TRUSTS IN ITALY: THE VIEW OF ITALIAN TAX AUTHORITIES & RECENT DEVELOPMENTS

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INTRODUCTION[1]

The legal construct of a trust is a common law arrangement having features that make it suitable for a wide range of uses, including asset protection, family and child protection, special needs, generation-skipping of family businesses, charitable, corporate governance issues, and management of inheritance needs. Notwithstanding its flexibility and its recognition worldwide, it remains relatively unfamiliar in civil law jurisdictions, such as Italy.

Unlike common law countries with established trust regulations, Italy lacks a specific legal framework for trusts, which limits its use in a purely Italian set of circumstances. Nevertheless, Italy ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition (1985) (the "Convention"), and in so doing, introduced a degree of recognition of trusts governed by foreign law. Consequently, Italy acknowledges and enforces the validity of trusts regulated by foreign law, as long as they adhere to the minimum standards outlined in the Convention.

Over the years, trusts have become increasingly common in Italy, even in cases where the only foreign element in the structure is the governing law, as the settlor, trustee, beneficiaries, and assets are all Italian. This trend reflects a growing reliance on trusts for estate planning, asset protection, and general planning purposes within Italy. At the same time, it is increasingly common for foreign individuals moving to Italy have previously implemented wealth planning structures involving the use of foreign trusts.

The absence of a specific civil law framework for trusts, combined with Italy's fragmented and evolving tax law regarding the treatment of trust structures has led to significant interpretative uncertainty. Both direct and indirect tax implications for trusts in Italy are subject to varied interpretations, leading to an inconsistent approach that has complicated the use of trusts.

This interpretative ambiguity, coupled with the general unfamiliarity of the Italian legal system with trust structures, has prompted the *Agenzia Delle Entrate*, the Italian tax authorities ("I.T.A."), to adopt a frequently skeptical and aggressive stance toward trust arrangements. In particular, the I.T.A. has identified various situations in which it views the trust as a mere "screen" interposed between the actual asset holder (either the settlor or a beneficiary) and the assets themselves, with the purpose of circumventing tax liabilities or regulatory requirements. In other words,

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[1] The authors acknowledge the contribution to this article made by Maria Pia Giovinazzo, an associate in the Rome office of Gianni & Origoni.

in cases where a trust retains control over assets ostensibly separated from the settlor's estate, the trust may be classified as fictitiously interposed, meaning it will be disregarded for tax purposes.

The purpose of this article is to provide an updated overview of the tax treatment of trusts in Italy, examining both direct and indirect tax implications. Special attention will be given to recent legislative developments in indirect taxation, as well as to the I.T.A.'s evolving approach toward the assertion of fictitious interpositions in trust structures. This analysis aims to offer a clear framework for understanding the legal and tax landscape for trusts in Italy, highlighting areas where taxpayers and practitioners should exercise caution to ensure compliance with interpretations Italian regulations by I.T.A., especially for individuals relocating to Italy.

ITALY'S TAX FRAMEWORK FOR TRUSTS

Direct Taxation

According to the Italian law, trusts are subject to the Italian corporate income tax ("I.R.E.S."). For I.R.E.S. purposes, trusts are treated in one of three ways:

- They are commercial entities where their principal activity is a business activity.
- They are treated as noncommercial entities where their main activity is not a business activity.
- They are treated foreign entities where their tax residence is maintained abroad.

The tax treatment of trusts is largely determined by their classification as either opaque or transparent. This classification directly impacts income attribution and the tax obligations of the trust and its beneficiaries.

Transparent Trust

A trust is considered transparent when its beneficiaries are identified. According to the I.T.A., beneficiaries must be timely identified and have the right to claim from the trustee the allocation of that part of the income that is imputed to them by reason of transparency.[2] This implies that beneficiaries (i) must be specifically named and (ii) must hold an enforceable right to a portion of the trust's income as it arises.

