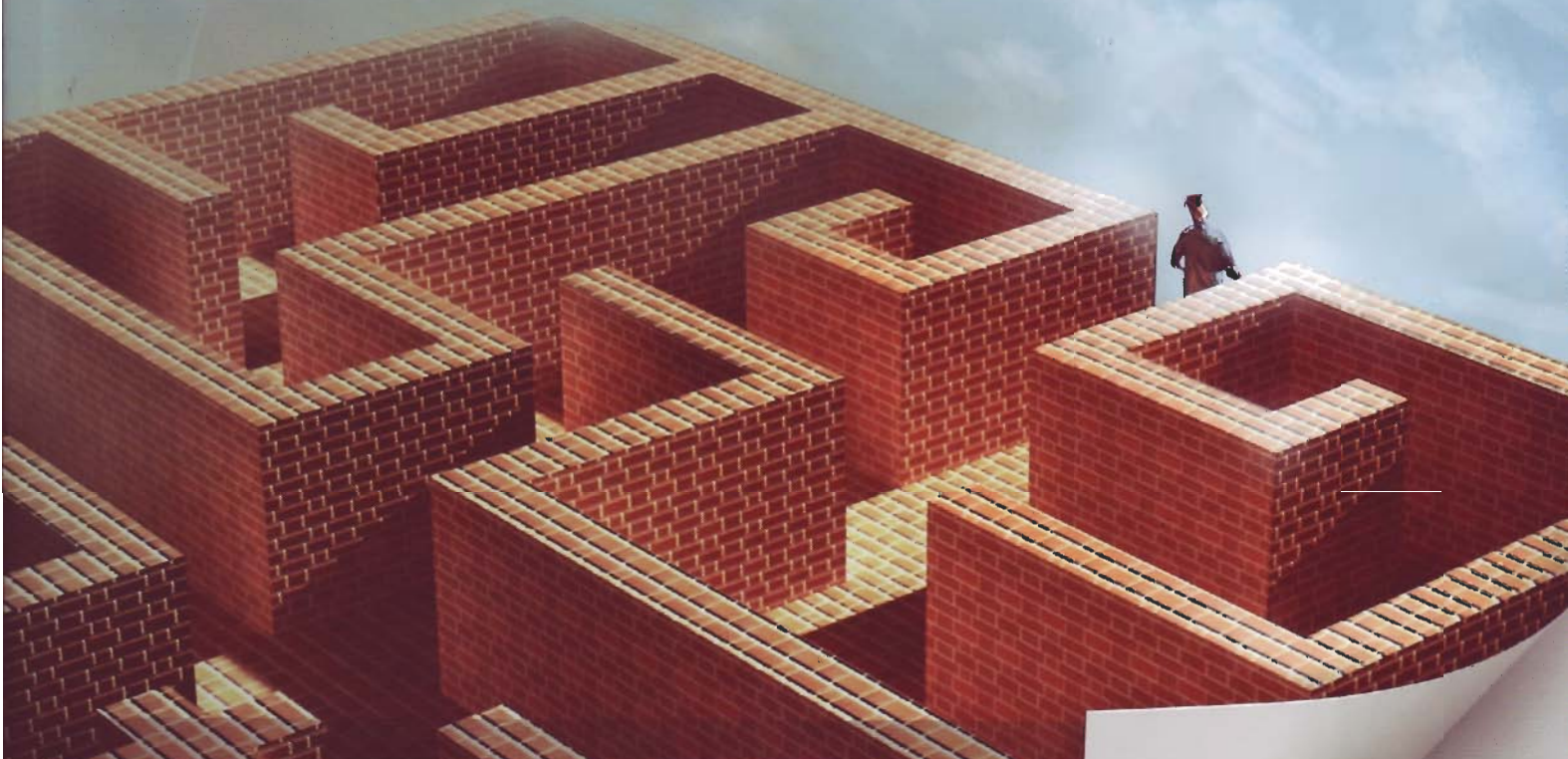


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TRUSTS & ESTATES

RECENT CHANGES TO TRUST PRACTICE IN ITALY AND INTERNATIONAL DEVELOPMENTS

The development of Trust in Italy and its use in asset protection and corporate governance operations has witnessed recent and important changes following the effects of combined increasing maturity of the country's economic and financial operators and important recognitions of legitimacy by the Judicial Authority and Financial Administration.

The effect of these phenomena has helped create a proper framework within which it is now possible to work, well aware of the limits and, especially, the opportunities deriving from proper use of this instrument when combined with other instruments of Italian and foreign legal orders.

Although there is no internal law of reference, national case law has by now recognised the full legitimacy of the trust instrument and its recognition, after the ratification of the Hague Convention of 1st July 1985, with its consequential full introduction into the Italian legal order and its application to different sectors of law.

Finally, recent tax legislation has provided further important contribution to the development and use of trusts across very different sectors of the Italian economy.

Italian legal practice allows trusts to be fully effective and efficient instruments, also for tax planning purposes, for property operations, relating to company and financial law as well as for typical reorganisations related to family business succession planning and/or asset protection.

