

GMS Flash Alert

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Switzerland – Revision of Withholding Tax Ordinance Will Come into Effect in 2021

The Swiss Federal Council released a circular¹ on the revised federal withholding tax laws, providing a commentary and practical guide to these new rules. The changes to the law became necessary after several Federal Court decisions concluded that the given withholding tax rules fell short in particular in regard to equal treatment of taxpayers and the freedom of movement regulations in respect of the European Union (EU).² The aim of the revised federal withholding tax law is to address these points.

One of the major changes is the introduction of the quasi-resident status in Swiss tax law, permitting nonresidents to file a Swiss tax return if certain conditions are met. In addition, Swiss tax residents earning less than CHF 120,000 per annum will be able to file a Swiss tax return.

Additional amendments concern formal changes on a procedural level, as well as subsequent adaptations in other ordinances and specifications to the technological aspects of the reporting duties. These are federal rules and will therefore supersede any cantonal rules.

The new regulations will come into force on January 2021.

WHY THIS MATTERS

In the past, Swiss non-tax residents and L- and B-Permit holders earning less than CHF 120,000 gross per annum were excluded from filing Swiss tax returns. The new rules will permit all Swiss quasi-residents and employees earning less than CHF 120,000 gross per annum to request a subsequent ordinary tax assessment via the tax return filing process. Quasi-residents are employees who are not domiciled in Switzerland and who generate more than 90 percent of their worldwide income in Switzerland.

The reforms aim to reduce potential inequalities between foreigners subject to Swiss tax withholdings and Swiss citizens or C-Permit holders who are not subject to the same tax regime.

In particular, the procedure for the source tax correction request and the supplementary tax assessment for nonresidents deemed to be quasi-residents who want to claim additional deductions will be replaced by the ordinary assessment by means of filing a Swiss tax return. Consequently, the taxation of this category of employees subject to source tax withholding will change fundamentally in Switzerland.

There are several other modifications in the withholding tax ordinance that will require employers to adapt their processes and systems.³

Expansion of Ordinary Tax Assessment

There are three categories of individuals who are affected by the expansion of the ordinary tax assessment. The categories and the respective consequences are outlined below.

Quasi-Residents (Nonresidents with 90 Percent Global Income in Switzerland)

The inclusion of the status of “quasi-tax resident” in Swiss law goes back to a Federal Court judgement of 26 January 2010 (BGE 136 II 241). At that time, the Federal Supreme Court stipulated that under certain circumstances the Swiss withholding tax regime was not in line with the Agreement on the Free Movement of People with the EU and was discriminatory.

According to this precedent, Switzerland must grant those deemed to be quasi-residents the same option to claim tax deductions through a tax return as is allowed for Swiss tax residents. In order to qualify as a quasi-resident, it is required that at least 90 percent of the taxpayer’s gross worldwide income is taxable in Switzerland. To determine the gross worldwide income, one needs to consider spousal income and potentially other household income. If the 90-percent threshold is met, it is possible for these quasi-residents to request a subsequent ordinary tax assessment by filing a Swiss tax return so that they can claim additional deductions such as double housing costs.

Conversely, if the 90-percent threshold is not met, nonresidents will no longer be able to file a Swiss source tax correction for any deductions.⁴ The Swiss source tax withheld will be their final tax liability.⁵

Upon request, the competent tax authority will check during the assessment procedure – that is, after the filing of the tax return – whether the requirements to apply as a quasi-resident are met.

Nonresident International Commuters

The quasi-resident rules will also have an impact on international commuters, e.g., nonresident taxpayers who are not quasi-resident. Under the new regulations, in future, international commuters will not be able to claim additional professional expenses (doubling housing, commuter costs) through a Swiss source tax correction request. These expenses can be claimed based on the tax laws of their country of residence. However, in the event that work-days are also being taxed in the country of residence, the taxpayer will still be able to file a Swiss source tax correction request to avoid double taxation of this employment income based on double taxation treaty rules. International commuters will not have the option to file a Swiss tax return.

According to circular 45 (*Kreisschreiben 45*), the tax authorities may decide at their own discretion to review an individual case to assess if the tax return can be filed in lieu of a Swiss source tax correction request – in which case further deductions could be claimed (e.g., commuting costs, double housing).

Swiss Tax Residents Earning Less Than CHF 120,000

There is a second category of individuals affected by the expansion of the ordinary tax assessment process: Swiss tax residents subject to source tax withholdings earning less than CHF 120,000 gross per annum. In the past, Swiss

residents subject to Swiss source tax withholding but earning less than CHF 120,000 gross per annum were considered to be “source tax final” and were not permitted to file a Swiss tax return.

From January 2021, these taxpayers will have the ability to file a Swiss tax return upon request. In order to file a Swiss tax return, the individual will have to file an application with the respective tax authorities by 31 March of the year following the tax year. A request for tax return filing cannot be retracted. Filing a Swiss tax return has the advantage of allowing a taxpayer to claim actual costs over and above the standard deductions (e.g., pension fund buy-backs). However, filing a tax return may otherwise lead to a higher income tax liability. Furthermore, if an individual decides to file a tax return in a given year, the obligation to file a tax return remains for all subsequent years.⁶

Additional Modifications of the Revision

Along with some minor other changes, the revision of withholding tax ordinance includes the following:

- “Economic employer” concept: The principle of the economic employer has been included in the law as a Swiss withholding tax category. In such cases, Swiss source tax would be due even if the formal employer is not domiciled in Switzerland.
- B-permit holders switching to C-permit: Under the revised withholding tax rules, in case of a change from the source tax withholding regime to ordinary taxation, a full-year tax return will be required.
- Abolition of “ancillary employment” withholding tax rates: The separate source tax tariff for “side income” will be abolished. All employers of a person subject to withholding tax with more than one gainful employment will have to withhold source taxes on such employment income at ordinary withholding tax rates.

FOOTNOTES:

1 See (in German): <https://www.estv.admin.ch/estv/de/home/direkte-bundessteuer/direkte-bundessteuer/fachinformationen/kreisschreiben.html> .

2 For a prior GMS *Flash Alert* report on this topic, see GMS [Flash Alert 2017-032](#) (21 February 2017).

3 See (in German) *Änderung bei der Quellen treten 2021 in Kraft* at: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-70404.html> .

4 A sourcing of work-days based on double taxation rules still applies. But additional deductions of professional expenses are no longer possible.

5 See (in German) *Totalrevision der Verordnung des EFD über die Quellensteuer bei der direkten Bundessteuer (Quellensteuerverordnung; QStV; SR 642.118.2* at: <https://www.newsd.admin.ch/newsd/message/attachments/51973.pdf> .

6 In addition to footnote 5 above, also see (in German): <https://www.estv.admin.ch/dam/estv/de/dokumente/bundessteuer/kreisschreiben/2004/1-045-D-2019.pdf.download.pdf/1-045-D-2019-d.pdf> .

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