

## Tax domicile under federal and cantonal law

*Dr Alexander Ressos, TEP  
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),  
Solicitor (England & Wales)*

Swiss tax law defines personal tax liability by domicile or residence. Under Article 3 of the Federal Act on Direct Federal Taxation (DBG), a person has tax domicile in Switzerland if he or she resides there with the intention of permanent settlement. A person has tax residence if he or she stays in Switzerland, regardless of temporary interruptions, for at least 30 days while exercising a gainful activity or for at least 90 days without gainful activity.<sup>1</sup> Ticino's Tax Law (*Legge tributaria*, LT) contains corresponding rules for cantonal and communal taxes.<sup>2</sup> Swiss tax liability begins on the day of arrival and covers worldwide income and wealth, with the exception of foreign businesses, permanent establishments and real estate, which are exempt with progression.<sup>3</sup> An entrepreneur who keeps an Italian sole proprietorship or Italian real estate thus has Swiss tax on his Swiss and other income at the rate applicable to his total income.

The Swiss concept of intention of permanent settlement looks at the centre of life, which is close to the new Italian concept of domicile. Both systems may therefore arrive at the same answer for the same facts, which reduces the cases in which the treaty tiebreaker must decide. Where they disagree, Article 4 paragraph 2 of the convention applies, as described above. A permanent home in both states is common among Lombard entrepreneurs who keep a house in Italy. In that case the centre of vital interests decides, a concept that weighs both personal and economic relations. The Italian reform of 2023 and the treaty therefore do not use the same test. An entrepreneur with his family in Lugano and his business in Italy has no Italian domicile under the new Italian definition. If he is nevertheless resident in Italy by physical presence, the treaty applies, and the Italian authorities may argue that his centre of vital interests lies in Italy because his economic ties are overwhelming.

## 1 Social security of the cross-border entrepreneur

Social security follows its own rules, which are coordinated between Switzerland and the European Union by Annex II to the AFMP and by Regulation (EC) No. 883/2004. A person is subject to the legislation of only one state at a time. An employee who works in two or more states is subject to the legislation of the state of residence if he or she pursues a substantial part of the activity there, which the implementing regulation defines as at least 25 per cent of working time or remuneration.<sup>4</sup> An entrepreneur who lives in Lugano, is employed by his Swiss company and spends a third of his time in Italy as director of his Italian company is subject to Swiss social security on his total earnings, including the Italian remuneration. The Italian company must then pay Swiss contributions on that remuneration or have him pay them, a burden that Italian payroll departments rarely anticipate.

The rules for self-employed persons and for persons who are employed in one state and self-employed in another follow the same logic with different connecting factors. The certificate A1, issued by the competent institution of the state whose legislation applies, protects the employer and the worker from claims by the other state. A move to Ticino therefore requires a social security analysis alongside the tax analysis, whose answer may differ: a person can be resident for tax purposes in Switzerland while remaining insured in Italy if most of the work is done there, or the reverse.

## 2 Notes

1. Federal Act on Direct Federal Taxation of 14 December 1990 (DBG), SR 642.11, Art. 3 paras 1 to 3, text at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/6/64/642.11-3-6.html), <https://www.droit-bilingue.ch/de-fr/6/64/642.11-3-6.html> ("mit der Absicht dauernden Verbleibens"; "ungeachtet vorübergehender Unterbrechung: a. während mindestens 30 Tagen verweilt und eine Erwerbstätigkeit ausübt; b. während mindestens 90 Tagen verweilt und keine Erwerbstätigkeit ausübt"). ↩
2. Legge tributaria del Cantone Ticino of 21 June 1994 (LT), Art. 2 (fiscal domicile with the intention of permanent settlement; fiscal residence after 30 days with or 90 days without gainful activity), <https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/legge/num/580>. ↩
3. DBG, Art. 6 para. 1 ("erstreckt sich aber nicht auf Geschäftsbetriebe, Betriebsstätten und Grundstücke im Ausland"), <https://www.droit-bilingue.ch/de-fr/6/64/642.11-6-9.html>, and Art. 7 para. 1 (rate

corresponding to total income), <https://www.droit-bilingue.ch/de-fr/6/64/642.11-7-10.html>. ↩

4. Regulation (EC) No. 883/2004, Art. 13 para. 1 lit. a, and Regulation (EC) No. 987/2009, Art. 14 para. 8 (substantial part: at least 25 per cent of working time and/or remuneration), applicable between Switzerland and the EU under Annex II AFMP. ↩

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