



## Germany - Update to Agreement with Switzerland on Cross-Border Work from Home

The German Ministry of Finance issued on 26 July 2022, a consultation agreement on the tax implications of home office work-days of cross-border commuters according to Art. 15a of the tax treaty between Germany and Switzerland.<sup>1</sup>

### WHY THIS MATTERS

Germany and Switzerland recognise that home working has evolved significantly since the start of the pandemic with a real shift in the way employees have embraced the flexibility of home versus office work. The tax regulations established for cross-border commuters working from their country of residence during the pandemic officially expired on 30 June 2022. (For prior coverage, see the following issues of *GMS Flash Alert*: [2022-119](#) (17 June 2022) and [2022-075](#) (5 April 2022).) Both countries appear to have agreed that now is the time to further clarify the tax regulations for cross-border commuters, within the meaning of the tax treaty between Germany and Switzerland, who work from their country of residence so that it is clear whether corresponding working days at home affect the cross-border-commuter status.

The regulations created for the period of the pandemic for applying social security to cross-border commuters who continue to work from home **will not expire until the end of December 2022**. It is not yet clear whether there will also be an adapted regulation in the area of social security for the time after that. For this reason, there may be differences in the tax and social security implications in respect of cross-border commuters under the tax treaty between Germany and Switzerland where they continue to work from home – these should be taken into account.

## Background

### General Tax Rules for Cross-Border Commuters According to Art. 15a Para. 2 Germany-Switzerland Tax Treaty

A cross-border commuter within the meaning of Art. 15a Para. 2 of the tax treaty between Germany and Switzerland is any person resident in a contracting state who has his or her place of work in the other contracting state and regularly returns to his or her place of residence from there. The cross-border-commuter status only lapses if the person does not return to his or her place of residence for more than 60 working days during the entire calendar year due to his or her work – i.e., if the person has more than 60 non-return days in the calendar year.

### Regulations During COVID-19 Pandemic

As part of the consultation agreement with Switzerland dated 11 June 2020<sup>2</sup> including the supplements dated 30 November 2020<sup>3</sup>, and 27 April 2021,<sup>4</sup> regarding the tax treatment of wages during the public health measures implemented to combat the COVID-19 pandemic, it was already the case that home-office working days spent in the country of residence due to the pandemic did not conflict with cross-border-commuter status. It was deemed that these days counted as having been completed in the country of the workplace. This regulation ended 30 June 2022.<sup>5</sup>

## Consultation Agreement Dated 26 July 2022

Due to the new consultation agreement dated 26 July 2022, home-office working days of a cross-border commuter (according to Art. 15a Para. 2 of the tax treaty between Germany and Switzerland) in the country of residence are generally not considered non-return days. From a tax point of view this means that working from home in the country of residence does not change the taxpayer's status as a cross-border commuter.

In the introduction to the above-mentioned letter from the Federal Ministry of Finance dated 26 July 2022, it is stated that the new regulation – which has now been made part of the consultation agreement – was crafted since employees increasingly want to carry out their work at their places of residence.

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## KPMG NOTE

However, increased work activity by cross-border commuters from their home offices situated in the country of residence should also be examined from a social security perspective. The COVID-19-related special regulations for cross-border commuters will continue to apply here until 31 December 2022.<sup>6</sup> This means that cross-border commuters who work from home in their country of residence due to the pandemic can remain in the social security system of the country of their workplace until 31 December 2022.

According to the current status, an extension of this measure beyond 31 December 2022, is currently not planned. A corresponding activity in the home office of at least 25 percent would lead to the social security law of the country of residence applying as of 1 January 2023. In order to counteract this, an exception agreement according to Art. 16 of the Regulation EC 883/2004 can be applied for in the country of the individual's workplace (where the employer is located). However, both the country of workplace and the country of residence must agree to this discretionary decision, and it is initially only valid for five years. This means that if cross-border commuters within the meaning of the tax treaty between Germany and Switzerland carry out at least 25 percent of their employment in the home office in the country of residence from 1 January 2023, there may be a change in the applicable social security obligation. It is not clear yet if there will be an adapted regulation for cross-border commuters in the area of social security.

## FOOTNOTES:

- 1 Soon to be published in *Bundessteuerblatt*, the German Federal Tax Gazette, but already available (in German) at the Ministry's official website – please follow this link: [Konsultationsvereinbarung betreffend ganztägig am Wohnsitz verbrachte Arbeitstage von Grenzgängern zur Anwendung der Grenzgängerregelung in Artikel 15a des deutsch-schweizerischen Doppelbesteuerungsabkommen \(bundesfinanzministerium.de\)](#) .
- 2 Published in *Bundessteuerblatt 2020 I*, S. 568 and also available (in German) at the Ministry's official website – please follow this link: [Konsultationsvereinbarung betreffend die steuerliche Behandlung des Arbeitslohns sowie staatliche Unterstützungsleistungen an unselbstständig Erwerbstätige während der Maßnahmen zur Bekämpfung der COVID-19 Pandemie \(bundesfinanzministerium.de\)](#) .
- 3 Published in *Bundessteuerblatt 2021 I*, S. 685 and also available (in German) at the Ministry's official website – please follow this link: [Abkommen zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen \(DBA-Schweiz\); Konsultationsvereinbarung betreffend die steuerliche Behandlung des Arbeitslohns sowie staatliche Unterstützungsleistungen an Beschäftigte im öffentlichen Dienst während der Maßnahmen zur Bekämpfung der COVID-19 Pandemie \(bundesfinanzministerium.de\)](#) .
- 4 Published in *Bundessteuerblatt 2021 I*, S. 685 and also available (in German) at the Ministry's official website – please follow this link: [Bekämpfung der COVID-19 Pandemie: Konsultationsvereinbarung vom 27. April 2021 \(bundesfinanzministerium.de\)](#) .
- 5 According to the consultation agreement dated 11 April 2022 - published in *Bundessteuerblatt 2022 I*, p. 614 and also available (in German) at the Ministry's official website – please follow this link: [Außerkräfttreten der Konsultationsvereinbarung betreffend die steuerliche Behandlung des Arbeitslohns sowie staatliche Unterstützungsleistungen an unselbstständig Erwerbstätige während der Maßnahmen zur Bekämpfung der \(bundesfinanzministerium.de\)](#) .
- 6 Published (in German) at *Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA)* at its official website – please follow this link: [Corona: Keine Änderung des anwendbaren Sozialversicherungsrechts für Grenzgänger, Entsandte und in mehreren Mitgliedstaaten Erwerbstätige - GKV-Spitzenverband, DVKA](#) .

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