n'occupe pas son emploi depuis des années (soit depuis moins de 5 ans environ), en quel cas il est imposé à son lieu de domicile;
- Le contribuable marié est en principe imposé au lieu du domicile de la famille, sauf s'il exerce une fonction dirigeante (responsabilité particulière et au moins 100 personnes sous ses ordres), en quel cas il est imposé au lieu de son travail.

Le Tribunal Fédéral a par ailleurs admis que lorsque les rapports du contribuable avec différents lieux sont à peu près de même intensité, un domicile alternant peut exister. Un tel cas entraine en principe le partage de la souveraineté fiscale par moitié entre les deux cantons concernés (ATF 131 I 145 c. 4.2). Toutefois, un arrêt récent concernant la détermination du domicile intercantonal pour une famille recomposée laisse entendre qu'un revirement de jurisprudence pourrait se produire en ce sens que le concept de domiciles alternants pourrait disparaître (ATF 148 II 285), n'étant pas compatible avec le principe de l'unité et de l'exclusivité du domicile. Le Tribunal fédéral a toutefois laissé cette question ouverte dès lors que la situation du contribuable en question ne correspondait pas à celle d'un domicile alternant.

Conclusion

La tendance jurisprudentielle tend à démontrer un rapprochement de la notion de domicile fiscal applicable dans les situations internationales et intercantonales, qui est similaire de la notion découlant du droit civil. Les autorités fiscales du canton de départ peuvent remettre en cause aussi bien un départ à l'étranger qu'un départ dans un autre canton et il revient finalement au contribuable – qui a un devoir de collaboration avec les autorités – de démontrer qu'il a bien transféré le centre de ses intérêts personnels.

Tax domicile under **Swiss law**

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Introduction

A person's domicile as defined in tax law is the main connecting factor leading to unlimited tax liability in Switzerland. This concept is important both at the international level – to determine whether a taxpayer is liable to tax in Switzerland – and at the intercantonal level – to determine which canton and which municipality has the right to levy tax. We will first look at the concept of tax domicile in Swiss law, then consider its implementation in international situations. Finally, we will review the essential differences with the concept of tax domicile that applies in intercantonal relations.

Tax domicile in Switzerland

Under Swiss tax law, a person is domiciled in Switzerland if he or she resides in the country with the intention of staying there durably (art. 3 para. 2 of the Federal Act of 14 December 1990 on direct federal taxes (DFTA)). Although tax law does not refer to civil law domicile to define tax domicile, the latter is based on the concept of the Civil Code (Swiss Supreme court ruling (SCR) 148 II 285, c. 3.2.1). According to the established case law of the Swiss Supreme Court, the intention to settle in a given place should not be examined according to the will expressed by the taxpayer, but according to all the ob-

jectively recognisable elements for third parties (SCR 138 II 300 c. 3.2). Domicile, in other words, is the place where the taxpayer's vital interests are objectively located, i.e. the centre of their personal and economic relations. If a taxpayer has relations with several places, their tax domicile is at the place with which they have the strongest relations. The starting point is the place of habitual residence of the taxpayer. However, a person's personal, family, professional and social interests may bind them so closely to another place that it appears to be the centre of their interests, even though they spend less time there (art. SCR 150 II 244, c. 5.3). In this context, the usual place of residence of family members (spouse, children, parents and siblings), social relationships outside the family (e.g. participation in community life), the taxpayer's professional situation and housing conditions in the various locations are relevant factors. These criteria must be weighted according to the taxpayer's personal situation (e.g. their age) and weighed against each other as part of the overall consideration required to determine tax domicile. Furthermore, the effective situation at an earlier or later date is in principle not directly relevant but may be taken into account as an indicator (SCR 148 II 285 c. 3.2.3).

Tax domicile in international settings

Some countries use other criteria to establish unlimited tax liability on the basis of tax domicile. The United Kingdom, for example, establishes tax residence by taking into account the purely mathematical criterion of the number of nights spent in the United Kingdom during the tax year. This can result in a conflict of tax domicile between different States. In such cases, the double taxation treaties concluded between the States concerned lay down tie-breaker rules aimed at determining which of the two States is entitled to tax an individual based on their domicile.

