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Italian Court of Cassation confirms deductibility of VAT on transaction costs in MLBO transactions

With decision no. 22608/2024, the Italian Court of Cassation confirms the deductibility of VAT on transaction costs incurred by the SPV in the context of merger leveraged buy-out (MLBO) transactions.

In general, passive entities set up for the sole purpose of holding equity interests in other entities are not allowed to deduct VAT on costs since (i) such entities cannot be considered as carrying on a business activity per se and (ii) the relevant costs cannot be linked to actual taxable activities carried out by the same entities.

In the past the Italian tax authorities took the view that the SPVs set up in the context of MLBO transactions were merely passive holding companies with the consequence that VAT on costs was not deductible.

The decision of the Court of Cassation (confirming the position taken a number of lower court decisions) take the opposite view.

In particular, in the view of the Court of Cassation the activity of the SPVs cannot be qualified as a mere passive holding but rather as an active business one since they carry on activities preparatory to those that will be carried on by the entity resulting from the merger between the SPV and the target company. From a VAT perspective, the decision implies that VAT on costs incurred in connection with MLBO transactions is deductible in accordance with general principles.

The decision is a positive precedent as it will facilitate the structuring of MLBO transactions.

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