



Tax consolidation : Conditions and regimes in France, Italy and Germany

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Summary

I- Conditions and effects of the French tax consolidation regime

II- Conditions and effects of the Italy tax consolidation regime

III- Conditions and effects of the Germany tax consolidation regime

IV- Comparative study

Conditions and effects of the French tax consolidation

A- General

Conditions :

- All group member companies must be subject to corporate tax in France
- This fiscal years of all group member companies must coincide
- The group is based on shareholdings, which can be direct or indirect

1. Conditions specific to the parent company

The company must not be 95% owned by another company subject to corporate tax.

However, a temporary and justified excess during the fiscal year is allowed.

 **Exception**: A company can become a parent if its capital is indirectly held at least 95% by another company subject to corporate tax if it is (i) through a company not subject to corporate tax (foreign or partnership) or (ii) through a company subject to corporate tax, provided it is not held at least 95%, directly or indirectly, by this other company.

2. Conditions specific to subsidiaries

Subsidiaries must be at least 95% owned by the parent company, with 95% of dividend rights (financial rights) and 95% of voting rights (political rights).

→The ownership of shares must be in full ownership

→Ownership can be direct or indirect

Indirect through a group member company.

Indirect “Papillon” through a foreign company that meets the conditions.

→Ownership must be maintained throughout the entire fiscal year.

B- Effects

1- Determination of the consolidated taxable Income

→ Consolidated taxable income = individual taxable results of the groupe entities.

→ Deficit of a subsidiary = the parent company is entitled to utilize these losses in the overall result.

2- Treatment of intra-group dividends

→ French parent-subsidiary = 5% taxed at 25% or 15%.

→ French parent-subsidiary + consolidation tax = 1% taxed at 25% or 15%.

3- Intra-group neutralization and adjustments

→ Intra-group provisions

At the **individual level**, entities within the group may record provisions or reversals of provisions for transactions involving other group members.

At the **consolidated level**, these intra-group provisions are neutralized.

- ⚠ Reversals of provisions are also neutralized, **except** in the following cases:
- If the company concerned is no longer integrated at the time of the provision's reversal;
 - If the provision was recorded before the company joined the tax consolidation regime.

→ Intra-group Capital Gains on fixed assets

Intra-group capital gains arise when a company sells a fixed asset or shares to another company within the same tax group. These gains are subject to tax at either:

- The standard corporate tax rate, or
- The long-term capital gains rate (for qualifying equity investments).

The tax consolidation regime provides for neutralization of capital gains and losses arising from intra-group transfers of fixed assets.

 However, this neutralization does **not mean exemption** (the deferred gain or loss will become taxable in the future when the asset is transferred outside the group).

→ Financial Expenses

A **limitation on the deduction** of net financial expenses applies under the tax consolidation regime.

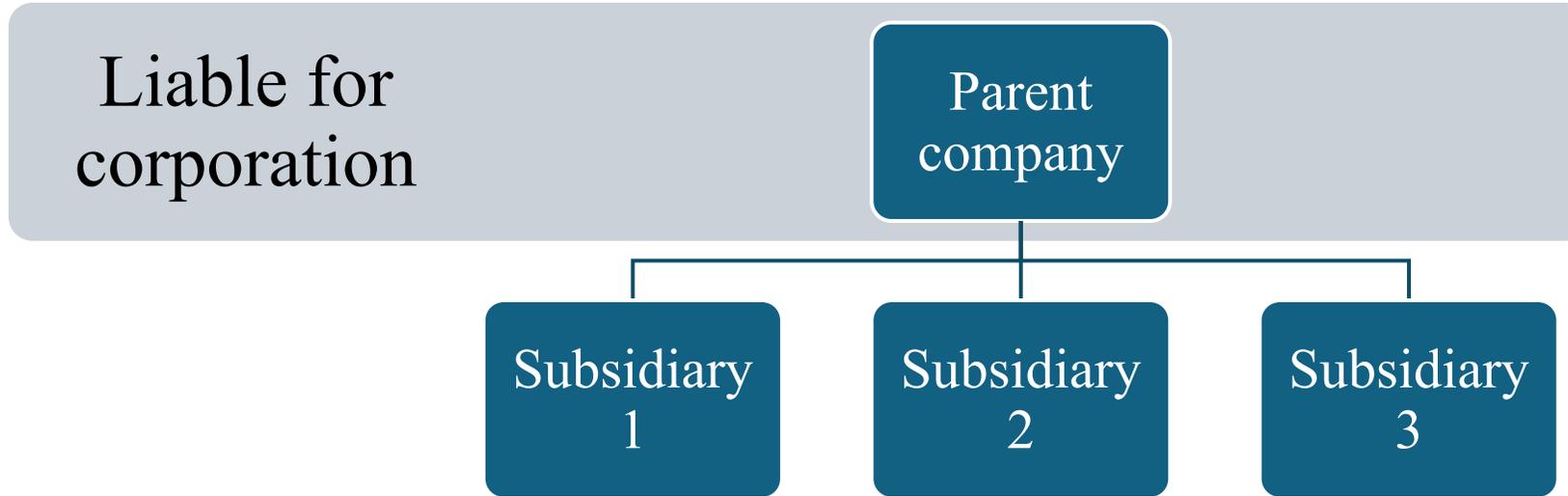
Any portion of financial expenses exceeding the applicable deduction cap must be added back to the group results

