



Caffe Nero Tax Affairs May 2014

Caffe Nero and its tax

Caffe Nero Group Limited (UK company number 4129005) does, according to its 2013 accounts:

Principal activities and future developments

The company trades as Caffe Nero which is a group of high quality Italian style coffee bars. In addition to its core range of high quality espresso-based coffees, Caffe Nero offers an array of pastries, baked goods, freshly made panini, sandwiches, salads and pastas, as well as cakes and biscotti.

The directors continue to believe that there are strong growth prospects in the UK branded coffee bar market and intend to continue the rapid roll out of the Caffe Nero concept around the country.

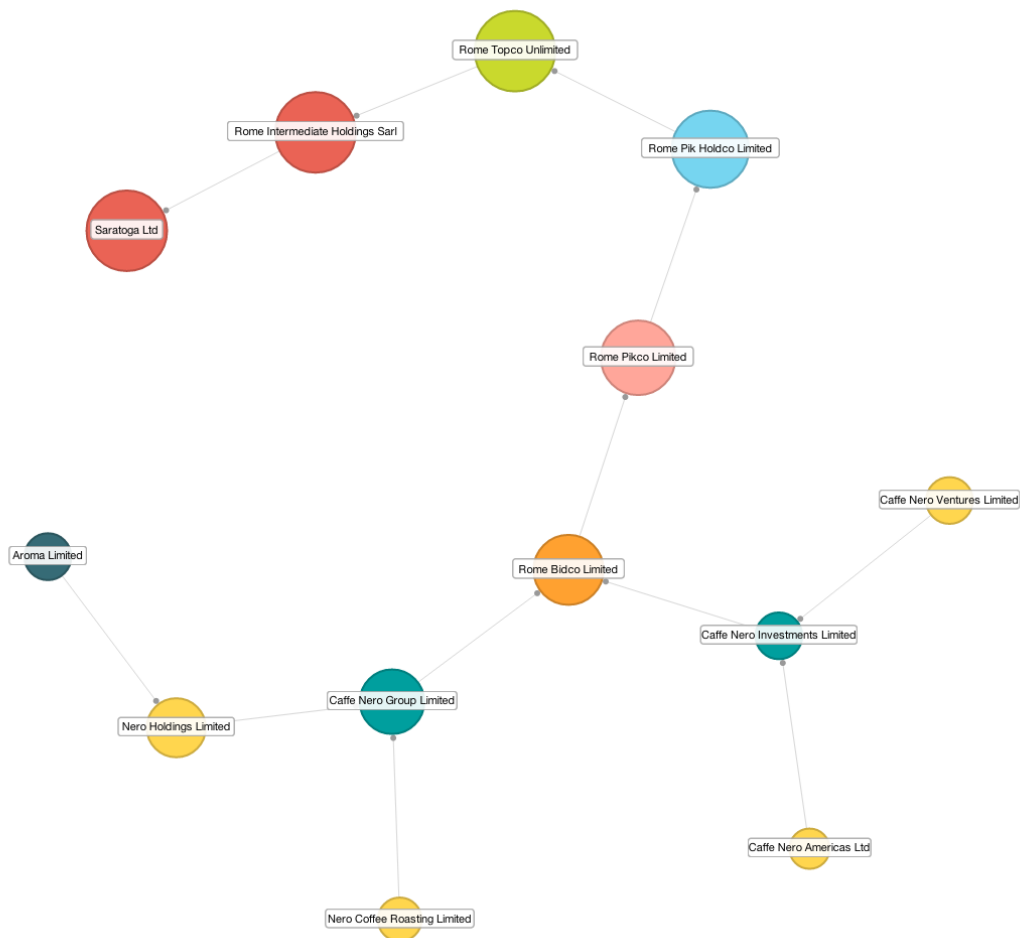
Expansion

Last year we continued the steady expansion of Caffe Nero. In the current year, we opened 45 stores and closed 6 resulting in a net increase of 39 stores or 7.5 % of the overall estate.

At the year end, we had 519 stores operating in 247 UK towns and cities. The directors believe that there is potential in the UK market for at least 750 Caffe Nero stores.

Who owns Caffe Nero?

