



MERGERS AND ACQUISITIONS

# Italy

Taxation of Cross-Border  
Mergers and Acquisitions

2010 Edition

TAX

# Italy

## Introduction

Italian law has special regulations for mergers and acquisitions (M&A) 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 or IRES) and regional tax on productive activities (imposta regionale sulle attività produttive or IRAP). The IRES and IRAP rates were reduced in 2008 to 27.5 percent and 3.9 percent respectively (higher rates apply to banks, financial institutions, and insurance companies as well as to certain oil and gas companies).

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 September 2009.

Accounting and legal issues are outside the scope of this chapter, but some of the key points that arise when planning the steps in a transaction plan are summarized later in the chapter.

## Recent Developments

The following summary of Italian tax issues is based on current tax legislation and includes the amendments introduced by Law Decree no. 78 of 1 July 2009.

The last edition of this book commented on certain changes that were under discussion in parliament and are now in force. The main amendments refer to:

- deduction of interest expenses: the thin-capitalization and non-deductible interest ratio (pro rata) rules have been abolished and replaced by the new earnings stripping rules;
- contributions, mergers, and demergers: these transactions are normally tax-neutral even if, in certain cases, it is now possible to step up the tax basis of the assets acquired; and
- controlled foreign companies (CFC) legislation: the scope of these special anti-avoidance rules has recently been extended.

These important changes in the tax environment 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 types of structure 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 connected risk: as a general rule, the buyer of a business unit is jointly liable with the seller only for the tax liabilities of the year of acquisition (up to the acquisition date) and the two previous years. Specific warranties may be included in the sale and purchase agreement in order for the buyer to get an indemnity by the seller.

The liability of the buyer is, however, limited to the lower of:

- the value of the business unit acquired; or
- 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 does not face any tax risk as regards the business unit acquired.

In an asset deal, the book value of the assets acquired 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 value of the business unit sold. 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 three 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 base cost of the assets purchased. This means that the future effective tax rate of the buyer will generally be lower in an asset deal than in a share deal (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 will normally be acceptable for tax purposes provided it is commercially justifiable.

#### *Goodwill*

If the price paid exceeds the fair market value of the assets included in the business unit, the buyer may – subject to the impairment test – register this difference as goodwill in its accounts. The amortization of goodwill is normally tax deductible over 18 years (for IRES and IRAP purposes).

#### *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 upon a normal period of use, and is different for the various production sectors.

#### *Tax Attributes*

Tax losses and other possible tax attributes are not transferred through an asset deal. They remain with the selling company. However, tax losses may be used by the seller to offset any capital gain realized, no matter how the losses were generated.

#### *Value-Added Tax (VAT)*

According to Italian VAT law, the transfer of ownership of assets is not taxable if it amounts to the transfer of a business unit. The selling company should therefore not charge VAT when transferring a business unit.

It is the long-standing opinion of the tax authorities that a business unit is a group of assets functionally linked to each other and capable, as a whole, of carrying on an autonomous business activity.

#### *Registration and Cadastral Taxes*

The disposal of a business unit is normally subject to registration tax of 3 percent.

This tax rate is increased to 8 percent for real estate and 15 percent for agricultural land, if included in the business unit. In this case cadastral and mortgage taxes would also apply at a rate of between 3 percent and 4 percent, depending on the real estate transferred.

The tax base for registration tax purposes is the fair market value of the business unit transferred. Where different registration tax rates apply, any liabilities included in the business unit are allocated to the different assets on a pro rata basis, to quantify the tax base of each group of assets with the same tax rate.

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 beforehand, to be used as documentary evidence in the event of a tax assessment.

#### *Purchase of Shares*

In a share deal the capital gain realized by the selling company may be 95-percent exempt from tax, 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, after recent changes in the law it is now possible to step up the tax base of the target's underlying assets if, after closing, a merger between the acquisition vehicle and target company takes place. The step-up is possible provided that substitute taxes of 12 percent, 14 percent, and 16 percent of the value are paid, as explained in more detail later in the chapter.

#### *Tax Indemnities and Warranties*

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

#### *Tax Losses*

Tax losses may normally be carried forward for five years. However, if tax losses are incurred during the first three years, they may be carried forward indefinitely, provided they are generated in a new business activity (that is, an activity not previously carried on by another person, even unrelated). Losses may not be carried back.

