

- In addition, most of the recommendations provided by the other BEPS **Action Plans have already been introduced into Italian laws, such as:** (i) a digital service tax in line with the EU Directive Proposal; (ii) anti-hybrid mismatches rules in line with ATAD; (iii) CFC rules in line with ATAD; (iv) an interest limitation rule in line with ATAD; (v) a Patent box regime in line with BEPS Action 5; (vi) a new definition of permanent establishment in line with BEPS Action 7; (vii) mandatory disclosure rules in line with DAC6; (viii) country-by-country reporting obligations in line with Directive 2016/881; (ix) tax dispute resolution mechanisms in line with Directive 2017/1852.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

As a general rule, Italian companies must adopt Italian GAAP. Certain Italian companies, such as listed companies, banks, financial intermediaries, are obliged to adopt IAS/IFRS, while others, for example companies that prepare consolidated accounts, are only entitled.

According to the Italian GAAP, assets and liabilities of the merged entity must be recognised in the first financial statement at the values recorded in the accounts at the date that the merger becomes effective. If a merger deficit results, where possible it must be used to step up the book value of the transferred assets (in the limit of their market value) and the difference must be allocated to goodwill. If a merger surplus results, it must be booked in a specific either in a specific reserve of the net equity or in a specific provision for risks when it is linked to negative economic forecast.

In case of companies adopting IAS/IFRS, mergers between companies "not under common control" must be booked following the so called "acquisition method" (IFRS 3) according to which it must be identified an "acquiror" which should (i) measure the cost of the acquisition at fair value, (ii) allocate that cost to the acquired identifiable assets and liabilities on the basis of their fair values, (iii) allocate the rest of the cost to goodwill.

On the other hand, mergers between companies "under common control" should be booked following the so called "predecessor method" (IFRS 3) which involves accounting for the assets and liabilities of the acquired business using existing carrying values, as shown in consolidated financial statements.

With regards the contribution of a going concern, from an accounting standpoint, the receiving company should:

- book the assets and liabilities pertaining to the transferred going concern;
- record an increase of the net equity.

As far as the record of the net equity increase is concerned, it should be pointed out that it is not compulsory for the receiving company to book the whole increase to Share Capital since it has the option to book part of such increase to a "share premium reserve" fully available for the distribution.

The main issue to be faced by the receiving company is the identification of the correct value of the assets and liabilities pertaining to the going concern that should be booked in the mandatory accounting books.

Indeed, the ICC does not specify whether it is compulsory to book the going concern at the value resulting from the sworn report ("evaluation at fair value") or it is possible to take the accounting values as booked in the financial statement of the contributing company ("evaluation at cost").

In general, the assets and the liabilities could be booked for an amount at most equal to the value resulting from the sworn report. According to the predominant Doctrine, the receiving company could, alternatively, book the assets and liabilities pertaining to the going concern at fair value or at cost. In addition, it should be asked whether it is possible to book a goodwill if the value of the going concern is higher than the sum of the values of the single assets and liabilities transferred.

The Doctrine is unanimous to confirm that the beneficiary of a going concern contribution could also take into account the value of the goodwill. In the opposite case, when badwill comes to light from a contribution, such deficit should, first of all, reduce (increase) the value of the overestimated (underestimated) assets (liabilities) pertaining to the going concern and, later, should be booked in a specific provision for risks.

b. Divestitures

No specific rules are applicable.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

For tax purposes, dividends include the distributions of profits derived from the participation in the capital or equity of a company and the proceeds from domestic or foreign securities and financial instruments that are fully tied to the economic results of the issuer (or of other companies belonging to the same group as the issuer) that are fully not deductible in the computation of income of the non-resident issuer.

In addition, sums or the market value of assets received by shareholders in the event of withdrawal, reduction of excessive capital or liquidation of the company constitute dividends to the extent they exceed the tax basis of the participation held by the individual shareholder.

b. Substance Requirements for Recipients

Although no specific substance requirements are provided by law, great attention is paid by the Italian tax authorities to the real substance of foreign holding companies and in some cases to the application of the tax presumptions by which a foreign company may be deemed to be tax resident in Italy.

