National and international tax and corporate information

April 2023 – n. 68

fidinam & Partners

Tax, Legal and Corporate Consultancy

NEWS

In this number:

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SWITZERLAND: TAX CHANGES IN FORCE FROM JANUARY 1, 2023

Introduction

Every year, tax legislation is updated in relation to current developments and also according to the rulings of the Federal Supreme Court and the Tax Appeals Commission.

Expenditure-based taxation

The tax is calculated on the basis of the annual expenses corresponding to the taxpayer's standard of living and that of the persons he supports, expenses incurred during the calculation period in Switzerland and abroad, with the higher of the following amounts as the starting point:

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

or as a control calculation, the sum of the following incomes:

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

For the determination of expenditure, the cantonal authority, aligning itself with cantons where expenditure-based taxation is present, obliges the taxpayer to submit a form to determine whether the last year's value is still current or whether adjustments, both in favour of and against the taxpayer, should be applied.

It should also be noted that, for the time being **only at** the federal level (FDTA Art. 14 para. 3 lett. a), the minimum taxation has increased from CHF 400,000 to CHF 421,700. There is no further news regarding expenditure-based taxation.

New share right

As of January 1, 2023, the new share law came into force. Mention should be made here of the implementation of the 'Capital Band' (CB), which allows the company to undertake capital creations and repayments over a period of five years. Only after this period must the calculation be made to see what the taxation of such transactions might be.

In general, the following formula should be taken into account:

- If the contributions to the reserves during the CB period is greater than the repayments of capital from reserves, then we are in the presence of a withdrawal of the 'Capital Contribution Reserve' (CCR), which will benefit from the exemption upon payment. We advise you to consult Circular No. 29c of 23.12.2022 for a more detailed picture of the specifics.

Increased deductions for children and needy dependents

The increase is due to the deduction on payments, premiums and contributions for life, health and accident insurance as well as interest on savings capital. The taxpayer or the person whose support he provides pursuant to Art. 34 para. 1 lit. a) and b) of the Federal Direct Tax Act (FDTA) is allowed to deduct the actual costs up to a maximum amount for each child who is a minor, in training or studying up to the age of 28 and for each person residing in Switzerland who is totally or partially incapable of gainful employment and whose support the taxpayer provides:

- CHF 10,500 for spouses living in a common household;
- CHF 5,200 for other taxpayers:
- CHF 14,800 for spouses living in a common household but who do not pay any contributions to pension institutions;
- CHF 7,400 for other contributors who do not, however, pay any contributions to pension institutions.

These categories mentioned above will be able to deduct an additional CHF 1,200 for each additional child and person in need.

It should be noted that we will be called to the polls on this deduction next June. If the outcome of the vote is positive, this option will come into force on January 1, 2024.

Taxation of frontier teleworkers

On February 1, 2023, the agreement with Italy on teleworking fell through.

This means that if the worker makes use of the possibility of teleworking, the condition of daily return lapses and consequently so does the 1974 taxation agreement between Switzerland and Italy whereby taxation takes place in both states, the place where the activity is carried out and the state of residence. If an Italian resident teleworks for one day a week, as described above, and does not return daily, the status of a frontier worker for the purposes of the 1974 Agreement on Frontier Workers lapses and therefore the salary must be levied at 100% in Italy.
The general rule of Art. 15 DTA CH-IT states that such income must be imposed:

- 80% of the salary, 4 days a week, is taxed in Switzerland
- 100% of the salary is taxed in Italy, which under Art. 24 para. 2 DTA CH-IT must grant a tax credit for the taxes paid in Switzerland

The company that employs the frontier worker must still subject the salary to 100% withholding tax.
By and no later than March 31, of the following year, the employee may request a refund of the withholding tax withheld by the employer in respect of the day on which he worked in Italy by teleworking through the online portal on the website (www.ti.ch/fonte) by selecting the 'Request for correction of withholding tax' menu. To obtain such a refund, proof must be provided that the income has been taxed in Italy.
In order not to incur tax problems, the employee must inform the employer about teleworking days.
As far as teleworking is concerned, there are other states that have ratified friendly agreements with Switzerland. For example, with France, teleworking is permitted up to 40% of working time. So up to this maximum, daily return is not necessary and without risk of losing status as a frontier worker.

