



GERMANY:
CROSS-BORDER COMMUTERS –
DIFFERENT TERMINOLOGY FOR
“GRENZPENDLER” & “GRENZGÄNGER”
IN GERMAN TAX LAW

German tax law distinguishes between the concepts of “Grenzpendler” and “Grenzgänger” when it comes to cross-border commuters. Since this distinction is unusual from a Swiss (or international) perspective, care should be taken when communicating on tax matters to ensure that all parties involved have a uniform understanding of the respective terminology.

From a German perspective, “Grenzpendler” are those individuals who live in a bordering country and work in Germany. In principle, these individuals are taxable in Germany since they earn most of their income there.

“Grenzgänger”, on the other hand, are those individuals who commute daily from Germany to other countries and pursue their work abroad. For these individuals, the so-called “Grenzgängerregelung” for the avoidance of double taxation applies in most cases.



Along with Austria, France is one of the countries that is particularly strict regarding the compliance with notification requirements under the EU Posted Workers Directive. The so-called SIPS declaration must be submitted before starting an activity in France and requires contact details of a representative of the employer in France. In addition, depending on the activity, the application for a specific professional card – the BTB card – is also necessary.

Employers whose employees carry out, manage, or organize construction or public work (including casual, secondary, or auxiliary activities) risk heavy fines in the event of an inspection if no BTB card is available. The following activities require the professional card:

- Earthwork, construction work, assembly and dismantling, interior and exterior fitting, maintenance, servicing
- Associated painting and cleaning work
- Directly related additional work

Just like the SIPS declaration, the BTB card is valid per employee and only for the exact period of the posting or assignment that has been declared.



FRANCE:
BTB CARD FOR POSTED WORKERS
IN THE CONSTRUCTION INDUSTRY



BELGIUM:
ADJUSTMENT OF MIGRATION
REGULATIONS IN FLANDERS

The Flemish government has adopted new migration guidelines effective as of March 1, 2021. The changes are intended to simplify the administrative immigration process as well as improve the labour mobility of foreigners in the Flanders region. The new regulations include the following:

- Foreign workers who reside abroad and hold a valid passport or Schengen visa C can apply for a work permit B. This permit allows them to commute to Flanders for work and is valid for 90 days within a period of 180 days.
- Foreigners who reside in a neighbouring country of Belgium have the possibility to apply for a cross-border commuter permit for their work activity in the Flanders region.
- The labour market test for the extension of the work permit is generally considered to be met if the employment is with the same employer and for the same position.
- Employers must inform the Flemish Regional Ministry of Employment of any significant change in employment conditions during the period of the work permit, for example, even if the employee starts working in the position at a later date.



SWITZERLAND:
THE NEW ENTRY AND EXIT REGULATIONS (EES - REGULATION)

On December 18, 2020, the Swiss Parliament in Bern agreed to adopt various EU regulations related to the Schengen Information System (SIS). On February 17, 2021, the Swiss Federal Council thus opened the consultation procedure for the implementation of the ordinance on the entry/exit system (EES). The aim is to improve the control of the Schengen external borders, to facilitate the management of migration flows and to identify third-country nationals who do not (or no longer) fulfil the admission requirements regarding stays in the Schengen area.

With the EES regulation, Switzerland also wishes to participate in the EU's Schengen Information System (SIS) to facilitate the prevention, detection or investigation of terrorist offences or other serious criminal offences. The implementation of this regulation thus constitutes a further development of the Schengen acquis. Not only police authorities but also offices in the field of migration will have online access to the EES database in order to check the entry as well as stay of third-country nationals. The data recorded in the EES will be stored for three years after the date of the exit record or the entry refusal record. After expiry of the storage period, the corresponding data are automatically deleted from the EES central system. The right of access is governed by national data protection law. Certain provisions of the EES Regulation would have to be adapted and integrated into the Foreign Nationals and Integration Act (FNIA). The EES regulation and the FNIA amendments are not due to come into force until May 2022.