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Home office as business establishments

With respect to Switzerland's intercantonal and international tax law, a company generally is not considered to have a permanent establishment in Switzerland or in another canton simply because employees are working from home there. However, as is so often the case, here too the exceptions prove the rule.

Still working from home after the pandemic

As a result of the Covid-19 pandemic, the trend in working from home accelerated dramatically. More and more companies are opting for flexible forms of working and adapting their working models to the digitalisation of the working world. The new modern workplace concepts raise tax issues both for employees and for employers.



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Since employees are often living in a different country or canton than the employer, the question is: Does working from home mean that the company's profit and capital are allocated to the employee's place of residence?

Due to economic affiliations, companies are subject to limited tax liability in Switzerland or in another canton if they maintain permanent business establishments there. Permanent business establishments are usually defined as "the right of disposal over a fixed and permanent facility in which a quantitatively and qualitatively significant part of the technical or commercial activity of a business is carried out".

Right of disposal over a fixed and permanent business facility

If an employee dedicates a particular space in their home to working from home, then in most cases this constitutes a fixed and permanent facility. However, the company usually has no real right over the permanent business facility at the employee's home. In particular, access to the premises remains under the control of the employee, and the company does not have a sufficient right of use. Consequently, there is no power of disposal over the employee's home, which would be necessary for it to be classified as permanent business establishment, even if the employer reimburses the employee for the use of their private space. However, the practice of the cantonal tax authorities has not yet been fully established, especially in cross-border cases, which is why it is a good idea to resolve this question with a binding tax ruling.

Place of actual administration

In principle, the main tax domicile of a legal entity is its place of business. However, this principle should not be applied if the managerial activity is carried out elsewhere, such as in a home office. In larger companies, an individual employee does not usually operate the actual administration from their home office even if they are the managing director. By the same token, the situation may be different in smaller structures where the operational management of the company is in the hands of a single individual such as a sole shareholder. Here it should generally be assumed that the company has power of disposal over the home office. If the business is managed entirely or mainly from the place of residence, then the main tax domicile also shifts to the place of residence. The situation is similar for sole proprietors who, in these cases, cannot claim a special tax domicile at their place of business, but at most, a business facility away from their place of residence as the civil law domicile of the sole proprietorship. Likewise, shareholders in partnerships may establish the main place of business or a permanent business facility at their home office. In these cases it is advisable to discuss the consequences of working from home with the relevant tax authorities of the place of residence and the place of business, as otherwise the possibility of double taxation cannot be ruled out.

Tags: Steuerberatung, Home-Office, Betriebsstätte, Geschäftseinrichtung, Nutzungsrecht, Arbeitsort, Arbeitsplatz

