

Structure and covered taxes

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The convention follows the structure of the OECD Model Tax Convention of 1963, with some features that are characteristic of Swiss treaty practice of the 1970s. Article 1 limits its scope to persons resident in one or both states. Article 2 covers taxes on income and on capital, including taxes on gains from the alienation of movable or immovable property. On the Italian side the taxes listed in 1976 were the personal income tax, the corporate income tax and the local income tax (ILOR). On the Swiss side they were the federal, cantonal and communal taxes on income and on capital.¹ Under Article 2 paragraph 4 the convention also applies to future taxes of an identical or similar nature introduced after its signature in addition to or in place of the listed taxes, and the competent authorities must inform each other of changes in their tax laws. The regional tax on productive activities (IRAP) and the regional and municipal surcharges on IRPEF therefore raise questions of coverage under this clause.² Article 3 designates the competent authorities: in Italy the Ministry of Finance, today the Ministry of Economy and Finance, and in Switzerland originally the Federal Tax Administration.³ For questions of interpretation and for the mutual agreement procedure the State Secretariat for International Finance (SIF) acts today on the Swiss side, while refund applications are handled by the Federal Tax Administration in Berne.⁴

The distributive rules occupy Articles 6 to 22. Article 23 contains an unusual provision on the relief of taxes on dividends, interest and royalties for companies controlled by non-residents. Article 24 sets out the methods for the elimination of double taxation, Article 25 the prohibition of discrimination, Article 26 the mutual agreement procedure and Article 27 the exchange of information. This numbering matters in practice, because the convention deviates from the later OECD Models, in which the mutual agreement procedure appears as Article 25 and the exchange of information as Article 26. Practitioners who cite the convention from memory of the Model Convention frequently refer to the wrong article.⁵

Common misconception. Many advisers assume that the Swiss-Italian convention has been modernized together with the exchange of information in 2015 and that it contains the anti-abuse rules and the arbitration clause of recent Swiss treaties. It does not. The Protocol of 2015 replaced only Article 27 and the protocol of 2020 only adapted the reference to the frontier workers agreement in Article 15 paragraph 4. The rates, the definition of permanent establishment, the relief methods and the mutual agreement procedure without arbitration are still those of 1976. Whether the Multilateral Instrument has modified the convention depends on Italy's ratification, which is discussed below.

1 Notes

1. Convention, Art. 2, text (above). ↩
2. Convention, Art. 2 para. 4, text as published with Law No. 943 of 23 December 1978, https://www.wikilabour.it/wp-content/uploads/2023/07/1978_svizzera-it.pdf ("La Convenzione si applicherà anche alle imposte future di natura identica o analoga che verranno istituite dopo la firma della Convenzione in aggiunta o in sostituzione delle imposte di cui al paragrafo 3"). ↩
3. Convention, Art. 3, text (above) (Italy: "il Ministero delle finanze"; Switzerland: "l'Amministrazione federale delle contribuzioni"). ↩
4. ESTV, "Italia" (above) (contact for treaty questions: SIF, dba@sif.admin.ch; refund questions: AFC, Division for refunds). ↩
5. Convention, Arts. 23 to 27, text (above). The numbering of the 1963 and later OECD Models places the mutual agreement procedure in Art. 25 and the exchange of information in Art. 26 [R as to the Model numbering of 1963]. ↩

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