

VAT Update: Finally, the partial revision of the VAT law comes into force - What's new from 1st January 2018?

Does the phrase “the heralded revolutions are not taking place” also apply to Swiss VAT? Didn't the discussion to revise VAT law begin with the simplifying notion of a uniform VAT rate? On the other hand, there were also efforts to introduce an administratively cumbersome approval procedure for the voluntary taxation of benefits (optional) and the idea to extend the limitation period from 5 to 15 years. All of these issues had to be written off by the National Council's Economic and Social Affairs Commission (WAK-N) in May 2016 to launch a partial revision that had a chance to be approved by the Council of States. Even though there may have been no revolution the rather recent VAT law, which only came into force in 2010, has now been partially revised due to these concessions.

We would like to present the substantial changes of the revised VAT law (hereinafter referred to as “revMWSTG”) in comparison to the current legal situation below. Additionally, the Swiss voting public voted for a change in VAT rates, however, these are not an integral part of the partial revision. Nevertheless, their importance is also reflected here.

The following changes are to be presented in this article:

- Definition of closely related persons
- Relocation of the place of delivery of consignments exempt from import tax (small consignments)
- New calculation basis for exemption from tax liability (turnover limit CHF 100,000)
- Simplification of the option
- Reduced rate for electronic newspapers, magazines, and books
- Easing the scope of the notional pre-tax deduction
- Limiting the application of service import tax on deliveries
- The adjustment of VAT rates

ATTENTION: The changes concerning small consignments will only enter into force on **1st January 2019**.

1. Definition of closely related persons (Article 3 (h) revMWSTG)

1.1. *Currently applicable law*

Closely related persons are defined as owners of significant holdings in business partnerships, meaning that foundations and associations are excluded from being closely related persons. A holding is regarded as significant if it comprises at least 10% of the share capital or 10% of the profit. If equity investments reach a market value of CHF 1 million, they are also deemed to be significant.

Landing in the “closely related persons” category leads to consequences as soon as someone receives benefits from a company to which a certain connection exists. If the closely related person is employed in the company, from a VAT point of view, they will be considered as the recipient of a salary statement, i. The benefits received are to be settled via the salary statement, provided the benefits concerned are benefits provided by the employer to their employees. However, if the closely related person is not employed and receives benefits from the company, the basis of assessment of these benefits is the value agreed upon by independent third parties. An example of such a benefit would be the use of a company jet by a major shareholder for a private short trip from Zurich to Paris. The use of the jet is taxable at the same price a third party would have had to have paid.

1.2. *New from 1st January 2018.*

Closely related persons are defined as owners of at least 20% of the share capital as well as newly including foundations and associations, to which a particularly close economic, contractual, or personal relationship exists, meaning, the new definition of closely related persons includes foundations and associations. However, pension funds are still excluded from being regarded as closely related persons from the point of view of Swiss VAT.

1.3. *Conclusion*

This adjustment neutralises the one-sided preference for foundations and associations; in the future, for example, benefits will be subject to Swiss VAT, provided that an association closely linked to a company is likely to use the infrastructure of that particular company for administration and club events free of charge.

2. Relocation of the place of delivery of consignments which are exempt from import tax (Art. 7(3)(b) revMWSTG) - valid from 1st January 2019.

2.1. *Currently applicable law*

Consignments with a taxable value under CHF 5 are currently qualified as small consignments. These are therefore exempt from import tax. The place of delivery shall be the place where the decisive economic rights to an object are transferred or the transport or dispatch of the item begins. If for example, an object is purchased by a Swiss company in Germany, the place of delivery is in Germany, since, at the time of the purchase and dispatch, the object is to be found in Germany.

2.2. *New from 1st January 2019*

Fundamentally, consignments with a taxable value of less than CHF 5 continue to be exempt from import tax. In contrast to the current regulation, however, for these small consignments, the place of delivery changes from international (start of dispatch) to national (Switzerland) as soon as a distributor of these small consignments to Switzerland reaches a turnover of more than CHF 100,000 per year. In such cases, the distributor must accordingly tax the sale of these goods in Switzerland and will be subject to VAT.

