

Directors' fees

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Article 16 allocates directors' fees and similar payments received by a resident of one state in his capacity as a member of the board of directors or of a similar organ of a company resident in the other state to the state of residence of the company.¹ An Italian resident who sits on the board of a Lugano company is therefore taxable in Switzerland on his board fees. Switzerland levies source tax on such fees paid to nonresidents under Article 93 DBG at a federal rate of 5 per cent of the gross amount and under the corresponding cantonal provisions. Italy taxes the fees as part of his worldwide income and credits the Swiss tax.²

Article 16 has a significance beyond the fees themselves. Board memberships of Italian residents are the most frequent cause of the Italian claim that a Swiss company is managed in Italy. A Lugano company whose board consists of three Italian residents, who meet in Milan and receive fees taxed at source in Ticino, documents by its own tax returns the facts on which an Italian tax auditor will base the argument that its place of effective management lies in Italy. The convention does not resolve this tension, since Article 16 allocates the fees while Article 4 paragraph 3 determines the residence of the company. The practical answer lies in the composition of the board and in the actual conduct of its meetings, which Chapter F.II and Chapter H.II examine in more detail.

1 Private pensions and Article 18

Article 18 provides that pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment "are taxable only in that State".³ The provision allocates private-sector occupational pensions exclusively to the state of residence of the recipient. A former employee of a Lugano bank who retires to Varese and receives a pension from the bank's Swiss pension fund is taxable on it only in Italy. A retired Italian manager who moves to Lugano and receives an Italian

private pension is taxable only in Switzerland. Article 19 makes an exception for remuneration and pensions paid by a state, its political subdivisions or local authorities, and by certain public bodies listed in paragraph 2, such as the railways and the postal services. They remain taxable only in the paying state if the recipient is a national of that state.⁴

Switzerland applies Article 18 through its system of source taxation for pensions paid abroad. A Swiss pension fund that pays a pension or a capital benefit to a person resident abroad must deduct source tax under Articles 95 and 96 DBG and the corresponding cantonal law. The cantonal rate applied is that of the canton in which the pension fund has its seat, and not that of the former place of work.⁵ Where a treaty allocates the taxing right exclusively to the state of residence, the source tax is not final. For capital benefits, the canton refunds the tax in full if the recipient files the official refund form within three years of the due date of the benefit and proves that the capital has been reported to the competent foreign tax authorities.⁶ For Italian residents the proof will normally consist of a confirmation by the Italian tax office, or of the Italian return together with evidence of payment of the Italian tax, and the documents should be agreed with the cantonal source tax office before the claim is filed.⁷

2 Notes

1. Convention, Art. 16, text (above) (fees taxable in the state of residence of the company). ↩
2. DBG, Art. 93 paras. 1 and 3 ("Die Steuer beträgt 5 Prozent der Bruttoeinkünfte"), <https://www.droit-bilingue.ch/de-it/6/64/642.11-93-99.html>; Legge tributaria del Cantone Ticino of 21 June 1994, Art. 4 para. 1 lit. b (tax liability of non-resident directors), <https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/legge/num/580>; Convention, Art. 24 para. 2 (above). ↩
3. Convention, Art. 18, text (above): "Le pensioni e le altre remunerazioni analoghe, pagate ad un residente di uno Stato contraente in relazione ad un cessato impiego, sono imponibili soltanto in questo Stato." ↩
4. Convention, Art. 19 paras. 1 and 2, text (above). ↩
5. VermögensZentrum, "Imposte alla fonte sui prelievi degli averi previdenziali", <https://www.vermoegenszentrum.ch/it/calcolatori-e-confronti/imposte-alla-fonte-sui-prelievi-degli-averi-previdenziali> (tariff of the canton of the seat of the pension institution). DBG, Arts. 95 and 96 (source tax on pension benefits paid to recipients resident

abroad), <https://www.droit-bilingue.ch/de-it/6/64/642.11-96-102.html>. ↩

6. Canton of Lucerne, Merkblatt (above) (full refund on submission of the official form within three years after the benefit fell due, with proof that the capital benefit has been reported to the foreign tax authority).
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7. Form of proof accepted by the Ticino tax administration for Italian residents. ↩

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