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NEWS

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Innovation, flexibility and expertise

SWITZERLAND: EXPENDITURE-BASED TAXATION (FOREIGN NATIONALS)

Introduction

On 10 September 2021, the Tax Division of the Federal Department of Finance communicated the data relating to persons taxed on an expenditure-based (lump-sum) basis in the Canton of Ticino. Foreign nationals domiciled in Ticino amounted to 910 as at 31.12.2016, 842 as at 31.12.2018 and 896 as at 31.12.2020.

This method of taxation allows the taxpayer not to file an ordinary (worldwide) tax declaration but to declare exclusively the taxable income from Swiss sources. For some wealthy foreign taxpayers who have moved to the Canton of Ticino, this method must be studied in advance, as some double taxation agreements provide restrictions, which can be overcome by applying the so-called *modified global* taxation.

Legal standard

Individuals are entitled to be taxed on the basis of expenditure instead of paying ordinary income tax if they:

- do not have Swiss nationality (Art. 14(1)(a) FDTA (Federal Direct Tax Act)),
- are subject to unlimited taxation (Art. 3 FDTA) for the first time or after an absence of at least ten years from Swiss territory (Art. 14(1)(b) FDTA) and
- they are not gainfully employed in Switzerland (letter c).

Cohabiting spouses must both meet the above conditions.

Expenditure-based taxation replaces income and wealth tax. The expenditure taxation system differs from the ordinary taxation system mainly in the way the tax base is determined, as the tax is not calculated on the taxpayer's net income, but on the taxpayer's expenditure.

The system tends to replace the obligation to make a full declaration of taxable income with a calculation of the taxes determined according to the expenditure of the taxpayer concerned.

A foreign national who meets the subjective conditions for taxation according to expenditure may choose in each tax period between ordinary taxation and taxation according to expenditure. They have this freedom of choice until the tax declaration is filed. In the first case, foreigners must declare all their worldwide wealth (Swiss and foreign) and all their worldwide income (Swiss and foreign), without prejudice to the application of international conventions signed by Switzerland. In the second option, foreign nationals who meet the necessary conditions are exempt from declaring their foreign wealth and income. They just have to provide the information necessary to determine their expenditure, which then constitutes their tax base in Switzerland.

A taxpayer wishing to benefit from expenditure-based taxation must submit the tax return provided for that purposes, and prove that they meet the required conditions. Before any taxation in view of expenditure taxation, the tax administration shall ascertain that the taxpayer meets the required conditions and, in order to do so, has been provided with all the information and evidence requested. It is up to the taxpayer to voluntarily and immediately transmit to the competent tax authority any factual element that may affect the law or the conditions for applying taxation by expenditure.

The right to expenditure-based taxation ceases when the foreign national acquires Swiss citizenship. He will then be subject to ordinary taxation. The same applies if he takes up gainful employment in Switzerland. A person is gainfully employed in Switzerland if he pursues a principal or secondary occupation of any kind and earns income there.

The fact of being taxed according to one's expenditure is a right of the taxpayer and not an obligation: it means that the taxpayer, despite fulfilling all the conditions provided for by law to be taxed according to one's expenditure, is not obliged to be taxed in this way and can, in each tax period, choose between global and ordinary taxation as long as the relevant taxation has not become final. On the other hand, the tax authority does not have the right to refuse taxation according to expenditure to a taxpayer who requests it, provided that he fulfils the legal requirements.

The fact of being taxed on expenditure does not avoid the submission of an annual declaration. The assessment procedure is carried out by the tax authority for each individual tax period. If the authority comes into possession of new information, both the liability, the status and the tax base may change.

Particular importance is attached to gainful employment. It cannot take place in Switzerland. The decisive factor is therefore the physical place where the gainful activity is personally exercised, i.e. the place where the taxpayer carries out a gainful activity, irrespective of whether or not this activity has a direct connection with the Swiss economy, as well as the place where the income originates. In order not to carry out a gainful activity in Switzerland, the taxpayer must carry out an activity for which a presence outside the national borders is required.

If the taxpayer taxed according to expenditure is deemed by the tax authorities to be a professional securities trader, he loses the right to this form of taxation, as the condition prohibiting any gainful activity in Switzerland for the current and subsequent years is no longer met. If the taxpayer entrusts the management of his assets to a financial institution or an asset manager located abroad, which carries out transactions similar to those qualifying the taxpayer as a professional securities dealer, the taxpayer may continue to benefit from taxation according to expenditure, as he does not directly carry out any gainful activity in Switzerland.

As far as cryptocurrencies are concerned, they are only taken into account as substantive elements in the assessment calculation and for the assessment of professional trading if they are of Swiss origin. If, on the other hand, the cryptocurrencies are deposited on computer platforms that interface with the distributed protocol ("apps", websites, etc.) or with foreign banks, there is no Swiss debtor. Therefore, they are not included in the assessment calculation and the trade is also considered to have been carried out abroad, which does not result in the loss of the right to global taxation.

