Irrevocable Trusts and Wealth Taxes: Practical Analysis and Recent Case Law in Argentina

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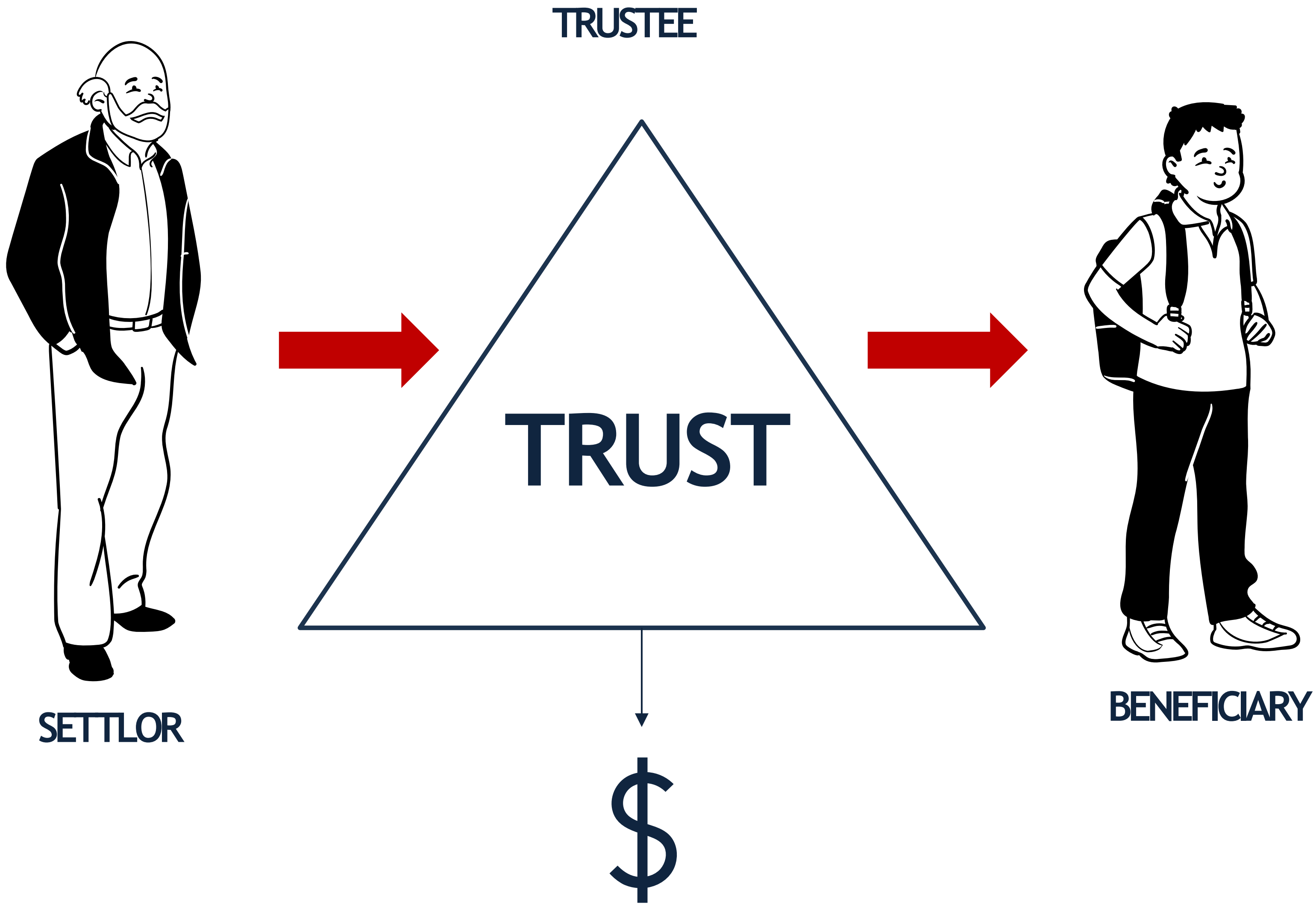
TRUSTEE
TRUST
SETTLOR
BENEFICIARY
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Key Concept: CONTROL

Section 130
Income Tax Law

TRANSPARENT TRUSTS

NON TRANSPARENT TRUSTS

Transparent Trusts

Argentine resident controls the trust. Some examples:

1) Revocable trusts.

