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Crossing Borders when Reaching Retirement Age[1]

As a child, I watched the European Broadcasting Union TV show *Jeux sans Frontières* (Games without Borders or It's a Knockout) in which participants had to climb over funny looking obstacles, jump across artificial pools, or quickly crawl underneath colourful fences.[2] Later, I learned that fences are not necessarily visible but may occur through rules about applicable law, competent jurisdiction, and other aspects of a legal framework. Such seem germane to me while writing this short article about retirement in an international setting. Presuming that many retirees are lucky enough to live with their spouses, I address bi-national married couples with connections to the USA and Europe, more specifically to Switzerland, where I have been teaching law since 1996. Thus, I discuss some retirement related issues arising when moving abroad.

1. Choosing the moment of retirement

The most evident issue is the question of when to cross the line between working and retirement, because this decision will affect spouses' time spent together as well as their financial resources. This is not a physical or legal obstacle, but it is revealing that the English phrase retirement age in some languages literally translates to "limits," like "*limite d'âge*" in French[3] or even to the word "border" in German (*Altersgrenze*), Polish (*granica wieku*), and Danish (*aldersgraense*).[4] In legal terms, retirement age is defined as the moment in time where an insured person qualifies for old age benefits;[5] it is a threshold that one crosses to become a pensioner.

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[1] The information contained in this article is not deemed to provide any legal advice but was written for academic research purposes solely.

[2] European Broadcasting Union TV: *Spiel ohne Grenzen/Jeux sans frontières*.

[3] *Jusqu'à quel âge peut-on travailler dans la fonction publique?*, https://www.service-public.fr/particuliers/vosdroits/F12395 [accessed: 10.04.2026] – about age limits for public agents set to 67.

[4] Pensionskommissionen, Det danske pensionssystem, 2015, p. 24.

[5] S. Pétremand, *La fixation de l'âge de la retraite en droit international, européen et suisse de la sécurité sociale*, Zürich 2013.

Retirement age however is not necessarily a number set in stone but can depend on political, demographic, and economic factors. Thus, retirement age varies among countries, and legislators are free to determine how long an insured person should work before qualifying for retirement.[6] In Switzerland the general retirement age is sixty-five; in the USA it is sixty-seven: most of European countries have similar age limits. A certain choice is possible given that many national pension schemes provide flexibility, typically by allowing people to advance or postpone retirement. The financial consequences of such options depend on national law; for individuals postponing, they are significantly more advantageous in the USA where retiring after sixty-seven triggers "delayed retirement credits (DRC's)" that increase old age pensions by a percentage for each month worked extra.[7] Switzerland has similar but less rewarding rules, mostly because only a limited amount of taxable income is used for determining a person's pension.[8] The flexibility offered by such rules can help couples to retire at the same moment although both spouses were insured in different countries (and/or born in different years).

If both spouses, by coincidence, reach full retirement age at the same time, they still need to pass some formal hurdles because reaching retirement age might trigger the right to claim a pension, but not automatically compel the social security bodies to pay out the pension. Future retirees will most often have to apply formally. In Switzerland this is done by filling out a special form issued by the Federal Social Insurance Office (FISO) and available online (E-Form). In the USA this is done on-line or by making an appointment.[9] As a general principle, each demand needs to be addressed to the competent authority (for instance, to the Swiss Compensation Office, SCO, that receives pension claims of beneficiaries living outside the country), but exceptions can stem from Treaty provisions, like the Social Security Agreement between the USA and Switzerland , which helps to safeguard rights of the insured and comply with deadlines when a demand or claim is introduced in one of the contracting States.[10] If the couple lives in an EU Member State, the legal obligations of social security bodies are similar; spouses for instance entitled to a Swiss pension may address their demand to the social security administration in their country of residence, which must forward it to the competent institution in Switzerland;[11] consequently, national time limits are deemed to be satisfied.[12] The cross-border transfer of requests is one of many examples of how

[6] In the EU, for instance, Directive 79/7/EEC is without prejudice to the right of Member States to determine pensionable age for the purposes of old-age pensions, OJ L 6, 10.01.1979, p. 24; ECLI:EU:C:1992:297.

[7] See: https://www.ssa.gov/oact/cola/examplemax.html [accessed: 10.04.2026].

[8] Articles 29 *et seq.* LAVS (loi fédérale sur l'assurance-vieillesse et survivants, RS 831.10).

[9] US Social Security, https://www.ssa.gov/apply?benefits=retirement&age=adult [accessed: 10.04. 2026].

