

Notes on the San Marino trusts

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Trust is a common law institute known for versatility and for flexibility as it provides wider purposes.

We start saying that there isn't a specific type of trust, it must be inferred time to time for the peculiarities of each trust.

The trust is identified as a legal relationship based on trust between the settlor and trustees.

The settlor transfers, typically, by an act inter vivos or mortis causa, certain properties or rights in favor of the trustees and includes them as administrator with full rights and powers in the interest of the beneficiary or for a fixed purpose.

The segregation of assets is the main consequence of the establishment of a trustee, since all of the assets transferred to inside of the trust assets are entirely separate from the assets of the trustee, with the result that these assets should not be attacked by creditors of the trustees, settlor or beneficiaries.

Going into detail, the trust in San Marino is rich of specificities to identification of a trustee entitled, as a place from art. 19 of the Act¹.

The authorization to obtain an authorized trustee is granted by the supervisory authorities limited to specific individuals or societies (identified by law in banking - financial) having its registered office in the

Republic of San Marino and having also a series of requirements by 'Regulatory Authority.

For law, in most cases, a trust must necessarily be in San Marino administered by a financial intermediary resident in the Republic of San Marino.

According to Art. 3 of the trust law², trust is taxable and the reporting, settlement and payment of tax on this income affect the trustee who shall be jointly and severally liable of the tax.

Obviously enough that even one of the trustees - the financial intermediary - is based in San Marino, so the trust is deemed to be tax resident there.

Today, the rate of tax on income trusts is 17%.

In reality, however, the effective rate is equal to 1.7%, because the tax base is equal to 10% of the income actually produced by the trust property.

Art. 5 of the law on trusts³, states that the taxable income of the trust is determined by applying the coefficient of return of 10% to 'total revenues and profits.

Goes instead to 8.5%'s effective tax rate when the income of the trust property are dividends in companies resident in tax havens.

If with the income of the trust there are also income from properties located in San Marino, these will not apply any flat-rate reduction of the tax base, in fact, for profits derived from trust property and buildings

located in the territory of the Republic of San Marino, shall apply the taxes on income provided by law on October 13 No 91⁴.

Switzerland was the country that has mostly used the trust and was also taken into account by Swiss before law that ratified the "Convention of Aja" as law applicable to trusts, which came into force in Switzerland on 1 July , 2007.

The Swiss law frames the trust not as a legal entity but rather as a transparent entity and not such a fiduciary relationship.

For tax treatment of trusts in Switzerland is clearly expressed in the circular that if any beneficiary, or the settlor, are not resident in Switzerland for tax purposes and in the trust assets there are no properties located in it, the income of the trust will not be subject to Swiss taxes.

This is because the law does not give the Helvetic Trust juridical personality and even the International Private Law so the trust and the subjects have no taxation.

As for gifts and inheritances, these are subject to tax at the cantonal level, which mean that in Switzerland there is the possibility of applying twenty-five different tax type.

But for gifts and inheritances are subject to tax, the donor or the deceased have been tax resident in Switzerland or that there is the presence of real estate situated in Switzerland and transferred by gift or inheritance.

According to the circular, all trustees may legally have possession but it is clear they are not owners of

property, which of course may not be available to them.

Of course, the trust is imposed only on his profits, unless it is tax resident in Switzerland.

¹ According to Art. 19 of Law n. 37/2005 of San Marino at least one trustee must be an authorized part, consisting solely of banking, financial and insurance companies having their headquarters and administration in San Marino. Therefore, the trustee resident in San Marino means that the administrative headquarters is located in San Marino. However art. 19 of Law 37/2005 allows the plurality of trustees, one of whom must be an authorized trustee. Therefore, where there is a co-trustee and the Italian trust act provides that decisions should be taken in Italy will be the requirement of effective and practical activities carried out in Italy and the trust will be considered taxable since this classification may be advantageous for certain types of income.

² Article 3 of Law 17 - 03 - 2005 n. 38

(Tax on income from trusts)

1. The trust is taxable as capital income trusts.
2. The rate of tax on income trusts is that in the first subparagraph of Article 12 of Law 91 dated October 13, 1984 and subsequent amendments and additions.
3. The reporting obligations, liquidation and payment of tax on income trusts included in the trustee, who is jointly responsible for the tax liability of the trust.

³ Article 5 of Law 17 - 03 - 2005 n. 38

(Determination of taxable income of the trust)

1. The taxable income of the trust is determined by applying the coefficient of return of ten percent to the

total earnings and profits, in cash and kind, derived from trust property, even by way of compensation for loss of profit, made and received in each tax period. In the aforesaid amount shall not be counted fruits and revenues derived from property situated in the territory of the Republic of San Marino.

2. The coefficient of return referred to in paragraph 1 is always equal to fifty percent when the fruits and revenues derived from trust property is made up of profits, dividends or shares in the profits distributed by companies or entities for tax-resident, domiciled or otherwise, in states or territories which have a preferential tax regime, identified with the Regency decree January 24, 2005 n.2.

3. For income from immovable property situated in the territory of the Republic of San Marino and included among the trust property shall apply with respect to taxes on income provided by Law 91 dated October 13, 1984 and subsequent amendments, with reference to companies and institutions which are legal entities resident for tax purposes in the territory of the Republic of San Marino. The income earned as a result of ownership of rights related to the aforementioned real property concur with the income determined under the preceding paragraphs, the total income of the trust

4[□] Article 4 of Law 13 - 10 to 1984 n 91 (Taxable)

The taxable amount is the total income consists of all the taxable income net of liabilities and expenses deductible under the Tax Act and excluding:

- a) Income subject to separate taxation;
- b) income subject to withholding tax as tax;
- c) the exempt income.

In its taxable income of the taxpayer, as the same defendants:

- a) returns, except those working as their income, including of minor children living with recognized natural children, adopted children and affiliates;
- b) the income of others which was freely available without obligation or the administration of reckoning.

Within one year after entry into force of this law special legislation would establish the criteria for the taxation of foreign income, which together form the basis of assessment of tax liability, as well as for the deduction of taxes paid in definitively on the predicted income in the country of production.

Art 12 Law 13 - 10 to 1984 n 91

(Application of)

The general tax is levied on taxable under Article 4.

Income so determined for an individual, is the standard rate for progressive bands provided in the table attached to this law.

For the corporate income produced by the parties responsible for compiling the annual financial statements with the account of profits and losses referred to in Articles 20 uc, and 26 - excluding those mentioned in the final paragraph of Article 2 - applies proportion to the rate of 24%.

When forming the total income of individuals contributes to the business income subject to the proportional tax rate, the progressive tax that affects other income shall apply at a rate corresponding to the bands which fall in income after they have been added to that business.

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