

The year of the move

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

Article 4 paragraph 4 contains a rule that is absent from the OECD Model and of considerable practical value. An individual who has definitively transferred his domicile from one state to the other ceases to be liable in the first state to the taxes for which domicile is the criterion "as soon as the day of the transfer of domicile has elapsed".¹ The provision splits the tax year of the move. An Italian who moves to Lugano on 1 July is taxable in Italy on his worldwide income until 30 June and in Switzerland thereafter. Italian domestic law, by contrast, applies the criterion of the greater part of the tax period, so that a person who leaves Italy after 2 July remains resident for the entire year under Article 2 TUIR.

The Italian administration has accepted that the treaty rule prevails over the domestic criterion where the person has definitively transferred his domicile to Switzerland. In Risposta No. 370 of 4 July 2023 it confirmed for an employee who moved on 31 May that Italy taxes only the income earned up to that date, even though her registration in the AIRE followed only in the next year, while reserving the factual question of residence for a later assessment.² The words "definitively transferred" carry the weight of the provision. A move that is followed by a return within a short period, or that is not accompanied by the transfer of family and economic interests, does not qualify. In practice the split year requires careful documentation: the Swiss residence permit and the registration with the Lugano population office, the deregistration from the Italian *anagrafe* and registration in the register of Italians resident abroad (AIRE), the lease or purchase of a home in Ticino and the transfer of the family. Chapter H.II describes these steps in the context of relocation.

1 Persons excluded from the convention

Article 4 paragraph 5 excludes two categories of persons from residence status. The first is a person who, although he meets the requirements of the

preceding paragraphs, is only the apparent beneficiary of the income, which the provision describes as *beneficiaria apparente*.³ This is an early version of the beneficial ownership requirement that later treaties place in the articles on dividends, interest and royalties. It allows both states to disregard nominee shareholders, fiduciaries and conduit companies that receive income on behalf of others. The Swiss courts have applied the concept in refund cases involving Italian residents who held Swiss securities through offshore companies, as described below.

The second excluded category is "an individual who is not subject to the taxes generally levied in the Contracting State" of residence.⁴ This clause targets persons taxed in Switzerland on the basis of their expenditure under Article 14 DBG and the corresponding cantonal rules (*imposizione secondo il dispendio*). Swiss practice, laid down by the Federal Tax Administration, distinguishes between ordinary lump-sum taxation and modified lump-sum taxation. Under the latter, which Article 14 paragraph 5 DBG provides for, all income from Italian sources is included in the Swiss assessment and taxed at the rate applicable to the taxpayer's total income, so that the person is subject to the taxes generally levied and may claim the benefits of the convention.⁵ Chapter E.V explains why this requirement makes the Swiss lump-sum regime unattractive for Italians whose main income derives from Italian companies, Italian rents or Italian pensions.

Essentials. Residence under the convention depends on domestic liability to tax (Art. 4 para. 1). Dual residence of individuals is resolved by permanent home, centre of vital interests, habitual abode and nationality (para. 2), dual residence of companies by the place of effective management (para. 3). The year of a definitive move is split at the day of the transfer of domicile (para. 4), which deviates from the Italian rule of the greater part of the tax period. Apparent beneficiaries and individuals not subject to the taxes generally levied, in particular persons under the ordinary Swiss lump-sum regime, are not residents (para. 5).

2 Notes

1. Convention, Art. 4 para. 4, text (above): "La persona fisica che ha trasferito definitivamente il suo domicilio da uno Stato contraente all'altro Stato contraente cessa di essere assoggettata nel primo Stato contraente alle imposte per le quali il domicilio è determinante non appena trascorso il giorno del trasferimento del domicilio." ↩
2. Agenzia delle Entrate, Risposta No. 370 of 4 July 2023, https://www.agenziaentrate.gov.it/portale/documents/20143/5409668/Risposta+n.+370_2023.pdf/9cb2326f-5f9f-7190-4ede-

e648dd27a3a7 (transfer of domicile to Switzerland on 31 May; Italy taxes only the income up to that date under Art. 4 para. 4 of the convention, although registration in the AIRE followed only in March of the next year; residence itself is not determined in a ruling and remains open to assessment); FiscoeTasse, "Trasferimento in Svizzera e mancata iscrizione all'AIRE: chiarimenti", <https://www.fiscoetasse.com/rassegna-stampa/34292-trasferimento-in-svizzera-e-mancata-iscrizione-allaire-chiarimenti.html>. ↩

3. Convention, Art. 4 para. 5 lit. a, text (above) ("è soltanto beneficiaria apparente dei redditi"). ↩
4. Convention, Art. 4 para. 5 lit. b, text (above): "una persona fisica che non è assoggettata alle imposte generalmente riscosse nello Stato contraente". ↩
5. ESTV, Kreisschreiben Nr. 44, "Besteuerung nach dem Aufwand bei der direkten Bundessteuer", 24 July 2018, <https://www.estv.admin.ch/dam/estv/de/dokumente/dbst/kreisschreiben/dbst-ks-2018-1-044-d-de.pdf.download.pdf/dbst-ks-2018-1-044-d-de.pdf> (modified taxation according to expenditure under Art. 14 para. 5 DBG for treaties with Belgium, Germany, Italy, Norway, Canada, Austria and the United States: all income from the treaty state must be included and taxed at the rate applicable to total income); see Chapter E.V. ↩

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-year-of-the-move