

MERGER LEVERAGED BUY-OUT: VAT DEDUCTION FOR TRANSACTION COSTS

AIDC Milan Section complaint and subsequent closing by the European Commission

- ✓ The Italian Association of Chartered Accountants, Milan Section (“IACA”), filed a complaint (No. 17 of June 20, 2025) with the European Commission for violation of European Union law regarding the deduction of VAT on transaction costs in Merger Leveraged Buy-Out (“MLBO”) transactions.
- ✓ According to the IACA, the denial of the right to deduct VAT on these costs conflicts with the principles established by EU courts, with established interpretations of European legislation on the matter, and with recent case law. For this reason, the IACA asked the European Commission to assess the merits of the complaint and, if so, to initiate infringement proceedings against Italy. However, the Commission decided to dismiss the complaint, considering that the taxpayer is adequately protected, given that the Italian Supreme Court (Corte Suprema di Cassazione) has recognized the deductibility of VAT on these costs.
- ✓ In particular, according to the IACA, the case examined and brought to the attention of the European Commission highlights how the position adopted by the Italian Tax Authorities (*ex multis*, circular letter No. 6/E of 2016) – which denies the deduction of VAT on transaction costs incurred in MLBO transactions – is in conflict with the principles of EU law, particularly the principle of fiscal neutrality. This approach unjustifiably limits the right to deduction, resulting in an incorrect transposition of European legislation, an alteration of the functioning of the European single market, and a distortion of competition, with a consequent infringement of the fundamental rights guaranteed by the EU.
- ✓ The European Commission issued a *pre-closure letter*, closing the infringement procedure, but providing reasons that essentially recognize the IACA's requests. In particular, the Commission, referring to the words of judgments of the Italian Supreme Court No. 22608/2024 and No. 22649/2024 (according to which VAT due or paid by the SPV, if related to purchases of goods and services for the purpose of carrying out the MLBO transaction, is in principle deductible if the company resulting from the merger with the so-called target company qualifies as a VAT taxable person and, in turn, enjoys the right to deduct the tax), recognized that this approach of national case law is in line with the consolidated case law of the EU Court of Justice, thus confirming the correctness of the interpretation and therefore proposing that the procedure be closed.