

Immigration under the Swiss Private International Law Act

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Switzerland is among the states that accept the immigration of foreign companies. Under Article 161 of the Federal Act on Private International Law (PILA), a foreign company may subject itself to Swiss law without liquidation and re-incorporation if the foreign law permits it, if the company fulfils the requirements of foreign law and if it can adapt to a form of organization under Swiss law. Article 162 requires a company that is subject to a capital requirement to prove, by a report of a licensed audit expert, that its capital is covered under Swiss law.¹ The reverse case is governed by Article 163, under which a Swiss company may subject itself to a foreign law without liquidation or re-incorporation, provided it meets the requirements of Swiss law and continues to exist under the foreign law.²

The commercial register offices have standardized the documents. A guidance note of the Zug commercial register, revised in 2023, lists the application with certified signatures, a certified and apostilled extract of the foreign register not older than two months, the resolution of transfer and the public deed adapting the articles to Swiss law, proof that the foreign law permits the transfer, proof that the company can adapt to a Swiss legal form, confirmation of the centre of business activity in Switzerland and, for capital companies, the auditor's confirmation "that the capital of the company is covered under Swiss law".³ Proof of the foreign law may be obtained from the Swiss Institute of Comparative Law. The Ticino commercial register in Bellinzona follows the same federal rules under Article 126 of the Commercial Register Ordinance. An Italian *società a responsabilità limitata* typically becomes a Swiss *società a garanzia limitata* (Sagl) and an Italian *società per azioni* a Swiss *società anonima* (SA), with the adaptations of capital, organs and auditing that Swiss law requires.

1 The Italian exit tax

The tax consequence of the transfer is governed by Article 166 TUIR as reformed by Legislative Decree No. 142 of 29 November 2018, which implemented the exit tax provisions of the EU Anti-Tax Avoidance Directive and applies from the tax period following 31 December 2018. The provision applies to persons carrying on a business who transfer their tax residence abroad: companies, commercial partnerships and individual entrepreneurs. On the transfer, the assets of the business are deemed to be realized at their fair value (*valore normale*), and the difference between that value and their tax cost is taxed as income of the last period of Italian residence.⁴ The deemed gain includes goodwill and self-generated intangible assets, which for an established company with brands, customer relationships and know-how often exceed the book value of its tangible assets. Assets that remain connected to a permanent establishment in Italy are excluded, because Italy keeps its taxing right over them.⁵

The reform of 2018 replaced the earlier options of suspension and deferral with a single option of payment in five annual instalments. The option is available only if the company moves to a member state of the European Union or to a state of the European Economic Area that is included in the list of states allowing an adequate exchange of information and with which Italy has concluded an agreement on mutual assistance in the recovery of taxes.⁶ Switzerland is neither, so that a transfer of seat to Ticino triggers immediate payment of the exit tax. Under the earlier rules, the Revenue Agency could also require a guarantee unless the company met conditions of profitability and net equity.⁷ The absence of a deferral for Switzerland is the main reason why entrepreneurs seldom transfer the seat of an operating Italian company to Ticino. The usual alternative is a new Swiss company that develops new business, while the Italian company remains with its existing goodwill.

The exit tax does not apply to individuals who are not entrepreneurs. A private person who moves to Lugano and owns shares in an Italian company is not taxed on the latent gain in those shares when leaving Italy, a feature that distinguishes Italy from Germany, France or Spain.⁸ This asymmetry explains much of the relocation practice discussed in this chapter. The owner of a successful Italian company can move to Ticino without exit tax on his shares, while the company itself cannot follow him without exit tax on its business.

2 Notes

1. Zug, Volkswirtschaftsdirektion, Handelsregister- und Konkursamt, Merkblatt über die Sitzverlegung einer ausländischen Gesellschaft in die Schweiz, revised 2023, https://cdn.zg.ch/dam/jcr:f671c094-331a-46b3-9846-0e1d0f11189a/Merkblatt%20%C3%BCber%20die%20Sitzverlegung%20einer%20ausl%C3%A4ndischen%20Gesellschaft%20in%20die%20Schweiz_Rev2023.pdf (legal basis Arts 161 and 162 PILA and Art. 126 of the Commercial Register Ordinance). Federal Act on Private International Law of 18 December 1987 (PILA), SR 291, Art. 161 para. 1 and Art. 162 paras 1 to 3, text at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/2/29/291-161-190.html), <https://www.droit-bilingue.ch/de-fr/2/29/291-161-190.html> and <https://www.droit-bilingue.ch/de-fr/2/29/291-162-191.html> ("durch den Bericht eines zugelassenen Revisionsexperten ... nachzuweisen, dass ihr Grundkapital nach schweizerischem Recht gedeckt ist"). ↩
2. PILA, Art. 163, English text at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-en/2/29/291-161-190.html), <https://www.droit-bilingue.ch/de-en/2/29/291-161-190.html> ("A Swiss company may subject itself to a foreign law without being liquidated or re-established, provided it meets the requirements of Swiss law and continues to exist under the foreign law"). ↩
3. Zug commercial register guidance (above) ("dass das Kapital der Gesellschaft nach schweizerischem Recht gedeckt ist"; extract "maximal 2 Monate alter"). ↩
4. Massimo Caldara, article on entry and exit tax in Italian law, We Wealth, 8 April 2022, <https://www.we-wealth.com/?p=14582> (scope limited to entrepreneurs, companies and partnerships; difference between fair value and tax cost). TUIR, Art. 166 para. 1 lit. a and notes, text at [Brocardi.it](https://www.brocardi.it/testo-unico-imposte-redditi/titolo-iii/capo-ii/art166.html), <https://www.brocardi.it/testo-unico-imposte-redditi/titolo-iii/capo-ii/art166.html> (as amended by Legislative Decree No. 142 of 29 November 2018, from the tax period following 31 December 2018). ↩
5. Caldara (above) (exclusion of assets that flow into an Italian permanent establishment); Federico Migliorini, article on form TR and the exit tax, Fiscomania, 2 August 2024, <https://fiscomania.com/quadro-tr-exit-tax-trasferimenti-imprese-estero/> (inclusion of goodwill and intangible assets). ↩
6. Caldara (above) (five annual instalments for transfers to EU and EEA states on the white list with which Italy has agreements on mutual assistance in the recovery of taxes; first instalment due at the deadline for the return of the last Italian period). TUIR, Art. 166 para. 9,

Brocardi.it (above) ("può essere versata in cinque rate annuali di pari importo"). ↩

7. Nicola Fasano, "L'esercizio dell'opzione per la sospensione o rateizzazione dell'Exit tax", EC News, 11 July 2014, <https://www.ecnews.it/fiscale/fisco-e-patrimonio/fisco-internazionale/lesercizio-delloptione-per-la-sospensione-o-rateizzazione-dellEXIT-tax/> (guarantee unless no losses in the three preceding years and net equity of at least 120 per cent of the deferred tax, under the regime then in force). ↩
8. Caldara (above) ("assenza di una 'exit tax'" for persons who are not entrepreneurs). Exit taxes on shareholdings in Germany (§ 6 AStG), France (Art. 167 bis CGI) and Spain (Art. 95 bis LIRPF). ↩

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