

# Tax risks associated with bleisure work

Careful planning is essential if the dream of a home office in the sun is not to turn into a tax nightmare for employers and employees. Why this also depends on the place of residence.



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One thing that the Corona pandemic has clearly shown is that working from home is a real option. Thanks to new communication technologies, managers and their teams can handle day-to-day business easily and efficiently, while at the same time developing innovative business ideas. In the fierce competition for top international specialists, global companies are therefore increasingly turning to attractive home office models.

The new trend is called bleisure work: combining money earning with beautiful places. However, cross-border activities raise a number of complex legal issues which a company should explore carefully. With a view to the taxation of salary income, a rough distinction must be drawn between employees domiciled in Switzerland and employees domiciled abroad.

### International employees domiciled in Switzerland

The relatively cold spring, the unsettled summer weather, and the gradual lifting of Covid-19 restrictions have many employees living in Switzerland dreaming of a home office in southern climates. Does an employee replying to his business emails and attending web meetings on the French Côte d'Azur already face tax liability? It depends. If a double taxation agreement is in place between Switzerland and the country hosting the temporary home office, the

183 day rule offers reliable protection against any interference by foreign tax authorities.

Subject to the condition that the international employee does not stay in the foreign state for more than 183 days in total over the course of one year, and that his salary is paid by the Swiss employer and is not ultimately borne by a permanent establishment or fixed base that the Swiss company has in the host state, Switzerland has the exclusive authority to tax employment income. This mechanism sounds simple enough – at first. In practice, however, there is surprisingly vast room for interpretation. One key element is that the 183 days include not only the working days, but much rather all days of presence, in particular also short-time working days, sick days, vacations, and weekends.

Utmost caution must be exercised where employees having only recently moved to Switzerland have family ties and maybe even residential property in the country of their temporary home office. In practice, there is an increasing number of cases in which foreign tax authorities contest the Swiss residency and expose the employee to unlimited tax liability, which results in a double taxation.

### International employees domiciled abroad

In comparison, Swiss companies retain a relatively large number of employees that are based abroad. Which aspects require consideration

from a tax law perspective if they increasingly work from home at their place of residence to spend more time with the family, to reduce the cost of living or simply to enjoy a pleasant climate?

As a rule, the place of work principle applies to international employees. Income earned by employees without tax residence or domicile in Switzerland is subject to a withholding tax insofar as it results from work physically performed on Swiss territory. Depending on the applicable double taxation agreement,

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the state in which the taxpayer is domiciled either deducts the tax levied in Switzerland or exempts the employment income earned in Switzerland from taxation. Moreover, special regulations apply to cross-border commuters from Germany, France, Italy and Liechtenstein.

Due to the place of work principle, it is, therefore, relevant with a view to taxation whether and – if so – how often an employee without tax residence or domicile in Switzerland works in a home office abroad. In fact, the non-

resident's salary is subject to Swiss withholding tax only for working days spent in Switzerland. To the extent that working days are spent abroad, the foreign country of residence has the exclusive right of taxation. The Swiss employer and his employee must, hence, make sure to document the days on which business activities were performed outside of Switzerland in a calendar.

If only that were all: but the Swiss employer must also always verify whether withholding tax obligations apply in the country in which his employee has his home office. For example, for business activities carried out in France, companies must pay a withholding tax on salaries paid through a foreign payroll service to French residents. In principle, this obligation also extends to Swiss employers, unless the special regulations for cross-border commuters apply. In addition to these income tax obligations, there is, in particular with a view to executive employees, a considerable risk that regular home office performed for a Swiss company may amount to a permanent establishment and, thus, give rise to profit tax liability abroad.

### Prospects of home office arrangements beyond the Corona pandemic

Bleisure work may sound tempting, but careful planning is essential if the dream of a home office in the sun is not to turn into a tax nightmare for employers and employees.

While Switzerland has concluded

Mutual agreements with other countries pursuant to which home office during the Corona pandemic is not to affect taxation. However, the tax relief granted therein is limited in time, applies exclusively to home office that is necessary due to Covid-19 and is, with the exception of Austria, available in relation to neighboring countries only.

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## Tax Partner

The Zurich-based Tax Partner AG, Taxand Switzerland, specializes in Swiss and international tax law and is recognized as a leading independent tax boutique. The company's some 50 tax experts advise their clients, multinational and national enterprises as well as private individuals, on all tax matters. In 2005, Tax Partner AG co-founded Taxand, the world's largest independent organization with more than 2,500 tax advisors from independent member firms in 50 countries.

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