

Case 2: the widow in Milan with a trust

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B, an Italian resident living in Milan, settled a discretionary trust governed by Jersey law with a Lugano trustee twenty years ago, with assets held at a Lugano bank. The assets were declared in the voluntary disclosure programme. Since her husband's death, B wishes to make distributions to her three grandchildren, two of whom live in Italy.

The analysis begins with the trust's Italian tax status. If the trust is genuinely discretionary and B has no power to direct the trustee, it is an opaque non-resident trust. Distributions to the grandchildren resident in Italy may be taxed as capital income under Art. 44(1)(g-sexies) TUIR if the trust is regarded as established in a state with a privileged tax regime. Under Art. 45(4-quater) the whole distribution is then presumed to be income unless the trustee's accounts distinguish between the original capital and the accumulated income. For inheritance and gift tax purposes, the distributions are taxable on exit under Art. 4-bis TUS. The rates are those applicable between B as settlor and her grandchildren, who are relatives in the direct line with an allowance of EUR 1 million each. The trustee must therefore reconstruct the trust fund since its settlement, while the grandchildren must report their interests in section RW if they qualify as beneficial owners. If B in fact controls the trustee's decisions, the Italian authorities may disregard the trust altogether and attribute its income to her.

1 Case 3: the Swiss-Italian dual national and the second marriage

C, who holds Swiss and Italian nationality, lives in Lugano with his second wife. He has two children from his first marriage, who live in Turin. He wishes to leave as much as possible to his second wife. Since C has Swiss nationality, he may choose Swiss law under Art. 22 of the Succession Regulation, and Swiss law applies in any event under Art. 90(1) PILA because his domicile is in Ticino. Under Swiss law his children's reserved shares amount to one half of their intestate share. The children can renounce their reserved shares in an agreement as to succession under Art. 495 SCC, for example in return for a lifetime payment. Such an agreement is valid under Swiss law, and if Swiss law governs the succession it will be recognized in Italy under Art. 25 of the Regulation. If C chose Italian law instead, the agreement would be void under Art. 458 Codice civile and the children's reserved shares would be larger. For a Swiss dual national, a choice of Italian law would not in any case allow C to escape the Swiss reserved shares, because of the limitation introduced by the 2025 revision of the PILA. The Ticino inheritance tax exempts both the wife and the children.

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