Trusts & Trustees, 2025, **31**, 1–7
https://doi.org/10.1093/tandt/ttaf058
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Recognition without immunity: Czech tax law's approach to foreign trusts

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ABSTRACT

This article analyses the legal and tax treatment of foreign trusts within the Czech legal system, focusing on their classification under both private and public law. Emphasis is placed on income tax implications and the practical application of Czech tax regulations. The study outlines the key features of Czech and foreign trust-like structures and explores their recognition, registration, and comparability. Particular attention is paid to the evolving administrative approach, especially the criteria used by Czech tax authorities to assess the comparability of foreign trusts. This article identifies potential continuing practical uncertainties and regulatory tensions in cross-border tax planning, considering Czech legal regulation.

INTRODUCTION

Alongside the legitimate use of the trust fund as a vehicle for the anonymous protection of assets, there are discernible trends and a potential for the abuse of trust funds and their foreign equivalents (trusts) in the context of aggressive tax planning.[1] Their key feature - the separation of assets from the original owner without the creation of a new legal entity and the exemption of certain types of transactions from tax - is attractive for legitimate purposes, but it can also serve to obscure ownership structures and to create schemes whose main purpose is to obtain an unjustified tax advantage. This inherent tension between private-law flexibility[2] and public-law risks has given rise to legislative and regulatory responses, notably in the form of specific tax rules, the mandatory registration of trust funds and their beneficial owners, and, not least, the establishment of principles in the judgments of the Czech administrative courts. This article aims to analyse the status of foreign trusts in the Czech Republic from the perspective of private and public law, with an emphasis in the latter case on their tax assessment. The central research question is how the Czech legal system approaches foreign trusts, which are now a standard component of holding structures with Czech participation. This article first presents the private and international law framework for trusts, before focusing on the tax aspects of their operation.

THE PRIVATE LAW FRAMEWORK AND INTERNATIONAL CONTEXT

To understand the tax and regulatory implications, it is essential to proceed from the private law nature of the trust in Czech law and the mechanisms by which the Czech legal system approaches its foreign counterparts. It is precisely the relatively liberal approach of private international law that contrasts sharply with the strict and often sceptical view[3] of public law norms.

The Czech trust de lege lata: key characteristics

The Czech trust, governed by the Civil Code,[4] is defined by several key characteristics that distinguish it from traditional continental legal institutions.[5]

This article was created with the support of the Technology Agency of the Czech Republic (TA ČR) project No. TL02000434, titled "Family Firms: Value Drivers and Value Determination in the Process of Succession".

[1] For selected aspects of aggressive tax planning (in general and with a focus on debt), see Alfandia NS (2024) How do countries curb their debt or profit shifting: a systematic literature review. *Cogent Business & Management* 11(1): 2344032. https://doi.org/10.1080/23311975.2024.2344032; for a general definition of aggressive tax planning attributes, with an emphasis on EU conditions, see European Commission (2017) *Working Paper No. 71–2017: Aggressive Tax Planning Indicators. Final Report*. [online]. [accessed 10 July 2025]. Available at: https://taxation-customs.ec.europa.eu/system/files/2018-03/taxation_papers_71_atp_.pdf.

[2] However, compared to foreign trusts (or foreign trust law), the Czech trust (or Czech legal framework) is significantly more rigid.

[3] On the other hand, however, this rigidity is not without justification.

[4] Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter referred to as "the Civil Code"); for further detail, see Section 1448 et seq. of this Act.

[5] The following text provides only a basic framework that is relevant for the subsequent analysis. For a more detailed account of the conditions in the Czech Republic, see, for instance, the publications of leading Czech experts in foundation and trust law: Ronovská K and Lavický P (2015) Foundations and trust funds in the Czech Republic after the recodification of Civil Law: a step forward? Trusts & Trustees 21(6): 639–644. https://doi.org/10.1093/tandt/ttv053; Ronovská K and Lavický P (2016) New Czech foundation and trust (like) law: initial experience and reactions. Trusts & Trustees 22(6): 641–646. https://doi.org/10.1093/tandt/ttw062; Pihera V and Ronovská K (2024) Czech Republic: Czech private foundations and trusts in the light of recent discussions and case law. *Trusts & Trustees* 30(6): 311–315. https://doi.org/10.1093/tandt/ttae055.

