Switzerland –COVID-19: Swiss tax and legal measures and cross-border teleworking.Update on the current situation

In view of the rapid spread of the COVID-19 worldwide as well as in Switzerland, and the impact of the pandemic on the economy, the Swiss government felt urged to take certain special measures also in the tax and legal fields.

The present newsletter gives an update of the urgent tax and legal actions which were taken during the crises situation and is divided into two parts giving a brief overview of (1) the measures introduced at the domestic level in Switzerland (both federal and cantonal), as well as (2) at the international level concerning the tax and social security treatment of income realized by cross-border workers in case of teleworking during the COVID-19 crisis.

I. SWISS NATIONAL MEASURES

A. FISCAL MEASURES

Like other countries, Switzerland took fiscal measures to help absorbing some of the economic difficulties that the current crisis caused and is still causing to the Swiss taxpayers.

At the federal level

1. *VAT and other indirect taxes:*

Taxpayers are able to postpone payment deadlines without late payment interest. The interest rate is reduced to 0.0% for VAT, certain customs duties, special consumption taxes and incentive taxes between 20 March and 31 December 2020.

2. *Direct federal tax:*

The same regulations as described above apply to direct federal tax from 1 March to 31 December 2020.

In addition, the Swiss Federal Administration has instructed its administrative units to check and settle creditors' invoices as quickly as possible, without waiting for the payment deadlines to expire, in order to increase the liquidity of the Confederation's suppliers.

At the cantonal level (some examples):

1. ***Zurich***

The canton of Zurich was one of the first to announce, on 20 March 2020, certain tax measures as part of its "Corona package", in particular:

- Extension of the deadline for filing tax returns until 31 May 2020 for all individual taxpayers. The extension of the deadline is particularly useful as many municipal administrations in Zurich, as well as in other cantons, have closed their counters in the meantime and only provide information by telephone and e-mail;

- Amendment (upon request) of advance tax payments for companies expecting to incur losses due to the negative effects of the virus, or by individuals experiencing a loss of income;

- Deferred payment of taxes: individuals and companies who are currently unable to pay their most recent tax bills due to the consequences of the virus have the option of deferring payment or paying by instalments;

- Relief from late payment interest: an exemption from interest on arrears is granted for the period from 1 March 2020 to 31 December 2020.

2. ***Geneva***

On 23 March 2020, the Geneva State Council announced a series of tax measures intended to alleviate the consequences of the COVID-19. Its main action is the abolition, from 24 March to 31 December 2020, of all interest in favour of the State for all periodic taxes, whether for individuals or legal entities, a measure which will cost the Canton of Geneva an estimated 64 million Swiss francs.

An extended deadline may also be granted by the Geneva tax administration ("GTA") for the payment of the 2019 cantonal and communal taxes, which may be made in a maximum of eight monthly instalments and which extended deadline must be requested within 30 days of the date of notification of the tax assessment.

It is also be possible to modify or postpone the 2020 tax instalments for taxpayers whose income or turnover is falling. Those who postpone the payment of advance payments do not receive a reminder, and late payment interest on 2020 advance payments is waived.

Finally, a general extended deadline of 31 May 2020 for filing tax returns has been granted, as well as for applications for the revision of the tax at source, including applications for the quasi-resident status. The canton further prohibited filing the 2019 tax returns in paper format and only authorized filing by Internet.

The deadline for responding to information requests from the GTA is also extended to 31 May 2020. The issuance of tax assessments and decisions on claims for cantonal and communal tax and direct federal tax for individuals and legal entities, and those taxed at source, are postponed to 30 April 2020.

In addition, the GTA works together with the Foundation for Business Support with the aim of offering facilitated payment arrangements to companies

3. ***Vaud***

On 18 March 2020, the Council of State of the Canton of Vaud announced an initial measure to ease the financial burden on individuals and legal entities, namely the possibility of requesting an amendment to their tax instalments for the year 2020 from that date. Consequently, a self-employed person who anticipates, for example, reduced earnings for the year 2020, can request a change in his or her tax instalments to a lower level than was anticipated at the beginning of the year. The canton also extended its general 2019 individual tax return filing deadline until 30 June 2020.

4. ***Valais***

The general deadline for filing the 2019 individual tax return and the deadline for requesting revisions to the tax at source have been extended from 31 March to 31 May 2020, without the need for a request from the taxpayer. Moreover, the Cantonal Tax Service strongly encouraged taxpayers to file their 2019 tax returns via internet only.

