

Switzerland

Amendments to the expatriate ordinance – merely a clarification?



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Before the start of this millennium, a number of the cantons in Switzerland had their own expatriate ordinance, which was one of the elements used to attract foreign business and talent to their particular canton. In 2000, the federal expatriate ordinance was issued as a part of the tax harmonisation effort between the cantons. The ordinance was widely followed by the cantons but as it was issued as an ordinance, the cantons had room for interpretation. This has led to significant differences in the application of the ordinance. The newly published amendments to the expatriate ordinance, which will come into effect on January 1 2016, clarify a number of the terms used in the former expatriate ordinance, but as the title indicates it is still an ordinance, with room for cantonal interpretation when applied in practice.

What's new?

- Maximum application of the expatriate ordinance for up to five years – not all cantons have been consistent on this point in the past, so a certain alignment may take place;
- General lump-sum deduction of CHF 1,500 *in lieu* of actual costs will only be granted if home country housing is still available to the foreign local hire (FLH) or international assignee (IA) during the stay in Switzerland;
- Actual housing cost deduction will only be allowed if the FLH or IA permanently and readily has home country housing available. Deductible amount is determined by the cantonal tax authorities;
- Schooling costs can only be deducted for up to five years. The school sponsoring system is still accepted in lieu of actual schooling costs, however, only for a maximum of five years for the FLH/IA; and
- Relocation lump-sums or reimbursements (so-called curtain allowance) are no longer deductible. Only direct costs related to the relocation, such as flights and removal costs, may be deducted.

Who can use the expatriate ordinance?

- Executive employees and specialists with an assignment letter from the

home entity to the Swiss entity.

- Foreign local hires (executive employees and specialists) who are transferred to the Swiss entity may be able to use the new expatriate ordinance. It is a requirement, however, that there is a guarantee of re-employment with the home entity.

The major change in the new expatriate ordinance is that FLHs (executive employees and specialists) who are hired externally to the Swiss entity will no longer be able to use the ordinance. In the past, this was possible in a number of cantons. We also expect the tax authorities to apply a stricter definition of “executive employees and specialists”, with the result that the group of employees eligible for benefitting from the ordinance will become more limited.

The amendments to the expatriate ordinance primarily seek to clarify and harmonise the application of the ordinance, which in itself is positive. It may, however, result in an increased tax burden for foreign employees coming into Switzerland in a number of situations.

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