- A trust is established by setting aside assets from the settlor's ownership,[6] is created upon the acceptance of a mandate to administer these assets by a trustee,[7] and comes into existence upon its registration in the Register of Trust Funds.[8]
- It may be established by an agreement between the living (*inter vivos*) or by a disposition for the event of death (*mortis causa*).[9]
- The purpose of the fund may be private, typically for the benefit of a specific person (the beneficiary), or for a public benefit purpose.[10]
- The foundational document of every trust fund is its Trust Deed, which the settlor must issue in the form of a public deed, that is, a notarial deed. The trust deed defines the basic rules for the fund's operation, including its name and purpose, the specification of its assets, the conditions for making distributions to the beneficiary, and the duration of the fund.[11]
- The most distinctive and, in continental law, most challenging feature is the absence of legal personality. The creation of the fund establishes separate and independent ownership of the designated assets. These assets are no longer owned by the settlor, nor do they become the property of the trustee or the beneficiary.[12]
- Legal acts concerning the assets in the fund are performed by the trustee in his own name on the fund's account.[13]

TRUSTS ESTABLISHED IN THE CZECH REPUBLIC UNDER FOREIGN LAW AND TRUSTS ESTABLISHED ABROAD

Trusts established under a different legal system

The Czech Republic is not a party to the Hague Convention.[14] However, key provisions, which in many respects correspond to those in the Hague Convention, can be found in the Act on Private International Law.[15] This regulation is quite liberal and allows for considerable flexibility, with the settlor's autonomy of will being the paramount principle.[16] The statutory condition is that the chosen law must govern the institution of the trust (or a similar arrangement) or that its provisions can be applied to the specific trust.[17] In practice, this allows Czech settlors to establish and use trusts governed by, for example, the law of Liechtenstein or New Zealand, which may offer advantages unavailable under Czech law, such as the administration of the trust by a legal person or a potentially unlimited duration.[18]

If the settlor does not choose the governing law, or if the chosen law cannot be applied, a subsidiary rule comes into play.[19] In such a case, the trust is governed by the law of the state with which it is most closely connected.[20] The Act provides a non-exhaustive list of criteria for determining this closest connection, including the place from which the trust is administered, the location of its assets, the seat or habitual residence of the trustee, and the purposes the trust is intended to fulfil.[21]

Foreign trusts in the Czech legal environment

The key provision for the existence of a foreign trust in the Czech legal environment concerns its recognition. A foreign trust is recognised in the Czech Republic if: "*it exhibits the fundamental characteristics required for it by Czech law*".[22] Although the Act does not specify these characteristics in detail, it can be inferred from the context of the Czech regulation of the trust fund that they primarily include[23]:

- the setting aside of assets by the settlor,
- the entrusting of these assets to the administration of a trustee, and
- the existence of a defined purpose.

If a foreign trust meets the condition of having "fundamental characteristics" under the Act on Private International Law, it is recognised (validated) in the sphere of Czech private law. This recognition means that the Czech legal system respects its existence and legal effects, in particular the separation of

[6] See Section 1148(1) of the Civil Code.
[7] See Section 1451(1) of the Civil Code.
[8] See Section 1451(2) of the Civil Code.
[9] See Section 1449 of the Civil Code.
[10] See Section 1449(1) of the Civil Code.
[11] See Section 1452 of the Civil Code.
[12] The property in question constitutes an asset *sui generis*, which, in effect, has no owner. This is in direct contradiction to the traditional conception of ownership as set out in Section 1011 of the Civil Code, which defines ownership as "*All that belongs to someone - both tangible and intangible things - is his or her property*".
[13] See Section 1448(3) of the Civil Code.
[14] Hague Conference on Private International Law (HCCH), *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition: Status Table* (The Hague, HCCH 1985) https://www.hcch.net/en/instruments/conventions/status-table/?cid=59 accessed 10 July 2025.
[15] Act No. 91/2012 Coll., on Private International Law, as amended (hereinafter referred to as the "Private International Law Act").
[16] See Section 73(1) of the Private International Law Act. This provision reads as follows:
"*A trust or a similar arrangement (hereinafter referred to as a 'fund') shall be governed by the law designated by the settlor, provided that the designated law governs trusts or that its provisions may otherwise be applied to the fund.*"
[17] See, for example, CZ: Resolution of the Supreme Court of the Czech Republic of 20 December 2022, Case No. 27 Cdo 1929/2022. The guiding legal principle of the resolution states:
"*Pursuant to Section 73 of Act No. 91/2012 Coll. (as amended), the issues of the formation, duration, and termination of a trust, as well as its administration, are primarily to be assessed under the legal order designated by the settlor in the trust deed or in another instrument fulfilling a comparable function required by the law designated by the settlor. Only in cases where the settlor has not designated the applicable law, or where such law cannot be applied (e.g., because it does not recognise such an institution, or because its application would clearly be contrary to public policy, or because it would appear disproportionate and inconsistent with a reasonable and equitable arrangement of the parties' legal relations under Sections 4 and 24(1) of the Act), shall the law with which the trust is most closely connected be applied. In determining the law most closely connected to the trust, the court shall take into account, in particular, the criteria demonstratively listed in Section 73(2) of the Act.*"
[18] D Kočí, 'Svěřenské fondy a trusty v mezinárodním právu soukromém' [Trusts and Trust-like Instruments in Private International Law] (2023) 32(3) *Jurisprudence* 35–41.
[19] See the subsidiary conflict-of-law rule contained in Section 73(2) of the Private International Law Act. According to Section 73(2) of the Act, *If a particular element of the fund can be separated from the others, the applicable law may be determined for that element independently*".
[20] This, naturally, places relatively high demands on familiarity with foreign legal rules, as the provision refers to the law of the state with which the element is most closely connected. A proportionate comparative analysis will therefore be required to identify an appropriate "winner".
[21] See Section 73(2) of the Private International Law Act.
[22] See Section 73(4) of the Private International Law Act.
[23] Not exclusively.