For tax purposes, any income generated by a transparent trust is attributed directly to the identified beneficiaries. They must report the income and pay taxes on the income at the time generated, even if no amount is distributed. This means that the income flows through to the beneficiaries and is taxed in their hands as if it were earned directly. For individual beneficiaries, this income qualifies as capital income ("*reddito di capitale*") and is subject to I.R.P.E.F., Italy's progressive personal income tax, with rates reaching up to 43%. When the income is eventually distributed to the beneficiaries, no additional tax is due.

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[2] See circular letter No. 48/E of 2007 issued by I.T.A.. The material in the text is an unofficial translation.

Opaque Trust

A trust is considered opaque when its beneficiaries are not timely identified and do not have enforceable rights to distributions of income when and as realized by the trust. Stated somewhat differently, in an opaque trust:

- beneficiaries may be partially identified but lack specific enforceable rights to claim a portion of the trust's income as it arises, or
- beneficiaries may be only broadly defined without immediate entitlements.

This classification applies when the trustee retains discretion over the distribution of income and capital or are contingent on certain future events, or when beneficiaries are not named.

For tax purposes, any income generated by an opaque trust is not allocated to beneficiaries but instead is subject to I.R.E.S. in the hands of the trust itself at the standard rate of 24%. The taxable base for I.R.E.S. purposes depends on whether the trust is involved in commercial activities. If so, taxable income is calculated in a manner that is similar to a corporate entity. If not, taxable income is calculated according to specific rules for noncommercial entities.

As with transparent trusts, an actual distribution of income by a noncommercial opaque trust does not trigger additional income tax for the beneficiaries. However, an actual distribution of income by a commercial trusts is treated as income for the recipient beneficiary and is subject to income tax or to 26% withholding tax based on the status of the recipient.

Without prejudice to the above distinction, the I.T.A. maintains the view that it is possible for a trust to be both opaque and transparent.[3] This may occur when the deed of trust specifies that a part of the income generated by the trust is to be retained in order to increase the trust's capital, while another part is attributed directly to beneficiaries. In that set of circumstances, the trust is referred to as a mixed trust for tax purposes. Consequently, the retained income is taxed at the trust level, while the income allocated to beneficiaries is taxed under concepts of transparency.

Trusts Resident in Blacklisted Jurisdictions

In contrast to the above rules, Italy applies specific anti-avoidance measures to trusts resident in blacklisted jurisdictions. Under these rules, distributions from a nonresident trust based in a blacklisted country are treated as taxable capital income in the hands of the Italian resident beneficiaries, even if the trust qualifies as opaque. This means that beneficiaries are subject to taxation on all distributions received regardless of the trust's classification and its tax treatment in its jurisdiction of residence. This measure is intended to prevent Italian residents from using offshore trusts to shield income from Italian taxation. Tax is imposed when funds are repatriated to resident beneficiaries. In principle, only income distributions by trusts that are resident in blacklisted jurisdictions are subject to income tax. Capital distributions remain nontaxable upon receipt. However, the burden of proof is on the beneficiary to clearly demonstrate the capital nature of the distribution. Otherwise, the distribution is presumed to be an income distribution that is fully taxable.

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[3] See circular letter No. 48/E of 2007 issued by I.T.A.

Inheritance and Gift Taxation

Italian inheritance and gift tax ("I.G.T.") applies to transfers of valuable assets as a result of death, gifts, or donations. In broad terms, I.G.T. applies to transfers of assets located both in Italy and abroad if the donor is, or the decedent was, resident in Italy. It also applies to transfers of assets located in Italy, if the donor is, or the decedent was, resident abroad.

Rates vary depending on the relationship between the donor and the relevant beneficiary. Exemption thresholds apply.

Relationship with Donor or Decedent	Tax Rate	Exemption Threshold
Spouse of direct descendant	4%	€1 million
Sibling	6%	€100,000
Other relatives up to 4th degree of consanguinity	6%	N.A.
Other individuals	8%	N.A.