Conclusion

As can be seen from the above, taxation is constantly evolving an so, if someone is unfamiliar with the regulations, they may seek the support of our tax advisors, who are always up-to-date and have the expertise to avoid tax problems for both individuals and legal entities.

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ITALY: TRANSFER OF RESIDENCE OF NATURAL PERSONS FROM ITALY TO SWITZERLAND

By means of two recent documents (see Reply No. 73 of January 18, 2023 and Reply No. 173 of January 27, 2023), the Italian Revenue Agency provided its clarifications on the rules applicable in cases of transfer of tax residence from Italy to Switzerland by an individual and on the relevant consequences on the allocation of taxing powers between the two countries.
In the following, after an illustration of the Italian domestic tax provisions and the contractual provisions applicable to this case concerning the transfer of residence to Switzerland, we will proceed to highlight the manner in which these regulations have been applied in the two recent policy measures just mentioned.

Italian domestic rules and conventional criteria applicable to the transfer of residence from Italy to Switzerland

As far as Italian tax law is concerned, the starting point is Art. 2, para. 2 of Presidential Decree No. 917/1986 ('Consolidated Income Tax Act - TUIR'), which sets forth the criteria that must alternatively be met, for the greater part of the tax period (i.e. a period of more than 183 days in the calendar year), in order to consider an individual tax resident in Italy:

- registration in the National Register of Resident Population;
- domicile in the Italian State within the scope of the Italian Civil Code (i.e. "*principal place of business and interests*");
- residence in the Italian State within the scope of the Civil Code (i.e. "*habitual abode"*).

Where, as in the present case with respect to Switzerland, the tax residence is transferred to one of the countries included in the list of States or territories having a privileged tax regime set forth in the Ministerial Decree of May 4, 1999, the provision contained in Article 2, paragraph *2-bis of* the same Article 2 of the TUIR becomes relevant, according to which, unless the taxpayer provides proof to the contrary, the tax residence is presumed to exist (still) in Italy for those who have transferred it to one of the aforesaid countries; As clarified in both of the above-mentioned speeches, under Italian law, therefore, even following formal registration in the Register of Italians living abroad (A.I.R.E.), the taxpayer will continue to be considered resident for tax purposes in Italy and subject to taxation there on all his income wherever produced, until such time as he is able to prove, during the assessment, that he is not domiciled or resident in Italy.
Until the aforesaid presumption is not overcome by the taxpayer, in cases where the same individual is resident, according to the respective domestic laws, in both countries, the provisions contained in the Double Taxation Agreement ("DTA") and in particular the provisions aimed at eliminating possible conflicts of residence between the two Contracting States (so-called "tie breaker rules") are relevant. "In the specific case of the DTA in force between Italy and Switzerland, reference must be made to paragraph 2 of Article 4, which resolves any conflict by establishing, firstly, the tax residence in the State where the individual's permanent residence is located and, secondly, the centre of vital interests, habitual residence and, finally, by giving prominence to the individual's nationality.
In cases of "dual tax residence", the provisions of paragraph 4 of Art. 4 of the same DTA, which provides, in the case of a transfer from one State to another during the course of the year, for the possibility of splitting the tax year, thus also dividing between the two countries the relative taxing power on the income produced by the same individual; for the purposes of the aforesaid division, the moment when the "new" residence takes effect and, consequently, the tax liability in the "arrival" State begins and that pertaining to the "departure" State ends, is identified and determined "*as soon as the day of the transfer of residence has passed*".
Having illustrated, albeit briefly, the national (Italian) and conventional rules relevant for the purposes of transferring personal tax residence, below, with an illustration of recent positions it will be possible to see how the same provisions have been applied to specific cases submitted to the Revenue Agency by taxpayers.