Article 4 of the OECD Model Convention's tie-breaker rules provides for a succession of rules: "Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

In international contexts, it bears emphasising that spouses may have separate domiciles, even if they are not separated (SCR 141 II 318 c. 2.2.3). In a recent ruling on a couple who had moved from Switzerland to Luxembourg, the Supreme Court reiterated this principle (SCR 150 II 244). The husband had a job in Luxembourg and spent most of his time there (277 days compared to only 40 in Switzerland). However, his spouse kept a part-time job in Switzerland and continued to live partly in the flat the couple had rented before they left. In addition, the couple's two sons, who were over 18 but still in higher education, were still living in the flat. The couple had a social life in Luxembourg, where they entertained both Swiss and Luxembourg friends. The cantonal tax authority had found that the couple had not transferred the centre of their vital interests to Luxembourg. The Court upheld the couple's appeal on the grounds that only the wife's domicile, where she still spent most of her time and worked in Switzerland, could be considered to be in Switzerland. The husband had thus effectively transferred the centre of his personal interests to Luxembourg.

If the tax domicile is transferred to another country during the course of a year, the tax liability in Switzerland ends on that date and taxes are only due

in Switzerland for the period from 1st January to the date of departure during the year (art. 8 para. 2 FDTA). By virtue of the principle of the persistence of tax domicile, a person retains their or her tax domicile in Switzerland as long as they have not set up a new domicile outside Switzerland. The taxpayer may therefore be required to demonstrate their new foreign domicile and prove that they have become a taxpayer there, in order to no longer be liable for tax in Switzerland (SCR 138 II 300).

Tax domicile in intercantonal relations

The concept of tax domicile in intercantonal tax law remains largely the same as in the LIFD. The Federal Act of 14 December 1990 on the Harmonisation of Direct Taxation of the Cantons and Municipalities (FHTA) contains an identical definition of domicile for tax law purposes and therefore also refers to the criterion of the taxpayer's centre of vital interests. However, one of the main differences is that there is no split assessment if the taxpayer moves from one canton to another during the year. The canton in which the taxpayer is domiciled on 31st December has taxing jurisdiction for the entire tax year (art. 4b LHID). With regard to the determination of the place of taxation, it is in principle up to the authorities to provide the factual elements necessary to establish the tax domicile relevant for tax purposes (SCR 138 II 300 c. 3.4). However, when there is clear and precise evidence that renders the facts presented by the authority plausible, it is up to the taxpayer to refute these facts with supporting evidence (SCR 2C_111/2012 c. 4.4). This concerns not only the definitive severance of ties with the previous domicile but also the factual circumstances that led to the establishment of a new domicile. The burden of proof is thus shifted to the taxpayer in certain cases. This applies in particular when a taxpayer leaves a canton where unlimited taxation was highly likely. It is then up to the taxpayer to provide proof of their alleged subjective tax liability in a new canton (SCR 9C_668/2022). In a recent ruling, the Court upheld a cantonal decision refusing to recognise a move of tax domicile on Christmas Eve (SCR 9C_25/2023). In reality, it is extremely difficult to prove a transfer of domicile so close to the end of the year, and the mere administrative transfer of one's papers is in any case largely insufficient.

The Supreme Court has established a number of criteria for specific cases where a taxpayer resides in several different cantons, in particular because of their work:

- An unmarried taxpayer who lives and works in different places is in principle taxed at their place of work, unless they are particularly young (under 30) and have not been employed for many years (i.e. for less than 5 years), in which case they are taxed at their place of domicile;
- Married taxpayers are in principle taxed at their family's place of residence, unless they hold a high-level management position (special responsibility and at least 100 people under their command), in which case they are taxed at their place of work.

The Supreme Court has also accepted that where the taxpayer's relations with different places are more or less of the same intensity, an alternating domicile may exist. In such a case, tax sovereignty is in principle shared equally between the two cantons involved (SCR 131 I 145 c. 4.2). However, a recent ruling on the determination of intercantonal domicile for a blended family suggests that there may be a reversal of case law in that the concept of alternating domiciles could disappear (SCR 148 II 285), as it is not compatible with the principle of unity and exclusivity of domicile. However, the Supreme Court left this question open as the taxpayer's situation did not correspond to that of an alternating domicile.

Conclusion

The trend in case law is to bring the concept of tax domicile applicable in international and intercantonal situations closer into line with the concept deriving from civil law. The tax authorities of the canton of departure may question a move abroad as much as a move to another canton, and it is ultimately up to the taxpayer – who has a duty to cooperate with the authorities – to demonstrate that he has indeed transferred the centre of his personal interests. ■