Taxation of frontier workers' income between Italy and Slovenia: problematic aspects and possible solutions

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Contents:

Part 1. Cross-border area between Italy and Slovenia

- Since the end of the 2nd World War a significant frontier work flow between Italy and Yugoslavia exists. It has continued also after:
  - the creation of the new Republics of Slovenia and Croatia (1991)
  - Slovenia before (2004) and Croatia after (2013) joined to the European Union
  - Slovenia before (2007) and Croatia after (2023) joined to the Schengen Area
- The main part of this flow is from Slovenia and Croatia toward Italy;
- The main part of this frontier workers (10.000 estimated) is in the black-market (about 90% of the total)
- The frontier workers are mainly employed in the following sectors: household and personal care, construction, agricultural, trade, tourism and shipbuilding sectors

Part 2. Taxation of resident dependent workers' income in Italy and in Slovenia

- Same method in both countries
- The employer acts as withholding agent, paying tax in advance to the Tax Authority on resident dependent workers' salaries
- The resident dependent workers receive monthly by the employer a net salary
- **In addition, the resident dependent workers pay taxes in their country of residence on every other source of income (earned in every part of the world), that is taxable according to the domestic tax legislation**

Part 2. Taxation of not-resident dependent workers' income in Italy and in Slovenia

- Same method in both countries
- The employer acts as withholding agent, paying tax in advance to the Tax Authority on not-resident workers' salaries
- The not-resident dependent workers receive monthly by the employer a net salary
- **Nevertheless, according to the domestic tax legislation of both countries, in the country of work the not-resident dependent workers pay taxes only on the incomes produced in that territory**

Part 2. How to manage the risk of tax conflict

- **According the domestic tax legislation of both countries, the same dependent workers' income is taxable in both countries (risk of tax conflict)**
- The risk of tax conflict is managed through the Double Taxation Convention (DTC), signed bilaterally in 2001 by Italy and Slovenia, adopting an OECD model
- According Article 24 of DTC signed by Italy and Slovenia, the dependent workers declare to the country of residence's Tax Authority all their incomes earned in the country of work, avoiding the double taxation through a deduction (with some limitations) of the income tax already paid in the other country (exemption method)
- **In this way, dependent workers employed in a country and resident in the other one are forced to deal (indirectly, in the country of their work, directly, in the country of their residency) with both Tax Authorities of Italy and Slovenia**

Part 2. Taxation of the frontier dependent workers' income in Italy and in Slovenia

- Despite both, the **«OECD Commentaries on the articles tax convention» (see point 10. of commentary on article 15)** and the **EC Comunication «Removing cross-border tax obstacles for EU citizens» (2010, see point 5.)**, warmly suggest to the relevant countries to adopt them, **no special rules on taxation of frontier dependent workers' income are provided in DTC between Italy and Slovenia**
- **So frontier dependent workers (and the taxation of their incomes) are not ruled as a specific case in the only existing international treaty binding for Italy and Slovenia in the taxation field and there isn't a definition of them (that would be, in any case, different from the Regulation 883/2004 one) binding for both countries, in a so sensitive area, mainly not ruled by EU legislation**
- Frontier dependent workers' income that move between Italy and Slovenia is so taxed in both countries with the abovementioned rules, specific for other categories of cross-border workers

Part 2. Problematic and/or uncorrect applications of the DTC between Italy and Slovenia – 1.

- In other bordering contexts (where they are recognized and defined in the relevant DTCs), dependent frontier workers benefit from a more advantageous situation, as they can deal for their incomes with only one Tax Authority (very often the residence country one)
- In the Italian-Slovenian case, the Tax Authority of country of residence doesn't always knows and very often don't fully understand the rationale and the meaning (also for linguistic and legislative reasons and for an historical lack of collaboration) of the domestic tax legislation and of the documents and certifications released by the Tax Authority of country of work, in order to correctly calculate the deduction from the dependent frontier workers' income
- **So, phenomena of partial double imposition of the dependent frontier workers income are possible and frequent**

Part 2. Problematic and/or uncorrect applications of the DTC between Italy and Slovenia – 2.

- In addition, some dependent frontier workers employed in Italy and resident in Slovenia - forced during 2020 by the pandemic COVID-19 to remain to work as teleworker from their homes for a certain number of days in a month -, have been requested by the Slovenian Tax Authority to pay taxes on their income for the days spent working at home
- But their Italian employer had already fully paid in advance the amount of taxes to the Tax Authority of Italy
- **So their incomes have been doubled taxed, for the portion earned during the days spent to work as teleworkers in Slovenia**

Part 2. Problematic and/or uncorrect applications of the DTC between Italy and Slovenia – 3.

