

Consultants: independent or employed...

How to anticipate and what to consider when hiring consultants?

CAGI – 18.06.19

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Types of consultants

- **Independent consultant AVS-recognized (Switzerland or abroad)**
- **Independent consultant not AVS-recognized (employee within the meaning of the AVS)**
- **Employee consultant from a Swiss third party company**
- **Foreign independent consultant working in Switzerland**
- **Foreign independent consultant working abroad**

What is an independent within the meaning of the AVS?

An independent is a person who works **on their own behalf**, assumes all the economic risks of their activity and is **hierarchically independent from their client**. An independent must work for several clients. If they worked for one, they would not be considered independent from the point of view of the Swiss authorities.

It is up to the compensation funds and, in some cases, the Suva, to decide whether someone has the status of independent within the meaning of the Swiss social insurance law.

What are the criteria taken into consideration by the AVS funds?

Recognition is based on a number of criteria arising from the retirement and survivors insurance (LAVS) and the case law of the Federal Insurance Court (TFA), to which the insured must satisfy.

The person must be Swiss or citizen of the EU or a C, G or B permit holder

The fact that the insured undertakes their activity as principal or secondary has no effect on the qualification of the latter.

What are the criteria taken into consideration by the AVS funds?

Examples of criteria taken into account by the AVS

- **The economic risk**
 - The profits belong to the contractor, the wages of his staff, the various expenses and the possible losses are his responsibility. (Rental lease)
- **Work organization**
 - Link of subordination (ex: hour of presence required)
 - An independent is not decisively subject to the instructions of others.
- **The accomplishment of the work**
 - Ability to hire and delegate the execution of all or part of the duties.
- **Number of clients**

Independent resident AVS-recognized in Switzerland

- They receive a certificate from the AVS compensation fund (1st pillar)
 - If the person is AVS-recognized, the activity of the mandate must be related to the field of activity pursued
- Invoice his client for the work provided, regardless of the duration
- Pay their own social charges (AVS, AI, APG, AF)
- Insure themselves against disability, death, illness/accident risks

Independent resident not AVS-recognized in Switzerland

- Is an employee of the company within the meaning of the AVS
- Is contractually bound with the employer
- The employer pays (according to the legal provisions) part of the social insurance (AVS, AI, APG, AC, AF, LPP, LAA, etc. Loss of earning health)
- Holiday payment
- Obligation to cover the employee against the risks of invalidity, death, retirement (according to the legal provisions)

Consultant employee of a Swiss third party company

- No action
- Is an employee of the third party company within the meaning of the AVS
- The third party company provides an invoice for the services performed.

Beware, what is defined in Switzerland may not necessarily be applicable abroad!

I.e: In the UK, to avoid a situation of disguised independent, the company must imperatively submit a salary slip as proof to be recognized as a company with employees (according to *IR35)

**IR35 refers to the United Kingdom's anti-avoidance tax legislation designed to tax disguised employment at a rate similar to employment. In this context, "disguised employees" means workers who receive payments from a client via an intermediary, for example, their own limited company, and whose relationship with their client is such that had they been paid directly they would be employees of the client.*