The “Charasse” Amendment

A specific limitation applies to the deductibility of interest expenses incurred on loans used to finance the acquisition of a company within the tax group.

 = (Group’s financial expenses X Acquisition price of shares) / Average amount of group debt

4- Taxation of the Consolidated Result



The other entities in the group remain jointly and severally liable for the tax payment

- ⚠ If the group reports a taxable profit, the standard corporate income tax rules apply:
 - 25% standard corporate tax rate.
 - 15% reduced rate for SMEs

5- Utilization of Tax Losses

Loss carryforward :

- The consolidated tax loss can be carried forward indefinitely.
- 1 million + 50% of taxable income exceeding €1 million.

Loss carryback :

- The carry-back option allows a group to offset its consolidated tax loss against the previous year's taxable profit, up to a limit of €1 million.

Group VAT and Extended VAT Base: A Step Towards Tax Integration

Group VAT, which allows companies within the same group to be considered as a single taxable entity.

The extension of the VAT base, which aims to eliminate some exemptions and harmonize rates.

About Group VAT

How Does It Work?

- A single VAT declaration is submitted for the entire group.
- Internal transactions between group companies are exempt from VAT.

Conditions to Benefit from This Regime

1. The parent company must hold at least 50% of the capital of the group members.
2. Only companies subject to VAT can be part of the group.
3. The regime is optional: once chosen, it applies for a minimum period of three years.

About Group VAT

Advantages of Group VAT

- ✓ Simplified administration, as only one declaration is required.
- ✓ Improved cash flow management.
- ✓ Tax optimization, by offsetting VAT credits from one company with VAT collected by another.

Limitations of Group VAT

- ✗ Joint tax liability
- ✗ Loss of deduction rights

About Extended VAT Base

- The standard rate (20%) applies to most goods and services.
- The intermediate rate (10%) applies to restaurants and transport.
- The reduced rate (5.5%) applies to essential goods, such as food and energy.
- The super-reduced rate (2.1%) applies to reimbursed medicines and the press.

The idea of an extended VAT base aims to reduce exemptions and apply a more uniform rate.

About Extended VAT Base

Challenges of Extending the VAT Base : It could increase prices for certain goods and services that are currently exempt or taxed at reduced rates.

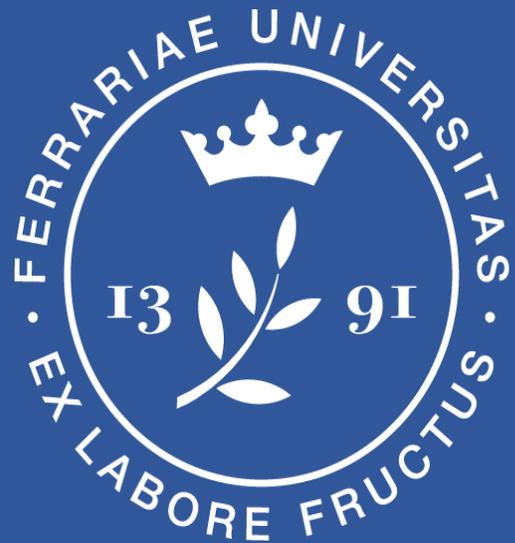
Link with Tax Integration and Future Perspectives

Like Group VAT, tax integration is based on capital links between companies. To benefit from it:

- The parent company must own at least 95% of the integrated subsidiaries.
- In return, it can neutralize intra-group transactions and consolidate results, optimizing corporate tax.

Thus, tax integration, Group VAT, and the extended VAT base share the same objective:

- ✓ Facilitating tax management for businesses.
- ✓ Ensuring better tax revenue for the state.



