

Newsletter No.

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**New EU Rules on Swiss Company Cars:** A large number of Swiss companies provide cars registered in Switzerland to their employees residing in the EU for business and private use. As from 1 May 2015, the private use of Swiss company cars by EU residents, permissible within the framework of temporary importation with total relief from EU import duties, is strictly limited to journeys between their place of work in Switzerland and their place of residence in the EU.

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## EU Tightens the Rules for Cross-border Use



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Given the potentially significant exposure with respect to EU import duties (customs duty and value added tax) the new rules call for a comprehensive re-evaluation of the existing factual and contractual arrangements with respect to Swiss-registered company cars used by EU resident cross-border commuters and appropriate action before 1 May 2015.

### Background

More than 285'000 EU residents commute daily across the border to work in Switzerland. No small number of these cross-border commuters uses a company car provided to them by their employer in Switzerland as part of their employment agreement. When they cross the border into the EU at the end of their work day or week, the commuters may not be aware that they are importing non-EU means of transport into the EU customs territory and even make a customs declaration by way of implied conduct.

### When can temporary admission relief be claimed today?

In general, the importation of non-EU goods into the EU customs territory attracts import duties such as customs duty and value added tax. Under certain conditions, however, relief from import duties (temporary admission relief) can be claimed on non-EU means of transport which are temporarily imported from outside the EU for private or commercial purposes. Such temporary admission relief is readily available if the means of transport is registered in Switzerland in the name of a company established in Switzerland and is used by a person resident in Switzerland.

Exceptionally, a person resident in the EU may be eligible for temporary admission relief as well, if the means of transport are used commercially or privately by an EU resident employed by the Swiss owner of the company car or otherwise autho-

risied by the Swiss owner. In this case, the private use must be provided for in the employment contract of the respective employee. Private use by a person resident in the country of temporary importation is where the new EU rules for relief of customs duties on non-EU means of transport kick in.

### What are the new conditions for temporary admission relief?

According to the new rules applied throughout the EU as from 1 May 2015, private use of means of transport by a natural person resident in the EU and employed by the owner, hirer or lessee of the means of transport established outside the EU is allowed only:

- for journeys between the place of work and the place of residence of the employee; or
- with the purpose of performing a professional task of the employee as defined in the contract of employment.

Any further private use of Swiss-registered company cars by EU resident employees (e.g. for shopping, holidays, leisure etc.) is no longer permissible under temporary admission relief and requires prior customs clearance of the vehicle for free circulation in the EU including payment of the applicable import duties (customs duty and value added tax).

### Why has the new legislation been introduced?

The aforementioned changes were deemed necessary to prevent the misuse of the temporary importation rules for

the avoidance of import duties on the use of non-EU means of transport in the EU. The *Fekete* decision of the European Court of Justice of 7 March 2013 (C-182/12) had led to a tightening of the EU rules for cross-border use of non-EU company cars by EU residents already in 2014. However, the EU countries struggled to implement the *Fekete* decision in a uniform and consistent manner. In Germany, for example, private use of non-EU company cars was deemed permissible beyond travel from and to work with relief from import duties, regardless as to whether the driver qualified as an 'employee' in the narrow sense of the word. In Austria, on the contrary, private use was generally restricted to simple employees and, hence, excluded executive employees.

#### **What is the impact on Swiss companies and their EU-resident employees?**

To the extent that Swiss-registered company cars are currently used and allowed to be used by their EU-resident employees for private purposes beyond travel between their place of work and their place of residence there is an imminent EU import duties exposure. This exposure comprises the potential assessment for import duty according to the EU tariff with a likely 3rd country duty rate of 10% on the customs value of the car and import VAT at a rate between 17% and 27% depending on the EU country of importation. In addition, the employee is likely to become personally liable for prosecution by the customs authorities in the EU country of importation.

#### **What can be done to mitigate the situation?**

Given the significant exposure it is highly recommended to undertake a comprehensive review of the existing factual and contractual arrangements with respect to your Swiss-registered company cars used by your EU resident employees, identify and take appropriate action **before 1 May 2015**.

Depending on your individual circumstances, the appropriate action may be:

- EU import clearance of the company cars for free circulation in the EU, in particular, if the preferential origin status of the respective car(s) allows for tariff preference (0%) and VAT status of the company and the car(s) allows for recoverability or deductibility of the import VAT incurred in the EU country of importation; or
- Changes to the relevant contract(s) of employment that exclude private use beyond travel to and from the place of work; and
- Definition and regulation of the nature and scope of professional tasks for which the employee may use the car; or
- Sourcing (purchase or lease) of new company car(s) in the EU country where the employee is resident; or
- Replacement of company car(s) by private car allowances paid to the employee for the business use of the car.

In case you need any assistance in this regard, our VAT & Customs practice as well as our Employment practice will be happy to support you.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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