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New VAT law as of 2018 – are you one of the 30'000 new VAT subjects?

Dear Sir or Madam,

On 1 January 2018, the partial amendment of the VAT law comes into effect. While many of those amendments undertaken only affect a selective few of those that are liable to VAT, this does not apply to foreign companies. They will be affected by a number of fundamental changes, and it is to be expected that around 30'000 companies domiciled abroad will newly be liable to VAT in Switzerland. We have listed the most crucial points here to help you make an assessment as to whether there is a need for action within your company.

Criteria for tax liability in Switzerland

Until now the issue of who needs to register for VAT in Switzerland has only been approached from a domestic point of view. Turnover realised in Switzerland was considered (to be precise: turnover with a "place of supply" in Switzerland according to VAT regulations – not always a trivial matter), and if that Swiss turnover was below the tax exempt amount of CHF 100'000, a foreign company was not required to register. Any turnover amounts in the millions or even billions realised in the company's home or other foreign countries were irrelevant. Thus, there were only a few foreign companies which needed to register in Switzerland – in most situations, customs (import tax) or the client in Switzerland (acquisition tax) had to deal with VAT.

On the one hand, this has led to certain distortions of competition. For example, it allowed foreign construction companies close to the border to provide their services to a few Swiss clients, and when they managed to keep turnover realised in Switzerland below CHF 100'000, they could avoid paying VAT completely. On the other hand, there has been a growing tendency within the EU to increasingly make foreign companies (domiciled outside the EU) liable to EU VAT. For example, if a Swiss company provided internet services and software downloads to clients domiciled within the EU, it had to register in the EU and make VAT payments in up to 28 countries. Thus it was only a question of time until Switzerland decided to reciprocate.

As of 2018, the answer to the question whether there is a liability to VAT in Switzerland lies in the turnover realised worldwide. Thus anybody who is over the tax exempt amount of CHF 100'000 worldwide is basically liable to VAT in Switzerland, hence required to register from the first Swiss Franc of turnover and cash up VAT. This is a complete reversion from the old point of view.

Which foreign companies are affected, and how?

Below we will show you what is going to change in 2018 for a few typical categories. This will allow you to get an overview of how and to what extent your company will be affected. Of course, in the end, an individual assessment will have to be made for each case.

Construction companies and building workers

So far, there had only been a requirement to register if a company realised a turnover of more than CHF 100'000 with Swiss contracts, something quite easily avoidable within the SME sector. Below this tax exempt amount, it had to be differentiated whether material was brought along from abroad or not: in the former instance the value of the material plus the supply of services rendered (which Switzerland considers to be part of the supply of goods) needed to be declared with customs. In the latter instance the beneficiary was liable to acquisition tax, with private persons only needing to declare for services received above CHF 10'000. In reality, neither of these were effective solutions and as a consequence, quite a number of services rendered remained untaxed.

From 2018 on, all construction companies with a turnover of more than CHF 100'000 worldwide are required to register in Switzerland as soon as they realise one Franc of turnover in Switzerland. In return the required material can be imported under their own name, allowing foreign construction companies to immediately reclaim import tax paid at customs, so that their clients will not be burdened by it. These clients will then receive a comprehensive invoice including 8% VAT, in the same manner as a Swiss construction company would send invoices to its clients in Switzerland.

"Services" regarded as supply of goods in Switzerland

Switzerland – in contrast to the EU – has this peculiarity whereby impacting or working on an object is regarded as supply of goods and not as supply of services. Examples include installations and repair work in situ, but also cleaning operations. As, more often than not, no goods are brought along, customs cannot levy any taxes. Until now this meant – as it has been described under building services – that acquisition tax came into effect, with a high tax-exempt threshold for individuals and a high number of unreported cases, as nobody really had any idea what to do, and the authorities were often left in the dark if any breaches occurred.

From 2018 on, any foreign company needs to register in Switzerland as soon as turnover worldwide exceeds CHF 100'000 and as soon as any supply has been rendered in Switzerland, however small.

"True" services according to the place-of receipt principle

Services that do not have any impact on an object but are rather of an intellectual nature, such as, for example, advertising, accounting, tax and legal consultancy, but also IT services, are regarded as supply of services in Switzerland as well, and they are generally subject to the so-called place-of-receipt-principle. As a consequence this means that services have been rendered where the actual beneficiary of these services is domiciled. A German lawyer who in Germany represents a Swiss client before a German court has thus rendered a service in Switzerland – and this according to the joint views of both the EU and Switzerland.

Thus far, there had been no requirement to register in Switzerland, and this will remain unchanged for such instances come 2018. As before, the beneficiary of these services must pay Swiss VAT in the form of acquisition tax; this goes for any company liable to

tax even after just CHF 1.00 of turnover (but usually with full input tax deduction and thus of no consequence) and for private persons with an annual tax exemption of CHF 10'000 for foreign procurements.

