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EUROPE: GLOBAL MINIMUM TAX – PILLAR TWO CAME INTO FORCE ON 1 JANUARY 2024

As of 1 January 2024, the Global Minimum Tax, provided for in the OECD (Organisation for Economic Co-Operation and Development) *Global Anti-Base Erosion Model Rules – Pillar Two ('GloBE')* signed by more than 130 member countries in October 2021, came into force in several European and some non-European countries. On that occasion, an agreement was reached on the reform of international taxation, introducing a minimum taxation of 15% for multinational or domestic groups of companies with combined annual turnover of at least EUR 750 million.

The European Union introduced the Global Minimum Tax through EU Directive 2022/2523 ('Aiming to ensure a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU') of the Council of 14.12.2022.

The introduction of the minimum comprehensive taxation is done through three general rules:

- the *Domestic Minimum Top-up Tax* rule due in relation to all enterprises of a multinational or domestic group subject to low taxation in that country (i.e. *effective tax rate* below 15%);

- the general rule of the *Income Inclusion Rule* payable by parent companies (ultimate controlling entity of a multinational or domestic group) in relation to subsidiaries taxed at less than 15% in the country where they are established;
- the *Undertaxed Payment Rule* payable by one or more companies of a multinational group located in a given country in relation to companies of the same group that are located in low-tax countries where the equivalent minimum supplementary tax has not been levied (in whole or in part) in other countries.

As of 2 February 2024, the following eighteen European states have implemented the EU Global Minimum Tax Directive into their national legislation: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Slovenia and Sweden. The remaining nine states (Estonia, Greece, Spain, Cyprus, Latvia, Lithuania, Malta, Poland and Portugal) were served a formal letter of formal notice by the European Commission in January, giving them two months to either implement the directive or submit their comments.

All eighteen European countries that have already implemented the EU directive (with the exception of Slovakia) have introduced the Domestic Minimum Top-up Tax and the Income Inclusion Rule as of the financial year after 31 December 2023, whereas the Undertaxed Payment Rule will only be introduced as of the financial year after 31 December 2024. Slovakia has exercised its right under Article 50 of the EU Directive, which allows countries with fewer than twelve parent companies that fall within the scope of the Directive, to be able to postpone the implementation of the Income Inclusion Rule and the Undertaxed Payment Rule for a period of six consecutive years starting from the financial year subsequent to 31 December 2023.

Liechtenstein has already introduced the Global Minimum Tax into its legislation as of 1 January 2024, implementing the Domestic Minimum Top-up Tax, Income Inclusion Rule and Undertaxed Payment Rule, in line with the European Union.
Other non-EU countries such as Norway, the United Kingdom, Malaysia and Vietnam have already implemented the Global Minimum Tax as of 1 January 2024, limiting themselves, for the time being, to the introduction of the Domestic Minimum Top-up Tax, Income Inclusion Rule.
The Global Minimum Tax has also been in force in Switzerland since 1 January 2024, but, for the time being, limited to the Domestic Minimum Top-up Tax, while in Japan only the Income Inclusion Rule has been introduced.

Finally, it is reported that Mauritius, Qatar and the United Arab Emirates have approved the introduction of the Global Minimum Tax in their respective legislations, but the details are not known at the moment.

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ITALY: THE NEW TAX RESIDENCE OF NATURAL PERSONS IN ITALY

With the publication in the Official Gazette of Legislative Decree No. 209 of 27 December 2023 (the so-called internationalisation decree), published on 28 December 2023, the amendments to the Italian tax system in the field of international taxation provided for by Article 3, paragraph 1, letters c), d), e) and f) of Law No. 111/2023 (the so-called tax reform decree) were implemented.
Among the various changes introduced, the following will illustrate that relating to the redetermination of the criteria for linking the tax residence of natural persons provided for in Article 2 of Presidential Decree No. 917 of 22 December 1986 (Tuir).

The new criteria for linking the tax residence of natural persons

Specifically, Article 1 of Legislative Decree No. 209/2023 proceeded to rewrite Paragraph 2 of Article 2 of the Tuir, i.e. the provision containing the criteria identified by the Italian tax system to establish the residence of natural persons. In order to understand the scope of these changes, it is useful to provide the following table through which it is easy to compare the previous text of Article 2 with the version amended by the Internationalisation Decree.

Art. 2 DPR. N. 917/86

Previous version	Version introduced by Legislative Decree No. 209/2023
1. Taxable persons are natural persons, resident and non-resident within the State territory.	Unchanged
2. For income tax purposes, persons who, for the greater part of the tax period, are registered in the record of the resident population (ANPR) or have their domicile or residence within Italian state territory within the meaning of the Civil Code, are deemed to be resident.	2. For income tax purposes, persons who for the greater part of the taxable period, including fractions of a day, have their residence within the meaning of the Civil Code or domicile within Italian State territory or are present therein, are deemed to be resident. For the purposes of the application of this provision, domicile means the place where the person's personal and family relationships are primarily established. Unless proven otherwise, persons registered for most of the tax period in the record of the resident population (ANPR) are also presumed to be resident.
2-bis. Italian citizens removed from the record of the resident population (ANPR) and transferred to countries or territories other than those identified by decree of the Ministry of Economy and Finance, to be published in the Official Gazette, are also considered resident, unless proven otherwise.	Unchanged

Before the reform, persons who – alternatively and for most of the tax period (i.e. 183 days, 184 in leap years) – were registered at the record of the resident population (ANPR) or who had their domicile or residence in Italy within the meaning of the Civil Code (c.c.) were considered resident in Italy. It is this generic reference to the civil law definitions of residence and, above all, domicile that has given rise over time to conflicting jurisprudential and practical guidelines in emphasising in some cases family relationships and in others economic ones, rendering it not always easy to correctly integrate tax residence in Italy and giving rise, consequently, to multiple disputes.

