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VAT – do you have your acquisition tax under control?

Dear Sir or Madam,

Every businessman is probably aware that Value Added Tax (VAT) must be paid on sales revenue, hence VAT is also often called sales tax. However, less known is the fact that VAT is also due on specific expenditures – as the so-called acquisition tax. In any case, while working on some of our customer mandates we have often faced the situation that the issue of acquisition tax is either completely unknown or that significant uncertainties exist about where and why acquisition tax needs to be paid. For this reason, we would like to give you an overview of the issue of acquisition tax below.

What is acquisition tax, and in which instances does it arise?

If you receive services from a foreign supplier that are subject to VAT in Switzerland, but the foreign company is neither required to register for Swiss VAT nor has it voluntarily opted to do so, and customs do not levy import VAT either, then you, as recipient of these services, need to submit VAT on receiving these services. This particular tax is called acquisition tax. This so far is the general rule, which, admittedly, is slightly hard to understand. Specifically, this applies to the following cases:

a) Supply of certain services from abroad

For each supply, VAT regulations, both in Switzerland and in other countries, state a place of supply from which it was received. These regulations are sometimes incompatible with common sense. For many supplies of services, such as consulting, accounting, legal services, marketing, advertisement, telecommunications or IT services, the “place of recipient” principle applies. This means that, for VAT purposes, the service has taken place where the recipient is domiciled.

In a perfect world, the supplier abroad would directly collect and remit Swiss VAT. However, as this is not very feasible, and as companies abroad are rather difficult to get a hold of from Switzerland, the obligation to pay tax is transferred to the recipient and he or she settles acquisition tax on services rendered.

Example: In a legal dispute in a German court a Swiss company chooses to be represented by a German lawyer. This particular lawyer never sets foot in Switzerland, and does all his work in Germany.

- ➔ The “place of recipient” principle applies. Place of supply of this service is Switzerland.
- ➔ For this service Swiss VAT is due, not German VAT. The German lawyer is not required to register for Swiss VAT, rather the Swiss recipient settles this tax in form of acquisition tax.

Not all supplies of service are subject to the place of recipient principle: hospitality services and passenger transportation, plus certain services directly supplied to a

physically present person (e.g. child care), either take place where the supplier is domiciled or at the venue where the service is effectively provided, and supply of services in connection with real estate (e.g. property management) where the property is situated. Apart from that, there are further specific rules on place of supply. If the place of supply is considered to be abroad, the foreign country will levy its local VAT from the supplier and you do not have to pay acquisition tax in Switzerland.

Example: An employee of a Swiss company has a business appointment in London and is staying overnight in a hotel there. The invoice will be issued to the name of his employer.

- ➔ The place of recipient principle does not apply to hospitality services. Place of supply Great Britain.
- ➔ British VAT is due on this service, and will be shown on the hotel's invoice. The Swiss company pays no Swiss acquisition tax.

b) Supply of goods from abroad not processed by customs

If goods are being delivered to Switzerland from abroad, they need to be declared at customs, who then will, among various other duties, charge import VAT.

However, occasionally situations arise in which a supply of goods from abroad does not go through customs as no goods are actually physically moved. Among these is the Swiss oddity that handling an object is considered a supply of goods and not a supply of services, even where the specific object is neither transported nor altered. In such cases, customs is not involved in the transaction and thus will not be able to charge import VAT. Instead, the recipient once again has to pay acquisition tax.

Example: A Swiss company engages a German cleaning company to clean its premises in Basel once a week. The vacuum cleaner is provided in Basel, the German company does not bring its own.

- ➔ From a Swiss point of view the process of cleaning is considered a supply of goods, but no goods go through customs. Place of supply is Switzerland. As a consequence Swiss VAT is due. The recipient needs to submit this in form of acquisition tax.
- ➔ Side note: the EU considers cleaning a supply of services, and applies the place of recipient principle. From the German point of view (although based on completely different considerations), the place of supply is Switzerland, and the German cleaning company does not have to charge German VAT.

How do I recognise whether acquisition tax has to be declared or not?

