

## vat's important

### Installation supplies vs. ancillary supplies to carriage/shipping

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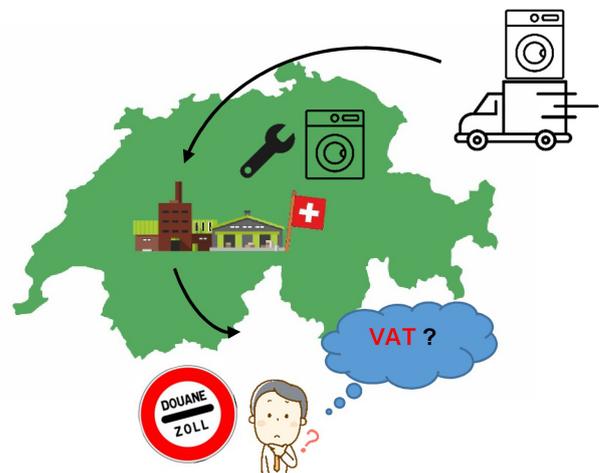
A foreign company supplies and installs a machine in Switzerland. According to past practices of the Swiss Federal Tax Administration (SFTA), this process undeniably qualified as a work contract for supply. The new practice of the SFTA now leaves room for speculation and opens another field of activity to consultants.

In **carriage and shipping**, the place of supply is where the carriage or shipping of the object to the buyer (or to a third person on the buyer's behalf) begins. If a good is imported into Switzerland from abroad, the place of supply is outside of Switzerland in principle. The corresponding turnover is not included in determining the liability for VAT in Switzerland and does not trigger the tax liability.

Supplies of moveable or immovable goods that are newly produced or processed before the actual delivery are generally qualified as **work contracts for supply**. Processing shall also include all work which doesn't change the good, especially function checks, cleaning, service work, maintenance, etc. For qualification as a work contract for supply, it is also not necessary that material is used, replaced or added to the good. If a good is imported into Switzerland from abroad and processed before delivery, the place of performance is Switzerland. The turnover thus created is relevant for determining VAT liability in Switzerland. If the foreign supplier exceeds the turnover threshold of (worldwide) CHF 100,000, VAT liability becomes mandatory for him in Switzerland.

#### New practice of the SFTA

According to the practice published by the SFTA, assembly services or installations can qualify as ancillary services to carriage/shipping under certain conditions. If a foreign company delivers a good into Switzerland, the place of performance is still considered to be located abroad when the associated (ancillary) assembly or installation supply can be qualified as an ancillary supply to the delivery. This means that the foreign company does not become obligatorily subject to VAT in Switzerland through such supplies, even though the assembly/installation takes place in Switzerland.



#### What does this mean for my company?

As soon as an individual adaptation is undertaken at the location of the recipient, "ancillary supply" is no longer applicable. However, the definition and qualification are not always straightforward in the individual case and/or can necessitate discussions with the SFTA. In order to have legal clarity concerning the VAT consequences (especially the place of supply and VAT liability in Switzerland) right from the beginning, it is recommended that a binding ruling by the SFTA is obtained through the foreign company in such cases.

## What do I have to think about?

In general, practice provisions of the SFTA become valid at the latest in the semester after publication. If the new practice is more favourable for the taxpayer, however, the revised practice also applies retroactively and for all VAT claims that have not yet become final. The taxable company can generally exercise VAT claims that arise through a new (more favourable) practice against the SFTA by means of an adjustment invoice. However, if the company has charged the VAT on their bill, it owes the reported VAT, unless:

- it corrects the invoice within the period permitted under commercial law by means of a document which requires receipt to be valid, and which refers to the original invoice and revokes this;

or

- it proves that this has not caused the Confederation a loss of tax.

If VAT claims are exercised against the SFTA, the claims as well as compliance with the regulations mentioned must be documented by the taxable company. Moreover, the SFTA does not levy remuneration interest on this credit.

If a foreign company has had to register as VAT liable in Switzerland based on the old practice and due to the provision of work contracts for supply, it is worth clarifying whether or not the assembly/installation can now qualify as an ancillary service to carriage/shipping in accordance with the new practice. If this is the case, the company might be able to have itself deleted from the register. It is not usually worth correcting or reversing the past, since the VAT was passed on to the customer or recipient in Switzerland.

We are happy to assist you in assessing your deliveries and ruling enquiries at the SFTA.

With best regards from your VAT team