Recent policy clarifications (Replies Nos. 73/2023 and 173/2023)

The first policy to be illustrated (reply no. 73/2023) concerned the case of an individual who, although having transferred his residence to Switzerland on 1 June (date of entry into Switzerland), had been registered by the Italian municipality of departure in the A.I.R.E. only during the following month of August, thus being registered in the Register of Resident Population for a period exceeding 183 days and consequently having to be considered resident in Italy for the year in question for the purposes of domestic tax legislation.
With regard to this case, the Italian tax authorities, correctly applying the above-mentioned conventional provisions, proceeded to recognise that the transfer of residence had already taken place as of 1 June, with no relevance for conventional purposes of the subsequent registration with A.I.R.E.; consequently, applying the split tax period of the transfer, the taxpayer was considered to be resident in Italy until the date of 1st June (and taxed there until that date on all global income earned) and resident in Switzerland from the following 2nd June with the possibility for Italy, from that date, to tax the same taxpayer only on income earned in Italy pursuant to Article 23 of the TUIR.
In the subsequent reply No. 173/2023, on the other hand, it is necessary to highlight the manner in which the Revenue Agency applied the *tie-break rules* and, in particular, the clarifications provided with respect to the concept of permanent residence in relation to the case in point where the taxpayer, having moved to Switzerland in year X where he had rented a house, was also in possession of a family home located in Italy where he intended to stay for short periods also during year X.

In reiterating, in accordance with the OECD Commentary, that a permanent dwelling is to be understood as that which a natural person maintains and organises for permanent use, the Revenue Agency emphasises that what is relevant for these purposes is the circumstance that the individual, regardless of the type of dwelling and the legal title under which he disposes of it, has arranged for it to be used on a lasting and continuous basis and not occasionally for the purpose of a short stay.
On the basis of these principles, the Revenue Agency concludes its commentary by reiterating how the family home owned in Italy, even if it is at the taxpayer's disposal for a limited period (even) in year X, should not be considered as a permanent dwelling, as

it is not possible to integrate a case of dual residence in Italy and Switzerland (*i.e.* the permanent dwelling is identified in the property rented in Switzerland).

Conclusions

Although not characterised by the affirmation of 'innovative' principles/clarifications, the policy measures have the undisputed merit of illustrating in a clear and straightforward manner the modalities by which cases of 'dual residence' must be resolved by applying the contractual provisions, thus representing a valid and useful vademecum to be kept in mind and referred to in the increasingly widespread cases of transnational personal mobility between Italy and Switzerland.

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UNITED ARAB EMIRATES: NEW CORPORATE TAX LAW (2023)

On December 9, 2022, the Federal Government of the United Arab Emirates (UAE) published Federal Decree-Law No. 47 (Corporate Tax Law, hereinafter "CTL") introducing Corporate Tax (CT) for legal entities and business activities. The CT will come into force with reference to financial years commencing on or after June 1, 2023 and therefore, in the case of financial years corresponding to the calendar year, from the financial statements closing on December 31, 2024.

Exempt persons

The CTL (Art. 4) provides for several categories of entities exempt from corporate tax (subject to certain conditions): governmental entities and/or government-controlled entities; entities engaged in the extractive business; entities engaged in the non-extractive business of natural resources; qualifying public benefit entities; qualifying investment funds; pension and social security funds; entities controlled by other exempt entities; other entities that may be determined in a decision issued by the Cabinet at the suggestion of the Minister.

Taxable persons

The CTL (Art. 11) concerns the following resident taxpayers, who will be subject to the CT on all income earned by them, both in the UAE and abroad:

- Companies and other legal entities having their seat and/or effective control and administration in the UAE, including Free Zones;
- Individuals conducting a business or commercial activity in the UAE (commercial activities subject to corporate tax will be specified in a Cabinet Decision to be published in due course).

