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INTERNATIONAL MOBILITY NEWSLETTER

HR UPDATES | BILATERAL SOCIAL SECURITY AGREEMENT | CORPORATE TAX

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LEGISLATIVES UPDATES 2022/2023

HR Changes

- Marriage For All
- Adoption Leave
- Women's Retirement Age
- New Data Protection Law

International Mobility

Bilateral SS Agreement with:

- Tunisia
- UK SMA Extension
- Relaxing Rules for Non-EU

Tax

- Cross-border Working Remotely Tax Agreement
- Corporate Tax & OECD Minimum Tax Rate

HR CHANGES

Marriage For All

New provisions on full marriage and adoption rights for same-sex couples have come into force on 1st July 2022

Previously unable to marry in Switzerland, same-sex couples only had the option of entering into a registered partnership, which did not allow naturalisation, adoption of children and access to reproductive medicine.

The Federal Council and Parliament wanted to eliminate these inequalities and open up marriage to all couples.

Swiss electorate voted on full marriage and adoption rights for same-sex couples.

New changes:

- **The enactment on 1 July 2022 of the new provisions governing marriage for all puts same-sex couples on the same footing as heterosexual couples in terms of civil wedding.**
- **Civil partnerships are no longer an option in Switzerland.**
- **Existing civil partnerships can be maintained without the partners having to make a special declaration.**

Ensure to update internal regulations and policies in this respect

Adoption Leave

Adoption leave has entered into force on January 1, 2023.
Duration : 2 weeks which may be taken within the first year of adoption.

Eligibility requirements :

- **Child under 4 years old**
- **The adopter must be gainfully employed at the time of welcoming child**
- **be compulsorily insured within the meaning of the LAVS during the 9 months preceding**
- **have carried out a gainful activity for at least 5 years**

Adoption Allowance :

- **Up to 14 daily allowances (7 daily allowances are paid per week)**
- **Daily allowance : 80% of the average income from gainful employment before the start of entitlement to adoption allowance, up to a maximum of CHF 220 per day.**
- No allowance and no adoption leave in the event of adoption of the spouse's child.
- In the case of joint adoption, entitlement to the allowance is granted only once if both parents fulfil conditions.

Seconded employees could therefore be eligible (subject to mandatory rules applicable in host country)

The right to adoption leave is in addition to the vacation days granted by the Company or the employment contract.

These days of vacation cannot be reduced for the worker who takes adoption leave, as is the case for maternity/paternity leave.

Women's Retirement Age

On 1st January 2024, entry into force of the old age and survivors' insurance (OASI 21) reform, which provides for retirement for all at age 65.

- **This will bring the harmonisation of reference age for men and women at 65.**
- **Gradual implementation, by three months each year, so that the reference age of 65 will apply to all from 2028.**
- **Transitional measures for Women born between 1961 and 1969,** close to retirement (lifelong pension supplement in the absence of early retirement & lower reduction rates for early retirement).
- **Flexibility in retirement :** Pre-retirement from the age of 63 (62 for women of the transitional generation). Pension postponed until the age of 70. It will be possible to bring forward or defer only part of the pension**.**
- **This adjustment will also affect insurance areas such as occupational pensions.**

- **We recommend that employers check at an early stage what action needs to be taken in this regard.**
- **This includes, for example, a revision of the employee regulations, contractual documents, handbook or technical system adjustments in payroll processing, international insurances policies…**

Birth year	Reference retirement age
1961	64 and 3 months
1962	64 and 6 months
1963	64 and 9 months
1964	65

New Swiss Data Privacy Act

The Federal Act on Data Protection (FADP) came into force in 1992 at a time when the Internet & digital tools were not yet being used, to protect fundamental rights of persons whose data are processed.

- **As per 1 September 2023,** the revised FADP **will come into effect.**
- **The basic principles of data protection remain unchanged**, i.e. compliance with the familiar processing principles, including transparency, purpose limitation and data security.
- **Many of the changes are in line with the European General Data Protection Regulation (EU GDPR).** These includes introduction of an obligation to report data losses and breaches of data security, expansion of information obligations (to be documented); changes to data exports, stricter sanctions compared to the current law. **However, there are some deviation from the GDPR, therefore your compliance documentation will need re-wording if applicable.**
- **Since the revised law does not provide for any transition periods, we recommend that companies and employers prepare for it now**. For example, companies have to justify why they collect information from their customers and to disclose with which third parties they share this information. Additionally, individuals will have the right to know how long their data will be stored and what purposes it will be used for. They can also request corrections of any inaccurate data without having to give a reason.
- **It is important to ensure that your organization complies with the applicable provisions**

INTERNATIONAL MOBILITY

New bilateral Social Security agreement with Tunisia

- **A bilateral social security agreement with Tunisia has entered into force on 1 October 2022**

- It regulates relations between Switzerland and Tunisia in the field of social security and coordinates the social security systems of the two contracting states in the areas of old age, death and disability, and regulates in particular the payment of pensions abroad.