- Predicting this kind of problems, during the summer of 2020 Italy has bilaterally signed 3 additional protocols to the relevant DTCs, respectively with France, with Austria and with Switzerland
- In these additional protocols the relevant two countries carefully agreed that days spent by the dependent frontier workers in the country of residence (till the end of the emergency) by the pandemic COVID-19 had to be considered by the relevant Tax Authorities as spent in the country of work. **In this way, no double taxation of their incomes has been possible**
- It is interesting to note that **all the 3 DTCs signed by Italy, respectively with France, with Austria and with Switzerland, contain a specific rule to define and to tax the income of dependent frontier workers**

Part 3. The so-called «not-resident Schumacker» treatment

- As EU Member States, both, Italy and Slovenia, have mandatorily introduced in their domestic tax legislations a specific treatment, dedicated to those workers (dependent or independent, but very often frontier workers) that, being not-resident, earn the most part of their income in the other country
- If these workers aren't entitled to receive the same kind of tax advantages in the country of residence, they are entitled to receive them in the country of work, at the same conditions of the other residents
- In order to be entitled to receive this kind of treatment in Slovenia, it's necessary for the workers (so-called «not-residents Schumacker») to earn there not less of 90% of the their whole annual taxable income; in Italy this percentage is lower, namely 75%

Part 3. How the entitled workers can obtain the so-called «not-resident Schumacker» treatment in Italy and in Slovenia

- In Italy the not-resident workers self-declare this condition, when they annually declare their incomes to the Italian Tax Authority
- In Slovenia it’s necessary for the not-resident workers to fill-in a form, in which also the country of residence’s Tax Authority have to confirm the correctness of the income information provided by the not-resident workers in Slovenia

Part 3. Problematic applications of the so-called «not-resident Schumacker» treatment

- The Slovenian Tax Authority's demand to the other one (in this case the Italian one) to certify in the relevant form (putting also its stamp and the signature of its officier) the correctness of the income information provided by the not-resident workers it's unrealistic
- The Italian Tax Authority cannot do it, as it would signify that it certifies that every information related to their incomes released by the resident workers in Italy is definitive and correct
- **So, practically, at the current time it's impossible for the workers resident in Italy to obtain the so-called «not-resident Schumacker» treatment in Slovenia**

Part 4. Specific tax advantages, provided by the domestic tax legislations of Italy (current) and of Slovenia (expired), dedicated to dependent frontier workers

- The Italian domestic tax legislation provides a specific tax advantage dedicated to the resident dependent frontier workers, employed abroad in the border areas of bordering and neighboring countries of Italy (so-called «frontier workers deduction»). **If they have their only and continuative job abroad, when they annually declare to the Italian Tax Authority all the incomes earned, they are entitled to deduct € 7.500,00 from the total amount of their annual income**
- A similar advantage existed also in Slovenia till 2013, but it has been declared uncostitutional by the Constitutional Court of Slovenia

Part 4. Problematicand/or uncorrect applications of the so-called «frontier workers deduction»

- Since in the Italian domestic tax legislation the «border areas of bordering and neighboring countries» aren't clearly defined, in some cases the Italian Tax Authority refuses to recognize the so-called «frontier workers deduction» to the applicant
- Similar refusals are due for the uncertain definition of «the only and continuative job» of the resident frontier workers

Part 5. Consequences of the described context on the frontier workers flow

- In this so-described context, regularly employed frontier workers are penalized and discrimined
- If looking for a regular job means to run the concrete risk to be so discriminated, it's really hard pretend the frontier workers claim for their rights, emerging from black-market
- Moreover, since this context in mainly proper of the Italian side of the cross-border labour market, Italy loses a significant portion of its tax and social security revenue
- In addition, the Italian side of the cross-border labour market is affect by important dumping phenomena
- **So, a better regulated framework of the frontier work, also in the field of direct taxation, it's necessary**

Part 6. How to obtain a better regulated tax framework (less ambitious solutions) – 1.

- Increasing the collaboration between the Tax Authorities of Italy and Slovenia
- Amending the already existing DTC, adding a rule that defines who the frontier workers are and that provides for a specific method to tax their incomes, allowing them to deal with only one Tax Authority
- Creating documents, similar to PDs (Portable Documents of social security benefits), attesting the payment by the frontier workers of similar kind of taxes to the another Tax Authority
- Introduction of a common Tax Identification Number or a tax (e-)passport that would ease communication between frontier workers and Tax Authorities and between Tax Authorities themselves

Part 6. How to obtain a better regulated tax framework (more ambitious solutions) – 2.

- But these kind of uncomplete framework could be proper of also other EU cross-border labour markets, so other general solutions could be:
  - Implementing an EU directive (also with enhanced cooperation) aimed at achieving a single tax treatment for cross-border workers inside the EU, coupled with shared allocation of the revenue between the MS of residence and that of work and a **one-stop-shop** where all the workers' tax compliance obligations could be completed in one tax office;
  - EU multilateral treaty on taxation of employment income earned by cross-border workers;
  - expanding the criteria set by the (European Court of Justice) ECJ, by means of interpretation or through the issuing of hard law

  (see a complete set of suggestions on the report of expert group **"Ways to tackle cross-border tax obstacles facing individuals within the EU"** https://op.europa.eu/en/publication-detail/-/publication/4bfee942-ca41-11e5-a4b5-01aa75ed71a1)

Thank you for your attention!