Special case - telecommunications and electronic services

When it comes to services, an old adage still applies: "there is an exception to every rule." Foreign companies that supply telecommunications and electronic services to private persons and companies not liable to tax in Switzerland are required to register in Switzerland as of 2018 and settle their Swiss VAT bills for services rendered here. Amongst these are software downloads, internet services and electronic publications with paid subscription.

Thus Switzerland is introducing the same regulation which has already been in effect in the EU for quite a while – as of 2018, providers from the EU will be treated on a par with how the EU has been treating Swiss and other foreign providers.

Goods export into Switzerland

Basically, for foreign companies exporting goods to Switzerland, nothing is going to change. Just as before, goods need to be correctly declared at customs, who in turn will levy import VAT on top of customs duties and charge it, via shipping company, to the recipient of the goods. The recipient, liable to tax, then can, where applicable, reclaim this import tax as input tax. Not only does this apply to wholesale trade between companies, but also to trade with private persons, as long as customs actually levy VAT. However, there will soon be a considerable exception in this instance.

Special case - small mail-order shipments

To simplify matters, customs waive import sales tax where the amount is less than CHF 5. Considering today's tax rates, this is the case with a goods value up to CHF 62.50 (at 8%) or CHF 200.00 (at 2.5%) respectively. Instead of rather laborious customs clearance, the package will receive a green sticker saying "exempt from duty", and the matter is settled. Thanks to this, a flourishing trade with such small shipments has developed in the last few years, and there are a number of foreign mail-order companies that distribute major orders deliberately in smaller shipments which each have a value below the threshold and can thus be imported free of tax. This distortion of competition will cease to exist with the new VAT act. However, as everyone is aware of the rather complex changeover, the new regulation here only comes into effect on 1 January 2019.

From then it will be mandatory for foreign companies which annually send more than CHF 100'000 worth of small shipments exempt from tax to Switzerland to register in Switzerland. They will also be required to import the goods under their own name, and to invoice their clients with Swiss VAT.

It is already possible to do this on a voluntary basis, to free your Swiss customers from having to deal with customs and the high processing fees of postal customs clearance (which must be paid by the customer as cash-on-delivery). artax offers comprehensive solutions and is already serving some of the biggest European mail-order companies in this area. We are certainly happy to support you should you wish to either voluntarily take the step to Swiss VAT registration, or should you be required to do so due to the change in law from 2019 onwards.

What else is going to change in 2018?

Apart from this major change regarding registration rules, there will be a few more selective changes in the amended law. These will generally have small or no implications for most companies; however, in specific instances they could have major effects. Some of these are listed below as examples:

- Completely new rules when public government entities become liable to VAT
- Re-introduction of margin taxation abolished in 2010.
- Abolition of notional input tax deduction for certain services, extension of notional input tax deduction to certain other services
- Voluntary payment of tax on exempt turnovers (option) is now also possible without explicitly mentioning that tax on the invoice.
- The reduced tax rate of 2.5% now also applies to online editions of newspapers and books
- Considerations for donations will not be relevant for tax anymore when the benefactors are informed that they have no entitlement to it (this will most certainly affect air rescue service Rega that now, for tax reasons, has to assess each time before going into the air whether it fancies flying just then).

And just maybe, just maybe a tax reduction – or maybe not!

It is also possible there might be a reduction of the tax rates as per 1 January 2018: On that particular date the fixed-term additional financing of the disability insurance (IV) via VAT comes to an end (-0.4% on the standard rate), but the tax increase for the financing of Swiss railways as per FBI legislation comes into effect (+0.1%), and, should the Swiss people vote for the pension scheme reform on 26 September, the first step of a tax increase will come into effect (+0.3% – a second step is supposed to follow in 2021). Altogether the legislator has designed the three revisions in such a way that rates in 2018 remain unchanged.

However, should the electorate decide to reject the pension scheme reform this autumn, then there will be a mandatory lowering of the VAT rates as per 1 January 2018, as then there will no longer be a constitutional basis to continue levying 8%. In this situation, companies will have a lead time of just three months to implement the necessary adjustments, to re-programme their computer systems, to inform their clients, and – wherever necessary – to organise subsequent corrections of (e.g. periodic) invoices already sent out. This is an excessively short timescale for such adjustments. We currently anticipate that the regulations for the adjustment will be the same as, or similar to, the last tax rate increase in 2011. In any event we shall be keeping a close eye on the matter and, should the Swiss people reject the pension reform scheme and thus create a need for action with VAT, inform you at short notice via this newsletter.

Should you have any further questions about changes to VAT law in particular or just with VAT in general, the team at artax will be happy to help with them.

Kind regards

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