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Tax Pills

Italy Revenue Agency clarifies fiscal residency rules under DTA with Switzerland

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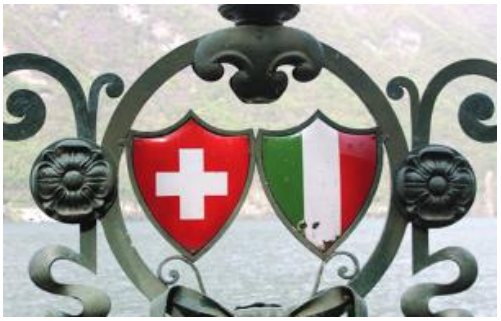

The Italian Revenue Agency on March 17 issued **an *ad hoc* ruling, n. 255/2023**, enlightening on how the rules on tax residence apply and function under the 1976 *Double Taxation Agreement*, DTA, with Switzerland. The taxpayer, an Italian citizen, moved to Switzerland for work purposes and, as provided by fiscal regulations, signalled his move to the *Register of Italians living abroad* (A.I.R.E.) in the following year. The taxpayer demanded clarification on his fiscal residency in the light of the rules under the DTA also for avoiding the double taxation trap. Indeed, clarify the Administration, the appellant will pay taxes to the Revenue Agency as long as his working activity remained in Italy , while Switzerland will tax his earnings the following day the taxpayer has transferred its domicile and his employment activity on the Confederation territory.

As a preliminary remark, the Revenue Agency points out that the assessment of the prerequisites for establishing the actual tax residence constitutes a question of fact that cannot be the subject of a petition for a ruling appeal under Article 11 of Law No. 212 of 2000. Then, it explains that the Convention does not, however, provide a definition of domicile or make explicit clarifications useful to answer to the specific case put forward by the applicant.

The law on fiscal residence - That said, the Revenue Agency mentions how Article 2, paragraph 2, of the TUIR considers fiscally resident in Italy natural persons who, for the greater part of the tax period, that is, for at least 183 days (or 184 days in the case of a leap year), are registered in the registers of the resident population or have in the territory of the State their domicile or residence

in accordance with what is prescribed by the Civil Code. The above conditions are alternative to each other. Moreover, according to paragraph 2bis of the aforementioned Article 2 of the TUIR, Italian citizens who have been cancelled from the registers of resident population and transferred to States or territories having a privileged tax regime, identified by Ministerial Decree May 4, 1999, tax residence is yet presumed to exist unless they prove that they have actually changed it. Therefore, even following formal AIRE registration, in respect of Italian citizens transferred to Switzerland there continues to be a (relative) presumption of tax residence in Italy as a result of the aforementioned Article 2, paragraph 2bis, since Switzerland is included in the list of States and territories with a privileged tax regime referred to in the Ministerial Decree of May 4, 1999.

Conclusions – That said, the Revenue Agency makes clear that taxation during dual residence in Italy and Switzerland for the years in question can be resolved by splitting the tax year according to the OECD Convention. Which is, Italy may exercise its taxing power, based on residency, up to day z, while Switzerland can assert its tax claim from the day following day z. Therefore, considering the case described above, the income, wherever held by the taxpayer until day z of year x, shall be subject to taxation in Italy and, therefore, reported in the tax return for tax period x. From the next day (commencing on the date from which the applicant will be fiscally resident in Switzerland) the taxpayer in Switzerland, as of day y of year x, shall be subject to exclusive taxation in the Swiss Confederation and, therefore, is not subject to taxation in Italy, in consideration of an employment activity carried out in the same country (art 15 of the OECD Convention). For the above reasons, it is confirmed that the taxpayer will not be required in year x+2 to file a tax return in Italy for tax year, unless, during that year, the Claimant has not produced in Italy income identified by Article 23 of the TUIR.

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