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Cross-Border Remote Work: Opportunities and Challenges for Employers

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Key Take-aways

- 1.** When working abroad, mandatory provisions of labor law applicable at the place of work must be complied with. Additionally, foreign visa and immigration requirements must be observed.
- 2.** From a social security perspective, it must be assessed whether an international social security agreement is applicable.
- 3.** From a tax law perspective, strict compliance with the applicable double taxation agreement and any additional international treaties is required.

1 Introduction

Our way of working has changed significantly in recent years. **Remote work** has become technically feasible in many professions, and for many employees, the possibility to work remotely is now a key requirement when looking for a job.

Remote work within Switzerland usually poses few legal challenges for Swiss employers. However, employees are increasingly expressing the desire to work from **outside of Switzerland**. This is particularly common among **cross-border commuters** who reside abroad and wish to work from home rather than commuting to Switzerland. At the same time, more and more employees residing in Switzerland are requesting to temporarily relocate their workplace abroad – whether to visit relatives, care for elderly parents living abroad, or extend their vacation (so-called **“workation”**).

However, remote work from abroad may raise immigration, labor, social security, and tax law issues for Swiss employers. The following outlines the most important legal risks in this context and presents potential solutions to mitigate them. In addition, current developments in tax and social security law are discussed.

2 Immigration Law

Regular Employment in Both Switzerland and

Abroad: When a Swiss company employs staff residing abroad, working in their country of residence typically does not pose immigration issues, as foreign employees are generally permitted to work in their home country. However, if the employee is to work partially or primarily in Switzerland, a valid Swiss work permit is required.

EU/EFTA citizens benefit from the Agreement on the Free Movement of Persons and usually **only need to register** their partial employment in Switzerland or are **entitled to a cross-border commuter permit**. In contrast, **third-country nationals require a work permit**.

These permits are **subject to quotas** and are **granted only to qualified professionals under strict conditions**. Therefore, it can be challenging for Swiss employers to hire third-country nationals for work in Switzerland. It is crucial that the Swiss employer obtains the appropriate permit for the foreign employee before any work is carried out in Switzerland. Violations of Swiss immigration regulations may result in fines or a sentence of detention. It is also recommended to make employment contracts contingent upon the granting of a work permit.

Workation: Swiss employees who wish to temporarily work abroad must check the entry and work permit regulations applicable at their destination in advance. **Tourist visas generally do not allow employment,**

meaning that special visas are often required to legally work on-site. Some countries, such as Australia or Greece, now offer digital nomad visas, allowing foreign employees to work within their territory for a limited period. These entry and work permit regulations must be strictly followed. Otherwise, depending on the country, fines, deportation, or future entry bans may be imposed.

Foreign nationals holding a Swiss **residence permit** also risk losing their permit if they leave Switzerland for more than three or six months (depending on the permit type). Therefore, longer stays abroad should be avoided by such individuals.

3 Labor Law

If an employee works primarily in Switzerland for a Swiss employer, the employment relationship is generally governed by Swiss law, and Swiss courts have jurisdiction over any disputes arising from the employment relationship. Often, the parties include a choice-of-law clause in the employment contract in favor of Swiss law. Regardless of such a clause, **all employees working on Swiss soil** are subject to the **mandatory minimum provisions of the Swiss Labor Act** (e.g., regarding maximum working hours and minimum rest periods).

If employees temporarily relocate their workplace abroad or regularly work in their country of residence for a Swiss company, this may result in a shift in the applicable legal framework – **potentially favoring foreign law and the jurisdiction of foreign courts**. Once an employee is working abroad, the minimum standards of the Swiss Labor Act no longer apply. Most countries have similar mandatory labor provisions that automatically apply to all persons working within their territory. In such cases, the Swiss employer is generally required to comply with these local standards.

This becomes particularly challenging for short-term assignments abroad, as Swiss employers will, in practice, not – or at least not with a reasonable amount of effort – manage to be familiar with local minimum labor law requirements worldwide. To minimize risk, Swiss employers should therefore at least comply with the minimum requirements of the Swiss Labor Act during their employees' short-term assignments abroad. However, this does not release the employer from his obligations in the foreign country under local law.

For longer or recurring assignments abroad, there is a risk that employees may, based on international agreements (such as the Lugano Convention), bring legal action against the Swiss employer in a foreign jurisdiction and successfully invoke the applicability of mandatory foreign labor law provisions. This is especially likely when the foreign regulations are more favorable to the employee

than the Swiss ones.

To mitigate risks, it is recommended to define international assignments in a company policy, including limitations on duration and permissible destinations (e.g., a maximum of 30 days per year, EU countries only). For employees working regularly or permanently abroad, it may also be advisable to consult a local attorney to review mandatory labor standards that may apply.