[10] Articles 24 and 25 Social security Agreement U.S-Switzerland (RS 0.831.109.336.1).

[11] Article 81 Regulation (EC) No 883/2004, OJ L 166, 30.04.2004, p. 1. See: current consolidated version of 31.07.2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004R0883-20190731 [accessed: 10.04.2026].

[12] Article 81 *in fine* Regulation (EC) No 883/2004.

mutual administrative assistance is powered by international and EU law and how it helps expatriates and other individuals in multi-country situations not to get trapped by formalism.[13] As in other fields of law, it is, indeed, important to look at deadlines to pass this first obstacle in the retirement process without losing pension money.

2. Deciding where to live during retirement

Another obvious topic is where to retire. Although most countries will probably allow citizens to bring along their non-citizen spouse, immigration law needs some planning and awareness of the legal conditions that must be met. In the case of a US-Swiss couple choosing their place of residence in Switzerland, it is relatively simple to obtain a residence permit for the non-Swiss citizen spouse,[14] because the law grants him/her a right to obtain a residence permit (B permit[15]); this right derives from Swiss Constitutional law which contains the fundamental right to marry and to have a family.[16] All that is necessary is to file one Form (B1773 "Familiennachzug") and gather several documents (marriage certificate, extract of judicial record, etc.). Besides the Swiss immigrant visa at entry, the US spouse also needs a valid US passport;[17] passports with an X marker can be used until they expire because the executive order "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" from January 2025 does not affect US passports issued before that date. Once settled and living in Switzerland for at least five years, the non-Swiss citizen spouse is eligible for a settlement permit (also called a C permit).[18] In the USA, obtaining an immigrant visa for a foreign spouse is not an uphill battle either, but it can take much longer than the corresponding Swiss procedure. To get permanent residence status (also called a green card) the US citizen spouse needs to file a I-130 petition for the other spouse to claim an "Immigrant visa for a Spouse of a US citizen" (IR1 or CR1 visa). The marriage, of course, needs to be considered valid, which might prove a delicate matter for same sex couples if only one of the two countries recognizes same sex marriages. US law[19] as well as Swiss law, however, allows same sex

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13 B. Spiegel, "Commentary *ad* Article 81 of Regulation (EC) No. 883/2004" [in:] *Europäisches Sozialrecht*, eds. E. Fuchs, D. Janda, 8th ed., Baden-Baden 2022.

14 If neither of the spouses is a Swiss citizen, the retirees can take advantage of Article 28 FNIA (Swiss Federal Act on Foreign Nationals and Integration, RS 142.20), which allows retired persons to live in Switzerland if they have a personal link to Switzerland and the required financial means.

15 Article 42 FNIA.

16 Article 14 Cst. féd., Federal Constitution of the Swiss Confederation, RS 101.

17 See: https://travel.state.gov/content/travel/en/passports/passport-help/sex-marker.html#:~:text=All%20passports%20%2D%20including%20those%20with,form%20which%20lists%20%22Sex.%22 [accessed: 10.04.2026].

18 Article 42(3) FNIA.

19 H.R.8404 – Respect for Marriage Act, 17th Congress (2021–2022), Public Law No 117-228; US Supreme Court (*Obergefell v. Hodges*), case 576 U.S. 644 (2015).

marriages; Switzerland has recognized registered partnerships since 2007; since 1 July 2022, the Swiss Civil Code has recognised same sex marriages.[20]

Moving back and forth might need some planning too, especially if the couple plans to stay outside Switzerland or the USA for certain time periods.[21] Spouses gain more flexibility for travel purposes, for example, to visit children and grandchildren in both countries, if the alien spouse applies for Swiss or US citizenship. According to US law the alien spouse of a US citizen may apply for citizenship after a three-year period counting from the moment that permanent residence status was obtained.[22] In Switzerland, foreign spouses of Swiss citizens may do so after a residence period of five years, through a so-called "simplified naturalization." The main requirements of such naturalization include being successfully integrated in Switzerland (for example by paying taxes on time, not having unpaid debts, etc.) and speaking one of the Swiss national languages.[23] Moving around within the EU, be it for vacations or for changing residence, is facilitated by the Swiss-EU Free Movement of Persons Agreement as well as by Schengen Regulations that also apply to Switzerland.[24] Based on Free Movement rights, a Swiss citizen and his/her US citizen spouse could for instance settle in the south of France or decide to have a second home in Italy.[25] Be aware however that several countries apply an "exit tax" when a taxpayer is leaving. In the USA, this is true for US citizens that are giving up their citizenship as well as green card holders leaving after eight years of residence. The United States is not alone having such an exit tax. Among European states, Germany asks for a "move away tax" ("Wegzugssteuer") that does not only apply to owners of German corporations but (since 2025) also private individuals holding investment funds.[26] As for now, Switzerland does not have such an exit tax, but it is recommended to follow up on tax legislation, especially on the particular taxation laws of the twenty-six Swiss cantons, which do change from time to time.

