



Trusts: new insights

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The clarifications and interpretations provided in the draft circular on the taxation of trusts (open for public consultation until 30 September 2021) have answered some of the unresolved.

Discretionary trusts in tax havens

The circular clarifies that the criterion for determining whether a foreign discretionary trust is established in a tax haven can be found in article 47-*bis* (1) (b) of the Italian Income Tax Code ('IITC').

When is a jurisdiction considered a tax haven?



According to the interpretation given in the circular, when the nominal tax rate on income produced by a foreign discretionary trust is 50% lower than the rate applicable in Italy. Special regimes from which trusts benefit are also to be considered.

In this scenario, tax ruling applications seeking to show that the establishment of a trust has not shifted income to tax havens are disallowed.

The introduction of paragraph 4-*quater* of article 45 of the IITC aims to prevent the non-taxation of income distributed to beneficiaries by foreign discretionary trusts established in tax havens. This rule applies only to discretionary trusts in tax havens.

How is taxable capital income determined?



The circular confirms that only the part of the distribution that is income is liable to tax, whereas the part that is principal is excluded. However, if this distinction cannot be proven using the trust's management accounts, the entire distribution constitutes income in the hands of the beneficiary.

Indirect tax

Further changes are described with regard to inheritance and gift tax as well as the registration taxes (*imposta di registro*, *imposta ipotecaria* and *imposta catastale*) applicable during the life of a trust.



The **trust deed**, **deed of conveyance** and (possible) **trustee replacement deed** mark moments during the life of a trust when the transfers serve only to further the trust's objectives. Because these are considered **neutral events**, a fixed *imposta di registro* and/or fixed *imposta ipotecaria* and *imposta catastale* are applied.

The **distribution of trust assets to beneficiaries** entails an actual transfer of wealth and therefore triggers proportional inheritance and gift tax and/or proportional *imposta ipotecaria* and *imposta catastale*.



Timeline

It is when the assets are distributed to the beneficiaries that the following are determined:

- the rates of gift tax, based on the degree of kinship between the settlor and the beneficiary, and any exemptions and/or relief;
- the value of the assets subject to tax.

The draft circular fails to explicitly clarify when exactly the settlor's place of residence must be verified for gift tax purposes. It is also unclear what happens if the settlor is a resident of Italy at the time of conveyance of assets to the trust and then moves abroad (or vice versa).

Tax monitoring obligations: IVAFE (wealth tax on financial assets) and IVIE (wealth tax on foreign real estate)

Not only direct owners of investments and foreign financial assets but also the beneficial owners must fill in an RW Form.

(!) The new definition of 'beneficial owner'



The previous references to the percentages of principal or control (25 percent or more) no longer apply. The new definition of a beneficial owner includes those who ultimately benefit from the activities of the legal entity, if they are identified or can be easily identified, even indirectly, through the trust deed or other documents.

How the beneficial owner is identified does not depend on the nature of the trust (discretionary or non-discretionary).

It should also be noted that, with effect from FY 2020, non-commercial entities and partnerships resident in Italy are subject to IVIE and IVAFE and are required to fill in an RW Form.

✓ **Are the trustee, settlor and protector required to file a tax return?**



No, not if they are merely following instructions/acting under a power of attorney and are not acting in their own interests.

Pending issues

It remains unclear whether any gift tax, or the registration taxes paid when registering deeds of conveyance, are refundable and/or subject to other tax treatment.

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