

Short-term business travelers to Switzerland

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Short-term business travelers (STBTs) who are foreign nationals coming to Switzerland often trigger unexpected tax and reporting obligations for themselves and their employers. Such travelers are generally employees working in Switzerland for a short period of time who continue to maintain tax residency in their home jurisdiction, where they hold strong ties. These obligations can place significant administrative and tax burdens on multinational companies that may be unaware of their exposure to penalties and other regulatory risks. To minimize the costs associated with conducting business in Switzerland, it is imperative that employers and employees be aware of the tax implications associated with working in Switzerland.

Tax residency

Swiss residents are generally taxed on their worldwide income and wealth (with exceptions, such as foreign real estate or permanent establishments). An individual can be deemed a Swiss tax resident in two scenarios:

- The individual is living in Switzerland with the intention to permanently establish his or her usual abode in Switzerland. In other words, it requires the worker to have the center of his or her vital interests in Switzerland.
- If the individual's center of vital interests is not in Switzerland, the individual is deemed a Swiss tax resident in the following cases:
 - If the individual stays in Switzerland for at least 30 days with the intention to exercise a gainful activity
 - If the individual stays in Switzerland for at least 90 days with no intention to exercise a gainful activity

Even if the individual qualifies as a Swiss resident under domestic law, he or she can still be treated as a nonresident under the provisions of a tax treaty. Most tax treaties with Switzerland follow the residency test of the Organisation for Economic Cooperation and Development (OECD) model, which is in most cases based on the center of vital interests of the individual.

Income and wealth tax

An individual's tax liability will be dependent upon his/her tax residency status. Swiss residents are subject to income tax on their worldwide income and on their worldwide wealth (one notable exception being foreign real estate which is only considered for tax rate purposes).

Maintaining documentation for STBTs

We advise employers to maintain records of employee travel and be able to show Swiss tax authorities that they are compliant with all tax obligations regarding business travelers.

Immigration

Internal immigration controls should be in place to ensure that STBTs are only carrying out business activities permitted by their visa or work permit status to avoid putting the business at risk.

Border controls globally are becoming more stringent, which engenders a greater risk of noncompliance.

Switzerland offers various permits depending on the duration of the stay.

Nonresidents can be subject to income tax on their employment income, in which case the tax liability will be limited to the days physically worked in Switzerland only. However, the worldwide income must still be taken into consideration to calculate the tax rate.

Tax return filing obligations are based on the residency permit of the STBTs.

STBTs are usually not required to file an ordinary tax return in Switzerland as they generally do not hold a C residence permit. Instead, their employment income is subject to a withholding tax (known as a tax at source) which is levied by their employer and paid directly to the relevant cantonal tax authority.

A tax at source rectification can be submitted to request a new calculation of the tax at source in the following cases:

- The calculation of the gross salary subject to tax at source is incorrect
- The calculation of the annual income used to determine the tax rate is incorrect
- The wrong scale and/or tax rate was applied

In some cases, these STBTs are required to file a subsequent ordinary taxation (SOT) or can freely opt to file a SOT:

- It is mandatory for Swiss residents to file a SOT when they earn more than CHF 120'000 yearly, when they have taxable wealth, when they own real estate in Switzerland, or when they have income that is not taxed at the source
- Other Swiss residents may optionally request a SOT; in this case, they will remain subject to the SOT for the entire period of their residence in Switzerland
- For non-Swiss residents, it is not mandatory to file a SOT and it can only be requested given that 90% of the taxpayer's global income is taxable in Switzerland (married couples' income should be considered together)

Payroll considerations

Employers can be required to set up a payroll for their STBTs to fulfill the various withholding obligations. In addition to the federal, cantonal and communal income tax withholding requirements, there are additional types of withholding requirements imposed. These obligations may include social security withholding, such as old-age and survivor's insurance; disability insurance; loss of earnings insurance; unemployment insurance; accident insurance; and occupation pension.

Without sufficient due diligence regarding withholding and reporting obligations, an employer can easily expose itself to penalties.

Social security and certificates of coverage

Social security coverage is usually required for all employees performing services within Switzerland. However, Switzerland has concluded social security agreements with certain countries that can allow the employee to remain subject to the social security system of his or her country of residence and be exempt from Swiss social security. If such an agreement is in place, the foreign employer would apply for a certificate of coverage from the home country to document the exemption from Swiss social security.

After obtaining a copy of the certificate, the employer should maintain this document in the company's files in case the social security authorities request that evidence be presented in the future.

Residence permits

Requirements and applications are not the same depending on whether the individual is a European Union (EU) or EFTA (Iceland, Lichtenstein and Norway) national. As a rule, L-permits as detailed below only are applicable to STBTs.

