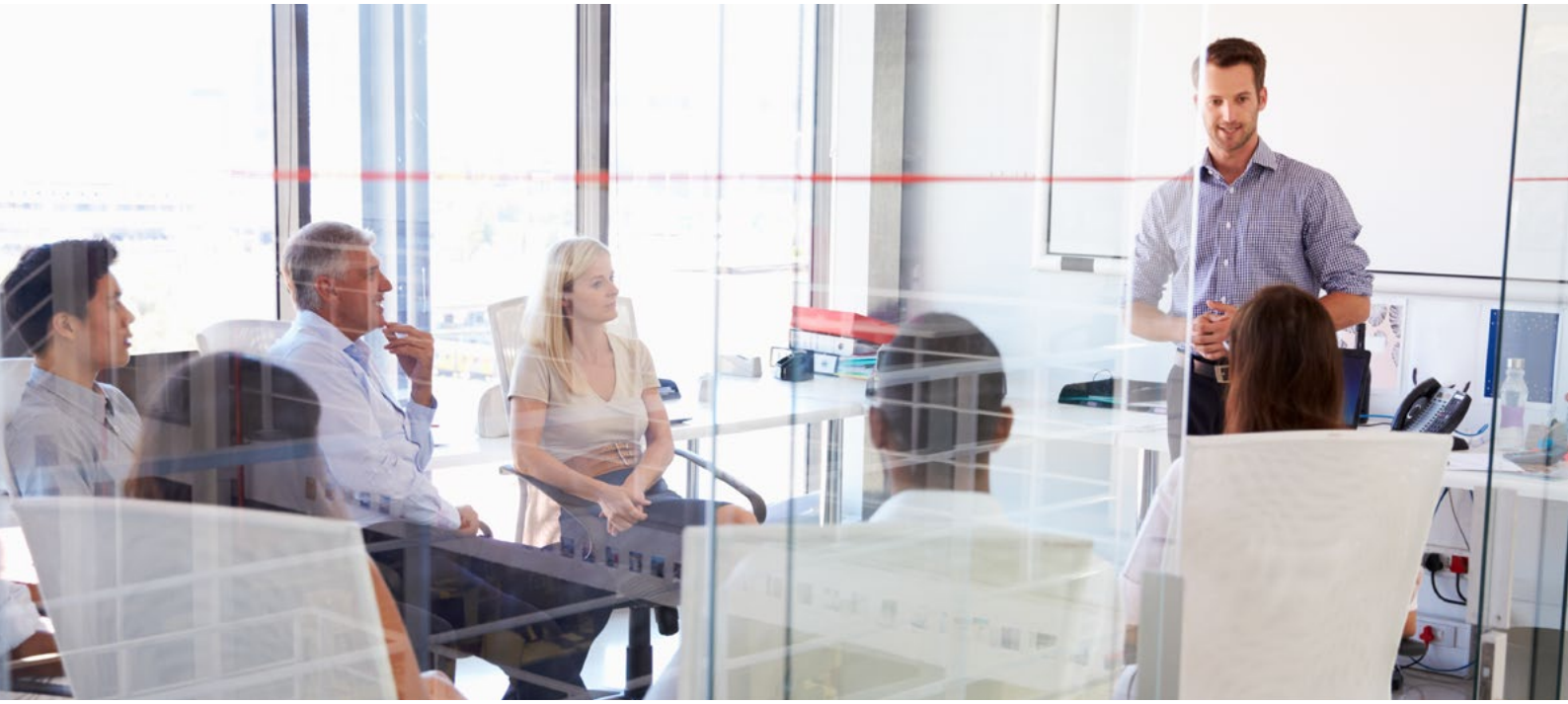
Grant Thornton

Revision of the withholding tax law

Important information on the changes coming into force as of 1 January 2021



The Swiss Federal Council adopted the revised withholding tax law in December 2016.

This reform contains various adjustments that are relevant to you as an employer. All changes will enter into force on Friday, 1 January 2021. In this fact sheet, we would like to provide you with information about the most important points of this revision.

It is no longer possible to settle the withholding tax for all persons subject to withholding tax with the canton of the employer's registered office or permanent establishment.

