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# **Zuger Steuer Praxis**

Abolition of tax privileges in the UK

# Migration law considerations of moving

## from the United Kingdom to Switzerland

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### A Introduction

Persons who are resident in the United Kingdom ("UK") but not "domiciled" there ("non-doms"), i.e. generally foreigners who have been liable for UK tax for less than 15 years, have, thus far, been able to declare their taxes based on the "*res non-dom regime*".<sup>1</sup> In this case, foreign income and capital gains are only subject to taxation in the UK if these assets were remitted to the UK.<sup>2</sup> On 6 March 2024, the UK Chancellor of the Exchequer announced the end of the *res non-dom* regime with effect from 6 April 2025, which would mean that the foreign income and capital gains of the current non-doms would, in future (after a transition period) be subject to normal UK tax.<sup>3</sup> This change in practice will undoubtedly result in some current non-doms considering relocating to a different country with a more favourable tax regime. Some non-doms will investigate Switzerland as a possible alternative to the

UK, not least because of the existing option of *forfait* taxation (depending on the canton), the high quality of life and the stable legal situation. As there could be some obstacles in terms of migration law standing in the way of a move from the UK to Switzerland, the aim of this article is to provide a short overview of the migration law issues those potentially moving to Switzerland could be faced with.

### B Dual immigration system in Switzerland

Switzerland has a dual immigration system with different rules for EU/EFTA and non-EU/EFTA citizens (known as third-country nationals). As a result, the law applicable to moving to Switzerland is based on the nationality of the person moving there. If they come from a EU/EFTA country, they can invoke the Agreement on the Free Movement of Persons ("FMPA") reached between the Swiss Confederation and European

Union and its Member States. However, if they come from a third country, the Federal Act on Foreign Nationals and Integration ("FNIA") will apply. While the FMPA grants members of EU/EFTA countries simplified migration conditions, third-country nationals must satisfy the more restrictive terms of the FNIA in order to be allowed to settle in Switzerland.<sup>4</sup> This means that while EU/EFTA nationals have a fundamental right to a residence permit, this is at the discretion of the relevant authorities for third-country nationals.<sup>5</sup> Following the withdrawal of the United Kingdom from the European Union as of 1 January 2021, British citizens are no longer considered EU/EFTA nationals and are therefore subject to FNIA with respect to migration law, like other third-country nationals.<sup>6</sup>

### C Immigration for EU/EFTA nationals

Non-doms who are nationals of an EU/EFTA country can essentially take up residence in Switzerland without further regulations. However, if they do not pursue gainful employment in Switzerland, the relevant authorities do require evidence that they have sufficient financial resources to afford living costs in Switzerland for themselves (and their family members):<sup>7</sup>

### D Immigration for third-country nationals

The prerequisites for a residence permit for third-country nationals in Switzerland vary according to whether the residence is planned with or without gainful employment. Gainful employment is essentially defined as any self-employed or employed activity carried out for money, even if it is without payment in the particular instance.<sup>8</sup>

### I Residence with employment

Third-country nationals wishing to work on an employed or self-employed basis in Switzerland require a permit, irrespective of the duration of their stay.<sup>9</sup> This must be applied for from the Cantonal Department for Economy and Labour for the place of work and is only issued if the conditions of issue set out in Art. 18 ff FNIA are met. The conditions of issue vary as a function of whether the applicant intends to be employed or self-employed. The individual prerequisites are listed in the table below:

