

Les étrangers qui s'installent en Suisse au bénéfice d'un permis de travail sont imposés selon le régime ordinaire, tandis que ceux qui s'installent au bénéfice d'un permis de séjour peuvent sous certaines conditions bénéficier d'un régime d'imposition spécial: l'imposition d'après la dépense.

Il est important de souligner que la fiscalité en Suisse dépend du canton et de la commune dans laquelle le contribuable prend domicile et que les impôts varient grandement d'un lieu à l'autre. Au régime ordinaire, les contribuables sont soumis à l'impôt sur le revenu sur leurs revenus mondiaux et à l'impôt sur la fortune sur leur fortune mondiale. Les taux applicables varient d'environ 20,2% dans le canton de Schwyz à environ 44,9% à Genève s'agissant de l'impôt sur le revenu et d'environ 0.11% à 1% dans les mêmes lieux pour ce qui est de l'impôt sur la fortune.

Dans le cadre du régime de l'imposition d'après la dépense les contribuables ne sont pas imposés sur leurs revenus et leur fortune mais sur

leurs dépenses. Pour être en droit de bénéficier de ce système, le contribuable doit remplir les conditions suivantes: 1) ne pas avoir la nationalité suisse; 2) être assujéti à titre illimité pour la première fois en Suisse ou après une absence d'au moins dix ans; 3) ne pas exercer d'activité lucrative en Suisse. Le principe de base est que le contribuable paie un impôt calculé en fonction de ses dépenses. Cependant, ce montant ne doit pas être inférieur à deux seuils. Tout d'abord, ce montant ne doit pas être inférieur à sept fois le loyer annuel ou la valeur locative du bien qu'il occupe. En second lieu, il ne doit pas être inférieur à CHF 434'700 pour le calcul de l'impôt fédéral direct et d'un montant déterminé par chaque canton (Genève: CHF 467'800; Valais: CHF 250'000; Vaud: CHF 450'800) pour le calcul des impôts cantonaux et communaux. Comme nous l'avons mentionné ci-dessus, ce montant minimum est plus élevé pour les personnes qui sollicitent une autorisation de séjour en se prévalant des intérêts cantonaux majeurs en matière de fiscalité pour le canton dans lequel il se domicilie. Ces minimums

varient selon les cantons (Genève: CHF 750'000; Valais: CHF 700'000; Vaud: CHF 1'000'000) et mènent à une imposition annuelle se montant à environ CHF 314'500 à Genève, CHF 432'000 dans le canton de Vaud et CHF 275'800 en Valais.

Pour une présentation détaillée de l'imposition d'après la dépense, nous renvoyons le lecteur à notre article sur le sujet dans cette édition.

Conclusion

Même si certains pays restreignent les possibilités pour les ressortissants non-européens d'y prendre résidence ou d'y travailler, les opportunités restent nombreuses, notamment dans des pays prévoyant des régimes fiscaux avantageux. Il y a toutefois lieu de garder à l'esprit que certains de ces Etats ne sont pas les plus stables au niveau politique et que des changements peuvent y intervenir rapidement, à l'instar du récent doublement du montant du forfait italien.



Relocation of non-EU citizens in Europe

Philippe Kenel

[Doctor of Law, lawyer in Pully-Lausanne, Geneva and Brussels, Partner, Valfor Avocats]

Daniel Gatenby

[LL.M. Tax, lawyer in Pully-Lausanne and Geneva, Valfor Avocats]

Introduction

At a time when some European countries, such as Portugal, are restricting certain residency options for non-European nationals, we will examine those that still exist in Spain, Greece, Italy and Switzerland, providing a broad overview of immigration law issues and a brief presentation of the tax systems in these countries. By "non-European citizens" we refer to anyone who is not a national of a member state of the European Union (EU) or the European Free Trade Association (EFTA).

Spain

Spain has several types of permits that allow non-European nationals to settle and/or work in Spain. It is possible to obtain a work permit provided that there is a shortage in the sector in question, that there are no European candidates with equal skills and that the salary offered is at least 1.5x the Spanish median salary in the relevant sector. Non-European nationals may obtain a Spanish residence permit if they make an investment in Spain or wish to develop an economic

activity there. The following investments qualify for a residence permit:

- An investment of at least EUR 2,000,000 in bonds issued by the Spanish government;
- An investment of at least EUR 1,000,000 in a Spanish company;
- An investment of at least EUR 500,000 in a property located in Spain.

In addition, people wishing to obtain a residence permit by developing an economic activity in Spain must demonstrate how their project serves the public interest, taking into account the job creation, technological and scientific innovation of the project and its socio-economic impact in Spain.

