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## **Source tax revision 2021 – What you need to know**

**O**n 16<sup>th</sup> December 2016 a federal revision for the source tax law has been passed, which will be in force on 1<sup>st</sup> January 2021. The revision was passed to harmonize taxation processes on cantonal level and to reduce inequalities between people who are paying tax at source versus regular income tax. Clearly the revision will cause need for actions on employer levels, but what are the implications for you as an employee?

### **1. Tax residents living in Switzerland**

Tax resident people subject to monthly source tax withholding with an annual gross salary exceeding CHF 120'000 continue being taxed within the regular taxation process and file a yearly tax return. If this income limit is exceeded once, a tax return must be filed each subsequent year until the source tax withholding ends (e.g. by receiving a C-permit). The source tax withheld monthly by the employer will be credited as prepayments towards the final tax assessments.

By now, if the annual income did not exceed CHF 120'000 gross, tax deductions could be claimed on an annual basis by filing an “application for source tax correction”. A normal tax return did not have to be submitted in most cases. From 1<sup>st</sup> January 2021, such deductions need to be claimed through a regular tax return. A formal request to file a tax return needs to be submitted to the cantonal tax authority **by 31<sup>st</sup> March**. If no request is submitted by this deadline, there is no possibility to claim any tax deductions for prior year. While the monthly source tax is calculated based on a cantonal average rate, the tax rate calculated within a normal tax return is calculated based on the effective residency commune. By submitting a request to file a regular tax return, that alone can lead to either a tax refund or an additional tax burden.

If a request is submitted once, there will also be a tax return to be filed for subsequent years. It is recommended to consult a tax professional to consider all aspects of this decision.

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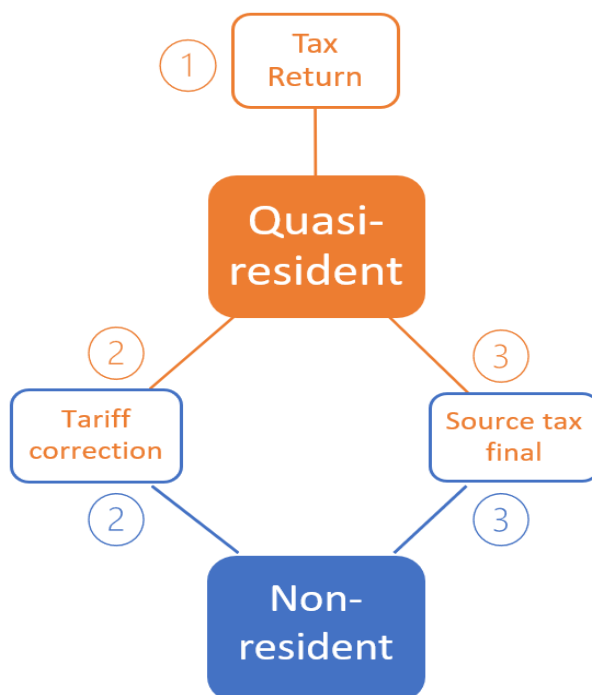
## 2. Tax non-residents living in Switzerland

**«Tax non-residents living in Switzerland»:** If you are typically working in Switzerland during the week but returning to your family abroad on weekends on a regular basis, in most cases you are considered non-resident in Switzerland from a tax law perspective. Based on most double taxation treaties, tax residency is given in the country with closer personal and economic relations (“center of vital interest”). Children’s residency and spousal habitual abode and work location can be crucial factors at determining fiscal residency. If based on these personal circumstances, no exact residency can be fixed in either country, other aspects such as nationality will be considered too.

To clearly determine tax residency in any country involved, the specific double taxation treaties between the countries involved need to be applied. Depending on the nations involved, regulations can differ and other specific aspects are considered to determine tax residency. There are also certain countries without any double taxation treaties in force. From a Swiss tax law perspective, there is joint taxation for married couples with/without minor children, so the entire family situation needs to be considered in order to determine tax residency, even if the second nation involved applies individual taxation.

**«Quasi-resident»:** If you are considered tax non-resident in Switzerland (see paragraph above) but more than 90% of your family’s worldwide income is taxable in Switzerland, you are considered as **«quasi-resident»**. The source tax revision 2021 finally harmonizes how this 90% limit will be calculated Swiss-wide. The entire taxable gross income taxable in Switzerland needs to be considered in relation to the worldwide taxable gross income. As a result, not only salary income but also interest, dividend, rental and deemed rental income as well as pension and alimonies are taken into consideration. If the spouse living abroad is receiving income from employment, usually the 90% limit cannot be reached.

If at least 90% of your family’s worldwide income is earned and taxable in Switzerland, you are considered **«quasi-resident»**, therefore you will be treated the same as a regular resident person from a tax law perspective. Despite a non-discrimination rule being in force, there used to be disadvantages in terms of tax deductions in the past.



## Quasi-resident

1

If you are considered quasi-resident, you can file a request to file a regular tax return. Within this annual tax return, worldwide family income, deductions and assets need to be declared. The taxation process is the same as for a regularly resident person. As the tax liability is no longer based on a cantonal average (source tax approach) but on your effective commune of residency, it is recommended to seek advice from a tax professional.

**IMPORTANT:** The request to file a regular tax return needs to be submitted to the respective cantonal tax authority **by 31<sup>st</sup> March of the following year**. If a request is submitted, it cannot be retrieved at a later stage.

2

If no request to file a regular tax return is submitted, there is the possibility to file an “application for tariff correction” in case the monthly source tax withholding was incorrect or foreign workdays can be excluded from Swiss taxation.

3

If neither a request nor an application for tariff correction is submitted, the monthly source tax withheld by your employer equals your final tax liability. As this tax is automatically deducted monthly from your salary, there are no further steps to be taken in terms of taxes.

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2

If less than 90% of your family's worldwide income is earned and taxed in Switzerland and you are therefore simply considered tax non-resident, there is only the possibility to file an application for tariff correction in case the monthly source tax deducted was not correct or you can exclude employment income related to foreign workdays from Swiss taxation. Any deductions, for instance your weekly commuting expenses, cannot be deducted as this would only be possible in case quasi-residency is given.

3

As a tax non-resident, if the correct source tax has been deducted and no foreign workdays can be excluded from taxation, the monthly source tax withheld is the final tax liability and no further steps have to be taken related to taxes.

## Conclusion

As of today, there were legal regulations in place regarding taxation of weekly commuters, however every canton took different and inconsistent practical approaches to apply the rules. Tax planning used to be almost impossible as even at the same authority, different tax officers took different approaches. The source tax revision finally leads to more precise regulations for weekly commuters and non-residents and delivers more security in terms of tax planning.

For tax residents with an annual gross salary below CHF 120'000, various aspects need to be taken into consideration when deciding to ask for a regular tax return filing. Even if in a specific year, large deductions lead to a significant tax benefit, future years without any deductions can lead to financial disadvantages. In addition, if the deadline 31<sup>st</sup> March is missed, there will be no possibility to claim any deductions. As a result, missing this deadline can lead to very large financial damage.

If you have any questions regarding the source tax revision or are not sure if and how you are affected, please do not hesitate to contact us without obligation.

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