

New Law regarding Value Added Tax: 1 January 2010

Summary of the most important changes October 2009

On 12 June 2009, the Swiss Parliament passed the new Federal Law regarding value added tax (VAT Law) which will enter into force as of 1 January 2010. The detailed regulations as well as the implementation through the Swiss Federal Tax Administration (FTA) which will be applied have not yet been defined. However, based on the final wording of the legislation, which is already available, it is possible to provide an initial outline of the most important changes.

VAT continues to be due on domestic supplies of services and goods which are rendered by taxable persons for consideration (**domestic tax**), on import of goods (**import tax**) as well as acquisitions of supply of services from enterprises having their place of business abroad (**service import tax**). Self-supply will only be accounted for by means of a correction of the input tax deduction and therefore does not constitute part of the turnover relevant for the tax calculation anymore.

Tax Liability

As of 1 January 2010, all persons running a business will basically be liable to VAT irrespective of the realisation of a turnover. Thus tax liability no longer depends on the realisation of a taxable turnover. The new VAT Law will allow for an exemption from tax liability if the taxable turnover is below CHF 100'000. Each enterprise will be able to explicitly abstain from the afore mentioned exemption and therefore become tax liable. Taxable persons who do not achieve the turnover threshold at the end of this year can renounce from VAT liability and will be deleted from the VAT register provided they inform the FTA until 31 January 2010 in writing.

Enterprises which have not been subject to VAT until now based on the exemption

(turnover below CHF 250'000 and tax burden, i.e. output VAT less input VAT, below CHF 4'000) and which achieve a taxable annual turnover exceeding CHF 100'000 will have to register with the FTA until 31 January 2010.

Furthermore, the tax exemptions for non profit and voluntarily administered sports clubs as well as charitable organisations (new also cultural clubs) with a taxable turnover not exceeding CHF 150'000 will remain.

Place of Supply of Services

Based on the VAT Law, the place of supply of services newly is the place, where the recipient has its business domicile with respect to his economic activity, provided that the law does not explicitly foresee another rule. This implies for example that accommodation services as well as services in the hotel and restaurant industry will no longer be taxable at the domicile of the supplier but at the location where the service will be provided. Furthermore, this new rule will also impact the import of services from enterprises domiciled abroad. Based on the new law, these services will mainly be taxable at the place of the domestic recipient and therefore be subject to reverse charge.

Option Possibilities

By means of the law revision, the possibilities to opt for VAT liability of exempt supplies (without credit) have been extended. However, turnover of insurance companies, banks and lotteries, continue to be generally excluded from the option possibility. For turnover in relation to real estate, the option remains excluded if the properties are exclusively used for private purposes. For all other turnover which is basically exempt from VAT, the option will be possible without the

requirement of fulfilling any conditions. Approval by the FTA will no longer be required, it will be sufficient to invoice and disclose the tax.

Input VAT deduction

Based on the new law, input VAT deductions will be possible for all expenses relating to the entrepreneurial activity, provided that the input tax has not been incurred in relation to VAT exempt (without credit) turnover. The links between input and output supplies are no longer required. The only relevant criterion is whether the input tax has been paid. An input tax deduction can therefore also be made if a taxable person has not made any taxable turnover. Furthermore, the reduction of input tax deduction to only 50% concerning food and beverage supplies will also be abolished.

A further possibility to deduct input tax will be established for investments (shares in the company's capital of at least 10%, held for the purpose of long term investment). There will be a right to deduct input tax for the purchase, holding and sale of shares as well as in connection with corporate restructurings within the scope of the entrepreneurial activity entitling to input tax deduction. For holding companies this can be based on the entrepreneurial activities of their participations.

Invoicing

The liberalisation of the formal requirements for VAT documentation has been envisaged, however as yet not been specified by the FTA.

Need for Action?

Not all specific consequences for single enterprises are foreseeable at this point in time. The VAT Ordinance based on the new VAT Law, which will come into force simultaneously, is currently still being compiled (planned passing by the Swiss Federal Council at the end of November) and will provide more detailed information. However, it is already clear there is scope for improvement

and action to be taken for specific requirements:

- In relation to the new option possibilities for the taxation of VAT exempt (without credit) turnover
- For enterprises for which the entry into the VAT register or the reimbursement of input tax has been refused until now
- For enterprises which were subject to tax until now and which do not achieve the turnover threshold and therefore will now be able to apply for a tax exemption
- For taxable enterprises which have been obliged to input tax reductions until now
- Review of the place of supply of services with respect to cross-border services

Note

Please note that the revision of the VAT law discussed in this letter is independent from the temporary increase of the VAT rates. The increase (ordinary rate 8%, special rate on supplies of accommodation 3.8% and reduced rate 2.5%) will be effective as of 1 January 2011 and will be terminated by 31 December 2017.

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