- **The agreement corresponds to the social security agreements already concluded by Switzerland, and is in line with international standards for the coordination of social security systems.**

The agreement guarantees insured persons equality of treatment and easier access to benefits, and allows the payment of pensions abroad. As before, Tunisian nationals who leave Switzerland permanently will be able to waive their right to a pension and instead request reimbursement of their AHV contributions.

Finally, the agreement promotes economic exchanges between the two countries and avoids double payment of social contributions by facilitating the secondment of personnel. Like all social security agreements concluded by Switzerland, it applies regardless of the nationality to determine applicable scheme.

Immigration - UK SMA Extension

- The **Service Mobility Agreement (SMA) between Switzerland and the UK** has been extended until 31 December 2025
- Switzerland and the UK signed the SMA on 14 December 2020 following the UK's exit from the EU and the end of the Brexit transition period.
- The SMA allows companies based in the UK to send their employees to work in Switzerland for up to 90 days (per company) per calendar year using the online notification procedure, without obtaining a short-term work permit.
- The agreement was **initially set to expire on 31 December 2022** and **will now be extended until 31 December 2025**.
- The SMA **only applies to cross-border service provisions of up to 90 days** per calendar year.
- Any local hires are governed by the Swiss Act on Foreign Nationals and Integration. Hence, in order to hire a U.K. national locally, a Swiss employer will still need to submit a formal Swiss work and residence permit. The so-called priority of Swiss and EU nationals applies.

Relaxed Rules For Hiring Highly Skilled Non-EU Nationals in Switzerland

- A revised directive was introduced on 1 February 2023 under the Foreign Nationals and Integration Act, on the **admission requirements for non-EU nationals to the Swiss labour market**.
- The **directive aims to facilitate the employment of highly-specialised non-EU nationals in positions where a shortage of skilled workers is evident**.
- The directive makes it easier to hire skilled workers from countries such as India, Britain, China and the United States.
- The new directive allows local authorities to **lower** the **requirements** that prioritise domestic and EU/EFTA nationals in sectors with a proven shortage of skilled workers. Companies will also no longer have to prove that the candidate has a required level of education before the permit can be issued.
- **By making it simpler to award B and L work permits, Switzerland hopes that the "innovative power of the economy can be strengthened."**

TAX

New Rules For French Cross-Border Workers

- France and Switzerland have agreed on a **permanent Tax agreement on telework for cross border workers**.
- **From 1 January 2023, up to 40 % of the total working time** per calendar year **maybe performed** remotely without having an impact on employment income tax status for the employee.
- An addendum to the existing double tax treaty between France and Switzerland will accordingly enter into force once signed and ratified by the respective parties and parliaments. In the meantime, an amicable agreement will apply.
- **Unfortunately, the rules on tax and social security are not yet harmonised**.
- **In terms of Social security**, the **flexible application of EU Regulation has been extended until 30 June 2023 only**. According to this practice, the competence in the field of social security remains unchanged, regardless of the part of the activity carried out remotely in the country of residence.
- **A derogatory agreement is expected after 30 June 2023, subject to ongoing discussions** between competent institutions for a level of telework higher than 25% in the country of residence without changing the social security competence.
- **Employers will have to be ready to revise their practice if no Social Security agreement is achieved**.

Minimum Corporate Tax

- The Swiss Federal Council has opened **public consultation on minimum corporate** tax.
- In June 2023, the Swiss people will be asked to vote on a fundamental issue for the future of Geneva as a business location: the implementation of the **special taxation of large corporate groups.**
- The **project of the OECD and G20 is a major reform of the international tax system**, which is part of a global approach **to reduce tax competition**. The first pillar provides for taxation in the countries where consumers are located. The second pillar **introduces a 15% minimum tax for international companies** with a turnover of more than 750 million. The second pillar is the most advanced, although many questions remain still open.
- If the majority of the Swiss citizens and the cantons approve the amendment, it is expected that the Federal Council will implement Pillar Two via temporary ordinances as of 1 January 2024.
- **Attractive taxation is an essential element in ensuring that companies and jobs remain in Switzerland. In this area, the challenges remain numerous, with ever-increasing international pressure**. Moreover, it is essential to promote a balanced tax system that does not adversely affect economic activity.
- **This is a topic to be followed closely in 2023**

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Q1 2023

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