

# TRUSTS' RECOGNITION AND TAX TREATMENT IN ITALY

GIUSY PISANTI  
LEXACTA GLOBAL LEGAL ADVICE  
ROME - ITALY

# TRUSTS' RECOGNITION IN ITALY



## CIVIL LAW PROFILES

RATIFICATION OF THE HAGUE TRUSTS CONVENTION DATED 1<sup>st</sup> JULY 1985 BY ITALIAN LAW N. 364 ISSUED IN 1989, OCTOBER 16<sup>th</sup> IN FORCE FROM 1<sup>st</sup> JANUARY 1992



## TAX PROFILES

ARTICLE 1, PARAGRAPHS FROM 74 TO 76 OF FINANCIAL LAW N. 296 DATED 27<sup>th</sup> DECEMBER 2006



# CIVIL LAW PROFILES – The 3 Essential of Trusts according to article 2 of the *Hague Trust Convention*

- 1) The Willingness of the Settlor to set-up a Trust.
- 2) The Trust scope.
- 3) Beneficiary/ies.

The Settlor has:

- 1) to set- up the Trust validly;
- 2) to assign assets in trust fund by dispossessing them
- 3) **to leave the scene.**

The **Settlor** gives up his ownership, as well as his disposal powers, onto assets (segregation effect) put in the trust fund in the name of the **Trustee**, who has the power, as well as the obligation, to manage/dispose of the trust fund in the interest of the **Beneficiary/ies** and/or for the realization of the trust **Scope**

**REPORTING DUTY BY THE TRUSTEE ACCORDING TO THE LAW  
AND TO THE TRUST DEED**



# IN CASE OF LACK OF ONE/MORE OF THE 3 ESSENTIALS

## SELF – DECLARED TRUSTS

- SETTLOR = TRUSTEE OR ACTS AS A TRUSTEE;
- NO TRANSFER OF ASSETS;
- NOT NIL BUT ALLOWED IF RULED BY A FOREIGN LAW OF A STATE RECOGNIZING IT;
- TO VERIFY, CASE BY CASE, IF IT HAS ELUSIVE PURPOSE;
- NOT RECOGNIZED BY ITALIAN LAW AS ART. 2 OF HAGUE TRUST CONVENTION IS NOT VERIFIED;
- IN ITALY IT IS TAXED FOR TRANSPARENCY ONTO THE SETTLOR'S SHOULDERS.

## INTERPOSED TRUSTS

- SETTLOR = BENEFICIARY/IES;
- ESTABLISHED & MANAGED TO ACHIEVE A MERE INTERPOSITION IN THE POSSESSION OF ASSETS & INCOME;
- ACCORDING TO ITALIAN REVENUE AUTHORITY (SEE AT SLIDE 6 AN EXEMPLARY BUT NOT EXHAUSTIVE LIST) THEY ARE TO BE CONSIDERED NOT EXISTENT WITH CONSEQUENT INCOME TAXATION FOR TRANSPARENCY ONTO THE SETTLOR;
- SEE AT SLIDE N. 7 EXEMPLARY BUT NOT EXHAUSTIVE SUBJECTIVE/OBJECTIVE CASES BY THE BANK OF ITALY.

# IN CASE OF LACK OF ONE/MORE OF THE 3 ESSENTIALS ... following

## SHAM TRUST



- **SETTLOR = TRUSTEE = BENEFICIARY/IES**
- **CASE IN WHICH THE SETTLOR'S LEGAL & FACTUAL CONTROL OF ASSETS IN FUND IS ACCOMPANIED BY A SIMULATORY AGREEMENT: THAT IS TO SAY, THE DESIRE TO BRING INTO EXISTENCE IN FAVOR OF THE SETTLOR A LEGAL RELATIONSHIP OTHER THAN THE TRUST.**

# ITALIAN REVENUE AUTHORITY'S EXEMPLARY BUT NOT EXHAUSTIVE LIST OF INTERPOSED TRUSTS



- the Settlor (or the Beneficiary) can freely terminate the trust at any time, generally for their own benefit or even for the benefit of third parties;
- the Settlor has the power to designate themselves as Beneficiary/ies at any time;
- the Settlor (or the Beneficiary) results, from the trust deed or other factual elements, as holder of powers; as a consequence, the Trustee, even if they have discretionary powers in management and administration, cannot exercise them without the Settlor's consent;
- the Settlor has the power to terminate the trust ahead of time, designating themselves and/or others as Beneficiaries (term trust);
- the Beneficiary has the right to receive assets' assignments from the Trustee;
- it is expected that the Trustee must take into account indications provided by the Settlor in relation to the asset management and income generated by it;
- the Settlor can change the Beneficiary/ies during the life of the Trust;
- the Settlor has the right to allocate Trust's income and assets or grant loans to subjects identified by the same, and any other hypothesis in which the managerial powers and disposition of the Trustee, as identified by the Trust Regulations or by the Law, result in some limited or even simply conditioned by the Settlor's and/or Beneficiary/ies' will.

# EXEMPLARY BUT NOT EXHAUSTIVE SUBJECTIVE & OBJECTIVE CASES OF INTERPOSED TRUSTS ALSO FOR AML'S PURPOSES BY THE BANK OF ITALY

## SUBJECTIVE CASES

- frequent issue by Trustee of proxies to operate, especially if in favor of the Settlor or of subjects close to them;
- presence of the Settlor among Beneficiary/ies of capital or indication of them as the Sole Beneficiary, especially if the cause establishing the Trust is not clearly perceptible.

