

Holding structures and the group

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A trading group with Ticinese roots typically consists of a Swiss operating company, which employs the traders and concludes the contracts, and a holding company that owns it and often other subsidiaries. Around them sit a number of foreign entities, such as a purchasing office near the source of supply, a logistics company in a port or a representative office in a client market. Before 2020 the holding company could benefit from the cantonal holding privilege, under which it paid no cantonal profit tax.¹ That privilege is gone. The participation reduction under Articles 69 and 70 of the Federal Act on Direct Federal Taxation (DBG) and the corresponding cantonal provisions still exempts, in practice, dividends and capital gains on qualifying participations.² A participation qualifies for dividends if it amounts to at least 10 per cent of the capital or of the profits and reserves or has a market value of at least CHF 1 million. Capital gains qualify if a holding of at least 10 per cent has been held for at least one year.

The choice of the location of the holding company is driven less by tax than in the past. A Swiss holding company of a Swiss trading company receives dividends that are, in effect, free of profit tax and pays dividends to its shareholders that are subject to Swiss withholding tax of 35 per cent. Whether that withholding tax is refunded depends on the shareholder's residence and on the applicable treaty, which for Italian shareholders is examined in a later section and in Chapter H.III. Families from Lombardy that own trading houses in Lugano frequently hold them through an Italian holding company or directly as individuals. Where the family has moved to Ticino, the holding is often a Swiss company, sometimes with a trust or foundation above it, a configuration treated in Chapter E.V.³

1 The register and publicity

All these entities are entered in the commercial register of the Canton of Ticino, kept by the Ufficio del registro di commercio in Bellinzona. Its

entries are published in the Swiss Official Gazette of Commerce (SOGC). The register shows the company's purpose, capital, registered office, the members of the board and the persons authorized to sign, with the nature of their signing authority. The register is kept entirely in electronic form, a system whose current rules on electronic access entered into force on 1 January 2021, and the data of registered entities can be searched free of charge through the central index Zefix.⁴ For counterparties of a Lugano trader, the register entry is the first source of due diligence. It reveals whether the trader is a recently formed company with minimal capital, whether its board has changed frequently and whether its signatories are resident in Switzerland. These are among the indicators that banks and inspection companies use when they assess a new client, as Chapter G.I describes in the context of trade finance.

Swiss law requires that a company limited by shares be represented by at least one person domiciled in Switzerland, who may be a member of the board or a manager (Art. 718 para. 4 CO). The same rule applies to the limited liability company (Art. 814 para. 3 CO).⁵ For trading houses owned and managed from Italy, the rule means that at least one signatory must live in Switzerland. In the Ticinese practice of the past this function was often performed by a local fiduciary who sat on the board as a nominee, signed when asked and had no part in the trading decisions. The tax consequences of such arrangements, which may make the company an Italian resident for Italian purposes, are discussed below. Swiss company law holds the nominee director fully liable for the duties that the next section describes. Any private agreement with the owners does not change this.

Essentials. Trading houses in Ticino are usually companies limited by shares (SA/AG) with a minimum capital of CHF 100,000, which since 1 January 2023 may be denominated in US dollars, euros, sterling or yen. The Sagl/GmbH (minimum CHF 20,000) suits small partnerships, while branches of foreign companies are used for desks without separate capital. At least one person with signing authority must be domiciled in Switzerland. The cantonal holding privilege ended in 2020, but the participation reduction still relieves dividends and gains on qualifying holdings.

2 Notes

1. Akin Gump Strauss Hauer & Feld, Swiss Tax Law Changes: Federal Act on Tax Reform and AHV Financing (TRAF), alert of 11 October 2018, <https://www.akingump.com/en/insights/alerts/swiss-tax-law->

changes-federal-act-on-tax-reform-and-ahv (abolition of the holding, domicile, mixed and principal company regimes and of the Swiss finance branch). ↩

2. Federal Act on Direct Federal Taxation of 14 December 1990 (DBG), SR 642.11, Art. 69 lit. a–c (10 per cent of the capital, 10 per cent of the profits and reserves, or a market value of at least CHF 1 million) and Art. 70 para. 4 lit. b (capital gains: 10 per cent held for at least one year), text at [droit-bilingue.ch, https://www.droit-bilingue.ch/fr-de/6/64/642.11-69-80.html](https://www.droit-bilingue.ch/fr-de/6/64/642.11-69-80.html) and <https://www.droit-bilingue.ch/fr-de/6/64/642.11-70-81.html>; Federal Act on the Harmonisation of Direct Taxes of the Cantons and Communes of 14 December 1990 (StHG), SR 642.14, Art. 28 para. 1 and 1bis, <https://www.droit-bilingue.ch/fr-de/6/64/642.14-28-50.html>. ↩
3. On trusts, foundations and the relocation of Italian families see Chapters E.V and H.II. ↩
4. CRO, Art. 6 (daily register and main register kept electronically), Art. 12 (electronic access, as amended by the Ordinance of 6 March 2020, in force since 1 January 2021, AS 2020 971) and Art. 14 (central business names index Zefix, free of charge), text at [droit-bilingue.ch, https://www.droit-bilingue.ch/fr-de/2/22/221.411-12-16.html](https://www.droit-bilingue.ch/fr-de/2/22/221.411-12-16.html) and <https://www.droit-bilingue.ch/fr-de/2/22/221.411-14-23.html>; Zefix, <https://www.zefix.ch>. ↩
5. CO, Art. 718 para. 4 ("Die Gesellschaft muss durch eine Person vertreten werden können, die Wohnsitz in der Schweiz hat. Diese Person muss Mitglied des Verwaltungsrates oder Direktor sein"), text at [droit-bilingue.ch, https://www.droit-bilingue.ch/de-fr/2/22/220-718-1027.html](https://www.droit-bilingue.ch/de-fr/2/22/220-718-1027.html); Art. 814 para. 3 (same rule for the limited liability company), <https://www.droit-bilingue.ch/de-fr/2/22/220-814-1172.html>. ↩

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