INTERNATIONAL TAXATION PRACTICE GROUP (ITPG)

Domestic tax consolidation between sister companies

Italy: Horizontal tax consolidation

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In order to prevent an infringement of the European principles of non-discrimination and freedom of establishment, the Italian government introduced important changes to the domestic tax consolidation rules.

Starting from the fiscal year 2015, foreign parent companies resident in EU or in countries with an effective information exchange with Italy can consolidate the taxable income and losses of their Italian subsidiary companies without the need for any holding or sub-holding entity in Italy (the parent company must hold more than 50% of the share capital of the consolidated entities).

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For the application of the domestic tax consolidation, the foreign parent company has to designate one of the Italian subsidiary companies as a consolidating entity for all Italian companies. This allows for the consolidation of Italian taxable income and losses of the group companies without the need for any holding entity in Italy.

Holding investments in Italian companies directly could also allow the foreign investor to benefit from capital gain provisions set out by most of the bilateral tax treaties concluded by the Italian government, which are much more favourable than the Italian domestic tax rules.

Pursuant to the tax treaty, the capital gain resulting from the sale of shares is taxable only in the seller's country of residence, regardless of the nature of the company whose shares are being sold. Conversely, the application of the participation exemption pursuant to the Italian domestic tax rules is not permitted for the sale of shares in real estate companies.

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