

# Taxing Trusts

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# Setting the framework (following Professor Marino's presentation)

- Trusts:
  - Discretionary (opaque);
    - Full-fledged legal entities liable to tax under corporate tax rules;
  - Non-discretionary: Transparency Rule:
    - Revenue attributable to beneficiaries (partnership-alike).



# Foreign Discretionary Trusts

- Attribution of wealth (money ...) to beneficiaries resident is deemed as income from capital and taxed accordingly if the Trust is resident in a privileged jurisdiction;
- Residence in the EEA or EU is *per se* enough to skip the application of article 47-bis, § 1 letter (b) Italian Income Tax Act ?
  - For instance, the provision is applicable to Offshore Trusts incorporated under the law of Cyprus.



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# Liechtenstein Case

- European Economic Area;
- Adequate exchange of information;
- Level of taxation not lower than 50% of the Italian one ...
  - Article 47-bis should not be applicable.
- Trusts are shielded by the EU principles CJEU C- 646/15, *Trust Panayi* just like other entities ...
- ... but some cases in the opposite direction have been recorded (Ruling n.9 decided in 2022;



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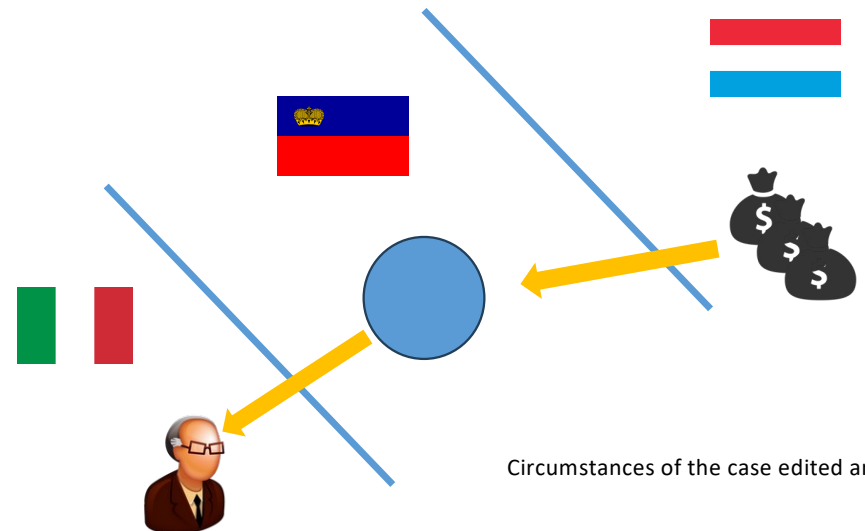
# Bookkeeping and Accountancy

- No duty imposed by the Italian legislation to non-resident Trusts but ...
- Any attribution (wealth, revenue) is deemed (taxable) income **by default** unless the Trustee demonstrates that a proper bookkeeping policy has been maintained;
  - Ruling procedure ?



# Practical Case 1

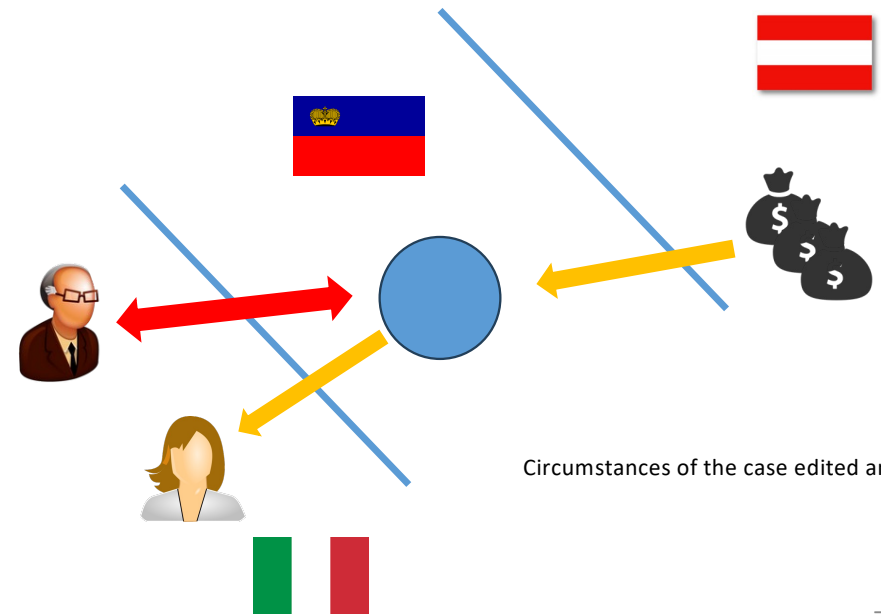
- Ruling n° 9, 11 February 2022;
  - Inconsistencies of the statute with the law of FL reverberate on the Italian Tax treatment and Italian qualification.



Circumstances of the case edited and simplified

## Practical Case 2

- Ruling n° 221 22 February 2022:
- In case of insufficient bookkeeping (benchmarked with Italian standards) any attribution of wealth is deemed taxable income.