the assets in the trust from the personal property of the settlor, the trustee, and the beneficiary. One of the most compelling pieces of evidence for this equivalent status is the existing case law of the Supreme Court of the Czech Republic. In a landmark decision issued in the year 2020, this court confirmed that the party to civil proceedings is the trustee, not the trust fund itself.[24]

When followed this resolution, the Regional Court in Ústí nad Labem which, in a decision concerning a foreign trust fund,[25] explicitly stated that the trustee of a foreign trust fund also possessed procedural capacity in Czech proceedings.[26] In another of its decisions, the Supreme Court of the Czech Republic affirmed that a foreign trustee has procedural capacity in the Czech legal system, noting that the nature of the foreign trust fund must first be examined.[27]

By granting the trustee of a foreign trust the capacity to be a party to proceedings,[28] the Czech court *de facto* and *de jure* recognised the existence and legal relevance of that foreign trust within the Czech legal order. If a foreign trustee can appear before Czech courts and defend rights relating to the assets in the trust, it is beyond doubt that the Czech legal system places this trust and its trustee on an equal footing with a domestic fund and its trustee. Judicial practice has thus evidently bridged the theoretical differences and affirmed the existing legislative solution. Furthermore, this approach must be assessed as consistent with obligations arising from EU law. The Court of Justice of the European Union has confirmed that trusts can invoke the freedom of establishment guaranteed by the Treaty on the Functioning of the European Union.[29] An *a priori* refusal to recognise a trust validly established in another EU Member State would, with a high degree of probability, constitute an impermissible restriction on this fundamental freedom. This creates further strong pressure on Czech courts to interpret the relevant provision of the Act on Private International Law in a manner consistent with EU law, ie, in favour of recognition.

RECOGNITION/QUALIFICATION OF A FOREIGN TRUST FOR THE PURPOSES OF THE INCOME TAX ACT

Private law liberality, however, creates a distinct tension. While a Czech settlor may validly establish a Liechtenstein trust administered by a corporate trustee, as soon as this trust begins to operate in relation to the Czech Republic (e.g., by holding a share in a Czech company, owning real estates in the Czech Republic), mandatory Czech public law norms come into play. The Financial Administration and the administrative courts will likely not primarily examine compliance with foreign law but will apply the Czech Income Tax Act, the Act on the Register of Beneficial Owners, and, in the event of a dispute, the Czech doctrine of abuse of law. It is therefore crucial to conclude that the choice of foreign law does not *a priori* grant immunity from Czech tax and regulatory requirements.

The foreign trust under the Act on public registers and the Act on the register of beneficial owners

Above stated conclusion is, moreover, supported by the regulations contained in the Act on Public Registers[30] and further in the Act on the Register of Beneficial Owners.[31] The Act on Public Registers places Czech trusts and foreign trusts on an equal footing.[32] Foreign trusts are to be registered in the Register of Trusts if they are deemed to be operating in the territory of the Czech Republic, in particular, if:

- it is administered from the territory of the Czech Republic,
- it is composed of assets predominantly located in the territory of the Czech Republic,
- immovable property situated in the territory of the Czech Republic is administered within it,
- its trustee or a person in a similar position has their residence or seat in the territory of the Czech Republic,
- its trustee or a person in a similar position has established a business relationship in the territory of the Czech Republic in relation to the administered assets, or
- the purpose pursued by its creation is to be achieved in the territory of the Czech Republic.[33]

