

What do foreign suppliers of goods and services need to know about Swiss VAT?

Laurent Lattmann and **Patrick Imgrüth** of **Tax Partner AG – Taxand** provide an overview of the Swiss VAT system, highlighting the challenges that foreign suppliers of goods and services need to be aware of, including new and upcoming changes.

Switzerland's VAT system is largely compatible with the European Union's VAT Directive. Nonetheless, important differences exist. Foreign suppliers are well advised to consult the Swiss VAT legislation before starting their activities in the country. Some relevant changes for foreign companies became effective as of January 1 2015, and new rules are likely to enter into force as of January 1 2016.

Even though Switzerland's VAT regime is comparatively young since it was only introduced 20 years ago, the regime has been constantly subject to changes. While, in the past, changes were more or less systematic or politically motivated, many of the new rules to be enforced as of January 2016 must be seen as an attempt to bring greater parity between the tax treatment of Swiss entities and their foreign competitors. In November 2014 the Swiss Federal Council already decided to abolish the reverse-charge mechanism for the local supply of goods made by foreign suppliers. These changes became effective as of January 2015. They aimed to target foreign suppliers rendering supplies in Switzerland who are not collecting and paying Swiss VAT on their local supplies. These amendments were only the beginning of a series of changes; the Swiss legislator published, in late February 2015, the draft of new changes that intend to eliminate competitive disadvantages that Swiss suppliers face by tightening the rules for foreign suppliers to register for VAT in Switzerland. It is expected that these new provisions will come into force as of January 1 2016.

Liability to register for VAT in Switzerland

Contrary to many other VAT systems around the world, Switzerland's current VAT Act contains a VAT-registration threshold that not only applies to Swiss-based entities, but also to companies established outside of Switzerland. A supplier of goods or services basically becomes liable for Swiss VAT only if it exceeds the VAT registration threshold of CHF 100,000 (\$105,000) per annum. The particularity of this provision is that, to assess whether a foreign suppliers become liable for VAT in Switzerland, only supplies taking place within Switzerland are taken into account. Or in other words: A company established abroad can make millions in turnover in other jurisdictions, but only becomes liable for Swiss VAT purposes in case the turnover resulting from supplies within Switzerland exceeds the above-mentioned registration threshold.

In addition to the VAT registration threshold, the Swiss VAT Act shifts the liability to pay VAT to the Swiss recipient by imposing the reverse-charge mechanism on certain supplies made by foreign suppliers. This is

typically the case for the supply of goods that is not subject to Swiss import VAT like the local purchase and sale of goods, or the work on moveable and immovable goods that is considered being a supply of goods according to the Swiss VAT Act. It is important to note that under the Swiss VAT Act not only entrepreneurs are obliged to apply the reverse-charge, but also private individuals. Needless to say that the application of the reverse-charge mechanism on a supply performed by a non-established supplier to a private individual is wishful thinking on the part of the legislator, and that such supplies were almost never taxed in the past. Foreign suppliers could therefore offer their supplies to Swiss private individuals without having to charge them 8% Swiss VAT. This competitive distortion was recently heavily criticised, especially since more and more foreign craftsmen started to compete with the local industry at much lower prices.

As a result, the VAT ordinance containing additional provisions to the VAT Act was amended with effect of January 1 2015. The reason for the changes being implemented on an ordinance level was that the Swiss Federal Council could bypass the legislative procedure and implement the new rules immediately. According to these new provisions, the local reverse-charge no longer apply on the local supplies of goods made by suppliers established abroad. Foreign suppliers that supply goods within Switzerland in excess of the registration threshold are therefore obliged to register for VAT and to collect and pay VAT to the federal tax authority. The new rules explicitly do not apply to foreign suppliers of gas and electricity supplying to B2B-customers, these are still subject to the reverse-charge mechanism.

Starting January 2016, these rules will not only be legally implemented in the existing VAT Act, but also tightened for foreign suppliers. If a company established abroad exceeds the equivalent of CHF 100,000 turnover, and is supplying goods or services within Switzerland, it will basically become liable for Swiss VAT. In certain cases, particularly when services are provided, the VAT liability of the foreign supplier may be avoided because of the application of the reverse-charge mechanism for certain types of services. Foreign suppliers that are planning to enter the Swiss market will immediately become liable for Swiss VAT. The same consequences result if a foreign company is supplying goods only occasionally or in the course of a one-off transaction.

If foreign suppliers are now below the Swiss registration threshold of CHF 100,000, they should re-assess the situation in late 2015 to be compliant with the new rules when they enter into force.

E-services to Swiss B2C recipients

Even though the rules on electronically rendered services (e-services) by suppliers established outside of Switzerland to Swiss B2C recipients will not change, the relevant rules are summarised below. Foreign suppliers of e-services must be

aware of the existing VAT obligations in Switzerland. In the following the Swiss VAT rules on e-services are explained in order to counterweight the introduction of the EU mini one-stop shop (MOSS) in the EU and to inform foreign suppliers of such services of their obligations in Switzerland, and of the changes resulting from the amendments in the VAT Act coming into force as of 2016.

Basically, most of the services rendered by foreign suppliers to Swiss recipients are subject to the reverse-charge mechanism. As already mentioned, private individuals also have the obligation to apply the reverse-charge if they receive services rendered by foreign suppliers that are not VAT-registered in Switzerland and the sum of the services received exceeds CHF 10,000 in total per annum.