The CTL also concerns the following non-residents, only for income earned by them in the UAE:

- Non-resident persons having a permanent establishment in the UAE;
- Non-resident persons obtaining income whose source is in the UAE. Article 13 (para. 1) of the CTL first of all identifies the following cases as UAE source income: income from a resident person; from a permanent establishment in the UAE of a non-resident person; from activities carried out, property located, capital invested, rights used or services rendered in the UAE. Article 13 (paragraph 2) also lists further cases, subject to possible limitation by the Minister, including income from the sale of goods, provision of services, exploitation of rights, income of a financial and insurance nature in the UAE;
- Non-residents with a nexus in the UAE (the concept of nexus will be specified in a Cabinet Decision to be published in the future).

Companies based in the Free Zones of the UAE will be subject to Corporate Tax but, if they meet the conditions to be considered 'Qualifying Free Zone Person' (Art. 18 of the CTL), they will benefit from a tax rate of 0% on their 'qualifying income'. In order to qualify for Qualifying Free Zone Person status they will have to:

- have adequate economic substance in the UAE;
- generate qualified income ('qualifying income'), which will be specified in a Cabinet Decision to be published in the coming months;
- not have chosen to be subject to the standard rate;
- comply with the transfer pricing rules introduced by the CTL.

Taxable base

The taxable base of the CT will be the net profit resulting from the financial statements, prepared in accordance with international accounting standards and the adjustments provided for in Article 20 of the CTL.

Rate of taxation

The CT will have a rate of 9% that will apply to taxable profits exceeding the threshold of AED 375,000. For profits below this minimum threshold, the rate will be 0% (the rates and minimum tax threshold were confirmed by Cabinet Decision 116 of 2022).
Qualifying Free Zone Persons, on the other hand, will be taxed at a rate of 0% on qualified income and 9% on other types of income.

Participation Exemption Regime (PEX)

The CTL (Art. 22 and 23) introduces a tax exemption regime on dividends and capital gains. In particular, in order to benefit from the Participation Exemption, the UAE company must fulfil the following requirements:

- hold at least 5% of the investee company;
- respect a minimum holding period of 12 months;
- the investee company must be subject to a corporate tax at a rate of at least 9%;
- and other requirements that may be established by the Minister.

Dividends received from other UAE residents will always be exempt from the CT.

Withholding Tax

The CTL (Art. 45) introduces a withholding tax on UAE source income received by a non-resident. The rate of the withholding tax will be 0% (but may be changed in the future by a Cabinet Decision).

The modalities of registration, declaration and payment of taxes

Every taxable person (including Free Zone Persons) must register with the Federal Tax Authority Portal and obtain their Corporate Tax Registration Number (some Exempt Persons may also be required to register for CT purposes). Each taxable person will be required to file an annual tax return and pay the relevant taxes within 9 months of the end of the tax year.

Conclusions

The introduction of the CT represents a turning point and confirms the willingness of the UAE to no longer be regarded as an offshore jurisdiction in international relations. All those potentially affected by the CT will have to assess their situation as soon as possible, also with the help of the Cabinet Decisions, soon to be published, which should clarify those aspects of the CTL that are still not well defined.

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ARGENTINA: NEW REPORTING REGIME FOR INTERNATIONAL TRANSACTIONS

On December 27, 2022, the Argentine Tax Authority (Administración Federal de Ingresos Públicos, AFIP) published Resolution No. 5306/2022 'Regimen de Informacion complementario de operaciones internacionales' (RICOI) in the Official Gazette, which establishes a new informative regime for certain international transactions. The purpose of RICOI is to obtain information on international transactions for the effective and efficient assessment and management of international tax compliance risks.

Reporting parties

Legal entities registered in Argentina, permanent establishments of foreign legal entities, trusts created in Argentina and sole proprietorships registered in Argentina fall under the RICOI regime.
Reporting entities are obliged to report transactions with related parties indicated as a continuation:

a. Legal entities, permanent establishments, trusts or equivalent figures incorporated, domiciled or located abroad;
b. Persons domiciled, incorporated or located in non-cooperating or low- or no-tax jurisdictions even if transactions are carried out through permanent establishments abroad.

The RICOI regime stipulates that companies classified as Micro, Small or Medium Enterprises (Tramo I y II Resolución 220 del 12 de abril de 2019) will be exempt from reporting under RICOI.