In the case of artists, athletes and speakers, the canton in which the public

General

Responsibility for the various groups of persons subject to withholding tax:

1. **For employers with employees subject to withholding tax residing in a different canton than that in which the company is registered:**
   The withholding tax of these persons is to be settled directly with the canton entitled to the tax.

2. **For employers with employees residing abroad who are subject to withholding tax:**
   The withholding tax of these persons is to be settled directly with the canton of their weekly residence.

3. **For employers with employees residing abroad who are subject to withholding tax and do not have a residence in Switzerland:**
   The withholding tax of these persons is to be settled in the canton in which the employer has its registered office, its actual administration or its permanent establishment.

performance takes place remains entitled to the tax.

For directors residing abroad, the withholding tax is settled in the canton of the company's administrative headquarters.

Increase in work-related expense deduction for artists

Artists residing abroad may claim a lump-sum work-related expense deduction of 50% of gross income (Article 92(2) of the Federal Act on Direct Federal Taxation (DFTA) and Article 36(2) of the Federal Act on the Harmonisation of Direct Taxation at Cantonal and Communal Levels (DTHA)). The deduction of actual work-related expenses is no longer permitted.

Uniform forfeiture period

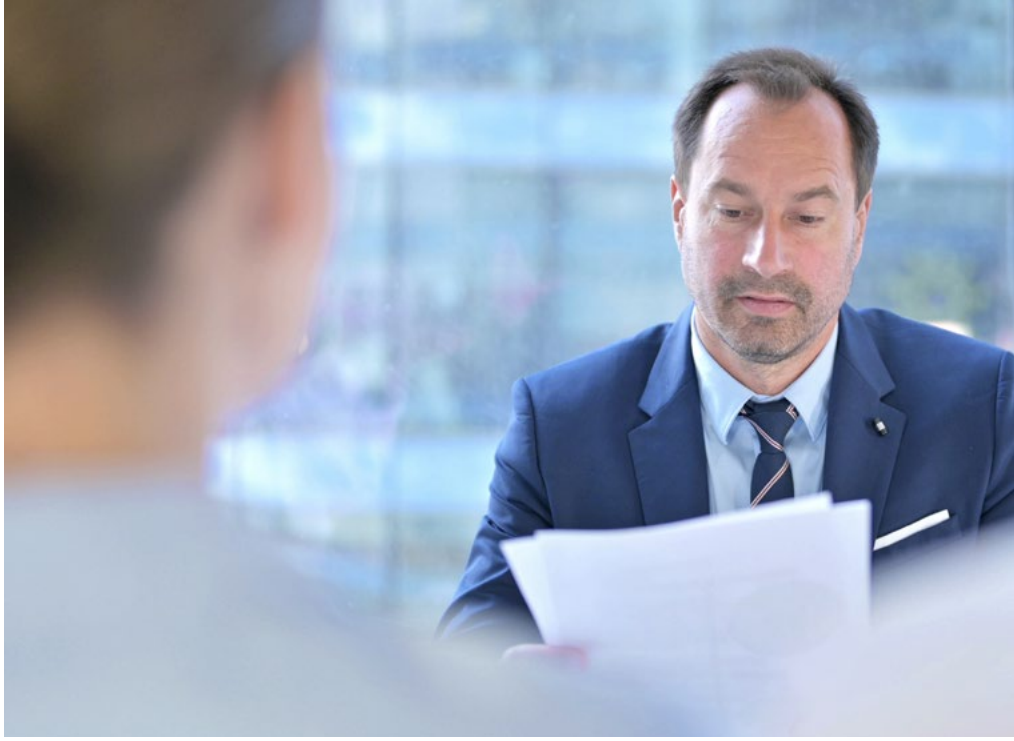
The deadline for making corrections to the withholding tax deduction was also harmonised. If the recipient of the taxable performance makes errors in determining the gross wages subject to withholding tax or in applying the tariff code, or if the rate-determining income is established incorrectly, they may make the necessary corrections themselves, provided that they submit the corrections to the tax authorities by 31 March of the following year at the latest.

