

Certificates of residence and the burden of proof

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A taxpayer who claims a treaty benefit must prove his residence. Both administrations rely on certificates issued by the other state's tax authority. The Italian forms for relief from Italian withholding tax require a certification by the Swiss tax authority, and the Swiss forms for the refund of Swiss withholding tax require a certification by the Italian tax office.¹ The Agenzia delle Entrate issues certificates of residence for treaty purposes on request. In refund cases under Article 29 of the convention the Italian courts treat the official certificate as the decisive evidence. The Court of Cassation held in order No. 30779 of 6 November 2023 that a Swiss certificate showing residence and liability to Swiss tax suffices by itself for the refund of Italian withholding on an INPS pension, and the tax court of Pescara held in 2025 that the certificate cannot be replaced by other documents claimed to be equivalent.² The certificate is a necessary condition for relief but does not bind the source state, which may still examine whether the claimant is the beneficial owner of the income and whether he is subject to the taxes generally levied.

For individuals who move during a dispute about their residence, the certificate issued by the new state may conflict with the old state's assessment. An Italian tax office that considers a person resident in Italy will refuse to issue a certificate, while the Ticino tax administration will issue a Swiss certificate. The conflict can then only be resolved by the mutual agreement procedure under Article 26, which the person must initiate within three years of the first notification of the measure resulting in taxation not in accordance with the convention.³ In practice the three-year period begins with the Italian notice of assessment (*avviso di accertamento*), so that a person who waits for the outcome of Italian litigation before requesting a mutual agreement procedure may lose the right to request it.

1 Notes

1. ESTV, "Italia" (above) (Italian forms R/CH-I/1a, 1b, 2 and 3 for Swiss residents; Form 95 for persons resident in Italy). The certification requirements are printed on the forms. ↩
2. Corte di Cassazione, Sez. V, order No. 30779 of 6 November 2023, massima in Brocardi.it, <https://brocardi.it/massimario/75857.html>, and Eutekne.info, "Sufficiente il solo attestato di residenza fiscale svizzera", 7 November 2023, https://www.eutekne.info/Sezioni/Art_976202_sufficiente_il_solo_attestato_di_residenza_fiscale_svizzera_per.aspx (refund of withholding on INPS pensions under Art. 29 para. 2 of the convention); Arturo Turbolente, "Il certificato di residenza fiscale del contribuente non ammette equipollenti", Diritto.it, 24 July 2025, <https://www.diritto.it/certificato-residenza-fiscale-contribuente-equipoll/> (Corte di giustizia tributaria di Pescara). ↩
3. Convention, Art. 26 para. 1, text (above) (application within three years of the first notification of the measure). ↩

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