



Mobility: Tax alert

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Italy

Taxation of Trusts in Italy: New developments concerning direct and indirect taxation rules

Executive summary

On 20 October 2022, Italian Tax Authority published long-awaited Circular Letter n. 34/E (hereinafter the 'Guidance') on Trust tax treatment in Italy.

The Guidance sets out the direct and indirect taxation rules for resident and non-resident trusts and tax monitoring obligations. The Guidance has significant consequences for the use of trusts in Italy and for beneficiaries.

Background

The Guidance is the final version of the letter that had been open for public consultation up to September 30, 2021.

The Guidance is the first Circular Letter issued by the Italian Tax Authority following release in 2019 of official guidelines relating to the taxation of foreign trusts (Law Decree n. 124/2019).

Among the key topics covered by the authorities, the long-awaited clarification as regards indirect taxation, with Italian Tax Authority acknowledges and endorses several Italian Supreme Court judgements in recent years.

It also provides commentary regarding the interaction between trust and tax monitoring obligations, both for trusts and beneficiaries.

Direct taxes

A significant clarification is provided regarding the taxation of the income distributions from opaque trusts, established in low-tax jurisdictions, to Italian resident beneficiaries.

The tax authorities view is that such distributions qualify as capital income and shall be taxable with progressive rates (up to 43% plus local taxes) in the hands of beneficiaries upon distribution.

Conversely, distributions from opaque trusts established in jurisdictions regarded as 'low-tax' continue to be exempt from taxation.

The Guidance confirms that a tax jurisdiction should be regarded as 'low-tax' for the purpose of trust income distribution if there is a nominal taxation level lower than 50% of the applicable rate in Italy. Jurisdictions shall also be regarded as 'low-tax' if any special tax regimes provide an exemption or further reduction of the taxable base.

According to the tax authority latest position, the nominal level of taxation shall be assessed and compared when the income is realised by the trust with the relevant Italian corporate tax rate in force at that time.

The tax authority has reiterated that taxpayers are not permitted to file a prior defensive tax ruling to demonstrate that the creation of an opaque trust in a 'low-tax' jurisdiction is not intended to localize the income therein.

The Guidance also provides clarification regarding the presumption that a distribution by a foreign opaque trust to beneficiaries resident in Italy, introduced by Law Decree n. 124/2019, is deemed to be income only if it is not possible to distinguish between income and capital. The main clarifications are as follows:

- This presumption is applicable only to opaque trusts established in low-tax jurisdictions
- The trustee can displace this presumption by demonstrating through account records and by means of non-account records (e.g., financial statements) the distinction between income and capital

Indirect taxes

The Guidance acknowledges and finally endorses several Supreme Court judgements in recent years.

Based on the Supreme Court's judgements, the transfer of assets and rights to a trust does not constitute an immediate transfer of ownership for the beneficiaries. Rather the taxable event of inheritance and gift tax shall be considered at the time of final transfer of property to the beneficiaries when an actual enrichment occurs in their hands.

Within this framework, the Guidance confirms that the taxable event of inheritance and liability to gift taxes shall occur at the time of transfer of property to the beneficiaries as a final transfer. It is worth noting that tax authorities further clarified that a case-by-case analysis should be performed to evaluate whether the actual transfer of assets and rights occurred to the beneficiaries at the time of final transfer.

In addition, the tax authority confirmed that where inheritance and gift taxes were already applied at the time of settlement of the asset to the trust then, relying on their earlier interpretation, no further tax will be due at the time any assets are subsequently transferred to beneficiaries.

Tax monitoring obligations

The tax authority also provided their opinion regarding the interaction between monitoring obligations and trusts.

The Guidance clarifies that, even if there is no direct reference within the tax monitoring obligation legislation to trusts, individuals who qualify as a 'beneficial owner' of any trust assets should comply with these tax monitoring obligations.

A beneficiary of a non-discretionary trust is also required to comply with the tax monitoring obligations by disclosing the value of any foreign asset held in trust and their ownership share. Similarly, a beneficiary of a discretionary trust is required to comply with the tax monitoring obligations but only when a trustee has communicated the decision to attribute themselves income and/or capital of the trust. No tax monitoring obligations should be extended for the trustees, as well as for trust's protectors.

With reference to the nature of foreign opaque trusts, the Guidance confirms that tax resident beneficiaries are not liable to so called 'IVAFE' and 'IVIE' wealth taxes because they do not hold property right over the assets concerned.

Next steps

Trusts, Beneficiaries, Trustees and/or Protectors should review these new developments immediately.

The new rules require detailed tax and legal planning. International and domestic law, as well as estate structures, should be carefully analysed to assess how the new rules affect tax and compliance positions.

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