I.G.T. and Gifts to Trust

According to Italian law, trusts may be relevant for the application of I.G.T. Until recently, the absence of specific legislation on trusts for civil law purposes, combined with tax regulations that are fragmented, fostered a climate of significant uncertainty, debate, and tax disputes regarding how and when I.G.T. should apply with reference to the transfer of assets to trusts. Recently, the situation has been clarified through legislation that is intended to provide a definitive framework for I.G.T.

Historically, the I.T.A. maintained a stringent approach to I.G.T. in connection with transfers to trusts. Specifically, tax was imposed at the moment assets were transferred to a trust. It did not matter that beneficiaries may not have been identified at this stage. Nor did it matter that actual transfers by the trust to the beneficiaries would first take place at a later stage. This interpretation was set out initially in Circular Letter No. 48/E of 2007, which was based on the assumption that transferring assets into a trust constituted a complete disposition of the transferred assets, thereby triggering I.G.T.

This appraoch sparked significant debate within the legal community. Some scholars pointed out that the position leads to taxation prior to the time of actual receipt by beneficiaries. Others pointed out that the system in place benefited beneficiaries because any subsequent growth in the value of the transferred assets owned by the trust is not relevant for I.G.T. purposes. Under this view, taxpayers could effectively shield the trust's accumulated gains from a potentially higher I.G.T. burden down the line by frontloading the tax obligation.

Over time, Italian case law on this issue evolved. Early decisions of the Italian Supreme Court supported the approach of the I.T.A., treating the initial transfer of assets as a taxable event. However, in more recent decisions, the Italian Supreme Court endorsed the position of commentators who argued in favor of deferring I.G.T. until the time assets are distributed by a trust. Under this approach, the sole taxable event for I.G.T. purposes is the final transfer of assets to beneficiaries. The decisions of the Supreme Court led the I.T.A. to review its earlier position.

Legislative Decree No. 139

Finally, Legislative Decree No. 139 of September 18, 2024, clarified the rule in the following way. First, it declares that that for transfers to trusts by Italian residents, the triggering event for I.G.T. is the transfer by the trust of assets and rights to the beneficiaries. Second, it allows an Italian resident settlor to opt for the application of I.G.T. at the time of contribution of assets to the trust. Should the option be exercised, subsequent distributions to the beneficiaries are irrelevant for I.G.T. purposes. In this bifurcated way, wealthy clients and their advisers have an opportunity to evaluate the approach that best aligns with specific tax planning objectives.

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FICTITIOUS INTERPOSITION: VIEW OF THE I.T.A.

Background

The increasing use of trusts in Italy – often used in foreign legal systems for estate planning and wealth management – has led the I.T.A. to scrutinize these structures closely. Given the unique challenges that trusts present within Italy's civil and tax law framework, the I.T.A. has expressed particular concern over cases where trusts may be used as instruments to shield assets from taxation. In line with broader anti-avoidance principles, the I.T.A. has developed an approach to identify and address cases of fictitious interposition in trust structures, examining whether a trust functions primarily as an artificial barrier that conceals the real economic ownership of assets, thereby circumventing, reducing or deferring tax liabilities.

In this section, we explore the I.T.A.'s evolving stance on fictitious interposition, including the criteria it employs to identify interposed trusts and the tax implications for direct taxes and I.G.T. This analysis underscores the importance of carefully structuring trust arrangements and evaluating trust structures already in place in case of relocation to Italy, as the classification of a trust as a fictitiously interposed device has significant consequences for both settlors and beneficiaries under Italian tax law.

Criteria Adopted by the I.T.A.

In the absence of specific legislation directly governing the issue, the I.T.A. developed an approach to identify those situations in which a trust might be deemed to have been fictitiously interposed. Relying on foundational principles used to define trust structures, the I.T.A. gradually developed criteria that allow it to scrutinize trusts and assess their substance as well as form. The approach involves examining whether a trust serves as a genuine vehicle for asset management or merely as a formal layer without substance to shield assets from Italian tax obligations.