In Circular Letter no. 6/2016 the Italian tax authorities clarified that they may apply full domestic WHT on dividends or disallow the tax treaty exemption on capital gains if foreign intermediate holding companies have:

- a light organisational structure, do not perform a real activity and do not have any decisional autonomy from a substantial viewpoint; or
- a conduit financial structure regarding the transaction, in which a substantial correspondence between what is cashed in and out of the company is arranged.

In addition, it should be noted that the Italian Supreme Court decision no. 14756/2020 and the Italian tax authorities' resolution no. 88/2019 in interpreting the beneficial ownership requirement under the Interest and Royalty Directive made reference to the judgement of the Court of Justice of the European Union on the Danish cases (i.e joined cases C-115/16, C-118/16, C-119/16 and C-299/16).

Finally, please note that in certain cases foreign companies may be deemed to be tax resident in Italy. There is a rebuttable presumption according to which a foreign company is deemed to be tax resident in Italy if (i) the foreign company directly controls an Italian resident company and (ii) the foreign company is directly or indirectly controlled by Italian residents or its Board of Directors consists mainly of Italian resident individuals.

c. Application of Regional Rules

No specific rules are applicable other than those specified in the previous sections.

d. Tax Rulings and Clearances

Italian tax law provides for the following different typologies of tax ruling:

- General ruling. Taxpayers may file a tax ruling request if the interpretation of tax rules is unclear (interpello ordinario puro) or the correct qualification of a case is unclear (interpello qualificatorio). Moreover, taxpayers may file a tax ruling request in relation to the fulfilment of the conditions necessary for the application of specific tax regimes (interpello probatorio) or related to the application of the abuse of law provision to a specific case (interpello antiabuso) as well as in order not to apply specific anti-avoidance rules (interpello disapplicativo).
- International ruling. Taxpayers may file an international tax ruling request in order to conclude with the Italian tax authorities advance agreements in relation to: (i) transfer pricing; (ii) entry or exit values in case of transfer of residence; (iii) attribution of profits and losses to Italian or foreign permanent establishments; (iv) existence of an Italian permanent establishment; (v) tax treatment of income, such as dividends, interests, royalties or other items of income, paid to/received from non-resident companies.
- Ruling on new investments. Both resident and non-resident taxpayers that intend to make in Italy a new investment, which is equivalent to at least EUR 20 million and with a significant and long-lasting impact on employment may file a ruling request in order to obtain confirmation regarding the tax implications of their investment plan and the related extraordinary transactions. According to the ministerial implementing decree and the Circular letter no. 25/2016, the scope of the ruling may include for example: realisation of new economic activities or extension of the existing ones; diversification of the production of an existing business; restructuring of an existing business to overcome or to prevent a crisis; transactions involving the participation in an enterprise; leveraged buyout transactions.

Italy implemented Directive 2015/2376 regarding mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements.

15. MAJOR NON-TAX CONSIDERATIONS

No specific rules are applicable.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %*	Royalties %	Footnote Reference
Argentina	15	0 / 20	10 / 18	[1] [2] *
Australia	15	10	10	*
Austria	15	0 / 10	0 / 10	[1] [3] *
Belgium	15	15	5	*
Brazil	15	15	15 / 25	[4] *
Canada	5 / 15	10	5 / 10	[5] [6] *
Chile	5 / 10	5 / 15	5 / 10	[7] [8] [9]
China**	10***	10****	10*****	*
Colombia	NO TREATY			
Croatia	15	0 / 10	5	[1] *
Cyprus	15	10	0	[10] *
Czech Republic	15	0	0 / 5	[11]
Denmark	0 / 15	0 / 10	0 / 5	[1] [12] [13] *
Finland	10 / 15	0 / 15	0 / 5	[1] [14] [15] *
France	5 / 15	0 / 10	0 / 5	[13] [16] [17] *
Germany	10 / 15	0 / 10	0 / 5	[2] [7] [17] *
Greece	15	0 / 10	0 / 5	[1] [2] *
Hungary	10	0	0	
India	15 / 25	0 / 15	20	[1] [18] *
Indonesia	10 / 15	0 / 10	10 / 15	[1] [7] [19] *
Ireland	15	10	0	*
Japan	10 / 15	10	10	[20]
Luxembourg	15	0 / 10	10	[1] *
Malaysia	10	15	15	*
Malta	15	0 / 10	0 / 10	[1] [11] *
Mauritius	5 / 15		15	[7] *
Mexico	15	0 / 15	0 / 15	[1] [13] [21] *
Netherlands	5 / 10 / 15	0 / 10	5	[1] [22] *