If the recipient of the taxable performance or the person subject to withholding tax is not in agreement with the withholding tax deduction, they may request a ruling on the status and scope of the withholding tax liability or a subsequent ordinary assessment (Nachträgliche ordentliche Veranlagung, NOV) or a recalculation of the withholding tax from the competent tax authority by 31 March of the following year (Article 137 of the DFTA and Article 49 of the DTHA).

Subsequent ordinary assessment (Nachträgliche ordentliche Veranlagung, NOV)

Several changes have been made in the area of subsequent ordinary assessments:

- If a person residing in Switzerland who is subject to withholding tax has income or assets that are not subject to withholding tax, a mandatory subsequent ordinary assessment is now carried out (Article 89(1)(b) of the DFTA and Article 33a(1)(b) of the DTHA). A mandatory subsequent ordinary assessment will also be carried out if the person subject to withholding tax earns a gross income of more than CHF 120,000 in a tax year (Article 89(1)(a) of the DFTA and Article 33a(2)(a) of the DTHA in conjunction with Article 9 of the Ordinance on Deduction at Source of Direct Federal Taxation (TaSO)).
  The subsequent ordinary assessment applies until the end of the withholding tax liability.
- Individuals residing in Switzerland who are subject to withholding tax may submit an application for subsequent ordinary assessment until 31 March



The tariff for gainful secondary employment no longer applies

If a person subject to withholding tax has several employment relationships, each employer must calculate the withholding tax according to the applicable ordinary rate and declare a rate-determining income.

The following options exist for calculating the rate-determining income:

1. Conversion of the periodic performance to the effective total employment rate of all gainful employment/activities (including replacement income).
2. Conversion of periodic performances to an employment level of 100% if the effective total employment level is not disclosed by the employee.
3. Conversion to the actual total gross income, provided that the income is known or disclosed to the employer (e.g. in a group of companies or in the case of several employment contracts with the same employer).
4. If the workload of a gainful employment cannot be determined, the relevant employer may offset the amount used as a basis for calculating the rate-determining income for tariff code C in the relevant tax year (the so-called median wage).
5. If the employee is employed on an hourly or daily basis and the wage is not paid in the form of a monthly payment (especially in the case of personnel leasing), the agreed hourly wage is converted to 180 hours (in the monthly model) or 2,160 hours (in the annual model) or the agreed daily wage is converted to 21,667 days (in the monthly model or 260 days in the annual model).

Further information on determining the rate-determining income can be found in circular 45 of the Federal Tax Administration dated 12 June 2019 (point 6.4.).

of the following year (Article 89a of the DFTA and Article 33b of the DTHA). Once an application has been submitted, a mandatory subsequent ordinary assessment is carried out until the end of the withholding tax liability. Once an application has been submitted, it can no longer be withdrawn (Article 10 of the TaSO).

- Individuals subject to withholding tax abroad may apply for a subsequent ordinary assessment for each tax period until March of the following year if the majority of their worldwide income is taxable in Switzerland (so-called quasi-residence, Article 14 of the TaSO), their situation is comparable to that of a resident of Switzerland or a subsequent ordinary assessment is required in order to claim deductions provided for in a double taxation agreement (Article 99a of the DFTA and Article 35a of the DTHA).

- In case of residency abroad, a subsequent ordinary assessment can be carried out ex officio in case of competing circumstances.

- In all cases of a subsequent ordinary assessment, the key date principle now applies, that is, the person subject to withholding tax is subsequently assessed for the entire tax period in the canton in which they have their residence or weekly residence at the end of the tax period or the tax liability, or in which they were gainfully employed (canton in which the recipient of the taxable performance had their registered office, actual administration or permanent establishment). Any withholding taxes transferred to other cantons will be transferred to the canton responsible for the subsequent ordinary assessment (Article 107(5) of the DFTA and Article 38a of the DTHA).

- For persons residing in Switzerland, a subsequent ordinary assessment is performed officially for the entire year and until the end of the withholding tax liability if a person is first subject to ordinary taxation and then to withholding tax within a tax period (Article 13 of the TaSO).

The employer as the debtor of the taxable performance is liable for the employee's withholding tax.

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