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Switzerland – Falling Euro Against Franc Has Assignment and Immigration Repercussions

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

Following the Swiss National Bank's recent decision to end the three-year cap of 1.20 Swiss francs per euro, Switzerland's currency jumped by nearly 30 percent against the euro and 18 percent against the dollar. The fluctuation of the Swiss franc against major currencies has an impact on assignees and their compensation, as well as compliance with Swiss immigration law.

Why This Matters

According to Switzerland's Federal Act on Assignments (*Entsendegesetz; EntsG*) every inbound international assignee must be paid a salary that meets Swiss reference salary requirements in relation to their time working in Switzerland. Salaries currently paid to assignees in euro (€) or other major currencies bear the risk of not meeting Swiss salary requirements and therefore not meeting immigration compliance requirements anymore.

Obligation to Meet Swiss Salary Levels

According to Swiss immigration law, non-Swiss companies providing services in Switzerland must compensate employees temporarily working in Switzerland (so called "assignees"; German: *grenzüberschreitende Dienstleister / Entsandte*) at a level which at least equals a Swiss reference salary for the relevant industry, profession, and geographic area in question.

There is no blanket minimum wage in Switzerland (with the exception of certain industries where generally binding collective labor schemes or cantonal standard employment contracts apply). The relevant salary level must be assessed on a case-by-case basis using criteria such as:

- role/activities/responsibilities when working in Switzerland;
- age;
- job grade;
- weekly number of hours of work;
- qualification level (highest educational and professional certificates);
- years of service.

Each of Switzerland's 26 cantons apply their own reference salary levels and assess the salary level they deem to be appropriate at their own discretion.

Generally, cantons with a higher level of costs of living apply higher minimum salaries than cantons in which cost of living is lower. All cantons, however, base their assessment on their statistical reference salaries for comparable Swiss employees in their canton.

Where the Swiss authorities deem a base salary paid in the home country to be too low compared to the Swiss reference salary level, the employer is required to pay additional allowances (referred to as assignment allowances) to close the gap for the duration of the assignment in Switzerland (i.e., to bring the base salary up to Swiss standards). On top of this total remuneration (i.e., base salary and assignment allowances), assignment-related expenses such as the costs of accommodation, meals, and trips, while working in Switzerland must also be borne by the employer (or by the host company, as the case may be) in order to comply with Swiss immigration law.

For compensation paid in a foreign currency, the competent immigration authorities usually apply the official currency exchange rate of the Federal Tax Authority (FTA) of the day on which they process the work permit application.

Labor Inspection Authority Applies Monthly Average Exchange Rate

Labor inspection authorities perform random inspections of foreign workers and their employers. During such inspections, the pay-slips of foreign employees and other documents are examined. With regards to foreign currencies, the labor inspection authorities apply the monthly average exchange rate of the FTA when assessing the compliance of salaries and expenses paid to the employees in question.

KPMG Note

During periods of high currency exchange volatility, there is increased risk that total compensation, which had been properly calculated or converted to Swiss francs at the immigration application stage, ends up being insufficient at the time of inspection.

Risks Concerning Failure to Comply with Swiss Salary Levels Due to Fluctuating Exchange Rates

If a labor inspection reveals that salaries paid to inbound assignees are too low based on Swiss standards, the employer may be sanctioned for violating Swiss immigration law. Sanctions range from fines to being banned from providing services in Switzerland.

KPMG Note

Apart from the threat of penal consequences, it is important to be aware that non-adherence with Swiss salary requirements may also cause a great deal of administrative work since the employer will typically have to engage in time-consuming dealings with Swiss authorities including the filing of comprehensive documents and frequent lengthy discussions. Furthermore, the company may be required to make salary back payments (German: *Lohn-Nachzahlungen*), as well.

Measures to Counteract Potential Risks Arising from Fluctuating Exchange Rates

To mitigate the risk of sanctions and extra administrative work as a result of non-compliance with Swiss salary requirements, employers should consider the following steps:

- For any international assignment into Switzerland, continually assess the non-Swiss franc denominated salaries paid to assignees against Swiss reference salary requirements – and do so by applying the monthly average exchange rate issued by the FTA at the end of every month. If necessary, increase the salary, retroactively. This holds particularly true during periods of high currency volatility.
- Be aware, however, that repeated payment of a higher total compensation due to exchange rate movements – depending on the applicable employment laws – may be considered a salary increase and thus may lead to an entitlement on the part of the employee to receive the higher compensation amount even if the exchange rate shifts in the opposite direction (currently, in case of a weakened Swiss franc).
- In view of the above and prior to the assignment, an employer should determine that a written agreement is made with the employee which specifies that, in the event of currency exchange rate movements, adjustments to the assignment allowances being paid to the employee for the sole reason of bringing compensation into line with Swiss reference salaries may be made at any time and without the employee's consent in case of exchange rate movements. Note: the lawfulness and enforceability of such an agreement under applicable laws should be checked in advance by the employer with its legal counsel who may recommend that this be evidenced in the assignment policy or assignment letter.

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