**University
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THE ITALIAN LEGAL FRAMEWORK ON TAX CONSOLIDATION REGIMES

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Université Jean Moulin Lyon 3

Valeria Bonsignore
Università degli Studi di Ferrara

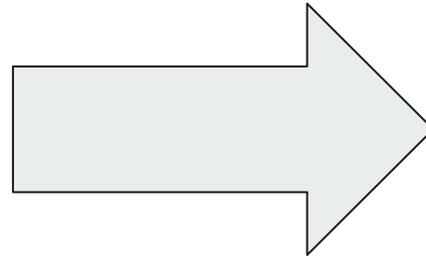


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HISTORICAL OVERVIEW

BEFORE 2003

- No general rules for group taxation



AFTER 2003

- Two alternative optional regimes:
- Tax transparency regime
 - Tax consolidation regime

After 2003, the Italian group taxation system is more in line with other European countries, such as France and Germany

TAX CONSOLIDATION REGIMES: SOURCES OF LAW

Arts. 117-142 ITC (Income Tax Code)*

Arts. 117-129

Domestic Tax Consolidation

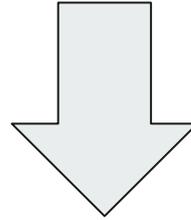


Arts. 130-142

Worldwide Tax Consolidation

*Income Tax Code: Presidential Decree no. 917/1986

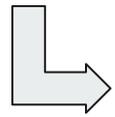
DOMESTIC TAX CONSOLIDATION REGIME: DEFINITION



Optional tax regime which allows the consolidating entity to determine the taxable base of the group as *the sum of all taxable income and losses* of the companies included in the tax group regime (so-called “consolidated entities”)

DOMESTIC TAX CONSOLIDATION REGIME : SUBJECTIVE REQUIREMENTS

Pursuant to art. 117 ITC, the **consolidating** entity must be one of the entities listed in art. 73, para. 1, lett. a) and b) of the ITC:

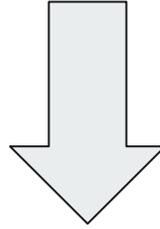


An Italian tax resident company or other commercial entity

If it is NOT an Italian tax resident entity, two additional requirements have to be met:

- 1) it must be tax resident in a State which has entered into a double tax treaty with Italy
- 2) it must carry out business activities in Italy with a permanent establishment

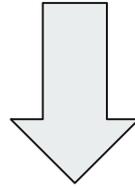
EXCEPTIONS: art. 126 ITC



The election for the group consolidation regime is not allowed if:

- 1) the entity benefits from a reduced corporate income tax (*IRES*) rate
- 2) the entity is subject to insolvency proceedings (e.g. bankruptcy)

DOMESTIC TAX CONSOLIDATION: OBJECTIVE REQUIREMENTS



- “**Legal control**”: the consolidating entity must hold, directly or indirectly, more than the 50% of the share capital of the consolidated entities (art. 2359, para.1, no.1) of the Italian civil code)
- The control must be exercised from the **beginning of the tax period** which the option is made for
- All of the companies opting for the consolidation regime must have the **same fiscal year-end**

The legal control can also be exercised **indirectly**, but the consolidating entity must hold more than the 50% of the shares, according to a demultiplier method

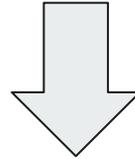


A indirectly controls C: it holds a participation in C of 56% (i.e. 80% of 70%)

WORLDWIDE CONSOLIDATION

arts. 130-142 ITC

The consolidating entity can elect for **worldwide** consolidation.

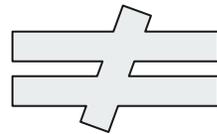


The taxable basis of the consolidating entity includes the income of the consolidated, which is NOT an Italian tax resident entity

The **consolidating** entity:

- 1) must be listed on the Italian Stock Exchange
- 2) must be controlled - pursuant to art.2359, para.1, no.1) and 2) of the civil code - by natural persons who do NOT control other companies or commercial entities

The election for the **domestic** consolidation regime is irrevocable for **3** fiscal years and is deemed to be renewed automatically (for 3 more fiscal years) at the end of such period, unless expressly revoked.



The election for the **worldwide** consolidation regime is irrevocable for **5** fiscal years and is deemed to be renewed automatically (for 3 more fiscal years) at the end of such period, unless expressly revoked.

