

NEWS FLASH DECEMBER 2022

CH-I TAX AGREEMENT RE IMPACT OF SMART-WORKING ON FRONTIER WORKERS TERMINATED WITH EFFECT FROM 1 FEBRUARY 2023

Since June 2020, an exceptional tax regime has been in place between Italy and Switzerland regarding the tax treatment of frontier workers. That tax treatment has now been terminated with effect from 1 February 2023. The consequences of this termination will impact heavily on frontier workers regularly or irregularly working from home as well as their Swiss employers.

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 treated instead as if performed at the employer's business location in connection with measures adopted to fight against the spread of COVID-19.
- Employees who, by reason of measures taken to fight the spread 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 or her 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 had in fact worked at the employer's premises in Switzerland.

JOINT DECLARATION OF 22 JULY 2022

On 22 July 2022, the Italian and Swiss competent authorities agreed provisionally to continue to apply the principles of the amicable agreement of 18-19 June 2020 even though there were no longer any governmental measures in place to fight the spread of COVID-19.

In other words, according to the declaration of July 2022, the exceptional disregarding of home-working was going to be applied irrespective of particular measures related to COVID-19.

OUTLOOK

The consequences for frontier workers regularly or irregularly recurring to the use of smart-working are complex and are likely to have tax consequences both on the Italian and the Swiss side. At the same time, numerous questions relating to the social security treatment of the frontier workers look likely to emerge in 2023.

The issues referred to here will be the subject of a more in-depth client briefing from us during January.

TERMINATION FROM 1 FEBRUARY 2023

With the joint declaration of 22 December 2022, the provisional derogation to the rules of the double tax treaty and of the agreement of 3 October 1974 will terminate on 31 January 2023 and will no longer produce any effects from 1 February 2023.

In the example mentioned above, the Italian frontier worker working from home one day per week will no longer be deemed to be working in Switzerland on the home-office day.

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