

# *Swiss tax implications of cross-border employment and social security pitfalls*

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## I. Tax Law

- Domestic Swiss law
- Double Taxation Treaty

## II. Social Security Contributions

- Domestic Swiss law
- Agreement on the free movement of persons with EU

## III. Case Studies

## Unlimited Swiss tax liability:

– Tax liability as of day of immigration if intention to stay indefinitely  
(*steuerrechtlicher Wohnsitz*)

– If no intention to stay indefinitely:

– 30 days if gainful activity

– 90 days if no gainful activity

– retrospective as of the 1<sup>st</sup> day

(*steuerrechtlicher Aufenthalt*)

Not applicable to international weekly commuters and cross-border commuters due to lack of continuity

⇒ Taxation of world-wide income and net wealth

## Limited Swiss tax liability:

- gainful activity in Switzerland
  - Member of board of directors or management of a Swiss company receiving remuneration – regardless of whether activity is performed in Switzerland or abroad
  - real estate situated in Switzerland
  - etc.
- ⇒ Taxation of the respective income and net wealth (generally levied at source)

## **Tie Breaker Rule (OECD-MC Article 4 para 2)**

If an individual is a tax resident of two contracting states, the individual is deemed tax resident in the state he/she has:

- a permanent home;
- central of vital interests (closer personal and economic relations)
- habitual abode;
- citizenship;
- by mutual agreement of contracting states

## Taxation of employment income (OECD-MC Article 15)

General rule (para 1): state where gainful activity is performed

Exception (para 2): resident state

- limited to the 183 day period
- employer paying the remuneration must not be a resident of the state in which the employment is exercised
- the remuneration is not borne by a permanent establishment of the employer in the state the employment is exercised

## **Taxation of income from self-employed activity (OECD-MC Article 7)**

⇒ taxable only in state where business of the self-employed person is based, unless the activity is related to a permanent establishment in the other contracting state

## **Taxation of directors' fees (OECD-MC Article 16)**

⇒ may be taxed in state of residence of the company  
⇒ if also taxed in resident state: elimination of double taxation by applying exemption or credit method

## **Domestic Swiss law:**

Liability to pay social security contributions is based on:

- residence in Switzerland or
- employment in Switzerland

⇒ Bilateral agreements with various states

## **Agreement on the free movement of persons with European Union:**

- Regulation (EC) No. 883/2004
- Regulation (EC) No. 987/2009
- Coordination of national social security systems (no harmonisation)
- Applicable to Swiss and EU citizens that are employed in Switzerland or in a EU member state
- As of 1 January 2016 also applicable in the context of CH / EFTA
- Not applicable to third country nationals

## Contribution coordination rules:

- General rule: social security contributions to the social security system of one single state, even if the activity is pursued in more than one state.
- Employment in only one state: contributions to the social security system in the state of employment.

- Employment in several states:
  - contributions to the social security system of the state of residence of employee as long as a substantial part (> 25%) of employment takes place there.
  - If this is not the case ⇒ state in which employer has its registered office
  - If *two* employers and one has its registered office in the state of residence ⇒ state of non-residence
  - If *more than one* employer and at least two have their registered offices outside the state of residence ⇒ state of residence

# Social security contributions – CH/EU agreement

Substantial part of employment in residence state (> 25%)?	Number of working states involved	Number of employers	Contribution obligations to
yes	several	one or several	residence state
no	several	one or several (with registered offices in the same state)	state where employers have their registered offices
no	two (one of which is state of residence)	several (with registered offices in two states one of which is state of residence)	non-residence state
no	several	several (with registered offices in at least two different states other than residence state)	residence state

- Self-employment in several states:
  - contributions to the social security system of the state of residence as long as a substantial part (> 25%) of the activity takes place there.
  - If this is not the case ⇒ state in which the centre of interest of the activities is situated

- Simultaneous employment and self-employment:
  - If a person simultaneously pursues an activity as an employed person and as a self-employed person: ⇒ contributions to the state in which the activity as an employed person is pursued
  - Definition of employment and self-employment is determined by the state the respective activity is pursued in.

