



Italian LBOS: Guidelines from the Tax Authorities shed light on several Tax issues

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On 30 March 2016, the Italian Revenue Agency issued detailed guidelines on certain significant and long-debated tax issues affecting Italian LBO and MLBO transactions (the "**Guidelines**").

The Guidelines are consistent with the recent efforts by the Italian government to promote a more favourable environment for international and domestic investors by, inter alia, removing uncertainties and clarifying the rules of the game.

Specifically, the guidelines address the following topics.

Deductibility of interest on acquisition debt

In the past few years, deductibility of interest incurred in respect of acquisition debt in LBO transactions has often been challenged by Italian tax authorities on several grounds (including abusive nature of the transaction; lack of connection of those interest expenses with the activity run by the target; transfer pricing issues).

The Guidelines clarify that interest on acquisition debt in LBO transactions is, as a general principle, deductible. Deductibility applies both at BidCo level (through tax consolidation) and, in the context of merger LBOs, at MergeCo level. There are however specific transactions (e.g., releverages with no change of control) where deductibility might be excluded.

Post-merger carry-forward of non-deductible interest expenses and operating costs incurred by BidCo (i.e losses, interest expenses, and non-deductible interest)

The carry forward of Bidco's Tax Attributes strictly connected with the LBO transaction through filing of the relevant ruling request is now more easily achievable since the Guidelines have clarified that LBO transactions are in principle not abusive.

Tax treatment of fees paid to PE funds by Bidcos and portfolio companies

The Guidelines provide, for the first time, a set of comprehensive rules on deductibility and

VAT treatment of the fees charged to Bidcos and portfolio companies.

Withholding tax within IBLOR structures and back-to-back financings

The Guidelines clarify the withholding tax treatment of a number of fronting arrangements, confirming inter alia the tax legitimacy of transparent IBLOR structures and indirect financings with tax-exempt beneficial owners.

Re-characterization of shareholder loans

The Guidelines set out the criteria on the basis of which shareholder loans would be re-characterized as equity for the purposes of non-deductibility and withholding tax treatment of interest.

Taxation of dividends and capital gains relating to MergeCo

The Guidelines gives criteria in relation to the application of exemptions/reductions under, treaties, EU Directives or domestic provisions applicable to EU intermediate vehicles when controlled by non EU ultimate investors. Adequate substance and not acting as pure financial conduits/pass-through vehicle would be key to obtain such regimes.

This note is a brief summary of the matters addressed by the Guidelines. If you are interested in obtaining more information or discussing any of the above, please contact:

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