L permit (Short-term residents)

Short-term residents are foreign nationals who reside in Switzerland for less than a year. Employment for less than three months is not subject to a permit but requires an online notification procedure.

B permit (Resident foreign nationals)

Resident foreign nationals are foreigners who reside in Switzerland for a longer period of time. The employment contract must be for at least 12 months. The permit is valid for five years and can be renewed.

C permit (Settled foreign nationals)

Settled foreign nationals are foreign nationals who have resided for at least five or ten years in Switzerland. The permit is not subject to any time restrictions.

G permit (Cross-border commuters)

Cross-border commuters are foreign nationals who work in Switzerland but return to their main place of residence abroad every day, or at least once a week in some places.

Transfer pricing

In situations where individuals are generating profit through the activities being undertaken on short-term travel on Swiss soil, the organization may need to apply a transfer pricing methodology to recognize any attributable revenue and expenses. This must be reviewed on a careful ad hoc basis, depending on the travelers' circumstances and duties.

Exceptions

Under certain circumstances, business trips in Switzerland do not generate any taxation or affiliation to the Swiss social security system, and do not require any payroll requirements.

In terms of taxes, this is notably the case when the employee only spends a few days in Switzerland in the limits established by the double tax treaty. To remain taxed in the home country, the three cumulative conditions must be fulfilled:

- STBT spends no more than 183 days on Swiss soil
- STBT is not paid by a Swiss entity
- Costs associated with a STBT cannot be cross charged to the Swiss entity

This is only applicable when a double tax treaty has been concluded between the home country and Switzerland.

The treaty exemption would not be available if the Swiss entity is instead considered the economic employer. The economic employer concept would be based on determining the entity which is the employer from an economic point of view, as opposed to the legal employer with whom the employee has an employment agreement. Therefore facts and circumstances would need to be reviewed in each instance. Each of the 26 Swiss cantons have implemented different tax regulations and procedures with two key trends. Some cantons consider the location where the cost to the Swiss business is borne (e.g. Geneva canton), while others will review the integration of the employee into Swiss business activities (e.g. Vaud canton).

In terms of social security, an employee must be affiliated with only one system. As a result, and if a social security treaty has been concluded with the home country, the employee will remain affiliated to the home country's social system (with a certificate of coverage on file).

Regarding the immigration side, in most cases, the employer must request a Swiss work permit even in the case of a business trip. However, in some rare cases like a short-term mission, a work permit may not be required.

Away-from-home expenses and expat favorable regime

Typically, employers will pay or reimburse expenses incurred by their employees while away from home, such as travel and housing expenses. They will generally be included in the employee's taxable compensation for Swiss tax purposes.

However, depending on a multitude of factors, individuals who are considered as expatriates under the so-called expatriates ordinance can request the deduction of so-called professional expenses, such as the necessary costs of traveling between their foreign place of residence and Switzerland or their reasonable living expenses in Switzerland where they retain a dwelling abroad for permanent personal use.

How can RSM help?

Noncompliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimized. Organizations may want to establish a compliance checklist in connection with their short-term business travelers.

RSM offers a senior-professional-led service that can advise on the data collation, recordkeeping and risk management surrounding your STBTs to Switzerland.

Permanent establishment

Depending on the business activities carried out by the STBT, it is possible for the individual to create tax exposure for the employer. This could occur if the employee's activities constitute a permanent establishment (PE) or taxable presence.

If a foreign company has Swiss PE, the company will be taxed on the profits that are generated through the activities in Switzerland.

While treaties may provide relief where the employee's activities do not constitute a PE, companies must check the facts and circumstances of each situation against local laws, and employers should develop a mitigation or compliance strategy as appropriate.

Our experienced international team will provide clarity regarding the complex tax compliance requirements that your business travelers face globally.

Other jurisdictions

While this document focuses on business travelers to Switzerland, RSM has the international presence and experience to provide clarity on the complex tax, social and legal requirements involved with business travelers around the globe.

Checklist for managing risks of noncompliance

- ✓ **Payroll tax exposure:** Payroll compliance should be monitored by the company. Certain payroll audits have become increasingly common. It is advisable to have an employee agreement in place documenting the length of the employee's Swiss short-term travel.
- ✓ **Immigration risks:** It is imperative that STBTs adhere to immigration laws globally. Any visa/work permit requirements should be identified prior to traveling to the other jurisdiction.
- ✓ **Corporate tax risks:** The employee's activities in the host country can create tax filing and payment obligations at the corporate level. The applicable income tax treaty should be reviewed, as a mitigation strategy may need to be put in place.
- ✓ **Regulatory risks:** Local requirements must be considered to reduce the possibility of triggering any regulatory issues in the host country.
- ✓ **Reputational risks:** There is increased pressure on multinationals to show that they have a process in place for monitoring STBTs and managing risks of noncompliance.

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