In terms of taxation, Spain taxes worldwide income at progressive rates of up to around 47% (for any income in excess of EUR 300,000). There is also a wealth tax, levied by the autonomous Regions at progressive rates of up to 3.5% on wealth in excess of EUR 10,695,996. Some regions have provided for an abatement of up to 100%. That said, in 2022 the government introduced a solidarity tax on large fortunes, the effect of which is to cancel out any abatement provided for by an autonomous Region.

Under certain conditions, taxpayers who take up residence in Spain can benefit from the non-resident tax regime. This means that wealth tax is levied only on assets located in Spain. As far as income tax is concerned, only Spanish-source income is taxed, and at a flat rate of 24% up to a taxable income of EUR 600,000. Above this amount, a rate of 47% applies. To benefit from this regime, the taxpayer must not have been resident in Spain for tax purposes for the previous 5 tax years. They must also come to Spain either because of an employment contract (excluding professional sportspeople), or because they have been appointed director of a Spanish company, or for the development of an economic activity as mentioned above. This scheme applies for a maximum of 6 years and can, on request, be extended to members of the taxpayer's family (spouse and children up to the age of 25).

Greece

Non-European nationals may obtain a work permit in Greece, provided they have an employment contract and can prove that they are qualified and have at least 5 years' experience in their

field of activity. They must also show that they have valid health insurance in Greece and sufficient financial resources to live in Greece.

As for residence permits, Greece grants residence to non-EU nationals in return for an investment in the country. There are several types of investment that qualify for a residence permit:

- A real estate project converting commercial property into residential property or a project to restore classified real estate, for at least EUR 250,000;
- The acquisition of real estate worth at least EUR 400,000 and with a surface area of at least 120m² or at least EUR 800,000 if it is located in Athens, Thessaloniki or on an island with more than 3,100 inhabitants;
- At least EUR 500,000 in Greek government bonds;
- At least EUR 800,000 in shares or bonds issued by Greek companies;
- At least EUR 350,000 in an investment fund that invests in Greek shares and bonds.

The investor must also be at least 18 years old, have a clean criminal record, health insurance and be a respectable person. Spouses and children under the age of 21 may be included in the residence permit application.

Under the ordinary tax system in Greece, income is subject to progressive tax rates of up to 44%. Certain types of income benefit from flat rates, in particular dividends, which are subject to a 5% withholding tax. A withholding tax of 15% is levied on interest and 20% on royalties.

There are several special tax regimes for foreigners moving to Greece. The first is aimed at wealthy individuals who have made an investment of at least EUR 500,000 in property or a business in Greece and who have not been resident in Greece for tax purposes for 7 of the last 8 years. Under this regime, the taxpayer pays a lump sum of EUR 100,000 which covers all foreign income. Income from Greek sources is subject to ordinary taxation. This regime, which lasts for a maximum of 15 years, can be extended to family members by paying an additional EUR 20,000 per person per year.

Foreign pensioners may opt for a special regime for pension income. Provided they have not been resident in Greece for tax purposes for 5 of the last 6 years, taxpayers can opt to have their foreign pensions taxed at a rate of 7% in Greece.

Under this system, which applies for a maximum of 15 years, other income is taxed under the ordinary system.

Foreigners who move to Greece to work may benefit from an exemption of 50% of their earned income for a maximum of 7 years if they have not been tax residents in Greece for 5 of the last 6 years, are transferring their tax residence from an EU or EFTA member state or from a country with which Greece has a valid convention on administrative assistance in tax matters, and declare their intention to remain in Greece for at least two years.

Italy

Non-European nationals may obtain a work permit in Italy if a quota unit, decided each year by the government, is available. Workers assigned to an Italian company as part of an intra-group transfer or under a service agreement with a foreign employer may be exempt from the annual quotas.

As in Spain and Greece, it is possible to obtain a residence permit for investors in Italy, if the applicant makes a substantial investment in the country, under one of the following options:

- At least EUR 2,000,000 in bonds issued by the Italian government;
- At least EUR 500,000 in an Italian company;
- At least EUR 250,000 in an innovative Italian start-up, or;
- A philanthropic donation of at least EUR 1,000,000 to support a project or initiative of public interest in the fields of culture, education, scientific research, immigration management or the renovation of heritage and landscapes.

As far as taxation is concerned, the ordinary regime provides for worldwide income to be taxed at rates that vary according to the category of income. Subject to a few exceptions, notably dividends, interest and capital gains, which are taxed at a final rate of 26%, other income is taxed at progressive rates of up to 43%.