Self-employment	Employment
<ul style="list-style-type: none"> <li>- The work is in the macroeconomic interest (Art. 19, letter a FNIA)</li> <li>- The necessary financial and operational requirements must be fulfilled (Art. 19, letter b FNIA)</li> <li>- Sufficient independent means of existence is in place (Art. 19, letter c FNIA)</li> <li>- The maximum figures (quotas) for the initial awarding of residence permit have not yet been reached (Art. 20 FNIA)</li> <li>- The personal requirements set out in Art. 23 FNIA are met</li> <li>- A suitable place to live is available to the applicant (Art. 24 FNIA)</li> <li>- Business plan (information on planned activities, finance for the enterprise, market opportunities, development of personnel capacities (in terms of quantity and quality) and recruitment options, plus planned investment, turnover and revenue)</li> </ul>	<ul style="list-style-type: none"> <li>- The work is in the macroeconomic interest (Art. 18, letter a FNIA)</li> <li>- An application must be received from the future employer (Art. 18, letter b FNIA)</li> <li>- The maximum figures (quotas) for the initial awarding of residence permit have not yet been reached (Art. 20 FNIA)</li> <li>- There is no suitable employee from Switzerland or an EU/EFTA country for this specific activity (national priority and recruitment priority, Art. 21 FNIA)</li> <li>- The obligation to report the position has been met (Art. 21a FNIA)</li> <li>- The wage and employment conditions standard for the location, profession and industry have been met (Art. 22 FNIA)</li> <li>- The personal requirements set out in Art. 23 FNIA are met</li> <li>- A suitable place to live is available to the applicant (Art. 24 FNIA)</li> </ul>

### Macroeconomic interest

Both Art. 18, letter a and Art. 19, letter a FNIA specify that the approval of third-country nationals for the Swiss employment market is dependent on a *macroeconomic interest* for Switzerland. This rather open and imprecise requirement is slightly more specified in Art. 3 FNIA, and in the instructions from the State Secretary for Migration ("SEM") which set out that the relevant employment market situation, the sustainable development of the economy and the ability of the person to integrate must all be taken into consideration.<sup>10</sup>

### Maximums / Quotas

Only restricted numbers of third-

country nationals can be approved. The annual maximums are set by the Federal Council in accordance with the Ordinance on Admission, Residence and Gainful Employment ("OASA") and distributed to central government and the cantons.<sup>11</sup> For UK nationals, Art 19b and 20b of OASA specifies a separate quota which is relatively generous compared to the maximums specified for other third-party countries.<sup>12</sup>

### National priority and recruitment priority

The admission of third-country nationals is only possible if no domestic employee (national priority) or person from an EU/EFTA state (recruitment

priority) can be found.<sup>13</sup> In accordance with Art. 21 FNIA, a domestic employee is defined not only as a Swiss national, but also a foreigner with a residence permit of type B, C, F, L and S.<sup>14</sup> For foreigners with a Swiss university degree, Art. 21, para. 3 FNIA specifies some mitigating measures. It is the responsibility of the employer to provide evidence that no other suitable priority employees could be recruited.<sup>15</sup>

### **Obligation to report open position**

For professional groups, areas of activity and economic areas in which the overall Swiss unemployment level has reached or exceeded five percent, the FNIA specifies an obligation to report open positions, unless exceptional regulations apply.<sup>16</sup> The employer must provide evidence that the position has been reported.<sup>17</sup>

### **Wage and employment conditions standard for the location, profession and industry**

In order to prevent wage dumping, the employer must provide evidence that the wage, social security contributions and working conditions meet the local, professional and industry standards.<sup>18</sup>

### **Personnel requirements**

The personal admission requirements set out in Art. 23 FNIA are especially important. According to these, only managers, specialists and other qualified employees can be admitted. Qualified employees are primarily defined as graduates from universities or universities of applied science with many years of professional experience. Depending on the profession or specialisation, persons with specific professional qualifications and many years of professional experience can also be admitted.<sup>19</sup> For longer periods of residence, integration criteria must be considered alongside professional qualifications: Long-term integration into the Swiss employment market and society must be guaranteed by the applicant's professional and social adaptability, language skills and appropriate age.<sup>20</sup>

If the personal requirements cannot be fulfilled, approval can be granted in the following circumstances:<sup>21</sup>

- For investors and entrepreneurs who can save jobs or create new employment,
- For recognised names in science, culture and sport,
- For persons with specific professional knowledge or skills, or for whose admission a clear need can be evidenced,

- For persons involved in management transfers at international companies, and for persons whose work in Switzerland is crucial for economically significant international business relationships.

