KPMG

Tax - Breaking News

August 2017

Consistent with our commitment to provide current information on tax issues, we summarize below the clarifications on the tax treatment of trusts and foundations provided by Circular (POL.1114/2017) issued by the Independent Authority for Public Revenues.

- The circular clarifies the definition of trusts and foundations and provides guidelines on the tax treatment of income earned by these entities before and after the implementation of the new Income Tax Code (ITC). Additionally, the circular provides clarifications on gift and inheritance tax issues.
- As of 1 January 2014 onwards trusts and foundations are considered legal entities and are taxed as such for income tax purposes. Specifically:
  - Income earned by beneficiaries (beneficial owners) after 1 January 2014 is treated as dividend income, provided that the settlor/founder of the entity is also its beneficiary
  - Undistributed income remaining within the trust or foundation could be treated pursuant to the provisions of the ITC under CFC rules (provided that all relevant prerequisites are met).
- Regarding income earned by trusts or foundations until 31 December 2013:
  - Trusts are not considered taxable entities and depending on the type of income earned, are taxed only at the level of the beneficiary (whether such beneficiary is an individual or a legal entity) provided that the settlor/founder is also the beneficiary
  - Foundations are liable to taxation both at entity and founder/beneficiary level. It is noted that the interpretation of the nature of the income earned by the founder/beneficiary by the Tax Administration as “other-sourced income” and thus subject to the tax scale applicable to freelancers, could be challenged under the spirit of the law and the Circular.
- Special reference is made to the tax treatment of the proceeds arising from the dissolution and liquidation of both trusts and foundations in relation to the timing of distribution of amounts in excess of capital contributed (before or after 1 January 2014).
- In case the founder/settlor and the beneficiary is not the same person, income earned by beneficiaries is treated as a gift or inheritance for tax purposes.
- Because the interpretation adopted by the Tax Administration for trusts and foundations is of high importance for the application of tax provisions to each individual case, options provided by the ongoing Voluntary Disclosure Program should be considered.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.