

The Law of the Trading House: Contracts, Taxation and Substance — overview and summary

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Consider a steel trader in Lugano who buys hot-rolled coil from a mill in Turkey, sells it to a service centre in Lombardy and hedges the price on a futures exchange. In a single afternoon he concludes contracts under three or four legal systems. The purchase may be governed by Swiss law with the Vienna Sales Convention excluded and the sale by English law under a standard form. The freight follows a charter party subject to London arbitration, the hedge an ISDA Master Agreement. The profit that the transaction leaves behind is taxed in Ticino. Its amount, however, depends on transfer pricing rules agreed in Paris and on a global minimum tax that Switzerland has written into its Constitution. If the shareholder or the managers live in Italy, Italian rules may treat the Lugano company as a controlled foreign company or as an Italian resident in disguise. Chapter F.I describes how Lugano became a place where such transactions are concluded. The present chapter asks under which law the trading house lives. It examines how the house is organized and taxed, which contracts it uses, where its disputes are decided and what substance and diligence the law expects of it.

The argument of the chapter is that the law of the trading house has changed more in the decade from 2016 to 2026 than in the half century before. Until 2019 a trading company in Ticino could be taxed under a cantonal mixed company regime or as part of a principal structure, with effective rates well below those of an ordinary company. The Federal Act on Tax Reform and AHV Financing (TRAF) abolished these regimes from 1 January 2020. Ticino lowered its ordinary rate in two steps up to 2025, while the OECD minimum tax introduced from 2024 a floor of 15 per cent for large groups. Over the same period Swiss company law was revised and the Code of Obligations acquired due diligence duties on conflict minerals and child labour. Italy rewrote its controlled foreign company and corporate residence rules. Switzerland and England modernized their

arbitration laws. What remains unchanged is the commercial core: standard contracts written in London, Incoterms published in Paris and a legal culture in which Swiss law and Swiss arbitration compete with English law for the trader's choice.

The chapter proceeds in eleven sections. It treats the legal forms and group structures of trading houses in Ticino, the governance duties of their boards and the federal tax framework after TRAF, followed by Ticino's cantonal taxation and the rates in Lugano. It then turns to the OECD minimum tax in Switzerland, transfer pricing for trading functions and the Italian rules on controlled foreign companies and corporate residence, with a short note on withholding tax. The contract law sections cover Swiss sales law, the Vienna Convention, Incoterms, standard forms, documents and hedging, followed by dispute resolution. The last sections deal with substance, due diligence and transparency and with a checklist for the establishment of a trading company in Lugano. Trade finance, sanctions and anti-money laundering are left to Part G, logistics and the Mendrisiotto distribution economy to Chapter F.III, and the Swiss–Italian double taxation convention to Chapter H.III.

1 Conclusion

The law of the trading house in Lugano rests on a stable commercial foundation and a changed fiscal one. The foundation consists of the company limited by shares, the board with its non-transferable duties, the standard contracts of London, Incoterms and the arbitration laws of Switzerland and England, which have been modernized without losing their character. Swiss sales law and the Vienna Convention coexist, and traders who want the Code of Obligations must say so. The GAFTA and FOSFA forms with their London arbitration and default lists govern the grain and oilseed trade. Swiss Rules arbitration with a seat in Lugano, Zurich or Geneva serves metals, steel and energy, and the New York Convention allows awards to travel in both directions.

The fiscal side has been transformed. TRAF ended the mixed company and principal regimes from 1 January 2020. Ticino's reduction of its cantonal profit rate to 5.5 per cent from 2025 brought the effective rate in the cantonal capital down to 16.05 per cent and in Lugano to about 15.5 per cent. The OECD minimum tax, in force in Switzerland through the QDMTT since 2024 and the IIR since 2025, sets a floor for large groups that high-turnover traders reach more easily than their size suggests. On the Italian side, the CFC rules of Article 167 TUIR and the residence rules of Article 73 TUIR were both reformed by Legislative Decree No. 209 of

2023. They decide whether a Lugano company owned or managed from Italy is taxed in Switzerland, attributed to its Italian owners or treated as Italian itself.

Substance links these strands. The functions that justify the trader's margin under the OECD guidance are the same facts as the economic activity that exempts it from the Italian CFC rules. They also determine the place of effective management that decides its residence and show whether the board fulfils Article 716a CO. Due diligence obligations under Articles 964j to 964l CO and the expectations of banks and European customers add a further layer, and the debate on the second Responsible Business Initiative may add another. Chapter F.III turns from the trading houses to the logistics, shipping and fashion companies of the Mendrisiotto, where the same questions of tax, substance and reputation arise in a different industry.

2 In five sentences

Trading houses in Lugano are usually companies limited by shares, whose capital may since 2023 be held in US dollars and whose boards bear non-transferable duties under Article 716a CO. Since TRAF abolished the mixed company and principal regimes in 2020 and Ticino cut its cantonal profit rate to 5.5 per cent in 2025, they pay an effective rate of about 15.5 to 16 per cent, close to the minimum that Switzerland levies on large groups through the QDMTT and the IIR. Their margins must be justified under paragraphs 2.18 to 2.22 of the OECD Transfer Pricing Guidelines and, where Italian residents own or manage them, by the substance that Articles 167 and 73 TUIR require. Their contracts combine Swiss sales law with an express exclusion of the CISG, Incoterms 2020, London standard forms, letters of indemnity and ISDA hedges, with disputes resolved under Chapter 12 PILA or in London and enforced under the New York Convention. Real decision-making in Lugano and documented supply chains under Articles 964j to 964l CO have become the conditions on which banks, tax authorities and customers accept a Lugano trader as a genuine trading house.

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-the-law-of-the-trading-house-contracts-taxation-and-substance-overview-and-summa