

TAX

# MERGER LEVERAGED BUY-OUT TRANSACTIONS

*ITALIAN REVENUE AGENCY ALLOWS VAT RECOVERY  
ON SPV TRANSACTION COSTS*

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## 1. INTRODUCTION

On 12 February 2026, the Italian Revenue Agency issued **Resolution No. 7/2026**, clarifying the VAT treatment of transaction costs incurred in Italian merger leveraged buy-out (MLBO) transactions.

The document departs from the authority's previous restrictive interpretation. It confirms that a special purpose vehicle (SPV) - established to acquire a target company and subsequently merge into it - may, under certain conditions, recover VAT on legal, tax, financial and due diligence costs.

The clarification addresses a long-standing interpretative uncertainty affecting private equity investments and other debt-financed acquisitions.

## **2. THE PREVIOUS RESTRICTIVE APPROACH**

Historically, the Italian tax authority has denied SPVs the right to deduct VAT on transaction costs incurred in connection with acquisitions, relying on two main arguments.

First, under Article 4 of Presidential Decree No. 633/1972 (the “VAT Decree”), the mere holding of shares does not constitute an economic activity for VAT purposes. Because the SPV is typically incorporated only to hold the shares in the target company prior to the merger, it has generally been treated as a “static holding” lacking VAT taxable person status.

Second, the authorities have considered transaction costs to be directly connected with the acquisition of shares, which is a VAT-exempt transaction. Pursuant to Article 19(2) of the VAT Decree and Article 168 of Directive 2006/112/EC, input VAT attributable to exempt transactions is not deductible.

This interpretation has been expressly confirmed in Circular No. 6/E/2016 and in legal advice No. 17/2019, effectively turning VAT into a structural cost of acquisitions.

### **3. THE REASONING THE NEW INTERPRETATION**

Resolution No. 7/2026 reverses this approach by re-characterising the role of the SPV in MLBO transactions. The Revenue Agency now recognises that the SPV is not established merely to hold shares, but to implement a single integrated acquisition and merger transaction aimed at continuing the business carried on by the target company.

In support of this position, the Resolution refers to the Court of Justice of the European Union decision in Sonaecom SGPS SA (Case C-42/19). The Court held that investment expenses incurred for the purpose of starting a taxable economic activity already constitute an economic activity in themselves and therefore grant the right to deduct VAT.

Applying this principle, the Agency acknowledges that the acquisition phase may be preparatory to the carrying out of a taxable activity.

### **4. THE ITALIAN SUPREME COURT (*Corte di Cassazione*): MLBO AS A UNITARY TRANSACTION**

The Resolution expressly follows two Italian Supreme Court decisions (Nos. 22608 and 22649 of 9 August 2024). The Court described the typical MLBO structure - in which an SPV is incorporated, acquires the target through debt financing and subsequently merges with it - as a functionally linked process.

According to the Court, the SPV serves as a financing vehicle designed to enable the continuation and direct management of the target's business following the reorganisation. The acquisition of the target company therefore represents a preparatory phase of the economic activity that will be carried out after the merger.

On this basis, the Revenue Agency concludes that the SPV qualifies as a taxable person for VAT purposes, as a direct link exists between the transaction costs incurred by the SPV and the taxable transactions that will be carried out by the merged entity. VAT on advisory fees may therefore be deductible where such a functional link can be established.

## **5. EFFECTS OF THE RESOLUTION ON PREVIOUSLY COMPLETED MLBO TRANSACTION**

With regard to merger leveraged buy-out transactions completed in previous years, Resolution No. 7/2026 does not provide any indication as to whether the tax authority may discontinue pending tax litigation. Likewise, it does not expressly address the recovery, by taxpayers, of VAT prudently not deducted by SPVs where the statutory time limit for deduction has expired under Article 19 of Presidential Decree No. 633/1972.

Under Article 19 of VAT Decree 2, the right to deduct VAT must be exercised no later than in the VAT return relating to the year in which the right arose.

In such circumstances, taxpayers may generally consider either:

- filing an amended VAT return in their favour (pursuant to Article 8, paragraph 6-bis, of Presidential Decree No. 322/1998) by 31 December of the fifth year following the year in which the original VAT return - where deduction was not exercised - was submitted; or
- submitting a refund claim for the non-deducted VAT pursuant to Article 30-ter of Presidential Decree No. 633/1972 within two years from the date the tax was paid or, if later, from the date on which the right to repayment arose.

Since the publication of the Resolution itself may be regarded as the event giving rise to the right to recover of not deducted VAT by the SPV, the filing of a refund claim (by 13 February 2028) may be considered for those acquisition transactions for which the deadline for filing an amended VAT return has already expired.

## **6. CONCLUSION**

The Resolution removes a significant element of uncertainty that had long characterised the VAT recovery of transaction costs in merger leveraged buy-out transactions.

The clarification is particularly relevant in the private equity sector, but also in management buy-outs and family buy-outs, where the acquisition vehicle represents a preparatory instrument for the investment and for the subsequent integration with the target company's business.

The clarification is further supported by the recent introduction of Article 177-ter of the Italian Income Tax Code (Presidential Decree No. 917/1986). Under this provision, limitations on the carry-forward of tax losses and excess non-deductible interest - elements typically arising at the level of the acquisition vehicle in post-acquisition mergers following the acquisition of legal control of the target company - are not applied by operation of law.

The combined effect of these measures reduces the degree of uncertainty traditionally associated with the costs connected to the acquisition of a controlling shareholding.

With this in mind, private equity funds and investors should promptly review their past MLBO structures to assess whether they are eligible to file refund claims or amended returns before the statutory deadlines expire.

For any clarifications or assistance regarding these requirements, please do not hesitate to contact our firm.