FYI GGi GLOBAL ALLIANCE

VAT deductibility of transaction costs in MLBO transactions

Federico Piccolo

VAT deductibility of transaction costs in MLBO transactions

by **Federico Piccolo**

Federico Piccolo is a chartered accountant and legal auditor. He is experienced in tax and corporate consulting for industrial and commercial enterprises, with specific expertise in VAT and international tax advising for foreign companies with subsidiaries and branches in Italy. **Contact Federico**.

In merger leveraged buy-out (MLBO) transactions, special purpose vehicles (SPVs) are specifically incorporated to facilitate this particular type of deal. They serve as the vehicle through which the resources necessary to acquire the target company are raised, with the ultimate aim of directly managing the target's business and implementing the economic and financial structure of the transaction.

Accordingly, the activities carried out and the costs incurred by the SPV are intended to enable the continuation and direct management of the target company's business following the operational and financial reorganisation implemented through the overall MLBO transaction, which is completed by the pre-arranged merger between the acquisition vehicle and the target.

Consequently, transaction costs should not be regarded as costs incurred by a passive holding company, but rather as the SPV's initial investment expenses, preliminary and preparatory to the carrying on of the taxable economic activity that will be performed following the acquisition of the target company and the merger. As such, they give rise to the right to deduct the input VAT incurred.

The Court of Justice of the European Union (CJEU), in its judgment of 12 November 2020 in Case C-42/19 (*Sonaecom SGPS SA*), addressed the issue of VAT deductibility in relation to transaction costs arising from consultancy services received by a mixed holding company

for the purpose of acquiring shareholdings in another company.

On that occasion, the CJEU clarified that "any person who has the intention, as confirmed by objective evidence, of independently starting an economic activity and who incurs the initial investment expenditure for those purposes must be regarded as a taxable person".

More specifically, VAT taxable person status cannot be attributed to a "static" holding company whose activity merely consists "in acquiring holdings in undertakings without direct or indirect involvement in the management of those undertakings". It must instead be recognised in the case of a "mixed" holding company, namely a company which, alongside its activity of holding shareholdings, provides taxable services to its subsidiaries, and, precisely for that reason, carries on an economic activity.

The misalignment between Italian administrative practice and EU principles led the Italian Association of Chartered Accountants (AIDC) to lodge, in June 2025, a complaint with the European Commission for infringement of Article 258 TFEU. The AIDC alleged a breach of EU law and requested the opening of infringement proceedings, since Italy had failed to comply with the principles laid down in Directive 2006/112/EC. At the same time, it was not possible to challenge, and it was risky to disregard, the interpretative documents issued by the Italian Revenue Agency. Subsequently, Italy has aligned itself with EU Law Resolution No. 7 of 12 February 2026.

Sofiae SOLIDORO FINULLI & PARTNERS

GGI member firm
Sofiae - Chartered Accountants & Lawyers
Milan, Italy
T: +39 02 5519 3413

Advisory, Auditing & Accounting, Corporate Finance, Tax

Sofiae Chartered Accountants & Lawyers' cornerstone is the professional collaboration between chartered accountants and lawyers and offers its clients complete and inter-disciplinary services related to accounting, corporate and tax services, in the legal area and referring to business area, corporate restructuring and bankruptcy. Sofiae Chartered Accountants & Lawyers is based in Milan and provides integrated services to individuals, private and public companies as well as non-profit organisations.