2) Settlor also a beneficiary.

3) Relevant reserved powers by settlor (e.g. investment prerrogatives).

Non Transparent Trusts

No Argentine resident controls the trust (i.e. "*efectivo desapoderamiento*"). Main Features:

1) Irrevocable trust.

2) Settlor not a beneficiary.

3) No decision power by Settlor and/or Beneficiaries to invest or disinvest the assets. Such prerrogatives are typically granted to corporate professional trustees and/or professional investment managers/advisors.

Argentina: Examples of Taxes on Wealth

1) Personal Assets Tax: Calculated on a Yearly Basis

2) Extraordinary and Solidary Contribution: One time (2020)

Extraordinary and Solidary Contribution: Main Aspects

- Introduced in December 2020 (COVID-19 Pandemic).
- One time payment on total assets that exceded ARS $ 200,000,000 (i.e. around USD 1,500,000 back in 2020).
- Tax Base included assets contributed into a trust (law did not differentiate between revocable and/or irrevocable trusts).

Extraordinary and Solidary Contribution Case Law

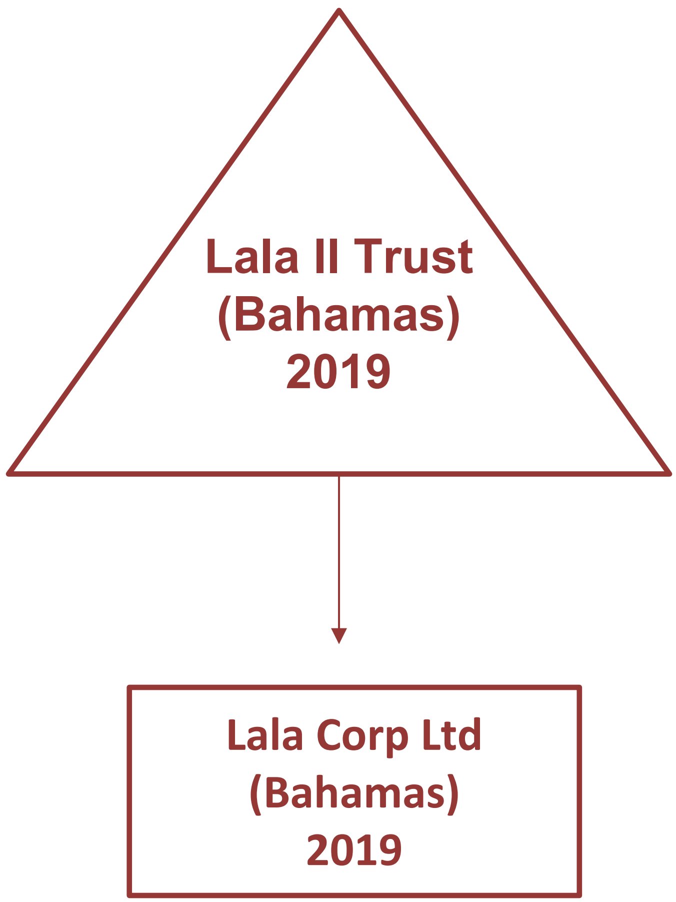
- Volij, Gabriela Verónica, from Juzgado Contencioso Administrativo Federal N° 8, City of Buenos Aires (November 28th 2023)

- Menendez Behety, Maria Cristina, from Camara Federal from Comodoro Rivadavia (February 1st 2024)

- Williner, Magdalena María, from Tribunal Fiscal de la Nación (December 13th 2024)

All irrevocable trusts and all resolved in favor of tax payer.

Williner



SETTLOR: Magdalena Maria Williner. Argentine resident.

TRUSTEE: Non Argentine resident, profesional trustee

PROTECTOR: Argentine resident.

BENEFICIARIES: Settlor´s descendants and further issue.

Williner

Tax Authority's Position:

Contributions into everty type of trust (revocable and irrevocable) must be included to calculate the tax base of the extraordinary contribution.

Tax Court's Position:

Taxpayer is right. Lala II Trust is irrevocable, thus assets contributed by the taxpayer into the trust cannot be subject to tax as if they were personal assets of the Settlor.

Comments on Williner

- Case law stability.
- Procedural Aspect: tax refund claim.
- Practical impact on other cases.

Questions?

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THANK YOU!
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