居民身份与加比规则

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凡因住所、居所、管理场所或任何类似标准而在缔约国负有纳税义务的人，即为该缔约国居民。新加坡对个人居民的定义，是本部分第VI章所述的183天标准和居住标准。瑞士的标准则是住所，或从事有偿活动时停留三十天、不从事有偿活动时停留九十天。[1]个人同时为两国居民的，第4条按常见的顺序适用：永久性住所、重要利益中心、习惯性居所、国籍，以上均无法确定时通过相互协商解决。[2]对公司而言，加比规则以实际管理机构所在地为准。

加比规则用来决定这样的案例：创始人在楚格保留一套公寓，在新加坡也有一套公寓，一年在两地之间往返。如果两处都是永久性住所，则由重要利益中心决定。瑞士和新加坡税务机关在实践中都表明，它们看重家庭、业务管理和社会联系，而不仅仅是天数。创始人家庭住在楚格、公司从新加坡管理的，其重要利益中心是分裂的，此时由习惯性居所（即天数）决定。一年在两地平均分配时间的创始人，则要看国籍。协定加比规则并不免除客户在“落败”国家国内法上在所有方面的居民身份。它只决定哪一国可以作为协定意义上的居民国征税。落败国保留来源地征税权；就瑞士而言，如果该人依国内法仍为瑞士居民，瑞士还保留财富税，因为协定不涵盖财富税。

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示例

一位创始人于2025年出售了他的新加坡公司，保留新加坡公寓和ONE准证（ONE Pass），2026年在楚格购置一栋房屋，妻子和孩子居住在那里。他当年在瑞士停留170天，在新加坡停留150天，其余时间在外旅行。瑞士自家庭迁入之日起将其视为在瑞士有住所。新加坡则因他当年部分时间居住在新加坡，并依据三年优惠安排，将其视为居民。两处都是永久性住所。重要利益中心在楚格，因为家庭在那里，而且业务已经出售。协定使他在2026年成为瑞士居民。瑞士自他抵达之日起对其全球所得征税，并在协定之外对其包括代币在内的全球财富征税。新加坡只能对来源于新加坡的所得征税，而对投资者来说，这部分为零。他应在取得居民身份之前申请楚格的包干税（lump sum），因为一旦以普通居民身份抵达，包干税虽仍可申请，但第一年的评税将已经作出。

公司的实际管理机构所在地，是决定两个中心之间大多数架构问题的关键。一家新加坡公司如果唯一董事住在楚格，并在那里作出所有决定，则根据第4条，该公司在协定意义上为瑞士居民，瑞士将依《联邦直接税法》（DBG/DFTA）第50条，将其作为在瑞士实际管理的公司对其全球利润征税。补救办法与第10L条（本部分第II章）相同：设有具备实际权限的居民董事，在新加坡召开董事会会议，并以会议记录证明决定是在新加坡作出的。[3]瑞士税务机关对从新加坡管理的楚格股份公司（AG）反向适用同一标准。根据笔者的经验，瑞士各州税务机关比IRAS更快主张实际管理，因为瑞士的全球征税制度使其可得利益更多。

注释

1. Direct Federal Tax Act (DFTA; DBG), SR 642.11，第3条第1–3款（tax residence by domicile or by a stay of at least 30 days with gainful activity or 90 days without）；Income Tax Act 1947，第2(1)条（resident in Singapore）。 ↩

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2. Singapore–Switzerland DTA 2011，第4条（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，第50条（tax residence of legal entities by registered office or effective management in Switzerland）；Income Tax Act 1947，第2(1)条中公司"resident in Singapore"的定义（control and management exercised in Singapore）。 ↩

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