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**In case of ambiguity, the German version
or circular letter 45 is authoritative.**

Schaffhausen, Dezember 2020

Information on withholding tax from 1 January 2021

One of the main objectives of this revision of the law is to eliminate unequal treatment between persons subject to withholding tax and those subject to regular taxation. In addition, Art. 85 para. 4 DBG¹ and Art. 33 para. 4 StHG² require the cantons to further standardise the calculation of withholding taxes. The Swiss Federal Tax Administration (FTA) together with the cantons has drawn up Circular Letter No. 45 on the withholding tax on employees' income from employment (KS 45), which was published on the FTA website on 12 June 2019. It lays down the rules for the calculation of withholding taxes in a way that is binding for all cantons.

1. mandatory settlement with the canton entitled to claim

The debtor of the taxable service (SSL) must pay the withholding taxes due directly to settle accounts with the canton entitled to claim and in accordance with its instructions and tariffs (Art. 107 DBG and Art. 38 StHG) It is no longer possible to settle withholding tax for all persons liable to withholding tax (qsP) via the canton of the SSL's registered office or permanent establishment. In principle, the canton of residence or weekly residence of the employee liable for withholding tax is considered the canton entitled to claim. If the employee is resident abroad and does not have a weekly residence in Switzerland, the canton in which the SSL has its registered office, its actual administration or its permanent establishment is entitled to claim. In the case of artists, sportsmen and women and speakers, the canton in which the public performance takes place is still considered eligible. In order to ensure that the withholding tax statements, which are transmitted to the cantonal tax authorities via the uniform salary declaration procedure (ELM-QST), can be correctly allocated, the SSL must register with the competent tax authorities in all relevant cantons and request an SSL number.

2. binding calculation models

¹ Revised Federal Act on Direct Federal Tax, SR 642.11 (AS 2018 1813).

² Revised Federal Act on the Harmonisation of Direct Taxes of the Cantons and Municipalities, SR 642.14 (AS 2018 1813).

The Federal Tax Administration (FTA) has worked with the cantons to devise two calculation models: the annual model, which is used in the cantons of Vaud, Geneva, Valais, Fribourg and Ticino, and the monthly model, which is used in the other cantons. While the monthly model is based on a monthly tax period and the monthly gross income is generally equal to the gross salary that determines the rate, the gross income paid out monthly under the annual model is taxed at the rate corresponding to the person's annual income. The two calculation models are described in detail in KS 45 of the FTA. The circular then describes which benefits are taxable to what extent and which tariff code is applied under which conditions. These specifications are generally binding for all cantons. Special features may arise in cantons which must take into account special agreements on the taxation of cross-border commuters in accordance with double taxation agreements with neighbouring countries.

A major innovation concerns the calculation of the income determining the rate in the case of non-monthly payment of a possible 13th month's salary in the monthly model. In principle, the 13th month's wage is regarded as a periodic benefit, but in the case of an entry or exit during the month it is only to be converted in relation to the period for which it is paid (see 6.3 ATS 45 and 6.6 ATS 45). In the annual model, a contractually guaranteed 13th month's salary can be spread over twelve months for the purpose of determining the income determining the rate (see 7.3.1 ATS 45). This results in a smoothing of the rate-determining income in the annual model, which is expressly not permitted in the monthly model.

If the withholding tax is calculated using software certified by Swissdec (guidelines CH wage standard ELM), the respectively valid guidelines of Swissdec are decisive for the calculation of the withholding tax to be deducted.

3. elimination of tariff code D / new tariff code G

Tariff code D is no longer applicable to income from a sideline and to replacement income paid directly by an insurer to the person liable to withholding tax (Art. 1 para. 1 QStV³). For substitute income that is not paid out to the employee via the employer, tariff code G (or tariff code Q for German cross-border commuters) now applies.

If an employee is simultaneously engaged in several gainful activities or receives wage payments and/or replacement income from different employers (including outside Switzerland), the income determining the rate is to be determined as follows for each employment or insurance relationship:

- Conversion of periodic benefits to total effective employment of all gainful activities (including replacement income);
- Conversion of periodic benefits to a 100% employment rate if the actual total employment rate by the employee is not disclosed;
- Conversion to the actual total gross income, provided that the income is known or disclosed to the employer (e.g. in a group or in the case of several employment contracts with the same employer);
- If the workload of a job cannot be determined, the employer concerned may, in order to determine the income that determines the rate, offset the amount used in the relevant tax year for calculating tariff code C (so-called median wage Fr. 5,675.- from 1 January 2021);
- If the employee is employed on an hourly or daily wage and the wage is not paid to him in the form of a monthly payment (especially in the personnel hire sector), 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 to 21.667 days (in the monthly model) or 260 days (in the annual model).

