Investments in Switzerland and France by residents of the United Arab Emirates: **opportunities** and **constraints**

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Emirati investors have always turned to Europe to manage their assets, whether real estate or financial. Switzerland and France are thus "close" countries from the economic point of view of the United Arab Emirates (hereafter "UAE"), with which they are linked by several international treaties, particularly in fiscal matters. The treaties signed in this respect offer opportunities to make investments under particularly advantageous tax conditions.

Specificities of the Swiss and French tax treaties for an investor resident in the Emirates

In the case of Switzerland, the treaty covers only natural persons' income tax and legal persons' profit. In contrast, wealth tax and inheritance or gift tax are not covered.

The main specificity is linked to the definition of the notion of "Emirates resident", which is a fundamental element since only those who meet this definition can avail themselves of the treaty benefits.

According to Article 4 of this treaty: *"the term resident of a Contracting State means (…) b) in the case of the UAE, a natural person who is domiciled in the UAE provided that the person maintains a substantial presence in that State (…)"*.

This substantial presence requirement is atypical and not in line with the OECD Model Convention which focuses on the extent of taxation of the taxpayer. Insofar as individuals domiciled in the UAE do not pay income or wealth tax, Switzerland therefore negotiated and obtained from the Emirates the inclusion of the substantial presence criterion in the notion of resident.

To better understand this criterion, reference can be made to the Federal Council's Message (in 2011) specifying the following: *"The UAE do not have a tax system comparable to that of Western industrialised countries (…) In the UAE, individuals are not subject to any income or wealth tax (…) Substantial presence means that the natural person spends most of his time in that State and has closer ties (family, social and professional) with that State."*.

In other treaties signed between Switzerland and countries that have not (yet) introduced a tax on the income or assets of their residents, the terminology "substantial presence" is not found; for example, the treaty with Qatar defines as resident any individual who has a permanent dwelling place and has the centre of his vital interests or habitual stay in Qatar.

Another feature of this treaty (contained in the Protocol) concerns the profits generated by the exploration and exploitation of natural resources, the exclusive taxation of which is reserved to the "source" State (i.e., the UAE), notwithstanding any provision to the contrary in the treaty.

For the rest, the provisions of the Swiss-UAE treaty are essentially in line with the conventions signed by Switzerland (on the OECD Model Convention).

In the case of France, the tax treaty signed with the UAE has several specific features in favour of persons with UAE citizenship.

Thus, Emirati citizens are, in particular, protected from any criminal proceedings that may be initiated by France against them in relation to tax matters, which is, however, not the case for French nationals resident in the Emirates.

In the same vein, an Emirati citizen, resident in the UAE within the meaning of the Treaty but who would also have been considered a French resident under the French domestic law, shall not be taxable in France, again unlike a citizen of another country and, in particular, a French citizen who would have kept overriding interests (family or economic) in France.

Emirati residents – and this time regardless of their nationality – also benefit from advantages that are not found in the treaties usually signed by France (except for other Gulf countries).

We can note in this respect that Emirati residents are:

- exempt from withholding tax on dividend and interest paid in France, even in the absence of taxation in the Emirates, their country of residence;
- exempt from wealth tax (IFI) on real estate located in France, provided that an investment at least equivalent in value, through shares in French or European companies listed on the stock exchange, is made.
- exempt from inheritance tax, on the one hand, on tangible and intangible property located in France regardless of the domicile of the heirs, and, on the other hand, on the securities of French or foreign real estate companies holding real estate in France.

Application to the case of an Emirati resident wishing to invest in Switzerland or France

We will consider the hypotheses of a real estate acquisition and then a financial acquisition, in Switzerland or in France.

In the event of a real estate acquisition in Switzerland: The investor buys the shares of a Swiss or foreign company that owns one or more investment properties in Switzerland (presumably in the canton of Geneva) intended for commercial or industrial activities (other investment properties, in particular residential properties, may not in principle be owned by persons domiciled abroad, except for Swiss nationals). In this case:

- The Emirati investor shall not be taxed in Switzerland on the assets;
- If it is a Swiss company, it will pay tax on profits at the rate of approximately 14%; the distribution of dividends to the investor will be subject to a tax deducted at source (withholding tax) limited to 15%; this tax cost is final as there is no taxation in the UAE;
- If it is a foreign company (in particular incorporated in the UAE), it will also pay tax on profits in Switzerland (exclusively in relation to real estate assets / property income) at the rate of 14%; in contrast, all income net of tax may be distributed, when necessary, without withholding tax;
- In case of a capital gain on the sale of the company's shares (Swiss or foreign), the UAE investor will be taxed in the canton where the property is located. For example, in the canton of Geneva, the rate is degressive according to the length of the holding period: 10% after 10 years and full exemption after 25 years);
- In some cases, the capital gain on the sale of shares of a foreign company that owns a subsidiary in Switzerland, owner of real estate, is not taxable.
- Finally, the free transfer (donation or inheritance) of the shares of the Swiss or foreign company will not be taxable in Switzerland (nor in the UAE, which does not tax gifts or inheritance).

In the event of a property acquisition in France: The Emirati investor can freely acquire all types of real estate in France, whether investment commercial property or property for private use, whether owned directly or through a French or foreign company. In this case:

- The Emirati investor may be exempted in France on real estate assets, on the one hand, if the company owning the property is less than 50% invested in French real estate and, on the other hand, more generally, if the value of the French real estate is lower than the value of other investments made in France, notably through shares in French or European listed companies (or subscriptions to French government bonds);
- If the investor is a natural person (or a translucent non-trading company, such as an SCI), he (it) will only be subject to income tax in France if the property is rented out. Thus, in case of private use, no taxation will be due on the basis of a theoretical rent
- If the investor is either a French or a foreign company, it will pay a corporate tax at the rate of 25%, but without withholding tax on dividend distributions;
- In the event of disposal of the property, a distinction must be made according to whether the property is owned directly by the UAE investor or through a company. Indeed, in the case of a directly owned property, the gain on disposal is taxable in France (with a full exemption after 30 years of ownership). On the other hand, the transfer of shares in a company holding real estate in France, but representing less than 80% of the assets of that company, is exempted in France;
- In the event of death of the UAE investor, the latter will be fully taxable in France for inheritance tax on property held directly, i.e., without an intermediary company. However, shares in French or foreign companies holding real estate in France are exempt from inheritance tax unconditionally (amount, percentage of ownership, etc.). This exemption does not, however, extend to gift taxes as these are not covered by the treaty.

In case of investment by an Emirati in an industrial or commercial company (listed or unlisted), his tax situation will be very similar depending on whether the target is in Switzerland or in France. For this example, we have assumed that the acquisition was made through a family holding company in the UAE. In fact:

- The investor will not be taxed on the assets neither in Switzerland nor in France;
- The distribution of dividends by a Swiss company to the holding company will be subject to a withholding tax limited to 5%, compared to full exemption in France;
- In case of a loan granted by the holding company, the interest paid by the Swiss or French company will not be taxed at source in these two countries;
- Disposal gains will not be taxed in Switzerland or in France;
- In the event of death of the Emirati investor, the transmission will not be taxable in Switzerland or in France. The same will apply to donations, but, in the case of France, only if the investment is made through a family holding company residing in the UAE.

Conclusion

Both Switzerland and France, each in their own way, offer relatively attractive tax conditions to UAE residents. If Switzerland grants to "substantially" present persons in the UAE treaty benefits in line with the OECD model, France, known for its more punitive internal taxation, was forced to provide 'tailor-made' stipulations to attract Emirati investors, particularly in relation to real estate investments. ■