I. Introduction

To conclude this presentation about the tax consolidation regimes in Italy, Germany, and France, we have chosen to offer you a comparative study.

The tax consolidation regime in France, Germany, and Italy are based on similar principles, but with notable differences in terms of eligibility, operations, and tax consequences. We will proceed with a structured comparison of the similarities and differences between these three countries.

II. Main similarities

These three regimes allow a tax consolidation within a group of companies in order to optimise corporate tax management and offset losses and profits between member entities. The parent company of each consolidated group identify the taxable base of the group and is liable for the tax determined on this taxable base. As a result, only one company is liable for the payment of the consolidated tax in all three countries.

Concerning the parent company, France, Italy, and Germany require that the parent company must be a legal entity whose place of management is located in the respective country. Any company located in another territory cannot be considered as the parent company of the group. However, Italy has also a worldwide consolidation that allows the ultimate parent company to be owned by individuals who are tax residents of Italy or listed on the Italien Stock Exchange.

In all cases, tax consolidation in Italy, Germany, and France remains optional. Companies wishing to form a tax consolidation group must exercise their option to the competent tax authority to which they are subject.

We can also specify that the legal basis for this regime originates from legislative texts: articles 223 A to 223 U of the CGI, article 14 of the german KStG and articles 117 to 129 of the italian TUIR.

III. Main differences

The main difference is that Germany and Italy only require a majority stake of the parent entity in its subsidiaries, with more than 50% of the capital or voting rights. In contrast, France is more stringent and requires that the parent entity holds at least 95% of the shareholding in its subsidiaries. France is therefore particularly strict, and as a consequence, many French companies cannot be considered parent companies.

Unlike France, Germany provides for a tax consolidation group not only for corporate tax but also for all other taxes and duties owed by the companies, including VAT and business tax. In Italy, companies can also form a VAT group. In these cases, there is only one single taxpayer. In contrast, France also allows for a VAT group. However, this option is not subject to the condition that the companies belong to the same tax consolidation group. Nevertheless, the three VAT group regimes share the same conditions: financial links (meaning holding more than 50% of the capital), economic links and organisational links (meaning common management or the organization of their activities either wholly or partially in coordination between the companies).

In order to prevent opportunistic tax optimisation strategies, a required duration of group membership is generally imposed. France sets a duration of 5 years and Italy requires the group to be maintained for years, while Germany does not have any legal duration condition. As France, Italy also provides for a 5-year duration in worldwide consolidation. As for France and Italy, both countries provide that the option is automatically renewed after the expiration of the legal period.

The aim of these regimes is the consolidation of the group's results. However, the countries do not provide for the same type of consolidation. France implements full tax integration: the tax will be calculated based on the sum of the results of the companies. In contrast, Germany provides for economic and tax consolidation with the goal of offsetting the profits and losses of each of the companies. Finally, Italy establishes tax consolidation with an option to neutralise intra-group transactions.

Regarding the impact of this regime on tax deficits, the treatment differs depending on the country studied. France provides that the losses of a subsidiary can be offset against the group's result, thus reducing the group's taxable income. Germany, on the other hand, allows only future losses of the subsidiaries to be offset. Finally, the Italian tax consolidation system allows the offsetting of a company's losses against the group's profits.

Regarding VAT, France does not require that tax integration be supported by the VAT group regime, unlike Italy and Germany. As a result, intra-group transactions will be subject to VAT by default, unless the group opts for the VAT group regime. In contrast, intra-company transactions will be exempt from VAT and corporate tax for italian and german groups.

Finally, concerning the tax liability of the companies within the group, France provides for joint liability for all the companies regarding the payment of corporate tax. In Germany, only the parent company is responsible for the payment of corporate tax. However, contribution obligations from the subsidiaries may be imposed. As for Italy, joint and several liability is recognised for the companies.

We could conclude this presentation by highlighting the effective dates of the different regimes. Germany was the first of the three countries to introduce the tax consolidation regime, in 1969. Subsequently, tax integration came into force on January 1st, 1988, in France. Finally, the most recent tax consolidation regime is the one existing in Italy, as it was created in 2003.

IV. Conclusion - Opening with parent-subsidiary directive

At first sight, these differences in the dates of implementation of these regimes might suggest that the tax consolidation regimes in the countries studied would be very different. However, as we have seen, only a few differences exist. This coordination of the tax consolidation regimes could be explained by the fact that Italy, Germany and France are all members of the European Union.

Although there is no directive today specifically on tax consolidation, it is worth noting the existence of the Parent subsidiary directive. This directive does not directly concern the group's results but focuses more on the taxation of profits distributed by subsidiaries to their parent company. It aims to exempt them from withholding tax, which leads to the elimination of double taxation in the case of profit distribution. To benefit from this advantage, the companies involved must be subject to corporate tax in a member state of the European Union where they are established. Additionally, the status of parent company is recognised for a company established in a member state of the European Union that holds at least 10% of the capital of a company located in another member state.