

The treaty framework of 1974 and 1976

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

The bilateral treaty relations between Switzerland and Italy in tax matters rested on two instruments of the 1970s. The Agreement of 3 October 1974 on the taxation of frontier workers provided that the salaries of Italian commuters working in Ticino, Graubünden and Valais were taxed only in Switzerland. In return the three cantons undertook to pay to the Italian border municipalities a financial compensation (*ristorno*). Under Article 2 of the agreement it amounted to 40 per cent of the gross tax paid by the frontier workers from 1976 onwards, after 20 per cent for 1974 and 30 per cent for 1975, a share that *swissinfo* still reported in 2011 as 38.8 per cent.¹ The Convention of 9 March 1976 for the avoidance of double taxation with respect to taxes on income and on capital (SR 0.672.945.41) allocated taxing rights in the usual manner of the OECD Model. Its Article 27 provided for an exchange of information limited to what was needed for the regular application of the convention and for combating its abusive use, which fell well short of Article 26 of the OECD Model.² Swiss treaty policy at the time reserved the exchange of information to what was necessary for the application of the convention itself and to cases of tax fraud. The Swiss reservation to Article 26 of the OECD Model expressed the same position.

The *ristorni* and the treaty became bargaining chips three decades later. Italy wanted information on its residents' Swiss accounts, which the treaty did not provide. Ticino wanted to reduce the *ristorno* and to end the Italian black-listing of Switzerland, which penalized Swiss companies and Swiss banks in their dealings with Italy. The Roadmap of 23 February 2015, discussed below, joined these interests in a single negotiating package. Before that date, the bilateral relationship in tax matters was characterized by the absence of any legal channel through which Italy could learn about the assets of its residents in Lugano.

1 The scale of Italian money in Ticino

No official statistics recorded the share of Italian undeclared money in the assets managed in Ticino, and every figure from the period before 2001 is an estimate. The Swiss National Bank published the assets in custody of banks by domicile of the client but not by region of the bank. Nor did it distinguish between declared and undeclared money. Contemporary estimates of Italian assets in Swiss banks ranged widely. Only the amnesties themselves later supplied the first hard numbers. When the third *scudo* closed in 2010, the Italian Ministry of Economy and Finance recorded that 105,792 of the declarants had held their assets in Switzerland, far more than in any other jurisdiction.³ In 2011 the weekly *L'Espresso* put the Italian assets still in Swiss banks at between EUR 130 and 230 billion, a range that illustrates the uncertainty that surrounds every estimate.⁴ Chapter E.I gives the figures for banks, employees and assets under management in Ticino that frame these estimates.

2 Notes

1. Agreement of 3 October 1974 between Switzerland and Italy on the taxation of frontier workers and the financial compensation in favour of the Italian border municipalities, SR 0.642.045.43, Art. 2 ("20 % für das Jahr 1974, 30 % für das Jahr 1975 bzw. 40 % für die folgenden Jahre des Bruttobetrag der Steuern"), text in *droit-bilingue.ch*, <https://www.droit-bilingue.ch/de-fr/0.6/0.64/0.642.045.43-2-5.html>. The figure of 38.8 per cent is given by Andrea Clementi, "Il vil denaro fa litigare Svizzera e Italia", *swissinfo.ch*, 26 July 2011, <https://www.swissinfo.ch/ita/il-vil-denaro-fa-litigare-svizzera-e-italia/30747038>. ↩
2. Swiss Federal Council, *Messaggio concernente l'approvazione di un Protocollo che modifica la Convenzione tra la Svizzera e l'Italia per evitare le doppie imposizioni* (2015), <https://www.news.admin.ch/newsd/message/attachments/40537.pdf>, which describes the Protocol as introducing an exchange-of-information clause conforming to the OECD standard into the convention of 9 March 1976 (RS 0.672.945.41). The message states that the convention "contiene un articolo sullo scambio di informazioni limitato ai casi di applicazione regolare e alla lotta contro il suo impiego abusivo". The current Art. 27 is in the version of Art. I of the Protocol of 23 February 2015 (AS 2016 2769), in force since 13 July 2016, *droit-bilingue.ch*,

<https://www.droit-bilingue.ch/de-fr/0.6/0.67/0.672.945.41-27-30.html>. ↩

3. Di Vizio, "Lo strano caso di un'emersione a volto coperto" (above), giving the number of declarants by country: Switzerland 105,792, San Marino 19,967, Monaco 11,107. ↩
4. Claudio Lindner and Gianfrancesco Turano, "E l'evasore torna in Svizzera", L'Espresso, 16 September 2011, <https://lespresso.it/c/attualita/2011/9/16/e-levasore-torna-in-svizzera/5012>. ↩

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