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## The new radio & TV Licence – foreign companies have to dig deep!

Dear Sir or Madam,

On 14 June 2015 the Swiss people accepted the new Radio and Television Act (RTVG), thus deciding to opt for a revision of the reception fees towards a device-independent model. These fees shall be levied in their new form as of beginning of 2019; in the meantime, it has become largely clear how levying will be implemented. Unfortunately, a few little noticed idiosyncrasies have turned up since then; from our point of view, their regulation is inappropriate and will lead to problems.

So that you know what you will be facing next year, we first would like to give an overview of the way these new radio and TV licence fees will operate:

### Individuals

The Federal Council has decided to levy an annual fee of CHF 365 per household. Thus, listening to the radio or watching TV will then cost one Franc per day, and in a leap year you will even get a day free – this in comparison to the previous Billag fee of CHF 451.10. This fee will now be levied on each and every household, irrespective of whether receiving devices are present. Billag will no longer be in charge, but a newly formed company by the name of SERAFE. This means that those supporting the No-Billag initiative may have lost in content, but they can still claim some kind of “success” through the change of name.

The levying is based on civil register data, which means that the cumbersome registration and de-registration, and search for unlicensed viewers, as under Billag, will largely cease (however, SERAFE has yet to communicate in detail how it will apply its processes). You no longer pay an additional fee for your vacation home, and for retirement homes, care homes and student residences, a new category “collective households” has been created, with those homes paying an annual fee of CHF 730, instead of the residents having to pay their own fees. Additionally, for those on supplementary benefits, there will be a relief on request, and, limited until end of 2023, households without receiving devices may also claim a relief.

Altogether, a pragmatic solution has been found for private individuals, reducing bureaucracy considerably and, for most, involving financial relief as well.

## Businesses

Businesses are also subject to the new radio & TV licence fee, if they are VAT-registered and have an annual turnover exceeding CHF 500'000. SERAFE will not be responsible for companies, but this fee will be levied, together with VAT, by the Federal Tax Administration (FTA). As all turnover must be declared at the FTA anyway those companies that are liable to pay this fee do not need to do anything – they will just receive a bill once per year.

The amount of the fee depends on the declared annual turnover, without the distinction usually applied with VAT between domestic/ foreign or taxable/ tax-exempt. Based on this turnover, companies will be assigned into one of these six categories.

Turnover CHF	Fee CHF	Turnover CHF	Fee CHF
from 500'000	365	from 20 million up	5'750
from 1 million up	910	from 100 million up	14'240
from 5 million up	2'280	from 1 billion up	35'590

The new fee will be levied only once per company – additional fees for branches or permanent establishments will be dropped. Equally the distinction between non-commercial and commercial reception will cease, along with the differentiation according to the number of reception devices. Please note that self-employed individuals with a turnover of more than CHF 500'000 pay the fee twice: once as an individual, once as a business – even if it is all on the same premises.

At first glance, a sensible solution has been found for companies as well, considerably reducing bureaucracy and the burden on small companies, whereas only the really big companies will now face a heavy burden.

On second thought, however, we need to narrow this statement down to domestic companies that only have taxable turnover or invoice according to the effective method, which means we have now arrived at undesired side-effects.

### **More bureaucracy for doctors and others who use the Simplified VAT method**

Companies for which only a small proportion of turnover is liable to VAT and much turnover is exempt from VAT choose, for reasons of simplicity, to use the Simplified VAT method (Saldosteuersatz). This concerns almost all doctors who also dispense medication (medical treatment is exempt; however, dispensing medication and a few other side shows are taxable). Equally concerned are associations that, on top of their membership fees (which are considered revenue exempt from tax), also generate revenue via commercial activities (which are liable to tax).

Thus far it had been accepted practice only to enter revenues liable to VAT on the tax declaration form, and to multiply that by the flat-rate tax rate, and to simply omit all revenue exempt from VAT and revenue generated abroad. As VAT due to be paid could thus be correctly calculated, and can also be correctly calculated in the future, the Federal Tax Administration has previously accepted this practice and never objected to it during audits.

This will no longer be enough for the calculation of the RTV fee, and it can be expected that in the future all revenue exempt from tax and all revenue generated abroad needs to be added to the simplified tax declaration, with their omission leading to queries and audits. So far it is not clear whether this has to happen with every filing, or whether, similar to the private use of company cars, it can be done once at the end of the year.

In any case, with such constellations the burden of filing VAT will increase considerably. The financial consequences will remain limited – as the Simplified VAT tax scheme can only be applied up to an annual turnover of slightly over CHF 5m, just the three lowest categories of the RTV fee come into effect, and even the third one only in exceptional circumstances.

### **Increased bureaucracy and massive extra costs for foreign companies**

Massively affected are foreign companies that are liable to VAT in Switzerland, and their number is continuously growing. After the referendum on the RTVG in 2015, the legislators very quickly introduced new VAT regulations and had them come into effect on 1 January 2018 (we reported about this [here](#)). Under these new regulations, the defining factor to determine tax liability is now worldwide turnover, which now will lead to 30'000 new foreign companies being liable to Swiss VAT. Among them are construction and maintenance companies with clients in Switzerland, but also companies offering Internet or communications services for Swiss clients, and as of 2019 in certain situations mail-order companies who just send packages to Switzerland. What they all have in common: they have no structure at all in Switzerland, and very often don't even physically come to Switzerland. Through the linking of the RTV fee with VAT even these companies are now fully liable to the fee in Switzerland, and their category is determined by their worldwide turnover!

