

Anti-abuse conditions and beneficial ownership

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Article 9 applies "without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse".¹ Italy applies to it the beneficial ownership requirement and its general anti-abuse rule in Article 10-bis of the Taxpayers' Statute (Law No. 212 of 27 July 2000). The Italian anti-abuse provision in Article 27-bis paragraph 5 of Presidential Decree No. 600 of 1973 refers to the general rule.² A Lugano holding company owned by non-EU persons that receives dividends from an Italian operating company must therefore show that it is not a conduit and that it has a genuine economic function. Italian tax auditors look at the board, the premises, the employees and the decision-making in Lugano, and at the onward flow of the dividends. They have challenged structures in which a Swiss company without staff received Italian dividends and passed them on within a short time to a parent in a third state. The interplay with the case law of the Court of Justice in the *Danish beneficial ownership cases* of 26 February 2019 has made Italian practice stricter, even though those judgments concerned EU directives and not the Swiss agreement directly.³

In the reverse direction, dividends paid by a Lugano subsidiary to an Italian parent company are also exempt from Swiss withholding tax under Article 9 paragraph 1 if the conditions are met. Switzerland grants the relief either by the notification procedure, under which the subsidiary pays the dividend without deducting tax after obtaining a permit from the Federal Tax Administration on Form 823C, or by refund.⁴ The notification procedure requires an application before the first distribution, and the permit is valid for five years. Each subsequent dividend must be reported to the Federal Tax Administration within thirty days of its due date on Form 108, and since 10 February 2026 the notifications can be filed through the administration's electronic portal.⁵ A late notification no longer leads to the loss of the procedure, and no default interest is due where the

substantive conditions for the notification procedure under the applicable agreement are met.⁶

1 Interest, royalties and the 25 per cent test of association

For interest and royalties, Article 9 paragraph 2 requires that the companies be associated by a direct holding of at least 25 per cent for two years, or that a third company hold at least 25 per cent in each of them for that period.⁷ Interest on an intragroup loan from a Lugano treasury company to an Italian subsidiary is therefore exempt from Italian withholding tax, which would otherwise be 26 per cent under domestic law and 12.5 per cent under the convention. The same applies to royalties paid by an Italian subsidiary to a Lugano company that owns the group's trademarks or patents, for which the domestic burden would be 22.5 per cent and the treaty burden 5 per cent. The relief requires the Swiss company to be the beneficial owner and the payments to be at arm's length. The Agenzia delle Entrate has accepted in a cooperative compliance procedure that the exemption can apply in advance where the two-year holding period has not yet been completed, subject to conditions.⁸

For Swiss-source interest the agreement has limited relevance, since Swiss withholding tax does not apply to ordinary intra-group loans. It matters for bonds issued by a Swiss group company and placed with an Italian affiliate, and for the treasury structures of trading groups in which a Swiss company issues notes. Switzerland levies no withholding tax on royalties, so that the reverse flow from a Swiss licensee to an Italian licensor is relieved by domestic law alone.

Essentials. Under Art. 9 of the Agreement between Switzerland and the EU on automatic exchange of information (formerly Art. 15 of the savings agreement of 26 October 2004), intra-group dividends, interest and royalties between Swiss and Italian companies are exempt from withholding tax where there is a direct holding of 25 per cent for two years, both companies are subject to corporation tax and neither is resident in a third state under a treaty. Since Resolution No. 46/E of 31 July 2023, a partial exemption of the Swiss company does not exclude the relief. The relief remains subject to beneficial ownership and the anti-abuse rules of both states. In Switzerland it is granted by notification procedure or refund, in Italy by exemption at source or refund.

2 Notes

1. Agreement of 26 October 2004 (above), Art. 15, opening words. ↩

2. Law No. 212 of 27 July 2000 (Statuto dei diritti del contribuente), Art. 10-bis, introduced by Legislative Decree No. 128 of 5 August 2015, Brocardi.it, <https://www.brocardi.it/statuto-contribuente/art10bis.html>; Presidential Decree No. 600 of 1973, Art. 27-bis para. 5 (Directive (EU) 2015/121 implemented "mediante l'applicazione dell'articolo 10-bis della legge 27 luglio 2000, n. 212"), Brocardi.it, <https://www.brocardi.it/disposizioni-accertamento-imposte-redditi/titolo-iii/art27bis.html>. ↩
3. CJEU (Grand Chamber), judgments of 26 February 2019, joined cases C-115/16, C-118/16, C-119/16 and C-299/16, N Luxembourg 1 and Others, on Directive 2003/49/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0115>, and joined cases C-116/16 and C-117/16, T Danmark and Y Denmark, on Directive 90/435/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0116>. ↩
4. Marcus Altenburg, "Verrechnungssteuer-Rückerstattung für Muttergesellschaften", Goldblum, 25 August 2026, <https://goldblum.ch/de/wissensdatenbank/verrechnungssteuer-rueckerstattung-muttergesellschaft/> (notification procedure under Art. 26a of the Withholding Tax Ordinance). Ibani, "Ausschüttung von Dividenden aus der Schweiz ins Ausland", <https://www.ibani.com/de/leitfaden/grenzueberschreitende-dividenden-verrechnungssteuer> (Form 823B for treaty cases, Form 823C for parent companies under the agreement with the EU, with a direct holding of at least 25 per cent for two years). ↩
5. Altenburg (above) (permit valid for five years; Form 108 within thirty days; electronic filing since 10 February 2026). ↩
6. WHTA, Art. 20 para. 3 (notification procedure granted whether or not the notification or the application was made in time) and Art. 16 para. 2bis lit. b (no default interest where the substantive conditions under the applicable international agreement are met), <https://www.droit-bilingue.ch/de-it/6/64/642.21-20-24.html> and <https://www.droit-bilingue.ch/de-it/6/64/642.21-16-20.html>; Art. 70c (transitional rule for the amendment of 30 September 2016, in force 15 February 2017, AS 2017 497), <https://www.droit-bilingue.ch/de-it/6/64/642.21-70c-80.html>. ↩
7. Agreement of 26 October 2004 (above), Art. 15 para. 2. Text of Art. 15 para. 2 in the version of 2004, LexFind, <https://www.lexfind.ch/tolv/157725/de> (holding of at least 25 per cent for two years, or a third company holding at least 25 per cent directly

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in each of them for the same period); the provision was carried over into Art. 9 para. 2 by the amending protocol of 27 May 2015. ↩

8. Migliorini, "Royalties in uscita verso la Svizzera" (above), citing Agenzia delle Entrate, Risposta a interpello No. 49 of 2025. ↩

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