The ownership structure of Caffe Nero is complex for a chain of coffee shops. This diagram from Duedil.com summarises the structureⁱ:



Caffè Nero Group Limited, that actually runs the coffee shops, is the blue company towards the bottom left corner. It is then owned in turn by:

- Rome Bidco Limited
- Rome Pikco Limited
- Rome Pik Holdco Limited
- Rome Topco Unlimited
- Rome Intermediate Holdings Sarl
- Saratoga Limited.

Rome Intermediate Holdings Sarl Limited appears to be a Luxembourg company.

Saratoga Limited is reported to be an Isle of Man company. The reason why we know this to be true is that the 2013 accounts of Caffè Nero Group Limited report that:

22. Ultimate parent undertaking and controlling party

At the year end, the group's ultimate parent undertaking and controlling party was Saratoga Limited, a company incorporated in the Isle of Man. The group's immediate parent undertaking was Rome Bidco Limited.

Rome Holdco Sarl (incorporated in Luxembourg) is the parent undertaking of the largest group of which the Group is a member and for which group financial statements are prepared. Rome Pikco Limited was the parent undertaking of the smallest group of which the Group is a member, and for which group financial statements are prepared. Copies of the group financial statements for Rome Pikco Limited are available from 3 Neal Street, London, WC2H 9PU.

Caffe Nero trading summary

The latest profit and loss account for Caffe Nero Group Trading Limited is as follows:

Caffe Nero Group Limited

Group statement of comprehensive income for the year ended 31 May 2013

	Notes	2013 £000	2012 £000
Revenue	2	204,326	184,566
Cost of sales		(155,099)	(140,124)
Gross profit		49,227	44,442
Administrative expenses excluding depreciation, amortisation, impairment and movement on provisions		(14,335)	(12,924)
EBITDA	1	34,892	31,518
Administrative expenses – depreciation, amortisation, impairment, loss on disposal and movement on provisions		(13,787)	(12,457)
Total administrative expenses		(28,122)	(25,381)
Operating profit	3	21,105	19,061
Bank interest receivable		3	16
Profit before taxation		21,108	19,077
Income tax	6	–	–
Profit for the year		21,108	19,077
Other comprehensive income		–	–
Total comprehensive income		21,108	19,077

This is a company that is making a good trading profit, and which appears to be doing so consistently. But there is something very odd that the accounts reveal, which is that despite

the average £20 million of profits made a year, representing about 10p in every pound spent with the company, it is paying no tax.

Caffe Nero's tax position

Caffe Nero's tax summary according to its own accounts is as follows:

6. Income tax

No income tax is payable for the year (2012 – nil)

The tax assessed for the year differs from the standard average rate of corporation tax in the UK of 23.87% (2012 – 25.67%). The differences are explained below

	2013 £000	2012 £000
Profit on ordinary activities before tax	21,108	19,077
Profit on ordinary activities multiplied by the standard average rate of corporation tax in the UK of 23.87% (2012 – 25.67%)	5,024	4,897
<i>Effects of</i>		
Expenses not deductible for tax purposes	2,054	1,845
Group relief claimed for nil payment	(4,900)	(7,029)
Movement in deferred tax asset not recognised	(2,178)	287
Income tax expense reported in the consolidated statement of comprehensive income	-	-

The implication is very clear: almost £10 million of potential tax liability has been cancelled over a two year period because 'group relief has been claimed for nil payment'. It is this factor that explains no tax being due, and so it needs explanation.

The Caffe Nero group

It would be incredibly useful if we could see an overall set of accounts for the group of companies of which Caffe Nero is a member for the UK, but we cannot. The highest company in the UK chain of companies that owns the operation is called Rome Topco Limited. Its most recent profit and loss account looks as follows

Rome Topco Unlimited

Statement of comprehensive income

for the year ended 31 May 2013

	Notes	2013 £000	2012 £000
Finance cost payable to parent undertaking	2	(10,901)	(35,101)
Finance income from subsidiary undertaking	2	12,517	40,420
Profit before taxation		1,616	5,319
Income tax	4	—	—
Profit for the year		1,616	5,319
Other comprehensive income		—	—
Total comprehensive income		1,616	5,319

What is immediately apparent is that this account does not reflect the entire operation of the Caffè Nero group in the UK. The absence of this data in those accounts is explained as follows:

These financial statements have been prepared for the individual company only. The company has taken advantage of the exemption available under section 400 of the Companies Act 2006 not to prepare group financial statements as the results of the company are included in the consolidated financial statements of an intermediate parent undertaking and are publicly available (as set out in note 10).