The Act on Public Registers also specifies in a separate provision the facts to be recorded in the Register of Trusts concerning a foreign trust. These facts include:

- the name of the foreign trust and its identification number,

[24] See the CZ: Resolution of the Supreme Court of the Czech Republic dated 15 December 2020, Case No. 27 Cdo 3033/2019, where its paragraph [10] states, "*The legal conclusion of both the first-instance and appellate courts - that a trust fund is a non-legal person entity representing an autonomous pool of assets without an owner, separated by the settlor for a specific purpose and administered by a trustee, as explicitly stipulated in Sections 1448(2) and (3) of the Civil Code - is correct. The courts also rightly concluded that, since a trust fund does not possess legal personality and the law does not otherwise confer legal standing upon it, it cannot act as a party to legal proceedings (Section 19 of the Code of Civil Procedure).*"

[25] Established under the law of the State of California.

[26] CZ: Judgment of the Regional Court in Ústí nad Labem of 28 July 2022, Case No. 12 C 334/2017-766. This judgment is not publicly available (information cited from: David Fojtů, "Trust Funds in Court Decisions over the Last Two Years—Part I" (7 September 2023) *Právní prostor* https://www.pravniprostor.cz/clanky/obcanske-pravo/svereenske-fondy-v-rozhodnutich-soudu-za-posledni-2-roky-dil-1 accessed 12 July 2025).

[27] See CZ: resolution of the Supreme Court of the Czech Republic of 29 November 2022, Case No. 21 Cdo 1007/2022, in which the Court stated, inter alia, "*... the appellate court ultimately proceeded correctly (albeit on different grounds) in concluding that the Treuhänderschaft TIMMER TRUST does not possess legal personality, and in treating as a party to the proceedings (as the pledgor) the individual who served as trustee of the TIMMER TRUST at the relevant time. ... Since, as explained above, a Treuhänderschaft governed by Liechtenstein law lacks legal subjectivity, and rights and obligations in respect of the trust property are exercised by the trustee in his or her own name (albeit over property that is separated from the trustee's personal assets), it follows that - based on the facts established to date - the rights and obligations relating to the pledge must be attributed to the trustee personally.*"

[28] Any alternative legal conclusion would, in practical terms, constitute an insurmountable obstacle.

[29] See EU: *Trustees of the P. Panayi Accumulation & Maintenance Settlements v Commissioners for Her Majesty's Revenue and Customs* (Case C-646/15, CJEU, 14 September 2017) ECLI:EU:C:2017:682.

[30] Act No. 304/2013 Coll., on Public Registers of Legal and Natural Persons, as amended (hereinafter referred to as the "Public Registers Act").

[31] Act No. 37/2021 Coll., on the Registration of Beneficial Owners, as amended (hereinafter referred to as the "Beneficial Owners Registration Act").

[32] See, for example, Section 7(2) of the Public Registers Act, which refers equally to foreign trust funds as, "*structures or functionally similar arrangements governed by the law of another state and operating in the territory of the Czech Republic (hereinafter referred to as a 'foreign trust').*"

Under the Beneficial Owners Registration Act (see Section 2(a)), a foreign trust is defined as, "*... a trust or a structure or functionally similar arrangement governed by the law of another state.*"

[33] See Section 65e(2) of the Public Registers Act.

- the law of the state governing the foreign trust fund and, if that law requires registration, the register in which it is recorded and the registration number,
- the purpose of the foreign trust, and where applicable, the object of its activity, business, or ancillary economic activity, if carried on,
- the registrable data required by this Act for the trustee,
- the dissolution of the foreign trust,
- a declaration of bankruptcy or the commencement of other similar proceedings concerning the foreign trust, and
- the termination of the foreign trust's activities in the Czech Republic.[34]

THE FOREIGN TRUST FROM THE PERSPECTIVE OF THE INCOME TAX ACT

Although a trust fund lacks legal personality, for the purposes of the Income Tax Act,[35] it is considered a corporate income tax taxpayer based on a fiction of legal personality.[36] According to the interpretation of the General Financial Directorate,[37] this regime also applies under certain conditions to foreign entities comparable to a trust. The fund is also obliged to maintain accounts, as it is defined as an accounting entity.[38] With the increasing use of structures involving foreign trusts by Czech tax residents, an important and highly practical key question has arisen:

> *"Under what conditions can a foreign trust be considered, for tax purposes, an equivalent to a Czech trust, and the relevant provisions of the Income Tax Act be applied to it?"*

The answers to this question have gradually been formulated outside of official legal regulations, on the platform of the Coordination Committees, which represent a key forum for dialogue between the Chamber of Tax Advisers of the Czech Republic and the General Financial Directorate (GFD). Although the conclusions from the meetings of these Coordination Committees are not a formal source of law, in practice they constitute binding methodology and established administrative practice for the Financial Administration authorities, providing taxpayers with a necessary degree of legal certainty.