2.3. *Conclusion*

At present, the current legislation disadvantages domestic suppliers compared to their foreign competitors. Foreign producers and suppliers could under certain conditions, provided that the turnover of CHF 100,000 is not exceeded with small consignments, prevent the offsetting of any VAT. The reform plans to counteract this preferential treatment and strengthen domestic trade.

ATTENTION: This regulation will only come into force from 1st January 2019.

3. New calculation basis for exemption from tax liability (turnover limit CHF 100,000)

3.1. *Currently applicable law*

An exemption from VAT exists for companies provided they generate less than CHF 100,000 per year of taxable transactions in Switzerland.

3.2. *New from 1st January 2018.*

As of 1st January 2018, in contrast to the current regulations, the generated turnover now not only includes taxable transactions made in Switzerland, but also those made worldwide. These new regulations specifically target the following foreign companies:

- Companies that carry out taxable supplies of goods or services in Switzerland, as well as;
- Companies, which provide electronic services and services in the field of telecommunications to non-taxable customers.

3.3. *Conclusion*

The current legislation allows a lucrative niche for suppliers outside Switzerland yet close to the border. These can currently provide their services in Switzerland and are not subject to VAT, provided that they are not exceeding the turnover threshold of CHF 100,000. This led to unfair competition between the Swiss and those companies which were able to provide the same services from just outside the border. However, the new legislation also has an impact on domestic companies. From now on, e.g. a domestic marketing company, which registers CHF 80,000 in Switzerland and CHF 30,000 abroad is subject to VAT in Switzerland. The federal government anticipates **additional revenue of up to CHF 40 million** from the estimated 30,000 companies that are now subject to VAT under the new provisions.

4. Simplification of the option (Art. 22(1) revMWSTG)

4.1. *Currently applicable law*

Some exempted services can be taxed voluntarily when opted in. Opting-in in a way that is legally valid requires the VAT to be disclosed openly, e.g. in the bill to the recipient of the service.

4.2. *New from 1st January 2018.*

In the future, this option will be made even more open. Opting-in in a way that is legally valid can take place in two ways:

- Open reporting of VAT, or;
- Declaration of VAT in section 205 of the VAT billing.

4.3. *Conclusion*

The amendment provides more freedom for the service provider, but also more uncertainty for the beneficiaries. The service provider is no longer forced to make their opting-in known via the open declaration on the invoice. They now have the additional opportunity to declare their intention to opt-in at a later stage, when submitting a VAT statement. However, did the legislator also consider the beneficiaries when changing this regulation? If the VAT no longer has to be shown on the invoice, how should a recipient entitled to deduct VAT still know whether he can claim input VAT? Until now, input tax deductions were based on invoices that specify the VAT. It has yet to be seen which documents will be required to deduct input tax in such cases in future.

5. Reduced rate for electronic newspapers, magazines, and books (Art. 25(2)(abis) revMWSTG)

5.1. Currently applicable law

Electronic newspapers, magazines, and books with exactly the same content as their corresponding print version are now subject to the standard rate of 8%. This has always led to discussions and lack of understanding.

5.2. New from 1st January 2018.

This amendment can definitely be regarded as a fine achievement, since, from the 1st January electronic newspapers, magazines, and books as well as their print counterparts will be taxed at the reduced rate of 2.5%.

5.3. Conclusion

To date, newspapers, magazines, and books in paper format were subject to the reduced rate of 2.5%. The same products in an electronic format were taxed with the standard rate. There was never any real justification for it, though it was brought into question repeatedly. This inequality was not present in many other European countries. As of 1st January 2018, this will also be finally changed in Switzerland.