Losses may not be carried forward if:

- the majority of the voting rights of the company are transferred; and
- 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 limitation, however, does not apply if the loss-making company had in the tax year preceding the transfer at least ten employees and gross revenues and personnel costs higher than 40 percent of the averages of the two previous years.

#### *Crystallization of Tax Charges*

If, due to a share deal, a tax consolidation regime is interrupted, the recapture of the following tax advantages may be triggered:

- the previously non-taxed difference between the accounting and tax value of capital gains arising from the sale of assets within the same tax group; and
- the deduction of interest expenses under the old pro-rata rule.

Both forms of tax relief were abrogated in 2008 and consequently the above issues will gradually disappear over the next few years.

#### *Pre-Sale Dividend*

In certain rare circumstances, involving companies only, the seller may prefer to realize part of the value of its investment as income by means of a pre-sale dividend. The rationale here is that the dividend may be subject to a lower effective rate of Italian tax, and reduces 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 EUR 168.

#### *Share for Share Deal (Contribution of a Significant Shareholding)*

Where an acquisition is effected by the purchase of shares in exchange for the issue to the seller of the purchaser's shares (that is, contribution of shares), the gain may be rolled over into the new shares, thus

enabling the seller to defer the Italian capital gains tax liability, according to the following rules.

This regime applies only if a significant shareholding is transferred, a significant shareholding being 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). Furthermore, both the seller and the purchaser should be Italian companies.

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

- the accounting value of the shares received by the seller (that is, the contributing company) in exchange for the contributed significant shareholding; or
- the accounting value of the significant shareholding in the accounts of the purchaser (that is, the receiving company).

If the transaction is performed at accounting value and both of the above values are therefore equal to the accounting 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 if the seller or the purchaser is an EU-resident company.

#### *Step-Up of Values after Merger*

Due to recent changes in the law, it is now possible to step up the tax base of the target's underlying assets if, after closing, a merger between the acquisition vehicle and the target company takes place. In this case, the step-up of the tax base of the underlying assets is possible provided that the following substitute taxes are paid:

- 12 percent on the first EUR 5 million of the higher amount;
- 14 percent on the next part up to EUR 10 million; and
- 16 percent on the part exceeding EUR 10 million.

### **Choice of Acquisition Vehicle**

There are several potential acquisition vehicles 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 EUR 168 registration tax would apply).

### **Local Holding Company**

An Italian holding company is typically used if the purchaser wishes to ensure that interest expenses are offset against the target's taxable profits either through tax consolidation or merger, in accordance with the new earnings stripping rules explained below.

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

- limited liability company (Srl); and
- joint-stock company (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 EUR 10,000.
- 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, but 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 (that is, in the form of receivables or any other asset with an economic value). In this case, the quotas corresponding to such 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 if 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 of 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 EUR 120,000.
- 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, but 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 (that is, 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. In large transactions an SpA might, therefore, 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, no withholding tax (WHT) applies on dividends distributed by the Italian target company, provided that the requirements indicated in the Parent-Subsidiary Directive are fulfilled.

### **Non-Resident Intermediate Holding Company**

If the foreign country taxes capital gains and dividends received, 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 may 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 Ventures**

Joint ventures are normally corporations in Italy, with the joint venture partners holding shares in an Italian company.

### **Choice of Acquisition Funding**

A purchaser using an Italian acquisition vehicle to carry out an acquisition for cash will need to decide whether to fund the vehicle with debt or equity, or even a hybrid instrument which combines the characteristics of debt and equity. The principles underlying these approaches are discussed later in the chapter.

### **Debt**

The principal advantage of debt is the potential tax-deductibility of interest, as the payment of a dividend does not give rise to a tax deduction. Another potential advantage of debt is the deductibility of expenses such as guarantee fees in 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 set. For this purpose, other companies within the group (both in Italy and abroad) may also be relevant (see Deductibility of Interest).

Normally, an Italian company is used as the acquisition vehicle, funding the purchase with debt either from a related party or directly from a bank.

### **Deductibility of Interest**

In the tax year 2008, the thin-capitalization and pro-rata non-deductibility rules were abrogated and a new tax regime was introduced (the earnings-stripping rule).