Suppliers of e-services and telecommunication services, however, must register in Switzerland and charge local Swiss VAT to their clients, if they provide services to B2C clients in excess of the VAT registration threshold of CHF 100,000 (\$105,000). Contrary to the MOSS registration process in the EU, no specific or simplified VAT registration process for foreign suppliers of such services exists in Switzerland. However, it is noteworthy to mention that once a foreign e-service supplier is registered for VAT purposes in Switzerland, it has the obligation to charge Swiss VAT on all services supplied to Swiss-based clients, irrespective of whether they are B2B or B2C clients. This is another Swiss particularity and a rule that differs from the EU regulations. In essence, once a foreign supplier has been VAT registered in Switzerland, it must charge Swiss VAT on all locally supplied goods and services.

As of January 1 2016, foreign suppliers of e-services will therefore have the obligation to register for Swiss VAT purposes irrespective of their turnover made with Swiss B2C clients if their worldwide turnover exceeds CHF 100,000 per year. Companies that are now rendering e-services to Swiss-based clients below the registration threshold should therefore re-assess their situation and initiate the registration process in late 2015 to be compliant with the new provisions as of the beginning of 2016.

Supply of e-books and e-papers

According to the changes as of January 2016 the applicable standard VAT rate of e-books and e-papers will be reduced to 2.5%. The existing provisions state that only books, newspapers and journals on paper can benefit from the reduced VAT rate of 2.5%, while the equivalent content provided electronically is considered being subject to the standard VAT rate of 8%. This change will not only significantly simplify the VAT calculation and collection of suppliers offering both formats to their customers, it will also eliminate a systemic distortion that was criticised in Switzerland for years. It is to be welcomed that the Swiss legislator expressly intends to apply the new rules even in case the newspaper, magazine or journal is only available in electronic format. In this regard, Switzerland



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Tax Partner is one of the leading tax firms in Switzerland. Now with 34 professionals, the firm has been advising multinational and national corporate clients as well as individuals. Tax Partner co-founded Taxand in 2005 – the first global network of more than 2,000 tax advisers and more than 400 partners from independent member firms in nearly 50 countries.



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is one step ahead of the EU, which has just confirmed the application of different VAT rates depending on the format in the ECJ's decision of March 5 2015.

Foreign providers of e-books and e-papers must start initiating the changes even before the new VAT provisions come into force, as the renewal of e-papers or magazines subscriptions may already take place this year. It is therefore important to define a date from which the reduced VAT rate should be charged on new subscriptions or the renewal of existing subscriptions, and to adapt the invoices accordingly.

Low Value Consignment Relief – distance selling

Swiss VAT rates are, at 2.5% and 8%, by far the lowest in Europe. Contrary to the rules in the EU, which applies the Low Value Consignment Relief (LVCR) based on the value of the imported goods, Swiss LVCR rules are applicable in case the import VAT does not exceed CHF 5 (\$5.25). This is why this scheme is of a greater importance to foreign distance selling companies supplying goods to Swiss customers. If the import VAT due on the value of the goods and the shipping costs to the customer is below CHF 5, no import VAT is levied. Considering the applicable VAT rates, shipments from abroad subject to the standard rate of 8% for an amount up to CHF 62.50 (\$65.70) or CHF 200 if

the reduced rate of 2.5% applies (for example, on books or dietary supplements) can be imported without incurring Swiss VAT.

This provision was identified as also leading to competitive distortion. Even though technically the LVCR will remain in force after 2016, the new VAT Act will ultimately close this VAT loophole by implementing a new place of supply rule. Foreign distance sellers shipping their products to their Swiss clients and benefitting in the past from this rule will have to reconsider their distribution model as of January 2016. The new provision shifts the place of supply of distance selling supplies into Switzerland if the annual turnover resulting from such LVCR sales exceeds CHF 100,000 per year. Accordingly, foreign distance selling companies may become liable for Swiss VAT and have to charge local VAT on sales made to Swiss clients. It needs to be noted that occasional supplies to Swiss clients below the sum of CHF 100,000 will not lead to an obligation to register for VAT in Switzerland. Also, should a foreign supplier already be registered for VAT in Switzerland for other reasons it will not have to subject such sales to Swiss VAT if the amount resulting from such supplies is below the CHF 100,000 limit.

Foreign distance selling companies now benefitting from the LVCR need to re-assess their business model with Swiss

clients and initiate the necessary VAT registration process in the course of 2015 and have to initiate the VAT registration process in late 2015.

Foreign suppliers should prepare for proposed 2016 changes now

Considering the changes that were implemented in January 2015 and taking into account the draft provisions that will most likely become effective as of January 2016, foreign suppliers of goods or services will have to re-evaluate their obligation to

register for VAT in Switzerland. The new provisions aim to oblige foreign traders to register and to charge local VAT to their customers in order to level the playing field. Even though foreign suppliers may still be able to avoid a local VAT registration, it is more likely than not that most of the foreign traders will become liable for VAT when offering their goods or services to Swiss-based clients. Since the enactment of the new rules has not yet been confirmed, foreign suppliers are well advised to monitor the developments to ensure they are ready to initiate the registration process and implement the new rules.