

GMS Flash Alert

2020-135 | March 31, 2020



Switzerland – COVID-19: Tax, Social Security, Immigration Implications for Cross-Border Workers

Efforts to contain the 2019 coronavirus (COVID-19), declared by the World Health Organization as a pandemic, have led many employers (whether voluntarily or following government instructions) to change their normal working environment and operating procedures. To help ensure the health of their employees and also the wider public, a full-time company-wide home office policy has been implemented.¹ Such COVID-19 pandemic response efforts can, however, raise complex tax, social security and immigration considerations for individuals and employers.

WHY THIS MATTERS

While tax and social security issues may not be at the forefront of employers' minds in the current environment, employers should be aware of the implications when developing and implementing policies in response to the COVID-19 pandemic in order to mitigate any unwelcome consequences for themselves and their employees. The tax consequences can be costly and give rise to special scrutiny by the tax authorities. And the sudden unplanned changes in immigration status because an employee has come home early, or has been moved to another country deemed "safer," or works from home in the host country, but the clock is running out on his visa, can make things tricky.

Social Security Considerations

As a general principle and according to European Union (EU) Regulation 883/2004, a frontier worker from an EU or European Free Trade Association (EFTA) member state, who only works in one state, is subject to social security in the state of employment as long as the employee does not perform a substantial amount of his work activity (defined as

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more than 25 percent of their activity) in his country of residence. Daily cross-border commuters who live in one EU member state, work in another, and return home every night are typically covered for social security purposes in the country where they work.

Due to the current circumstances, employees – including cross-border workers – are obliged to work from home, with some exceptions. This situation presents employees and employers with new challenges when it comes to international social security rules. Based on the guidelines issued by Swiss cantonal and federal authorities,² cross-border workers will remain subject to social security in Switzerland during the “quarantine”-time in which they are required to work from home for a certain amount of time. Their social security status will remain the same and they will not be considered as multi-state workers in the context of Art. 13 of the EU regulation 883/2004. No A1-form has to be requested to confirm this position.

KPMG NOTE

The Swiss authorities have informed their European counterparts of this position and we are currently working on the basis that this is tacitly accepted by the foreign authorities as well.

As the length of the quarantine period is currently unknown, the situation could change in the future and different countries’ understanding of the status for cross-border workers may change accordingly. It is assumed that if the quarantine time exceeds several months, then the authorities may consider the long period in one’s home office as an assignment for the affected employees. In such a case an A1-form could be requested retroactively to guarantee the “subordination” of social security in Switzerland.

In general, the future situation regarding social security remains unclear, which is why it is recommended to wait the situation out and reassess in due time.

Individual Taxation Considerations

The taxation of cross-border commuters and international commuters living abroad but commuting to Switzerland for work on a daily or regular basis may be affected by COVID-19. Based on the “place of work” principle stated in double taxation treaties, the home countries of cross-border commuters have, in principle, the right to tax third-country and home-country work-days. When employees are required to work in their home country more often than they would have usually done, their home country would have the right to tax these additional home office work-days. Employees would be subject to home income tax rather than the income tax of their actual country of employment. Payrolls would have to be adjusted accordingly.

KPMG NOTE

However, no official statement or guidance has been published by the Swiss authorities as of yet. Therefore, given the extraordinary circumstances, we recommend continuing the status quo payroll set-up until we hear more from the authorities. For cross-border commuters from Germany, the Swiss source tax rate of 4.5 percent continues to apply and for international commuters, the standard source tax rates apply.

Corporate Taxation Consideration – Permanent Establishment Risk

A permanent establishment (PE) is a fixed place of business which creates a taxable presence outside of the company's state of residence for income or value added tax purposes. A home office may meet the conditions to be defined as a fixed place of business, thereby potentially exposing employers to corporate tax risks through the enforced home office period. However, a move to a home office for a short period of time typically is not sufficient to create a permanent place of business.

KPMG NOTE

For now, we consider the risk of creating a permanent establishment through sending employees to work in their (foreign) home office as small. Having said this, where senior executives carry on a business (e.g., sign contracts on behalf of a Swiss entity) from their home office outside Switzerland, these activities may give rise to a permanent establishment. In such circumstances, we recommend that additional advice be sought to identify potential mitigating actions that can be undertaken (e.g., have these senior executives work from Switzerland wherever possible).

Our office will continue to monitor such matters closely. We will endeavor to keep readers of GMS *Flash Alert* posted on any important developments in regards to PE in the current environment as and when they occur.

Immigration Considerations

In an attempt to confine the further spread of the virus, Switzerland has decided to restrict the entry to Switzerland for travellers from all countries for a period lasting six months, with the exception of Liechtenstein.³ There are exceptions possible, for example, for persons who live or work in Switzerland. (For prior coverage, see GMS [Flash Alert 2020-103](#) (24 March 2020).)

Travellers should now consider whether entering Switzerland is a necessity, even if in possession of a valid permit. The border police have the authority to question travellers regarding the reason for their entry. If no legitimate reason or immediate necessity is evident, entry can be denied. Any decision to travel to Switzerland should be made in consultation with your travel adviser and qualified immigration counsel.

FOOTNOTES:

1 For information on the Swiss federal government's steps to address the COVID-19 situation, see in [English](#); [French](#); [German](#); [Italian](#); [Romansch](#).

2 See the Swiss social security [site](#) (in German, French and Italian).

3 See the Swiss Federal Office of Public Health [webpage](#) (available in English, Swiss-German, French, and Italian). Also, see the State Secretariat for Migration [site](#) (in English, as well as Swiss-German, French, Italian) for travel restrictions for individuals from outside the Schengen Area.

Additionally, for information on measures taken by the Swiss federal government to combat COVID-19, see the U.S. Embassy in Switzerland [webpage](#).

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Contact us

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* Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.

The information contained in this newsletter was submitted by the KPMG International member firm in Switzerland.

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