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EU turnover tax: an introduction for Swiss companies

Dear Sir or Madam,

As soon as cross-border business deals take place, both Swiss laws and the regulations in the other country have to be taken into consideration. In the case of business deals with EU countries, turnover tax of the corresponding countries has regularly been an issue. The following newsletter by guest authors from our Morison International Partner in Germany will provide an insight into this complex issue.

All businesspersons (both from within and outside the EU) who offer services or goods within the EU need always to be clearly aware of whether, and in which country, their turnover needs to be taxed, how invoices have to be drawn up, and who is responsible for paying taxes to the respective tax authority. As the regulations in this field are changing on a regular basis, all relevant issues, including current business relationships, need to be reviewed constantly. In general, a consultation with a tax advisor is to be recommended. The latest amendments within the field of turnover tax legislation in Germany, particularly where electronic services are concerned, give reason to point out the most important regulations of the German turnover tax law regarding trade within the EU and to outline any changes.

Which regulations basically need to be considered with respect to turnover between different EU countries?

On the one hand, treatment of turnover tax on services provided by companies that are domiciled with the EU covers the kind of service offered and, on the other hand, covers the type and the location of the recipient of the service. The following statements are equally applicable for companies with their headquarters in Switzerland but who are carrying out their EU trade via branches they have set up within the EU. However, excluded are EU import services, which will not be covered in this newsletter. Primarily, a distinction has to be made between the following cases:

How is turnover taxed in the case of a purely domestic transaction?

If both the company (delivering goods or providing services) and the customer – irrespective of whether a company or a private person – are domiciled in the same country, then, of course, turnover tax law according to this particular country (e.g. Germany) will be applied. As regulations about turnover tax have been harmonised across the EU via the Directive on the VAT system, the turnover tax laws of individual EU countries may be quite similar; however, there might be differences in specific cases

(e.g. the tax rate). In these particular cases, it is recommended to consult a tax advisor of the country in question.

What is applicable in cases of delivery of goods within the EU?

If one company is delivering goods to another company that is based in a different EU country we have what in Germany is regarded as an intra-community transaction which, although subject to tax in Germany, is exempt from turnover tax (value-added tax). On the other hand the recipient has made an intra-community acquisition that is subject to taxation in his or her respective country. In this instance each business requires a VAT identification number (VAT ID) in the respective country. The supplier just issues a net invoice without turnover tax, but with a note stating that the recipient is a tax debtor (a so-called reverse-charge procedure). The recipient declares the acquisition in his or her country. This country's turnover tax rate is then applied, not that of the country where the supplier is domiciled. At the same time, the customer is entitled to claim input tax from the tax authorities, which is identical to the amount of turnover tax that would need to be paid. This will also be added to the tax declaration. Effectively, this means that neither supplier nor recipient is paying turnover tax to their respective tax authorities.

What should be considered in the case of services between companies within the EU?

If one company in a particular country provides services for a company domiciled in a different country of the EU, then generally these services are subject to tax only in the country of the recipient company. However, exceptions are possible. In this case as well, a net invoice will be issued, with the VAT ID of both companies plus the notice that the reverse-charge procedure is to be applied. The recipient of the services needs to declare that these services are eligible to claim input tax in his or her country, and consequently are not subject to any turnover tax.

How are sales of goods to private EU citizens taxed?

It is an altogether different matter if the customer is a private person. First, the delivery of goods is taxable in the country where the company is domiciled. If, for example, a customer from France is ordering goods from Germany then a turnover tax of 19% on these goods has to be paid in Germany. The customer receives a gross invoice and pays the full amount to the supplier who then pays turnover tax to the German tax authority. However, if a businessperson is selling a considerable amount of goods to a particular EU country it may well be possible that the annual delivery quota (turnover limit) set up for each individual EU country has been exceeded. In this case, the customer still receives a gross invoice; however, in this particular case with a turnover tax rate of 20% (France). The businessperson then has to declare and pay this in France. It is also an option to do so on a voluntary basis, even if the delivery quota has not been exceeded.

How about turnover tax in case of services to private persons?

Should a businessperson be providing a service for a private person, then generally this service is subject to tax in the country where the businessperson is domiciled. Thus the customer receives a gross invoice, including, for example, 19% turnover tax (Germany) that is paid to the service provider who then pays this to the tax authorities. However, this can vary depending on the nature of services.

Special case: electronic services supplied to private persons

As of 1st January 2015, any electronic services like, for example, providing websites, software, pictures, E-books, online newspapers, music, films or games via the internet, have become subject to tax at the domicile of the receiver of services if this customer is a **private person**. Thus, the place of delivery for electronic services to private persons within the EU changed at the turn of the year. Prior to that, this was done at the domicile of the providing businessperson(s). For example, if a German businessperson sells software, via internet download, to a private person in Austria, in 2014 this electronic service was still supplied in Germany at the domicile of the supplying businessperson who then issued an invoice which included German turnover tax (19%). As of 1 January 2015 this service is now supplied at the residence of the person receiving the service, which means the German businessperson must now include Austrian turnover tax (20%) in the invoice.

To avoid German businesspersons supplying electronic services to private persons abroad having to hand in a tax declaration in each and every EU member state, the opportunity has been created to participate in a specific taxation procedure for electronic services (also known as Mini-One-Stop-Shop = MOSS) from 2015 onwards. If participating in this procedure, the businessperson can then electronically declare the turnover tax that is due to be paid for electronic services to private persons in other EU member states at the Federal Central Tax Office (*Bundeszentralamt für Steuern*, BZSt). Another valid option is to declare this tax at another tax authority within an EU member state. In order to do so, a tax declaration must be handed in at the BZSt no later than 20 days after the end of the quarter, i.e. for the first time on 20 April 2015, in which each electronic service has been listed separately for each EU member state. At the same time, the self-declared tax to foreign EU states must be paid to the BZSt. Participation in this specific procedure is on a voluntary basis. However, the businessperson's decision has to be consistent for all EU member states. If the businessperson wishes to participate, an electronic registration at the BZSt is necessary. Registration needs to be done before the start of the quarter in which the businessperson wishes to participate, i.e., for participating from 3rd quarter 2015 onwards, before 30th June 2015.

Electronic services to **businesspersons** in other EU member states are excluded from this particular procedure. The businessperson supplying the service issues an invoice without turnover tax, as the receiver of those services is the tax debtor.

These regulations can also be accordingly applied to companies outside the EU, e.g. in Switzerland (§ 18 Abs. 4c, 4d UStG-D) if they supply services to private persons according to § 3a Abs. 5 UStG-D. They can also have themselves registered in an EU country (e.g. Germany) should they want to declare services supplied to private persons throughout the EU at a single authority (e.g. at the BZSt – see also Nr. 3a.16 Abs. 13 UStAE-D). This regulation has already been in effect in Switzerland, thus nothing changes for Swiss companies as of 2015 (cf. Art. 58 *MwStSystRL* VAT system regulation).

Conclusion

Although turnover taxation is generally easy to deal with within the EU, the fact that the legislators are creating an increasing number of exceptions also creates increasing challenges for companies that would like to ensure the correct taxation of their services and also to avoid having to pay back taxes to the authorities in years to come.

About the authors:

Both authors work at the RIEDLINGER Partner Company mbB Freiburg, and deal predominantly with international taxation matters.

For many years now, we have maintained a close working partnership with the company, and have been able to jointly deal with a number of cross-border mandates.

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