

## E-invoicing in Switzerland - changes in sight

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Invoices are known to be of outstanding importance in VAT: on the one hand, they are used to pass on the VAT (if applicable) to the customer, and on the other hand, they form an essential basis for companies to reclaim the VAT charged on them (so-called input tax). So far, Switzerland knows two invoice formats: the paper invoice and the electronic invoice (or e-bill). The latter is currently defined by the Federal Tax Administration (FTA) as an electronically generated document that has the same contents and legal consequences as paper invoices. With the revision of VAT Info 16, Bookkeeping and Invoicing, draft of 3 May 2023, another format will apparently be introduced: in addition to the paper invoice and the e-invoice, there will now also be the digital invoice. But how exactly do these two latter categories differ from each other? And how relevant is this for companies operating in Switzerland in practice, what are the possible consequences?

### BACKGROUND

Only a few decades ago, invoice documents were always created in paper form (for lack of better alternatives), but in the course of digitization, new cheaper and time-saving options quickly opened up: for example, the invoice sent via e-mail in PDF format enjoyed increasing popularity. The previously applicable VAT rules on invoices were rigid, the formal requirements high and ultimately tailored to paper invoices. New rules became necessary to create legal certainty for businesses in dealing with invoices that are not created and sent in paper form or that are sent in paper form but archived electronically. This applies not only to Switzerland, but worldwide.

### E-BILLS IN SWITZERLAND

#### CURRENTLY VALID REGULATIONS

The Swiss VAT Act (MWSTG) defines an invoice as a document with which the remuneration for a service is settled. The name of the document is irrelevant (substance over form). Thus, contracts, receipts, sales slips and the like are also considered invoices within the meaning of the VAT Act. The law is silent on the question of the type of medium. In its published and currently valid practice, the FTA defines electronic invoices as electronic documents that have the same content and legal consequences as paper invoices. The FTA thus explicitly recognizes e-bills as invoices and states that the same rules apply to e-invoices as to paper invoices. Thus, in principle, invoices in electronic form have the same probative value as paper invoices, provided that the principles of proper accounting and all requirements of the Ordinance on Business Records (GeBüV =

Geschäftsbücherverordnung in German) are complied with (i.e. the documents are stored in such a way that they cannot be changed and can be checked at any time during the legal retention period). This is in line with the freedom of evidence anchored in the VAT Act. This practice has opened the way for businesses to send invoices in PDF format via e-mail or in another digital format and to do without printing and mailing, still not having to fear adverse VAT consequences. This applies regardless of the possible use of an electronic signature.

#### **RECENT FTA PUBLICATIONS AND PLANNED PRACTICE ADJUSTMENTS**

At the beginning of May 2023, the FTA published the draft of the revised VAT Info 16, Accounting and invoicing (the consultation period expired on 7 June 2023). The present draft shows that electronic invoices will continue to be treated the same as paper invoices and will in principle be accepted as evidence. However, it is interesting that according to the draft, the passage on the definition of an electronic invoice is to be deleted without replacement. Instead, the following sentence is found in a seemingly incidental note:

*"The paper invoice, electronic invoice and digital invoice (e.g. PDF invoice or scanned paper invoice) are equal for VAT purposes."*

With this, the FTA is apparently introducing a third category, namely the digital invoice, in addition to the paper invoice and the e-bill. Does this mean that an invoice in PDF format is no longer considered an electronic invoice? And what exactly is meant by an electronic invoice as opposed to a digital invoice? Does this have any practical relevance for businesses? The draft of the practice publication does not say anything more about this.

#### **A LOOK ACROSS THE BORDER**

A look at the regulations in force in the EU could give an indication of how a digital invoice might be distinguished from an e-invoice:

As early as 2010, the EU VAT Directive was adapted to the effect that documents sent and received in an electronic format and containing the same content as a paper invoice are in principle also to be regarded as invoices. In doing so, the EU deliberately wanted to promote the use of e-invoices. However, as is often the case, this provision is interpreted and applied differently by the individual EU Member States, in particular with regard to what the requirements are for such an invoice to be considered valid for VAT purposes. Some countries, like Switzerland, accept simple PDF invoices, others require an additional electronic signature or are even stricter. Within the framework of Peppol (Pan-European Public Procurement On-Line), a project that aims to harmonize the process of electronically supported public procurement within the EU, the EU Directive on Electronic Invoicing for Public Contracts was then enacted in 2014. This defines e-invoicing very narrowly as an invoice issued, transmitted and received in a specific structured electronic format (CEN/TC 434 EN16931) that enables its automatic and electronic processing. Invoices in PDF format are not covered by this definition (even if they are indisputably transmitted digitally). In the meantime, it applies to all EU member states that invoices to government authorities (so-called B2G, Business to Government) may only be submitted in this special structured format. The EU's currently much-discussed VAT initiative, ViDA (VAT in the Digital Age), now builds on this definition of electronic invoicing and provides for an obligation to issue electronic invoices in the CEN/TC 434EN16931 format for companies that provide cross-border services in the EU, even for transactions between companies (B2B).

### **SIGNIFICANCE FOR SWISS PRACTICE**

It is not clear whether Switzerland or the FTA is preparing to also introduce corresponding regulations in the foreseeable future and possibly even to define e-invoices in the future only as invoices that are transmitted and received in a specific structured format. Admittedly, Switzerland is not a member of the EU and is therefore not obliged to submit to the invoicing requirements applicable in the EU. In the interest of the economy, however, it makes sense to align Swiss VAT law to a certain extent with that of the EU, even if this is initially only a question of definitions. For at present it cannot be seen that the linguistic introduction of a third form of invoices planned by the FTA will have any practical relevance in Switzerland: the invoice categories "paper invoice", "e-invoice" and "digital invoice" are on an equal footing, and there are currently no indications for the introduction of mandatory invoicing in a specific structured electronic format. However, it will probably be made possible, as can be seen from the fact that the Federal Finance Administration is promoting e-billing in a media release dated 17 March 2023 (<https://www.efv.admin.ch/efv/de/home/efv/erechnung/e-rechnung-zustellen.html>): according to the media release, invoicing in PDF format qualifies as e-billing, as does invoicing by means of an integrated system (ERP; with or without the involvement of a service provider) and the recording of the invoice on the internet (via service provider).

### **CONCLUSION**

The planned distinction between e-invoices and now also digital invoices is probably only a linguistic differentiation that will most likely have no effect in Swiss practice at present. However, it remains to be seen whether this will also apply in the future. Companies based in Switzerland that are active in the EU should keep an eye on the developments in connection with the ViDA initiative and how the Swiss authorities will react on that.