

The convention in the two legal orders

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In Switzerland a ratified treaty binds the Federal Supreme Court and the other authorities applying the law from its entry into force without any act of transformation, so that the courts apply treaty provisions that are sufficiently precise directly in favour of the taxpayer.¹ Swiss domestic law also contains rules that implement or supplement the treaties. The Federal Act on the Implementation of International Tax Agreements of 18 June 2021 (StADG) governs the mutual agreement procedure, the relief from Swiss withholding tax under the treaties and the penalties for offences relating to source taxes on investment income. It entered into force on 1 January 2022 and repealed the Federal Act of 22 June 1951 on the implementation of the double taxation agreements of the Confederation.² In Italy the convention became domestic law through the ratification act, and Article 169 of the Income Tax Code (TUIR) provides that the provisions of the TUIR apply even in derogation from the double taxation treaties where they are more favourable to the taxpayer.³ The Italian courts, and in particular the tax section of the Corte di Cassazione, have repeatedly held that a treaty provision prevails over incompatible domestic law, a point that has become relevant for the credit of Swiss withholding tax discussed below.⁴

The two legal orders therefore apply the same text through different institutions. On the Swiss side the convention is applied by the Federal Tax Administration for withholding tax, by the cantonal tax administrations for income and capital taxes and by the Federal Administrative Court and the Federal Supreme Court on appeal. In Ticino the Divisione delle contribuzioni (Tax Division) of the Department of Finance and Economy is responsible for cantonal assessments. On the Italian side the Agenzia delle Entrate administers the treaty through its regional directorates and, for refunds to non-residents, through the Centro Operativo di Pescara. Disputes go to the tax courts of first and second instance, renamed *Corti*

di giustizia tributaria by Law No. 130 of 31 August 2022, and to the Corte di Cassazione.⁵

1 Notes

1. Federal Constitution of 18 April 1999 (BV), SR 101, Art. 5 para. 4 ("Bund und Kantone beachten das Völkerrecht") and Art. 190 ("Bundesgesetze und Völkerrecht sind für das Bundesgericht und die anderen rechtsanwendenden Behörden massgebend"), <https://www.droit-bilingue.ch/de-it/1/10/101-5-8.html> and <https://www.droit-bilingue.ch/de-it/1/10/101-190-224.html>. ↩
2. Federal Act of 18 June 2021 on the Implementation of International Tax Agreements (Bundesgesetz über die Durchführung von internationalen Abkommen im Steuerbereich, StADG), SR 672.2, Art. 1 para. 2 lit. a to c, Art. 36 (repeal of the Federal Act of 22 June 1951, AS 1951 889) and Art. 38 (entry into force on 1 January 2022), <https://www.droit-bilingue.ch/fr-de/6/67/672.2-1-4.html>, <https://www.droit-bilingue.ch/fr-de/6/67/672.2-36-39.html> and <https://www.droit-bilingue.ch/fr-de/6/67/672.2-38-41.html>. ↩
3. TUIR (Presidential Decree No. 917 of 22 December 1986), Art. 169, Brocardi.it, <https://brocardi.it/testo-unico-imposte-redditi/titolo-iii/capo-ii/art169.html> ("Le disposizioni del presente testo unico si applicano, se più favorevoli al contribuente, anche in deroga agli accordi internazionali contro la doppia imposizione"). ↩
4. Associazione Italiana Dottori Commercialisti (AIDC), Norma di comportamento n. 227: Dividendi di fonte estera percepiti da persone fisiche residenti, <https://www.redigo.info/wp-content/uploads/2025/01/AIDC-Norma-di-Comportamento-n.-227.pdf>, citing Cass. civ., Sez. V, No. 25698 of 1 September 2022 and No. 10204 of 16 April 2024 on the prevalence of treaty provisions. ↩

5. Legislative Decree No. 546 of 31 December 1992, Art. 1 para. 1 ("La giurisdizione tributaria è esercitata dalle corti di giustizia tributaria di primo grado e dalle corti di giustizia tributaria di secondo grado"), as amended by Law No. 130 of 31 August 2022, Art. 4 para. 1 lit. a, Brocardi.it, <https://www.brocardi.it/codice-del-processo-tributario/titolo-i/capo-i/art1.html>. ↩

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