### **Suitable place to live**

Finally, Art. 24 FNIA specifies that the applicant must have a suitable place to live.<sup>22</sup>

## **II Residence without employment**

### **Exception from the admission requirements**

In addition to the exceptions to the personal requirements in Art. 23 para. 3 FNIA, the cantons are also free, based on Art. 30 FNIA, to issue residence permits in certain cases even if they deviate from all the admission requirements. For former non-doms, the regulation in Art. 30, Para 1, letter c is likely to be of particular interest. It stipulates that the admissions regulations can be overlooked in order to consider severe personal hardship cases or important public interests.<sup>23</sup> Art. 32, Para. 1, letter c OASA cites one example of important public interests as *substantial cantonal fiscal interests*, thus giving the cantons the option of admitting wealthy third-country nationals at their own discretion, and irrespective of their fulfilment

of the FNIA admission prerequisites for residence in Switzerland.

Persons who are taxed on a forfeit tax basis may meet the criteria of *substantial cantonal fiscal interest* due to the resulting tax revenue. The minimum income required for forfeit taxation varies from canton to canton. Currently, the statutory minimum for the Canton of Zug is CHF 500'000<sup>24</sup>, while it is CHF 638'400 for the Canton of Lucerne<sup>25</sup>, CHF 600'000 for the Canton of Schwyz<sup>26</sup> and CHF 415'000 in the Canton of Vaud<sup>27</sup>. However, the necessary minimum tax income required for a *substantial fiscal interest* for third-country nationals, as defined based on a tax ruling on a case-by-case basis, is generally significantly above the statutory minimum. It is reported that some cantons demand a higher minimum income for forfeit taxation from UK nationals than from EU/EFTA nationals, but that this figure is lower than for (other) third-country nationals.

Forfeit taxation does not automatically mean a *substantial cantonal fiscal interest*. This is at the discretion of the cantons or the communes and can vary dramatically from canton to canton and sometimes even within the canton at a communal level. However, as a rule, the cantonal migration and tax authorities will coordinate to

ensure that, on a general basis, forfeit taxation will also mean the requirement for a *substantial cantonal fiscal interest* is also met.

Finally, it should be noted that employment is not possible in the event of an admission based on *substantial cantonal fiscal interests*,<sup>28</sup> and that the canton's decision is subject to approval by the SEM.<sup>29</sup>

### **Other scenarios without employment**

Residence permit can also be issued to pensioners. The prerequisites are set out in Art. 28 FNIA in conjunction with Art. 25 OASA. Anyone who is at least 55 years old, no longer in employment (except persons managing their own assets), has a particular personal link to Switzerland and has the necessary financial resources can apply for a residence permit as a pensioner.<sup>30</sup> A particular personal link to Switzerland can be evidenced through extensive holidays or periods of education or employment in Switzerland or relationships with close relatives (parents, children, grandchildren or siblings) in Switzerland.<sup>31</sup> Persons are deemed to have the necessary financial resources if they can, with a large degree of certainty, finance themselves for the remainder of their lives and the risk of reliance

on welfare is considered relatively low.<sup>32</sup> Finally, a residence permit can also be requested as part of a family relocation. The requirements to be fulfilled in this respect depend on the residence rights of the person living in Switzerland, the nationality of the relatives (EU/EFTA or third country) and the relationship to the relatives moving to Switzerland (spouse or children and ascendants). However, depending on the specific requirements, particular attention is paid to the language abilities of the relative(s) moving to Switzerland.<sup>33</sup>

### **E Permit types**

If the admission requirements have been met or there is evidence to support an exception, the cantonal migration department will issue the relevant residence permit. A permit issued for the first time (if long-term residence is planned) is generally a B permit (residence permit) which is valid for one year and for a specific purpose.<sup>34</sup> It can be extended on an annual basis providing the prerequisites for admission are still fulfilled.<sup>35</sup> In principle, after residence of ten years, a C permit (settlement permit) can be applied for, this is then unconditional and permanent.<sup>36</sup> In some cases, a shorter residence is sufficient.<sup>37</sup>

## F Conclusion

For non-doms wishing to emigrate, Switzerland is an attractive alternative to the UK. As well as the high quality of life in Switzerland and the option of flat-rate taxation, the option of obtaining tax rulings and thus achieving legal certainty in terms of tax handling, even in complex asset scenarios, is also an important factor.

However, there are considerable hurdles in terms of migration law for third-country nationals seeking residence permits. In particular, the conditions required of UK nationals have become significantly stricter in the wake of Brexit. It is important to clarify in advance whether third country nationals meet the admissions criteria for a move to Switzerland.