## OBJECTIVE CASES

- establishment of the Trust in Countries or Territories at risk, especially if the Settlor or a Beneficiary is resident in Italy;
- management operations carried out by the Trustee with systematic presence of the Settlor, the Guardian or the Beneficiary/ies.





# **TAX PROFILES- ARTICLE 1, PARAGRAPHS FROM 74 TO 76, OF FINANCIAL LAW 296/2006**

## **INCOME DIRECT TAXATION**





# TAX PROFILES- ARTICLE 1 PARAGRAPHS FROM 74 TO 76 OF FINANCIAL LAW 296/2006



## TRANSPARENT TRUSTS

- Beneficiaries are well identified in the incorporation deed;
- Although not directly identified, it is easy to know, by incorporation or other side deeds, Beneficiary/ies entitled to have Trust's income/attributions duly distributed;
- Very low discretion granted to the Trustee about the Trust's attributions' destination;
- Trust income is taxed in transparency onto Beneficiary/ies according to the % of their share to the Trust fund if it is known by deeds, otherwise in equal % (art. 73 paragraph 2 Italian Income Tax Law n. 917/1986).

## OPAQUE TRUSTS

- High discretion powers granted to the Trustee about Trust income's/attribution's destination;
- No identification of Beneficiary/ies directly by deed or equivalent docs or by their interpretation and/or coming up by real facts;
- Italian resident Trusts are subject to IRES (Business Income Tax) at 24% onto income made.

## TRANSPARENT & OPAQUE MIXED TRUST

- Both
- Part of Trust's income is set aside as Principle and part is, instead, distributed to Beneficiary/ies.

### PART SET ASIDE AS PRINCIPAL

**TAXED ON THE ITALIAN RESIDENT TRUST**



### PART TO BENEFICIARY/IES

**TAXED ONTO THEM AT A 26% FLAT SUBSTITUTIVE TAX RATE**



# INCOME DIRECT TAXATION IN CASE OF NON-ITALIAN RESIDENT TRUSTS



## 1) FOREIGN TRANSPARENT TRUSTS WITH ITALIAN RESIDENT UBO

Income made out of the Trust is taxed as a capital income at a flat substitutive tax rate of 26% onto identified Italian resident Beneficiary/ies (articles 73 and 44 Italian Income Tax Law)

## 2) FOREIGN OPAQUE TRUSTS IN EU OR TERRITORIES BELONGING TO EEA WITH TAX INFORMATION EXCHANGE TOGETHER WITH ITALY

ZERO taxation onto Italian resident UBO for income made out of the Opaque Trust

## 3) FOREIGN OPAQUE TRUSTS RESIDENT OUTSIDE EU/EEA

### NEW MEASURES WITH EFFECT FROM FY 2020

#### PRIVILEGED TAX JURISDICTIONS

- Those outside EU and EEA where the nominal level of taxation is lower than 50% of the tax rate applied in Italy.
- Income made out of them are taxable onto Italian resident UBO, even though they are not identified.

#### NOT PRIVILEGED TAX JURISDICTIONS

Without any difference with privileged tax Jurisdictions, any attribution by foreign Trust, if not duly proved as income distribution, is presumed so, thus taxed onto UBO even though they are not identified.

# INDIRECT TAXATION OF TRUSTS' SETTING – UP AS WELL AS REVOCABILITY

## SETTING – UP

### - GIFT/ INHERITANCE TAX

- 4% WITH ALLOWANCES GRANTED ACCORDING TO DIFFERENT DEGREES OF PARENTAL RELATIONSHIP BETWEEN S & B
- 6%
- 8%

IN CASE OF DULY IDENTIFICATION BETWEEN S SETTLOR & B BENEFICIARY/IES AS THERE IS A REAL TRANSFER OF ASSETS

- IN CASE OF INTERPOSED/SHAM TRUST: ZERO GIFT TAX FOR NO TRANSFER OF ASSETS AND/OR S = B

## DOUBTFUL ASPECTS

FOR DOUBTFUL TRANSFER OF ASSETS IN FUND FROM SETTLOR TO TRUSTEE AT THE SETTING - UP



## REVOCABILITY

- Assets are assigned back to the Settlor.
- If gift tax was paid at the setting-up, fixed registration tax of 200 eur has to be paid.
- If gift tax was not paid at the setting – up, but only Fixed Registration Tax, proportional Registration Tax at 1% is now due.



# ANY QUESTIONS?



Mrs. Giusy Pisanti  
Associate at Lexacta Global  
Legal Advice  
Rome – Corso Vittorio  
Emanuele II, 287 - 00186  
Mail: [giusy.pisanti@lexacta.it](mailto:giusy.pisanti@lexacta.it)



## **Milan**

Piazza Fontana, 6 | 20122

Phone: +39 02 76390009 | Fax +39 02 76281213  
E- mail: [segreteria.milano@lexacta.it](mailto:segreteria.milano@lexacta.it)

## **Rome**

Corso Vittorio Emanuele II, 287 | 00186 Tel Phone:  
+39 06 6819091 | Fax +39 06 68190940  
E- mail: [segreteria.roma@lexacta.it](mailto:segreteria.roma@lexacta.it)

