

Physical presence and the counting of days

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The reform added physical presence as an independent criterion. A person who is present in Italy for the greater part of the tax period, which means 183 days or 184 in a leap year, is resident regardless of domicile, civil-law residence or registration. Fractions of a day count as days of presence.¹ An entrepreneur who lives in Lugano and drives every morning to his factory in Como, returning in the evening, accumulates a day of presence in Italy for each working day. Over a year of about 220 working days he will exceed the threshold without spending a single night in Italy. The circular confirms the consequence for remote work: a person who works from Italy for the greater part of the year becomes resident through presence alone.² The rule makes the daily commute from Ticino to Italy incompatible with Swiss tax residence for anyone who works in Italy on most working days. It also changes the evidence. Before 2024 the authorities had to reconstruct a centre of interests from documents. Physical presence can be shown from motorway toll records, mobile telephone data, credit card payments and similar traces of daily life, which the Guardia di Finanza can obtain in the course of an investigation. An entrepreneur who moves to Ticino and continues to supervise an Italian business must plan his presence in Italy and keep his own records of days, a discipline familiar to clients in Monaco or London but new to many Lombard business owners.

1 Registration and the rebuttable presumption

An Italian national who moves abroad must cancel the registration in the municipal population register and register in the register of Italians resident abroad (*Anagrafe degli italiani residenti all'estero*, AIRE), kept by the consulate competent for the new place of residence. For Ticino this is the Consulate General in Lugano.³ Since 2024 registration in the population register is a rebuttable presumption of residence. A person who forgets to deregister may prove that he or she in fact lives abroad, an improvement for those who moved without completing the formalities.⁴ The reverse

does not hold. Registration with the AIRE does not establish non-residence, since the authorities may still prove domicile, civil-law residence or physical presence in Italy. The common belief that AIRE registration ends Italian tax liability has always been wrong and remains wrong after the reform.

The treaty comes into play only after the domestic analysis. If a person is resident in both states under their domestic laws, Article 4 paragraph 2 of the double taxation convention between Switzerland and Italy of 9 March 1976 resolves the conflict in favour of the state in which the person has a permanent home, then the state of the centre of vital interests, then the state of habitual abode and finally the state of nationality.⁵ Circular 20/E recalls that treaty rules take precedence over domestic rules on residence.⁶ Article 4 paragraph 4 adds a rule that is specific to the Swiss-Italian convention. A natural person who has definitively transferred the domicile from one contracting state to the other ceases to be subject in the first state to the taxes for which domicile is decisive from the day after the transfer, and becomes subject in the other state from the same date.⁷ The provision splits the year of the move and removes the rule of the greater part of the year for treaty purposes, provided the transfer is definitive.

2 Notes

1. TUIR, Art. 2 para. 2 (Brocardi.it, above); FiscoeTasse, press review No. 1236 (above) (183 days, 184 in leap years, fractions of a day included). ↩
2. FiscoeTasse, press review No. 1236 (above), on the statements of Circular 20/E concerning smart working in Italy. ↩
3. Legge 27 ottobre 1988, n. 470, Anagrafe e censimento degli italiani all'estero, Art. 6. ↩
4. FiscoeTasse, press review No. 1236 (above) (registration now a "presunzione relativa" admitting proof to the contrary). ↩
5. Convention between Switzerland and Italy for the avoidance of double taxation and for the settlement of certain other questions relating to taxes on income and capital of 9 March 1976, SR 0.672.945.41, Art. 4 para. 2, Italian text at https://www.wikilabour.it/wp-content/uploads/2023/07/1978_svizzera-it.pdf. ↩
6. FiscoeTasse, press review No. 1236 (above). ↩

7. DTA Switzerland–Italy, Art. 4 para. 4 (text above): "La persona fisica che ha trasferito definitivamente il suo domicilio da uno Stato contraente all'altro Stato contraente cessa di essere assoggettata nel primo Stato contraente alle imposte per le quali il domicilio è determinante non appena trascorso il giorno del trasferimento del domicilio". ↩

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