³ Revised FDF ordinance on withholding tax in the case of direct federal tax, SR 642.118.2 (AS 2018 1829)

4. uniform period of forfeiture

The deadline for making corrections to the withholding tax deduction has also been harmonised. If the employer makes mistakes in determining the gross wage subject to withholding tax or in applying the tariff code, he can make the necessary corrections himself, provided that he can submit them to the tax authorities by 31 March of the following year at the latest. If the employer or the employee does not agree to the deduction of withholding tax, they may request a ruling on the existence and extent of the withholding tax liability or a subsequent ordinary assessment (NOV) or recalculation of the withholding tax from the competent tax authority by 31 March of the following year (Art. 137 DBG and Art. 49 StHG).

5. increase in the deduction of production costs for artists

Artists residing abroad can claim a flat-rate deduction for extraction costs amounting to 50% of gross income (Art. 92 (3) DBG and Art. 36 (2) StHG). The deduction of the effective production costs is no longer permissible.

6. reduction of the tariff for artists/athletes/speakers

At its meeting on 7 September 2020, the Cantonal Council decided to reduce the tariff for artists, sportsmen and women and speakers. The new tariff will come into force on 1 January 2021 and is structured as follows:

- for daily income up to 200 Fr.	10.8%
- for daily income from 201 to 1'000 Fr.	12.4%
- for daily income from 1'001 to 3'000 Fr.	15.0%
- for daily income over 3'000 Fr.	17.0%

7. subscription commission

The cantons are now only allowed to set the subscription commission for the employer's participation at between 1% and 2% of the total withholding tax amount (Art. 88 para. 4 or Art. 100 para. 3 DBG and Art. 37 para. 3 StHG). In the Canton of Schaffhausen, the subscription commission has already been 2% of the periodic settlement since 1 January 2017 and will be retained.

For capital payments, the subscription commission is 1 percent of the withholding tax amount, but no more than CHF 50 per capital payment.

8. subsequent ordinary investment (NOV)

Several adjustments have been made in the field of NOV:

- If an employee resident in Switzerland has income or assets that are not subject to withholding tax, an obligatory NOV is now carried out (Art. 89 para. 1 let. b DBG and Art. 33a para. 1 let. b StHG). The supplementary ordinary assessment known today is no longer applicable. A compulsory NOV will continue to be carried out if the employee has a gross income of more than CHF 120,000 in a tax year (Art. 89 para. 1 let. a DBG and Art. 33a para. 2 let. a StHG in conjunction with Art. 9 QStV). The NOV applies until the end of the withholding tax liability.
- Employees resident in Switzerland may submit an application for NOV until 31 March of the following year (Art. 89a DBG and Art. 33b StHG). Once an application has been made, a NOV is carried out until the end of the withholding tax liability. Once an application has been made, it can no longer be withdrawn (Art. 10 (1) QStV).

- For each tax period, employees resident abroad can submit an application for NOV by 31 March of the following year if at least 90% of their worldwide gross income (including spouse) is subject to tax in Switzerland in the corresponding tax year (so-called quasi-residence, Art. 14 QStV / KS 45), their situation is comparable to that of a person resident in Switzerland or an NOV is required to claim deductions provided for in a double taxation agreement (Art. 99a DBG and Art. 35a StHG).
- In all cases of an NOV, the cut-off date principle now applies, i.e. the employee is assessed for the entire tax period in the canton in which he/she had his/her residence or weekly stay at the end of the tax period or the tax liability or in which he/she was employed (canton in which the employer had his/her registered office, actual administration or permanent establishment). Any withholding taxes transferred to other cantons are transferred to the canton responsible for the NOV (Art. 107 para. 5 DBG and Art. 38a StHG).
- In the case of persons resident in Switzerland, an ex officio NOV is made for the entire year and until the end of the withholding tax liability if a person is subject to ordinary taxation first and then to withholding tax within a tax period (Art. 13 para. 1 QStV).

9. change from withholding tax to ordinary taxation

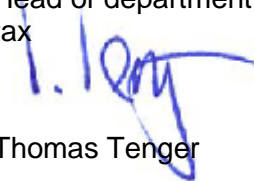
If an employee receives a permanent residence permit or marries a person who is in possession of Swiss citizenship or a permanent residence permit, he or she is no longer subject to withholding tax as of the following month and is assessed properly for the entire tax period. Withholding taxes already paid are credited without interest (Art. 12 QStV).

10 . Tariffs 2021 and forms

In Canton Schaffhausen, the tax rates of the communes and the canton are set together with the budget for 2021. As these decisions will not be taken until the beginning of December 2020, it is currently not clear whether there will be new withholding tax rates for 2021. You will find the necessary information on our homepage by 20 December 2020 at the latest. In addition, new forms for the registration and mutation of withholding taxpayers, for accounting and for the application for NOV will be available on the homepage.

Friendly greetings

Head of department withholding
tax


Thomas Tenger