In addition, the State of Valais is asking to avoid going to the counters of the cantonal administration and instead to make use of online services, telephone or e-mail. In principle, non-priority services rendered by the

Valais tax administration could be suspended and postponed depending on the evolution of the situation.

B. LEGAL AND ADMINISTRATIVE MESURES

1. *Standstill of deadlines for debt collection proceedings under the Swiss Federal Debt Enforcement and Bankruptcy Act:*

On 18 March 2020, the Swiss Federal Council decided that debtors cannot be prosecuted throughout Switzerland from 19 March to 4 April 2020 inclusive. During this period, it was not possible to notify debtors of acts of debt collection.

In concrete terms, this freezing of deadlines meant that the debt collection offices and courts did not take any measures to collect debts in accordance with the Federal Debt Enforcement and Bankruptcy Act; in particular, they did not serve any payment orders on debtors or declare a company bankrupt. However, it is still possible, among other things, to take freezing measures against debtors.

Although the suspension of deadlines applies to all Swiss companies, it does not release them from their obligation to pay overdue invoices and from their board of directors' obligation to notify the bankruptcy court in the event of overindebtedness. In addition, creditors could still initiate collection proceedings against their debtors, but enforcement measures were suspended.

2. *Extension of judicial vacations in civil and administrative matters*

On 20 March 2020, the Swiss Federal Council decided to bring forward the Easter judicial vacations in civil and administrative matters and to start them the day after the announcement.

Thus, the court holidays lasted from 21 March 2020 to 19 April 2020 inclusive.

This measure concerned the cantonal and federal courts and did not apply to proceedings which, under current law, do not normally benefit from judicial vacations, i.e. urgent cases and criminal proceedings. In the case of these procedures, extensions must continue to be required. However, requests for extensions can now also be made by eFax, without being duplicated by sending a paper letter. Replies were communicated to all parties, if possible, through the same channel as the one used for the request.

In order to ensure the smooth functioning of the judicial system in times of crisis, the Federal Council has renounced (i) to postpone all hearings and (ii) to no longer notify judgements or decisions of the authorities. Nevertheless, the courts retain a certain flexibility in their functioning. In particular, they have the possibility of cancelling or postponing non-urgent hearings, extending or restoring certain deadlines.

3. *Other measures to support the economy:*

- Employers may apply for deferral of payment of social security contributions, without negative interest from the time the deferral is granted. They are also able to adjust the usual amount of advance payments for these contributions in the event of a significant reduction in the wage bill. These measures further apply to self-employed persons whose turnover has fallen.

- Specific transitional credits have been introduced (total volume CHF 20 billion) aimed at providing Swiss SMEs with transitional bank credits. The following two types of bridge loans were made available:

- Loans up to CHF 500’000: the credit is disbursed immediately without review by the banks. The Confederation guarantees the bank 100% of the default risk. According to the Federal Council, these loans should cover more than 90% of the companies affected by the COVID-19;

- Loans from CHF 500’000 to 20 million: these loans are 85% guaranteed by the Confederation. In the spirit of shared responsibility, a brief credit assessment by the bank is required.

- An emergency Ordinance had been drafted in this sense and was released on 25 March 2020, and entered into force on 26 March 2020. According to the Ordinance, the collection of default interest on tax claims of natural and legal persons shall be waived if the tax claim has fallen due in the period between 1 March 2020 and 31 December 2020 (this will not include fines and fees). The waiver of negative interest is limited to 31 December 2020. This temporary waiver shall apply both to tax claims in the tax period 2020 and to tax claims relating to earlier tax periods, provided that the due date for provisional or definitive taxation is in the period between 1 March and 31 December 2020.

- In addition, the Swiss Tax Authorities should grant payment facilities. Thus, if the payment, within the prescribed period of the tax, interests and costs as well as fines subsequently imposed for a contravention would have very harsh financial consequences for the debtor, the collecting authority may extend the period of payment or authorize payment by instalments.

- Extension of short-time working (reduction of working hours) and simplification of procedures.

- Compensation for loss of earnings for self-employed persons in the following cases:

- closure of schools ;
- quarantine ordered by a doctor;
- closure of an independently managed establishment open to the public.

Compensation is paid on the basis of the earnings loss allowance scheme and is paid in the form of daily allowances. These correspond to 80% of the income and are capped at CHF 196 per day.

