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Swiss expenditure-based taxation

Treaty residence and foreign-source income

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01 Introduction and scope

Swiss expenditure-based taxation (*imposition d'après la dépense*) is a special method of taxation available to qualifying foreign nationals who take up residence in Switzerland without exercising a gainful activity in Switzerland.[1]

This raises particular questions under Switzerland's double taxation agreements (DTAs). Two are considered here. First, does an individual subject to expenditure-based taxation qualify as a Swiss resident for treaty purposes and therefore have access to treaty benefits? Second, how is foreign-source income treated under the expenditure-based regime, particularly where treaty relief from foreign taxation is available?

France, Germany and Italy provide useful points of comparison. These neighbouring jurisdictions have historically represented important countries of origin among beneficiaries of Swiss expenditure-based taxation and, more importantly, illustrate materially different treaty approaches.[2]

1 Federal Act on Direct Federal Taxation of 14 December 1990 (DBG/LIFD), Art. 14(1) and (3); Federal Tax Administration (FTA), Circular No. 44, *Imposition d'après la dépense en matière d'impôt fédéral direct*, 24 July 2018, sections 2.1, 2.3 and 3.1.

2 Thibaud Giddey, Geoffroy Legentilhomme and Matthieu Leimgruber, 'A paradise for foreign capitalists? Expenditure-based taxation in Switzerland, 1916–2020', *Zeitschrift für Unternehmensgeschichte*, vol. 71, no. 1 (2026), pp. 67–104, https://doi.org/10.1515/zug-2025-0017, discussing the geographical origins of beneficiaries of expenditure-based taxation and, based on a nationwide sample for 1964, identifying France, Germany and Italy among the principal neighbouring countries of origin.

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02 Expenditure-based taxation and treaty residence

An individual subject to expenditure-based taxation remains a Swiss resident for tax purposes.[3] The special regime affects how the individual is taxed, not their Swiss tax residence.

The Federal Tax Administration (FTA) states that expenditure-based taxpayers may, in principle, claim the benefits of Switzerland's DTAs.[4] Whether treaty benefits are available must nevertheless be determined under the applicable DTA. Certain treaties contain provisions of particular relevance to expenditure-based taxpayers.

The FTA may issue official tax attestations to expenditure-based taxpayers, taking the applicable DTA into account, but such an attestation does not by itself resolve the taxpayer's position under the treaty in the other Contracting State.[5]

02.1 France: treaty residence and Conseil d'État No. 469789

The distinction between Swiss domestic residence and treaty residence is particularly important under the France–Switzerland DTA. This is illustrated by the *Conseil d'État* decision of 18 September 2023, No. 469789. The taxpayers had moved from France to Switzerland in 2005 and were subject there to expenditure-based taxation. France nevertheless sought to tax a capital gain arising from the disposal of shares in a French company. Swiss treaty residence was material because the relevant treaty provision allocated the gain to the state of residence.[6]

Article 4(6)(b) of the DTA excludes from treaty residence an individual taxable only on a lump-sum basis determined taking account of the rental value of a residence. The taxpayers' *Swiss forfait* had been fixed at five times their rent, increased by 30%. The *Conseil d'État* held that they fell within the Article 4(6)(b) exclusion. They could therefore

3 LIFD, Arts. 3 and 14(1); FTA Circular No. 44, sections 2.1 and 2.3.

4 FTA Circular No. 44, section 5.1.

5 FTA Circular No. 44, section 6. See also *Conseil d'État*, 19 April 2021, No. 431982.

6 *Conseil d'État*, 18 September 2023, No. 469789, ECLI:FR:CECHR:2023:469789.20230918, paras. 1–2. Under Article 15(5) of the France–Switzerland DTA, the category of capital gain at issue was taxable only in the state of which the transferor was a resident.