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Jurisdiction	Dividends %	Interest %*	Royalties %	Footnote Reference
Norway	15	0 / 15	5	[1] [7] *
Philippines	15	0 / 10 / 15	25	[23] [25] *
Poland	10	0 / 10	10	[1] *
Portugal	15	0 / 15	12	[1] *
Puerto Rico	NO TREATY			
Romania	0 / 5	0 / 5	5	[1] [24]
Russia	5 / 10	10	0	[26]
Serbia	10	10	10	
Singapore	10	12.5	15 / 20	[2] *
Slovakia	15	0	0 / 5	[11]
Slovenia	5 / 15	0 / 10	5	[1] [7] *
South Africa	5 / 15	0 / 10	6	[1] [12] *
South Korea	10 / 15	0 / 10	10	[7] *
Spain	15	0 / 12	4 / 8	[1] [2] *
Sweden	10 / 15	0 / 15	5	[1] [27] *
Switzerland	15	12.5	5	
Turkey	15	15	10	
UK	5 / 15	0 / 10	8	[5] [17] *
USA	5 / 15	0 / 10	0 / 5 / 8	[17] [28] [29] *
Venezuela	10	0 / 10	7 / 10	[1] [2] *

*Many treaties provides for the 0% rate for certain types of interest, e.g. interest paid to the state, local authorities, central banl, credit institution or in relation to sales on credit. Such exemptions are not considered in this column but are highlighted with an apostrophe

** On 23 March 2019, the Chinese and Italian Governments signed a new agreement for the avoidance of double taxation and the prevention of fiscal evasion.

*** Under the new agreement, a 5% rate would apply when the recipient company directly holds at least 25 per cent of the capital of the distributing company and such a condition is met for a minimum holding period of 365 days. The current 10 per cent rate will continue to apply in all residual cases.

**** Under the new agreement, a 8% rate would apply in case the interest income is paid to financial institutions of the other State in relation to loans (i) having a minimum maturity of three years and (ii) destined to financing investment projects. The current 10 per cent rate will continue to apply in all residual cases.

***** Under the new agreement, a 10% rate would be applied only on 50 per cent of gross amount.

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Footnotes	
1	Interests - The 0% rate applies, inter alia, to interest paid by public bodies.
2	Royalties - The lower rate applies to copyright royalties.
3	Royalties - The higher rate applies if the recipient company owns more than 50% of the capital in the distributing company.
4	Royalties - The higher rate applies to trademarks.
5	Dividends - The lower rate applies if the recipient company controls directly or indirectly at least 10% of the voting power in the distributing company.
6	Royalties - The lower rate applies to royalties for computer software or any patent or information concerning industrial, commercial or scientific experience.
7	Dividends - The lower rate applies if the recipient company controls directly or indirectly at least 25% of the voting power in the distributing company.
8	Interests - The 5% rate applies to interest derived from loans granted by banks and insurance companies, bonds and securities regularly and substantially traded on a recognised securities market and qualifying sales on credit of machinery and equipment. The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
9	Royalties - The 5% rate applies to royalties for industrial, commercial or scientific equipment. The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
10	Dividends - The rate under the treaty, by virtue of a most favoured nation clause, may be reduced.
11	Royalties - The higher rate applies to royalties for patents, trademarks, etc., and industrial, commercial or scientific equipment, etc.
12	Dividends - The lower rate applies if the recipient company has owned at least 25% of the capital in the distributing company for at least 12 months.
13	Royalties - The lower applies to copyright royalties, excluding films, etc.
14	Dividends - The 10% rate applies if the recipient company owns directly more than 50% of the capital in the distributing company.
15	Royalties - The higher rate applies to royalties for films, patents, trademarks, and industrial, commercial or scientific equipment, etc.
16	Dividends - The 5% applies if the recipient company has owned at least 10% of the capital in the distributing company for at least 12 months.
17	Interests - The 0% rate applies to interest paid by public bodies and trade credits, and to interest arising from the sale of equipment.
18	Dividends - The lower rate applies if the recipient company owns at least 10% of the capital in the distributing company.
19	Royalties - The lower rate applies to equipment leasing and royalties for know-how.
20	Dividends - The lower rate applies if the recipient company has owned at least 25% of the voting shares in the distributing company for at least 6 months.
21	Interests - The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
22	Dividends - The 5% rate applies if the recipient company has owned more than 50% of the voting rights in the distributing company for at least 12 months. The 10% rate applies if it the recipient company has owned more than 10% of the voting rights in the distributing company for at least 12 months.

