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## The place of supply for VAT – far away from common sense!

Dear Sir or Madam,

Anybody who has ever dealt with VAT is aware that this is a rather complex issue. In particular, the question of whether to bill with or without VAT can cause severe headaches. Among a number of issues, the place of supply plays an important role. Unfortunately, the current VAT regulations very often lead to results that are in direct conflict with common sense. This newsletter would like to give you an overview.

### **Supply of goods or supply of service?**

Supply of goods is defined according to Art. 3 VAT Act. Not only does Swiss VAT regard the obvious transfer of one product to a new owner (i.e. the classic purchase) as supply of goods, but also the letting or leasing of goods. Additionally the processing of goods is also regarded as supply of goods, even if these goods are not changed in any way by this processing. The commissioning of a machine, the calibration of a scale, the sanding down of a table, even cleaning activities – all these are regarded as supply of goods in Switzerland. This regulation is obviously so far removed from any common sense that nothing but learning by heart will help.

Anything that is not a supply of goods is regarded as a supply of service. This includes trust-related work, advertising, consulting, medical treatments, services in the gastronomy or transportation. Very often a rule of thumb helps make the distinction: anything predominantly produced by hand is regarded as supply of goods – anything that is the result of brainwork is rather a supply of service.

**Please note:** EU countries deal with this differently – there, leasing or letting and the processing of goods are regarded as supply of service. Your business partners abroad might have trouble understanding this Swiss peculiarity.

### **Place of supply of goods**

If the goods are either picked up or handed over in person then place of supply is where the goods are handed over and are in possession of the purchaser.

With shipments, however, the place of supply is where the shipment starts. A possible tax exemption for shipments going abroad is claimed at a later stage with the custom documents confirming the export.

Additionally, there are special cases, for example, the supply of electricity or gas.

### **Place of supply of service**

Art. 8 of the VAT Act. defines both a principle and several exemptions:

Unless otherwise provided, the so-called principle of location of the recipient. The supply of service is executed where the recipient is domiciled, irrespectively of where the actual work was carried out.

#### *Example:*

*A Swiss company engages a German lawyer to look after the company's interest in a legal dispute. This lawyer never sets foot in Switzerland, exclusively works from his offices in Hamburg and twice appears at court in Berlin. For legal consultancy the principle of the place of establishment of the customer applies, thus the place of supply is actually Switzerland (and not, as one might expect, in Germany).*

An exception exists with a supply of service that is normally provided directly to individuals who are physically present, for example, curative healthcare, child care or body care. These are regarded as rendered where the service provider is domiciled.

Services in the gastronomy are rendered where they actually take place, and the same applies to transport services. However, a supply of service in connection with real estate, for example property management, is regarded rendered at the property's location. On top of that there are a few more special cases.

#### *Example:*

*A real estate agent from Basel procures a holiday home in Spain for a married couple living in Switzerland. The agent earns a commission for her services. Although she never set foot in Spain for this, the service is regarded as rendered in Spain (and not in Switzerland where both she and her clients are domiciled).*

### **With or without VAT?**

To put it very simply, Swiss VAT always has to be raised where the place of supply is in Switzerland. Normally, VAT will be raised by the provider of the service and passed on to the customer via the bill. However, depending on the circumstances, customs can raise VAT as so-called import sales tax or it can be raised by the recipient of services as so-called service import tax. Should the place of supply be situated abroad, then normally Swiss VAT is not affected.

## **Conclusion**

In certain aspects the VAT regulations concerning place of supply are far removed from common sense. Everything is fine if business transactions are made on the domestic market by domestic partners – the service is liable to Swiss VAT, and the exact reason for the service only has a theoretical significance.

As soon as cross-border transactions are involved, the question about place of supply gains enormous significance, as it determines whether these transactions are subject to Swiss VAT or (according to regulations abroad) to foreign VAT.

Kind regards

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