



LOCONTE & PARTNERS

DISTRIBUTION FROM FOREIGN BLACK-LIST TRUSTS SUBJECT TO INCOME TAX IN ITALY

The new rules provided by the art. 13 of the Law Decree n. o. 124 of 26 October 2019 have changed the tax treatment of income generated by opaque foreign black-list trusts received by Italian residents. In particular, while distributions made out of capital generally continue to be considered non-taxable, any distributions out of income generated by a foreign black-list trust will be taxed in the hands of the Italian residents who receive said income.

Before the approval of the new decree, as a general rule, the Italian tax law provided for a different treatment of “transparent” trusts (with identified beneficiaries) and “opaque” trusts (with no identified beneficiaries), even if set up in black-list countries.

Income generated by “transparent” trusts was attributed to beneficiaries on an accrual basis, regardless of its effective distribution, while income generated by all “opaque” trusts was subject to taxation in the hands of the trust, which was considered as an autonomous taxable entity.

Now, with the Decree issued in October, also distributions of income produced by “opaque” trusts, whether established in black-list Countries, are subject to taxation as capital income in the hands of the Italian residents who receive said income.

According to the Italian tax law, a country (other than EU member States and EEA Countries which grant an

effective information exchange) is considered black-list if the nominal tax rate is lower than 50% of the nominal tax rate applicable in Italy. To determine the nominal tax rate, it is necessary to take into consideration also special tax regimes that are capable of reducing the tax due through exemptions or reductions.

As a reminder, the nominal tax rate generally applicable to an opaque trust tax resident in Italy is the ordinary 24% corporation tax rate. However, a 26% tax rate may apply to financial income and, under certain conditions, a full exemption may apply to other sources of income (like gains on real estate, or pieces of art).

Capital distributions are not taxable in the hands of the Italian tax residents who receive said capital. However, the Tax Decree establishes that when it is not possible to determine if the distribution is made out of income or out of capital, the whole amount is deemed income distribution.

The new provisions entered into force on 27 October 2019.

In conclusion, distributions of income from trusts established in black-list Countries will be subject to tax in the hands of the Italian tax residents who receive said income, disregarding the qualification of the trust as “opaque” or “transparent”. Furthermore, in case it is not possible to establish if the distribution is made out of income or out of capital, the whole amount will be considered as income.

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