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# The San Marino Case

- New Comprehensive law in 2010 (n.42):
- **Trust Court:**
  - Rulings and (*ex ante*) opinion on decisions to be taken by the Trustee;
- **Register of the Incorporated Trusts:**
  - Control of the Central Bank and duty of reporting via Bank regulations;
- **Trust Agent:**
  - Local lawyer (chartered accountant) or company responsible for compliance duties in case of non-resident trustee.





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# Setting the Framework

- Association agreement with the EU;
- COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of the Agreement establishing an association between the European Union and the Principality of Andorra and the Republic of San Marino, respectively COM(2024) 191 *final*;
- To be approved in 2024.



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# Measures in Force

- San Marino's policy concerning Trust legislation;
  - Preserve competitiveness;
  - Adjust to address anti-abuse measures applicable in Italy;
  - Relevant changes with Act n. 157 passed on 19 November 2019;
    - Impacts on Act n. 38 passed on 17 March 2005 (Taxation of Trusts in San Marino).



# Relevant Provisions

- **Taxation as it was:**
  - Tax base equals to the 10% of the gross revenue of the resident Trust (tax rate 17%);
  - ETR 1,7% (as it was);
- **Taxation as it is:**
  - Tax base equals 75% of the gross revenue (...)
  - ETR 12,75% (Italy is 24% so art. 47-bis, § 1 lett. (b) Income Tax Act not applicable).
- **Optional regimes (now):**
  1. Taxation of **effective income** (net of costs);
  2. Taxation on 10% of the tax base of revenue is **re-invested in San Marino** for 2 years.

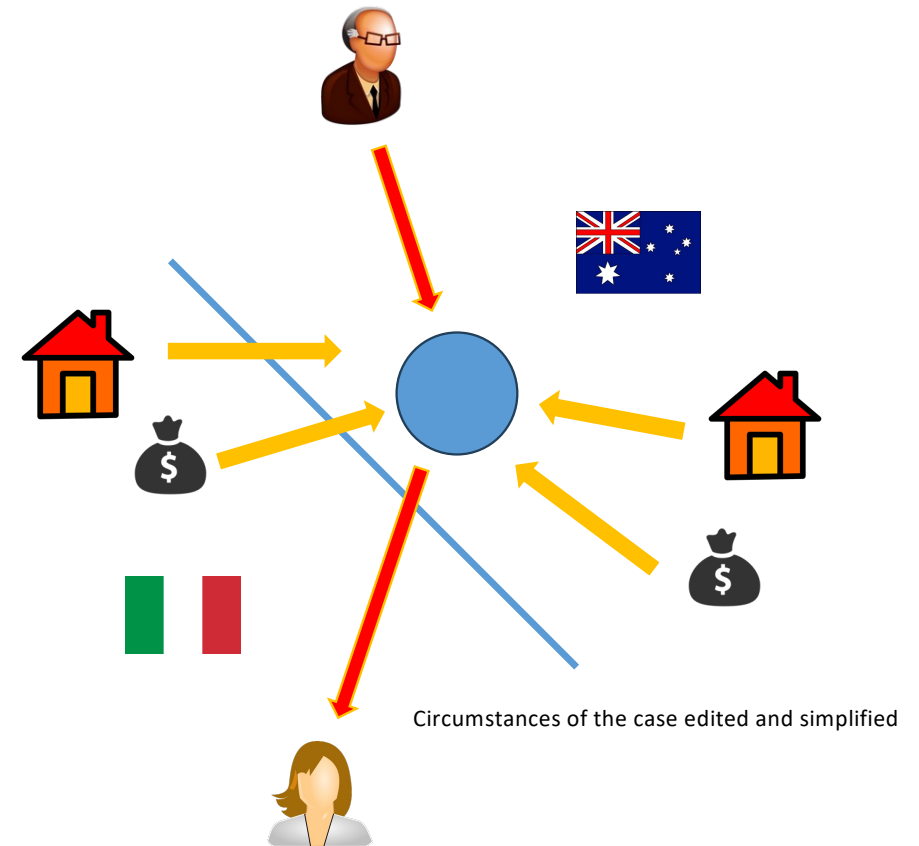


# Inheritance Taxation

- Inheritance taxation in Italy is regulated by Act n. 262/06;
  - Family taxation: ascendants and descendants charged with a 4% rate but threshold of 1 million euro applicable;
- Endowments (*target/purpose constraints*) are tax free under the law when they are decided in an act of last will (Testament):
  - Creation of a Trust falls int this case.

- Ruling n. 371 issued on 10 September 2019:
  - Setting a Trust in an act of last will is charged only with € 200 tax, if immovable properties are included;
    - Lump-sum payment

## Practical Case 3





# Concluding remarks

- Adaptive attitude of the Italian Tax System to the Trust / Trust legislation;
- Compliance:
  - *Per relationem* approach (i.e. copy and paste) as compared to other entities;
  - Reference to compliance in the country of incorporation if compatible with the Italian and in line with generally accepted principles;
  - No “*hard law*” provision in the matter: loophole currently filled in by the Tax office guidelines in the matter.

Thanks for Your Attention

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