The relevant note 10 says:

Ultimate parent undertaking and controlling party

At the year end, the company's ultimate parent undertaking and controlling party was Saratoga Limited, a company incorporated in the Isle of Man. The company's immediate parent undertaking was Rome Intermediate Holdings Sarl (incorporated in Luxembourg).

Rome Holdco Sarl (incorporated in Luxembourg) is the parent undertaking of the smallest and largest group of which the company is a member and for which group financial statements are prepared. Copies of the group financial statements for Rome Holdco Sarl will be available from Rome Holdco Sarl at 46A Avenue JF Kennedy, L-1855 Luxembourg.

The conditional nature of the commitment to make the accounts of Rome Holdco Sarl available is interesting. A search on an official government of Luxembourg website to find the accounts in question for review revealed the following informationⁱⁱ:

LE GOUVERNEMENT du Grand-Duché de Luxembourg

Legilux

Recherche plein-texte

Recherches spécifiques

Home | News | FAQ | Links | Feedback | Contact

Help | Index | About this site

Imprimer | Envoyer à

> home > Associations > Search

Search

New Search | Modify Search

Criteria recherche:

Name contains [rome Holdco +]
 Legal form = *
 Type of publication = *
 Date of publication = *

ROME HoldCo SA RL

No Reg. of Commerce: B0121936
 Legal form: Limited liability company under Luxembourg law
 Date of incorporation: 21.11.2006
 Mailing Address: 46A AVENUE JOHN F. KENNEDY LUXEMBOURG

For this company there are 13 publications matching your criteria recherche

Memorial	Pub Date.	No Memory.	Page mem.	Type Pub.	Act
	11.11.2011	2757	132315	Balance sheets, the filing	
	29.9.2011	2320	111314	Correction	
	13.10.2010	2157	103528	Balance sheets, the filing	
	31.8.2010	1779	85367	Balance sheets, the filing	
	16.3.2010	563	27024	Administrators (publications made outside balances)	
	12.3.2010	543	26064	Balance sheets, the filing	
	12.3.2010	543	26064	Balance sheets, the filing	
	8.5.2008	1143	54828	Amendments to the Statutes	
	7.5.2008	1117	53615	Articles of association, the filing	

No data appears to have been filed since 2011, and if the link posted on that date is followed information for May 2008 is revealed. A visit to the office of the company in Luxembourg has not been undertaken for the purposes of this report. An Internet search of the registered address of the company suggests that it is serviced office accommodationⁱⁱⁱ.

As a result attention was turned back to the accounts of Rome Topco Limited which revealed further interesting information. Firstly, those accounts note that:

The company's transactions have been funded by another group company and the company does not have a bank account. Accordingly, the company had no cash flows during the year and no statement of cash flows is presented

It is an interesting idea that a company apparently receiving more than £12.5 million in the year and paying out more than £10.9 million can do so without a bank account, and other information disclosed in the accounts is more troubling. A note is included that says:

Going concern

The financial statements have been prepared on a going concern basis which assumes that the company will be able to meet its liabilities as they fall due for the foreseeable future

The company is part of a group of companies that are dependent on the ongoing trading and financing activities of Rome Pikco Limited, one of the company's 100% subsidiary's ('the Pikco group') The directors of the Pikco group have produced cash flow forecasts that indicate that the Pikco group will continue as a going concern for the foreseeable future, which is no less than 12 months from the date of approving these financial statements

In making this assessment, the directors have taken into account the ongoing difficult macro-economic and trading environment prevailing in the UK and have reflected this in their assumptions on the Pikco group's growth prospects. The directors remain confident their forecasts are achievable. Having made due and careful enquiry, the directors consider that there are no material uncertainties that may cast doubt over the Pikco group's ability to continue as a going concern and therefore apply the same conclusion to the company

This note reveals is that the entire group is under stress as a result of parental pressure on another member of the Caffè Nero ownership chain, Rome Pikco Limited.

