

Case 3: the software founder

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D, aged thirty-two, has developed a software platform for logistics companies in a small Milan company that she owns with two friends. An investor in Zurich offers to finance the next stage on condition that the business be carried on by a Swiss company. D is prepared to move to Lugano, her co-founders are not.

The first step is a new Swiss SA in which the three founders and the investor hold shares. The platform cannot simply be used by the new company, because it belongs to the Milan company. It must be sold or licensed at arm's length. A sale realizes a gain in Italy that the Milan company must tax, which is often modest for software at an early stage but should be supported by a valuation. D herself is not subject to an exit tax on her shares in the Milan company. Ticino offers her company the support of Fondazione AGIRE, a place at the Tecnopolo or the Switzerland Innovation Park and, if it grows quickly, possibly tax relief under the LInn, which presupposes at least 15 jobs within three years and an investment of CHF 1 million. The capital tax relief for start-ups and the patent box may also matter, although the patent box does not cover bought-in software that is not patented.

The co-founders who remain in Milan create the residual risks. If they are the developers and take product decisions from Milan, the Swiss company may have an Italian permanent establishment or even its place of effective management in Italy. If they hold the majority of the shares and the company in turn controls an Italian subsidiary, the presumption of Article 73 paragraph 5-bis TUIR applies. A clear allocation of functions, contracts of employment with the Swiss company or service agreements with the Milan company at arm's length, and a board that meets in Lugano will be needed. D's own social security depends on where she works: if she spends at least a quarter of her time in Switzerland, she is insured there.

1 Case 4: the entrepreneur who commutes

E owns a metalworking company near Varese with 120 employees. In 2024 he rented a flat in Paradiso, obtained a B permit as a person without gainful activity and registered with the AIRE. His wife and their children aged twelve and fifteen stayed in the family house near Varese because of the children's school. E drives to his factory every morning and sleeps in Paradiso on most weeknights. He files Swiss tax returns and has stopped filing Italian ones.

Under the reformed Article 2 TUIR, E is resident in Italy on at least two grounds. His personal and family relations principally develop where his wife and children live, which gives him an Italian domicile. His daily presence in the factory, counted in fractions of days, exceeds half of the year. The treaty does not help him. He has a permanent home in both states, and his centre of vital interests, both personal and economic, lies in Italy. His Swiss permit was also obtained on a false basis, since he is gainfully active as the director of his company. If the Italian tax evaded in any year exceeds EUR 50,000, he is exposed to prosecution under Article 5 of Legislative Decree No. 74/2000.

The remedy depends on timing. If no audit has begun, E can file Italian returns for the open years with the benefit of the voluntary correction procedure and inform the Ticino authorities. If he wishes to keep a Swiss residence, the whole family must move, and he must hand day-to-day management to someone who works in Italy. The case is typical of the constellation the Italian authorities look for. It shows why a move that changes only the address is worse than no move at all.

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