

Taxing commuters from Germany: Article 15a

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The taxation of employment income across borders is governed in principle by Article 15 of the OECD Model Tax Convention, under which salaries are taxable in the state where the employment is exercised. For cross-border commuters the treaties between Switzerland and its neighbours depart from this principle in different ways. The double taxation convention between Switzerland and Germany of 11 August 1971 contains a special rule for frontier workers in Article 15a, which was inserted by the protocol of 21 December 1992 and applies since 1994.¹ The rule follows the residence principle. A cross-border commuter resident in Germany and employed in Switzerland is taxable in Germany, while Switzerland may levy a tax at source limited to 4.5 per cent of the gross salary.

The German tax authorities credit the Swiss tax against the German income tax, so that the total burden corresponds in principle to German income tax. The commuter files a German tax return in which the Swiss salary is declared, while the Swiss employer withholds the 4.5 per cent tax at source and certifies the amount.² The employer must also obtain a residence certificate from the German tax authority, without which it may apply the full Swiss tax at source. The administrative procedure thus requires cooperation between the employee, the employer and two tax administrations, which in practice works smoothly in most cases.

The status of frontier worker depends on regular return to the residence. Article 15a paragraph 2 defines a frontier worker as a person who resides in one state, has the place of work in the other and regularly returns from there to the place of residence. The status is lost if the person does not return to the residence on more than 60 working days in a calendar year because of the employment, a rule known as the 60-day rule.³ Days of non-return include business trips with overnight stays abroad or at the place of work, while days of illness or holiday are not counted. For managers who

travel frequently, the 60-day rule can therefore cause the loss of frontier-worker status, with the result that the general rule of Article 15 applies and Switzerland gains the full right of taxation for the days worked in Switzerland.

Article 15a also contains special rules for senior executives. Under Article 15 paragraph 4 of the convention, the remuneration of a person resident in Germany who works as a member of the management of a Swiss company, for example as a director or with a power of attorney entered in the commercial register, is taxable in Switzerland, provided that the activity is not exclusively exercised outside Switzerland.⁴ This provision takes precedence over the frontier-worker rule and produces full Swiss taxation for the executives concerned. In a city whose life sciences groups employ numerous executives with signing powers resident in southern Baden, the provision has considerable practical weight.

The German side has given its own interpretation of these rules over the years, notably with regard to the treatment of days spent working at home. Because a commuter who works from home in Germany has returned to the residence by definition, home office days do not endanger frontier-worker status under the 60-day rule. The issue becomes relevant for commuters who are not frontier workers within the meaning of Article 15a, for example because they exceed the 60-day limit or because they are senior executives, since home office days shift the right of taxation for those days to Germany under the general rule.⁵ The following section, which turns to France, shows that the Franco-Swiss arrangements follow a different model.

1 Notes

1. Convention of 11 August 1971 between the Swiss Confederation and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and on capital (SR 0.672.913.62), Art. 15a, inserted by the Protocol of 21 December 1992. To be verified. ↩
2. Art. 15a para. 1 and para. 3 lit. a of the Swiss–German DTC on the limited Swiss tax at source and the credit in Germany. On the procedure, see the circulars of the Federal Tax Administration on tax at source and the guidance of the German Federal Ministry of Finance on Grenzgänger. To be verified. ↩
3. Art. 15a para. 2 of the Swiss–German DTC and the consultation agreement of 1993 on its application (Verständigungsvereinbarung), which defines the days of non-return and the treatment of business trips and part-year employment. To be verified. ↩

4. Art. 15 para. 4 of the Swiss–German DTC on the taxation of senior executives (leitende Angestellte) of companies resident in the other state. On its relation to Art. 15a, see the literature on the convention, for example the commentaries on the Swiss–German DTC. To be verified. ↩
5. On the treatment of home office days under Art. 15 and 15a of the Swiss–German DTC, see the consultation agreements concluded during the pandemic and the subsequent arrangements of 2023, as well as the guidance of the Federal Tax Administration and the German Federal Ministry of Finance. Status to be verified. ↩

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