Taxation of income transferred to Italian beneficiaries from non-EU resident trusts

28 November 2019

Private Client & Offshore Services, Italy

Decree-Law 124/2019, which entered into force on 27 October 2019, has introduced specific provisions concerning the tax treatment of income transferred to Italian beneficiaries from non-EU resident trusts.

Trusts have been recognised under Italian civil law since 1989 in accordance with the Hague Convention, notwithstanding the absence of a specific domestic law. Notwithstanding that, Italian residents can create a trust regulated by foreign law. The tax residence of the trust is determined by the location of the trustee who can also be Italian.

From a tax law point of view, specific rules were introduced to regulate the taxation of trusts (as corporate income tax subjects) and the taxation criteria of remittances made to Italian tax resident beneficiaries. There are still doubts regarding the application of gift tax (the Supreme Court of Cassation has issued different decisions in this regard in recent years) and the taxation of benefits received by Italian-resident taxpayers.

Decree-Law 124/2019 has introduced a provision to regulate the taxation of the transfer of income to Italian beneficiaries from non-EU trusts which are not considered transparent entities for Italian income tax purposes (ie, opaque trusts).

Since the introduction of provisions to the Income Tax Code aimed at regulating the taxation of trusts and related beneficiaries, the tax treatment applicable to income distribution from foreign opaque trusts (whose income is not to be attributed to their beneficiaries) has not been clarified by law and the position of tax administrations and taxpayers have always been different.

This legal void will be filled by Article 13 of Decree-Law 124/2019 (unless it is amended during the parliamentary process), which provides for a new class of 'financial income', represented by income paid**(1)** to Italian resident beneficiaries by non-EU trusts established in low-tax jurisdictions**(2)** (determined in accordance with Article 47*bis* of the Income Tax Code).**(3)**

The new rules should have an innovative (and not interpretative) aim, so that benefits received by Italian tax resident beneficiaries up until the law's entry into force on 27 October 2019 should not be subject to taxation.

Decree-Law 124/2019 has also introduced a presumption that all trust distributions (including EU opaque trusts) qualify as income distributions unless adequate evidence is provided that the amount distributed represents a capital distribution (not subject to income taxes).

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Endnotes

(1) Without any specific provision, Article 13 will apply to income distributions made as of fiscal year 2020.

(2) Trusts established in EU or EEA member states that have an agreement with Italy allowing the adequate exchange of information are excluded from the scope of the new provision.

(3) A jurisdiction is considered low tax if its:

- effective tax rate is lower than half the rate applicable in Italy, where the entity is controlled by a shareholder resident in Italy; and
- nominal tax rate is lower than half the rate applicable in Italy (if there are no checks).


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