Anti-avoidance in both hubs

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Neither hub tolerates a residence that exists only on paper. Swiss tax law applies the doctrine of tax avoidance (Steuerumgehung) where a structure is unusual, chosen solely to save tax and would in fact achieve that saving. The Federal Supreme Court has applied it to residence claims where the taxpayer's life remained elsewhere.[1] Singapore has a general anti-avoidance rule in s. 33 of the Income Tax Act. The Court of Appeal in Comptroller of Income Tax v AQQ held it to apply where the arrangement's purpose or effect is to reduce tax and it cannot be explained by bona fide commercial reasons.[2] Neither rule is engaged by a founder who moves in fact. Both are engaged by a founder who takes a flat in Zug or a serviced apartment in Singapore, spends forty days a year there and runs the project from the city they left.

Cross-border perspective

A founder can make the decision between Zug and Singapore in three steps. First, ask whether you will keep working on the project for the next three years. If yes, the Swiss lump-sum is unavailable. The comparison is then between ordinary Zug taxation, with its tax-free capital gains but annual wealth tax, and Singapore, with its tax-free capital gains and no wealth tax but employment-income taxation of the vesting tranches at up to 24 per cent. The two are close, so the location of your

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investors, your exchange partners and your team will usually decide. Second, if you have stepped back, the Zug lump-sum produces the lowest tax cost of any option in this chapter, provided you can obtain the permit without working. Third, whichever hub you choose, the character of your allocation as purchased capital or earned remuneration drives more of the result than the choice of hub. That character is decided by the documents signed before the grant.

Notes

1. BGE 138 II 239, consid. 4.1 (the three-part test of tax avoidance); BGE 132 I 29, consid. 4 (determination of tax domicile by the centre of vital interests). ↩
2. Income Tax Act 1947, s. 33; Comptroller of Income Tax v AQQ [2014] SGCA 15 at [46]–[53] and [107]–[110]. ↩

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