

Newsalert

Tax Department

Trust and Italian indirect taxation. Is the position of Italian tax authorities finally up to speed with Italian settled case-law? A brief comment to Ruling No. 106 of February 15, 2021.

In Ruling No. 106 of February 15, 2021 (the “**Ruling**”), the Italian tax authorities were once again called to address the discipline of trusts’ indirect taxation. In the ruling outcome, the tax authorities adhered to the applicant’s interpretation stating that no inheritance and gift tax shall apply when the beneficiary is also the settlor of a trust, given that in such case no transfer of assets occurs.

Setting aside the formal conclusions contained in its laconic answer, the ruling embeds significant ramifications as the tax authorities made reference to a recent Decision rendered by the Italian Supreme Court according to which inheritance and gift tax shall come into play only in connection with the distribution of the trust’s assets to the final beneficiary.

1. Facts and legal background

The case concerned a non-Italian tax resident individual, vesting both the role of settlor and beneficiary of a foreign revocable trust.

Following a tax investigation, the Italian tax police upheld that (i) the individual was effectively tax resident in Italy, despite being formally registered in the registry of the Italian citizens resident abroad, and (ii) the trust as well as other entities included in the structure should have been considered as interposed for Italian tax purposes. On these grounds, the Italian tax police challenged that the income deriving from the fiscally interposed trust should have been subject to tax in Italy.

The individual agreed with the conclusions of the Italian tax police and regularized her tax position both for income tax and monitoring purposes, by filing the relevant Italian tax returns previously omitted. The individual also executed a notarial deed, aimed at officially revoking the trust, to regain possession – also from a formal perspective – of the trust’s assets.

In such context, the applicant asked the Italian tax authorities to confirm that no inheritance and gift taxes should (i) apply to the transfer of assets in her favour upon trust's revocation and (ii) have been applied to the original transfer of the assets into the trust upon its settlement.

2. The position of the Italian tax authorities

The Italian tax authorities replied laconically, confirming that no inheritance and gift taxes was due on the above-mentioned transfers of the assets (*i.e.*, not upon settlement nor revocation), due to the fact that the same individual had the role of settlor and beneficiary of the trust.

According to the Italian tax authorities, in principle and under certain conditions, the transfer of the trust's assets from the trustee to the beneficiaries is subject to inheritance and gift tax. However, in the case at stake, no tax liability could arise as no transfer of assets actually occurred given that the settlor and the beneficiary coincided.

Interestingly enough, in order to support their conclusions, the Italian tax authorities referred to a recent Decision of the Italian Supreme Court¹ concerning the relationship between trusts and indirect taxation, in particular Italian inheritance and gift taxes.

In such Decision, that is in turn aligned and follows the now consolidated case-law stemming from landmark Decision No. 21614 of 26 October 2016, the judges stated that the transfer of an asset to a trust does not produce an immediate and actual translational effect, but shall rather be considered as a mere impoverishment of the settlor, not linked by default to a correspondent enrichment of the beneficiary which is in turn the event giving rise to the application of inheritance and gift tax.

3. The takeaway

To the best of the authors knowledge, this is the first time that the tax authorities – when providing an answer to a ruling request - openly refer to the conclusions reached over the last four years by an enormous number of Supreme Court's Decisions over indirect taxation of trusts' settlements.

This can be certainly seen as a ray of hope for tax practitioners in that the authorities are (finally) recognizing the landing point reached by the Supreme Court on the subject matter.

For any further clarification please do not hesitate to contact Chiomenti's Tax Department at tax@chiomenti.net

¹ Reference is made to Decision No. 10256 of 29 May 2020.