

Domicilio, residenza and the vocabulary of personal status

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Swiss and Italian law also define the place where a person lives in different ways. Under Art. 23(1) CC "il domicilio di una persona è nel luogo dove essa dimora con l'intenzione di stabilirvisi durevolmente" (the domicile of a person is the place where he or she resides with the intention of settling there permanently).¹ Italian law distinguishes two concepts in Art. 43 c.c.: the *domicilio* is the place where a person has established the principal seat of his business and interests, and the *residenza* is the place of habitual abode.² The Swiss *domicilio* is therefore closer to the Italian *residenza* than to the Italian *domicilio*. The difference has tax consequences, because Italian tax residence has traditionally been linked to registration in the population registers, to the *domicilio* and to the *residenza* in the civil law sense, and since 2024 to a revised definition of *domicilio* as the place where a person's personal and family relations mainly develop. Chapter H.II describes that reform. A Swiss document that certifies an Italian client's "domicilio" in Lugano proves something different from an Italian document that records his "residenza".

1 Fiduciario, dispendio and patriziato

Three further terms illustrate how Swiss Italian vocabulary reflects Swiss institutions. The Ticinese *fiduciario* is a licensed professional. Under the cantonal law of 1 December 2009, in force since 1 July 2012, the activity of the *fiduciario commercialista* (accountant and corporate service provider) and of the *fiduciario immobiliare* (real estate agent and manager) requires an authorization, which is granted to natural persons and has a personal character. A limited authorization exists for currency exchange.³ In Italy the *società fiduciaria* is a company that holds assets in its own name on behalf of clients under a mandate, regulated since 1939 and, for the larger ones, supervised by the Bank of Italy. The Italian client who hears *fiduciario* thinks of a nominee holder of shares, while the Ticinese fiduciary is often

an accountant and corporate service provider. Chapter E.III treats both professions.

The *imposizione secondo il dispendio* is the Swiss lump-sum taxation. Article 14(1) of the Federal Direct Tax Act allows natural persons who do not have Swiss citizenship, become subject to unlimited tax liability in Switzerland for the first time or after an absence of at least ten years and do not carry on gainful activity in Switzerland to pay, instead of income tax, "un'imposta calcolata sul dispendio" (a tax calculated on expenditure).⁴ The Italian counterpart for new residents, the *imposta sostitutiva* on foreign income under Art. 24-bis TUIR, is a fixed annual amount and has a different structure. Italians often call both regimes "flat tax", a term that hides their differences. The *patriziato*, finally, is a public-law corporation of the members of old local families that administers collective property such as forests, pastures and alpine meadows. The *Dizionario storico della Svizzera* describes it as the legal successor of the medieval *vicinanza* in Ticino. Ticino counts some 200 *patriziati* in 111 municipalities, governed by the *Legge organica patriziale* of 28 April 1992.⁵ Italian law knows comparable collective rights under the name of *usi civici* and *proprietà collettive*, but no corporation of this kind. An Italian client who acquires land in a Ticinese valley may be surprised to find a *patriziato* as neighbour or as owner of the access road.

2 Notes

1. CC, Art. 23(1), Italian text (Codice civile svizzero), https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/24/233_245_233/20240101/it/html/fedlex-data-admin-ch-eli-cc-24-233_245_233-20240101-it-html-5.html. ↩
2. Brocardi.it, "Art. 43 Codice civile – Domicilio e residenza", <https://www.brocardi.it/codice-civile/libro-primi/titolo-iii/art43.html>. ↩
3. Canton of Ticino, Divisione della giustizia, "Fiduciari", <https://www4.ti.ch/di/dg/fiduciari>. On Italian società fiduciarie see Law No. 1966 of 23 November 1939 and Art. 106 of the Consolidated Banking Act (TUB) for those entered in the separate section of the register. ↩
4. Federal Act of 14 December 1990 on Direct Federal Taxation (DFTA), SR 642.11, Art. 14(1), Italian text (Legge federale sull'imposta federale diretta, LIFD), <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/>

1991/1184_1184_1184/20250101/ it/html/fedlex-data-admin-ch-eli-
cc-1991-1184_1184_1184-20250101-it-html-3.html. ↩

5. Basil Sieber, "Comune patriziale", Dizionario storico della Svizzera (DSS), version of 16 February 2005, <https://hls-dhs-dss.ch/it/articles/026443/>; Wikipedia (Italian), "Patriziato (Svizzera)", [https://it.wikipedia.org/wiki/Patriziato_\(Svizzera\)](https://it.wikipedia.org/wiki/Patriziato_(Svizzera)), consulted as a last resort for the figures (200 patriziati in 111 municipalities) and for the Legge organica patriziale of 28 April 1992. ↩

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