Initial definition: the six comparability criteria (2014)

Shortly after the new Civil Code and the relevant amendments came into effect, the GFD, in response to queries from practitioners, formulated its position on the tax assessment of foreign trusts. In its initial opinion, the GFD adopted a more rigid posture, establishing six cumulative criteria that a foreign entity must meet to be considered comparable to a domestic trust for the purposes of the Czech Income Tax Act. These criteria are as follows[39]:

1) Creation by setting aside the settlor's assets: The foreign entity must be created by separating assets from the settlor's ownership and entrusting them to a trustee for a specific purpose.
2) Administration of assets by a trustee: The trustee must hold and administer the assets in his own name and on the account of the entity, and must also maintain its accounts.
3) Separate ownership of assets: The segregated assets must not be owned by the trustee, the settlor, or the beneficiary - this is the key principle of separate and independent ownership.
4) Absence of legal personality: The foreign entity must not have legal personality, which distinguishes it from corporations or foundations.
5) Taxpayer status: The foreign entity must demonstrate that, under the law of its state of tax residence, it is considered a taxpayer of a tax equivalent to Czech corporate income tax and that its income is not, even in part, attributed to other persons (i.e., it is not a tax-transparent entity).
6) Taxability of profit and distributions: Both the profit from the appreciation of assets in the trust and distributions (payments) from this appreciation to the beneficiary must be taxable income under the laws of the trust's state of residence.

While the first four points were relatively unproblematic and mirrored the basic features of a trust, the remaining two criteria became the core of subsequent disputes, as they were perceived to relate not to the legal substance but to the specific tax regime abroad. The legislative intent would rather suggest the need for a functional and substantive assessment, where the decisive factor is not the formal name or precise legal regulation, but the similarity in function and purpose.[40] The GFD, however, established a more rigid approach, with its 5th and 6th conditions

[34] According to Section 65g of the Public Registers Act.
[35] Act No. 586/1992 Coll., on Income Taxes, as amended (hereinafter referred to as the "Income Tax Act").
[36] See Section 17(1)(f) of the Income Tax Act.
[37] General Financial Directorate (hereinafter referred to as the "GFD").
It is the central authority within the Czech Financial Administration, serving inter alia as a methodological and coordinating body for the administration as a whole.
[38] See Section 1(2)(i) of Act No. 563/1991 Coll., on Accounting, as amended (hereinafter referred to as the "Accounting Act").
[39] Based on General Financial Directorate (2014) *Zápis z jednání Koordinačního výboru s Komorou daňových poradců ČR ze dne 23. dubna 2014—Daň z příjmů, č. 421/26.02.14: Výklad pojmu svěřenský fond ve vztahu k zahraničním srovnatelným jednotkám* [Minutes of the Coordination Committee Meeting with the Chamber of Tax Advisers of the Czech Republic of 23 April 2014 - Income Tax, No. 421/26.02.14: Interpretation of the Concept of Trust Fund in Relation to Comparable Foreign Entities]. Prague: General Financial Directorate. Available at: https://financnisprava.gov.cz/assets/cs/prilohy/d-prispevky-kv-kdp/Zapis_KV_KDP_2014-04-23.pdf.
[40] The approach of the General Financial Directorate appears to be somewhat at odds with the original legislative intent of the Government as expressed in the explanatory report to the Senate Statutory Measure concerning the real estate acquisition tax. That explanatory report states that, "*The deliberately chosen term 'svěřenský fond' [trust], as used within the framework adopted in tax legislation, is not limited to the trust fund defined under the new Civil Code, but also encompasses comparable foreign legal institutions (such as trusts in common law jurisdictions). According to this conceptual approach, where a provision of tax law refers to a specific legal institution, it also applies to foreign institutions of a similar nature. Conversely, where a provision is intended to apply exclusively to an institution governed by Czech law, it is accompanied by a clarifying reference to the relevant statute - e.g. 'a trust under the Civil Code'.*"
See Parliament of the Czech Republic (2013) *Důvodová zpráva k zákonnému opatření Senátu č. 340/2013 Sb., o dani z nabytí nemovitých věcí* [Explanatory Report to Senate Statutory Measure No. 340/2013 Coll., on Real Estate Acquisition Tax]. Prague: Parliament of the Czech Republic. Available at: https://www.psp.cz/sqw/text/orig2.sqw?idd=166789.

focusing not on the essence of the trust but on its tax consequences in a foreign jurisdiction. Through these measures (rules),[41] the GFD effectively narrowed the broad scope of recognisable foreign trusts and created a certain safeguard (or barrier) for the recognition of foreign trusts, particularly targeting those from common law jurisdictions where the tax regime may not correspond to the Czech model (e.g., where the trustee is the taxpayer, not the trust fund itself).

