

GMS Flash Alert

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Switzerland - Revising the Taxation at Source Rules for Employment Income

In December 2016, the Swiss parliament adopted new rules¹ for the taxation of employment income for individuals who are:

- nonresidents of Switzerland, or
- residents of Switzerland but have no Swiss citizenship, (long-term residency) C permit, or resident spouse with a Swiss citizenship or C permit.

The changes include how refunds of Swiss social security contributions are taxed, the ability of Swiss residents subject to taxation at source to file a tax return, and how remuneration paid to board members who are nonresidents of Switzerland will be treated for tax purposes.

WHY THIS MATTERS

- The new rules, once they take effect, could have implications for compensation packages for assignees, in particular, for those who serve on boards of directors.
- Taxpayers will have the option to file a tax return rather than be subject to taxation at source, giving them more flexibility and more control over their tax affairs.
- However, under certain circumstances, the ability of certain nonresident taxpayers to claim deductions will be significantly curtailed, which could raise their tax burdens – which may in turn make the tax-related costs of their international assignments increase.
- Nonresident employees will no longer be able to file a source tax adjustment request in order to claim deductions from source tax, unless a tax treaty provides for specific deductions or unless they fulfill the criteria of the so-called

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“90% rule.” Further exceptions may apply based on case law by the Federal Court. As a consequence, nonresident employees may end up with no possibility to claim deductions – such as for professional expenses – either in Switzerland or in their home country.

Background

In recent years, the Federal Court of Switzerland found, in several cases it considered, legal provisions in Swiss tax law where the taxation at source rules were not in line with the European Union Agreement on the free movement of people (in effect since 1 June 2002). The predominant aim of the revision to the taxation at source rules is therefore to align Swiss tax law with the EU Agreement.

Key Aspects of the New Rules

Under the new provisions, there will be the following important changes:

- Refunds of Swiss social security contributions (in lieu of a pension entitlement) will become subject to taxation at source;
- Explicit provision to confirm taxation at source of Swiss board members’ remuneration paid to nonresidents of Switzerland that is not paid directly to the board member, but rather paid directly to the assigning company (inter-company payment);
- Both resident and nonresident employees fulfilling the criteria of the so-called 90% rule can claim deductions, such as for professional expenses, but only if they are filing a tax return;
- Residents of Switzerland subject to taxation at source can apply to file a tax return irrespective of their level of income – with the obligation to file a tax return in subsequent years as well (in which case source tax will be considered as an advance payment); and
- Nonresidents of Switzerland subject to taxation at source can apply for a tax return filing in certain cases provided for in a double taxation treaty, or in situations where more than 90% of their total income – including non-employment and spouse’s income – is subject to taxation in Switzerland (the 90% rule).

In addition, according to the new taxation at source provisions, there shall be no distinction between EU citizens and non-EU citizens, with the result that non-EU citizens can also benefit from the new provisions.

KPMG NOTE

Key Take-Aways

- Companies assigning board members to Swiss entities may need to consider reviewing their board member compensation structures and policies in order to comply with the new provisions.
- Under the new rules, standard deductions continue to be taken into account in the source tax rates. In order to claim additional deductions, a tax return has to be filed.

- With the option to file a tax return, there should be no more material disadvantages for resident employees subject to taxation at source. However, there may be cases where taxation at source is more beneficial than filing a tax return.
- Nonresident employees subject to taxation at source who do not fulfill the criteria of the 90% rule (or equivalent, yet to be determined in an ordinance or by the Federal Court) may no longer be able to claim deductions for professional and other expenses under the new law.
- On the other hand, nonresident employees who are citizens of an EU country may already apply for a tax return filing if 90% of their total income is subject to taxation in Switzerland and if a tax return filing is more beneficial for them.

There are cantons (such as St. Gallen and Basel-City) that have already a 90% rule in place.

Next Steps

It appears unlikely that there will be a petition for a referendum; therefore, the Federal Tax Administration will likely issue a new ordinance and a circular in summer 2017 with more detailed rules for the implementation of the new provisions and the date when they become effective (which may be 1 January 2020).

FOOTNOTE:

1 See (in German) [Bundesgesetz über die Revision der Quellenbesteuerung des Erwerbseinkommens](#).

Also, see (in French) [Loi fédérale sur la révision de l'imposition à la source du revenu de l'activité lucrative](#).

And (in Italian), [Legge federale sulla revisione dell'imposizione alle fonte del reddito da attività lucrative](#).

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