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Tax Department

Italian Tax authorities rule on the application of Italian inheritance and gift tax in a legal succession involving a fiscally interposed trust

Introduction

The circumstance that a trust shall be considered as fiscally interposed and therefore disregarded from an Italian income tax perspective does not imply that the underlying assets shall be automatically considered as being held by the settlor and/or by the beneficiaries.

Rather, the tax qualification of the trust as fiscally interposed merely implies that the income formally produced by the trust shall be attributed directly to the settlor/beneficiaries from an income tax perspective, while the legal ownership of the assets stands in the hands of the trust with all the relevant consequences from an indirect tax perspective.

These are the conclusions put forward by the Italian tax authorities in the reply to the ruling request no. 359 dated July 4, 2022 ("Ruling 359") issued in the context of the legal succession relating to the settlor of a fiscally interposed trust.

The case at hand

The case concerned the legal succession of the settlor of a revocable trust, passed away in 2021, the beneficiaries of which are the settlor's children and grandchildren.

The trust – resident in San Marino - was originally established as part of an overall generational succession planning. The trust fund consisted of a controlling participation in an Italian limited partnership.

In a previous ruling concerning the trust in question[1], the Italian tax authorities upheld that in view of its governances features, and mainly due to the fact that the powers of the trustee were limited by the influence of the protector and of the beneficiaries, the trust shall have been considered as non-existing from an Italian tax standpoint.

Against this background, the applicants to Ruling 359 required the tax authorities to confirm whether the qualification of the trust as fiscally interposed should have relevance for the purposes of the application of the Italian inheritance and gift tax upon the death of the settlor.

In other words, the applicants were keen to obtain confirmation on whether the deceased settlor had still to be considered as the owner of the assets formally held by the fiscally interposed trust so that such assets should have fallen into the settlor succession, being therefore relevant for the purposes of the application of Italian inheritance and gift tax.

The position held by the Italian tax authorities

The Italian tax authorities took the position that the qualification of the trust as fiscally interposed shall have relevance exclusively for the purposes of the attribution of its income, implying that the income produced by the trust should be attributed directly to the settlor (or to the beneficiaries, as the case may be).

Such a circumstance, according to the line of reasoning put forward by the Italian tax authorities, does not affect the validity of the trust from a civil law standpoint, so that the trust shall be considered as being the legal owner of the assets once such assets have been transferred thereto. This conclusion would hold true also from an indirect tax perspective where the trust would be considered as the owner of the relevant assets; according to the tax authorities, a trust could be interposed from an income tax perspective but considered as validly existent from an indirect tax perspective.

It follows that the death of the settlor, whom no longer owned (from an indirect tax perspective) the assets transferred to the trust, did not trigger any final transfer of the assets to the beneficiaries. Such final transfer is indeed the event that, according to Italian administrative guidance and consolidated jurisprudence[2], triggers the application of the Italian inheritance and gift tax for trusts.

The takeaway

The relevance of Ruling 359 can arguably be identified in two different aspects, expanded below in order of importance.

First, the tax qualification of a trust as interposed is relevant from an income tax perspective only. Accordingly, it is for income tax purposes only that the assets held by a fiscally interposed trust should be considered as being held by the settlor (or beneficiary) of the trust.
This conclusion is coherent with the position taken by the Italian tax authorities in a number of recent tax ruling replies, some of which even published.

[1] Reference is made to ruling reply no. 795 dated December 1, 2021
[2] Reference is made to, inter alia, decisions no. 19745 of June 20, 2022, no. 19558 dated June 17, 2022, and no. issued by the Italian Supreme Court.

In addition, the arguments put forward in Ruling 359 should be replicable for all those entities, such as for instance non-Italian real estate holding companies or non-Italian financial holding companies with little or no economic substance, which are typically qualified as tax interposed from an Italian tax perspective.

Secondly, Ruling 359 stands out as another confirmation that the objective condition for the applicability of Italian inheritance and gift tax is not configured by the transfer of a determined asset to the trust, but is rather fulfilled at a later stage, when the final transfer of the assets to the trusts' beneficiary occurs.

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