Under the new rules, 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 (that is, those exceeding interest income) accrued in such tax periods are less than 30 percent of each period's EBITDA.

For tax periods beginning on or after 1 January 2010, the portion of EBITDA not used up in 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 section on Group Consolidation), any non-deductible interest expenses (that is, 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 used up in the deduction of its own interest expenses.

Within a tax consolidation regime, for the purpose of computing the deductible amount of net interest expenses, the available EBITDA of controlled foreign companies (CFCs) may also be taken into account

### **Withholding Tax on Debt and Methods to Reduce or Eliminate**

As a general rule, interest payments to non-resident companies are subject to WHT of 12.5 percent. This rate is increased to 27 percent if the lender is resident in a black-list country.

The WHT may be reduced or eliminated under specific provisions included in double tax treaties (DTTs) and will not be levied on:

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

### **Checklist for Debt Funding**

- It is important to consider whether the level of profits would enable tax relief for interest payments to be effective.
- It is possible that a tax deduction may be available at higher rates in other territories.
- A WHT of 12.5 percent/27 percent applies on interest payments to non-Italian entities unless a lower rate applies under the relevant DTT or EU directive and advance approval is obtained

## Equity

A purchaser may use equity to fund its acquisition. An equity increase is normally subject to the EUR 168 registration tax.

Under domestic law, a WHT of 27 percent applies on 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 one of the countries in the European Economic Area. Furthermore, if the Parent-Subsidiary Directive requirements are met (such as EU parent company holding at least 20 percent of the shares for more than one year), no WHT applies on dividends paid.

Dividends are not deductible for Italian tax purposes.

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

- 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 deduction according to earnings-stripping rules; or
- there are non-tax grounds for preferring equity – such as for commercial reasons, it might be desirable to have a higher level of equity.

KPMG in Italy finally points out that, from a corporate income tax perspective, mergers, demergers, and contributions of business units are neutral transactions that do not trigger taxable income for the companies or their shareholders.

## Hybrids

Consideration may be given to hybrid finance; instruments treated as equity in the hands of one party and as debt (giving rise to tax-deductible interest) in the hands of the other. Various hybrid instruments and structures have been devised to achieve an interest deduction for the borrower with no income pick-up for the lender. However, recent legislative changes (see the new CFC legislation, in the section on Foreign Investments of a Local Target Company) have sought to deny the tax effectiveness of hybrid financing structures.

## 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 but normally 95 percent of capital gains realized by companies on the alienation of shares or financial instruments equivalent to shares are exempt from tax.

The above exemption applies if:

- the interest has been held from at least the first day of the 12th month preceding the alienation (the LIFO method applies);
- the interest is classified as a financial asset in the first financial statements closed after the acquisition; and
- at least since 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 black list.

### 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.

On the other hand, the demerger of a company is a transaction through which all or some of the businesses of a company are contributed to one or more other companies. The beneficiary companies may be newly incorporated or 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 business unit consists of a group of assets and liabilities constituting an independent business activity.

A sworn appraisal by a court-appointed expert (for Srls, the expert can be appointed by the contributing company) is a prerequisite for contributions of business units. 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 GAAP these transactions are normally recorded at accounting values, without generating any step-up. Italian companies, when preparing their financial statements, should in general use Italian GAAP, as set out in the Italian Civil Code and interpreted by the Italian Accounting Organization (OIC).

However, in many cases Italian companies choose IFRS for preparing their accounts. These accounting standards provide for a step-up of the accounting values of the assets involved in a business combination, if certain conditions are met.

Finally, a common issue of transaction structuring regards the rules on financial assistance. Broadly speaking, these establish that 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. It is necessary to evaluate these provisions 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; and
- the Italian subsidiaries are registered in the accounting books of the permanent establishment.

The main advantage of tax consolidation is that tax losses incurred by one or more companies of the group can be immediately offset against taxable income of other companies of the group. However, losses incurred before consolidation cannot be offset against 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 the Deductibility of Interest) and generated after a company's inclusion in the tax consolidation group, may be used to offset the taxable income of another company within the tax consolidation group if that other company's EBITDA has not been fully used up in 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 membership of the regime is optional, it is possible that not all the Italian subsidiaries potentially qualifying for tax consolidation will join the group. The domestic tax consolidation regime is irrevocable for a period of three years. Specific rules exist in case of interruption of the consolidation regime, that mainly may happen if the control requirement is no longer met or certain merger/de-merger transactions are performed during the three-year period.

