

The trust

The protagonists of the trust: the beneficiaries

The term "beneficiaries" refers to all individuals who, in various capacities, can receive economic benefits from the trust. We can distinguish between income beneficiaries and ultimate beneficiaries, or more accurately, beneficiaries of the fund.

Let's start with the latter: they are the individuals who, at the end of the trust, will receive the assets from the trustee (subject to the possible right to receive advances during the "life" of the trust). When the trust is established and the beneficiaries are identified, they only have a potential right to the assets disposed of in the trust, namely the right to receive them at the end of the trust's duration.

This right is only potential because over time, the assets in the trust could decrease or even be extinguished due to its management, to the extent that the trust may be terminated prematurely due to lack of funds.

Income beneficiaries, on the other hand, are the individuals who may be allocated the income generated by the assets in the trust: these individuals could be the same ones identified as beneficiaries of the fund, but the instrument of establishment may include provisions allowing for the allocation of income to the settlor and other potential parties.

The distinction between ultimate beneficiaries and income beneficiaries is particularly relevant from a tax perspective: the former will be considered at the time of disposition of the assets in the trust and therefore will affect indirect taxation, while the latter will affect direct taxation.

The entitlements of the beneficiaries may be determined in the institutive act, in this case we speak of trusts with defined interests, or they may be left to the discretionary evaluation of the trustee, in this other scenario we talk of discretionary trusts (the two structures may also coexist in the same trust).

It should be noted that a creditor of a beneficiary may attack the beneficiary's position. If the beneficiary's position is absolute, meaning the beneficiary can demand the transfer of what is due from the trustee, the creditor may seize or attach it and indirectly attack the trust fund, but only to the extent that it belongs to the debtor beneficiary.

If the beneficiary's position is contingent on a future event and is therefore an unliquidated claim, the possibilities of attack are significantly lower.

Finally, if the beneficiary's position is linked to a discretionary trust, the creditor will have no interest in taking action, as there is no debt to attack. For this reason, the discretionary trust provides greater protection from the perspective of asset protection.

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