

Taxation of Trusts - Ruling no. 381 of the Italian Tax Authorities

With ruling No. 381 issued on September 11, 2019 (the “**Ruling 381**”), the Italian Tax Authorities (“**ITA**”) stated that a trust is considered “existent” from a tax point of view only in cases where the trustee acquires the effective power to manage and to dispose of the assets transferred to the trust.

On the contrary, the trust cannot be considered as an “existent” taxable entity (i.e. must be disregarded for income tax purposes) in any circumstance in which the power to dispose of the assets (income) remains, as a result of specific clauses set forth under the trust deed, in the hands of the settlor.

Ruling 381 enlists some clauses that may be considered a signal of the absence of the trustee management power:

- the trustee must comply with specific directives of the settlor in managing the assets attributed to the trust;
- the trustee cannot exercise any power on the assets without the prior consent of the settlor or of the beneficiary of the trust;
- the settlor has the power to attribute trust’s assets and income to persons selected at his own discretion;
- any other case in which the power of the trustee to manage the trust’s assets is limited or influenced by the will of the settlor and/or of the beneficiary of the trust.

Therefore, in the above mentioned cases, the consequences from a tax perspective are the following:

1. the trust is not a taxable entity;
2. the trust is an interposed entity of the settlor;
3. any income formally attributable to the trust will be taxed in the hands of the settlor.

More in details, in Ruling 381 ITA stated that the analysis of the trust rules that were submitted brought to the conclusion that the trust was to be considered non-existent from a tax point of view in light of two main provisions:

- the settlor is entitled to transfer assets to him/her by the trustee to his/her spouse at his/her discretion;
- the trustee cannot dispose of an asset in contrast with the explicit instructions of the person who has attributed the same asset to the trust.




The position expressed by ITA with Ruling 381 is in line with the previous Circular Letters No. 61/E of 2010 and No. 43/E of 2009.

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