COMPLIANCE ASPECTS

DOMESTIC CONSOLIDATION

It is **not** required for all the companies in the group to jointly elect for the tax consolidation regime (no “*all in-all out*” rule)



It is sufficient a “**couple election**”: at least the consolidating and one consolidated entity (from a civil law perspective, the entities are entering into a tax consolidation agreement)

WORLDWIDE CONSOLIDATION

Only the consolidating entity must elect for consolidation



The option must be exercised for all the foreign companies belonging to the group (“*all in-all out*” rule)

In both cases, the option is exercised by filling in the “CNM” module, electronically submitted to the Italian Tax Authorities



The option for the consolidation regime does NOT exempt the consolidated entities from the duty to submit their own tax return to the Italian Tax Authorities



The **consolidating** entity is responsible for the payment of a tax amount determined on the basis of the global income of the group



The **consolidated** entity is responsible only for the payment of the tax amount directly related to the income it produced



In case of tax assessment, both the consolidating and the consolidated are jointly liable for the payment of:

- 1) the higher tax assessed by the Italian Tax Authorities
- 2) the interests
- 3) the sanctions

ADVANTAGES

The main advantage is the possibility to **offset** the income and losses among the companies belonging to the same group

In the **ordinary regime** (no consolidation), tax losses of previous fiscal years can be carried forward and used only by the same company which produced those losses

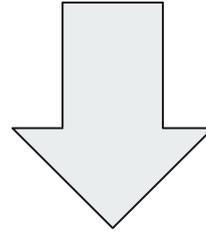


In the **consolidation regime**, the tax losses of a company can be “transferred” to another company of the group which produced an income, in order to reduce the taxable basis

AN EXAMPLE...

	COMPANY A	COMPANY B	CONSOLIDATION REGIME	ORDINARY TAX REGIME FOR "A"	ORDINARY TAX REGIME FOR "B"
INCOME	100	(No income)			
LOSSES	(No losses)	(30)			
TAXABLE BASIS			70	100	(30)
TAX AMOUNT			16,8	24	0

“VAT-GROUP”

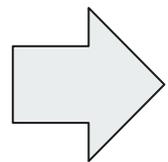


Art.70-bis, Presidential Decree no.633/1972

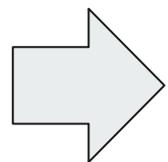
*“Taxpayers established in the territory of the state engaged in business, art or profession, for which the financial, economic and organizational requirements referred to in Article 70-ter are jointly met, may become a **single taxpayer**, hereinafter referred to as a “VAT group.”*”

REQUIREMENTS (art.70-ter)

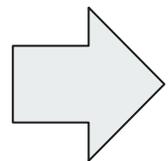
The possibility to create a VAT group is reserved to companies bound by the following financial, economic and organizational link:



Financial link: common control, through a direct or indirect participation granting 50% or more of voting rights (this requirement is satisfied even if the common controlling party is based in a foreign country with which an exchange of information instrument is in force with Italy)

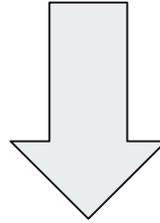


Economic link: same core business and economic activities, or, alternatively, activities complementary, ancillary and auxiliary with respect to the other group members



Organizational link: coordination between the decision making bodies of the involved entities

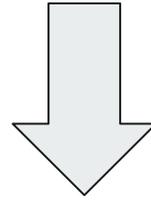
CREATION OF THE VAT-GROUP (Art. 70-quater)



*“The VAT group is formed as a result of an **option** exercised by **all** taxpayers established in the territory of the state for whom the financial, economic and organizational requirements referred to in Article 70-ter are jointly met.”*
(“all in-all out” rule)

VAT GROUP LIQUIDATION

Art. 73, Presidential Decree no.633/1972 and Ministerial Decree 13
December 1979

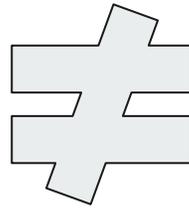


Italian resident companies belonging to the same group may opt for a **special VAT regime** pursuant to which periodic VAT payments and the year-end payments are made by the parent company which determines the VAT to be paid or the VAT credits as the sum of the VAT positions of each company included in the VAT group liquidation

KEY DIFFERENCE

VAT GROUP

The companies included in the group become a **single taxpayer**



VAT GROUP LIQUIDATION

The companies opting for the VAT group liquidation regime maintain their **autonomy**

Tax Consolidation: Conditions and Regimes in Germany



Pres

Vera Wenker & Katharina Krützmann

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1. Introduction

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II. Value Added Tax – Group Taxation

III. Overview and comparison

Corporate Tax - Introduction

.Subject:

- all resident corporations (unlimited liability)
- non-resident entities earning German-sourced profits (limited liability)

.Tax rate (corporate level)

