

The presumption for emigrants and Switzerland's status

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For Italian nationals who moved to Switzerland the most serious obstacle was not Article 2 paragraph 2 but paragraph 2-bis. Under that provision, Italian nationals who are deleted from the population register and transferred to states or territories other than those identified by ministerial decree are considered resident "unless proven otherwise".¹ Pending a positive list of cooperative states, the provision referred to the list of states with privileged tax regimes in the Ministerial Decree of 4 May 1999, which included Switzerland. An Italian who moved to Lugano was presumed to remain resident in Italy and had to prove the reality of the move. In disputes the burden of proof lay on the taxpayer, a position that many lost because they could not document the absence of Italian ties.

Switzerland's status changed in stages. After the Roadmap of 23 February 2015 and the Protocol amending the convention signed on the same day, which introduced exchange of information on request to the OECD standard, the Ministerial Decree of 9 August 2016 added Switzerland, Liechtenstein and Hong Kong among others to the list of cooperative states for the purposes of the taxation of financial income.² The decree of 1999 remained in force for individuals. Only Law No. 83 of 13 June 2023, which ratified the new agreement on the taxation of cross-border workers, provided in its Article 12 for Switzerland's removal from that list. The Ministerial Decree of 20 July 2023, published in the Gazzetta Ufficiale No. 175 of 28 July 2023, carried out the removal with effect from the 2024 tax period.³ Until the end of 2023 all provisions linked to the listing remained applicable. From 2024 the presumption of paragraph 2-bis no longer applies to moves to Switzerland, and the penalties and assessment periods for undeclared Swiss assets are no longer doubled.⁴

Common misconception. Many entrepreneurs believe that registration with the AIRE and a Ticino residence permit end Italian tax residence.

Under Article 2 paragraph 2 TUIR as amended by Legislative Decree No. 209/2023, a person remains resident if for the greater part of the year he or she has the domicile in Italy, defined as the place where personal and family relations principally develop, or the civil-law residence, or is physically present there, counting fractions of days. An entrepreneur whose family stays in Lombardy, or who drives to an Italian office on most working days, remains an Italian taxpayer whatever his registrations say.

1 Notes

1. TUIR, Art. 2 para. 2-bis (Brocardi.it, above). ↩
2. Paolo Besio and Mattia Tencalla, note on the new white list and the taxation of financial income, Bernoni Grant Thornton, 20 October 2016, https://www.bgt-grantthornton.it/globalassets/1.-member-firms/italy-bernoni/articoli/2016/20161020_fisco_nuova_white_list_effett_su_tassazione_redditi_finanziari.pdf ("fanno il loro ingresso nella white list dei Paesi collaborativi la Svizzera, il Liechtenstein, Hong Kong ..."). On the Roadmap and the Protocol of 2015 see Chapter E.II. ↩
3. Emiliano Marvulli, "Svizzera fuori dalla black list per le persone fisiche: le novità dal 2024", *Informazione Fiscale*, 3 August 2023, <https://www.informazionefiscale.it/svizzera-paesi-black-list-persone-fisiche-novita-2024> (Law No. 83/2023, Art. 12; Ministerial Decree of 20 July 2023, GU No. 175 of 28 July 2023; effect from the 2024 tax period). ↩
4. Marvulli (above); Pierpaolo Molinengo, "Svizzera fuori dalla black list dei paradisi fiscali, conseguenze per i contribuenti italiani", *QuiFinanza*, 26 August 2026, <https://quifinanza.it/fisco-tasse/svizzera-fuori-black-list-fiscale/1011191/> (penalties for omissions in form RW on Swiss assets from 3 to 15 per cent instead of 6 to 30 per cent; open question of retroactive application to earlier years). ↩

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