Calculation basis according to expenditure

The tax shall be calculated on the basis of the annual expenses corresponding to the taxpayer's standard of living and that of his dependants incurred during the assessment period in Switzerland and abroad, but at least on the highest of the following amounts:

1. 400,000 francs;
2. For taxpayers who have their own household: an amount corresponding to seven times the annual rent or rental value of their home/flat;
3. For other taxpayers: an amount corresponding to three times the annual pension price for board and lodging at the place of residence;

or as an assessment calculation, the sum of the following incomes:

1. Income from real estate located in Switzerland;
2. Income from movable property located in Switzerland;
3. Income from securities placed in Switzerland, including claims secured by real estate collateral;
4. Income from copyrights, patents and similar rights exercised in Switzerland;
5. Retirement allowances, pensions and annuities from Swiss sources;
6. Income for which the taxpayer claims full or partial relief from foreign taxes under a double taxation agreement concluded by Switzerland.

As mentioned in the introduction, certain countries of departure of the foreign national to Switzerland have special provisions, in particular Italy, Austria, Belgium, Canada, France, Germany, the United States and Norway.

As far as the Canton of Ticino is concerned, in addition to income tax, a tax which replaces wealth tax is levied. The taxable estate amounts to 5 times the established amount of the income tax base, and in any case must correspond to at least the substance from a Swiss source.

Global taxation in Switzerland

Global taxation is a legally recognised institution at federal level.

The situation at cantonal level is different. In fact the following cantons do not recognise global taxation: the two semi-cantons of Basel, the semi-canton of Appenzell Outer-Rhodes, the canton of Schaffhausen and, above all, the canton of Zurich. If a taxpayer arrives, from abroad, in one of the above-mentioned cantons, he is not entitled at the cantonal level to be imposed as at lump-sum taxation, but only at the federal level with his transfer to one of the cantons with the benefit of lump-sum taxation, he could also benefit at the cantonal level from privileged taxation.

With the exception of the French-speaking cantons (Fribourg, Jura, Valais and Vaud) which are below the Federal minimum of CHF 400,000, the other cantons start from a minimum of CHF 400,000 up to a maximum of CHF 631,000 in Canton Thurgau.

It should be noted that the expression of fiscal federalism is the freedom of the cantons to decide the rates applicable to direct taxes on the income and wealth of individuals. This rate autonomy is granted by Art. 129 para. 2 of the Federal Constitution.

Conclusion

This method of taxation allows wealthy foreign nationals who have moved to Switzerland (Canton Ticino) to benefit from practical and economic advantages. This system can be advantageous for all wealthy foreign individuals who wish to move to the Canton of Ticino.

For further information please contact:
giuseppe.lerose@fidinam.ch
or rudy.summerer@fidinam.ch

ITALY: TAXATION OF WORK DONE IN TRANSNATIONAL MODE

With several practical interventions in the first month of 2022, the Italian Revenue Agency has provided its clarifications on several cases concerning the application of the special regime for inbound workers becoming tax resident of Italy under Article 16 of Legislative Decree no. 147/2015 also related to cases of work carried out on a transnational basis (i.e. those cases in which a worker resident in Italy performs his duties on behalf of a non-resident employer), which due to the effects of the pandemic has affected and still affects an increasing number of workers and employers.

In the following, after an illustration, albeit very brief, of the requirements for apply to the favourable tax regime in argument, we will proceed to highlight the various clarifications of practice recently provided on the subject by the Revenue Agency.

The special scheme for inbound workers: requirements and conditions for apply

The rules in question, introduced into the Italian legal system by Article 16 of Legislative Decree no. 147/2015, were subsequently amended by Article 5 of Decree-Law no. 34/2019, which significantly simplified the relevant access requirements; following the aforementioned intervention, according to the provisions of paragraph 1, persons who:

a. transfer their residence to the territory of the State pursuant to Article 2 of the Italian Consolidated Income Tax Act (TUIR);
b. have not been resident in Italy in the two tax periods preceding the transfer and undertake to reside in Italy for at least two years;
c. carry out their work as employees, self-employed persons or businesses mainly in Italy.

Compared to the previous version, in addition to a reduction of the period of residence abroad required before returning to Italy (from 5 to 2 years), there is now no reference to management roles or to the possession of highly qualified or specialised requisites that applicants had to hold according to the original legislation or to the fact that the work had to be carried out on behalf of an Italian company or a company belonging to the group of the latter[1].

For workers who meet these requirements, in the tax period in which the residence is transferred and in the following four periods, the income from employment (or assimilated to it) or self-employment carried out in Italy contributes to the formation of the total income limited to 30% of the amount[2] (with an exemption therefore of 70%).