Revision and clarification (2022)

After eight years of applying the original criteria, objections arose that it was precisely conditions No. 5 and No. 6 that were causing problems in practice. A contribution from the Chamber of Tax Advisers of the Czech Republic (discussed in March 2022) reflected the fact that experience with cross-border relationships involving foreign trusts had significantly increased and that the original conditions were unreasonably restrictive, or rather, irrelevant, and led to discrimination against foreign structures.

The arguments put forward by the author of the opinion included the following[42]:

- The principle of the unity of the legal order: It was pointed out that other Czech laws treat foreign trusts more liberally. The Act on Private International Law only requires compliance with "fundamental legal characteristics" for the recognition of a foreign fund. Even more significant is the regulation in the Act on the Register of Beneficial Owners, which defines a foreign trust fund as an arrangement that is "similar in structure or functions" to a Czech fund, which is clearly a functional, not a formal, test.
- Practical reality: Tax advisers emphasised that in many jurisdictions (especially in the common law system), the taxpayer is not the trust as an entity, but its trustee. However, the trustee pays the tax from the trust's assets and income, so the actual impact is identical to what it would be if the trust itself were the taxpayer.
- Irrelevance of the foreign tax regime: It was argued that the tax regime in the trust's country of residence should not be decisive for the application of the Czech Income Tax Act to the income of Czech tax residents.
- Compliance with EU law: An overly restrictive approach could constitute a restriction on the free movement of capital, which is contrary to EU law.

The "compromise" reached

In summary, the revised stance on criterion No. 5 represents a pragmatic concession rather than a fundamental change in philosophy. The result of the discussion was an opinion concluded "without contradiction", wherein the GFD, while insisting on maintaining the six-point test as the basic framework to "avoid discrimination against domestic trust funds", nevertheless agreed to a relaxation of the key criterion No. 5, while its position on criterion No. 6 remained unchanged.

For criterion No. 5 (taxpayer status), the GFD acknowledged the arguments from practice and stated that the comparability condition is met even where, *"the trust itself is not a tax subject, but the tax obligations are fulfilled on its behalf by another person - usually the trustee - charged to the assets of the* said trust." This shift was conditional on it being a "formal difference" and the taxpayer having to prove that, "*in reality, the trust's profit is being taxed as if the trust itself were the tax subject.*" At the same time, the GFD explicitly excluded fiscally transparent entities where the income is *attributed to other persons* (typically the settlor or beneficiaries).

With regard to the 6th condition, the GFD stated that, "*The comparability condition listed under No. 6 must always be met; a more lenient interpretation as with condition No. 5 cannot be permitted here.*" This means, in effect, that the requirement for both the income from the appreciation of assets at the trust level and the distributions to the beneficiary to be subject to tax under the foreign legislation remained fully in force without change. By being unyielding on criterion No. 6, it clearly signalled its main priority: the prevention of double non-taxation.

The following Table 1 summarises the evolution of the GFD's opinion and the practical impact of the changes.

FUTURE DIRECTION AND OPEN QUESTIONS (2025)

The view persists among the professional community that the current system (i.e., the conditions) for recognising a foreign trust remains rigid and inadequate. This is evidenced by a subsequent contribution from the Chamber of Tax Advisers submitted for discussion at the Coordination Committee in April 2025, which proposes a fundamental revision of the entire recognition methodology.[43]

Key elements of the proposal

The proposal seeks a fundamental change in approach, abandoning the current "checklist" in favour of a more modern, substance-based assessment:

- Transition to a functional test: It is proposed to abandon the six-point test and instead assess foreign structures based on their functional and structural similarity to their Czech equivalents.
- Extension to foundations: The proposal explicitly calls for the establishment of a methodology for assessing foreign foundations, for which no official interpretative document currently exists, creating significant legal uncertainty.

[41] Although these may constitute rational and legitimate requirements from various perspectives - such as securing tax revenue, eliminating double non-taxation, or preventing the misuse of foreign trusts for tax optimisation or avoidance purposes - it is essential that their application remains proportionate, legally predictable, and consistent with the international obligations of the Czech Republic.