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Footnotes	
23	Interests - The 0% rate applies to interest on public bonds paid by public bodies. The 10% rate applies to interest on other public issues of bonds.
25	Royalties - The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
24	Dividends - The 0% rate applies to dividends derived from direct participations of at least 10% and a minimum holding period of 2 years is required.
26	Dividends - The 5% rate applies if the recipient company owns directly at least 10% of the capital in the distributing company and the value of the holding exceeds USD 100,000.
27	Dividends - The 10% rate applies if the recipient company owns directly at least 51% of the capital in the distributing company.
28	Dividends - The 5% rate applies if the recipient company has owned more than 25% of the voting stocks in the distributing company for at least 12 months.
29	Royalties - The zero rate applies to copyright royalties (excluding computer software, films, tapes, etc.). The 5% rate applies to patent royalties. The 8% rate applies to films, etc.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Starting from fiscal year 2016, tax assessments must be served by 31 December of the fifth year following the one in which the tax return was filed (e.g., 31 December 2022 in relation to fiscal year 2016). The statute of limitations is 7 years if no return was filed (e.g., 31 December 2024 in relation to fiscal year 2016).

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	Copy of Tax Audit reports (*Processi verbale di constatazione*)
4	Tax Due Diligence	General	Tax Assessments and similar (*Avvisi di accertamento, avvisi di liquidazione, irrogazione sanzioni, cartelle di pagamento etc.*)
5	Tax Due Diligence	General	Status of tax litigation including copies of Tax Court decisions
6	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
7	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements.
8	Tax Due Diligence	General	Transfer pricing documentation
9	Tax Due Diligence	General	If the Company has been involved in any extraordinary transactions (e.g. merger, acquisition etc.) company deeds, public deeds and tax clearances should be provided, together with a brief narrative description of the transactions. In particular, the description should describe the substance and economic purpose of the transactions in order to evaluate compliance with tax avoidance provisions.
10	Tax Due Diligence	General	Information and documentation related to any interest, royalties, and dividend paid to non-resident companies.
11	Tax Due Diligence	General	Details of dividends paid to the shareholder during the open FYs
12	Tax Due Diligence	General	Copy of rulings signed with the tax authorities, if any
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas.
14	Tax Due Diligence	General	Trial balance sheets
15	Tax Due Diligence	General	Financial statements

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No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Income tax	Tax returns (IRES)
17	Tax Due Diligence	Income tax	Tax returns (IRAP)
18	Tax Due Diligence	Income tax	Filing receipts of the tax returns -IRES
19	Tax Due Diligence	Income tax	Filing receipts of the tax returns - IRAP
20	Tax Due Diligence	Income tax	Payments receipts of the IRES and IRAP due
21	Tax Due Diligence	Income tax	Details of the transition from book income to taxable income for CIT purposes (positive and negative tax adjustments)
22	Tax Due Diligence	VAT	VAT returns
23	Tax Due Diligence	VAT	Please provide the "Liquidazioni periodiche IVA" forms
24	Tax Due Diligence	VAT	Filing receipts of the VAT returns
25	Tax Due Diligence	VAT	Payment receipts of VAT due
26	Tax Due Diligence	VAT	Schedules of monthly VAT due computation
27	Tax Due Diligence	WHT agent's return	Withholding tax returns (Modelli 770)
28	Tax Due Diligence	WHT agent's return	Filing receipts of the Withholding tax returns

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