

A practitioner's checklist

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The legal questions described in this chapter must be addressed in a sequence that reflects their interaction. The following checklist summarises the points that must be examined before a German entrepreneur or family moves to Zurich.

1. Residence: give up every dwelling in Germany at the taxpayer's disposal, avoid a habitual abode in Germany and document the new centre of life in Zurich, in order to avoid unlimited tax liability under §§ 8 and 9 AO and the special rule of Article 4 paragraph 3 of the convention.
2. Five-year period: identify all German-source income and assets that remain taxable during the year of departure and the five following years under Article 4 paragraph 4 of the convention, and check whether the employment exception applies.
3. Extended limited tax liability: carry out the comparison of § 2 paragraph 2 AStG for the planned place of residence, determine whether the counter-proof of two thirds can be furnished and assess the substantial economic interests in Germany.
4. Exit tax: value all shareholdings of at least 1 per cent and all fund units above the thresholds of the Investment Tax Act, calculate the exit tax under § 6 AStG, prepare the application for instalments and the security, and consider the return rule.
5. Companies: examine the place of management of German companies after the move, the controlled foreign company rules for Swiss companies and the substance of any new Swiss structure.
6. Inheritance and gift tax: map the five-year period of § 2 paragraph 1 number 1 lit. b ErbStG, the ten-year period of § 4 AStG, the special rule of the estates convention and the residence of each heir, and postpone gifts and the establishment of foundations or trusts accordingly.

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7. Swiss tax: choose the commune within the canton, obtain rulings on the valuation of foreign shareholdings for wealth tax and on the treatment of distributions, and plan the Swiss tax return for the first year.

8. Residence permit and social security: apply for the permit under the free movement agreement, determine the applicable social security legislation under Regulation No 883/2004 and register with the AHV compensation fund.

9. Pensions and real estate: clarify the taxation of German pensions and the treatment of German real estate in both states.

10. Compliance: keep a residence calendar, file German returns for the year of departure and under limited liability, fulfil the reporting obligations under § 6 paragraph 5 AStG, and review the tax history for undeclared income before the move.

The checklist cannot replace individual advice, since each family's situation combines these elements differently. It shows, however, that a move to Zurich requires the coordinated work of German and Swiss tax advisers, lawyers, notaries and, frequently, a family office or bank that can provide the necessary documentation.

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