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Switzerland – Restrictions to Expatriate Deductions Come into Force January 1, 2016

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

The Swiss Federal Council released the final version of the revised federal Expatriate Ordinance¹ on January 16, 2015². While the Expatriate Ordinance is expected to continue to apply, the definition of an expatriate will be narrower and fewer costs will qualify as expatriate deductions.

Why This Matters

Under the Expatriate Ordinance, certain costs incurred as a result of a temporary assignment to Switzerland (such as double housing costs and school fees) can be considered tax deductible. With a narrower definition of who qualifies as an expatriate and with fewer costs qualifying as tax deductible, the cost of assigning employees to Switzerland will potentially increase. Nevertheless, with appropriate analysis and planning, there could still be some tax deductions available for expatriates – thereby, helping to maintain Switzerland's appeal as an attractive assignment location.

Background

In May 2014 the Federal Council released proposed changes to the Expatriate Ordinance, after various initiatives had questioned the legality of the Expatriate Ordinance and many parties had 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). Subsequently, over 40 different parties and business associations commented on the proposed changes which resulted in the now released final version of the new Expatriate Ordinance.

As noted above, there has been some opposition domestically to the Ordinance because of a common belief that it discriminated against moves within Switzerland. To make the Ordinance more palatable, from a public opinion perspective, the government has implemented new limitations for the Expatriate Ordinance that restrict the number of employees eligible for additional expatriate deductions. The government had to balance this domestic perception against its desire to maintain Switzerland's place in the global marketplace as a top assignment destination.

Main Changes

Firstly, the definition of an expatriate has been restricted to an “executive employee or a specialist, who is temporarily assigned to Switzerland by a non-Swiss employer.” This means that the expatriate must keep his or her home country employment contract during the assignment to Switzerland. If the expatriate commences a new local employment with an employer in Switzerland, he or she will not qualify for expatriate deductions. However, an employee making a local-to-local move into Switzerland within the same multinational group may still qualify as an expatriate provided that the local contract is limited to five years and the home country contract contains a “re-employment” clause for when the assignment ends.

Secondly, the conditions for claiming commuting and relocation costs have been tightened. In the past, expatriates living outside Switzerland were able to deduct their *ordinary* commuting expenses between their home country and Switzerland. Under the new regime, only their *necessary* costs will be deductible. Similarly for expatriates relocating to Switzerland, only the *necessary* costs for relocation will be deductible going forward (e.g., pre-assignment visits will no longer be deductible). The criteria for what costs are deemed necessary will be determined by each canton separately.

Thirdly, the expatriate deduction for housing costs has been limited. A housing deduction for “reasonable cost” of Swiss rental accommodation will only be possible if the expatriate maintains his or her home country housing, which must be available for personal use. As soon as the expatriate rents out his or her 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). The amount of rent which can be considered as a “reasonable cost” will continue to be determined by each of the cantonal tax authorities. The lump-sum deduction of CHF 1,500 per month (which under the current ordinance can be claimed in place of actual housing costs / relocation costs) will only be permitted if the expatriate maintains his or her home country housing.

Fourthly, the conditions allowing deductions for school fees for minor children have also become more restrictive. Under the new Ordinance, school fees are deductible if the mother tongue of the minor children is different to the language taught at public schools at the place of residence. Only tuition costs will be deductible (costs of school meals, transport, and after-school care will no longer be tax deductible). The proposed changes also provide for the cancellation of the cooperation agreements with international schools from a tax point of view. This would mean that school fees would only be deductible for a period of five years, whereas previously school fees paid under a cooperation agreement were deductible beyond five years.

Things to Consider

The new Expatriate Ordinance will come into force on January 1, 2016. Expatriates who qualify under the current Expatriate Ordinance will keep their status until the end of their temporary employment in Switzerland (regardless of whether they have maintained a home country employment contract). Nevertheless, the more restrictive deductions will also apply to them from January 1, 2016.

KPMG Note

- Employers should review their assignment letters to determine that their employees assigned to Switzerland are able to qualify as expatriates for Swiss tax purposes.
- The different cantons are likely to issue updated ordinances for cantonal/communal tax purposes. These guidelines could mirror the updated federal Expatriate Ordinance.

Footnotes:

- 1 See: <https://www.news.admin.ch/message/index.html?lang=de&msg-id=55929> .
- 2 See our earlier report in [Flash Alert 2014-083](#) (August 27, 2014) on the proposed changes.

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