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Partial Revision of the Swiss VAT Law as of 1 January 2018:

Basis of the VAT Liability in Switzerland

To date the Swiss legislation determines the VAT liability based on the turnover generated in Switzerland. Supplies, which are provided abroad, are not relevant in this case. This also applies to foreign businesses, which leads to a distortion of competition because businesses in the surrounding countries are generally subject to the VAT from the first Euro. This disadvantage for domestic businesses compared with foreign competitors could not be eliminated through tightening the regulations regarding service import tax (transfer of tax due to the supply-recipient), as it was hardly enforceable.

Amendment of the Legal Text: Exemption from Tax Liability

According to the new wording the exemption from the VAT liability is given, provided that the person (i.e. natural or legal person) generates turnover from taxable supplies of less than CHF 100'000 within a year in Switzerland and abroad, which are not excluded in accordance with art. 21 para. 2 of the new VAT Act (nMWSTG).

Thus, new is that not only the turnover in Switzerland but the worldwide turnover has to be considered for the determination of the VAT liability. As of 1 January 2018 each domestic and foreign business is subject to the Swiss VAT, if it provides supplies in Switzerland – unless it concerns tax excluded supplies¹ – and its worldwide annual turnover exceeds CHF 100'000.

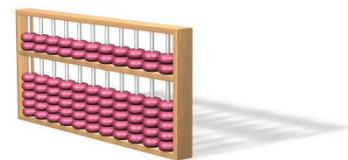
Exception for Foreign Businesses

Exempt from the tax liability are businesses domiciled abroad, which irrespective from the amount of its turnover, solely provides one or more of the below mentioned supplies:

- Supplies exempt from the tax;²
- Services, where the place of supply according to art. 8 para 1 nMWSTG is in Switzerland. However, not exempted are telecommunication or electronic services to not taxable recipients;
- Supply of electricity and natural gas in pipes or cables and district heating to taxable customers in Switzerland.

¹ According to the official translation of the Federal Act on Value Added Tax published by the Federal Administration it is defined as “supplies exempt from the tax without credit” under art. 21 MWSTG.

² Within the meaning of “supplies exempt from the tax” under art. 23 MWSTG.



This provision allows foreign businesses – irrespective of its turnover – to not having to register themselves in Switzerland. In this case the Swiss recipient must pay service import tax³ (analogue Reverse-Charge-Method of the EU). Domestic businesses do not benefit from this provision.

Art. 8 para 1 nMWSTG concerns services, for which the place-of-receipt principle applies. This is a so called catch-all clause. The supplies under this article are comparable to the term catalogue services of the EU. A different localisation of the place of supply of service applies for example for healing treatments, therapies, nursing, personal hygiene, marriage, family and life counselling, child and youth care, services of travel agencies and event organisers, services in the area of culture, the arts, sports, the science, scholarship, entertainment or similar services, passenger transport services, services in connection with immovable property, as well as services in the area of international development, etc. When providing such services as well as supply of goods with place of supply in Switzerland (especially contractual work and service), the foreign business must, under fulfilment of the aforementioned requirements, register for VAT purposes.

Beginning and End of the Tax Liability

Due to the amendment of the tax liability the beginning and end of the tax liability has to be newly defined. The new regulation is that:

For foreign businesses:

- Beginning of the tax liability with the first supply in Switzerland;
- End of the tax liability with the end of the calendar year, in which the last supply was provided in Switzerland.

For domestic businesses:

- Beginning of the tax liability with the take-up of the business activity;
- End of the tax liability with the termination of the business activity or if the turnover falls below the relevant limit as at the end of the fiscal year.

Further relevant Amendments as of 1 January 2018

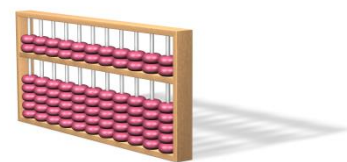
Electronic News Papers and Magazines:

As of 1 January 2018 electronic publications without advertisement character (such as books, news papers and magazines) are treated as equivalent to printed versions and the reduced rate is applicable.