The central pillars in this interpretative journey are Circular Letters No. 43/E of 2009 and No. 61/E of 2010, which laid the groundwork by offering a comprehensive set of

indicators that are used to evaluate a trust's independence and true economic function. The mentioned circular letters provided guidance on characteristics that may suggest the fictitious interposition of trusts, such as the direct or indirect retention of control by the settlor, or the lack genuine autonomy given to the trustee in managing the assets of the trust.

A fundamental element in I.T.A.'s approach is the genuine authority of the trustee to manage and dispose of the assets contributed to the trust by the settlor. The settlor must not retain any power or control over the trust assets that would impede the trustee from fully and autonomously exercising its activity. Consequently, if the settlor retains, in whole or in part, the power to manage and dispose of the trust's assets – whether it explicitly emerges from the trust deed or implicitly from factual circumstances – a true divestment has not occurred, and the trust should be considered fictitiously interposed for tax purposes.

To operationalize this general principle, and to provide guidance for local offices in conducting tax assessment activities, the I.T.A. has outlined a set of specific indicators that, if present, suggest that a trust is fictitiously interposed. The indicators include the following:

- The settlor or beneficiary can terminate the trust at any time, typically for his or her own benefit or the benefit of third parties.
- The settlor has the power to designate himself or herself as the beneficiary at any time.
- The settlor or beneficiary holds powers under the trust deed, requiring the trustee to obtain his or her consent before exercising discretionary powers in the management and administration of the trust.
- The settlor can terminate the trust early, designating himself or herself or others as beneficiaries to receive termination distributions, an arrangement known as "term trusts."
- The beneficiary is entitled to receive assets from the trustee.
- The trustee must follow the settlor's instructions regarding the management of the trust's assets and income.
- The settlor can remove and appoint beneficiaries during the life of the trust.
- The settlor has the power to assign income or assets from the trust or to have the trust grant loans to chosen individuals.
- Any other case in which the trustee's management and decision-making powers, as defined by the trust deed or law, are limited or conditioned by the will of the settlor and/or beneficiaries.

Tax Implications of Fictitious Interposition

Should a trust be classified as having been fictitiously interposed, it loses its independent status for tax purposes. Its income and assets are treated as if they are directly owned by the settlor or the beneficiary, as the case may be. This reclassification has substantial consequences, affecting direct taxes and I.G.T.

Direct Tax Implications

When a trust is deemed interposed, the I.T.A. view is that it must be treated as if it does not exist for tax purposes, with the consequence that any income generated by the trust is taxed directly, as if it were generated by the settlor or the beneficiary, as appropriate in the facts. This interposition negates the application of standard tax rules that would otherwise apply to either opaque or transparent trusts, described above.[4] If I.T.A. challenges the trust's structure, it may allege that the settlor or beneficiary committed tax violations due to failure to file the required tax return or due to inaccuracies in a submitted return, where relevant income was omitted. Such violations can lead to administrative penalties, and if the amount of unreported tax exceeds certain thresholds, criminal penalties may also apply.

I.G.T. Implications

The reclassification of a trust as fictitiously interposed can significantly impact the application of I.G.T. The position of the I.T.A. is that, depending on the terms, the settlor or beneficiary of a fictitiously interposed trust passes away, I.G.T. will apply as if the assets held by the trust were directly owned by the deceased at the time of death. This view is premised on the absence of a true transfer to the trust, trust assets should be included in the deceased's estate and therefore subject to I.G.T.[5]

The approach of the I.T.A. has drawn substantial criticism from commentators.[6] Critics argue that the I.T.A.'s position overlooks the foundational civil law principles underpinning the existence and operations of a trust. Under civil law, the assets transferred into a trust should be segregated from the settlor's personal estate, reflecting a fundamental characteristic of trusts recognized internationally and by the Convention. Consequently, the I.T.A.'s interpretation of fictitious interposition effectively disregards the trust's civil law validity and asset segregation, which should be recognized in Italy as long as the trust is structured and administered in accordance with applicable foreign law and the Convention.

