

WAIVER OF POSITION OF BENEFICIARY OF TRUST - INHERITANCE AND GIFT TAX, REGISTRATION TAX, MORTGAGE TAX AND CADASTRAL TAX

Italian Revenue Agency ruling No. 165/2024

- ✓ The case submitted to the Italian Revenue Agency (IRA) concerns a Trust governed by Jersey law, established in 2012 by an individual (Tizio) and his daughter (Caia) as Settlers and having as beneficiaries Caia's two children (as well as Tizio' grandchildren).
- ✓ The purpose behind the establishment of the Trust was to provide for the living needs of the beneficiaries through the creation of an autonomous estate that would ensure the best personal and medical care for the descendants of Settlers, and where necessary for Settlers themselves, as well as security and economic protection for the future. To this aim, Settlers contributed certain real estate to the Trust. As of 2018, replacing the Italian company initially appointed as trustee, the same Settlor Tizio took over as Trustee.
- ✓ The intention therefore put forward to the IRA is to proceed, with the full agreement of all parties to the Trust, to terminate the Trust, so that the real estate attributed to the Trust returns to the full availability of Settlers (thereby restoring the situation prior to the establishment of the Trust).
- ✓ This trust termination would be implemented with the waiver of all beneficiaries from the "position of Trust beneficiary" and with the consent of the Trustee and Protector.
- ✓ The IRA, without going into the merits regarding the correctness of the tax regime applied by the Trust for the purposes of direct taxation nor regarding the validity of the establishment of the Trust, specifies, with reference to the proposed transaction, that:
 - the transfer back to Settlers of the real estate assets originally contributed to the Trust does not realize the requirement for the application of the gift tax pursuant to Article 1 of Legislative Decree 346/90, since there is no transfer of wealth (in line with the orientation of the Supreme Court jurisprudence);
 - for the purposes of registration tax, the deed of retrocession is among the deeds to be registered in a fixed term and with the application of registration tax at a fixed rate, if drawn up by public deed or by notarized private deed, pursuant to Article 11 Tariff - Part One of Presidential Decree 131/86;
 - to the same deed the mortgage and cadastral taxes are made applicable in a fixed measure ex. art. 4 of the Tariff annexed to Legislative Decree 347/90 and art. 10, paragraph 2 of that decree.