- Earnings loss allowances for employees : Parents of children up to the age of 12 and other persons who have to interrupt their gainful activity because the care of their children is no longer possible by third parties or persons who have been quarantined, are entitled to loss of earnings allowances if they (i) are employees and (ii) are compulsorily insured with the AHV (Old Age Insurance, First Pillar).

II. INTERNATIONAL TAX MEASURES: SITUATION OF CROSS-BORDER TELEWORKERS

Switzerland and France, as well as Germany, have recently decided on a pragmatic approach in view of the particular circumstances of the COVID-19 crisis. We focus in particular on the cross-border workers living in France and working in the canton of Geneva. It is important to raise this issue because the canton of Geneva counts approximately 85’000 French resident border workers.

1. *Tax issue*

As a reminder, a cross-border worker is an employee who resides in one State and carries out his professional activity in another State, and who returns to his domicile, in principle every day. The imposing of confinement due to the COVID-19 disrupts the situation of a cross-border worker, who can no longer carry out his activity on Swiss territory, and who must, in many cases, telework from his domicile.

However, Article 17 of the Double Tax Treaty concluded between France and Switzerland provides as a general rule that income received in respect of employment may be taxed in the State of residence unless the employment is exercised in another State.

In accordance with the double tax treaty, the income of a cross-border worker living in France and physically exercising his activity in Switzerland must be taxed in Switzerland. On the contrary, if a cross-border worker carries out his activity at his place of domicile in France, his income should be taxed in France. Therefore, according to the double tax treaty, when a cross-border worker teleworks from his country of residence, the days of teleworking should be taxed in the country of residence.

However, considering the exceptional situation caused by the COVID-19, the French Ministry of Europe and Foreign Affairs published on 19 March 2020 a communiqué on the situation of cross-border teleworkers. The Ministry states that allowing cross-border workers to telework at their domicile does not have any consequences on the tax regime applicable to them in this situation of emergency.

Moreover, on 13 May 2020, Switzerland and France signed an agreement for cross-border workers who are now forced to work from home as a result of measures taken by both governments. Thus, cross-border teleworkers continue to benefit from the applicable tax regimes as if they had physically come to their usual place of work.

As a result, France renounces to its right to tax the teleworking days of its cross-border worker during the period of confinement due to the COVID-19. In other words, a French resident cross-border teleworker continues to be subject (only) to the Swiss tax regime.

However, please note that the measures of this special agreement apply as of 14 March 2020 and will remain in force until 31 May 2020. The agreement is tacitly renewable from that date, at the end of each month. It will cease when both States have removed their restrictive sanitary measures. The French and Swiss authorities can terminate it before by mutual agreement.

2. *Social Security issue*

According to EU Regulation No. 883/2004 on the coordination of social security systems between the European Community and Switzerland, when a substantial part of the professional activity (exceeding 25%) is carried out in the country of residence, the social security applicable will be that of the country of residence.

In periods of teleworking, cross-border workers residing in France and their Swiss resident employers would have to be careful not to exceed more than 25% of their working time in France, otherwise they would become subject to French instead of Swiss social security.

Nevertheless, the French Ministry of Europe and Foreign Affairs declared on 19 March 2020 that, given the exceptional circumstances related to the COVID-19, the increase in time spent on French territory due to the increased use of teleworking (usually limited to 25%) will have no impact on the social security coverage: a cross-border worker will therefore still benefit from a social security coverage in his State of activity.

Consequently, in view of the exceptional circumstances of the COVID-19, France renounces to subject cross-border teleworkers to French social security.

In our view, these derogations from international treaties are pragmatic solutions allowing the cross-border teleworkers to avoid switching tax and social security regimes in this exceptional period.

However, we note that the communiqué doesn’t mention the case when the activity carried out in France by a cross-border teleworker could lead to the employer-company setting up a permanent establishment in France in accordance with the Article 5 para. 4 of the Double Tax Treaty concluded between France and Switzerland, which could lead to the taxation by the French Tax Administration of the profits arising from the employee's activity carried out in France, even though the company/employer is resident of Switzerland. Considering the exceptional situation, we expect that a derogation from the Double Tax Treaty should also be decided in such cases.

Given the rapid tax and legal changes occurring at the national as well as international levels, it is important to follow them carefully and keep up to date. Our tax team will be glad to assist you if you have any specific questions or require any assistance with regard to your fiscal or patrimonial situation.

Take care and stay safe!

Geneva, 11 June 2020

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