



Italian Tax Authority Clarifies Taxation Regime for Trusts

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Francesco Bonichi and Lorenza Traccitto of Caiazzo Donnini Pappalardo & Associati explain the new guidelines issued by the Italian tax authority, which clarify the taxation of trusts to remove uncertainty around their tax treatment.

The Italian tax authority has published [Circular No. 34/E](#), which provides important clarification on taxation of trusts, accepting case law principles and removing uncertainty, with the result that this common law “fiduciary agreement” can now be more easily considered in personal assets segregation and family succession plans.

Non-Italian professional trustees, family officers, and private banking and financial advisers should be aware of these new guidelines, since we can expect an increase in business for those firms/trustees based in countries more familiar with common law principles under which trusts are regulated.

The circular has been open to public consultation for more than a year, and mainly provides clarification of an amendment introduced by [Decree-Law No. 124](#) of Oct. 26, 2019, relating to distributions to Italian beneficiaries from trusts subject to low-level taxation.

This article will focus on taxation of distributions made by trustees of certain non-Italian trusts to Italian residents, qualified by a law presumption as “income from capital” when it is not possible to distinguish between accrued income and the original assets assigned to the trust by the settlers.

The article will also address the indirect tax treatment of trusts set up and consequent asset contribution, including the contribution of properties, fixed assets, and intangible rights.

Foreign Opaque Trusts

Trusts fiscally resident in Italy are taxed on their income wherever produced, in the same way as Italian companies and non-commercial entities.

“Non-discretionary trusts” are fiscally transparent. When the deed of trust recognizes identified beneficiaries with the right to receive income or assets, these beneficiaries, in proportion to their respective right/share, are subject to income tax on the basis of the “imputed income,” and irrespective of the cash payment.

Conversely, under a “discretionary trust,” the trustee discretionally distributes capital or income to beneficiaries (who do not have an effective right to claim a fixed share of income/capital until the trustee resolution). In this case, the trust is considered for Italian tax purposes as an “opaque” entity, i.e., it is deemed a taxable entity like a company or a non-commercial entity, irrespective of its beneficiaries.

We will focus only on non-Italian trusts, discretionary and without an identified beneficiary, that are subject to taxation in Italy only on income produced in Italy (the foreign source income would not be taxable in Italy). This is one of the most common type of trust present in the market.

The circular clarifies that the described tax regime is subject to an important exception when the (opaque) trust is established in a state or territory that, with reference to the income produced by the trust, is subject to a level of taxation less than half that applicable in Italy at the tax rate of 24%—that is, the trust’s income is subject to tax lower than 12%. In this case, the distribution of income to the beneficiary is subject to income tax for the Italian beneficiary (as capital income on cash basis—*reddito di capitale*).

The circular clarifies that the purpose of Law 124/2019, which introduced this provision, was to avoid that income distributed from trusts subject to a low level of taxation (or not subject to tax) would lead to substantial non-taxation of income distributed to Italian beneficiaries.

It also follows that any other nonresident opaque trusts (subject to a level of taxation of at least 12% and not having Italian source income) are not subject to Italian taxation, and also that Italian beneficiaries are not subject to tax when the trustee discretionally resolves to pay a cash distribution.

Legal Presumption of ‘Income’ versus ‘Capital’ Distribution

A further clarification in the circular (No. 34/E on page 24 et seq.) relates to the following legal presumption: If in relation to the attributions of foreign trusts, as well as entities with similar features, to beneficiaries resident in Italy, it is not possible to distinguish between “income” and “capital” (original assets assigned to the trust by the settler), the entire amount received by the beneficiary constitutes income and consequently is taxed in the hands of the Italian beneficiary at its progressive income tax (IRPEF) rate up to 43%.

This presumption applies in the event that the beneficiary of the attribution made by the foreign opaque trust subject to a low level of taxation does not receive suitable reporting and documents from the trustee to identify the income component versus the capital component not subject to tax.

