



Tax consequences of coronavirus for employees and companies

On 16 March, the Swiss Federal Council declared a national emergency following the rapid spread of the Corona virus. As a result, large numbers of employees are working from home (where possible) by so called "home office". The tax consequences of this pandemic will be felt next year in particular, when private households complete their 2020 tax returns and when companies carry out tax calculations for their 2020 financials.

1. Employee perspective

1.1. Tax reduction for home office?

Numerous companies have sent their employees home to work in the home office. This has forced many Swiss households to change the use of their premises or to double use these, e.g. the guest or living room becomes an office, the private phone and printer ink is used 24/7 for working purposes and the electricity meter runs at full speed due to continuous load. This use of private infrastructure will without doubt have some impact on the employees' personal wallets. In the end, they may therefore pose a variety of questions regarding the taxation of their new work situation, such as: Are costs for private premises, infrastructure, internet, electricity etc. in connection with the home office tax deductible?

The jurisprudence in this regard is very guarded/conservative and accepts a tax deduction for a private working space as professional expenses only if the employee regularly has to carry out a substantial part of

his professional activity at home because the employer does not provide a suitable working space. In addition, the private working space needs to be clearly separated in such a way that is mainly used for working purposes but not private needs. According to general practice, a tax deduction is only accepted if external circumstances force the employee to use the private space.

In view of the current situation, this narrow practice needs to be adapted. It would neither be appropriate in view of the current crisis nor would it be proper, if only those persons could benefit from a tax deduction who have a separate working space at home. Not every household will be able to organize a separate "home office". Furthermore, in the current situation converted premises are not only being used for working purposes on a regular basis but rather on a daily and predominant basis. Ultimately, it would also run counter to the principle of equal treatment if in the current situation employees were not able to make a tax deduction in their 2020 tax return regardless of the exact facilities of their home office. The same should apply to the other work-related costs such as the telephone connection, internet, printer ink, paper and the like.

To benefit from a tax deduction of professional expenses, it should ultimately be noted that the burden of proof lies with the taxpayer: Whether or not the tax authorities will accept a deduction of professional expenses in connection with the "Corona virus-related" home office will depend to a large extent on the supporting documents

and evidence submitted by the taxpayers. Detailed documentation (overview of the working hours, invoice extracts, receipt for purchase of office-supplies, etc.) will be essential for the 2020 tax return.

1.2. *Reduced tax deduction for commuters?*

While working in the home office, the costs for the commute to work cease to accrue. In contrast to the extraordinary tax deduction for home office costs, the commuter deduction is therefore likely to be reduced on a pro-rata temporis basis.

2. **Company perspective**

2.1 *Permanent establishment(s)?*

Due to the rapid transition to home office, companies might face the question, whether their employees resident in other communes or cantons could be considered to have set up permanent establishments there and – as a consequence – whether this might trigger an intercantonal or -communal tax liability for 2020.

According to intercantonal tax law, a permanent establishment is defined as a *permanent physical facility or institution*, in which a *business activity is carried out that is not completely subordinate* and that can be *assigned to a company*. In principle, any infrastructure available to the company for the purpose of conducting its business activity is considered a *permanent physical facility or institution*. In the case of employees' home offices, this condition should always be met. In addition to this physical component, a time component must be fulfilled: The business activity needs to be carried out at least for a certain time period in the *permanent physical facility or institution*. However, no clear definition of the relevant time period is provided by law or practice.

The "Corona virus-related" home office is clearly temporary and limited in time from the outset. In our view, the requirement of a permanent establishment is therefore unlikely to be met due to the lack of duration (unless the employee actually carries out his or her work from home over a longer period

of time). No permanent establishment(s) qualification should arise, even though the actual business premises of the company might be currently "unused".

2.2 *Federal and cantonal relief measures*

To ensure that companies do not suffer too much from the economic consequences of the Corona virus and from the national emergency, the Federal Council issued comprehensive measures on 20 March 2020. In addition to the CHF 40 billion financial aid package to prevent liquidity shortages, measures such as deferred payments of social security contributions and liquidity buffers for tax purposes have been provided:

- Granting of temporary, interest-free deferral of payment of social security contributions (if the company is "affected" by the Corona virus).
- Temporary reduction of default interest for value-added tax, customs, special consumption taxes and incentive taxes to 0.0 percent (from 21 March 2020 to 31 December 2020). During this period, no default interest will be levied. The same applies to direct federal tax. The waiver of the levying of default interest thus offers companies the opportunity, at least until 31 December 2020, to plan their payment arrangements by deferring tax payments and thus to manage the available liquidity in this regard.

Several cantons are also helping to cushion the tax consequences of the crisis by extending deadlines for the filing of tax returns and by granting payment deferrals or instalment payments. The canton of Zug is even considering to lower the municipal tax multiple from 82% to 78% for the years 2021 to 2023.

Finally it remains to be seen how many companies will still be making a profit in 2020, especially as sales could fall sharply in some cases and thus might erode profits.



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Dr. Roland Böhi
Partner, Head of Tax
roland.boehi@prager-dreifuss.com



Lukas Scherer
Associate Tax
lukas.scherer@prager-dreifuss.com



Nicole Fröhlich
Associate Tax
nicole.fröhlich@prager-dreifuss.com



Manuel Vogler
Associate Tax
manuel.vogler@prager-dreifuss.com



Laura Bartesaghi
Trainee Lawyer
laura.bartesaghi@prager-dreifuss.com

