



CHANGES IN THE ORDINANCE TO THE SWISS VALUE ADDED TAX (VAT) LAW

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On November 12, 2014 the Swiss government adopted 2 amendments to the Ordinance to the Swiss VAT Law (VAT Ordinance). The first amendment affects the Swiss VAT liability of foreign companies, the other concerns VAT group taxation of occupational benefits schemes. The 2 amendments will become effective on January 1, 2015.

INTENSIFIED SWISS VAT LIABILITY OF FOREIGN COMPANIES

Currently, foreign companies, not domiciled in Switzerland, do not have to register for Swiss VAT purposes provided that the company performs only supplies (supplies of goods and services), which fall under the Swiss reverse charge mechanism (Bezugsteuer). Excluded from this regulation is the supply of telecommunication and electronic services to recipients, who are not liable for the tax.



From January 1, 2015 foreign companies with a turnover of more than CHF 100,000 p.a. are exempt from taxation in Switzerland, only if they provide in Switzerland services that fall under the Swiss reverse charge. If they provide supplies of goods that are subject to the reverse charge, they are no longer exempt from tax liability and if their turnover in Switzerland from these supplies exceeds CHF 100,000 per year, they will have to register for VAT. The new regulations are especially meant for construction supplies, repair and assembly works.

It is intended that the new regulation will be applicable until the partial revision of the Swiss VAT Law becomes effective, which is planned for January 1, 2016. It aims to ensure better enforcement of VAT

on foreign domiciled companies. The purpose of the partial revision is that Swiss and foreign companies will become liable for VAT from the first Swiss Franc of turnover generated in Switzerland, if their worldwide turnover exceeds CHF 100,000. The partial revision was in the consultation procedure until the end of September 2014 and the results are now being analyzed.

OCCUPATIONAL BENEFITS SCHEMES CAN AGAIN BECOME A MEMBER OF VAT GROUPS

Article 16 Para 3 of the VAT Ordinance will be withdrawn from January 1, 2015 without substitution. The current content of this article is that occupational benefits schemes (e.g. pension funds) can in no circumstances become members of VAT groups.

The article will be deleted, because the Swiss Federal Court has held that the categorical exclusion of occupational benefits schemes from Swiss VAT groups is not in accordance with the Swiss VAT Law.

The upcoming amendment, however, does not mean that occupational benefits schemes can from January 1, 2015 become unrestrictedly members of VAT groups. The conditions for membership of VAT groups will still be valid; for example that the members must be under a unified control.

With this in mind, an occupational benefits scheme can in future be a member of a VAT group, if the occupational benefits scheme is the head of the Swiss VAT group. It is questionable, whether an occupational benefits scheme – because of its independent status it cannot be under unified control - can be a member of a Swiss VAT group without also leading it.

RECOMMENDATIONS FOR ACTION

The amendments applicable from January 1, 2015, concern mainly foreign domiciled companies, which provide supplies of goods in Switzerland, and occupational benefits schemes.

Foreign domiciled companies should, therefore, review their transactions and establish whether as a result of the amendments to the VAT Ordinance the conditions are now met for VAT registration in Switzerland. Taxable persons without a place of business in Switzerland must appoint a representative, domiciled in Switzerland, to fulfill their procedural obligations.

We would like to emphasize that this amendment to the Ordinance infringes the VAT Law. Art. 10 Para 2 lit b VAT Law states explicitly that foreign companies are not obliged to register for Swiss VAT purposes, if their supplies fall under the reverse charge mechanism (Bezugsteuer). As an ordinance must be expressly and specifically legitimized by the relevant act, the ordinance must not stipulate anything contrary to the specific act, to which it is related.

With this in mind, the foreign company performing supplies as described above that may be forced to register for Swiss VAT purposes by the Swiss Federal Tax Administration, could appeal against the registration obligation, but also against the new illegal article in the ordinance.

For occupational benefits schemes the changes do not represent an obligation, but an opportunity to optimize their input tax deduction. Joining a VAT group could result in the hidden tax (the so called „taxe occulte“) on the exempt supplies invoiced between the group's members becoming irrelevant.

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