In order to resolve these uncertainties, the aforementioned reform provides that – with effect from 1 January 2024 – persons are to be considered residents if they have their residence within the meaning of the Civil Code or domicile in Italy for the greater part of the year or are present there. In particular – and contrary to what was previously provided for – the same regulation specifies that domicile is to be understood as *'the place where the person's personal and family relations are primarily established'*.

Further new elements introduced by the reform relate to:

- the new relevance, for the purposes of calculating days spent in Italy or abroad, also of fractions of a day;
- the inclusion of a new linking criterion relating to presence on Italian territory;
- to the 'downgrading' of registration in the record of the resident population (ANPR) to a relative presumption of residence for which it is now possible to provide contrary evidence aimed at proving actual foreign tax residence.

Critical conclusions

Pending the first official clarifications, it cannot but be noted at the outset that, although the reform was aimed at simplification, choices such as that of favouring affective interests, which in today's social context are characterised by specific features and mobility far removed from the more traditional concept of personal and family relations, as well as those of giving importance to fractions of a day in calculating the period of permanence in a country and of enhancing the value of presence in Italy, have in fact added further elements of complexity in the assessment/identification of the tax residence of individuals in Italy.

Furthermore, it should not be overlooked that the reform was an opportunity, unfortunately wasted, to include in the Italian legislation a special provision on the splitting of the tax period (the so-called split year), which would have made it easier to resolve the cases of dual tax residence that often arise in cases of transfer of residence of individuals occurred in the course of the year.

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SWITZERLAND: CLASSIFICATION AND TAX TREATMENT OF TOKENS

In recent years, the adoption of cryptocurrency investments has been growing in economic importance, which requires a better understanding of the tax implications involved. In an attempt to answer the questions of those who have invested in cryptocurrencies, the Swiss Federal Tax Administration ('SFTA') issued a document at the end of 2021 to determine which taxes are taken into account when an individual decides to invest in these products. This document focuses on income and wealth taxes at the level of the beneficial owner.

There are currently 3 types of token.

Payment tokens

Payment tokens are digital securities that can be used as means of payment depending on their distribution and infrastructure. The issuer has no obligation to make a specific payment or provide a service to the investor.

Payment tokens are treated as if they were foreign currency accounts and qualified as movable assets. For these reasons, their value is considered for cantonal wealth tax purposes.

When Mining is involved, the criteria for an independent activity are given. Therefore, the profits generated by this activity are taxed.

The staking produces, after the waiting period, a profit that is taxed as income from securities.

The term 'airdrop' means 'fallen from the air'. Ultimately, this means that certain tokens are allocated for free. A cryptocurrency holder receives additional units of the cryptocurrency without having to do anything. He therefore does not have to pay for the cryptocurrency received via an airdrop. Airdrops are taxable at the time of their allocation to the market value as income from securities.

Expenses that have a direct causal connection to the earning of income and that are necessary for the management of the asset (Art. 32 para. 1 FDTA) may be deducted from income from securities. On the contrary, transaction costs that are directly related to the acquisition, transfer or sale of the asset, are not deductible.

Investment tokens

Unlike payment tokens, investment tokens issued as part of an ICO or ITO represent money-valuable entitlements vis-à-vis the counterparty or issuer. These rights consist of a fixed fee or a certain investor participation, to be defined in advance, at a certain benchmark value of the issuing company.

Investment tokens fall into 3 further categories:

- Third-party capital-based tokens: these tokens comprise a legal or de facto obligation of the issuer to repay all or a substantial part of the investment as well as any payment of interest due;
  These tokens are treated as bonds with a right to interest, which must be considered as movable assets and assessed for wealth tax. Additionally, since they have an internal interest element, the periodic payment is subject to income tax.

- Contractual investment tokens: these tokens do not stipulate any obligation of the issuer to redeem the investment. The investor's right consists of a financial benefit calculated according to a certain indicator of the issuer or a cash payment, corresponding to a proportional share of the annual operating profit and/or liquidation proceeds. The payments are qualified as movable capital income and imposed as taxable income. Any capital losses cannot be considered as a deduction as they are private matter. The value of these tokens is taken into account for cantonal wealth tax.

- Investment tokens with participation rights: these tokens represent participation rights such as shares or participation

certificates. Proportional profit rights are regulated by the articles of association. The payments qualify as dividends and are taxed as taxable income. The value of these tokens is taken into account for cantonal wealth tax.

Usage Tokens

Contrary to investment tokens, utility tokens issued within the scope of an ICO or ITO do not represent a right assessable in cash in the form of a fixed fee or a certain share in the issuer's business performance. Utility tokens grant the investor the right to use digital services, usually made available primarily on a (decentralised) platform. Usually, these services are provided via a blockchain-based infrastructure, where the investor's right to access digital usage through tokens is limited to the specific platform and service. Since these tokens do not generate any income, they are not considered for income tax purposes. Instead, they are considered as taxable assets for cantonal wealth tax. The capital gain on the purchase and sale of the tokens is, like the rest of the private wealth, fully exempt. That is if the taxpayer is not considered a professional securities trader.

Conclusion

As we have seen above, depending on the token held, different tax issues may arise. We are available for further examination in order to declare the possession appropriately.

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