Each consolidated company is liable for tax liabilities, penalties, and interest assessable by the tax authorities on its own 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, intercompany transfer pricing of transactions between multinational enterprises or, in certain cases, between Italian companies within the same tax group, must be at fair market value. This means that the price of each intercompany transaction, if it implies an increase of 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.

### **Foreign Investments of a Local Target Company**

Under CFC legislation, profits generated by foreign companies resident in black-list countries are fully taxed in the hands of the Italian parent company, even if not distributed, unless the Italian parent company is able to obtain a prior tax ruling issued by the tax authorities, proving one of the following:

- That the CFC carries out a real business activity as its main activity in the country where it is located (actual business activity test). For this purpose it is necessary to prove that the business activity of the CFC is mainly performed in the country where it is established (that is, the business activity should predominantly involve local customers and/or suppliers). CFCs performing financial, banking, and insurance activities should prove that most investments or revenues are generated in that country.
- That at least 75 percent of the CFC profits are generated and taxed in a country not on the black list (effective taxation test).

Recent changes in law have significantly widened the scope of CFC rules, by including an active income test whereby CFC rules also apply to foreign companies, wherever they are located, if more than 50 percent of their revenues derive from the following items:

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

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

However, the CFC rules may not apply if the Italian parent company is able to prove, by means of a prior tax ruling, that the foreign company is not an artificial structure aimed at achieving tax advantages.

### **Anti-Avoidance Rules**

Pursuant to the Italian Tax Assessment Code (Art. 37-bis of Presidential Decree no. 600/73), certain transactions often performed in the course of mergers and acquisitions may be considered as tax avoidance. In

such cases the tax authorities may disregard 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, and intra-group asset transfers under the consolidation tax regime.

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

Recent Supreme Court positions have strengthened the application of anti-avoidance rules.

## **Comparison of Asset and Share Purchases**

### **Advantages of an Asset Purchase**

- A step-up in the cost base of the assets is obtained and consequently higher depreciation/amortization is obtained (including goodwill).
- Previous tax liabilities of the seller are only partially transferred to the purchaser. In certain cases they may be fully eliminated.
- It is possible to acquire only part of a business.
- It may be possible for the seller to shelter the capital gain against its own tax losses carried forward, if any.

### **Disadvantages of an Asset Purchase**

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

### **Advantages of a Share Purchase**

- It is likely to be more attractive to the seller from a tax perspective (because the disposal may be partially exempt) and the price may, therefore, be lower.

- The buyer may benefit from tax losses of the target company.
- Lower transfer duties will usually be payable.

### ***Disadvantages of a Share Purchase***

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- The buyer effectively becomes liable for any claims or previous liabilities of the entity (including tax).
- No step-up in the cost base of assets purchased, including goodwill.

## Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest <sup>1</sup> (%)	Royalties <sup>2</sup> (%)
	Individuals, Companies (%)	Qualifying Companies <sup>3</sup> (%)		
Albania	10	10	0/5 <sup>4</sup>	5
Algeria	15	15	0/15 <sup>4</sup>	5/15 <sup>5</sup>
Argentina	15	15	0/20 <sup>4</sup>	10/18 <sup>6</sup>
Armenia	10	5 <sup>7</sup>	0/10 <sup>8</sup>	7
Australia	15	15	10	10
Austria	15	15	0/10 <sup>4</sup>	0/10 <sup>9</sup>
Bangladesh	15	10 <sup>10</sup>	0/10/15 <sup>11</sup>	10
Belarus <sup>12</sup>	15	15	0/- <sup>13</sup>	0
Belgium	15	15	15	5
Bosnia and Herzegovina <sup>14</sup>	10	10	10	10
Brazil	15	15	15	15/25 <sup>15</sup>
Bulgaria	10	10	0	5
Canada	15	15	0/15 <sup>4</sup>	0/10 <sup>5</sup>
China (People's Rep.)	10	10	10	10
Croatia <sup>14</sup>	10	10	10	10
Cyprus	15	15	10	0
Czech Republic	15	15	0	0/5 <sup>6</sup>
Denmark	15	0 <sup>16</sup>	0/10 <sup>4</sup>	0/5 <sup>17</sup>
Ecuador	15	15	0/10 <sup>4</sup>	5
Egypt	- <sup>18</sup>	- <sup>18</sup>	0/25 <sup>4</sup>	15
Estonia	15	5 <sup>10</sup>	10	5/10 <sup>19</sup>
Finland	15	10 <sup>20</sup>	0/15 <sup>4</sup>	0/5 <sup>5</sup>
France	15	5 <sup>21</sup>	0/10 <sup>22</sup>	0/5 <sup>5</sup>
Georgia	10	5	0	0
Germany	15	10	0/10 <sup>22</sup>	0/5 <sup>6</sup>
Ghana	15	5 <sup>10</sup>	10	10
Greece	15	15	0/10 <sup>4</sup>	0/5 <sup>6</sup>
Hungary	10	10	0	0
Iceland	15	5 <sup>21</sup>	0	5
India	25	15 <sup>10</sup>	0/15 <sup>4</sup>	20
Indonesia	15	10	0/10 <sup>4</sup>	10/15 <sup>23</sup>
Ireland	15	15	10	0
Israel	15	10	10	0/10 <sup>5</sup>
Ivory Coast	15	15	15	10
Japan	15	10	10	10
Kazakhstan	15	5 <sup>10</sup>	0/10 <sup>4</sup>	10
Korea (Rep.)	15	10	0/10 <sup>4</sup>	10
Kuwait	0/5 <sup>24</sup>	0/5 <sup>24</sup>	0	10
Latvia	15	5 <sup>10</sup>	10	5/10 <sup>19</sup>
Lithuania	15	5 <sup>10</sup>	0/10 <sup>4</sup>	5/10 <sup>19</sup>
Luxembourg	15	15	0/10 <sup>4</sup>	10
Macedonia	15	5	0/10 <sup>4</sup>	0
Malaysia	10	10	15	15
Malta	15	15	0/10 <sup>4</sup>	0/10 <sup>6</sup>
Mauritius	15	5	- <sup>18</sup>	15
Mexico	15	15	0/10 <sup>4</sup>	0/15 <sup>5</sup>
Montenegro <sup>14</sup>	10	10	10	10
Morocco	15	10	10	5/10 <sup>5</sup>
Mozambique	15	15	0/10 <sup>4</sup>	10
Netherlands	15	5/10 <sup>25</sup>	0/10 <sup>4</sup>	5
New Zealand	15	15	0/10 <sup>4</sup>	10
Norway	15	15	0/15 <sup>4</sup>	5
Oman	10	5 <sup>26</sup>	0/5 <sup>4</sup>	10

Country	Dividends		Interest <sup>1</sup> (%)	Royalties <sup>2</sup> (%)
	Individuals, Companies (%)	Qualifying Companies <sup>3</sup> (%)		
Pakistan	25	15	30	30
Philippines	15	15	0/10/15 <sup>27</sup>	25
Poland	10	10	0/10 <sup>4</sup>	10
Portugal	15	15	0/15 <sup>4</sup>	12
Romania	10	10	0/10 <sup>4</sup>	10
Russia	10	5 <sup>28</sup>	10	0
Senegal	15	15	15	15
Serbia <sup>14</sup>	10	10	10	10
Singapore	10	10	12.5	15/20 <sup>29</sup>
Slovak Republic	15	15	0	0/5 <sup>6</sup>
Slovenia <sup>14</sup>	10	10	10	10
South Africa	15	5	0/10 <sup>4</sup>	6
Spain	15	15	0/12 <sup>4</sup>	4/8 <sup>5</sup>
Sri Lanka	15	15	0/10 <sup>4</sup>	10/15 <sup>6</sup>
Sweden	15	10 <sup>30</sup>	0/15 <sup>4</sup>	5
Switzerland	15	15	12.5	5
Syria	10	5	0/10 <sup>31</sup>	18
Tanzania	10	10	12.5	15
Thailand	20	15	0/10/- <sup>32</sup>	5/15 <sup>5</sup>
Trinidad and Tobago	20	10	10	0/5 <sup>6</sup>
Tunisia	15	15	0/12 <sup>4</sup>	5/12/16 <sup>33</sup>
Turkey	15	15	15	10
Ukraine	15	5 <sup>34</sup>	0/10 <sup>4</sup>	7
United Arab Emirates	15	5	0	10
United Kingdom	15 <sup>35</sup>	5 <sup>35</sup>	0/10 <sup>22</sup>	8
United States	15	5/10 <sup>36</sup>	15	5/8/10 <sup>37</sup>
Uzbekistan	10	10	0/5 <sup>4</sup>	5
Venezuela	10	10	0/10 <sup>4</sup>	7/10 <sup>6</sup>
Vietnam	15	5/10 <sup>38</sup>	0/10 <sup>4</sup>	7.5/10 <sup>39</sup>
Zambia	15	5	10	10