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be resident in Switzerland under Swiss domestic law while not qualifying as Swiss residents for purposes of the DTA.[7]

The case also concerned the former French administrative practice under which certain expenditure-based taxpayers could nevertheless be treated as Swiss treaty residents if additional conditions were satisfied.[8] France withdrew that administrative tolerance with effect from 12 September 2012, while maintaining it for years before 2013.[9]

02.2 Germany and Italy: the modified procedure

Germany and Italy use a different mechanism. Their treaties do not use the French rental-value criterion. Instead, they contain conditions concerning the taxation in Switzerland of income arising from the other Contracting State.[10]

Under Article 4(6) of the Germany–Switzerland DTA, an individual is not regarded as resident of a Contracting State if that individual is not subject there to the generally levied taxes on all income from the other Contracting State that is generally taxable under the law of the first State.[11] Article 4(5)(b) of the Italy–Switzerland DTA follows a comparable approach.[12]

For expenditure-based taxpayers seeking the relevant treaty benefits, Switzerland applies the modified expenditure-based taxation procedure. The Swiss calculation then includes all income from the relevant Contracting State insofar as that income is taxable under Swiss law and is not exempt from Swiss tax under the applicable DTA. The relevant income is subjected to federal, cantonal and communal direct taxes at the rate applicable to total income.[13]

7 Ibid., para. 11; Convention between Switzerland and France for the avoidance of double taxation with respect to taxes on income and capital, 9 September 1966, Art. 4(6)(b).

8 *Conseil d'État*, 18 September 2023, No. 469789, paras. 3–4. The practice originated in an exchange between the French and Swiss tax administrations concerning the interpretation of Article 4(6)(b) and permitted certain expenditure-based taxpayers to be treated as Swiss treaty residents where specified conditions were satisfied.

9 French tax administration, BOFiP, *Imposition au forfait en Suisse et qualité de résident suisse au sens de l'article 4 de la convention fiscale franco-suisse du 9 septembre 1966*, 26 December 2012. The tolerance was withdrawn from 12 September 2012 but remained applicable for years before 2013.

10 FTA Circular No. 44, section 5.2.

11 Convention between the Swiss Confederation and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and capital, 11 August 1971, Art. 4(6), as amended.

12 Convention between the Swiss Confederation and the Italian Republic for the avoidance of double taxation with respect to taxes on income and capital, 9 March 1976, Art. 4(5)(b).

13 FTA Circular No. 44, section 5.2.

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03 Foreign-source income and treaty relief

Under expenditure-based taxation, the Swiss tax is calculated by reference to expenditure, subject to statutory minimum amounts and a control calculation. Foreign-source income may nevertheless be relevant.

Article 14(3)(d) LIFD requires specified items of actual income to be taken into account for purposes of the control calculation. These include foreign-source income for which relief from foreign tax is available under a Swiss DTA.[14] The FTA further states that the decisive point is not whether the taxpayer has formally applied for treaty benefits, but whether foreign taxation has in fact been reduced or eliminated by reason of the DTA.[15] Treaty relief can therefore affect the Swiss calculation even in the absence of a separate formal application.

The 2023 French case provides a historical illustration of this interaction. Under the former administrative practice discussed above, one of the conditions for treating certain expenditure-based taxpayers as Swiss treaty residents concerned French-source income for which treaty relief was sought. The taxpayer had received French dividends subject to the full French withholding tax without requesting treaty relief and argued that those dividends should therefore not enter the relevant comparison. The *Conseil d'État* held that the comparison had to be made on the hypothesis that the taxpayer qualified as a Swiss treaty resident.[16]

The modified procedure applicable under the treaties with Germany and Italy provides a current example of a different interaction. An expenditure-based taxpayer seeking the relevant treaty benefits must include in the modified Swiss calculation all income from the relevant state that is taxable under Swiss law and not exempt from Swiss tax under the applicable DTA.[17]

Expenditure-based taxation therefore does not create a general exemption for foreign-source income. Depending on the applicable

14 LIFD, Art. 14(3)(d)(6); FTA Circular No. 44, sections 3.1 and 3.3.4.

15 FTA Circular No. 44, sections 3.3.4 and 5.1.

16 *Conseil d'État*, 18 September 2023, No. 469789, paras. 3–5.

17 FTA Circular No. 44, section 5.2.

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treaty and the relief concerned, foreign income may enter the control calculation or be included in the modified procedure. The outcome is treaty- and income-specific.

04 Conclusion

Swiss domestic residence under the expenditure-based regime does not, by itself, determine entitlement to DTA benefits. France, Germany and Italy demonstrate that the applicable DTA may impose materially different conditions on expenditure-based taxpayers.

Nor does expenditure-based taxation place foreign-source income outside the Swiss tax calculation as a general matter. Treaty relief may bring foreign income into the control calculation and, under certain DTAs, require application of the modified procedure. Expenditure-based taxation may therefore provide preferential Swiss taxation, but its treaty consequences remain dependent on the applicable DTA and the income concerned.

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