

Pillar 3a, vested benefits and early withdrawals

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The Italian 5 per cent rule covers AVS and LPP benefits. Benefits from the tied private pension provision of the third pillar (pillar 3a) and from vested benefits accounts (*conti di libero passaggio*) are not expressly mentioned in Article 76. Whether a vested benefits account falls within the second pillar for the purposes of the Italian rule depends on its legal nature, since the capital held on such an account derives from occupational pension schemes and remains subject to the LPP framework. The Agenzia delle Entrate applied the rule in Resolution No. 3/E of 2020 to second-pillar capital that had been transferred to a vested benefits account (*conto di libero passaggio*). Pillar 3a benefits, by contrast, derive from voluntary savings and fall outside the wording of the provision.¹ They are taxable in Italy at ordinary rates or under separate taxation, depending on their qualification, and the Swiss source tax on them is refundable under Article 18 or Article 21 of the convention, depending on whether they are regarded as pensions in consideration of past employment. Early withdrawals of pension capital raise a further question. Under Swiss law a person who definitively leaves Switzerland may withdraw the vested benefits in cash, except for the mandatory part of the LPP capital if he moves to a Member State of the European Union and is subject to compulsory insurance there.² Whether such a withdrawal, or a payment from a vested benefits account, qualifies in Italy as an LPP benefit eligible for the 5 per cent rate depends on its legal nature under Swiss law. Advisers should obtain a statement from the pension institution on the origin of the capital before the payment is made.

1 Notes

1. Agenzia delle Entrate, Resolution No. 3/E of 27 January 2020 (above) (capital "trasferito automaticamente dall'ente gestore su un conto di 'libero passaggio 2° pilastro'"; Art. 76 para. 1-bis of Law No. 413 of 1991 refers to benefits of the Swiss occupational pension scheme for old age,

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survivors and invalidity (LPP), and the resolution does not extend it to pillar 3a). ↩

2. Federal Act on Vesting in Occupational Old Age, Survivors' and Invalidity Pension Plans of 17 December 1993 (Vesting Act, FZG), SR 831.42, Art. 5 para. 1 lit. a ("sie die Schweiz endgültig verlassen; vorbehalten bleibt Artikel 25f") and Art. 25f para. 1 (no cash payment of the mandatory retirement assets under Art. 15 BVG in the cases listed), <https://www.droit-bilingue.ch/de-it/8/83/831.42-5-8.html> and <https://www.droit-bilingue.ch/de-it/8/83/831.42-25f-51.html>. ↩

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