

Tax Pills

## Italy's new fiscal rules on offshore, opaque and non-resident trusts

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In the draft **Circular** accessible for public consultation until September 30th, ample space is also reserved on the taxation of non-resident trusts located in low-tax States or territories. Particularly, for opaque foreign trusts, established in jurisdictions which, with reference to the income produced by the trust, are considered to have privileged taxation, the attributions of income by the trust are subject to taxation by the resident beneficiary. In this case, in fact, the reduced taxation of the foreign trust would correspond, however, to the taxation of the resident beneficiary for the attributions of income by the trust. This interpretative position and the correspondent legislative change are both based on the circumstance that the incomes are not subject to adequate taxation in the jurisdiction of establishment of the trust before being attributed to subjects residing in Italy.

**Taxation of offshore trusts—resident but non-domiciled** - In the event that the trust is not considered to be fiscally resident in a State, according to the legislation of that State, despite the fact that the administration of the trust is mainly carried out there, for the purposes of applying the rule in question, the trust must in any case be considered "Established" in that country if the income produced by the trust is not subject to any taxation in that country either on the trust or on the non-resident beneficiaries. The classic example is that of "*resident but not domiciled*" trusts.

**The peculiar British law on offshoring trusts** - This circumstance can occur, by way of example, with reference to trusts with multiple trustees in the United Kingdom. In this case, if the settlor is neither resident nor domiciled there (at the time of the establishment of the trust and any subsequent contributions) and there is at least one trustee not resident or not domiciled in the United Kingdom, the trustees (considered as single deemed person) are not regarded as resident there, regardless of whether there is a majority of English trustees or whether the trust is administered in the United Kingdom. Consequently, this type of trust, despite having its administrative headquarters in the United Kingdom, enjoys the fiscal advantages reserved for offshore trusts in that country. Indeed, similar considerations also apply in the event that the trust is deemed to be resident in an EU or EEA State, if it benefits from a tax (exemption) regime provided for offshore trusts (e.g. trusts in Cyprus).

**The adoption of a specific mechanism to detect the tax treatment of foreign trusts is fundamental** - In this regard, it seems appropriate to underline that the sole purpose of providing a valuable method of identifying the tax regimes applied to foreign trusts in the countries of establishment that prefigure a privileged regime constitutes a decisive tool in the attempt to adopt a valued anti-avoidance scheme, so effective to limit using offshore opaque trusts to pay less taxes. Moreover, the provision in question clearly provides that foreign States are or are not considered to have privileged taxation with exclusive reference to the treatment of income produced by trusts resident there. Therefore, the main factor that is taken into consideration, for the purposes of qualifying capital income, is the tax treatment of trusts. It's therefore believed that, in order to identify foreign opaque trusts that enjoy a privileged tax regime, reference should be made to specific rule which recognizes such a regime where the nominal level of taxation is less than 50 per cent of that applicable in Italy.

**The discriminating factor of the 50 per cent effective taxation** - In conclusion, the income of an opaque trust paid to an Italian individual is always considered taxable in Italy if the nominal level of taxation of the income produced by the trust is lower than 50per cent of that applicable in Italy. In such cases, any special regimes applicable to the trust must also be taken into account.