[42] See General Financial Directorate, *Zápis z jednání Koordinačního výboru s Komorou daňových poradců ČR ze dne 23. března 2022* [Minutes of the Coordination Committee Meeting with the Chamber of Tax Advisers of the Czech Republic of 23 March 2022] (Prague, 2022) https://financnisprava.gov.cz/cs/dane/prispevky-kv-kdp/zapisy-z-jednani/2022 accessed 14 July 2025.

[43] See General Financial Directorate, *Zápis z jednání Koordinačního výboru s Komorou daňových poradců ČR ze dne 30. dubna 2025* [Minutes of the Coordination Committee Meeting with the Chamber of Tax Advisers of the Czech Republic of 30 April 2025] (Prague, 2025) https://financnisprava.gov.cz/cs/dane/prispevky-kv-kdp/zapisy-z-jednani/2025 accessed 14 July 2025.

Table 1. Evolution of the GFD's Comparability Criteria for Foreign Trusts

Comparability Criterion	Original GFD Opinion (2014)	Current GFD Opinion (2022)	Commentary and Practical Impact
1. Creation by setting aside assets	Must be created by separating assets from the settlor.	Unchanged.	A fundamental constitutive feature, unproblematic.
2. Administration by a trustee	The trustee holds, administers, and maintains accounts for the assets.	Unchanged.	A standard requirement for administration.
3. Separate ownership of assets	Assets are not the property of the trustee, settlor, or beneficiary.	Unchanged.	The key principle of separate ownership that distinguishes a trust from other forms of administration.
4. Absence of legal personality	Must not have legal personality.	Unchanged.	Distinguishes a trust from foundations and corporations.
5. Taxpayer status	Strict requirement for the trust to be a taxpayer of a tax equivalent to corporate income tax under foreign law.	**Softened:** The condition is also met if the tax liability is fulfilled by the trustee on behalf of the trust, charged to the trust's assets, and the income is not attributed to other persons.	A key change. It allows for the recognition of trusts from jurisdictions where the formal taxpayer is the trustee. The burden of proof is on the taxpayer to demonstrate it is not a transparent entity and that tax is effectively paid from the trust's assets.
6. Taxability of profit and distributions	Both the profit from asset appreciation and the profit distribution to the beneficiary must be taxable income abroad.	**Confirmed and emphasised:** This requirement must always be met; a more lenient interpretation is not permitted.	No change. This criterion remains the biggest obstacle for trusts from jurisdictions with favourable tax regimes (e.g., no tax on capital gains or distributions). It is the main safeguard against abuse from tax perspective.

Source: Author's own compilation.
Based on General Financial Directorate (2014) *Zápis z jednání Koordinačního výboru s Komorou daňových poradců ČR ze dne 23. dubna 2014—Daň z příjmů, č. 421/26.02.14: Výklad pojmu svěřenský fond ve vztahu k zahraničním srovnatelným jednotkám* [Minutes of the Coordination Committee Meeting with the Chamber of Tax Advisers of the Czech Republic of 23 April 2014—Income Tax, No. 421/26.02.14: Interpretation of the Concept of Trust Fund in Relation to Comparable Foreign Entities]. Prague: General Financial Directorate. Available at: https://financnisprava.gov.cz/assets/cs/prilohy/d-prispevky-kv-kdp/Zapis_KV_KDP_2014-04-23.pdf; General Financial Directorate, *Zápis z jednání Koordinačního výboru s Komorou daňových poradců ČR ze dne 23. března 2022* [Minutes of the Coordination Committee Meeting with the Chamber of Tax Advisers of the Czech Republic of 23 March 2022] (Prague, 2022) https://financnisprava.gov.cz/cs/dane/prispevky-kv-kdp/zapisy-z-jednani/2022 accessed 14 July 2025.

- Inspiration from international standards: The argumentation relies on the principles of the Hague Convention and on relevant case law of the Court of Justice of the EU, which favours assessment based on the mode of operation over formal characteristics when comparing legal forms from different states.

Status of the proposal and its implications

It is crucial to emphasise that, as of the date of this article's preparation,[44] this contribution is marked in the minutes of the meeting as a "*deferred contribution*". This means that the GFD has not yet issued a binding opinion on the proposals stated therein and, crucially, the proposed criteria do not constitute established administrative practice. For taxpayers, this means that it cannot currently be relied upon. The very existence of this proposal signals that, even after the 2022 adjustment, the Chamber of Tax Advisers considers the current system unsatisfactory and is actively seeking to change it towards existing European and international standards. The "deferred" status may also be an indication that this is a conceptually complex issue on which the Financial Administration has not yet formed a clear position, which for practitioners means continuing legal uncertainty in cases that do not meet the 2022 test.

