

Tax Alert – Italian beneficiaries of non-Italian irrevocable and discretionary trusts are required to tax monitoring obligations (section RW of the tax return)

With the recent Tax Ruling (Interpello) No. 693/2021 of 8th October 2021, the Italian Tax Authorities clearly addressed a debated tax monitoring obligation of Italian beneficiaries of foreign discretionary and irrevocable trusts, confirming the obligation for actual or potential beneficiaries of the trust to report their entitlement and the trust amount in the “tax monitoring section RW” of their Italian tax return. This conclusion is grounded on the interpretation of the definition of “actual beneficiary” (titolare effettivo) of trusts’ assets, as amended by the Legislative Decree No. 90/2017 (and effective since 2018).

The above interpretation and conclusion is also reported in the current draft of the tax circular on trusts, opened to comments until September 2021, and that received several requests of clarification and amendment by scholars and market players and that is still in draft but expected to be published and formally enacted by the Tax Authorities in the near future.

Warning & Actions:

This is not a change of law but a relevant interpretation of the Italian Tax Authorities in a specific tax ruling. The principle, if confirmed (as expected) by the incoming tax circular on Trusts, will be binding for the tax offices with a significant impact on future tax assessments on Italian beneficiaries of foreign trusts on fiscal periods from 2018 onward.



Italian tax resident beneficiaries of a foreign discretionary and irrevocable trust are clearly required to declare their “potential” entitlement to foreign trust assets in their Tax Return only for “tax monitoring” purposes filing section RW.

The omitted filing is heavily sanctioned with a tax penalty variable between 3% and 15% (increased to 6% - 30% if the trust is incorporated in a non-cooperative country) per each fiscal year on the entire assets value held in trust.

Summary of the tax ruling

An Italian settlor was planning to set up a genuine irrevocable and discretionary trust regulated by a foreign law, appointing a non-Italian trustee and nominating as final beneficiaries his minor children (identified only as a category of beneficiaries) tax resident in Italy.

The question raised with the tax ruling dealt with the qualification of the minor children as “actual beneficiaries” (*titolari effettivi*) of the trust: if so, they should file the Italian tax return reporting the “potential” trust entitlement in the tax monitoring section RW.

In the case the children were qualified as *titolari effettivi*, and therefore required to file the section RW of the tax return, the settlor asked if the appointment of an Italian fiduciary company, acting on behalf of his children in collecting future income/capital from the Trustee, would have avoided this compliance tax reporting obligation due to the intermediation activity of the same Italian fiduciary company.

The tax ruling confirmed that, following the 2017 amendment introduced by the IV^o Directive on anti-money laundering (Legislative Decree No. 90/2017), the Italian tax monitoring law (Law Decree No. 167/90 and art. 1 and 20 of Legislative Decree No. 231/2007) includes among the *titolari effettivi* of trusts and similar entities (committed to file section RW of the tax return), also those beneficiaries that may be easily identified through the reference to a category, like “my children” and irrespective from the percentage of assets attributed to each beneficiary.

In addition, with respect to the question on the interposition of an Italian fiduciary company, the Italian Tax Authorities denied that such circumstance would have exempted from the Section RW obligation because such exemption applies only to fiduciary companies with trust management powers (which would instead be exercised by the trustee in the case at stake).



Conclusions

The principle expressed in this tax ruling is very significant since it will be likely confirmed by the incoming tax circular on trusts becoming a mandatory tax guideline for Italian local tax offices in their ordinary tax assessment procedures.

We expect that, if this will be the case, in the near future tax offices may start to challenge the omitted filing of Section RW to all Italian tax resident beneficiaries of foreign, discretionary and irrevocable trusts even in those cases where these beneficiaries are identified only as a category of potential beneficiaries (like “my spouse” or “my children”) when these individuals can be easily identified at the end of each fiscal period (ie. the actual spouse or children of the Settlor).

We remain at your disposal for any clarification,

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