

When the structure is challenged

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When the Italian authorities open an audit or a criminal investigation, the response must coordinate tax, criminal and Swiss law. On the Italian side, the procedures of *accertamento con adesione* and, for criminal exposure, the effect of payment under Article 13-bis of Legislative Decree no. 74/2000 shape the choice between settlement and litigation.¹ On the Swiss side, the company should consider whether the mutual agreement procedure under the double taxation convention offers relief from double taxation. It should also examine whether Swiss rules on the protection of business secrets and on cooperation with foreign authorities affect the production of documents. Requests for administrative or judicial assistance from Italy run through the Federal Tax Administration and the federal and cantonal authorities, as Chapters E.II and H.IV describe.²

A settlement in Italy may also have consequences in Switzerland. If profit previously taxed in Ticino is now taxed in Italy, the Ticino company may claim a correction of its Swiss assessments only within the limits of Swiss procedural law and the convention. In practice, the scope for such a correction is narrow when the Italian settlement was reached under domestic procedures. Groups that settle in Italy and then move functions out of Ticino should also consider the Swiss tax consequences of the transfer of assets and functions abroad, including the possible realization of hidden reserves.³ The lesson of the Kering case for practitioners is that the time to address these questions is before the structure is set up, while the facts that will decide them can still be shaped.

1 Notes

1. Legislative Decree no. 218/1997 and Legislative Decree no. 74/2000, Art. 13-bis (above). ↩
2. Swiss-Italian DTA (above), Art. 26; Swiss Criminal Code, SR 311.0, Art. 271 (unlawful activities on behalf of a foreign state),

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<https://www.droit-bilingue.ch/de-en/3/31/311.0-271-334.html>, and Art. 273 (industrial espionage), <https://www.droit-bilingue.ch/de-en/3/31/311.0-273-336.html>. Their relevance to the production of documents to foreign authorities depends on the circumstances of each case. ↩

3. DFTA (above), Art. 61b (taxation of hidden reserves, including self-created goodwill, when tax liability ends, including on the transfer of assets, operations or functions abroad), in force since 1 January 2020, <https://www.droit-bilingue.ch/fr-de/6/64/642.11-61b-71.html>, and the corresponding cantonal provisions. See Chapter F.II. ↩

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