Reportable international transactions

The following international transactions must be reported if one or more of the following situations arise:

a. Cases involving permanent establishments in Argentina, including the following:
   i. negotiation of the basic elements of contracts and their conclusion in Argentina, but their execution takes place abroad;
   ii. Argentine entities acting exclusively or almost exclusively on behalf of related foreign companies;

iii. a foreign entity performs a project, construction, assembly or installation, or related supervisory activities, and carries out these activities in the country through the successive execution of contracts, concluded alone or through one or more related parties, all relating to the same activity and the same project, the duration of which taken together exceeds six months.

b. A transaction that results in double international non-taxation;

c. The transfer of benefits to other jurisdictions arising from mismatches in the treatment or qualification of an entity, agreement, or financial instrument under the laws of two or more jurisdictions;

d. Any form of agreement, scheme or plan that has the effect of excluding one or more persons, funds or assets from reporting or being reported under the Common Reporting Standard (CRS) or FATCA. The following operations, among others, are considered to be included:
   - the use of an account, product or investment which is not, or purports not to be, a financial account, but which has characteristics that are substantially similar;
   - transfer of money and/or financial assets held in a financial account to an institution not required to declare or to a jurisdiction that does not exchange information under the CRS or FATCA with at least one of the jurisdictions of tax residence of a declarable person under the CRS;
   - transfer of money and/or financial assets held in a financial account, to an account not subject to reporting under the CRS;
   - provide incomplete information in relation to any of the following:
     1. account holder and/or control person;
     2. all jurisdictions of tax residence of the account holder and/or control person.
   - classify a payment made for the benefit of an account holder or control person as undeclared income within the meaning of the CRS.

e. Corporate restructuring that has the effect of falling outside the scope of the international country-by-country reporting regime;

f. Disposal of assets or rights through the sale of foreign companies that directly or indirectly own Argentine companies or assets;

g. Concessions for the exploitation of any activity involving the transfer of capital;

h. An international leasing transaction is entered into, resulting in a financial loan;

i. Payments are made by a non-profit organisation to a foreign organisation;

j. When a tax benefit is obtained as a result of one of the following:
   i. payments of interconnected transactions that return wholly or partly to the person who made them or to any of its partners, shareholders or related parties;
   ii. an international transaction involving one or more entities and/or legal entities that do not have tax personality in the jurisdiction in which they are incorporated, domiciled or located, and whose income is directly attributed to their shareholders, members, participants, owners, controllers or beneficiaries;
   iii. mechanisms that generate uncertainty with respect to the ownership of an asset and allow taxpayers in different jurisdictions to benefit from a tax deduction for the depreciation of the same asset or to claim double taxation with respect to the same asset;
   iv. deductible cross-border payments made to members of the same multinational group who are not resident for tax purposes in any jurisdiction.

Content of the information to be transmitted

Reporting entities must provide the following information for each international transaction subject to reporting:

a. International Transactions: you must select the corresponding option(s) according to the transactions described above, linking each of them to the subject(s) indicated in the next point;

b. Identifying data of the parties involved in international transactions: if applicable, the full name or designation of the counterparty(ies) involved in the international transaction(s) should be provided (e.g. details of the contractor, foreign company, financial or non-financial entity; the NIF, domicile, country of tax residence and jurisdictions involved in the transaction, etc.).

Deadlines and submission methods

International transactions carried out during the tax period must be reported on the due date of the tax return.

The information must be submitted by accessing with a Tax Code, with security level 3 or higher, the agency's website (https://www.afip.gob.ar) at the service called *'Régimen de Información Complementaria de Operaciones Internacionales'* (Complementary Information Regime for International Transactions).

General Provisions

Failure to comply with all or part of RICOI's obligations shall give rise to the application of the sanctions provided for in the Tax Procedure Law No. 11,683 of 1998, as amended.

The provisions set forth in RICOI came into force on the day of its publication in the Official Journal, December 27, 2022, and apply for the filing of information corresponding to the tax years ending on or after August 1, 2022.

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