This benefit can be extended for a further 5 tax periods for workers:

i. with at least one minor or dependent child and to those who become owners of at least one residential property unit in Italy after the transfer (or in the previous 12 months);
ii. with at least three minor or dependent children.

In case of extension, however, for the cases under (i) the favoured incomes contribute to the formation of the taxable income to the extent of 50% (i.e. 50% exemption) and for the case under (ii) to the extent of 10% (i.e. 90% exemption).

Recent practical clarifications (replies no 3/2022, 32/2022, 55/2022)

The first case under discussion (Reply No. 3/2022) concerned the case of an employee resident in Switzerland since 2015 who, starting from 6 September 2021, moved her residence to Italy in order to start working with a number of establishments located in Italy on behalf of her Swiss employer and claimed the application of the special regime for inbound workers as from 2021 and claimed that the special scheme for inbound workers should be applied from 2021, considering that she was already resident in Italy for that tax period under Article 4 of the Italy-Switzerland Double Taxation Convention, which provides that she is subject to taxation in the country of transfer (Italy) from the date of the transfer of residence.

With respect to this case, the Italian tax authorities acknowledge that the requirements for access to the rules in question are met, and explicitly reconfirm that the rules are applicable not only if the work is carried out for an Italian company, but also in cases, such as this one, where the work is carried out for a non-resident employer mainly in Italy (including teleworking); however, contrary to the taxpayer's claim, the Revenue Agency concludes that such special regime will not applied for the 2021, but only from 2022, i.e. the first tax period in which the residence requirement will be met as regulated by Article 2 of the TUIR (i.e. entry in the registers of the resident population or transfer of domicile or residence for at least 183 days in the tax period), while the provisions of the Conventions aimed at resolving conflicts of dual residence recalled by the taxpayer, does do not apply in such cases.

In its subsequent Reply No. 32/2022, the Revenue Agency confirmed that the same regime could be applied also in the case where the taxpayer/employer had had, during her years of residence abroad, a professional collaboration relationship, carried out remotely, with a number of Italian companies, including the one with which she entered into an employment contract, as a result of which she transferred her residence to Italy and requested access to the regime in question.

With reference to this reply, it should be noted that the Revenue Agency did not dwell on the different tasks performed for the same company (first remotely from abroad, then working in Italy), which were highlighted by

1 Precisely because of these changes, which have profoundly increased the number of persons potentially interested in the benefit in question, the regime for workers in possession of a university degree provided by paragraph 2 of the same Article 16, although formally still in force, is in practice now completely absorbed by the provision of paragraph 1.
By way of illustration only, the second paragraph provides that the tax regime under review is available to citizens of the European Union or of a non-EU State with which a Double Taxation Convention or an agreement on the exchange of information on tax matters is in force, who a) hold a university degree and have been "*continuously*" employed, (a) have a university degree and have been "continuously" employed, self-employed or engaged in business outside Italy for the last 24 months or more, or (b) have been "*continuously*" *engaged in* an educational activity outside Italy for the last 24 months or more, obtaining a university degree or a *postgraduate degree*.

2 In the case of transfer of residence to one of the regions of Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sicily and Sardinia, the extent to which employment income contributes to the total income is reduced to 10%.

the taxpayer in the appeal, thus giving its confirmation of access to the regime as a general value (i.e. independently from the change of the activity performed prior to the transfer to Italy for the same employer).
Finally, Reply No. 55/2022 confirms that the scheme will also apply to a worker employed by a foreign employer for whom he will continue to perform the same work/activities in *remote working* from Italy, where he intend to transfer his residence[3].

3 The Revenue Agency had also expressed itself in the same terms in its previous Reply No. 596/2021.

Conclusions

As underlined by recent and numerous practical measures, labour mobility on a transnational basis has significantly increased in the last two years due to the disruptive effects of the pandemic, the restrictive measures put in place by the various States in order to prevent it but also, above all, by the consequent and inevitable opening of employers towards more flexible and remote forms of working.
In this context, which allows for greater mobility and flexibility of the employment relationship, the special regime for inbound workers proves to be a very interesting measure offered to the number of workers, especially Italian citizens, who after years abroad wish to return/continue to work in the "Bel Paese", benefiting from a facilitated taxation and a regulatory framework that the practical interventions mentioned only make it clearer and more responsive/flexible to the personal/employment needs recently emerged, thus increasing its interest and its attractiveness.

For further information, please contact:
luca.guidotti@fidinam.ch

fidinam & Partners
Tax, Legal and Corporate Consultancy

Fidinam & Partners SA
Via Maggio 1
CP 6009
CH – 6901 Lugano
Tel. +41 91 973 17 31
Fax +41 91 973 13 65
www.fidinam-and-partners.ch
fidinamnews@fidinam.ch

Lugano – Bellinzona – Mendrisio
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