

## Revision of taxation of employment income at source

### A. Background

The following persons are subject to **taxation at source** on income from employment:

- Foreign persons who **are** resident in Switzerland for tax purposes if they do not have a permanent residence permit (C permit), and are not married to a person who holds Swiss citizenship or has a permanent residence permit (C permit);
- Persons who **are not** resident in Switzerland for tax purposes if they carry out an employment in Switzerland.

In December 2016, the Swiss Parliament approved a comprehensive revision of the legislation relating to the taxation of employment income at source. The Federal Law on the Revision of the Taxation at Source and the corresponding revised ordinance entered into force on **1 January 2021**.

In this context, the Swiss FTA published Circular No. 45 "Taxation of employment income at source of employees" on 12 June 2019, which also came into force on 1 January 2021. At 69 pages plus an appendix, the circular is relatively comprehensive and contains numerous examples.

The background to the revision is a Federal Supreme Court decision dating from 2010 (BGE 136 II 241), according to which the existing taxation at source system was, in certain cases, in violation of the Agreement on the Free Movement of Persons between Switzerland and the EU. Persons subject to tax at source who are not resident in Switzerland for tax purposes should be entitled to the same deductions as persons resident in Switzerland, provided they are in a comparable situation ("**quasi-residents**"). This is the case if they earn at least 90 percent of their worldwide family income in Switzerland.

The revision aims to remove the **unequal treatment** between persons taxed at source and those subject to ordinary taxation. At the same time, the opportunity was taken to standardise taxation at source from a procedural point of view.

### B. Key changes

#### 1. Extended scope of application of the subsequent ordinary tax assessment

Under previous law, persons taxed at source who were resident in Switzerland and had an annual gross income exceeding a certain level (**CHF 120'000**) were required to file a subsequent tax return (**mandatory subsequent ordinary assessment**). This principle remains unchanged under the new law.

The following adjustments, however, require a distinction between persons **who are** and those who **are not** resident in Switzerland for tax purposes:

##### 1.1. Persons who are resident in Switzerland for tax purposes

The **mandatory subsequent ordinary assessment** now also applies to taxpayers who do not reach the certain annual gross income level but do earn income that is not taxed at source or own taxable assets (varying cantonal practices regarding minimum amounts apply). This was previously covered by a **supplementary ordinary tax assessment**, which will be abolished.

The existing **request for a reassessment of the tax at source** ("tariff correction") is abolished and replaced with the option to file a (optional) **subsequent ordinary tax assessment on request**. With this instrument, additional deductions not taken into account in the tax at source tariff can be claimed. As was previously the case for the tariff correction, the request must be submitted no later than 31 March of the following year. The tax authorities will then provide the tax declaration forms.

### 1.2. Persons who are not resident in Switzerland for tax purposes

Persons who **are not** resident in Switzerland for tax purposes (e.g. cross-border daily or weekly commuters, short stay permit holders) will also be able to file a tax declaration through a **subsequent ordinary tax assessment on request**. To this end, one of the following requirements must be met:

- the predominant part (usually at least 90%) of the worldwide gross income of the applicant, including the income of the spouse, is subject to taxation in Switzerland ("quasi-residents"), or
- the situation is comparable to that of a taxpayer resident in Switzerland, or
- a subsequent ordinary assessment is required in order to claim deductions provided for in a double taxation agreement.

The request must be submitted by 31 March of the following year.

## 2. Other changes

- Under the previous law, employers could settle the tax at source with tax administration of the canton where the employer was domiciled when the persons taxed was a **resident in Switzerland**. The employer's tax administration then forwarded the tax at source to the employee's canton of residence. Now, employers are required to **settle the tax at source directly** with the canton entitled to the tax. They are, therefore, no longer able to exercise the option to settle the tax at source exclusively in their own canton of domicile.
- For **cross-border weekly commuters**, the canton of the weekday residence and not the employer's canton of domicile is in charge. This was already the case in the past but is now anchored in the law.
- The range of the entitlement provision ("Bezugsprovision"), which the cantons can grant to the persons liable for the tax at source and responsible for the withholding, is adjusted from previously 1% to 3% to now 1% to 2%.

## C. Summary

The basic principles of taxation of employment income at source remain unchanged. The revision clarifies some procedural matters, thereby essentially creating **transparency** and **legal certainty**. Additional guidance is provided by Circular No. 45, which contains many examples. However, due to the abolition of the tariff correction, claiming **deductions** such as contributions to pillar 3a, alimony or education costs will tend to be a more tedious process. In cases where the requirements for a mandatory subsequent ordinary assessment are not met, a subsequent ordinary tax assessment on request must be obtained by means of an application and a tax return will need to be submitted.

A person submitting a **request** for a subsequent ordinary tax assessment must be aware that this will require an annual submission. The following **principle** applies: once assessed through a subsequent ordinary tax assessment, always assessed through a subsequent ordinary tax assessment. However, this principle only applies to persons **who are** resident in Switzerland for tax purposes. Persons **who are not** resident in Switzerland for tax purposes for whom the requirements for a (voluntary) subsequent ordinary assessment are met (cf. section B.1.2. above) must submit a new request each year.

We recommend that employers and employees subject to tax at source review their current situation in light of the new provisions.

ADB ALTORFER DUSS & BEILSTEIN AG

+41 44 267 63 00



**Dr. Pascal Taddei**

Partner  
Dr. iur., attorney-at-law,  
certified tax expert

[pascal.taddei@adbtax.ch](mailto:pascal.taddei@adbtax.ch)



**Theodor A.J. Ambauen**

MLaw, Rechtsanwalt,  
MLaw, attorney-at-law,  
certified tax expert

[theodor.ambauen@adbtax.ch](mailto:theodor.ambauen@adbtax.ch)