

California State Bar Association Tax Section
Annual Meeting - La Jolla, Nov. 2-4, 2007

Italian Taxation of Trusts

Law 296 of December 27, 2006 (Budget Law 2007)

Circular 48/E of August 6, 2007

Effective Date: 1.1.2007

Tax Residency of Trusts

- Three alternative tests (to be met for at least 183 days in the tax year):
 - Legal seat (formal, trust agreement controls);
 - Place of administration (facts and circumstances, trust's administrative offices or trustee's domicile);
 - Place of principal activities (facts and circumstances, location of assets or activities).

Special Anti Abuse Rules

- A trust is presumed to be resident in Italy if:
 - It is formed in a nonqualified jurisdiction (no white list) and one grantor and one beneficiary is an Italian resident person;
 - An Italian resident person transfers Italian real estate to a trust;
 - Owns or controls and Italian entity and it is owned or controlled by Italian residents.

Tax Classification of Trusts

- Fiscally non transparent, if no designated or identified income beneficiaries (in trust agreement or by trustee);
- Fiscally transparent if income beneficiaries designated in the trust agreement or appointed by the trustee;
- Hybrid trust (partly transparent, partly taxable);
- Business/non-business trusts.

Taxation of Trusts

- Trusts compute and report income like corporations.
- Fiscally non transparent trust: subject to corporate income tax.
- Fiscally transparent trust: income - as allocated in the trust agreement or by the trustee - passes through to and is taxed upon income beneficiaries of the trust.
- Hybrid trusts: part of income subject to corporate income tax and part attributed to/taxed upon income beneficiaries.

Taxation of Trust Beneficiaries

- No tax on income beneficiaries upon distribution of trust's income.
- One level of tax only: upon income beneficiaries or upon trust.
- Fiscally transparent trust: income beneficiaries include their share of trust's income as computed on the last day of trust's tax year.
- Fiscally non transparent trust: tax is assessed on the trust, no tax on beneficiaries upon distribution of trust's income.

Cross-Border Issues

- Resident trusts are taxed on worldwide income;
- Nonresident trusts are taxed on Italian-source income;
- Income from trust is characterized as Italian-source income from capital (sheltered under tax treaties “other income” provision?);
- Nonresident beneficiary’s share of income of Italian business trust is Italian-source business income (is Italian trust’s business attributed to trust’s foreign beneficiary)?
- Treaty relief if no PE in Italy? Tested at the level of trust/beneficiary?
- No tax on Italian trust’s distributions to foreign beneficiaries.

Tax Treaties

- Trust qualify as “persons” for treaty purposes.
- Fiscally nontransparent trusts qualify as persons and residents for tax treaty purposes.
- For fiscally transparent trusts, treaty benefits eligibility is tested at the level of the trust’s beneficiaries.
- Hybrid trusts: who get the treaty benefits?

Gift Tax

- Transfers to trusts are subject to gift tax.
- Gift tax applies when beneficiary of trust's assets is identified. Possibility of deferral?
- Tax rate (4-6-8 per cent) and exemptions vary depending on relatedness between settler and beneficiary.
- Transfer of Italian assets to foreign trust is subject to gift or estate tax. Beware!

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