By PwC Deutschland | 09 July 2026

Cross-border workers: Unreasonableness of home return

A taxpayer will not be considered to be a cross-border worker (“Grenzgänger”) within the meaning of Article 15A paragraph 2 of the 1971/2010 Double Taxation Agreement with Switzerland (DTA Switzerland) if a return to his place of residence is not possible or not reasonable for professional reasons. This is determined based on the circumstances of the individual case, in particular work-related factors, and cannot be decided solely on the basis of general criteria, especially a fixed distance between the place of residence and the place of work. So held the Supreme Tax Court in two separate decisions.

Background

Article 15A DTA Switzerland states that remuneration derived by a **cross-border worker** in respect of an employment shall be taxable in the Contracting State of which he is a resident: However, the Contracting State in which the employment is performed may levy a tax on such remuneration by way of deduction.

For these purposes a cross-border worker is someone who works in one state and regularly returns home to the other state. If he spends more than 60 days (pro rata reduced in the case of part-time employment) absent from home for professional reasons the cross-border worker status will not apply.

Facts

In the case **VI R 31/24** the plaintiff lived with his family in Germany and had a 90% part-time job in Switzerland in 2019. He kept a room in Switzerland for occasional overnight stays due to the distance (90–97 km) and commute time (75-120 minutes). In the year of dispute, he stayed overnight in Switzerland on at least 54 days, working longer shifts and starting early the next day. The tax office argued he was a cross-border worker and his income should be taxable in Germany; the taxpayer disagreed, citing professional necessity for overnight stays, and lower courts sided with the taxpayer.

In the case **VI R 14/24** the plaintiff lived in Germany with his family in 2019 while working full-time in Switzerland. He maintained a small apartment near his workplace in Switzerland and usually returned to Germany about once a week. The commute by car took between roughly 80 minutes and 108 minutes. He worked about 11 to 11.5 hours daily, often starting early between 6:00 and 6:30 am. The tax office considered him a cross-border worker and taxed his Swiss income in Germany, but he appealed. The lower court ruled in favour of the plaintiff, and the Supreme Tax Court confirmed that due to the unreasonableness of returning daily, he did not qualify as a cross-border worker.

Judgement

In both cases the plaintiffs were deemed tax residents of Germany because whilst they had homes in both countries, their centre of vital interests (family and personal ties) was in Germany. However, Germany's right to tax under domestic law is limited in that, pursuant to Art. 15(1), second sentence, and Art. 24(1)(1)(d) DTA Switzerland, Germany must exempt the plaintiffs' income from Switzerland to the extent that the plaintiffs carried out activities in Switzerland. In particular, the right to tax was not assigned to Germany under Article 15A (1), first sentence DTA Switzerland, since the plaintiffs were not cross-border workers within the meaning of Article 15A (2) DTA Switzerland.

The Supreme Tax Court held that a failure to return home is considered to be for professional reasons if returning is impossible or unreasonable. The assessment as to whether the failure to return home is due to professional reasons is case-specific and cannot be determined solely on the basis of general criteria.

Taking travel time into account (in part) when assessing whether the commute is unreasonable was not

precluded. Since the wording of the DTA Switzerland does not specify a particular location, the distance or travel time between the place of residence and the workplace can only be relevant within the context of interpreting the criterion “for professional reasons.”

Furthermore, in addition to commute times, factors such as long shifts and early starting times can make a return home unreasonable.

The Court further noted that the tax office could not rely on the consultation agreement dated 12 October 2018, concerning the non-return of a cross-border worker due to employment pursuant to Article 15A (2) of the DTA Switzerland ("Consultation Agreement”). Intergovernmental consultation agreements inform treaty interpretation but do not override the treaty’s text. The Court thereby rejected rigid thresholds (e.g., a return home is unreasonable only where a one-way commute exceeds 100 km or 1.5 hours travel time) imposed by a consultation agreement but not found in the treaty.

Source:

Decisions VI R 31/24 and VI R 14/24 (NV) published on 9 July 2026 on the Supreme Tax Court’s website.

Keywords

double tax treaty, employment income, income tax exemption