The accounts of Rome Pikco Limited at 31 May 2013 do not make for happy reading. The results are consolidated. In other words, they do include the trading results of Caffè Nero Group Limited already noted above in the following profit and loss account:

Rome Pkco Limited

Group statement of comprehensive income

for the year ended 31 May 2013

	Notes	2013 £000	2012 £000
Revenue	2	205,302	185,218
Cost of sales		(155,099)	(140,124)
Gross profit		50,203	45,094
Administrative expenses excluding depreciation, amortisation, impairment, foreign exchange and movement on provisions		(15,040)	(13,134)
EBITDA	1	35,163	31,960
Administrative expenses – depreciation, amortisation, impairment, foreign exchange and movement on provisions		(16,729)	(15,382)
Total administrative expenses		(31,769)	(28,516)
Operating profit	3	18,434	16,578
Finance income	6	55	52
Finance costs and similar expenses	7	(41,561)	(37,992)
Finance cost re-imburement		-	62,588
Share of post tax loss of joint ventures	12	(223)	(1,326)
(Loss) / profit before taxation		(23,295)	39,900
Income tax credit	8	1,289	1,463
(Loss) / profit for the year		(22,006)	41,363
Other comprehensive income		-	-
Total comprehensive income for the year		(22,006)	41,363

The revenue, cost of sales and gross profit in this account and that for Caffè Nero Group Limited are almost identical and the operating profit only a little lower. So what is the difference? It is around £40 million of interest paid a year (although exceptionally in 2012 £62 million of charge was cancelled). Operating profits suddenly turn into enormous losses as a result. It is this interest that generates the tax loss that is used to cancel the tax due on the profits made by the coffee shops.

The interest is explained as follows:

7. Finance costs and similar expenses

	2013 £000	2012 £000
Senior debt interest	7,625	8,511
Mezzanine debt interest	8,221	7,724
PIK notes interest	11,928	10,036
Amortisation of loan issue costs	1,514	1,636
Bank fees	231	225
(Gain) / loss on fair value of interest rate and currency swap	(2,957)	1,415
Euro loan revaluation	2,003	(1,784)
Interest on loan from parent	12,745	10,229
Loss on fair value of put and call options	251	-
	<u>41,561</u>	<u>37,992</u>

The interest rate applied to the loan from the parent undertaking set out in note 18 was amended in the prior year with retrospective effect and resulted in a reimbursement of interest charged of £62,588k

The loans on which interest is due are as follows, from the same accounts:

18. Financial liabilities

Group

At 31 May 2013

	Current £000	Non- current £000	Total £000
<i>Interest bearing loans and borrowings</i>			
Term loan – Senior A – £23,949,722	5,296	17,344	22,640
Term loan – Senior B1 – £34,705,882	-	28,507	28,507
Term loan – Senior B2 – £25,500,000	-	24,454	24,454
Term loan – Capex facility – £7,000,000	-	7,000	7,000
Term loan – Revolver facility – £3,000,000	2,000	-	2,000
Mezzanine term loan – £ 50,000,000	-	47,486	47,486
Rolled up interest – Mezzanine term loan	-	8,526	8,526
<i>PIK notes</i>			
PIK notes - £49,000,000	-	46,536	46,536
Rolled up interest on PIK notes	-	25,688	25,688
<i>Related party loans</i>			
Loan from parent undertaking	98,450	-	98,450
Rolled up interest due to parent undertaking	93,419	-	93,419
Total	<u>199,165</u>	<u>205,541</u>	<u>404,706</u>

It will be noted that about half this debt is due to parent companies with about half owed to third parties. The parent companies are ultimately those in tax havens, noted above.

The net result is that of the operating profit of around £18 million almost £13 million is cancelled by interest payments that seem to largely flow via Rome Topco Limited to parent companies outside the UK with a balance of interest due of around \$28 million tipping the group into a loss making situation.

The reality is that it seems that this debt was, however, incurred to acquire the Caffè Nero operation in the first place. The accounts confirm this:

Principal activities

Rome Pikco Limited is the holding company of Rome Bideo Limited, which in 2007, purchased Caffè Nero Group Limited. Caffè Nero is the trading name of a group of high quality Italian style coffee bars. In addition to its core range of high quality espresso-based coffees, Caffè Nero offers an array of pastries, baked goods, freshly made panini, sandwiches, salads and pastas, as well as cakes and biscotti.

The accounts also confirm that Rome Pikco Limited is technically insolvent, saying:

Going concern

The directors have produced cash flow forecasts, which indicate that the group can continue as a going concern and that the banking covenants are all met comfortably for the foreseeable future.

