

Case studies

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The following cases are hypothetical and anonymized. They combine features that recur in practice and show how the rules described in this chapter interact. Each real case requires advice from Italian and Swiss lawyers and tax advisers on the law in force at the time of the move.

1 Case 1: the founder who intends to sell

B, aged fifty-five, founded a company in Brianza that makes components for industrial automation. He owns 100 per cent of its shares, which a private equity fund has offered to buy for EUR 40 million within the next two to three years. His wife and their two teenage children are willing to move to Lugano, where the children would attend an international school. B asks whether a move before the sale would remove Italian tax on the gain, which at 26 per cent would amount to about EUR 10 million.

The analysis begins with the asymmetry described above. As a private shareholder B is not subject to the Italian exit tax on his shares. If he becomes resident in Switzerland for treaty purposes before the sale, Article 13 paragraph 3 of the convention reserves the taxation of the gain to Switzerland, which generally exempts private capital gains. The risks are equally clear. B must actually move with his family, so that his domicile under the reformed Article 2 TUIR is in Ticino, and he must spend fewer than half of the days of each year in Italy. As chief executive he is in the factory most days, which would make him resident by presence. He must therefore appoint a general manager, reduce his role to that of chairman and organize board meetings in Lugano. Because the Italian authorities examine sales shortly after a move with particular attention, the move should take place well before negotiations begin, and the documentation of his family life in Ticino must be complete.

The Swiss side has its own conditions. If B sells to the fund's acquisition company, which then distributes the target's reserves to finance the price,

the Swiss rules on indirect partial liquidation may turn part of the gain into taxable income. If he first contributes the shares to his own holding company, the transposition rules may apply. A ruling from the Ticino tax administration before the sale is advisable. Finally, B will pay Swiss wealth tax on the proceeds every year. His social security position must also be reviewed if he continues to receive Italian remuneration as chairman.

2 Case 2: the Como textile company and its Lugano sales arm

C, a family company in Como, weaves fabrics for fashion houses. Its owners, two siblings, live in Como and have no intention of moving. They want to found a sales and design company in Lugano that would buy fabrics from Como and resell them to clients across Europe, and they ask whether the profits could be taxed in Ticino.

The siblings remain Italian residents and control the Swiss company, so the Italian controlled foreign company rules apply. Because the Swiss company would buy from its Italian parent and resell with limited added value, its income may fall within the category of low-value sales to related parties. The company passes the effective tax test only if its Swiss tax exceeds half of the virtual Italian tax, which at a rate of about 16 per cent it normally does. It also benefits from the simplified test if its audited accounting effective rate reaches 15 per cent. More serious is the risk of *esterovestizione*. If the siblings take the strategic decisions in Como and the Como staff handle the clients, the Swiss company is resident in Italy under Article 73 paragraph 3 TUIR. The structure works only if the Lugano company has its own managing director living in Ticino, its own designers and sales staff, its own premises and its own authority to conclude contracts. Its margin must also correspond to the functions it performs.

The operational issues follow. The Lugano staff may include Italian commuters with G permits, whose taxation follows the new cross-border agreement. The company will need Swiss VAT registration and, for any Italian stock, an Italian fiscal representative. The sales staff must not habitually conclude contracts in Italy on behalf of the Lugano company. If these conditions are met, the profits of the Swiss company's own functions are taxed in Ticino. If they are not, the structure adds costs and creates Italian assessments with penalties.

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

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