6. Easing the scope of the notional deduction (Art. 28a revMWSTG)

6.1. Currently applicable law

When buying an item that is sold without VAT, an entrepreneur can charge a fictitious tax on the amount paid (amount stated is inclusive of VAT) and claim this amount as input tax. The prerequisite is that:

- the seller of the goods did not declare VAT during the sale;
- the item can be customised (reused) and is movable;
- the object is an integral part of a delivery to a customer in Switzerland (e.g. if a company buys second-hand vehicles from private individuals for resale to customers in Switzerland).

6.2. New from 1st January 2018.

According to the revMWSTG the notional deduction of input tax can be applied from 1st January 2018 even if purchased objects are used in-house or resold without VAT (e.g. export). In future, the conditions for the application of the notional input tax deduction have been simplified:

- The customisable movable object was obtained within the framework of a business activity entitled to input tax deduction.
- The invoice / purchase amount contained no VAT.

6.3. Conclusion

The amendment of the law leads to a simplification of the applicability of the notional deduction and can be beneficial for companies which, for example, buy many used items for in-house use or for resale abroad.

7. Limiting the application of service import tax on deliveries (Art. 45(1)(c) revMWSTG)

7.1. *Currently applicable law*

A delivery is defined as follows:

- an item is sold or rented (sale of a suitcase, renting a car, etc.), or
- work is carried out on an object (repainting of a table, installation of a heating system provided by the customer etc.).

Currently, in the case of domestic deliveries by companies registered abroad, the service import tax must be settled, provided that the deliveries are not subject to import tax and the company is not registered in Switzerland for VAT purposes. This provision was controversial from the beginning and in practice regularly led to misunderstandings.

7.2. *New from 1st January 2018.*

Now only the delivery of immovable goods to Switzerland by companies domiciled abroad is subject to the service import tax. The condition that they are not subject to import tax and that the company must not be registered in Switzerland for VAT purposes remain in force. Based on our definition given above, only works conducted on immovable objects are referred to here. These are, for example, the regularly required testing of heating systems or repair work on a ventilation shaft.

7.3. *Conclusion*

The regulation is complicated, and a limitation of its application is encouraging. However, many of the foreign companies registered abroad concerned are expected to be subject to VAT as of 1st January 2018 anyway because their worldwide turnover exceeds CHF 100,000 (see point 3).

8. The adjustment of VAT rates

8.1. *Currently applicable law*

The standard rate is 8%, the special rate (hotels etc.) is 3.8% and the reduced rate (food, books etc.) is 2.5%.

8.2. *New from 1st January 2018.*

The normal rate is now 7.7% and the special rate 3.7%. The reduced rate of 2.5% remains unchanged.

8.3. *Conclusion*

The current standard rate of 8% with 0.4% covers the additional financing of the IV, which expires at the end of 31/12/2017. From 1st January 2018 the new standard rate will increase from 7.6% to 7.7%, to finance the development of rail infrastructure. The special rate is reduced by 0.1 (minus 0.2% for IV funding, plus 0.1% for rail infrastructure funding) and the reduced rate stays the same (minus 0.1% IV funding, plus 0.1% rail infrastructure funding). It is assumed that with the reduced tax rates the state is set to suffer **a loss of CHF 1 billion**.

Summary

The heralded revolution is currently bogged down. However, the partial revision is not to be underestimated. In summary, the changes bring welcome simplifications in the application of VAT law, the reduction of the competitive disadvantage of domestic companies and additional revenue for the public purse. The future will show whether the concessions granted by the National Council's Economic and Social Affairs Commission (WAK-N) have paid off and determine if the partial revision can keep its promises.

In the practical sense, everyone must now deal with a wave of administrative consequences. The federal government is facing the herculean task of integrating the changes into numerous VAT and sector information. The VAT settlement forms for 2018 have been amended but there's still a lot to do. An essential question is here, how can the federal government check whether a company makes more than CHF 100,000 turnover worldwide and therefore eligible to pay VAT in Switzerland. Will cooperation with foreign tax authorities continue to strengthen in future? Each company subject to VAT is also faced with the daunting task of ensuring that the new VAT rates have been integrated into their systems and that their processes have been adapted in line with the other changes. The countdown is on...



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