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Swiss tax implications of talent mobility – cross-border movement of employees

The foreign work force is an important factor in Switzerland. Approximately 35 per cent or almost 1.9 million of the employed population in the country are foreign nationals. Over 20 per cent thereof are border commuters, ie, employees living abroad and commuting to Switzerland for work, largely on a daily basis. The importance and complexity of handling the related tax and social security issues in a compliant manner, while also managing permanent establishment (PE), value-added tax (VAT) and customs risks, should not be underestimated.

1. Overview of the tax system

The Swiss tax system is residence based. Taxes are levied at the federal, cantonal and communal level. For individuals, the tax year is equivalent to the calendar year.

Tax-resident individuals are subject to tax on their worldwide income and assets, with the exception of foreign real estate and foreign businesses. The tax rates applied are, generally, progressive.

2. Taxation of employment income

Tax-resident foreign nationals who are permanent residents are taxed in the same way as tax-resident Swiss nationals: they pay no tax at source and their liability is based on the tax return filed.

Employees are subject to tax at source, if they have a Swiss employer and are:

- tax-resident foreign nationals who do not hold a permanent residence permit; or
- non-resident employees, such as daily or weekly border commuters.

Tax-resident foreign nationals who have a foreign employer are not taxed at source but are liable to file a tax return.

The liability to withhold source tax rests with the Swiss employer. This liability applies to legal as well as factual employers.

In the case of employee lending, the Swiss employee lender usually is liable to withhold the source tax. However, if the employee lender is foreign (which is actually illegal), it is the Swiss placement company that is liable to withhold the source tax.

2.1 Scope of taxable employment income

All kinds of compensation received by the employee in connection with their employment is taxable: salary, bonuses, commissions, equity compensation (employee shares and options, restricted stock units (RSUs), etc), allowances (such as child and family allowances) and benefits in kind.

Tax-exempt allowances for business expenses can be agreed with the tax authorities. In the case of qualifying expatriates, certain living expenses, such as Swiss rental expenses and school fees, can qualify as business expenses and would, therefore, be exempt from the source tax basis.

The main differences in the Swiss regime compared to other jurisdictions are:

- private capital gains are income tax exempt. This is relevant in the case of a gain realised by the employee upon the sale of employee shares received, although the grant in itself will be taxable;
- health insurance is an individual responsibility. Such arrangements are not state run, are not part of the social security system and are not a benefit customarily provided by the employer. As a result, any employer-funded health insurance contributions are a taxable benefit. Basic health insurance is mandatory for all residents;
- state social security contributions are not capped. Both employer and employee contributions are levied on the aggregated gross income from the employment relationship;
- in addition to state social security contributions, employees are required to make occupational pension insurance contributions, which provide benefits for old age, death and incapacity. Pension contributions are tax exempt and at least 50 per cent must be employer funded. Pension benefits are taxable;
- another mandatory employee benefit is accident insurance. Non-occupational accidents must be covered by insurance arranged by the employer if the employee works more than eight hours per week; and
- upon leaving Switzerland, third-country nationals (ie, non-Swiss, non-EU and non-European Free Trade Association (EFTA)) may claim a cash pay-out of their pension savings. Subject to a treaty, a partial refund can also be claimed for the Swiss state social security contributions that have been made.

2.2 Income source rules

Just like in most other countries, employment income is generally considered locally sourced if the work is performed in Switzerland.

In the case of employees employed in international transport sectors (shipping, aircraft or ground transport), the employment income is considered locally sourced if the compensation is paid by an employer with a branch or residence in Switzerland.

In the case of qualifying border commuters who are tax resident in one of the countries neighbouring Switzerland, the general rule stating that employment income may be taxed by the country where the work is performed, is reversed or amended if the following applies:

- the treaty concluded between Switzerland and Germany provides that the income earned by qualifying border commuters working in Switzerland is taxable in Germany. Switzerland may only levy a 4.5 per cent flat source tax;

- the treaty concluded between Switzerland and the Principality of Liechtenstein provides that the income earned by qualifying border commuters is exclusively taxable in the country of residence;
- certain Swiss cantons bordering France have concluded an agreement with France stating that qualifying French resident border commuters are not taxed for their work by Switzerland. Instead, those certain cantons receive 4.5 per cent of the border commuters' gross taxable income from France. A new agreement regarding home office work can, however, reverse this rule; and
- the recent agreement concluded between Switzerland and Italy provides that Switzerland may tax 80 per cent of the income earned by qualifying border commuters working in Switzerland. Transition rules apply to those employees who qualified as border commuters before the new agreement entered into force.

