

NEWS FLASH MAY 2023

NEW CH-I AGREEMENT ANNOUNCED DEALING WITH TELEWORKING OF ITALIAN FRONTIER WORKERS HIRED IN SWITZERLAND

As mentioned in our briefing in February 2023, an extraordinary tax regime had been in place since June 2020 between Italy and Switzerland regarding the tax treatment of frontier workers. That extraordinary regime had been terminated in December 2022, with effect as of 31 January 2023. The consequences of this termination are complex and have been outlined in our February 2023 briefing.

On 20 April 2023, the Italian and Swiss finance ministers announced that there would be a new "interim solution" dealing with teleworking for frontier workers, that would have (retroactive) effect from 1 February 2023 until 30 June 2023.

Presently unknown are both the contents of the new interim solution as well as what rules will apply after 30 June 2023.

INTRODUCTION

Under the Italian-Swiss amicable tax agreement of 18-19 June 2020:

- On an exceptional and provisional basis, the double tax treaty between Switzerland and Italy as well as the agreement of 3 October 1974 on the tax treatment of frontier workers will be interpreted as disregarding the work performed from home for an employer by a frontier worker and treat it as performed at the employer's seat in connection with measures adopted to fight against the spreading of COVID-19.
- Employees who, by reasons of measures taken to fight against the spreading of COVID-19 remain in the State of employment without daily return to their residence will continue to be treated as frontier workers pursuant to the agreement of 3 October 1974.

If, for example, an Italian frontier worker employed by a Swiss company worked one day per week from his home in Italy, under the Italian-Swiss amicable tax agreement of 18-19 June 2020 the day spent working from home would have been treated as if the worker in question would have worked at the employer's premises in Switzerland.

TERMINATION AS OF 31 JANUARY 2023

In a joint declaration of 22 December 2022, the Italian and Swiss competent authorities confirmed that the provisional derogation to the rules of the double tax treaty and of the agreement of 3 October 1974 would terminate on 31 January 2023 and no longer produce any effects from 1 February 2023.

As to the consequences of the termination, we refer to our briefing of [February 2023](#).

INTERIM SOLUTION FOR THE TIME PERIOD 1 FEBRUARY – 30 JUNE 2023 AND MORE PERMANENT SOLUTION THEREAFTER?

On 20 April 2023, the Italian Minister of economy and finance as well as the Swiss Federal councilor responsible for the Federal Department of Finance issued a joint statement on the topic of teleworking. According to the statement, the two countries are currently negotiating a permanent solution for the tax treatment of teleworking. In the meantime, the parties to the statement confirm that a preliminary agreement has been reached for an interim regulation of teleworking. According to well-informed sources quoted by newspapers, said interim regulation shall have (partially retroactive) effect between 1 February and 30 June 2023. The joint statement declares that the interim regulation may not be extended after 30 June 2023.

The exact content of the interim solution has not been disclosed yet, but according to the latest information it seems as if it will allow frontier workers to recur to teleworking for up to 40% of their time without any impact on their tax treatment.

Also, there are also no details available on the more permanent regulation that is supposed to replace the interim solution after 30 June 2023. It is possible that such a permanent regulation could be aligned with existing agreements with other neighboring countries, such as France (with France, Switzerland has a new agreement on teleworking in place since 1 January 2023, that allows frontier workers to work remotely for up to 40% of their annual activity without any consequences for tax purposes). It should also be noted that discussions are ongoing at the EU level for a new framework agreement that would allow to maintain the competence of the social security system at the employer's location based on a series of pre-requisites, among which that the teleworking days account for less than 50% of the total working time. On this last topic, our firm will circulate a separate briefing.

As to timing, no details have been disclosed. It should be noted, however, that the Swiss side has conditioned its approval of the interim solution for frontier workers to the implementation, by Italy, of another item that was part of the joint statement of 20 April 2023, i.e. the removal of Switzerland from the Italian list of tax haven countries ("*black list*").

OUTLOOK

The Italian parliament is expected to approve ratification of the agreement signed on 23 December 2020 ("**FA 2020**", cfr. our February 2023 briefing) on the tax treatment of frontier workers as early as the end of April. The ratification letters are expected to be exchanged rapidly thereafter. It should be noted that the grandfathering clause of (Article 9 of the FA 2020) only applies to frontier workers that have been employed as frontier workers in the frontier region until the ratification of the FA 2020. Assuming ratification on 15 May 2023, this means that new frontier workers that will start working in the Swiss frontier region e.g. from 1 June 2023 would not benefit from the grandfathering clause and be subject to the new tax system starting on 1 January 2024.

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