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Trusts with Italian nexus
Risk of tax requalification

Although widely used in Italian practice, the Italian tax authorities continue to interpret trusts with limited understanding. Consequently, even valid and properly structured trusts may be challenged as "interposed" structures. To prevent disputes, it is crucial to adopt a proactive approach by drafting trust deeds and related documents carefully, anticipating potential objections.

1. **Tax acknowledgment:**
   - A trust is fiscally recognized only if the trustee has full, effective, and independent control over the trust assets.
   - If the settlor retains control— even via factual circumstances —the trust is deemed *interposto* (fiscally non-existent). Same might apply at the level of beneficiaries, if these have substantial influence over the trust fund. Special attention must be paid to the *Saunders v. Vautier* rule[1].
   - In such cases, income is taxed directly in the hand of the settlor, and the trust is not treated as a separate taxable entity.

2. **Elements for re-characterization (examples)**
   - The settlor can revoke or terminate the trust at any time.
   - The settlor can appoint themselves as beneficiary.
   - The trustee must seek the settlor's consent to make decisions.
   - The settlor can modify the list of beneficiaries or direct asset management.
   - The trustee's discretion is limited or conditioned by the deed or facts.
   - The settlor can freely assign assets or income from the trust.
   - Revocable trusts, in particular, lack the necessary permanence of asset transfer
   - Beneficiaries can terminate the trust or force distributions.
   - The trustee must follow beneficiary instructions or obtain their consent.
   - The role of the protector must also be carefully considered: if he holds significant powers and might be removed (or significantly influenced) this can equally have an impact on the tax characterization of the trust.

3. **If a trust is deemed interposed:**
   - Income is taxed directly to the settlor and/or to the beneficiaries
   - The settlor and/or the beneficiaries must comply with foreign asset reporting
   - Upon the settlor's death, trust assets are included in their estate for inheritance tax purposes.
   - The requelification comes along with fines and interest for late payments.

Given the growing interest towards Italy as a destination or second residence by UHNWI (bringing along their own wealth structures) a thorough preliminary analysis is highly advisable

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We encourage you to get in touch should you require any support or further clarification

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