## Notes

- Many treaties provide for an exemption for certain types of interest, such as 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.
- The rates apply to gross royalties paid.
- In general, the ownership of at least 25 percent of the capital in the Italian company is required for these reduced rates.
- The zero rate applies, inter alia, to interest paid by public bodies.
- The lower rate applies to copyright royalties, excluding films, etc.
- The lower rate applies to copyright royalties, including films, etc.
- The rate applies if the Armenian company has owned directly at least 10 percent of the capital in the Italian company for at least 12 months and the value of the holding exceeds USD 100,000 or its equivalent in other currency.
- The zero rate applies to interest paid by a public body and to interest from bank loans in general.
- The higher rate applies if the Austrian company owns directly more than 50 percent of the capital of the Italian company.
- The rate applies if the foreign company owns at least 10 percent of the capital of the Italian company.
- 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).
- The treaty concluded between Italy and the former USSR.
- The domestic rate applies; in some cases there is no limitation under the treaty.
- The treaty concluded between Italy and the former Yugoslavia.
- The higher rate applies to trademarks.
- The rate applies if the Danish company has owned directly at least 25 percent of the capital of the Italian company for at least 12 months.
- The lower rate applies to copyrights of literary, artistic, or scientific work, excluding royalties for software and films, etc.
- The domestic rate applies; there is no reduction under the treaty.
- The lower rate applies to equipment leasing.
- The rate applies if the Finnish company owns directly more than 50 percent of the capital of the Italian company.
- The rate applies if the recipient company has owned at least 10 percent of the capital of the Italian company for at least 12 months.
- The lower rate applies to interest on public bonds and trade credits, and to interest arising from the sale of equipment.
- The lower rate applies to equipment leasing and for information concerning industrial, commercial, or scientific experience.
- The higher rate applies if the Kuwaiti resident holds 75 percent or more of the capital of the Italian company.
- 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 owned more than 10 percent for at least 12 months.
- The rate applies if the Omani company (other than a partnership) owns directly at least 15 percent of the capital of the Italian company.
- The zero rate applies to interest on public bonds. The 10-percent rate applies to interest on other bonds.
- The rate applies if the Russian company owns directly at least 10 percent of the capital of the Italian company and the value of the holding exceeds USD 100,000 (or its equivalent in other currency).
- The higher rate applies to copyright royalties, including films, etc.
- The rate applies if the Swedish company owns directly at least 51 percent of the capital of the Italian company.
- The lower rate applies to interest on any loan granted by a bank.
- 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.
- The 5-percent rate applies to copyright royalties, excluding films, etc. The 16-percent rate applies to trademarks, films, etc., and equipment leasing.
- The rate applies if the Ukrainian company owns at least 20 percent of the capital of the Italian company.
- The rate applies if the U.K. company controls at least 10 percent of the voting power of the Italian company.
- The 5-percent rate applies if the U.S. 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 the U.S. company has owned at least 10 percent for at least 12 months, provided that not more than 25 percent of the gross income of the Italian company is derived from interest and dividends.
- The 5-percent rate applies to copyright royalties, excluding films, etc. The 8-percent rate applies to films, etc.
- The 5-percent rate applies if the Vietnamese company owns directly at least 70 percent of the capital of the Italian company. The 10-percent rate applies if the direct holding is at least 25 percent.
- The lower rate applies to royalties for technical services.

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