

Dealing with Italian società semplici in a UK tax context

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Italian families have historically structured their wealth through società semplici. These are the simplest form of legal entities in Italy and are most commonly used for holding financial or real estate assets, as well as agricultural or professional businesses. However, they cannot be used to undertake any type of commercial activities.

We mostly come across these structures when advising individuals who are UK tax resident on their international estate planning or when conducting a full review of their international tax affairs. The latter is often undertaken in reaction to a nudge letter from HMRC in light of the information exchanged between the UK and the Italian tax authorities pursuant to the fully implemented transparency rules. To see what we would advise you to do, should you receive a nudge letter, please see [here](#).

Most Italian domiciliaries become alert to international estate planning once they become UK deemed domiciled for inheritance tax purposes. An international Will dealing with their worldwide estate becomes extremely important at this point, given the risk of their worldwide assets then being subject to UK inheritance tax at 40%, in the absence of specific exemptions or reliefs. One of these exemptions applies to the transfer of assets between spouses. However, transfers of interests in società semplici on death are often subject to restrictions – contained in the atto istitutivo – so that it may only be possible for such interests to be transferred in favour of the surviving members or certain relations (eg lineal descendants) to the exclusion of others. It is therefore essential that these restrictions are considered to establish what the legal position would be on the death of the UK res and deemed dom member and whether any amendments should be implemented to override such restrictions, if appropriate. The Italian documents relating to the creation of, and amendments to, società semplici should be reviewed to ensure the clients' interests in such structures are properly dealt with as part of their international estate planning – including consideration given to the Italy/UK Treaty on estate duties where the underlying assets are also situated in Italy.

A società semplice may also be subject to review to establish its tax treatment for UK tax purposes and in particular whether it should be treated as a company (that is opaque and a taxable entity in its own rights) or a partnership (that is transparent, with the tax falling on its members on a look-through basis). If the member relocates to the UK (and elects to be taxed on the arising, rather than the remittance, basis) or becomes UK deemed domiciled (and as such unable to claim the remittance basis of taxation going forward) different tax implications may result in respect of his/her interests in the società semplice, depending on its UK tax classification as a foreign entity. If the società semplice is opaque, then it may be possible to argue that the income and gains belong to it and a tax charge will only be levied in the hands of the members upon a distribution.

By contrast, if the entity is treated as transparent, any income and gains accrued or realised within the società semplice will be taxable on the members in a look-through manner. The remittance basis, where properly claimed, will be able to shelter from UK taxation, non UK income and gains only. Therefore, a full review of the underlying assets should be carried out to ensure that the società semplice holds no UK situs assets. If this is not the case (that is, if the società semplice holds UK situs assets) the income accrued and the gains realised in respect of the UK assets would be chargeable to tax in the UK on an arising basis.

Società semplici are not listed amongst the foreign entities for which HMRC has already provided preliminary guidance and, as such, a full review of the main features of the relevant società semplice should be carried out on a case by case basis. This will involve considering the helpful indicators published by HMRC. Although società semplici are generally considered to be similar to partnerships (on the basis that they are taxed under the look-through approach under Italian tax law), each società semplice should be considered in its own merits as it may be possible to reach a different outcome (i.e. opaque) depending on its specific features. Indeed, this is the case for some US LLCs or French SCIs where a clear mismatch exists between their ordinary domestic tax treatment and their corresponding UK tax classification. An easy trap to fall into!

Should you have any questions or queries on this, please contact your usual Withers contact, or Mara Monte (details below).

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