- 1 Guidance note for residence, domicile and the remittance basis, RDR1, section 5.21.
- 2 Cf. <https://www.gov.uk/taxforeign-income/non-domiciled-residents>.
- 3 Cf. HM Treasury Policy paper, Technical note: Changes to the taxation of non-UK domiciled individuals, 23 April 2024, <https://www.gov.uk/government/publications/changes-to-the-taxation-of-non-uk-domiciled-individuals/technical-note-changes-to-the-taxation-of-non-uk-domiciled-individuals>.
- 4 UEBERSAX, PETER/SCHLEGEL, STEFAN, *Einreise und Anwesenheit*, P. 496-497, in: Uebersax, Peter/Rudin, Beat/Hugi Yar, Thomas/Geiser, Thomas/Vetterli, Luzia (Hrsg.), *Ausländerrecht, eine umfassende Darstellung der Rechtsstellung von Ausländerinnen und Ausländern in der Schweiz* (3rd edition, 2022).
- 5 UEBERSAX/SCHLEGEL, S. 496-497.
- 6 The exception to this are UK nationals who already had a Swiss residence permit prior to Brexit. These people retain their rights from the FMPA, cf. Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on the rights of citizens following the United Kingdom's exit from the United Kingdom and the discontinuation of the Agreement on the Free Movement of Persons.
- 7 Art. 6 FMPA in conjunction with Art. 24, Annex I, Para. 1 FMPA and Art. 16 Agreement on the Free Movement of Persons ("AFMP").
- 8 Art. 11, Para. 2 FNIA.
- 9 Art. 11, Para. 1 FNIA.
- 10 Art. 3, Para. 1 FNIA. SEM instructions on FNIA (as at: 01/06/2024), figure 4.3.1.
- 11 Art. 20 FNIA.
- 12 Art. 19b and 20b OASA and Annex 1 and 2, figure 7 and 8 OASA.
- 13 Art. 21, Para. 1 FNIA.
- 14 Art. 21, Para. 2 FNIA.
- 15 SPESCHA, MARC / BOLZLI, PETER / DE WECK, FANNY / PRIULI, VALERIO, *Handbuch zum Migrationsrecht* (4th edition 2020), S. 206.
- 16 Cf. Art. 21a FNIA; SECO publishes a list of professions subject to the obligation to report every year: <https://www.arbeit.swiss/secoal/de/home/menue/unternehmen/stellenmeldepflicht.html>.
- 17 Art. 21a, Para. 3 FNIA.
- 18 Art. 22 FNIA.
- 19 SEM instructions on FNIA (as 01/06/2024), figure 4.3.5.
- 20 Art. 23, Para. 2 FNIA.
- 21 Cf. Art. 23, Para. 3 FNIA, the exceptions tend to be relatively restrictive in nature cf. BVGer C-4813/2013 of 27 June 2014, or BVGer C-7286/2008 of 9 May 2011.
- 22 Art. 24 FNIA.
- 23 Art. 30, para 1, letter c FNIA.
- 24 Art. 14, Para. 3, letter a StG ZG (Zug taxation act) and Art. 4 Para. 2 of the ordinance on the Zug taxation act.
- 25 Art. 21, Para 3, letter a StG LU (Lucerne taxation act).
- 26 Art. 15a, Para. 1, letter a StG SZ (Schwyz taxation act).
- 27 Art. 15, Para 3, letter a StG VD (Vaud taxation act).
- 28 Cf. Art. 32, Para. 2 FNIA e contrario.
- 29 Art. 5, letter e of the FDJP on the approvals and preliminary decisions relating to immigrant law that are subject to approval processes (ZV-EJPD).
- 30 Art. 28 FNIA in conjunction with Art. 25 OASA.
- 31 Art. 25, Para. 1 OASA.
- 32 Cf. SEM instructions on FNIA (as 01/06/2024), figure 5.3.
- 33 For an overview of the possible arrangements and prerequisites, cf. SPESCHA/BOLZLI/DE WECK/PRIULI, P. 298-299.
- 34 Art. 33, Para. 1 and 2 FNIA.
- 35 The maximum figures are only relevant to the initial permit, extensions can be issued irrespective of the quotas.
- 36 Art. 34 FNIA.
- 37 Cf. exceptions in Art. 34 FNIA.