[20] See: https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-85912.html [accessed: 10.04.2026].

[21] For the statutory basis and details *cf.* Swiss FNIA, and U.S. Immigration and Nationality Act (INA), 8 US Code; for details *cf.* Code of Federal Regulations, Title 8, Chap. I, Subchap. C, Part 316, para. 316.5, https://www.ecfr.gov/current/title-8/chapter-I/subchapter-C/part-316/section-316.5 [accessed: 10.04.2026].

[22] 8 US Code Chap. 12 Subchap. III, Part II, para. 1427 – Requirements of naturalization, https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-3 [accessed: 10.04.2026].

[23] Article 21 SCA (Federal Citizenship Act, SR 141.0).

[24] If for instance the couple is living in France but would like to move their domicile to Switzerland, no extra Swiss immigrant visa is needed.

[25] Article 7 "Citizens Rights" Directive 2004/58/EC of April 2004, OJ L 158, 30.04.2004, p. 50.

[26] Para. 6 Außensteuergesetz (AStG), https://www.gesetze-im-internet.de/astg/__6.html [accessed: 10.04.2026]; para. 19 Investmentsteuergesetz (InvStG), https://www.gesetze-im-internet.de/invstg_2018/__19.html [accessed: 10.04.2026].

3. Receiving pensions while living abroad and having access to affordable health care

Once one has decided where to live, the question arises as to whether crossing borders will affect pension rights. According to national law and treaties, social security pensions, which evidently include retirement pensions (also called old-age-pensions), are most often paid even if the pension holder has his/her residence abroad. Between Switzerland and the USA, this follows from national social security law and from the Swiss-US Social Security Agreement allowing, for instance, a US retiree to settle in Switzerland while still receiving a US social security pension, and vice versa.[27] If one of the spouses or both have also gained social security credits in Switzerland, they are be protected by the Free Movement of Persons Agreement mentioned above if they move to an EU Member State (Article 6 Regulation (EC) No 883/2004). Even if the couple were to move to a third country, for instance somewhere in South America or the Far East, EU law could overrule national law if it is not compliant with equality of treatment (Article 4 Regulation (EC) No 883/2004). In Swiss law, for example, pensions are reserved for citizens and residents,[28] but EU citizens and their third national spouses can claim a Swiss pension while having domicile and residence outside Switzerland.

Approaching a certain age, social security is not only about pension income. Medical expenses generally increase with age, and moving to another country can become an economic barrier if "purchasing" health insurance abroad is needed. The US-Swiss Social Security Agreement does not cover health care, but both US and Swiss national law come to the rescue of retirees. In the USA, Medicare is available for spouses over sixty-five that have not themselves paid into the system if the other spouse has earned enough credits through the US social security system, and, further, Swiss social health insurance mandatorily covers every person domiciled in Switzerland with equal premiums for young and old insured.[29] Within the EU, retiring outside the pension paying country is also "health insurance proof" because Regulation (EC) No 883/2004 grants access to medical care in any other EU Member State or Switzerland. EU and Swiss retirees are treated as if they were insured in the country of their new home, while doctor's bills are to be paid by the health insurance of the pension country. In addition, family members visiting from other EU Member States are protected by the same tool, as part of the European legal framework giving access to health care through the EU. If children and grandchildren visit, they also have access to the local health providers, on the basis of their insurance from home in Austria, Belgium, or elsewhere.[30]

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27 B. Kahil-Wolff, "Regulation (EU) No 465/2010, the new Swiss–US Convention and other developments," *Schweizerische Zeitschrift für Sozialversicherung und berufliche Vorsorge/Revue suisse des assurances sociales et de la prévoyance professionnelle* (SZS/RSAS) 2015, no. 5, pp. 438–450. Article 4 Social security Agreement U.S-Switzerland (RS 0.831.109.336.1).

