

## **Contractual supply of goods (“werkvertragliche Lieferung”), supply under a contract for work and labour (“Werklieferung”) and supply and assembly of goods (“Montagelieferung”) from a VAT perspective - "Same same but different"?**

The VAT treatment of "simple" supplies of goods can lead to complex VAT issues in individual cases. It becomes even more complex when additional elements are added to the element of a pure supply of goods. In these cases of "complex supplies", the terms contractual supply of goods (“werkvertragliche Lieferung”), supply under a contract for work and labour (“Werklieferung”) and supply and assembly of goods (“Montagelieferung”) are used in the German speaking DACH region (Switzerland, Germany and Austria). What do these terms mean from a VAT perspective? And do they differ at all?

### **CONTRACTUAL SUPPLY OF GOODS (“WERKVERTRAGLICHE LIEFERUNG”)**

The "werkvertragliche Lieferung" is a speciality of Swiss VAT with its very broad understanding of a "supply of goods". There is no definition in either the law or the ordinance. The FTA considers a "werkvertragliche Lieferung" to be "all supplies of movable or immovable goods that are newly manufactured or processed before delivery on the basis of a contract for work and services or an order", see VAT Info 06 "Place of supply", point 3.1. The extent of the processing is irrelevant. It is also not necessary for material to be used, replaced or added as part of the processing.

The definition in the VAT information on the "place of supply" shows the primary importance of the “Werklieferung” in contrast to a "simple" supply of goods: the determination of the place of supply for VAT purposes. In accordance with the general principle of Art. 7 para. 1 let. a VAT Act, the supply of a “Werklieferung” is deemed to have taken place where the contractual work is performed or where the goods are delivered. However, please note: If the additional service under the “Werklieferung” (e.g. assembly/installation) is merely an ancillary service to a supply of goods, the supply is deemed to have been made where the transport or dispatch begins.

*Example: The Swabian tool manufacturer sends its fitter to Switzerland to replace a spare part for a customer in Winterthur (not a warranty case). The fitter brings the spare part with him from Germany. The tool manufacturer is registered for VAT in Switzerland.*

*The place of supply under the "contractual supply of goods" is the place where the contractual work is performed. The necessary assembly work is not merely ancillary to the "supply of the spare part". The tool manufacturer is the importer of the spare part and is*

*subject to domestic tax on its delivery to the Swiss customer under the "contractual supply of goods".*

## **SUPPLY UNDER A CONTRACT FOR WORK AND LABOUR (WERKLIEFERUNG)**

In other (German-speaking) European countries, the term "werkvertragliche Lieferung" is not officially used in connection with VAT. In Austria and Germany, however, the term "Werklieferung" ("supply under a contract for work and labour") is used and is defined as the treatment or processing of an object by an entrepreneur in which the entrepreneur uses materials that he has procured himself and which are not merely ingredients or ancillary items, Section 3 (4) VAT Act DE/AT. A Werklieferung is therefore a complex supply in the sense of a bundle of different supply elements (usually supply of goods and services elements in the sense of the European understanding) that are so closely linked that they are to be treated as a single supply for VAT purposes.

The existence of a supply under a contract for work and labour in this sense therefore requires that

- the supply relates to an item provided by the client and
- the supplier uses its own materials that are not merely ingredients or incidentals, and
- the item provided by the client is treated or processed.

The requirements for the existence of a "Werklieferung" are therefore much more narrowly defined than for the existence of a "werkvertragliche Lieferung".

*Example: The painter Brush produces one commissioned work for a Swiss customer and one for an Austrian customer.*

*From the point of view of Swiss VAT law, this is a "werkvertragliche Lieferung", as the work of art is produced on behalf of and according to the wishes of the client. From the perspective of Austrian VAT law, it is not a "Werklieferung", as the artist does not treat or process any goods belonging to his Austrian client.*

The distinction between a "Werklieferung" and a simple supply of goods is initially used to determine the place of performance for VAT purposes. As in Switzerland, no special regulations apply to "Werklieferungen", but rather the general principles for determining the place of supply in connection with supplies of goods.