The Italian legal and interpretational system relating to trusts is by now essentially in place and available to international investors, whether individuals or companies, who approach Italy to seize the many opportunities for investment that the country offers.

The market has its qualified operators and a growing number of trust companies, introduced by banking groups and important professional businesses, which are able to guarantee the full efficiency of investments arranged through trusts.

The vast network of double taxation agreements signed by Italy and the inclusion of trusts, and interpretation of the same, among parties who are subject to the conventional regime, eliminates the distortive international double taxation, legal and economical phenomena which have notoriously limited the free movement of investments and capital.

Lastly, the Italian Government is working on an internal law to regulate "fiducia" (and consequently trusts), and this will invariably add further certainty to the legal application of the trust instrument.

Conversely, the very recent internal law introduced to fight international tax evasion and the war that has been declared on all offshore jurisdictions, appears to be particularly



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restricting and penalising.

New legislative provisions, which came into effect in June 2010, have in fact introduced stringent operating restrictions to the Italian legal order in relation to trade and company relations entertained between Italian parties and parties residing in offshore countries.

Internal rules on Controlled Foreign Companies and transfer pricing have been strengthened and made harsher, and obligations have been introduced – which also apply to intermediaries and qualified operators – to report financial movements related to suspicious transactions.

In line with the global trend and OECD directives, the purpose of these new provisions of law is to fight money laundering related to illegal business and to identify the economic beneficiaries of juridical structures operating in different jurisdictions, both offshore as well as onshore.

At the same time, the new law has given the Financial Administration new and broader powers to fight legal constructions and economic transactions carried out for tax evasion purposes and undue tax savings, recognised a recent legal argument relating to the so called "abuse of rights", which is particularly penalising for the taxpayer. The debate on the real extent and effectiveness of these new provisions has only just started and we shall have to wait for the new legal interpretations before being able to comment on their operating effectiveness in relation to actual cases and how the provisions are used by the Italian tax authorities.

Therefore, international operators who approach the Italian market must take into account this inevitable legal requirement and, with specific reference to trusts, the existence of an anti-money laundering law – also the result of E.U. directives – which puts special attention on these juridical parties, requiring the identification of a settler, beneficiaries (where found) and protector by the trustee.

It appears clear how this new legislative body shall weigh somewhat heavily on procedures, especially during the initial business phases with an Italian operator, but, as highlighted above, this is simply the adjustment of Italian law to international standards to fight terrorism and the use of capital generated from illegal activities.

Qualified operators shall not be harmed by these new provisions of law. In fact, what will be attained is the elimination – in Italy too – of parties and transactions that are not in line with the minimum levels of legality required to guarantee proper market operations, free of distorting and noncompliant business practices.

LOCONTE & PARTNERS – ITALY

Over the last years Italy has introduced tax laws relating to Trusts and the government is currently working on the approval of a field of civil law addressing “fiducia”.

In Italy the transfer of property and rights as a result of death is subject to inheritance tax with the following tax rates:

- a. for the benefit of the spouse and lineal relatives (child or parent) on the total net amount, for each beneficiary, in excess of EUR1,000,000: 4%;
- b. for the benefit of siblings on the total net amount, for each beneficiary, in excess of EUR100,000: 6%;
- c. for the benefit of other relatives up to the fourth degree and lineal relatives in law, as well as collateral relatives in law up to the third degree: 6% on the full amount;
- d. for the benefit of other parties: 8% on the full amount.

There are special provisions of law if the beneficiaries are disabled or if the transfer concerns companies or majority ownership interests in companies.

Loconte & Partners is a full service law firm with offices in Bari, Milano and Rome. In the area of trusts and fiduciary services the firm works inter alia on inheritance cases relating to claims from disinherited spouses and offspring, also through the use of trusts and complex company arrangements. Stefano Loconte, managing partner at the firm, said: “When dealing with company arrangements the greatest problems are posed by the need of understanding a company’s structures and transactions that had been carried out, including international transactions, for the purpose of achieving the goal of depriving a heir of their rights.”



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Loconte & Partners has developed a close network of relationships across all the most important jurisdictions in the world. This working network allows the office to be constantly up to date on legislative changes and case law in different courts and, consequently, in a position to arrange efficient and effective capital and asset protection structures also for tax planning purposes.

The main legal complexities associated with trusts and estates at international level concern direct and indirect taxation related to the transfer of estates. Loconte & Partners can provide comprehensive assistance to overcome all of these complexities. The firm is often involved in setting up complex cross-border trusts for high net worth individuals or senior executives of client firms. Among this type of operations the most prevalent for the firm are those connected to asset protection needs, confidentiality and tax savings. “We do not rely on one particular offshore jurisdiction but rather try to identify the jurisdiction that comprehensively offers the most efficient instruments to resolve the specific problem on hand,” commented Mr Loconte.

In addition to cross-border and offshore trusts, Loconte & Partners is specialised in management of trusts in Italy, and avails itself also of its own Trust Company. At this particular moment in time Italian trust practice is particularly interesting in view to find solutions for companies and natural persons.