Margin Taxation:

Through the law revision per 1 January 2010 the margin taxation ceased to exist. However, with the current law revision the margin taxation will be reintroduced in a slightly different form. This means that for the sale of collection pieces such as works of art, antiques, et al. the tax will be calculated by deducting the purchase price from the sales price, provided that no input tax has been deducted from the purchase price. If the purchase price is higher than the sales price, the loss can be charged against the taxable turnover.

³ This tax is defined as “acquisition tax“ according to art. 45 ff. MWSTG in the official translation by the Federal Administration.



Deduction of Notional Input Tax:

As of 1 January 2018 a notional input tax deduction on the purchase of individual movable items can be made. This even applies if the VAT has not been separately charged. The paid amount is understood to be inclusive VAT. For items which are subject to the margin taxation in accordance with art. 24a nMWSTG (as described in the section above) no notional tax can be deducted.

Good to Know

How is the Amount of Security for Foreign Businesses Determined

Businesses domiciled abroad, which do not have a permanent establishment in Switzerland, must provide security due to its VAT registration with the Swiss Federal Tax Administration. This can be done by way of bank warranty through a Swiss bank or with a cash deposit.

Since 1 August 2017 the amount of the security is regulated as follows:

- 3% of the anticipated taxable turnover in Switzerland (exclusive exports)
- Minimum amount CHF 2'000
- Maximum amount CHF 250'000

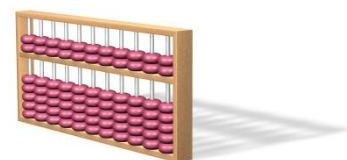
Up to the amount of CHF 20'000 the security is rounded to the next thousand and from CHF 20'000 on it is rounded to the next five thousand.

Tax Representative

A foreign business, which operates in Switzerland and is subject to the tax, must be represented by a representative domiciled in Switzerland. This gives the foreign business a domicile for any VAT matters. As a tax representative is acknowledged who is a natural or legal person with residence respectively place of business in Switzerland. The representative bears the obligations of the taxable person with the exception of the liability for tax due and its payment.

Definition of Supply of Goods

With the revision of the law per 1 January 2010 Switzerland has in regards of the localisation of the place of supply of goods largely converged with the VAT Directive of the European Union. However, the Swiss VAT Act defines the term "supply of goods" more extensive than the EU. Thus, not only the transfer of the power to dispose of a good commercially in one's own name but also the delivery of the good on which work has been performed, even if the good is not altered by the work, but only tested, calibrated, regulated, checked for its function or has been treated in another way, is considered supply of goods. Moreover, letting and leasing of an item also falls under the term supply of goods.



Reduction of the VAT Rates as of 1 January 2018

Irrespective of the partial revision of the VAT law the Swiss people voted on the adjustment of the VAT rates on 24 September 2017. The reform “Altersvorsorge 2020” (retirement provision 2020) was rejected and thus the rates are going to be adjusted per 1 January 2018 as follows:

	Standard rate	Special rate accommodation services	Reduced rate
Current tax rates	8.0%	3.8%	2.5%
- expiring additional funding of the invalidity insurance by 31.12.2017	-0.4%	-0.2%	-0.1%
+ increased tax rate FABI ⁴ 01.01.18-31.12.30	0.1%	0.1%	0.1%
Status per 01.01.2018 ⁴	7.7%	3.7%	2.5%

Treatment of Year Overlapping Supplies

Relevant for the billing is neither the date of the billing nor the payment, but the time, respectively the time period of the supply provision. Until 31 December 2017 provided supplies are generally subject to the previous tax rates and from 1 January 2018 on provided supplies are subject to the new tax rates. If the supplies are billed together the VAT must either be calculated separately or the entire supply must be billed with the current higher tax rates.

If you have any queries regarding this topic or require support, please do not hesitate to approach your contact person at Haussmann or contact:

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⁴ The initiative FABI (financing and expansion of the railway infrastructure) was adopted on 9 February 2014.