

The Double Taxation Convention, Its Protocol and Everyday Tax Practice — overview and summary

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The tax relationship between Switzerland and Italy rests on a treaty that is older than most of the people who apply it. The Convention between the Swiss Confederation and the Italian Republic for the avoidance of double taxation and for the settlement of certain other questions relating to taxes on income and on capital was signed in Rome on 9 March 1976 and entered into force on 27 March 1979.¹ It has been amended three times: by a protocol of 28 April 1978, by the Protocol of 23 February 2015 on the exchange of information and by a protocol of 23 December 2020 that accompanied the new agreement on cross-border commuters.² Its core allocation rules on residence, permanent establishments, dividends, interest, royalties, employment income and pensions have remained unchanged for half a century. Every Lugano bank, fiduciary, trading company and family office with Italian clients or Italian subsidiaries works with this text every day, usually without opening it. It decides how much tax Switzerland may keep on a dividend paid to a client in Como, whether a Swiss company with an Italian managing director has an Italian permanent establishment and whether a pension fund lump sum paid to a former employee in Varese is taxed at 5 per cent or at the progressive Italian rates.

This chapter reads the convention article by article from the point of view of everyday practice. Its argument is that the result for a client is decided above all by the procedures that surround the treaty rates. The rates are known to every adviser: 15 per cent on dividends, 12.5 per cent on interest and 5 per cent on royalties. What determines the result for a client is the interplay between those rates and four other layers of law. The first is the domestic withholding regime of each state, with its own refund forms, deadlines and administrative delays. The second is the Agreement between Switzerland and the European Union, which exempts qualifying intra-group dividends, interest and royalties altogether. The third is Italian

domestic law on the taxation of financial income and pensions, which in several respects is more favourable than the treaty. The fourth consists of the international instruments added since 2015: the exchange of information on request, the automatic exchange, the Multilateral Instrument and the global minimum tax. A practitioner who knows only the treaty rates will often give the wrong answer.

The chapter does not repeat what other chapters treat in depth. The history of the Protocol of 2015, the group requests and the end of banking secrecy are the subject of Chapter E.II. The agreement on the taxation of cross-border commuters of 23 December 2020 and the telework rules are described in Chapter H.I, and the relocation of individuals and companies, including the Italian rules on corporate residence and exit taxation, in Chapter H.II. Lump-sum taxation in Ticino, Italian inheritance tax and trusts are discussed in Chapter E.V. Chapter F.II covers the Swiss corporate tax framework, the Italian rules on controlled foreign companies and the implementation of the OECD minimum tax. The present chapter refers to these chapters where necessary. It proceeds from the history and structure of the convention to residence, permanent establishment, the three categories of passive income, the European agreement, refund procedures, the taxation of private investors, employment income and pensions, real estate, and finally the procedures for resolving disputes. It closes with worked examples and a checklist.

1 Conclusion

The convention of 9 March 1976 has outlived the world for which it was written. It was drafted to protect Swiss banking secrecy and to give Italy a share of the withholding taxes on capital income at a time when cross-border investment was mainly a matter for banks and large companies. Half a century later its exchange-of-information clause has been replaced, and the automatic exchange has made secrecy irrelevant in any case. Its rates on dividends, interest and royalties have been overtaken for intra-group payments by the exemption in Article 9 of the agreement with the European Union. Its reference to the frontier workers agreement now points to the agreement of 2020. What remains in force from 1976 are the definitions of residence and permanent establishment and the allocation rules for employment income, pensions and capital gains. The anti-abuse conditions of Article 23 and a mutual agreement procedure without arbitration also remain. These elements still decide many everyday cases in Lugano, and several of them work in favour of the taxpayer. Examples are the narrow definition of permanent establishment, the split year on a move and the exclusive allocation of pensions to the state of residence.

The practical value of the convention depends on the procedures that surround it. A Swiss dividend paid to an Italian investor bears a combined burden of 37 per cent if the Swiss refund works and the Italian administration denies the credit. It bears more than half if the refund is neglected, and some Italian courts would reduce it to 26 per cent. A pension fund lump sum paid to an Italian resident bears 5 per cent in Italy, provided the Swiss source tax is reclaimed within three years with proof of the Italian declaration. An intra-group royalty from Italy to Lugano bears nothing or 22.5 per cent depending on the documentation. In every one of these cases the outcome is decided by forms, deadlines, certificates and the evidence of substance. The rate in the treaty decides much less.

The next changes are foreseeable. Once Italy ratifies the Multilateral Instrument, the principal purpose test will apply between the two states and structures without commercial substance will lose the protection of the convention. The OECD minimum tax already covers the larger groups. The abolition of the Swiss imputed rental value in 2029 will change the taxation of Italian-owned holiday homes in Ticino. A comprehensive revision of the convention, with a modern permanent establishment definition, a beneficial ownership clause and arbitration, would serve both states. Neither has announced negotiations. Chapter H.IV turns from tax to the enforcement of claims across the border: the Lugano Convention, the recognition of judgments and mutual assistance in criminal matters.

2 In five sentences

The Swiss-Italian double taxation convention of 9 March 1976 still governs residence, permanent establishments, passive income, employment income and pensions between the two states, amended only in 2015 for the exchange of information and in 2020 for the frontier workers. Its rates of 15 per cent on dividends, 12.5 per cent on interest and 5 per cent on royalties are displaced for qualifying intra-group payments by the exemption in Article 9 of the agreement between Switzerland and the European Union. For Italian private investors the combined burden on Swiss dividends depends on the Swiss refund on Form 95 and on the contested Italian credit for Swiss tax, while Swiss pension capital is taxed in Italy at a flat 5 per cent. Disputes can be resolved only by a mutual agreement procedure without arbitration, and the principal purpose test of the Multilateral Instrument will apply only once Italy completes ratification. In practice the convention is applied through procedures, certificates and evidence of substance, which decide the outcome more often than the treaty rates themselves.

3 Notes

1. Swiss Federal Tax Administration (ESTV/AFC), country page "Italia", <https://www.estv.admin.ch/it/italia> (Convention of 9 March 1976, SR 0.672.945.41, AS 1979 461, in force 27 March 1979). The official Swiss title is: Convenzione tra la Confederazione Svizzera e la Repubblica Italiana per evitare le doppie imposizioni e per regolare talune altre questioni in materia di imposte sul reddito e sul patrimonio. ↩
2. ESTV, "Italia" (above): protocol of 28 April 1978 (AS 1979 484); Protocol of 23 February 2015 (AS 2016 2769), in force 13 July 2016. State Secretariat for International Finance (SIF), Liste der Doppelbesteuerungsabkommen, Italian version, status at 1 January 2025, <https://www.sif.admin.ch/dam/it/sd-web/Rq53YeWNalWg/DBA-Liste%20IT-per%2001.01.2025.pdf> (protocol of 23 December 2020, in force 17 July 2023, applicable from 1 January 2024). ↩

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