Additionally, in the absence of a judicial declaration voiding the trust, the I.T.A.'s unilateral reclassification of the trust's assets as part of the settlor's estate stretches the limits of tax authority, blending tax administration with determinations typically reserved for civil courts. The lack of a judicial ruling challenging the trust's validity leaves the trust intact for civil law purposes. This raises questions concerning the I.T.A.'s authority to disregard this status purely for tax reasons.

Another criticism concerns the timing and legal basis for imposing inheritance tax. If the I.T.A.'s position were consistently applied, inheritance tax could be levied on trust assets as part of the settlor's estate upon their death. This timing ignores the typical trust function and could impose tax liabilities on individuals who may not have control or even knowledge of the trust assets. In practice, heirs and beneficiaries could face challenges in reporting these assets in the inheritance tax return,

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4 Circular Letter No. 34/E of 2022.

5 Circular Letter No. 34/E of 2022 and Ruling No. 176 of 2023.

6 C. Culiersi - G. Zoppis, "*Trust "interposto": quali impatti ai fini dell'imposta sulle successioni?*" in il Fisco No. 12/2023; S. Loconte, "*Deroghe nella tassazione dei trust opachi e trasparenti: trust interposto e autodichiarato*," in il Fisco No. 11/2023; S. Loconte - G. Floriddia, "*Criticità e anomalie della ritenuta rilevanza dell'interposizione del trust ai fini del tributo successorio*," in il fisco No. 1/2024.

particularly if they are not the trust beneficiaries and therefore lack access to details about the trust assets.

Court Cases and I.T.A. Rulings

Ruling No. 267 of 2023 – Extension of Guardian's Powers

The case concerned a trust established in 2018 which was used by the settlor for generational wealth transfer, specifically transferring an amount equal to 93.86% of his shares in a family holding company to the trust, with his descendants designated as beneficiaries.

Based on a draft trust deed submitted to it in 2015, the I.T.A. indicated that the trust could be considered to be fictitiously interposed due to the settlor's ability to substantially influence the trustee's conduct indirectly through the guardian. Subsequently, the trust deed was modified to address the concern, including the introduction of (i) restrictions on the settlor's ability to remove or appoint the guardian and (ii) limitations on the trustee's obligations to follow the settlor's directives.

Despite these adjustments, Ruling No. 267 concluded that the trust was fictitiously interposed, based on the ongoing influence of the guardian, whose binding consent was required for numerous critical trustee actions. These included the guardian's powers over the appointment of beneficiaries, major amendments to the trust deed, and transfers of significant holdings. In addition, the guardian could be removed without cause by the settlor with the agreement of one of the beneficiaries, which was viewed by the I.T.A. to be an indirect link between the settlor's will and the trustee's authority that undermined the trust's independence. Consequently, the trust was deemed to be nonexistent for income tax purposes. All income generated by the trust remained taxable at the level of the settlor.

"Ruling No. 267 is important because it addresses the role of the guardian rather than focusing solely on the role of the settlor."

Ruling No. 267 is important because it addresses the role of the guardian rather than focusing solely on the role of the settlor. The position of the I.T.A. appears to be particularly strict and somewhat unclear in defining the boundaries of permissible influence that naturally accompanies the guardian's role. In international trust practice, it is common to require a guardian's approval for specific trust matters, a provision that does not automatically signal control by the settlor. Nonetheless, the ruling underscores the delicate balance between these common practices and the requirement that the settlor relinquish influence over the trust and its assets.

Ruling No. 267 is important also because it illustrates the I.T.A.'s view that even formal provisions typical of standard trust arrangements may trigger reclassification if they permit indirect influence over trustee actions. This scrutiny is particularly significant when the trust instrument fails to provide objective criteria for appointing and removing the guardian or trustee. In sum, it is not the role of the guardian that is problematic. Rather it is the retained power of the settlor to remove the guardian and to appoint a successes. The existence of the guardian's authorization powers should not automatically result in the interposition of the trust, even in cases where the guardian can be appointed or removed by the settlor.[7]

[7] E. Vial, "*Interposto il trust con il guardiano nominato o revocato dal disponente?"* in il fisco No. 19/2023.

