

Case studies and a practitioner's checklist

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The following cases are hypothetical and anonymised. They combine features that recur in practice and are intended to show how the rules described in this chapter interact. Because they are simplified, each real case requires advice from Italian and Swiss lawyers and tax advisers on the current law.

1 Case 1: the entrepreneur who moves to Lugano

A, an Italian national aged sixty-eight, founded a mechanical engineering company in the province of Monza and Brianza. He holds 80 per cent of its shares, his two children 10 per cent each. His daughter manages the company. His son lives in London and has no interest in it. A and his wife wish to move to Lugano, where they own a flat, and to settle the succession to the company before the move.

The first step is the family pact under Art. 768-bis Codice civile, concluded in Italy before a notary with the participation of the wife and both children. A transfers his shares to his daughter, who compensates her brother with a payment corresponding to the value of his reserved share, partly financed by a dividend from the company. Because the pact is a transfer to a descendant of a controlling shareholding, it can qualify for the exemption from gift tax under Art. 3(4-ter) TUS if the daughter keeps control for five years. The pact also protects the transfer against later reduction claims. The second step is the move. A and his wife cancel their registration in Italy, register with the AIRE and obtain B EU/EFTA permits in Ticino. Since both spouses move and the children are adults living elsewhere, the couple's personal and family relationships are centred in Lugano within the meaning of the reformed Art. 2(2) TUIR. They must not, however, spend more than half of the year in Italy. A must give up his offices in the company. If he continued to manage it from Lugano, he could not use the

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Ticino lump-sum regime and might expose the company to arguments about its place of effective management.

The third step is the succession plan for the remaining estate. As an Italian national without Swiss nationality, A cannot choose Swiss law under Art. 22 of the Succession Regulation. If he dies habitually resident in Lugano, both Italian and Swiss authorities will apply Swiss law, under which his wife and children have smaller reserved shares. If he prefers Italian law, he can choose it expressly. In either case his remaining Italian assets, mainly real estate in Milan, will be subject to Italian inheritance tax at 4 per cent above the allowance of EUR 1 million per heir. The Swiss assets will be exempt in Ticino because the heirs are his wife and children.

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