### **An extreme example we experienced**

A large infrastructure company in Germany generates a turnover of CHF 1.2bn worldwide. Contributing to this are few maintenance jobs for clients in Switzerland, that altogether generate revenue of around CHF 80'000. Therefore, as of 1 January 2018 they have become subject to VAT in Switzerland. This is no problem as VAT can be passed on to all Swiss clients, who are all VAT-registered themselves, and input tax deduction can be applied in full on all imported material. Now there is the RTV fee as well, and due to the turnover generated worldwide it will fall into the highest category at CHF 35'590 per year. This is almost 45% of the revenue generated in Switzerland!

Even with those foreign companies, who all are required to have a fiscal representative domiciled in Switzerland, it is customary only to declare those revenues that are liable to VAT in Switzerland and to simply omit all revenue generated abroad. Here too the tax that is due can be correctly determined, and the Federal Tax Administration has accepted this procedure previously, never objecting to it during audits.

However, to determine the RTV fee correctly the turnover generated abroad would need to be declared as well (and immediately deducted as exempt from VAT). It is a complete mystery to us how this should work in practice: The foreign company has no obligation to keep records in Switzerland about the business it is doing abroad, and Swiss VAT auditors are forbidden to act abroad, even at the explicit request of the taxable company. As a consequence, neither the fiscal representative nor the VAT auditor are really able to correctly determine these turnovers abroad or even check them.

The financial consequences for foreign companies are immense: to estimate them we assume that of the 30'000 foreign companies newly liable to VAT in Switzerland, around half will remain below the threshold for the RTV fee (small craft businesses near the border), and about 7'000 each will fall into the first and second RTV fee category. The remaining 1'000 companies are large construction or maintenance companies or mail-order companies who, with a worldwide turnover of over CHF 1bn, fall into the highest category.

In total this will lead to about CHF 44.5m of RTV fees that foreign companies will be obliged to pay in Switzerland, although there is no apparent reason whatsoever, nor a tangible benefit (the package sent to Switzerland or the software downloaded by the Swiss client will not be watching television!), and quite certainly the legislator cannot have had this consequence on its radar, because the changes to the VAT legislation were introduced at a much later stage.

### **Further absurdities**

There are a few further absurdities with the RTV fee:

- The significant factor for the categorisation is the previous year's turnover. The RTV fee that will be levied in 2020 will be based upon the 2019 turnover. For the fee to be paid in 2019, it is not the 2018 turnover that will be used for calculating the fee but the 2017 turnover. Unfortunately, 2017 was the last year before the changes in VAT legislation and can therefore, as far as liability to tax is concerned, not be compared with the regulations in force since 2018. That is why a few foreign companies might be spared for a year; however, there is no evident reason for this irregularity.
- For the RTV fee, corporate groups under common control will be allowed to form a fee group (which is similar to the group taxation that is possible with VAT, but completely independent of it) and then, based on the sum of all turnovers, they will pay the fee just once. However, this option is only open for corporate groups that consists of at least 30 companies. So far, experience from practice is missing to estimate whether and for whom such a conglomerate actually makes any sense. But there is no apparent reason why this option should be refused to a corporate group that only consists of 29 companies.

### **Conclusion**

You can wonderfully argue about whether a radio and TV fee separated from the general national budget shall be levied and whether the financing of public service broadcasters make sense or not. The arguments about this were very intense, and the Swiss people, in two separate referenda – 2015 (RTVG) and 2018 (No-Billag) – decided to opt for today's solution. Given this situation, we regard the intended implementation with regard to both individuals and to most of the Swiss companies as pragmatic and reasonable, and aside from a reduction in bureaucratic work, it will also ease the financial burden. However, for some Swiss companies, the bureaucratic effort in gathering all information for VAT will increase considerably, as a widespread, and unofficially tolerated simplification of the declaration, at any rate, will now cease.

Through the concurrence of two legislative changes, foreign companies, however, will experience a significant and unjustifiable additional burden with neither a comprehensible reason, an apparent benefit nor even a reasonable possibility of any control. Based on the temporal sequence, it is impossible that the legislator could have been aware of these consequences.

As the only way out, we envisage a legislative change as soon as possible which either shall free foreign companies without an establishment in Switzerland from the RTV fee entirely, or only the revenue generated in Switzerland by these companies will be considered for the RTV fee categorisation. Additionally, we deem this as necessary as other countries sooner or later will regard these new regulations as non-tariff trade constraints and as a breach of free trade agreements, which in turn means Switzerland will face additional disputes with both the WTO and the EU.

Should the legislator really insist on levying the RTV fee on foreign companies based on their turnover generated worldwide, then it would at least need a pragmatic regulation that, as previously, declaring only the turnover generated in Switzerland, which is fully sufficient for VAT, and that the tariff categorisation for the RTV fee can otherwise be estimated or reported.

Kind regards

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