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Changes in the Swiss Value Added Tax Legislation

The Swiss Value Added Tax Act (VATA) has been partially revised and this brings changes, some of which will already come into effect on 1 January 2018. The changes relate in particular to the area of taxable persons and the result is that certain foreign suppliers, which were not liable to VAT hitherto, will now have to be entered in the VAT Register. Because the pension reform proposals ("Pension Reform 2020" and "Additional Funding of Pensions by an Increase in the VAT Rate") were rejected in the referendum of 24 September 2017, the VAT rates will also change as from 1 January 2018.

Partial Revision of the VATA

Following the total VATA revision which has been in force since 2010, various potential reforms were discussed. In 2013 those connected with the intended introduction of a single VAT rate and the planned abolition of most tax exemptions were rejected, and a partial revision of the Act was passed by Parliament in September 2016 which in particular had the object of eliminating the VAT disadvantages suffered by Swiss businesses in comparison to foreign businesses.

Equal Treatment for Foreign and Swiss Businesses

Specifically, all businesses that have an activity in Switzerland will now be liable to register for VAT if they have a turnover in Switzerland and abroad totaling at least CHF 100,000 from supplies which are not tax-exempt (at present only the turnover in Switzerland is taken into account). Foreign businesses will thus be treated in the same way in Switzerland as Swiss businesses are in the EU.

The rule continues to apply whereby foreign businesses whose sole supplies in Switzerland are exempt from VAT with the right to claim input tax,

or subject to acquisition tax (reverse charge), do not have to register for VAT in Switzerland. These include foreign businesses that provide solely services in Switzerland for which the place of supply under art. 8 para. 1 VATA is deemed to be the place of business of the recipients of the supply. This applies irrespective of the size of the turnover generated with such services. Such foreign businesses do not become liable to register for VAT in Switzerland until they make a taxable supply in Switzerland, and they cease to be liable to register at the end of the calendar year in which the last taxable supply was made in Switzerland.

The Federal Council estimates that at least 20,000 foreign businesses will have to register for Swiss VAT for the first time in the year of introduction of the new rule.

Changes in the Area of Mail Order Businesses

There is a further change which has far-reaching consequences for foreign businesses, in particular those in the mail order business, and it relates to the area of import-tax-free "small consignments" (i.e. the import VAT does not amount to more than CHF 5.00). As from 1 January 2019, businesses which send such tax-free small consignments to Switzer-

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land for a total amount of at least CHF 100,000 p.a. will also be liable to register for VAT in Switzerland.

Developments in the Area of Electronic Vouchers

A further innovation in the area of VAT law must also be mentioned: the Ordinance of the FDF on Electronic Data and Information of 11 December 2009 is repealed as from 1 January 2018. In this connection, the Federal Council has determined that in future only art. 957–958f of the Swiss Code of Obligations and the Ordinance on Business Records will apply for VAT purposes in respect of vouchers. Taxable persons that keep accounts properly will thus basically also have the right to claim input tax back on the basis of “ordinary” PDF invoices.

Finally, we would like to point out that it will now be possible to opt for exempt turnover to be made subject to VAT by way of declaration within the framework of the tax return and tax payment procedure. In future it will no longer necessary for the tax to be shown explicitly in the invoice.

Entry into Force

The lower and upper houses of Parliament passed the partially revised VATA in their final votes of 30 September 2016. The Federal Council passed the partially revised VAT Ordinance (VATO) on 18 October 2017. Both VATA and VATO will come into force on 1 January 2018, with the exception of the provisions relating to mail order businesses. The new rules regarding mail order businesses will come into effect

a year later, for technical reasons. As there is only a very short period of time between the passing of the VATO and the entry into force of the partial revision, the complete revised publications will only become available in the course of 2018.

Amendment of the VAT Rates

Because of the rejection of the pension reform proposals “Pension Reform 2020” and “Additional Funding of Pensions by an Increase in the VAT Rate” in the referendum of 24 September 2017, the following VAT rates will now apply from 1 January 2018 onwards:

- Normal rate 7.7% (previously 8%)
- Special rate 3.7% (previously 3.8%)
(accommodation services)
- Reduced rate 2.5% (unchanged)

The reduced tax rate of 2.5% will also apply as from 1 January 2018 for electronic newspapers, magazines and books without advertising character. The partial revision of the VATA put the electronic products on the same footing as the printed products.

Supplies which are made in 2018 are subject to the new tax rates, where these have been reduced. This applies irrespective of the date when the supply is invoiced. In this connection, please note that supplies which are partly made in 2017 and partly in 2018 must be invoiced pro rata: the “old” tax rate must be used for that part of the supply which is made in 2017. Apart from that the new VAT rates must be applied.

Recommended Actions

We recommend that foreign businesses in particular should check whether they may be liable to register for Swiss VAT as from 1 January 2018 (or in the case of the mail order businesses, as from 1 January 2019). If so, it would be necessary to make the registration with the Federal Tax Administration. Please note that a Swiss fiscal representative must be appointed in this connection for foreign businesses.

Further, it is important to ensure that the new VAT rates are used from 2018 onwards. In the case of supplies which are made in both 2017 and 2018, for VAT purposes it will be necessary to make a time-based demarcation of the supplies with a view to the invoicing, and to document this correspondingly.



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