28 Article 18(2) LAVS (loi fédérale sur l'assurance-vieillesse et survivants, RS 831.10).

29 Article 3 LAMal (loi fédérale sur l'assurance-maladie, RS 832.10).

30 Article 19 *et seq*. Regulation (EC) No 883/2004. For more details see K.-J. Bieback, "Commentary *ad*

4. Matching retirement plans and optimizing income sources

Even with pensions and reasonable costs for health care, people like to optimize the funding they will have once retirement age has been reached. With an international married couple crossing borders, there are some risks because one spouse could, for example, lose pension rights (by lack of residence or citizenship, Sec. 3) or encounter difficulties when transferring assets to another country (exchange rates, monetary and banking regulations, etc.). On the other hand, being connected to more than one country can also lead to opportunities, especially complementary income sources like pensions, capital gains, or supplemental work income. Whereas one spouse might get substantial income from retirement pensions, the other perhaps plans on drawing on his/her assets as a main resource. Stock market risks, on one hand, and unpredictable situations linked to public welfare (deficits, changes in the law), on the other, can balance each other. Moving abroad can increase the number of options available, for instance, the possibility to convert a pension plan into cash. In Swiss social law, settling outside Switzerland and the EU can trigger the right to take out an unlimited amount of pension fund money, which can give more flexibility for working out a well-balanced retirement plan. The capital taken out is however subject to progressive taxation averaging around 10% of the amount withdrawn. It is therefore interesting to not only look at investment options and risks but also to compare what kind of taxes are due on monthly pensions. Maybe owning assets instead gives tax advantages. This raises the question if and where pensions are taxed.

Some countries, in fact, do not tax social security pensions, because the pension would come out of the same public treasury or because of other policy reasons.[31] Some Double Taxation Avoidance Agreements (DTAAs) reflect this method while providing the same treatment to pensions paid by the contracting parties.[32] Other DTAAs contain more complex rules providing both countries with the right to levy taxes on pensions. This is the case of the US Swiss Double Tax Avoidance Treaty. As with most DTAAs, the US-Switzerland DTAA is inspired by the OECD-Model Tax Convention: it determines where a person has tax residency, distributes tax rights to one or both countries, and sets up rules about how to avoid double taxation ("possibility to claim foreign tax credit").[33] For pension matters, however, the US-Swiss DTAA differs from the general principle laid down in the OECD-Model Tax Convention. The latter aims towards

Article 19 *et seq.* of Regulation (EC) No. 883/2004" [in:] *Europäisches Sozialrecht*, eds. E. Fuchs, D. Janda, 9th ed., Baden-Baden 2026.

31 In the USA, social security pensions are tax-free if the pension holder's income falls below a certain limit; https://www.irs.gov/newsroom/irs-reminds-taxpayers-their-social-security-benefits-may-be-taxable [accessed: 10.04.2026].

32 Cf. Article 18(5) DTAA: a German social security pension received by a resident of the USA must be treated as "though it were" a US. social security pension.

33 OECD-Model Tax Convention on Income and on Capital, https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en.html [accessed: 10.04.2026].

a rather simple solution for pensions by saying that retirement pensions should be subject to taxation only in the country of residence; only this country gets to decide if a pension is taxable or not.[34] The solution is attractive by virtue of its simplicity, but it is not the one the USA and Switzerland have agreed on. Their DTAA deviates from the OECD-Model by allowing the country of source to tax up to 15% of the gross value of the pension. In practice this means that a retiree living in Switzerland and receiving a US social security pension will be taxed on this pension by Switzerland (residence country) and by the U.S. (source country), with foreign (Swiss) tax credits to claim in the USA. In the opposite case, if, for instance, the Swiss spouse has residence in the USA while receiving a Swiss social security pension, this pension would be taxed in the USA (residence country) but not in Switzerland because Swiss tax law does not contain any legal basis to tax pension holders that have left the country.

The situation is complex and needs one to seek tax advice, including for the period before retirement when social security contributions as well as contributions to a pension fund are paid; such contributions may, under certain circumstances that I cannot expand on here, qualify for tax credits after retirement.[35]

5. Thinking of future times and generations

An international couple will also encounter issues when planning on marital agreements and inheritance. Some rules protecting marriage might not be fully applicable in cross-border situations, especially in US tax law, under which certain rules of public law reach into a couple's estate planning. The unlimited marital deduction provided to married couples by the US Internal Revenue Code, for instance, is not available when one spouse is not a US citizen;[36] this means that on an estate inherited by the surviving non-US citizen spouse, federal taxes of up to 40% would be due on amounts passing the taxable exemption amount (in 2026, 32.2 million dollars for married couples filing jointly, and 16.1 million dollars for married individuals filing separately). Like other rules discussed in this article, this law is about borders: it aims to avoid surviving spouses going back to their home countries before taxes are paid. Couples in this situation might need to use a Qualified Domestic Trust (QDOT) which pays out taxable income instead of transferring property.[37] On the Swiss side, the couple is well advised to make an inheritance contract (*pacte successoral*) if they intend to waive mandatory inheritance law. A pre- or post-nuptial agreement made under US state law should "mirror" the one made up according to Swiss law, notably by listing

