

May 26 2023

# Transfer of residence and dual tax residence

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## **Introduction**

At the beginning of 2023, the Italian Tax Authority (ITA) published several rulings dealing with Italian domestic and double tax treaty provisions on individuals' residence transfer from Italy to Switzerland and Germany and vice versa.

In this respect, the applicable double tax treaties (DTT) concluded between Italy and the aforementioned countries includes provisions deviating from the ordinary criteria set forth by domestic laws.

## **Italian tax residence: domestic provisions**

According to present<sup>(1)</sup> Italian domestic provisions,<sup>(2)</sup> an individual is to be considered tax resident in Italy if, for a majority of the tax period (ie, for at least 183 days in the calendar year), they meet at least one of the following conditions:

- are included in the registers of the Italian resident population;
- have domicile in Italian territory within the meaning of the Civil Code (ie, the principal seat of its business and economic interests); or
- reside in Italian territory within the meaning of the Civil Code (ie, habitual abode).

It is presumed<sup>(3)</sup> (unless proven otherwise) that individuals are tax resident in Italy who, although they have correctly removed themselves from the registries of the resident population, moved to states or territories with a privileged tax regime.<sup>(4)</sup>

Under the described framework, the transfer of tax residence of individuals during the year does not trigger straightforward tax consequences.

Italian domestic tax law does not allow for cases in which an individual can be a resident or a nonresident for part of the year. An individual is either a tax resident or a non-tax resident for the entire year (January through December) without possibility of "splitting" the scale period due to the taxpayer's change of residence.

For example, should the transfer of the residence from Italy to a foreign country take place in May, the taxpayer will not be considered tax resident in Italy for the whole scale year. On the other hand, if an individual transfers residence in August, they will be considered tax resident in Italy for the entire scale year.

The criteria adopted by Italian domestic legislation may lead to double taxation (or double exemption) if the foreign country sets the effect of the date of transfer of residence differently.

### **Italian tax authority ruling**

On 18 January 2023, ITA's ruling No. 73 clarified that the case of dual residence, where a resident person moves

to Switzerland during the course of the calendar year, is solved by the criterion of splitting the tax period on the basis of the day of transfer of residence, considering the international provisions contained in the DTT concluded between Italy and the other country, which prevail over internal law. Said principle is applicable also in case of blacklisted countries, like Switzerland.

The DTT, with Switzerland, provides for the splitting of the tax period according to the definitive transfer of residence (ie, the "split year" rule), deviating from the principles of domestic law.

The DTT states that an individual who has permanently transferred their domicile from one contracting state (ie, Italy) to the other contracting state (ie, Switzerland) ceases to be subject in the first contracting state (ie, Italy) to the taxes for which the domicile is decisive from the day the domicile transfer passed. Tax liability begins in the other state (ie, Switzerland) as of the same date.

Thus, if the individual transfers their domicile definitively from Italy to Switzerland on 1 August 2023, Italy will consider them to be tax resident until 31 July 2023 and not for the entire tax year.

### **Comment**

In conclusion, the answers released by ITA ruling also confirm that the DTT criteria (in this case of "split year" rules) prevails over the domestic legislation's rule whereby Italian citizens who have been removed from the National Registry of the Resident Population and have migrated to a country or territory with privileged tax status (ie, Switzerland) are also deemed to be resident in Italy.

In this respect, it is worth noting that Switzerland and Italy recently signed a political declaration concerning the regularisation of some pending tax issues and,

among others, Italy removed Switzerland from the blacklist jurisdiction for individuals' tax residence released in 1999.

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## **Endnotes**

(1) Article 3 of the recent scheme of tax reform filed by the Government of 23 March 2023, provides that changes to the present domestic law will be introduced in accordance with the best international practice and Tax Treaties subscribed by Italy.

(2) Article 2(2) of the Consolidated Income Tax Law (TUIR).

(3) Article 2(2-bis) of the Consolidated Income Tax Law (TUIR).

(4) The States or territories with a privileged tax regime are identified by Ministerial Decree 4 May 1999.