Residence and the tie-breaker

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A person is resident of a contracting state if he is liable to tax there by reason of domicile, residence, place of management or any similar criterion. Singapore's definition of resident for individuals is the 183-day and residing test of Chapter VI of this Part. Switzerland's is domicile or a stay of thirty days with gainful activity or ninety days without.[1] Where an individual is resident in both, Article 4 applies the familiar sequence: permanent home, centre of vital interests, habitual abode, nationality and, failing all, mutual agreement.[2] For a company the tie-breaker is the place of effective management.

The tie-breaker decides the cases of the founder who keeps a flat in Zug and an apartment in Singapore and spends the year between them. If both are permanent homes, the centre of vital interests decides. The Swiss and Singapore authorities have both shown in practice that they weigh family, business management and social ties over the mere count of days. A founder whose family lives in Zug and whose company is managed from Singapore has a divided centre, in which case the habitual abode (the day count) decides. A founder who splits the year evenly reaches nationality. The treaty tie-breaker does not relieve the client of domestic residence in the losing state for all purposes. It determines only which state may tax as the

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state of residence under the treaty. The losing state retains source taxation and, in Switzerland's case, the wealth tax if the person remains Swiss-resident under domestic law, because the treaty does not cover wealth tax.

Example

A founder sells his Singapore company in 2025, keeps his Singapore apartment and ONE Pass, buys a house in Zug in 2026 where his wife and children live and spends 170 days in Switzerland, 150 in Singapore and the rest travelling. Switzerland treats him as domiciled from the date the family moved. Singapore treats him as resident because he resided there for part of the year and under the three-year concession. Both are permanent homes. The centre of vital interests is Zug, because the family is there and the business has been sold. The treaty makes him Swiss-resident for 2026. Switzerland taxes his worldwide income from the arrival date and, outside the treaty, his worldwide wealth including tokens. Singapore may tax only Singapore-source income, which for an investor is nil. He should apply for the Zug lump sum before taking up residence, because once he has arrived as an ordinary resident the lump sum is still available but the first year's assessment will have been made.

Place of effective management for companies is the issue that decides most structuring questions between the hubs. A Singapore company whose sole director lives in Zug and decides everything from there is, under Article 4, resident in Switzerland for treaty purposes, and Switzerland will tax its worldwide profit under Art. 50 of the Direct Federal Tax Act as a company effectively managed in Switzerland. The remedy is the same as for section 10L (Chapter II of this Part): resident directors with authority, board meetings in Singapore and minutes that show decisions made there.[3] The Swiss authorities apply the same test in reverse to a Zug AG managed from Singapore, and in my experience the Swiss cantonal authorities are quicker to assert effective management than IRAS, because Switzerland's worldwide system gives it more to gain.

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Notes

1. Direct Federal Tax Act (DFTA; DBG), SR 642.11, Art. 3 paras 1–3 (tax residence by domicile or by a stay of at least 30 days with gainful activity or 90 days without); Income Tax Act 1947, s. 2(1) (resident in Singapore). ↩
2. Singapore–Switzerland DTA 2011, Art. 4 (resident; tie-breaker for individuals by permanent home, centre of vital interests, habitual abode, nationality and mutual agreement; for persons other than individuals by place of effective management). ↩
3. Direct Federal Tax Act (DFTA; DBG), SR 642.11, Art. 50 (tax residence of legal entities by registered office or effective management in Switzerland); Income Tax Act 1947, s. 2(1), definition of "resident in Singapore" for a company (control and management exercised in Singapore). ↩

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