

# New reporting obligations for trusts in Italy

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**CATEGORY:**  
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## Non-resident trusts under increased scrutiny

Italy was the first civil law country to ratify the Hague Trust Convention. This was followed by the introduction of express rules dealing with the tax treatment of trusts in 2007.

Overall, the statutory rules (coupled with low gift and succession taxes) are relatively benign and it has been possible to use trusts to defer income and capital gains tax by holding assets through non-Italian resident trusts (broadly, discretionary and irrevocable trusts that (a) are effectively managed abroad, (b) are not comprised mainly of Italian situate assets and © are not established in a blacklisted jurisdiction).

However, at the end of 2010 the Italian tax authorities released a circular letter in which they outlined a number of scenarios in which they would effectively disregard trusts (by treating them as '*fictitious interpositions*'). This approach has been widely criticised by commentators as being too broad-brushed.

## New tax reporting obligations

In the latest instalment in what seems to be an increasingly hostile saga for trusts, the Italian government has effectively extended the existing reporting obligations (under which Italian taxpayers must disclose any non-Italian assets they own, whether income-producing or not) to trust beneficiaries.

Strictly, the new rules (which entered into force on 4 September 2013) apply to '*beneficial owners*' of offshore structures. However, the term is defined by reference to the anti-money laundering rules, which contain a wide definition of '*beneficial owner*' – much wider than its tax law counterpart, because of the different scope of the relevant rules (the aim of any anti-money laundering legislation is to identify any person who is behind a legal structure, regardless of their power to enjoy its income, which is what tax laws generally seek to tax).

Going forward, the new *reporting-cum-anti-money laundering* rules will apply to the following scenarios: '*1) if the future beneficiaries have already been determined, the beneficiaries of 25% or more of the assets; 2) if the beneficiaries have not yet been determined, the class of persons in whose main interest the [trust] has been established/acts; 3) the person(s) who exercise control in respect of 25% or more of the [trust] assets*'.

Offshore trustees<sup>[1]</sup> and Italian resident beneficiaries need to consider the terms of their trusts and decide whether it falls within the definition outlined above.

If it does, then the trustee and/or the beneficiaries will have to disclose the existence of the trust in their tax return, which will increase the potential for tax litigation.

## Regulatory disclosure of shareholdings in listed companies

In a separate move, the Italian Securities and Exchange Commission ( CONSOB) issued new rules requiring trustees to disclose the identity of the settlor/beneficiaries and of any protector, as well as the nature and duration of a trust which holds 2% or more of the ordinary shares in a listed Italian company, or is a party to a shareholders' agreement in relation to such a company. Failure to comply with the new rules may lead to a fine between €5,000 and €500,000 (if the disclosure takes place no later than two months after the event) and between €25,000 and €2,500,000 (if more than two months late).

## Should non-resident trusts migrate to Italy?

The answer to this question is not straightforward, as it raises a number of complex issues.

## Possibly not such a bad idea...

In Italy, trusts are treated as akin to companies for tax purposes. This may lead to some interesting results. For example, dividends received by Italian resident trustees may benefit from participation exemption. In addition, the Italian tax authorities consider that income taxed in the hands of trustees should not be taxed again in the hands of the beneficiaries. Add to this the fact that, in Italy, gift tax is levied at very low rates (between 4% and 8%) and trusts look like the perfect holding vehicle. Furthermore, trustees may keep their affairs confidential by holding assets through a qualified intermediary (e.g. a bank or nominee) who acts as tax collection agent (so that income may not need to be reported when tax is levied at source).

By bringing a foreign trust onshore, trustees and beneficiaries may also avoid the reporting obligations mentioned above.

## Tax planning – don't let the tail wag the dog

Over the next few months, many foreign trustees will feel the pressure to migrate their trusts to Italy, e.g. by appointing an Italian co-trustee or by resigning in favour of an Italian trustee.

In our professional practice, we saw a similar wave at the time of the last tax amnesty programme.

However, the problem of tax planning is that, well, it only deals with tax. Instead, professional trustees should consider the *trust law implications* of migrating common law trusts to Italy. Whilst the Italian courts have some experience with trusts and Italian practitioners have generally a good grasp of trust law issues, trustees should consider that (unlike neighbouring Switzerland) Italy has stopped short from introducing express conflict of laws rules dealing with trusts. Thus, by migrating trusts to Italy, foreign trustees may find it more difficult to have disputes resolved by the courts of the country the proper law of which governs the trust. Therefore, trustees need to consider jurisdictional issues as well as the interaction between the proper law of the trust and local issues (such as Italy's rules on forced heirship, divorce and the protection of creditors).

With over 40 Italian speaking lawyers, the biggest private client and contentious trust teams in Europe and offices both in the UK as well as Italy (in addition to our other locations), we have an unparalleled expertise in dealing with complex trust structures with an Italian component, whether in connection with tax, fiduciary or contentious matters. Our cross-border expertise means that we can advise trustees and beneficiaries alike in their own language, both technically and culturally.

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[1] Under a rebuttable statutory presumption, a trust is deemed to be resident in Italy for tax purposes if it is not established in a white-listed jurisdiction and either: (a) at least one of the settlors and one of the beneficiaries are resident in Italy; or (b) Italian real estate is added to such a trust.