

Extension of Swiss Value Added Tax (VAT) liability / Amendment of VAT rates

A partial amendment to Swiss VAT law comes into force on 1 January 2018. Companies with a turnover of less than CHF 100,000 remain generally exempt from Swiss VAT. However, under the amended law not only the Swiss turnover, but the total worldwide turnover will be taken into account for the calculation of the turnover threshold. This means that numerous companies which were previously exempt from Swiss VAT will then become liable for VAT.

Furthermore, on the same date there will be a change in the VAT rates. The normal rate will then be 7.7%, the reduced rate 2.5% and the special rate 3.7%.

I. Present law (until 31 December 2017)

Any person who carries on a business, is sufficiently connected with Switzerland and is not tax-exempt, is liable for VAT.

Under the present law namely persons who generate a turnover on Swiss territory from taxable supplies of less than CHF 100,000 within one year are tax-exempt unless the company waives the exemption from tax liability. Thus under present law only the Swiss, but not the foreign turnover is taken into account for the calculation of the turnover threshold.

Example 1: A tiler based abroad achieves turnover outside Switzerland of EUR 20,000 (CHF 23,000) and of EUR 70,000 (CHF 80,500) on Swiss territory, i.e. a worldwide turnover of CHF 103,500. As only the turnover achieved on Swiss territory is taken into account for the calculation of the turnover threshold and the turnover of CHF 80,500 is less than CHF 100'000 in this example, the tiler is not liable for Swiss VAT under the present law.

II. Future law (as of 1 January 2018)

1) General turnover threshold

Under the future law the relevant turnover threshold for the VAT liability is no longer just the turnover achieved on Swiss territory, but will be the turnover achieved worldwide. So tax exemption will only apply for

persons that achieve a turnover on Swiss territory and foreign territories, i.e. worldwide, of less than CHF 100,000 within one year. The turnover limit will be measured by all supplies that are not exempt from VAT under Art. 21 (2) of the Swiss VAT Act. For this reason considerations for the supply of goods on foreign territory and the supply of services on foreign territory will be had to take into consideration by the calculation of the threshold limit according to the future law. Swiss law will be applicable for the qualification of the supplies.

Example 2: Same situation as in example 1. However, as the worldwide turnover of CHF 100,000 has been reached the tiler is liable for Swiss VAT under the future law.

2) Exclusive provision of tax-exempt supplies

Any person who carries on a business based abroad that provides on Swiss territory exclusively tax-exempt supplies will also be exempt from VAT. This will be irrespective of the amount of turnover. The tax-exempt services are outlined in Art. 23 of the VAT Act.

3) Exclusive provision of supply of services whose place of supply is on Swiss territory according to the recipient principle (Empfängerortprinzip).

a) General principle

Any person who carries on a business based abroad that provides on Swiss territory exclusively supply of services whose place of supply is on Swiss territory according to the place of recipient principle is also exempt from VAT. Such services are namely services in the field of advertising, services provided by consultants, asset managers, lawyers etc., management services, data processing and the hiring out of temporary workers, in each case for recipients whose place of business or a permanent establishment (insofar as the service is provided for the Swiss permanent establishment), domicile or place of normal abode is in Switzerland. In contrast the place of supply for services supplied by travel agencies and event organisers and services in connection with immovable property is not governed by the place of recipient principle and therefore

such service providers are not exempt from the VAT liability. Furthermore, it should be considered that the service concept according to Swiss law is narrower than it is in other countries. Persons who carry on a business based abroad that only provides services in Switzerland whose place of supply according to the place of recipient principle is situated on Swiss territory are exempt from VAT. This applies irrespective of the amount of turnover. However, in these cases the recipient of the service must generally settle up the acquisition tax.

Example 3: A lawyer in Germany makes a turnover of CHF 150,000 in both Switzerland and Germany with legal services that are subject to the place of recipient principle. For the reason that the lawyer provides exclusively services under the place of recipient principle, the lawyer is exempt from Swiss VAT liability.

b) Telecommunication or electronic services to recipients who are not VAT liable

However, a counter-exception of the above applies to the supply of telecommunication or electronic services to recipients who are not VAT liable. Electronic services are services obtained or provided directly through long-distance lines, namely: the provision of websites, webhosting, the tele-servicing of programs and equipment; the electronic provision of software and its updating; the electronic provision of images, texts and information as well as the provision of databases; the provision of databases etc. Suppliers of such services are not tax exempt, if the general turnover threshold is achieved (see II.1 above).

Example 4A: A German based software developer provides software to the value of CHF 150,000 for the not VAT liable Switzerland based service recipient A. Due to the counter-exception the software developer is not exempt from Swiss VAT.

Example 4B: However, if the software developer provides services for Swiss VAT liable B the counter-exception does not apply due to B's VAT liability. The software developer himself becomes not VAT liable.

Whether or not the service recipient is VAT liable can be determined here: [LINK](#).

III. Commencement of tax liability and procedure in the case of tax liability

For businesses previously exempt from VAT liability the exemption ends and the VAT liability begins at the end of the business year in which the relevant turnover threshold was exceeded.

For businesses that commence their activity or extend their activity by taking over a business or opening a new business division, the exemption from tax liability ends with the commencement or extension of this activity, if at the time based on the circumstances it must be assumed that the relevant turnover threshold will be exceeded within the following twelve months. If at the time of the commencement or extension of the activity it cannot yet be assessed whether the turnover threshold of CHF 100,000 will be exceeded, at the latest after three months after the commencement or extension of the business activities a re-assessment must be undertaken. If based on this re-assessment it must be assumed that the turnover threshold will be exceeded, the VAT exemption will end. The business may opt to commence the tax liability or end the exemption from tax liability either retroactively on the date of com-

mencement or extension of this activity or on the date of the re-assessment, but at the latest at the beginning of the fourth month.

Persons who become liable for VAT must register with the Swiss Federal Tax Administration (FTA) of their own accord in writing within 30 days of the commencement of their VAT liability. The registration and the VAT statements are verified on the basis of the notification for cross-border services. Registration can be carried out online: [LINK](#) (only available in German, French and Italian).

VAT liable persons without a domicile or place of business on Swiss territory must appoint a representative to perform their procedural obligations. This tax representative must have his domicile or place of business in Switzerland. The form for the announcement of the representative to FTA can be downloaded here: [LINK](#) (only available in German, French and Italian).

If a taxable person is not resident or domiciled in Switzerland, a security needs to be provided in order to complete the VAT registration. Said security is usually paid in cash or by setting up a bank guarantee with a bank domiciled in Switzerland. The security deposit amounts to 3% of the ex-

pected taxable domestic turnover (excl. exports), but at least CHF 2,000 and at most CHF 250,000.

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