

Exchange of information

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Article 27, as amended by the Protocol of 2015, allows the exchange of information that is foreseeably relevant for the application of the convention or of the domestic tax law of either state, including group requests. Chapter E.II describes it and its use since 2016. In practice it has been joined by three automatic exchanges. Under the Common Reporting Standard Switzerland transmits the financial account data of Italian residents. Under the minimum standard of BEPS Action 5 it exchanges tax rulings spontaneously. Under BEPS Action 13 it exchanges country-by-country reports.¹ Chapter G.IV describes these instruments. For the practice of the convention their main effect is that the Italian administration knows the Swiss income and assets of Italian residents before it audits them.

1 The Multilateral Instrument and the principal purpose test

Both states signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017. Each listed the other's treaty as a covered tax agreement. Switzerland ratified the MLI after parliamentary approval on 22 March 2019, and it entered into force for Switzerland on 1 December 2019.² Switzerland chose to adopt essentially the minimum standard. It accepted the preamble against treaty abuse and the principal purpose test of Article 7 MLI, which denies a treaty benefit where obtaining it was one of the principal purposes of an arrangement.³ Italy has not completed ratification. The OECD's peer review of 2021 noted that Italy had signed the MLI in 2017 but not ratified it. It also found that the Swiss-Italian convention did not yet meet the minimum standard against treaty abuse, although both states had listed it.⁴ In January 2025 Italian commentary still described the ratification as pending.⁵ The OECD's official list of signatories and parties, in its version of 27 June 2024, records the Italian signature of 7 June 2017

without any deposit of an instrument of ratification, and no later Italian deposit has been found up to the time of writing.⁶ As long as Italy has not ratified, the MLI does not modify the Swiss-Italian convention. As far as could be established, no synthesized text of the Swiss-Italian convention has been published, unlike for the treaty partners with which the MLI already applies. The principal purpose test therefore does not yet apply as a treaty rule between the two states. Both administrations still apply their domestic anti-abuse rules, the beneficial ownership requirement and Article 23 of the convention. Once Italy deposits its instrument, the MLI provisions accepted by both states will apply. Since Switzerland has announced that it will notify the completion of its internal procedures for each covered agreement, the reservation under Article 35 paragraph 7 governs the timing. Withholding taxes will then be affected from the first day of the next calendar year beginning on or after the thirtieth day after receipt by the depositary of the later of the two notifications, and other taxes for taxable periods beginning after six calendar months from that date.⁷ Structures that rely on the convention should be reviewed now against the principal purpose test.

2 The minimum tax and the convention

The OECD minimum tax under Pillar Two interacts with the convention only indirectly. Switzerland has levied a qualified domestic minimum top-up tax since 1 January 2024 and applies the income inclusion rule from 1 January 2025. Italy introduced all three charging rules by Legislative Decree No. 209 of 27 December 2023. Chapter F.II describes the Swiss rules, the side-by-side package of January 2026 and the consequences for trading houses.⁸ The minimum taxes are not covered taxes under Article 2 of the convention. Their coordination therefore follows the OECD model rules and not the treaty. The Swiss domestic minimum tax on a Lugano subsidiary of an Italian group in scope reduces any Italian top-up tax under the income inclusion rule to zero, provided it qualifies for the safe harbour. Groups that fall below the EUR 750 million threshold remain subject to the Italian rules on controlled foreign companies, which Chapter F.II also describes.

3 Notes

1. See Chapter G.IV for the sources. ↩
2. Böhi, Wenger and Fröhlich (above) (parliamentary approval of 22 March 2019; Italy among the fourteen covered treaties); SIF, "BEPS Convention", <https://www.sif.admin.ch/en/beps-convention> (entry

into force on 1 December 2019); Susanne Schreiber and Peter Reinarz, "Switzerland Signs the BEPS Convention", Mondaq, 30 June 2017, <https://www.mondaq.com/tax-treaties/607098/switzerland-signs-the-beps-convention> (Swiss signature in Paris on 7 June 2017; Italy among the fourteen states with agreed wording); Ennio Vial, "La Multilaterale Beps e le modifiche delle Convenzioni italiane", Euroconference News, 12 October 2020, <https://www.ecnews.it/fiscale/fisco-e-patrimonio/fisco-internazionale/la-multilaterale-beps-e-le-modifiche-delle-convenzioni-italiane/> (Italian signature on 7 June 2017). ↩

3. Böhi, Wenger and Fröhlich (above). ↩
4. OECD, Prevention of Tax Treaty Abuse – Third Peer Review Report on Treaty Shopping, 2021, country section Italy, https://www.oecd.org/en/publications/prevention-of-tax-treaty-abuse-third-peer-review-report-on-treaty-shopping_d6cecb8-en/full-report/italy_b737b918. ↩
5. MySolution, "Convenzione multilaterale BEPS in attesa di recepimento", 14 January 2025, <https://www.mysolution.it/fisco/informazioni/news/2025/01/14/convenzione-multilaterale-beps-in-attesa-di-recepimento>. ↩
6. OECD, "Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting", status as of 27 June 2024, <https://oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mli/beps-mli-signatories-and-parties.pdf> (Italy: signature 7 June 2017, no deposit; Switzerland: deposit 29 August 2019, entry into force 1 December 2019); KPMG, "OECD: Montenegro deposits instrument of ratification for MLI", 20 May 2026, <https://kpmg.com/us/en/taxnewsflash/news/2026/05/tnf-oecd-montenegro-deposits-instrument-of-ratification-for-mli.html> (Montenegro as the 91st party). ↩
7. MLI, Art. 35 para. 1 lit. a and b and para. 7 lit. a and b ("dem 30. Tag, nachdem die letzte der Notifikationen ... über den Abschluss ihrer innerstaatlichen Verfahren ... beim Depositar eingegangen ist"), <https://www.droit-bilingue.ch/de-it/0.6/0.67/0.671.1-35-38.html>; State Secretariat for International Finance (SIF), "BEPS Convention", 29 November 2019, <https://www.sif.admin.ch/en/beps-convention> (Switzerland will notify once the convention has entered into force for the other state). ↩

Exchange of information

8. See Chapter F.II; Legislative Decree No. 209 of 27 December 2023, Title II (Arts. 8 to 60), implementing Council Directive (EU) 2022/2523, summarized in RPLT, "Attuazione della riforma fiscale in materia di fiscalità internazionale", January 2024, <https://www.rplt.it/wp-content/uploads/2024/01/Informativa-Attuazione-della-riforma-fiscale-in-materia-di-fiscalita-internazionale.pdf> (income inclusion rule and domestic minimum tax for financial years beginning after 31 December 2023, undertaxed profits rule from financial years beginning on or after 31 December 2024). ↩

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