2.3 Tax rates

Source tax rates are generally progressive. Depending on the employee's personal circumstances, a different rate applies. The applicable rate differs from canton to canton and is based on either monthly or annual income.

The canton for which source tax has to be withheld is determined by the canton of residence of the employee and not the registered address of the employer.

When applying the tax rate, the employer should consider, inter alia, income from other employment and spousal income, whether such income is extraordinary or recurring or even wholly or partially exempt (such as treaty-protected foreign-source income; equity compensation that has been partially vested abroad). In practice, these situations can prove to be quite complex.

Several examples where flat rates would apply include:

- former Swiss tax-resident employees who have left Switzerland and who exported equity compensation that partially vested in Switzerland are taxable in Switzerland upon exercise at a flat rate of 31.5 per cent; and
- board members of Swiss tax-resident companies are subject to tax at source. The (flat) rate depends on the canton and is generally around 25 per cent. Subject to treaty rules, Swiss social security contributions usually also apply to such remuneration. The Swiss company is liable to withhold, report and issue a salary certificate to the board member.

2.4 Miscellaneous issues

In return for withholding and paying the source tax to the tax authorities, the employer receives a commission representing a percentage of the tax withheld. The Swiss employer is solely and fully liable to the tax authorities in the case of non-compliance, not the employee. The employer only has a contractual right of recourse against the employee.

In the case of employees that work in Switzerland and abroad, there is the risk that they become subject to social security contributions abroad, as well as in Switzerland. In some countries this entails the Swiss employer having to register as an employer or appoint a representative.

Employees who regularly travel abroad for work are advised to carry a certificate of coverage from the Swiss social security authorities.

Another consideration is customs and VAT: travelling across the Swiss border in a company car for business purposes can trigger customs obligations and VAT.

3. PE risks

The definition of a PE in Swiss tax legislation closely follows the wording of the Organisation for Economic Co-operation and Development's (OECD) Model Tax Convention: a fixed place of business where the business of an enterprise is wholly or partially carried out. The Swiss federal court has narrowed the PE definition by introducing quantitative and qualitative criteria. Within Switzerland, the PE risk can be considered low, because one of the guiding principles is to not unnecessarily split the tax liability between cantons. In an international context, given the new OECD guidelines on home office PEs, and the fact that the Swiss federal court follows the OECD guidelines in its rulings, there is a risk of the PE definition widening.

3.1 Dependent agent PE

Scenario A: the employee is employed by a local Swiss subsidiary and concludes contracts on behalf of a foreign group company.

Consequence: employees regularly concluding contracts on behalf of a foreign company could trigger a PE in Switzerland.

Scenario B: the employee is employed by a local Swiss subsidiary in a sales role. The Swiss company provides intra-group marketing and sales support. The employee does not have the power to conclude contracts.

Consequence: providing marketing and sales support or other kinds of supporting services would usually not trigger a PE in Switzerland.

VAT: the liability to register for VAT is determined to be independent of the entity's corporate income tax status. A foreign company can be liable to register for Swiss VAT even if the Swiss activity does not qualify as a PE for corporate income tax purposes.

3.2 Fixed-place PE

In regard to home offices in Switzerland, the following applies:

- in Switzerland, a home office would generally not qualify as a fixed place of business, as long as the employer is neither the owner nor a tenant of the employee's home;
- in international cases, the Swiss federal court tends to follow the OECD's guidelines. To date, no ruling has been published applying the new OECD guidelines on home office PEs to a Swiss-based home office. However, the risk should be managed; and
- in the case of a foreign employee resident abroad and working from home for a Swiss employer, the new OECD guidelines pose a risk that home office work can trigger a PE in the home country. This risk must be managed: for example, by including certain rules in the employment agreement. If a PE is assumed, this could lead to the Swiss employer being liable for VAT in the employee's home country.