Italy has a flat-rate tax system under which individuals who have not been resident in Italy for 9 of the last 10 tax years and who transfer their tax residence to Italy may opt for a flat-rate tax in full discharge of their tax liability on certain foreign-source income and wealth, irrespective of the total amount thereof. The amount of this tax has recently and unexpectedly doubled to EUR 200,000 per year (plus EUR 25,000 for each additional ac-

companying family member). This regime, which is limited to 15 years, is also open to Italian nationals who meet the conditions and does not exclude the taxpayer from working in Italy, although that Italian sourced income to ordinary taxation.

Switzerland

Unlike EU nationals, citizens of non-EU countries do not have the right to work or settle in Switzerland. They can – subject to relatively strict conditions – obtain a work permit or a residence permit.

Only management staff, specialists and qualified workers may be admitted to work in Switzerland, subject to the availability of a quota unit. The conditions that have to be met are the following: 1) the admission of the foreign nationals must serve Switzerland's economic interests; 2) the priority of the Swiss and EU/EFTA labour markets must be respected (only when the Swiss and European labour markets have been explored in vain can an application be submitted for a third-country national); 3) the usual minimum working and salary conditions customary in the sector must be respected; 4) the application must be made for a full-time position. In case of an inter-group transfer, i.e. an international transfer within a multinational group, it is possible for a non-European citizen to obtain a work permit more easily, in that the priority for Swiss and EU/EFTA labour markets does not apply.

As regards residence permits, there are only two ways for a non-European national to obtain a residence permit in Switzerland. First, they can obtain a pensioner's permit if they meet the following conditions: 1) they must be over 55 years of age; 2) they must have special personal ties to Switzerland; please note that the Swiss authorities are very strict in their interpretation of this condition. For example, it is not sufficient to own a property in Switzerland; 3) they must no longer engage in any gainful activity, either in Switzerland or abroad, except for managing their own assets; 4) they must move the centre of their interests to Switzerland; 5) they must have sufficient financial resources to live in Switzerland.

If a person does not meet the requirements for a pensioner's permit, they can apply for a residence permit based on "major public interests". Apart from the case of famous artists or sportspersons who can demonstrate that their presence in Switzerland represents a major cultural interest, the



only path open to other foreign nationals is to demonstrate that granting them a residence permit represents a major tax interest for the canton in which they wish to settle. As will be mentioned below, in order to do this, they must agree to pay lump sum taxation on a higher basis than the amount provided for by law. The minimum amount depends on the canton in which the applicant wishes to settle.

Foreigners who settle in Switzerland with a work permit are taxed under the ordinary system, while those who settle with a residence permit may under certain conditions benefit from a special tax system known as the lumpsum taxation regime.

It is important to note that taxation in Switzerland depends on the canton and commune in which the taxpayer takes up residence, and that taxes vary greatly from one place to another. Under the ordinary system, taxpayers are subject to income tax on their worldwide income and wealth tax on their worldwide assets. The applicable rates vary from around 20.2% in the canton of Schwyz to around 44.9% in Geneva for income tax and from around 0.11% to 1% in the same places for wealth tax.

Under the lump sum taxation regime, taxpayers are not taxed on their income and wealth but on their expenses. To qualify for this system, taxpayers must meet the following conditions: 1) they must not be Swiss nationals; 2) they must be subject to unlimited taxation for the first time in Switzerland or after an absence of at least ten years; 3) they must not be gainfully employed

in Switzerland. The basic principle is that taxpayers pay tax on their expenses. However, this amount must not fall below two thresholds. Firstly, the amount must not be less than seven times the annual rent or rental value of the taxpayer's home. Secondly, it must not be less than CHF 434,700 for the calculation of direct federal tax and an amount determined by each canton (Geneva: CHF 467,800; Valais: CHF 250,000; Vaud: CHF 450,800) for the calculation of cantonal and municipal taxes. As mentioned above, this minimum amount is higher for people who apply for a residence permit on the basis of major cantonal tax interests in the canton in which they are domiciled. These minimum amounts vary from canton to canton (Geneva: CHF 750,000; Valais: CHF 700,000; Vaud: CHF 1,000,000) and result in annual taxation of around CHF 314,500 in Geneva, CHF 432,000 in Vaud and CHF 275,800 in Valais.

For a detailed presentation of taxation based on expenditure, we refer readers to our article on the subject in this edition.

Conclusion

Although some countries restrict non-European nationals from taking up residence or working there, there are still plenty of opportunities, particularly in countries with favourable tax regimes. It should be kept in mind, however, that some of these countries are not the most stable politically and that changes can occur rapidly, as in the case of the recent doubling of the Italian lump-sum tax. ■