The group is in a net liability position of £194.7m due to external and intercompany debt. The company's immediate parent undertaking, Rome PIK Holdco Limited, has confirmed that it will not seek repayment of £191.9m owed by the group until such time as the group is able to meet these liabilities. Rome PIK Holdco effectively owes these funds to various holding companies up to Rome Intermediate Holdings Sarl and the various holding companies have also received confirmation that repayment will not be requested until such time that they are able to meet these liabilities. The majority of the remainder of the group's third party liability (£205.5m) is not due within twelve months of the date of authorising these financial statements for issue.

The directors have also taken into account the ongoing difficult macro-economic and trading environment prevailing in the UK and have reflected this in their assumptions on the group's growth prospects. The directors remain confident their forecasts are achievable.

Having made due and careful enquiry, the directors consider that there are no material uncertainties that may cast doubt over the group's ability to continue as a going concern.

What that, in effect, means is that of the total debt owed by this company almost the whole deficit is owed to parent companies located in tax havens who are having to waive their claim for repayment for the time being simply to keep the operation going. However, this does not prevent them claiming the interest payments for tax relief purposes in the meantime and nor does it prevent the fact that the future of the group looks potentially precarious as a consequence.

Conclusions and issues arising

Having taken this tour of the Caffè Nero Group a number of conclusions can be drawn:

1. The Caffè Nero operation is successful and profitable, generating an operating profit of about £21 million before tax in 2013.
2. This operating profit is entirely cancelled at group level by over £40 million of interest liabilities, at least £13 million of which was due to group companies in 2013.
3. The debt burdens of the group were imposed upon it at the time that it acquired Caffè Nero: they were not incurred as a result of trading; they were incurred in the course of purchasing that trade, which is a distinct and separate activity.

4. The debt burdens arising as a consequence of the purchase of the trade have left the group as a whole in a perilous position: the company acknowledges its marginal solvency and that it can only continue to trade by deferring settlement of its obligations to its parent companies, the top two of which are in the tax havens of Luxembourg and the Isle of Man.
5. Accounts for the Luxembourg and Isle of Man companies do not appear to be readily available for inspection.
6. As a result of the tax relief available on the interest payment, even though they were not incurred in the course of the trade of the company, any tax owing on the profits arising from sale of coffee in Caffè Nero stores is entirely cancelled and no corporation tax is being paid by the company and none is likely to be paid for many years to come.

It is stressed with regard to the tax aspects of this matter choice is in operation. The structuring is deliberate, and is intended to route interest payments out of the UK via Luxembourg to the Isle of Man tax haven in the process stripping profits that would otherwise be liable to UK tax and leaving nothing due in this country. The structure used is, no doubt, entirely legal and has met with tax authority approval. But that does not mean it is ethical. The intention has been to use an effective tax subsidy secured by cancelling UK tax liabilities with interest charges on sums owing to offshore companies to help finance the cost of acquiring the group. That is the issue subject to ethical challenge here.

Three issues arise as a consequence:

1. Firstly, the U.K.'s policy of allowing tax relief on interest paid to acquire a trade must be open to question in the future: time after time companies appear to be in trouble because they are laden with debt that their owners have used to acquire them when that liability has nothing to do with the trade that the acquired company actually undertakes. A change in tax law to deny relief on interest incurred to acquire a trade seems long overdue.
2. The use of a Luxembourg company within the structure noted here is not coincidental: under EU agreements tax may not be withheld on interest payments from one member state to another, even if the recipient state then allows the onward transmission of that interest to a tax haven without the tax that might have been deducted in the first state having been charged. This is, therefore, an exercise in tax avoidance. The time for the EU to reconsider the desirability of such arrangements is long overdue.
3. UK company law needs reconsideration with regard to the ability of shareholders to load the debt that they incurred to acquire their interest in a company onto its balance sheet to secure a tax advantage. This debt loading creates financial instability that is potentially harmful to trade in the UK, the stability of employment in UK companies, and the tax revenue stream for the UK Exchequer, all of which are undesirable. Policy in this area is in need of reconsideration.

ⁱ <https://www.duedil.com/company/05936498/rome-pik-holdco-limited/group>

ⁱⁱ http://www.legilux.public.lu/entr/search/index.php?ss_soc=rome+holdco&sr_soc=name&sr_fj=all&sr_tp=all&sr_date=all&sl_d=1&sl_m=1&sl_y=2014&sl_d1=1&sl_m1=1&sl_y1=2014&sl_d2=8&sl_m2=5&sl_y2=2014&page_len=100&page=result

ⁱⁱⁱ <http://www.themovechannel.com/servicedoffices/4034/>