

The Italian income tax treatment of trusts

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Italian income tax law has treated trusts as taxpayers since the Budget Act for 2007. Under Art. 73(1)(b) and (c) of the Consolidated Income Tax Act (*Testo unico delle imposte sui redditi*, TUIR, Presidential Decree No 917 of 22 December 1986), resident trusts are subject to corporate income tax (IRES). Non-resident trusts are taxable on their Italian-source income. Where the beneficiaries are identified, the trust is transparent and its income is attributed to them in proportion to their shares, whether or not it is distributed (Art. 73(2) TUIR). Under Art. 73(3) TUIR, trusts established in states that are not on the list issued under Art. 11(4)(c) of Legislative Decree No 239 of 1 April 1996, the Italian list of states allowing an adequate exchange of information, are presumed to be resident in Italy if at least one settlor and at least one beneficiary are resident there for tax purposes. The same presumption applies if, after the trust has been set up, an Italian resident transfers real estate or rights in real estate to it. Both presumptions can be rebutted by proof to the contrary.¹ The distinction between transparent and opaque trusts has accordingly become the first question of Italian trust taxation.

Article 13 of Decree-Law No 124 of 26 October 2019, converted by Law No 157 of 19 December 2019, added a rule for distributions from opaque foreign trusts. Art. 44(1)(gsexies) TUIR now treats as capital income the income paid to Italian residents by trusts and similar institutions established in states with a privileged tax regime, even if the beneficiaries are not identified. Art. 45(4-quater) adds a presumption: if it is not possible to distinguish between income and capital in the amount received, "l'intero ammontare percepito costituisce reddito".² The Agenzia delle Entrate explained the rules in Circular No 34/E of 20 October 2022. A state has a privileged tax regime for this purpose if the nominal level of taxation is lower than 50 per cent of the Italian level, by reference to Art. 47-bis TUIR. The presumption is relative, so that the beneficiary can rebut it by showing,

on the basis of the trustee's accounts, which part of a distribution represents capital.³

The circular also restated the Italian position on sham or interposed trusts. If a trust is only formally independent of the settlor or of a beneficiary who in fact controls the assets, the trust is disregarded and its income is taxed directly in the hands of the person who controls it.⁴ Revocable trusts, trusts in which the settlor can direct the trustee, and trusts in which the settlor remains the sole beneficiary are typical candidates. For Swiss trustees administering trusts with Italian settlors or beneficiaries this has two consequences. First, the trust accounts must distinguish clearly between capital and income from the outset, since otherwise every distribution to an Italian resident beneficiary may be taxed in full. Second, the reality of the trustee's discretion must be documented, since a trust that functions as an extension of the settlor's own account will be treated as such.

1 Notes

1. TUIR, Art. 73(1)(b) and (c), (2) and (3), text at Brocardi.it, <https://www.brocardi.it/testo-unico-imposte-redditi/titolo-ii/capoi/art73.html> (consulted 5 October 2026), with the note on the amendment of para. 3 by D.Lgs. 27 dicembre 2023, n. 209. Circolare n. 34/E (below) states that "il comma 74 dell'articolo 1 della legge finanziaria 2007 ha modificato l'articolo 73". ↩
2. Agenzia delle Entrate, Circolare n. 34/E del 20 ottobre 2022, "Disciplina fiscale dei trust ai fini della imposizione diretta e indiretta", text at Dirittobancario.it, <https://www.dirittobancario.it/wp-content/uploads/2022/10/Circolare-Agenzia-delle-Entrate-20-ottobre-2022-n.-34-Trust.pdf> (consulted 5 October 2026), quoting Art. 44(1)(g-sexies) and Art. 45(4-quater) TUIR as amended by Art. 13 of "decreto legge 26 ottobre 2019, n. 124, convertito con modificazioni dalla legge 19 dicembre 2019, n. 157". ↩
3. Circolare n. 34/E (above), on Art. 47-bis TUIR ("il livello nominale di tassazione risulti inferiore al 50 per cento di quello applicabile in Italia"). Tommaso Gavi, "Trust: imposte dirette e indirette, monitoraggio fiscale e giurisprudenza nella circolare delle Entrate", *Informazione Fiscale*, 21 October 2022, <https://www.informazionefiscale.it/trust-imposte-dirette-indirette-giurisprudenza-circolare-Agenzia-Entrate> (consulted 5 October 2026), on the relative nature of the presumption. ↩

4. Circolare n. 34/E (above): "il reddito di cui 'appare titolare' il trust è assoggettato ad imposizione ... direttamente in capo all'interponente".
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