

Case 3: royalties to a Lugano brand company

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Gamma SA in Lugano owns the trademarks of a fashion group and licenses them to Gamma S.p.A. in Como, which pays royalties of EUR 3 million a year. Gamma SA has held 30 per cent of Gamma S.p.A. for three years, and the same family holds the rest. Under Italian law the withholding tax would be 22.5 per cent, or EUR 675,000. Under the convention it would be 5 per cent, or EUR 150,000. Under Article 9 paragraph 2 of the agreement it is zero. The Italian payer will apply the exemption only if Gamma SA is the beneficial owner of the royalties and the royalties are at arm's length. Chapter F.III describes the investigation of the luxury goods sector in Ticino, which shows how closely the Italian authorities examine such structures. A royalty rate above the arm's length rate would be partly disallowed in Italy and treated as a hidden profit distribution. The partial exemption of Gamma SA's patent income, if any, under the Ticino patent box does not exclude the relief after Resolution No. 46/E of 2023. Trademark income in any case does not qualify for the patent box.¹

1 Case 4: the pension fund lump sum

Signor B, an Italian national, worked for twenty-five years for a bank in Lugano and lived in Ticino. On retirement he moves back to Varese. Three months after the move his pension fund, which has its seat in Ticino, pays him a capital benefit of CHF 600,000. The fund deducts Swiss source tax at the Ticino rate for capital benefits paid to non-residents. In Italy, Signor B declares the benefit in section RM of his tax return for the year of payment. He pays the 5 per cent substitute tax on the gross amount, or CHF 30,000, under tax code 1242. With proof of the declaration from the Italian tax office, he files the Swiss refund form within three years and recovers the Swiss source tax in full.

The timing matters. If Signor B had received the capital while still resident in Ticino, it would have been taxed in Switzerland as a capital benefit at

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the reduced Swiss rate for pension capital. Italy would have had no claim. Under Article 4 paragraph 4 of the convention, his Swiss residence ends on the day of the move. The convention allocates the benefit to the state of residence at the time of payment. Signor B can therefore choose, within limits, between Swiss taxation before the move and Italian taxation at 5 per cent after it. The Swiss tax administration may examine whether the move was definitive and not a temporary arrangement to obtain the more favourable treatment. The Italian residence rules in Chapter H.II determine from when he is an Italian resident.

2 Notes

1. StHG, Art. 8a (patent box for self-employed persons by analogy) and Art. 24a (exhaustive list of patents and comparable rights, which does not include trademarks), <https://www.droit-bilingue.ch/de-it/6/64/642.14-8a-20.html> and <https://www.droit-bilingue.ch/de-it/6/64/642.14-24a-39.html>. ↩

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