34 Article 18 OECD-Model Tax Convention.

35 This aspect is crucial for individuals working in Switzerland and paying contributions to a Swiss pension fund because the IRS does not deduct these contributions from the gross income; for further explanations see: https://help.taxesforexpats.com/en/articles/6573333-switzerland-specific [accessed: 10.04.2026].

36 26 U.S. Code/Internal Revenue Code para. 2056(d)(1).

37 26 U.S. Code/Internal Revenue Code para. 2056A.

the same assets as separate or community property. Together, US and Swiss planning tools can form a bridge across jurisdictions and help protect surviving spouses as well as children or other heirs.[38]

Finally, although the couple has organised the best trust or nuptial agreement, issues related to public law can arise. It is tax law, again, that may interfere with situations created under private law. Switzerland, as well as many US states, treat married couples as an economic unit, placing certain assets under the legal presumption that they belong to both spouses. In California, for instance, a home owned by one spouse might be considered as community property even if it is located outside the USA;[39] it can therefore trigger the obligation to mention this property in an annual US tax return. Also one should think ahead of times in which one spouse, because of old age or disability, may need special medical treatment or long term basic care: social policies like Medicaid in the USA or similar non-contributory health care assistance in Switzerland may restrict benefits to individuals who do not have any other support (from their own assets or from family). Such rules might, in fact, impair civil law arrangements about common and separate property with regard to the affected couple. Similar to this, giving up inheritance rights under Swiss law can end up in the refusal or reduction of social benefits, even with regard to medical expenses.[40]

6. Conclusions

Within the jurisdictions I have addressed, bi-national couples are mainly free to choose their domicile, at least in the countries in which one of them has citizenship. Retirees treasure their freedom and hope for younger generations that they will always have this right too. The set of obstacles we have discussed are due to tax and social security policies that seem largely justified by the financial challenges that democratic countries must deal with. They can be handled by carefully advised legal planning, mostly in the fields of family, inheritance, and tax law, making crossing borders more predictable for retirees and safer for their descendants.

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[38] For more details on the US side see D. Westfall, G. Mair, J.R. Buckles, *Estate Planning Law and Taxation*, 5th ed., Valhalla 2024.

[39] I Chap. 1 Sec. 760 CA CC "Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property."

[40] Swiss Federal Court in ATF 134 I 65: access only to absolute minimum standard of social protection for a spouse who has given up inheritance rights in favour of other heirs; Article 12 Cst. féd., Federal Constitution of the Swiss Confederation, RS 101; also see Swiss Federal Court judgment 9C_532/2019 of 18 November 2019.

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Summary

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Crossing Borders when Reaching Retirement Age

Moving abroad when retiring from work can open up undreamt-of possibilities, but it is also fraught with uncertainties. This article addresses issues that married international couples encounter when moving from Europe to the USA or vice versa. It includes considerations about retirement pensions, access to affordable healthcare, estate planning, and other questions that are typically faced by retirees.

Keywords: social security, USA–Switzerland Agreement, exportation of pensions, health care, pension fund, cash payments, taxation, estate planning.

Streszczenie

Bettina Hummer

Przekraczanie granic po osiągnięciu wieku emerytalnego

Przeprowadzka za granicę po przejściu na emeryturę może otworzyć nieoczekiwane możliwości, ale wiąże się także z wieloma wątpliwościami. W niniejszym artykule omówiono wyzwania, z jakimi mierzą się małżeństwa międzynarodowe, przeprowadzając się z Europy do Stanów Zjednoczonych i odwrotnie. Poruszono w nim kwestie związane z emeryturami, dostępem do niedrogiej opieki zdrowotnej, planowaniem majątkowym, a także inne problemy, z którymi zazwyczaj borykają się emeryci.

Słowa kluczowe: ubezpieczenie społeczne, Umowa USA – Szwajcaria, eksport świadczenia emerytalnego, system ochrony zdrowia, fundusz emerytalny, świadczenia gotówkowe, opodatkowanie, emerytalne planowanie majątkowe.