The distinction is also important when it comes to the question of who is liable for VAT in each case. Neither in Germany nor in Austria does the reverse charge procedure currently apply to "simple" supplies of goods (reverse charge = reversal of the tax liability from the supplier to the recipient). The situation is different in the case of "Werklieferungen" by an entrepreneur based abroad to a service recipient who is also an entrepreneur. In these cases, the recipient is liable to pay VAT to the tax authorities if the place of supply is in Germany or Austria.

*Example: Belt AG, which is domiciled in Switzerland, specialises in the production of conveyor belts. It is commissioned by the French company Sort Sàrl to install a conveyor belt in the parcel sorting system to be installed by Sort Sàrl in Germany at the German company Worldwide Shipping GmbH. The parcel sorting system will be permanently connected to existing machines at Worldwide Shipping GmbH. Sort Sàrl's client is the German Worldwide Shipping GmbH. Neither Belt AG nor Sort Sàrl are currently registered for VAT in Germany and do not have any permanent establishments there.*

*Both Belt AG and Sort Sàrl provide a “Werklieferung”, as they each process or work a third-party object using their own materials, which are not merely incidental. Belt AG does not owe German VAT on its “Werklieferung” to Sort Sàrl, as Belt AG is a foreign company. Accordingly, the reverse charge procedure applies and Sort Sàrl must register for VAT in Germany in order to be able to account to the German tax authorities for the VAT on Belt AG’s “Werklieferung”. In turn, Sort Sàrl does not owe any German VAT on its “Werklieferung” to Worldwide Shipping GmbH, as Sort Sàrl is still a foreign company. The VAT registration in Germany does not change this. Accordingly, Worldwide Shipping GmbH owes the VAT from the “Werklieferung” of Sort Sàrl to the German tax authorities.*

### **SUPPLY AND ASSEMBLY OF GOODS (“MONTAGELIEFERUNG”)**

The “Montagelieferung” is not included in either the German or Austrian VAT Act. Rather, this is a term derived from the European VAT Directive. The VAT Directive forms the basis of the harmonised VAT system in the EU member states (“Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax”, referred to in this article as the VAT Directive).

As the term “Montagelieferung” suggests, this is a supply where the goods are installed or assembled at the customer’s premises by or on behalf of the supplier. In this case, the Directive states that the place of supply is the place where the installation or assembly is carried out, Art. 36 of the VAT Directive. Accordingly, the assembly supply differs from the German or Austrian “Werklieferung” in that it does not require the working or processing of a material provided by the customer. There is disagreement between the various member states as to which services make an assembly supply such a supply (specifically: does it require fixing at the supplier’s premises or is it sufficient to assemble the goods and make them ready for use?) In German-speaking countries, the prevailing view seems to be that assembly requires the object of the supply to be attached or fixed to a specific location using technical aids.

*Example: Belt AG, which is domiciled in Switzerland, specialises in the production of conveyor belts. It is commissioned by the German company Worldwide Shipping GmbH to supply a mobile conveyor belt. Belt AG will adapt and install the conveyor belt to the existing conditions on site in Germany, but without working or processing Worldwide Shipping GmbH’s goods.*

*Belt AG provides a “Montagelieferung” to Worldwide Shipping GmbH. The place of supply is in Germany. Due to the lack of treatment or processing of third-party goods, this is not a “Werklieferung”, and the reverse charge procedure therefore does not apply. Belt AG must therefore register for VAT in Germany in order to settle the VAT owed on its delivery with the German tax authorities.*

### **CONCLUSION**

Similar, but completely different - or “same same but different”. With VAT, the devil is in the detail. If you consider that the relevant circumstances usually involve the import of goods and that the input tax deduction is only ever granted to the “correct” importer, it becomes clear why errors still

regularly creep into the VAT treatment of seemingly commonplace transactions, resulting in extensive offsetting and at least a large administrative burden in the event of an audit.

With appropriately trained staff and up-to-date work aids, risks can be minimised and the focus can be directed towards the essentials.