

Recent Italian Revenue Agency rulings on Trusts

Family Office and Private Client 23 November 2020



Uffici

Milano

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

Firenze

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

Genova

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

Napoli

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

Padova

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

Roma

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

Torino

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

Verona

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

This edition of Family Office and Private Client News takes a brief look at Tax Rulings no. 506 and no. 512, in which the Italian Revenue Agency comments on Trusts.

The first one comments on the fiscal monitoring obligations of a Trust protector when the Trust is resident abroad. The second answers the question of whether, in the circumstances described by the tax ruling applicant, it is possible to take the tax benefits available under the so-called 'After Us Law'.

Tax ruling no. 506

The applicant, which was the protector of a foreign Trust, asked the Revenue Agency whether, in this fiduciary capacity, it had to comply with fiscal monitoring requirements⁽¹⁾.

Not only was the Trust resident abroad, it also held 100 percent of a foreign subsidiary, several foreign current accounts and a loan receivable arising from an interest-free loan made to a foreign company.

The applicant also stated that, since the Trust was an interposed entity, the sole beneficiary – an individual residing in Italy – was fulfilling the fiscal monitoring requirements by declaring the Trust's foreign financial assets in section RW of his income tax return.

In line with previous statements of practice⁽²⁾, the Revenue Agency ruled that the applicant had no fiscal monitoring obligations, thus confirming that the beneficial owner concept used for fiscal monitoring purposes can sometimes be narrower than that used in the application of anti-money laundering rules.

In particular, the Revenue Agency reminded the applicant that anti-money laundering and fiscal monitoring rules both apply whenever there is "a legal (registration) or de facto (ownership or possession) relationship between a party and declared foreign assets".

A party that is merely mandated by the settlor to ensure that the trustee fulfils its obligations has no fiscal monitoring obligations and this was so in the case of the applicant: in its role as trust protector it merely had the power to monitor the actions of the trustee and, essentially, to endorse the business transacted by the trustee under the discretionary powers assigned to the latter by the trust deed.

(1) As per article 4 of Law Decree no. 167/1990.

(2) For example, Revenue Agency Resolution no. 53/2019 and Circular 38/E/2013.

Tax ruling no. 512/2020

The applicant asked the Revenue Agency whether the Trust he had set up together with his wife, in the exclusive interests of their severely disabled children, could benefit from the tax relief available under article 6 of the 'After Us Law'⁽³⁾.

The Revenue Agency ruled that in this particular case the tax relief could not be taken as one of the requirements had not been met: the Trust deed did not name a Trust protector to ensure that the trustee would fulfil the duties assigned to it when the Trust was established⁽⁴⁾.

The purpose of having a mandatory trust protector is to "ensure that throughout the life of the trust transactions are always aimed at providing special care, an aim which the law desires to protect and which is the reason for the establishment of the trust". Therefore, since a Trust protector had not been named, this particular trust could not take the tax relief available under the 'After Us Law'.

However, still with regard to claiming tax benefits under the 'After Us' rules, the Revenue Agency did not object to the possibility of (i) placing assets and rights in a Trust at any stage of its life and not just at its inception, or (ii) transferring bare-ownership rights to a Trust.

(3) Law no. 112/2016, which offers the following forms of tax relief, among others:

- an inheritance and gift tax exemption;
- fixed registration taxes (*imposta di registro*, *imposta ipotecaria* and *imposta catastale*);
- a stamp duty exemption.

(4) This mandatory appointment was introduced by article 6(3)(f) of Law no. 112/2016.

Contacts

KPMG in Italy, Tax & Legal

Antonio Deidda

Partner
Family Office and
Private Client

E: adeidda@kpmg.it
T: +39 02 6764 4762

Tomaso de Simone

Partner
Family Office and
Private Client

E: tdesimone@kpmg.it
T: +39 06 8096 3552

kpmg.com/it

kpmg.com/it/socialmedia

kpmg.com/app



Family Office and Private Client News / 23 November 2020

© 2020 Studio Associato - Consulenza legale e tributaria, an Italian professional partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

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.