FINAL SUMMARY AND RECOMMENDATIONS FOR PRACTICE

The evolution of the Financial Administration's views on the tax assessment of foreign trusts can be summarised in the following timeline:

- 2014: Introduction of a strict, formal six-point test that emphasised the tax regime abroad.
- 2022: A pragmatic adjustment of the test in response to practical experience. The requirement for formal taxpayer status was relaxed (criterion No. 5), but the necessity of taxation of both profits and distributions abroad was confirmed and emphasised (criterion No. 6).
- Future (2025 and the years thereafter): The currently valid and binding framework is the one following the 2022

[44] As of 14 July 2025.

revision. However, a proposal for a fundamental change in methodology towards a functional assessment is under discussion; it has not yet been approved and represents a source of future development and current uncertainty.

PRACTICAL RECOMMENDATIONS FOR TAXPAYERS

For taxpayers and their advisers, the above implies the following recommendations:

1) Binding framework: When assessing the comparability of a foreign trust, it is necessary to adhere strictly to the six criteria as specified in the 2022 conclusions. Any other approach, such as a purely functional one, is currently associated with high potential risk.
2) Burden of proof: It must be borne in mind that the onus of proving all relevant facts alleged and declared by the taxpayer rests squarely with the taxpayer.[45]
3) Recommended documentation: To successfully prove comparability, it is essential to gather and, upon request, submit comprehensive documentation, which should include in particular:
   - The trust's formation documents (e.g., Trust Deed, Trust Administration Agreement) and their certified translation.
   - A legal analysis or opinion from a foreign legal or tax adviser confirming the key civil law characteristics (separate assets, absence of legal personality, role of the trustee).
   - Confirmation of the tax residency of the trust or, where applicable, the trustee, if he is the formal taxpayer.
   - Detailed evidence of the tax regime abroad, with a special focus on demonstrating compliance with criteria No. 5 and No. 6.

Although the GFD's position is gradually evolving towards greater pragmatism, its core remains conservative and primarily focused on protecting the tax base of the Czech Republic.

CONCLUSION

The article provides a comprehensive examination of how foreign trusts are treated under Czech law, with a specific focus on their classification for income tax purposes. It highlights the dual nature of these arrangements - while liberal private law provisions facilitate their recognition, rigid public law standards, particularly in taxation, impose significant constraints. Although foreign trusts are accepted in private law if they meet basic structural characteristics (such as asset separation and a defined purpose), their treatment under tax law is far more stringent.

The Czech GFD initially adopted a formalistic six-criteria test in 2014 to assess whether a foreign trust is comparable to a Czech trust for corporate income tax purposes. While this test addressed key structural elements, two criteria - pertaining to tax subject status and the taxation of gains and distributions - became major points of contention due to their focus on the tax regime in the foreign jurisdiction, rather than the substance of the trust.

In response to criticism from tax professionals and evolving practice, the GFD softened the fifth criterion in 2022, acknowledging that a trust may still be comparable even if the trustee (rather than the trust itself) is the taxpayer, provided tax is effectively paid from trust assets. However, the sixth criterion, requiring foreign taxability of both the trust and capital gain distribution, remains strictly enforced. This ensures that foreign trusts from low- or no-tax jurisdictions are effectively excluded from favourable treatment, serving as a safeguard against tax base erosion. Despite this partial shift, practitioners argue that the current framework is overly rigid and inconsistent with other areas of Czech and EU law, which apply a more functional approach.

A new proposal discussed in 2025 advocates for abandoning the existing checklist in favour of a substance-over-form assessment, aligning the Czech approach with international standards and improving legal certainty.

From a practical standpoint, taxpayers seeking to use foreign trusts must continue to adhere strictly to the 2022 criteria. The burden of proof lies with the taxpayer, who must supply detailed documentation on the trust's legal and tax status. Until further reform is adopted, the Czech tax authority's cautious and conservative stance prioritises anti-avoidance principles and the protection of the domestic tax base, despite growing pressure for modernisation and harmonisation with EU principles.

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[45] For further details on the issue of the burden of proof, see Section 92 of Act No. 280/2009 Coll., the Tax Procedural Code, as amended.

Trusts & Trustees, 2025, 31, 1–7
https://doi.org/10.1093/tandt/ttaf058
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