

Tax Alert - New guidance from the Italian Tax Authority relating to Trusts

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On 27 December 2010 the Italian Tax Authority has issued Circolare ("Guidance") number 61/E setting out further clarifications in relation to the taxation of trusts, settlors and beneficiaries.

This new clarification contains statements that will mean that changes may be necessary to trusts, whether resident in Italy or not, as it may affect Italian and non-Italian resident beneficiaries and settlors of Italian and non-Italian resident trusts.

The document has confirmed the interpretation of some of the provisions of the Finance Act 2007, which introduced the taxation of trusts into the Italian system.

However there are three issues arising from it that may require action.

Deemed tax transparency

Firstly, the clarification refers to another Circolare of October 2009, which detailed the application of the "scudo" (repatriation of funds) legislation in Italy to trusts at the time. This Guidance extends its applicability stating that in certain circumstances the Italian Tax Authority would consider trusts as transparent for tax purposes.

There is a list of trust terms and factual situations in the Guidance that would cause a trust to be fiscally transparent.

Some, such as any dispositive control by a settlor or beneficiaries under the terms of the trust or by their actions, or the revocability of the trust, have always been firm principles under Italian rules.

However, this goes further, and it seems to state that, for example, if a settlor is a beneficiary or has the ability to add himself or herself as a beneficiary of a trust, or even if he just has the power to add beneficiaries, the trust could be considered as transparent and the trust fund would remain in the hands of the settlor for Italian tax purposes and be taxed accordingly.

Taxation of Italian resident beneficiaries of non-Italian Trusts

The Guidance clarifies that an Italian resident beneficiary of a non-Italian resident trust who receives or is entitled under the terms of the trust to income from such trust, will be subject to tax in Italy.

Therefore if there is an income entitlement under the terms of any trust in favour of an Italian beneficiary, such income will be taxed in Italy, no matter where the trust is resident.

Taxation of non-Italian resident beneficiaries of Italian Trusts

The Guidance finally states that if a Trust resident in Italy has a non-Italian resident beneficiary entitled to income under the terms of the trust, such income will be subject to tax in Italy on the beneficiary on an arising basis, even if not distributed.

For more information please do not hesitate to contact



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