



# Italy: Share deal vs asset deal - Article 20 of the Registration Tax Act under the scrutiny of the Constitutional Court

## Tax Alert

10 October 2019



### Offices

#### Milan

Via Vittor Pisani 31, 20124  
T: +39 02 676441

#### Ancona

Via I° Maggio 150/a, 60131  
T: +39 071 2916378

#### Bologna

Via Innocenzo Malvasia 6, 40131  
T: +39 051 4392711

#### Florence

Viale Niccolò Machiavelli 29, 50125  
T: +39 055 261961

#### Genoa

P.zza della Vittoria 15/12, 16121  
T: +39 010 5702225

#### Naples

Via F. Caracciolo 17, 80122  
T: +39 081 662617

#### Padua

Piazza Salvemini 2, 35131  
T: +39 049 8239611

#### Perugia

Via Campo di Marte 19, 06124  
T: +39 075 5734518

#### Pescara

P.zza Duca D'Aosta 31, 65121  
T: +39 085 4210479

#### Rome

Via Adelaide Ristori 38, 00197  
T: +39 06 809631

#### Turin

C.so Vittorio Emanuele II 48, 10123  
T: +39 011 883166

#### Verona

Via Leone Pancaldo 68, 37138  
T: +39 045 8114111

### Registration Tax

By the recent decision no. 23549 filed on last 23 September, the Supreme Court remitted to the Constitutional Court the evaluation of the legitimacy of article 20 of the Registration Tax Act.

The 2018 Budget Law, modifying the mentioned provision, clarified that registration tax must apply separately on each deed that is filed for registration, without considering any other deed executed immediately after and disregarding the economic ultimate effects achieved through all the executed deeds. As a result, step-transactions (the most typical one consisted of the contribution/demerger of a going concern into a newco, followed by the sale of the shares in the newco, re-qualified by authorities as a straight sale of the going concern) could only be challenged on the basis of the general anti-abuse rules.

The 2019 Budget Law specified that the clarification introduced by the 2018 Budget Law was to be intended as retroactive and therefore applicable also to deeds executed and registered before January 1, 2018.

Based on the above scenario, taxpayers that had started litigation were expected to obtain a favorable outcome in the court trial.

With multiple arguments, the Supreme Court is now challenging the current version of article 20, sustaining it would breach the (assumed) basic principle of 'substance over form'.

It is not possible to estimate when the Constitutional Court will decide on the matter.

Meanwhile, the Law challenged by the Supreme Court continues to be effective and cannot be disregarded. Consequently any notice of assessment based on the interpretation running before the 2018 Budget Law should be considered unlawful and appealed against in front of the Tax Court.

In event the Constitutional Court upholds, the Law challenged by the Supreme Court would be repealed with retroactive effects, saving, however, cases for which the tax authorities' review is barred under the statute of limitation or have been decided in a final judgment by a Court.

Theoretically, at its discretion, the Constitutional Court may decide to grandfather also transactions undergone from January 2018, on the basis of the 'legitimate expectation' principle, i.e. relying on the amended contents of the rule.

---

## Contacts

### KPMG, Tax & Legal

#### Gianluca Stancati

Head of Tax Dispute Resolution  
and Controversy Services in Italy

T: +39 06 80963583

E: [gstancati@kpmg.it](mailto:gstancati@kpmg.it)

[kpmg.com/it](https://kpmg.com/it)

[kpmg.com/it/socialmedia](https://kpmg.com/it/socialmedia)



[kpmg.com/app](https://kpmg.com/app)



**Tax Alert** / KPMG in Italy / 10 October 2019

© 2019 Studio Associato - Consulenza legale e tributaria, an Italian professional partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ('KPMG International'), a Swiss entity. All rights reserved.

The KPMG name, logo are registered trademarks or trademarks of KPMG International Cooperative ("KPMG International").

Studio Associato - Consulenza legale e tributaria is a leading Italian law firm and a member firm of KPMG International for tax and legal services.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.