

GMS Flash Alert

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Switzerland – Updating Tax Compliance Rules for French Frontier Workers

The amicable tax agreement between Switzerland and France agreed during the pandemic, which allows cross-border workers to work from home without affecting their tax status, has been extended again, until 31 December 2022.¹

Switzerland and France have extended their accord of 13 May 2020.² This agreement allows French cross-border workers at Swiss employers in any canton to maintain their existing tax status while working from home in France. These measures, enacted at the start of the pandemic, have been extended multiple times, but this is expected to be the final extension. As such, the existing accord is to end on 31 December 2022, according to the French tax authorities.

Also, on a separate but related note, France, which has embarked on its new legislative agenda, has published its draft 2023 Finance Law³ which may be of interest to Swiss employers. The agenda includes a proposal to simplify the withholding tax procedure for certain non-French employers – which we discuss, along with its implications, below.

WHY THIS MATTERS

The agreement stipulates that, in the context of the ongoing COVID-19 health emergency and the establishment of new work patterns during this period (tele-work, remote work, etc.), frontier workers who are not eligible for the specific frontier worker regime will not suffer adverse consequences if they work from home or a remote location.

The extension of the agreement should provide some relief and comfort for affected individuals and their employers.

The proposal to simplify the withholding tax procedure for certain non-French employers is expected to simplify compliance for the employers concerned. Where the conditions are met, foreign employers will no longer be subject to the withholding procedure. However, employees will be subject to a system of tax pre-payments, which will need to be carefully managed in the case of assignees, particularly those for whom the employer pays the income tax via a tax equalisation policy.

Swiss-French Agreement Extended

Once the amicable agreement expires on 31 December 2022, as the law stands, if a Swiss employer were to allow a cross-border frontier worker to work from home in France, for instance one day a week (for a full-time employee), then 20 percent of the employee's remuneration would be taxable in France. However, this raises the question of how this obligation can be fulfilled if Swiss employers are legally constrained from withholding tax imposed by a foreign state. (More on this below.)

That said, France and Switzerland have jointly recognised the importance of defining a new permanent taxation regulation in order to keep pace with the rapid uptick in teleworking. The Swiss federal authorities are therefore conferring with French officials to determine whether a more practical solution exists, announcing that a timeline has been set out for this purpose.⁴

European Social Security

The "no-impact" policy in EU social security is extended until 30 June 2023.⁵ The no-impact policy prevents a change in the competent authority or social security deductions, irrespective of how much an employee's working pattern has changed.

The EU Commission has formed an ad-hoc working party with a mandate to provide proposals on how remote workers/teleworkers could work from home more (current threshold is 25 percent) without triggering the application of social security in their country of residence.

This working party is expected to deliver results during this six-month extension and probably around March 2023.

French Withholding Tax

The French government suggests modifying the withholding tax obligation from 1 January 2023, in the following cases:

- the employer is established outside of France in a European Union (EU) member state or in a country or territory that has concluded an administrative assistance agreement with France to combat tax fraud and tax evasion as well as a mutual assistance agreement in matters of tax collection (excluding non-cooperative countries or territories), and
- the employee is not covered, for the periods for which the salary is paid, by the compulsory French social security system (e.g., by virtue of the EU social security regulations or a bilateral agreement).

However, there will still be compliance obligations. The foreign employer will be required to report to the French authorities the amount of net taxable income paid to each eligible employee on an annual basis. Failure to comply with this obligation could result in a fine capped at EUR 50,000.

The new rule would apply to income received from 1 January 2023.

KPMG NOTE

For Switzerland, meanwhile, the current lack of a mutual administrative assistance agreement in matters of tax collection with France poses a major problem and will mean that this concession will not be applicable to Swiss employers.

A mutual administrative assistance agreement in matters of tax collection with France is currently not on the agenda as it would concern many other areas of taxation, not only wage tax, and have ripple effects on Switzerland's relationships with other bordering countries.

In conclusion, the reporting obligation for Swiss employers remains a very significant burden.

FOOTNOTES:

1 See the announcement of the Embassy of France in Switzerland and Liechtenstein (Ambassade de France à Berne) (in French) at: <https://ch.ambafrance.org/Teletravail-des-frontaliers-l-accord-fiscal-prolonge-jusqu-au-31-decembre-2022> .

2 For related coverage, see [GMS Flash Alert 2020-253](#), 27 May 2020. Also see [GMS Flash Alert 2022-136](#), 13 July 2022.

3 See [GMS Flash Alert 2022-183](#), 11 October 2022.

4 As noted in "Accord amiable entre les autorités compétentes de la Suisse et de la France concernant les dispositions applicables aux revenus visés aux 1 et 4 de l'article 17 de la Convention du 9 septembre 1966 entre la Suisse et la France en vue d'éliminer les doubles impositions en matière d'impôts sur le revenu et sur la fortune et de prévenir la fraude et l'évasion fiscales (« la Convention »)."

5 See "[EU No Impact policy for social security extended until June 30, 2023](#)" published by Meijburg & Co. in The Netherlands (16 November 2022). For related coverage, see the following issues of *GMS Flash Alert*: [2022-124](#) (22 June 2022) and [2022-119](#) (17 June 2022).

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RELATED RESOURCE:

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