

Interest, funds and the role of the Swiss bank

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Interest on Swiss franc bonds and on deposits with Swiss banks is subject to Swiss withholding tax of 35 per cent, of which an Italian resident can recover 22.5 percentage points, leaving the treaty rate of 12.5 per cent. In practice the issue arises mainly for Swiss bonds and medium-term notes (*obbligazioni di cassa*), because bank deposits rarely produce significant interest. Interest on bonds issued by foreign issuers and held in a Swiss account is not subject to Swiss withholding tax, and most portfolios managed in Lugano consist predominantly of non-Swiss securities. Swiss withholding tax is therefore a material issue only for the Swiss part of a portfolio. The Swiss share is often substantial for clients of Lugano banks with a home bias towards Swiss equities, such as the large pharmaceutical and food companies listed on the SIX Swiss Exchange.

Investment funds raise further questions. Italian law distinguishes between harmonized funds under the UCITS Directive and non-harmonized funds, and taxes their income at 26 per cent on distribution or redemption. Swiss funds are non-EU funds and therefore never harmonized in the Italian sense, although they may be subject to Swiss withholding tax on distributions. Income from non-harmonized foreign funds was formerly taxed at progressive rates in Italy. Under the regime introduced by Decree-Law No. 225 of 2010 it is now also taxed at the uniform rate, which has been 26 per cent since 2014, subject to conditions concerning the supervision of the fund or its manager.¹ For the Swiss investment funds that Lugano asset managers frequently use, the classification therefore needs to be checked before they are recommended to Italian clients.

1 Capital gains

Capital gains on movable property are governed by Article 13. Gains from the alienation of immovable property may be taxed in the state where the property is situated. Gains from the alienation of movable property

forming part of the business property of a permanent establishment, or of a fixed base used for independent personal services, may be taxed in the state where the establishment or base is situated. All other gains are taxable only in the state of residence of the alienator.² For the Italian investor this means that capital gains on Swiss shares and bonds are taxed only in Italy, at 26 per cent. Switzerland in any case does not tax private capital gains on movable property of its own residents, and it does not tax those of non-residents either.

The exclusive allocation to the state of residence has an important consequence for substantial participations. The convention contains no clause allowing the source state to tax gains on shares of companies whose value derives principally from immovable property, which the OECD Model has contained since 2003. Under the convention a Swiss real estate company owned by an Italian resident can therefore be sold without Swiss tax on the gain under Article 13, even though Article 12 paragraph 2 StHG treats transactions with the economic effect of a sale as alienations and allows cantonal law to tax the transfer of holdings in real estate companies. Article 124 paragraph 1 of the Ticino tax law applies the tax on real estate gains (*imposta sugli utili immobiliari*) to such economically equivalent transactions, which in Ticino, as in most cantons, covers the transfer of a majority holding in a real estate company.³ Whether the cantonal tax administration may nevertheless levy its tax on the economic transfer, on the ground that the convention's concept of immovable property must be read in the light of domestic law, is a question on which practice is not uniform. Sellers should obtain a ruling before the transaction.

2 Monitoring, IVAFE and the reporting chain

The income tax is only one element of the Italian obligations of a resident with a Swiss account. The account must be reported in section RW of the tax return and is subject to the tax on the value of financial assets held abroad (IVAFE). For the securities and other financial products in the portfolio the tax amounts to 0.2 per cent a year of their market value, while a current or savings account bears a fixed annual amount of EUR 34.20.⁴ Chapter G.IV describes these obligations and the penalties for their violation. Since the first automatic exchange in 2018, the Agenzia delle Entrate has received the account balances and income of Italian residents with Swiss banks every September, and it uses the data to check the returns. For the adviser in Lugano the practical consequence is that the Italian return must reconcile with the Swiss bank's reporting under the Common Reporting Standard. Discrepancies between the bank's account balances and the values reported in section RW, or between the gross income

reported by the bank and the income declared in section RM, trigger automated letters from the Italian administration.⁵

3 Notes

1. Law No. 77 of 23 March 1983, Art. 10-ter, as amended by Decree-Law No. 225 of 29 December 2010: Salvatore Sanna, "La ritenuta del 20% sui fondi esteri «dipende» dal gestore", Eutekne.info, 5 June 2013, https://www.eutekne.info/Sezioni/Art_425515_la_ritenuta_del_20_sui_fondi_esteri_dipende_dal_gestore.aspx (extension of the regime for harmonized funds by Decree-Law No. 225 of 2010); Legislative Decree No. 47 of 16 April 2012, Art. 3, Edizioni Europee, https://www.edizionieuropee.it/LAW/HTML/197/zn15_06_062.html (Art. 10-ter para. 1 now refers to funds "il cui gestore sia soggetto" to supervision in the state of establishment); rate of 26 per cent under Decree-Law No. 66 of 2014, Art. 3. ↩
2. Convention, Art. 13 paras. 1 to 3, text (above). ↩
3. StHG, Art. 12 para. 2 lit. a ("die Rechtsgeschäfte, die in Bezug auf die Verfügungsgewalt über ein Grundstück wirtschaftlich wie eine Veräusserung wirken") and lit. d ("die Übertragung von Beteiligungsrechten des Privatvermögens des Steuerpflichtigen an Immobiliengesellschaften, soweit das kantonale Recht für diesen Fall eine Steuerpflicht vorsieht"), quoted in law.ch, "Beteiligungserwerb an Immobiliengesellschaft", <https://law.ch/lawinfo/grundsteuern-schweiz/grundstueckgewinnsteuer/steuerobjekt/veraeusserung/beteiligungserwerb-an-immobiliengesellschaft/> (only GE, LU, NE, VD and VS also tax minority holdings); Legge tributaria del Cantone Ticino of 21 June 1994, Art. 124 para. 1 (legal transactions with the economic effect of a transfer of ownership), quoted in Federal Supreme Court, judgment 2C_420/2010 of 28 April 2011, https://servat.unibe.ch/dfr/bger/2011/110428_2C_420-2010.html. ↩
4. Decree-Law No. 201 of 6 December 2011, converted by Law No. 214 of 22 December 2011, Art. 19 paras. 18 ff. (IVAFAE); Emiliano Marvulli, "IVIE e IVAFAE: le imposte patrimoniali sulle attività finanziarie e sugli investimenti detenuti all'estero", Money.it, 24 June 2021, <https://www.money.it/ivie-ivafie-imposte-patrimoniali-attivita-finanziarie-investimenti-estero-disciplina> (0.2 per cent on financial products; fixed amount of EUR 34.20 for current and savings accounts; credit for comparable taxes paid abroad); see Chapter G.IV. ↩

5. Law No. 190 of 23 December 2014, Art. 1 paras. 634 and 636; Agenzia delle Entrate, Provvedimento No. 247672 of 12 July 2019, https://www.dirittobancario.it/wp-content/uploads/sites/default/files/allegati/provvedimento_agenzia_delle_entrates_12_luglio_2019_n._247672.pdf (communications to taxpayers on anomalies in section RW and in foreign income identified from CRS data, with an invitation to correct through ravvedimento operoso; data shared with the Guardia di Finanza); see Chapter E.II. ↩

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