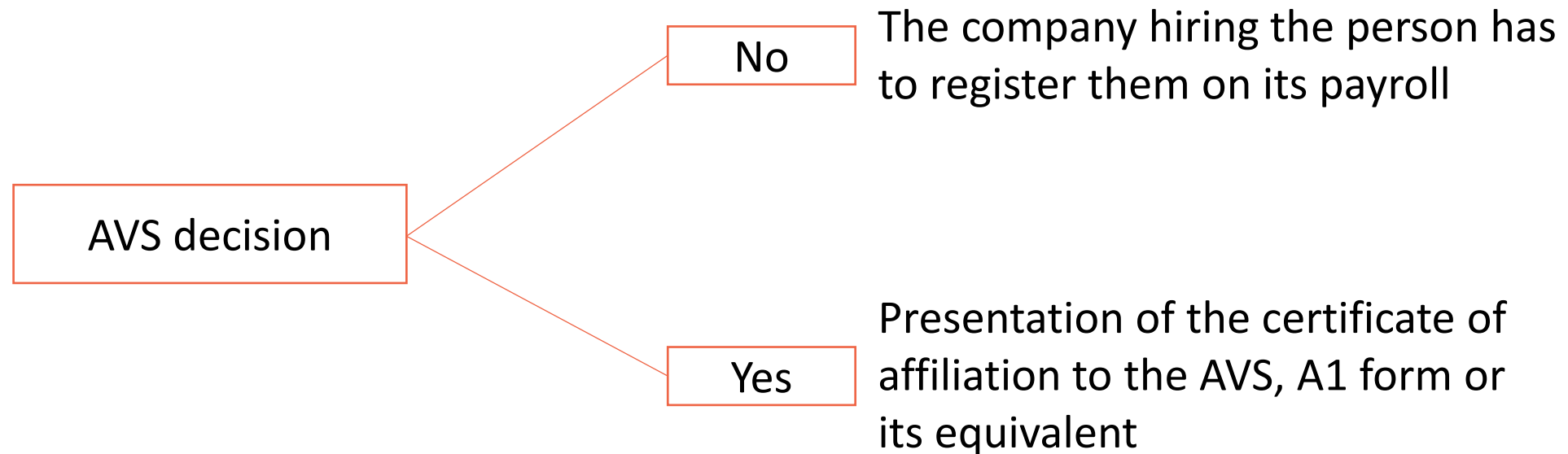
Independent consultant from the EU/EFTA

According to the conditions of the country of origin, a person may be considered as independent there, but not in Switzerland. This is why all secondments require to provide proof of their status when they start their mission in Switzerland, as well as with the supervisory bodies.

Are considered proofs:

- Registration with social insurance in Switzerland or abroad as a self-employed person who can provide **an adhoc A1 form** (this form attests to the social security legislation applicable to its holder)
 - The holder must certify the validity and the period in Switzerland
- Contract (company contract, mandate) with a client in Switzerland
- Extent of customer circle (number of customers),
- VAT number

A person may very well be considered independent in their country and not according to the Swiss law.



The A1 form is only issued to European citizens with residence in Europe. In the event of an American independent living in France, for example, he will be unable to provide this form.

What are the steps to announce or get a permit for a foreign self-employed in Switzerland?

The announcement procedures:

Steps:

- Less than 8 days in a calendar year: **no announcement needed**
- From 9 to 90 days in a calendar year: **announcement to the federal authority 1.1***
- Beyond 90 days in a calendar year: **application for a permit**

*1.1 : The calculation of the number of days is carried out by company and by calendar year, no matter the number of detached persons. I.e.: A company hires 5 persons for the same week, it will be considered 5 days!

The announcement must be made no later than 8 days before the start of the mission of the self-employed, except for emergency cases where the declaration can be made no later than the day of the beginning of the mission. Otherwise, the company risks a fine of 5,000 CHF.

A work and residence permit (EC / EFTA permit) from the canton concerned will be required for a mission of more than 90 days.

This authorization is not automatically delivered.

Specificities

Whatever the duration of the mission, the announcement is compulsory from the first day, if the mission carried out in Switzerland falls under:

- construction (civil engineering and second work)
- landscaping
- itinerant trade
- surveillance and security sectors
- domestic and industrial cleaning
- hotels and restaurants.

Foreign independent consultant working abroad on behalf of a Swiss company

I.e: an EU-resident worker, hired by a company in Switzerland for a mandate outside the EU / EFTA

The responsibility for the payment of social charges rests with the worker. The Swiss company bears no responsibility

- It applies to workers who perform their activity outside the EU/EFTA

Beware with VAT! NGOs are mostly not subject to VAT on the income from their activity; if you decide to hire this typology of personnel you have to take into account the VAT charge for import of service (potentially non-recoverable).

Impact for the company

What happens in case of control?

During a control, you will have to show the documents proving the good implementation of the legislation.

- **The independent consultant AVS-recognized**
 - No impact
- **The independent consultant not AVS-recognized**
 - Adjustment on contributions according to compulsory social insurance
 - Extra cost (unplanned) in the budget
 - Problem of insurance coverage in case of illness/accident according to labor law
 - Obligation to pay days off according to labor law
 - Adjustment on a possible source tax
 - Fines

Recommendations for the employer

What to check when hiring an independent?

- Ask for a copy of the independent form issued to the consultant by the AVS fund OR an equivalent from their country
- Make sure that this form is still valid
- However, this form does not exempt the employer from having their own AVS compensation fund examine the independent nature of the activity.

Qualification tool

<https://newco.synergix.ch/consultant-qualification/>

Thank you!

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