Ruling No. 796 of 2021 – Power of Beneficiaries Over the Trust

In ruling No. 796 of 2021, the I.T.A. examined a trust established in Italy, ultimately concluding it was fictitiously interposed due to the significant influence over trust management that was given to the beneficiaries, exerted indirectly through a guardian. The case involved a trust created for generational wealth transfer purposes. It held the majority participation in a partnership held by the settlor. The beneficiaries were the settlor's descendants. The trustee was an Italian company, and the guardian was a trusted family advisor.

The I.T.A. concluded that the trust lacked independent tax status, classifying it as having been fictitiously interposed by the settlor. The I.T.A. based its conclusion on several factors:

- The trustee's ability to manage assets in the trust was constrained because guardian consent was required for specific actions.
- The beneficiaries held the right to terminate the trust early.
- The beneficiaries retained the power to dismiss the guardian.

The I.T.A.'s conclusion relied on the argument that the guardian's powers were held in substance by the beneficiaries who jointly held the power to appoint and remove the guardian. The grant of that power undermined the trustee's independence, rendering the trust to be fictitiously interposed, and accordingly, nonexistent for tax purposes. Although the tainted power was held by the beneficiaries, the I.T.A. classified the settlor as the ultimate owner of the assets, leading to the attribution of taxable income to the settlor. Commentators have questioned the logic that links the powers of the beneficiaries to the retained ownership by the settlor.[8] Some believe it may be based on the conclusion reached in Circular Letter No. 61/E of 2010, which stated that trust income should be attributed to the settlor in all cases where the transfer of control is incomplete. This approach appears misplaced here, where the I.T.A. concluded that control was exercised by the beneficiaries.

CONCLUSIONS

In conclusion, this article has explored Italy's fragmented regulatory landscape regarding trusts, highlighting the uncertainty that has long surrounded their use in Italy due to the lack of a clear domestic framework. The absence of comprehensive legislation tailored to trusts has historically led both Italian taxpayers and practitioners to operate in a climate of ambiguity, facing challenges particularly in matters of tax compliance and reporting. Nevertheless, a growing trend toward legislative clarification is emerging, as seen in the recently introduced I.G.T. regulations. This legislative shift, which creates specific tax provisions rather than merely adapting existing Italian rules to an institution of foreign origin, reflects a deeper understanding by lawmakers of the unique nature of trusts.

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[8] E. Vial, "*Clausole dell'atto di trust che portano all'interposizione: la prassi dell'Agenzia delle entrate*," in il fisco, No. 12/2022; G. Zoppis, "*Trust inesistenti e poteri di guardiano e beneficiari: un accertamento non sempre agevole,*" in il fisco, No. 3/2022; E. Vial, "*Un recente caso di interposizione del trust,*" in Commercialista telematico of December 10, 2021; S. Bettiol, "*I beneficiari invasivi rendono il trust interposto nei confronti del disponente,*" in Cesi Multimedia of December 9, 2021.

For professionals advising clients relocating to Italy with pre-existing wealth structures, it is essential to understand this nuanced landscape. Trust powers must be structured thoughtfully in order to avoid potential challenges from the I.T.A. based on the concept of fictitious interposition.

Advisers based outside of Italy should be aware of the interaction between common international trust provisions and Italian concepts of excessive influence by the settlor or beneficiaries. Although some cases clearly exhibit undue influence, others involve standard clauses commonly accepted in international practice. Navigating this fine line is crucial, particularly in distinguishing the natural supervisory role of the guardian from a settlor's direct or indirect retention of predominant influence over trust assets.

By recognizing potential risk areas, high net worth individuals contemplating a move to Italy and their advisers abroad must carefully tailor the powers within a trust in order to avoid tax problems arising from Italian expectations that are designed to safeguard the trust's integrity for direct and indirect tax purposes.