## **Exception Temporary Posting (*Entsendung*):**

Posted workers remain subject to the social security legislation of the posting state, if the following criteria are met:

- limited posting duration (generally < 24 months)
- habitual and significant activities of posting company in the posting state
- prior social security cover in the posting state
- posted worker is not sent to replace another posted worker
- Swiss national or EU national
- ongoing direct employment relationship between posted worker and posting company
- self-employed workers: pursuit of similar activities

## Case 1 – Board of directors (1)

Mr Huber – a German tax resident and a self-employed lawyer in Germany – becomes a member of the board of directors of a Swiss firm. He will be attending the meetings by telephone conference.

What are the tax and social security consequences?

## Case 1 – Board of directors (1)

### Tax liability:

- The directors' fees are subject to Swiss source tax.
- Based on the DTT Germany may also tax but needs to credit the Swiss source tax.

### Social security liability:

In Switzerland (place where board member (employed) activity is pursued) for German self-employed income and Swiss remuneration!

## Case 1 – Board of directors (2)

What are the social security consequences if Mr Huber thereafter also becomes a member of the board of directors of an Austrian firm?

## Case 1 – Board of directors (2)

- Activity as board of director is generally considered to be an activity as an employed person in Austria ⇒ employed activities in Switzerland and Austria
- Mr Huber is subject to German social security legislation (residence state)!

## Case 1 – Board of directors (3)

Same as Case 1 but Mr Huber is a tax resident of Brazil. What are the tax and social security consequences?

## Case 1 – Board of directors (3)

### Tax liability:

- The directors' fees are subject to Swiss source tax.
- There is no DTT with Brazil, thus, the same income might also be taxed in Brazil resulting in a double taxation.

### Social security liability:

- Swiss social security contributions are levied on the directors' fees.
- The bilateral social security agreement with Brazil is not in force yet, i.e. Brazil could also levy social security contributions.

## Case 2 - International weekly commuter

Mrs Müller who lives with her family in Frankfurt / Germany is offered the position of the CEO of a Swiss firm. She decides to accept the job and to rent a 1 bedroom apartment in Zurich. Her family remains in Frankfurt where Mrs Müller returns every weekend.

What are the tax and social security consequences?

## Case 2 - International weekly commuter

### Tax liability:

- Mrs Müller's employment income is subject to Swiss source tax.
- Based on the DTT with Germany this income may only be taxed in Switzerland (exemption method in Germany).

### Social security liability:

- Swiss social security contributions (place of employment)

## Case 3 – International assignment (1)

Mr Allen – a UK citizen living in the UK – is delegated from his UK employer to work in the Swiss subsidiary with registered office in Lucerne for 4 months. He remains on the UK payroll and the salary is not recharged to the Swiss subsidiary.

What are the tax and social security consequences?

## Case 3 – International assignment (1)

### Tax liability:

- Domestic Swiss law: Unlimited tax liability in Switzerland, but:
- Art. 4 para 2 DTT CH/UK: Mr Allen is deemed tax resident in the UK
- Art. 15 para 2 DTT CH/UK: ⇒ only tax liable in the UK

### Social security liability:

Provided that posting requirements are fulfilled Mr Allen remains subject to UK social security contributions.

## Case 3 – International assignment (2)

What are the tax and social security consequences if Mr Allen is delegated to work in the Swiss subsidiary for 12 months?

## Case 3 – International assignment (2)

### Tax liability:

- Domestic Swiss law: Unlimited tax liability in Switzerland
- Art. 4 para 2 DTT CH/UK: Mr Allen is deemed tax resident in the UK
- Art. 15 para 2 DTT CH/UK: not applicable
- Switzerland may tax employment income

### Social security liability:

Provided that posting requirements are fulfilled Mr Allen remains subject to UK social security contributions.

## Case 3 – International assignment (3)

What are the social security consequences if Mr Allen is an Iranian citizen resident in the UK?

## Case 3 – International assignment (3)

### Social security liability:

- The CH/EU agreement is not applicable to third country nationals and there is no bilateral agreement with Iran.
- Mr Allen is subject to the Swiss social security legislation with regard to his Swiss income.
- ANOBAG: he has to settle the contributions to the Swiss social security authority.