



## ITALIAN GOVERNMENT ENACTS NEW TAX RULES DEALING WITH DISTRIBUTIONS MADE BY CERTAIN NON-RESIDENT TRUSTS TO RESIDENT BENEFICIARIES

Italian Government has recently enacted Law Decree No. 124 of 26<sup>th</sup> October 2019 (to be converted into law within 60 days), which deals *inter alia* with the tax treatment of income distributions from certain non-resident trusts to Italian resident beneficiaries (individuals and non-business entities).

In particular, article 13 of the Law Decree:

- i. provides that distributions of trust income from fiscally opaque trusts, established in jurisdictions where they benefit from a low tax regime, are taxable in the hands of the recipients (trusts established in EU and EEA Member States are excluded from the scope of the rule); and
- ii. introduces a presumption pursuant to which all trust distributions qualify as income distributions, unless adequate evidence is provided that capital has been distributed.

A low tax regime is deemed to exist where the nominal (or, under certain conditions, the effective) tax rate applied to the trust is lower than a half of the Italian corporate tax rate.

It is worth noting that the new rules:

- i. should not apply to trusts that are regarded as “transparent” for Italian tax purposes (*i.e.* where the beneficiaries have a fixed right to receive income from the trust) and to trusts that are disregarded for Italian tax purposes;
- ii. implicitly confirm that income distributions made by fiscally opaque trusts, other than those subject to a low tax regime, are not subject to tax in the hands of the recipients;
- iii. confirm that the income of a fiscally opaque trust subject to a low tax regime is taxed in Italy only when such income is paid to the Italian resident beneficiaries;
- iv. also confirm that distributions of trust capital are not subject to income tax.

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