Particularly in cross-border situation VAT is a rather complex matter, and any question can only be answered conclusively by analysing each business transaction individually whether a supply of goods or a supply of services has taken place, where the place of supply is, if the supply is subject to VAT or exempt and, where applicable, in what form tax is to be submitted (by the supplier, by customs or by the recipient of services). In practice the following guidelines serve well as a rule of thumb:

1. Acquisition tax can only be required for supplies from a foreign supplier. Swiss companies themselves are subject to VAT in Switzerland, and they will include VAT in the invoice they send you – unless either the company or the services it supplies are exempt from VAT.

2. If the invoice of a company based abroad shows Swiss VAT (generally almost always 8%) and a Swiss VAT number, then acquisition tax cannot be required. It simply means that the foreign company (either voluntarily or as required) is registered for Swiss VAT. In this instance you may simply claim a pre-tax deduction.

3. In Switzerland, there is no obligation to point out any liability to acquisition tax on your invoice – it is the recipient's responsibility to be in compliance on his own. However, many EU countries have such requirements. On German invoices you often

read "Steuerschuldnerschaft des Leistungsempfängers nach §13b UStG", in many other countries "VAT reverse charge" or similar. Should you see such a note, then this usually means that you have to submit acquisition tax. Where such a note is missing however, it does not mean that acquisition tax is not applicable.

4. If no foreign VAT is shown on the invoice by the company abroad, then often (from a foreign point of view) the service is considered to be supplied in Switzerland, which means acquisition tax needs to be applied. Conversely a foreign VAT on the invoice could mean that (once again from a foreign point of view) the service was applied there and thus acquisition tax would not apply.

However, as the regulations between Switzerland and other countries for the place of supply differ as much as the distinction between supply of goods and supply of services (see example above), this rule is not absolute. In many cases, it can deliver the right result whether acquisition tax needs to be declared or not, but in the end the Swiss regulations decide what needs to be done.

How much does acquisition tax cost me?

Very often acquisition tax is a zero-sum situation at no cost to you, as the acquisition tax remitted entitles you to an equal amount of pre-tax deduction on the same VAT filing. This applies to companies subject to VAT that file according to the effective method and only supply services fully subject to VAT. Even if it is impossible for the state to miss out, it is always recommended to correctly declare acquisition tax and thus avoiding unnecessary discussions during a VAT audit.

Should you file VAT according to the simplified net tax rate regime, then acquisition tax is not a zero-sum situation, as you cannot effectively claim input taxes because they are already compensated in the lower net tax rate. Acquisition tax in this case must also be declared at 8% and not at net tax rate; it puts you on the same level as if you had received the same service from a Swiss company including 8% VAT in its invoice to you. Should you either have a high amount of acquisition tax, or generally have a high pre-tax deduction, then it might be worth changing to effective VAT filing.

If you also provide services that are exempt from VAT and you are therefore not entitled to a full pre-tax deduction, then the same applies to the reclaim of acquisition tax remitted, and you are no longer in a zero-sum situation either.

How do I declare acquisition tax?

Companies that are subject to VAT need to declare acquisition tax on their regular quarterly or the biannual VAT filing, in field 381 specifically. The amount to declare corresponds with the amount invoiced from the foreign supplier, without VAT and where necessary converted into CHF 8% of this amount is the acquisition tax to be declared. To the extent you are entitled to reclaim pre-tax (see also above) the amount of acquisition tax can immediately be reclaimed in the same VAT filing.

And if I am not subject to VAT?

If either companies not subject to VAT or private individuals receive services from abroad subject to acquisition tax and exceeding CHF 10'000 per year, then acquisition tax on these services needs to be declared. As you are otherwise not subject to VAT and not VAT registered, no pre-tax deduction is possible. Under certain conditions, a voluntary VAT registration could make sense in such situations and would thus allow deduction of input tax.

This newsletter can only scratch the surface of the rather complex matter of VAT. If you have any further questions regarding VAT, the artax specialists are here to help you.

Kind regards
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