Recommendation: Apply Swiss mandatory minimum labor standards even during foreign assignments

4 Social Security Law

4.1 Social Security Affiliation

In the case of cross-border remote work, it is essential to determine in which country social security obligations arise. The decisive factor is whether an international social security agreement applies or whether exclusively local Swiss social security law governs the situation. In relation to EU/EFTA countries, the provisions of Regulation (EC) No. 883/2004 and its Implementing Regulation (EC) No. 987/2009 (together, the "EU/EFTA Agreement") apply. For activities or residence outside the EU/EFTA, it must be determined whether Switzerland has concluded a bilateral social security agreement with the respective country and whether this agreement is applicable to the specific case.

4.2 EU/EFTA Agreement

The EU/EFTA Agreement applies only to nationals of a member state who are employed in one or more member states. If an individual is working in multiple countries, **coordination rules within the agreement** determine which country is the competent authority (so-called "competent state"). Social security contributions are made exclusively in this competent state, meaning that income earned from work in other EU/EFTA countries is also reported there, thus avoiding multiple affiliations in different member states.

A person who is **employed in several member states** is subject to the social security system of their country of residence, provided they perform at least 25% of their work there. If the individual is employed by only one employer and the work performed in their country of residence is less than 25%, the social security obligation lies with the country of the employer.

In the case of **simultaneous employment and self-employment**, the applicable system is determined by where the employment (i.e., dependent work) is carried

out. Whether an activity qualifies as "employed" or "self-employed" for determining the competent state is based on the social security law of the country where the activity is performed (so-called first-level qualification). However, for the purpose of calculating social security contributions, only the qualification under the law of the competent state is decisive (so-called second-level qualification).

Insignificant activities of less than 5% are not considered when determining the competent state. However, managing a Swiss company (e.g., serving on the board of directors) is never considered insignificant, regardless of the workload involved.

4.3 Framework Agreement on Cross-Border Telework

The EU/EFTA Agreement provides that two or more member states may agree on exceptions to its rules. One such exception came into force on July 1, 2023, through **the Multilateral Framework Agreement on Cross-Border Telework ("TWA")**. This agreement has since been signed by Switzerland and several EU/EFTA member states, including neighboring countries Germany, Austria, Liechtenstein, France, and Italy.

The TWA allows, upon application, for social security affiliation to remain in the employer's country even if remote work in the employee's country of residence exceeds 25% but does not reach 50%. In other words, for cross-border remote work between 25% and 49.9%, there is flexibility in choosing the applicable social security system – either in the country of residence or in the employer's country. For example, under a full-time arrangement, two days of remote work per week from abroad (i.e., 40%) are possible without triggering a shift in social security affiliation to the country of residence.

Flexibility regarding applicable social security scheme for remote work between 25%-49.9%

The TWA only applies to exclusive remote work from the country of residence (i.e., usually no customer visits or similar activities), and only if the employee is not regularly working in a third country.

5 Tax Law

The tax implications of cross-border remote work are complex and multifaceted. They depend on the individual's tax status (e.g., cross-border commuter vs. international weekly resident) and the specific country constellation involved. Therefore, in cases of cross-border remote

work, it is **essential to assess the applicable double taxation agreement for the given situation, as well as any additional bilateral treaty arrangements that may apply.**

Federal Act on the Taxation of Telework in force since January 1, 2025

It is worth noting that Switzerland has concluded specific agreements with both France and Italy regarding the taxation of cross-border remote work from home offices. Under these agreements, remote work performed in the country of residence does not affect cross-border commuter tax status or related income tax rules – up to a certain annual threshold (France: up to 40% of annual working time; Italy: up to 25%).

In order for Switzerland to tax income earned abroad by foreign employees, **the Federal Act on the Taxation of Telework in International Relations** entered into

force on January 1, 2025. This law applies exclusively to Switzerland’s five neighboring countries and requires the existence of an international agreement that allocates taxation rights to Switzerland for the foreign workdays.

For cross-border remote work from a home office, it is advisable to consult with local tax experts to determine whether there is a permanent establishment risk, i.e., whether the Swiss employer could become subject to corporate taxation in the country where the remote work is being performed.

6 Conclusion

Cross-border remote work presents many opportunities, but it also carries considerable risks. The complexity often lies in the details, and the legal and financial implications can vary significantly depending on the specific circumstance. To avoid unpleasant surprises, it is strongly recommended to conduct a thorough, case-by-case assessment before initiating any cross-border work arrangement, taking into account all relevant areas of law.



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