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Switzerland – Restrictions Proposed to Expatriate Ordinance Could Raise Assignment Costs

by KPMG AG, Zurich (KPMG AG in Switzerland is a KPMG International member firm)

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The Swiss Federal Council released proposed changes to the Expatriate Ordinance¹ on April 10, 2014. While the Expatriate Ordinance should continue to apply, the definition of an expatriate will be narrower and fewer costs will qualify as expatriate deductions.

Why This Matters

With a narrower definition of who qualifies as an expatriate and with fewer assignment-related costs qualifying as tax deductible, the cost of assigning employees to Switzerland could increase. Nevertheless, where provision is made for careful planning that considers an appropriate assignment structure, there could still be some tax advantages (e.g., deductions) available for expatriates – thereby, helping to maintain Switzerland's appeal as an attractive assignment location.

Background

The original federal Expatriate Ordinance came into force in 2001 and allowed expatriates to claim certain deductions such as relocation, housing, and schooling costs. Subsequently the district tax court of Zurich ("Steuerrekurskommission") questioned in one of its decisions² the Expatriate Ordinance's legality, and in particular, criticized the unequal treatment of employees moving *within* Switzerland (who are not entitled to expatriate deductions) versus employees moving *into* Switzerland (who may be entitled to expatriate deductions). Various parliamentary initiatives also questioned the Expatriate Ordinance, which prompted the Federal Council to commission a working group, consisting of federal and cantonal tax inspectors, tasked with reviewing the current Expatriate Ordinance. The findings of this working group form the basis of the proposed changes.

Main Changes

Firstly, the definition of an 'expatriate' is to be restricted to an "executive employee or a specialist, who is temporarily assigned to Switzerland." This means that the expatriate must keep his or her home country employment contract during the assignment to Switzerland. Executive employees and specialists who are on a temporary local contract will no longer qualify for expatriate deductions. At the moment, many companies implement temporary local contracts, particularly for EU citizens, to facilitate the process of obtaining a work permit.

Secondly, the conditions for claiming an expatriate deduction for housing costs are to be tightened. A housing deduction for Swiss rental accommodation will only be possible if the expatriate maintains his home country housing, which must be available for personal use. As soon as the expatriate rents out his home country accommodation, no Swiss housing deduction can be claimed (even if the rent in Switzerland is higher than the rental income received in the home country).

Thirdly, the conditions allowing deductions for school fees for minor children will also become more restrictive. Under the proposed changes, the employer would have to include all payments made to a school on behalf of an employee on the employee's salary certificate. In addition, only tuition costs would be deductible. Costs of school meals, transport, and after-school care would no longer be tax deductible. The proposed changes also provide for the cancellation of the cooperation agreements with international schools. This would mean that such school fees would only be deductible for a period of five years, whereas previously school fees paid under a cooperation agreement could be paid tax-free beyond five years.

Finally, the proposed new Ordinance clarifies the employer's reporting requirements on the Swiss salary certificate for expatriate payments.

KPMG Note

- If the proposed changes are implemented, then any foreign employees with a temporary **local** Swiss contract would no longer qualify for expatriate deductions.
- The proposed changes are subject to review and amendments from the different stakeholders (cantonal authorities, business associations, etc.). Changes in the legislation should be anticipated, although the date these provisions would enter into force is still open. The KPMG International member firm in Switzerland will endeavor to keep readers informed of any further developments.

Footnotes:

- 1 See: <https://www.news.admin.ch/message/index.html?lang=de&msg-id=52625> .
- 2 Court decision of 23 October 2007 (2ST.2006.63 / 2DB.2006.399).

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