

Home office after the pandemic: the arrangements of 2023

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The spread of home working after 2020 raised a question that the drafters of 1983 could not have foreseen. A commuter resident in France who works some days at home in France still returns home every day and therefore remains a frontier worker under the agreement, so that taxation remains in France. Swiss compensation, however, is calculated on the full salary, which raised the question whether the compensation should be reduced for home office days. The issue was more acute for commuters to Geneva, where the cantonal right of taxation at source covers only work physically performed in Switzerland.

On 27 June 2023 Switzerland and France signed an amendment to the agreement of 1983 together with an agreement concerning the Geneva model, which settle the question for both groups. Under these arrangements, telework from the state of residence up to 40 per cent of working time does not affect the frontier-worker status. The compensation of 4.5 per cent continues to be calculated on the full gross salary for the cantons that are party to the agreement of 1983.¹ The arrangements also introduce an automatic exchange of information on the salaries of frontier workers between the tax administrations, which is designed to secure the calculation of the compensation and the correct taxation in France.

Switzerland and Germany reached their own understanding on home office days in the same period. Because German frontier workers within the meaning of Article 15a remain frontier workers when they work from home, the arrangements with Germany are mainly relevant for commuters who fall outside that article, for example senior executives or employees who exceed the 60-day rule.² Practitioners must therefore check three different thresholds for a Basel employee who works partly from home: the 49.9 per cent limit of the social security framework agreement, the 40 per

cent limit of the Franco-Swiss arrangements and the rules applicable under the Swiss–German convention.

These thresholds rarely coincide with the contractual arrangements that employers offer. Many Basel employers allow one or two days of home working a week, which falls below all limits. A few have adopted more generous policies, which require careful monitoring of individual working patterns. The obligation of the employer to record the place of work for each day has thus become part of payroll administration in the trinational region.³ For employers that also have staff in Italy or Austria, further treaties with their own rules must be added to the analysis.

1 Notes

1. Amendment of 27 June 2023 to the Franco-Swiss agreement of 11 April 1983 on the taxation of the remuneration of frontier workers and Additional Protocol to the Convention of 9 September 1966, providing for telework of up to 40 per cent and for the automatic exchange of salary information. On the entry into force and the transitional rules applicable from 2023 to 2024, see the communications of the State Secretariat for International Finance (SIF). Status to be verified. ↩
2. On the arrangements agreed between Switzerland and Germany in 2023 concerning the taxation of home office days of cross-border employees, see the communications of the State Secretariat for International Finance and the German Federal Ministry of Finance. Content and status to be verified. ↩
3. On the practical consequences for employers of the different thresholds for home working in social security and tax law, see the guidance of the Basel Chamber of Commerce (Handelskammer beider Basel) and of the cantonal tax administrations. To be verified. ↩

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