Building sites, construction or installation projects lasting more than 12 months generally qualify as a PE, according to Swiss unilateral tax legislation.

3.3 Service PEs

Switzerland has not enacted specific domestic law in regard to service PEs. Unless there is a fixed place of business, Switzerland does not generally assume that a PE exists.

For VAT purposes, providing services through Swiss-based employees can lead to a registration requirement.

4. Exit tax/departure rules

Switzerland has not enacted specific exit tax legislation or departure rules for individuals.

When employees leave Switzerland, the main consideration is the deferred taxation of equity compensation. The rules apply as follows:

- equity compensation that is exercised abroad and has at least partially vested during the Swiss employment is taxable;
- the gain realised at exercise is subject to Swiss taxes and social security contributions on a pro rata basis (Swiss vesting period /total vesting period);
- the former Swiss employer is liable to withhold and report the tax and social security contributions withheld and to provide a salary certificate to the employee; and
- a flat rate of source tax applies of 31.5 per cent.

5. Recent developments and case law

Recent developments have occurred concerning border commuters, namely the taxation of home office work. In 2024, Switzerland enacted federal legislation providing the legal basis for Switzerland to tax so-called 'telework', ie, work performed from the foreign tax residence of a border commuter. Subject to an applicable tax treaty, such telework may

be taxed as if the work was performed at the employer's offices located in Switzerland.

In this regard, Switzerland has recently concluded bilateral agreements with most of its neighbouring countries concerning border commuters working from home. The various agreements provide that a certain percentage of work performed at home is taxed as if it were performed in the country of their work. A recent agreement with France, for example, allows Switzerland, within certain limits, to tax employees working from their home office in France. The new home office rules, however, require the employer to provide detailed time and location reporting for each individual.

This year, Swiss voters have adopted federal legislation introducing the separate taxation of married couples. Today, married couples are taxed jointly. While it is expected that individual taxation will also affect the taxation of international employees, the date when the new separate taxation regime will enter into force has not yet been fixed.

6. Key takeaways

In most cases, our experience tells us that the best structure to use for a foreign business looking to establish a Swiss presence, is, in the mid-term, to establish a subsidiary or branch. Other solutions, such as secondments or employee lending, tend to only work effectively in the short term, or in situations involving nationals from specific countries in the EU, or nationals from countries with whom Switzerland has a bilateral treaty.

The major risks for employers include:

- factual employer risk: for example, in the case of secondments. This risk is not limited to a Swiss group company but can also extend to the Swiss-based customer;
- sole liability for the correct withholding of source tax: for example, in the case of deferred taxation of equity compensation;
- PE risk: for example, due to the new OECD guidelines on home offices;
- social security risk: for example, employees who are resident in an EU country and whose home office usage exceeds 25 per cent of their time, become subject to social security contributions in their home country, making the Swiss employer liable for withholding the relevant social security contributions, according to the home country rules; and
- taxation of home office work: new rules regarding the taxation of qualifying border commuters working in their home office have introduced extensive recording and reporting requirements. The fact that different rules apply in regard to each of Switzerland's neighbours does not make the relevant administration of such taxes easier.

Major risks for employees include:

- risk of double taxation and double social security costs for foreign employees living in Switzerland and working for a foreign employer; and
- border commuters: risk of being taxed and subject to social security in the home country due to home office work. Since Switzerland is generally a low-tax country, becoming liable to tax in the country of residence would be viewed as a risk by most border commuters.

Key planning considerations:

- manage the home-office PE risk: conclude an employment agreement in the case of non-resident employees which sets out their home office working rules and consider the VAT ramifications of a PE in the employee's home country;
- manage the source tax liability risk: monitor the deferred taxation of equity comp risk (track equity compensation);
- manage the social security risk: monitor days spent working from home and be aware that for social security purposes the home country could qualify not only home office days as work from home;
- manage the factual employer risk: consider that this risk can also extend to the Swiss based customer. Pay attention when setting out the employment and engagement rules; and
- manage the customs and VAT risk: consider possible customs and VAT consequences when employees have the use of a company car.