

Tax Treaty Between Brazil and Switzerland: Brazilian Tax Authorities Clarify Application of Income Tax Exemption to Individuals Receiving Pension Proceeds from Abroad

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The Brazilian tax authorities have provided clarifications on the application of the [Brazil - Switzerland Income Tax Treaty \(2018\)](#).

The query raised by the taxpayer related to the application of the income tax exemption for pensions and retirement remuneration received by individuals as of the age of 65 (up to a specific limit), established by article 6 of Law 7.713 of 22 December 1988.

The request for clarification was filed by an individual having Swiss nationality, with a permanent visa since 8 March 2017. The individual receives retirement benefits paid by the Swiss government, directly into a Brazilian bank account. The taxpayer requested the tax authorities to clarify whether he is entitled to the income tax exemption mentioned above, considering that he is 65 years old, has a permanent residence in Brazil and receives retirement remuneration or pension paid by a source domiciled in Switzerland.

The tax authorities stated that, initially, it is not possible to extend the application of the tax exemption to residents in Brazil, aged 65 or over, when they earn income by way of retirement or pension paid by a foreign state, based on articles 41 and 42 of the Civil Code, which provide a definition of "legal persons of public law", as well as on article 111-II of the Tax Code, which establishes that the legislation providing tax exemptions must be interpreted literally.

Nonetheless, the tax authorities considered that [article 19](#) of the [Brazil - Switzerland Income Tax Treaty \(2018\)](#) must be applied in the case at hand, considering that article 98 of the Tax Code provides that treaties and international conventions revoke or modify domestic tax legislation. In this sense, the tax authorities stated that, in order to determine if the income is subject to taxation in Brazil or in Switzerland, it is necessary to identify the nature of the pension received, which was not possible in the case at hand, due to the lack of information in this regard.

Even so, the tax authorities pointed out the fact that Interpretative Declaratory Act No. 8 of 30 May 2007 (*Ato Declaratório Interpretativo* ADI RFB No. 8/2007) stated that the income tax exemption could be extended to apply to residents in Brazil over 65 years old, when the pension payments are made by a public law entity or private pension fund domiciled in a country with which Brazil has a tax treaty in force containing a non-discrimination clause. Considering the above, the tax authorities concluded that the exemption would apply in the case at hand, as the [Brazil - Switzerland Income Tax Treaty \(2018\)](#) contains a non-discrimination clause ([article 24](#)). The tax authorities also stated that the exemption applies from 1 January 2022, date of entry into force of the treaty.

Other queries raised by the taxpayer were not analyzed by the tax authorities, as they did not comply with the requirements for consultation and did not relate to the application of tax laws.

These clarifications were provided through [Ruling \(Solução de Consulta\) COSIT 62/2022](#), published in the Official Gazette on 21 December 2022.

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