

Taxation and accounting topics in M&A

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Law No. 12.973/2014 marked the alignment between tax law and international standard accounting IFRS – International Financial Reporting Standards, but the challenges of this reconciliation are still frequent, including in the purchase and sale of assets or equity interests (M&A). Divergences between the accounting and tax treatment of a transaction are possible and expected. After all, accounting and law are guided by different purposes. Those who apply tax law should be aware of possible differences and gaps that require caution in integrating with accounting. Some solutions still imply recognizing parallel regimes for accounting bookkeeping and tax calculation. We will examine four current examples.

Sale of real estate by company under the presumed profit regime

In 2021, the tax authorities recognized that the accounting classification of the property should not impact the taxation of its sale as stock by a real estate company opting for presumed profit. Depending on the characteristics of the case, even if the properties sold have been leased or originally registered as non-current assets, the revenue from their sale may be taxed as operating.

Capital Transactions

Capital transactions are acquisitions of equity interest that do not entail changes in control of the entity. For accounting purposes, gains on these operations are not recognized in the P&L, but in net equity. Despite this, also recently, the tax authorities understood that capital transaction gains would be taxable, as they imply an increase in equity. The decision was succinct and specific, deserving of some criticism, but draws attention. For consistency, for example, if there is a taxable capital gain, the price paid by the acquirer must allow the tax use of goodwill, even without its accounting record.

Contingent consideration (earn-out)

It is common in M&A operations to condition a portion of the price to an uncertain future event, such as the permanence of the selling partner in the business for a period. The accounting has specific rules, which are not legal, to qualify the contingent payment, either as consideration (price) or "separate operation" (compensation). However, this accounting record should not be decisive for tax purposes, and may differ as to the classification of the payment and the moment of recognition.

Business Combinations

In the acquisition of a relevant interest in another company, the acquirer must recognize its cost according to criteria inspired by the accounting rules of business combination, with relevant tax effects. Although similar, these legal and accounting regimes are not identical. For example, in the acquisition of a minority interest, even without registration of business combination, there may be tax amortizable goodwill. On the other hand, a transaction such as incorporation of companies can be classified as a business combination, implying the recording of accounting goodwill, but which does not "exist" for tax purposes.

Differences between the accounting and tax treatment of the same operation are natural. Many have already been regulated. Others, not yet. They require practical solutions, based preferably on understandings already accepted by the tax authorities, with degrees of security that can still vary, even though the time elapsed since the enactment of Law No. 12.973/2014 already allows views on many topics with relative critical distance.

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