Tax Consolidation in France, Germany, and Italy

Hello everyone,

Today, we will present the different tax consolidation regimes applicable in France, Germany, and Italy.

Tax consolidation is an essential mechanism for corporate groups, allowing them to pool their tax results and optimize their tax burden. In a context of globalization and increased economic competition, large companies seek to reduce their tax costs and simplify the management of their profit taxes.

In Europe, several countries have implemented specific tax consolidation regimes, enabling groups to offset the profits and losses of their subsidiaries while adhering to the competition and tax transparency rules imposed by the European Union. Among these regimes, those of France, Germany, and Italy exhibit similarities but also notable differences, both in terms of access conditions and operational modalities.

While the general principle of tax consolidation is shared among these three countries, its implementation varies depending on the fiscal policy objectives pursued by each state. Some questions then arise:

- What are the conditions to qualify for the tax consolidation regime in each country?
- What are the similarities and differences between the French, German, and Italian regimes?

A comparative study of these three regimes is particularly interesting, as it helps understand how national fiscal policies influence the structuring of corporate groups. Indeed, a company operating in several European countries must consider these differences to organize its group efficiently from a tax perspective.

From a broader perspective, tax consolidation is also a topic at the heart of debates on tax harmonization in Europe. Some countries, like France and Germany, have well-established regimes, while others, like Italy, have implemented more recent and flexible mechanisms. The European Union also seeks to encourage harmonization of tax rules to prevent optimization practices and ensure fair competition among member states.

As previously mentioned, in this presentation, we will compare the tax consolidation regimes in France, Germany, and Italy.

- First, we will examine the French regime, which is based on the principle of consolidating tax results at the parent company level.
- Next, we will look into the German regime, which operates on a profit transfer model (“Organschaft”) and has notable features regarding control and intra-group agreements.
- Finally, we will analyze the Italian regime, which adopts a more flexible approach, notably allowing tax consolidation between entities without requiring absolute control by the parent company.

This comparison will enable us to better understand the advantages and limitations of each regime and highlight the strategic choices a corporate group must make to optimize its taxation in Europe.

Let’s begin with a general presentation of the tax consolidation regime in France.

Part 1- Tax Consolidation: The French Approach

Tax consolidation is governed by Articles 223 A and following of the French General Tax Code (CGI).

Several conditions are required to benefit from this regime. The common conditions are threefold:

- All group member companies must be subject to corporate tax in France. The tax consolidation regime is Franco-French; only companies subject to corporate tax in France are included, excluding companies domiciled in the EU.
- The fiscal years of all group member companies must coincide. The opening and closing dates of the fiscal year must be the same for all group companies. If they do not coincide, they must be adjusted to align. This may lead to shortening the fiscal year in the first year to coordinate with the fiscal years of other subsidiaries.
- The group is based on shareholdings, which can be direct or indirect.

Even if the various conditions set by law are met, tax consolidation is not automatic and remains an option. Fundamentally, consolidation makes sense if one of the subsidiaries is loss-making. Even when the parent company decides to opt for the tax consolidation regime, it is free to choose which subsidiaries will be included in the group's scope. It is possible to leave subsidiary companies outside the group.

Let's look at the conditions specific to the parent company.

a. Conditions Specific to the Parent Company

Article 223A of the CGI states that to qualify as a 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.

Now, let's focus on the conditions specific to subsidiaries.

b. 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 "butterfly" through a foreign company that meets the conditions.
- Ownership must be maintained throughout the entire fiscal year.

Now, Brune will explain the effects of this regime.