Increased Relevance of Trustee Accounts and Reporting

Under the legal presumption described above, all distributions of funds made by the trustee of foreign opaque trusts enjoying a low tax regime are deemed income for the beneficiary

(*reddito di capitale*), other than where the beneficiary is able to distinguish between the income and capital component on the basis of the trustee's accounts and reporting.

In order to override this legal presumption, there must be clear evidence of the distinction between the capital component, represented by the initial endowment and subsequent transfers of assets to the trust, and the income component, consisting of income earned or accrued to the trust (including income reinvested or capitalized in the trust itself). The Italian tax authorities should be able to verify the income component accrued to the trust in each fiscal period and whether this income has been taxed with the trust.

The circular clarifies that non-accounting documentation, such as bank and financial statements, investment contracts, and the trust's financial statement, may be used to override the legal presumption.

Therefore, it is important that the trustee holds complete and detailed accounting documentation attesting the source and date of the original capital trust endowment component in respect of the income accrued over the years, net of any allocations to beneficiaries. The lack of sufficient evidence may lead to the Italian beneficiary being subject to taxation on the entire trustee distribution of funds or assignment of assets.

Indirect Taxation Is Due at the Time of the 'Capital' Distribution

With reference to indirect taxes, the circular confirms the tax court case law principles providing for the application of registration tax at the fixed amount of 200 euros (\$213), to both the deed of establishment of the trust, and the subsequent deed of endowment of assets and funds to the trust, resulting from public deed or private agreement. The transfer of assets and rights into trusts represents a "neutral act" that does not lead to a transfer of wealth subject to tax.

The application of the progressive inheritance and gift tax is consequently due only at the time of distributions of assets to the Italian beneficiaries (between 4% and 8% according to the relationship existing between the settler and the beneficiary).

Tax Monitoring Obligations

The circular also clarifies when an Italian beneficiary of an opaque foreign trust is required to comply with Italian tax monitoring obligations that are due not only by the direct legal owner of a foreign investment, but also by the ultimate beneficial owner when assets are held in the name of interposed entities.

The ultimate beneficial owners of trusts, as defined by the [EU directive on anti money laundering](#), are those individuals identified or easily identifiable by category (e.g., lineal descendants of the settler) under the trust deed or other related documents. In these cases, Italian beneficiaries must comply with tax monitoring obligations and file form RW—related to the monitoring of asset investments and financial assets held abroad by individuals, non-commercial entities based in Italy, and simple partnerships (*società semplici*)—of their tax return.

Beneficiaries of discretionary trusts, as soon as appointed and entitled to claim the payment of income or capital from the trustee (i.e, upon the trustee resolution/decision to distribute

funds), are also obliged to file form RW, declaring for tax monitoring purposes not only their share, but all assets held by the trust.

Planning Points

- Circular No. 34/E comprehensively clarifies the interpretation of the main principles of taxation of Italian and foreign trusts and the taxation of Italian beneficiaries.
- Trustees of foreign trusts with Italian beneficiaries should be aware that in many cases if they are not able to distinguish and give clear evidence of the “capital” component versus the “income” component, the entire distribution to the beneficiaries resident in Italy is subject to income tax (at the progressive income tax rate up to 43%) on the basis of a legal presumption that qualifies the entire amount as taxable income.
- A fixed stamp duty of 200 euros applies only at the time the trust is set up and on contribution of cash, assets, and securities to the trust; a proportional inheritance and gift tax is due only at the time of and upon distributions to the final beneficiaries.
- Relevant clarification has been provided on tax monitoring and reporting obligations for Italian tax resident beneficiaries of discretionary and non-discretionary trusts, with potential heavy tax penalties for failure to meet these obligations.

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Author Information

Francesco Bonichi is tax partner and **Lorenza Traccitto** is tax associate at Caiazzo Donnini Pappalardo & Associati.

The authors may be contacted at: francesco.bonichi@cdplex.it; lorenza.traccitto@cdplex.it



Francesco Bonichi
Caiazzo Donnini Pappalardo & Associati



Lorenza Traccitto
Caiazzo Donnini Pappalardo & Associati