- Corporate Income Tax: 15%
- Local Business Tax / Trade Tax: \approx 15%
- Additional taxation on shareholder level (dividend payments or capital gains)

Corporate Tax – Group Taxation: Idea behind the „Organschaft“

- Aims at an intragroup loss compensation
- background: principle of separability
- Avoiding double taxation of the distribution of earnings

Corporate Tax – Group Taxation: Requirements

- I. Parent Company („Organträger“)
- II. Subsidiary („Organgesellschaft“)
- III. Majority Interest
- IV. Profit Transfer Agreement

Corporate Tax – Group Taxation Requirements:

I. Parent Company („Organträger“)

- Natural person
- Legal persons that are not exempt from corporate tax
- Commercial partnerships
- Potentially: legal subjects that have been founded under foreign law

Corporate Tax – Group Taxation Requirements:

II. Subsidiary („Organgesellschaft“)

- Societas Europaea (SE), stock companies or partnerships limited by shares
- Potentially: corporate entities that were established under foreign law
- Place of management in Germany
- Legal seat in the EU or EEA

Corporate Tax – Group Taxation Requirements:

III. Majority Interest / financial integration

- Parent company must own the majority of voting rights
- .In the subsidiary
- .Or in the intermediary company
- Ability of the parent company to enforce its decisions

Corporate Tax – Group Taxation Requirements:

IV. Profit Transfer Agreement

1. Formal legal requirements

- .Written form
- .Approval of the annual general meeting
- .Entry in the commercial register

2. Material requirements

- .Subsidiary: is obliged to transfer its profits and losses to the parent company
- .Parent company: must offset losses made by the subsidiary

Corporate Tax – Group Taxation: Consequences

- .Attribution of the income of the subsidiary to the parent company
- .Intragroup loss compensation
- .Both the parent company and the subsidiary are personally liable to tax, but the income of the controlled company is 0€
- .Intra-group profits are subject to tax, e.g.: loans, transfer of assets
- .No taxation of dividend distribution (if the dividend is distributed from one corporation to another corporation)
- .Protection of Minority shareholders: Compensatory payment (annually)

Corporate Tax – Group Taxation: Termination

- When the aforementioned requirements are no longer met
- Differentiation between termination after and before the mandatory minimum duration of five years
- Defective transfer profit agreement
 - Transfer of profits = hidden profit distribution
 - Offset of losses = constructive equity contribution

Corporate Tax – Group Taxation: Advantages & disadvantages

Advantages	Disadvantages
Offsetting of losses incurred by the subsidiary at the parent company	The limited liability protection for losses in the subsidiary is waived
Thin capitalization rules do not apply	Requirement for a minimum five-year-period for the profit transfer agreement
5% tax on dividends is avoided	

Value Added Tax – Group Taxation Requirements:

I. Financial link

- Majority of voting rights (more than 50%)
- Decisions can be enforced in the controlled company

II. Organizational integration

- Deviating formation of will at the subsidiary has to be excluded
- Differentiation between complete personal union, partial personal union and no interlocking of the management

III. Economic integration

- If there are not insignificant economic relations between the

Value Added Tax – Group Taxation

Consequences & termination

.Consequences:

- The controlled company is not to be regarded as independent
- The parent company is regarded as the entrepreneur & tax debtor
- Intercompany sales are no longer subject to VAT

.Idea & advantages:

- To simplify complex structures. Only the controlling company appears to the tax authorities as an entrepreneur
- The creation of non-deductible input tax can be avoided

.Termination:

Overview and comparison

	Financial Integration	Economic Integration	Organizational Integration	Profit Transfer Agreement
Corporate Tax	(+)			(+)
Trade Tax	(+)			(+)
Value Added Tax	(+)	(+)	(+)	

Thank you for your attention!



Comparative study

- Differences and similarities between Italy, Germany and France -

- I. Study on the main similarities
- II. Study on the main differences

Main similarities

- **Aim:** Optimise corporate tax management – Offset losses and profits between companies of the group
- Only the parent company is **liable** for the consolidated tax.
- The parent company must be a legal entity established in the respective country.
- Tax consolidation is an **option**.
- A regime based on legislative texts.

Main differences

- **Different majority stake:** 50% in Germany and Italy / 95% in France.
- **A required duration of the group:** 5 years in France / 3 years in Italy / None in Germany.
- Not the same consolidation provided.
- **Different treatments on tax deficits.**
- **Joint liability** for the companies in France and in Italy.
Liability of the parent company in Germany.
- **Entries in force of the regime** different that differ.

**THANK YOU FOR YOUR
ATTENTION!**

