

A guide through Switzerland's revised VAT Act

All good things are worth waiting for. As such, the long-awaited partial revision of the Swiss VAT Act was finally put into force as of January 1 2018.

Laurent Lattmann and **Désirée Högger** from **Tax Partner – Taxand Switzerland** expect this will mean closer alignment of the way Swiss and foreign suppliers are treated, and explore how foreign companies must apply the new rules when supplying goods and services to Switzerland.

Even though Switzerland is not a member of the EU, its VAT system has been designed in line with the European VAT Directive and has remained largely aligned with it ever since. It is essential that the Swiss VAT system remains more or less compatible with the VAT systems of its surrounding neighbours, especially in order to avoid double or non-taxation of transactions. In spite of these general principles, it nevertheless deviates in some points from the European rules. Although a few of these differences have now been abolished, new ones have also been created. It seems clear that some of the changes were made to bring the existing legislation up to speed by taking into account technical developments like the unstoppable progress of e-products or the massive increase in distance selling activities. This article explains the new rules that foreign suppliers dealing in Switzerland should be aware of. Some of the rules explained here are not new, but since they were part of recent developments taking place in the EU, they were considered important enough to be mentioned as well.

When does a foreign supplier become liable for Swiss VAT?

In the past, Switzerland made a turnover-based assessment in order to define whether a foreign supplier was obliged to register locally for VAT. This assessment took into consideration the turnover generated in Switzerland and the same rules as for Swiss entrepreneurs were applied. If the registration threshold of CHF100,000 (\$107,000) was exceeded by supplies provided on Swiss territory, the company had to register. By applying the same registration threshold for Swiss and foreign entities, Switzerland deviated from EU standards and created competitive distortions. A foreign company could therefore turn over millions of dollars, but since the turnover amount for Swiss customers was below the registration threshold, the company would not be obliged to register for, collect and remit Swiss VAT.

The new rule that has applied as of January 1 2018 is that a foreign entity must register for VAT if it carries out taxable supplies within Switzerland. The previously applied registration threshold of \$107,000 has been abolished. For competitive distortion reasons it now only applies to small foreign enterprises whose overall global turnover is below the amount of \$107,000. However, if a foreign company is exceeding this threshold and starts its activity in Switzerland, it will immediately become liable. The new rule also applies to foreign companies that were already carrying out supply activities in Switzerland in previous years, but



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tion of the reverse-charge mechanism. Only a few categories of services, such as cultural, sports, medical or real estate-related services do not have to be reverse-charged by the Swiss recipients. When electronically supplied or telecommunication and/or broadcasting services are rendered to Swiss business-to-consumer (B2C) customers, an obligation to register exists. In this regard it is worth mentioning that if a foreign supplier is obliged to register for Swiss VAT, it must account VAT on all supplies rendered to Swiss customers, irrespective of whether they are business-to-business (B2B) or B2C customers.

Does importing or exporting of goods lead to an obligation to register for Swiss VAT?

Another Swiss particularity is that the place of the supply of goods does not automatically shift to Switzerland if the foreign supplier acts as the importer of record. Contrary to the rules in the EU, Switzerland has been unsuccessful with its several attempts to align its place of supply rules when it comes to the importing of goods. The place continues to be deemed where the transporting of the goods starts, even if the foreign supplier acts as the importer of record and pays the import VAT. However, the supplier will not be granted a VAT refund on the import VAT paid as this would lead to non-taxation. In practice, the Swiss Customs authority considers the Swiss-based recipient as the importer of record if the goods are not to be installed. If the foreign company nevertheless wants to act as the importer of record and pay and claim the import VAT, it can voluntarily choose to do so. This would require VAT registration in Switzerland and the signing of a form referred to as a subordination licence (*'Unterstellungserklärung'* in German or *'déclaration d'engagement'* in French), in which the foreign supplier commits to charging, collecting and remitting the VAT on supplies made to Swiss based-clients for which the supplier acted as the importer of record. This Swiss practice draws criticism for being too complicated, bureaucratic and completely unnecessary. It would have been simple to just follow the European rules – it is to be hoped that this point will be reconsidered in one of the next revisions of the VAT Act.

Contrary to the burdensome rules regulating the importing of goods by a foreign company for subsequent local sale, the revised VAT Act now contains an exemption that was previously an administrative practice of the Federal Tax Administration (FTA). A foreign company that is involved in export supply activities from Switzerland does not have to register for VAT purposes, even if the place of its supply is deemed to be in Switzerland. It should be noted that the Swiss VAT Act does not cater for the allocation of transport in the course of a chain transaction. The integration of the previous administrative practice into the VAT Act allows a foreign supplier to take part in such transactions without registration obligations. Such a company is even expressly

never reached the former registration threshold. Such suppliers need to register for VAT purposes immediately.

Which supplies are deemed to be local supplies?

When checking if a foreign supplier needs to register for Swiss VAT purposes, the company's activities need to be analysed to establish whether the company is performing taxable supply services in Switzerland. The analysis therefore needs to distinguish between the supply of goods and the supply of services. This might appear to be an easy task, especially for experienced EU VAT tax managers, but it is slightly more complex in Switzerland. The reason for this is that in Switzerland the distinction between the supply of goods or services does not follow the EU approach. Switzerland's interpretation of a supply of goods is broader than in the EU. For example, the leasing or renting out of movable or immovable goods is considered the supplying of goods. Likewise, any activities that involve the treatment of goods, such as the repair, maintenance, cleaning or calibration of goods are also considered supply of goods activities under the Swiss interpretation; and since these supplies do not fall within the scope of the reverse-charge mechanism, a foreign company rendering such supply services in Switzerland must register for VAT.

Compared to the EU, the definition of the supplying of services is rather restrictive, as the term covers many supply activities. Nevertheless, if services are rendered cross border, they typically fall into the scope of applica-

entitled to apply for a VAT refund should it have incurred local Swiss VAT, which was not the case under the administrative practice.

Consignment stock simplification

Since consignment stocks are a hot topic in the EU, it is important to outline the relevant Swiss rules, as this might help to avoid local registration obligations for foreign suppliers. If goods are imported and placed under a consignment or commissionaire agreement, title to these goods remains with the foreign supplier until the consignee or commissionaire sells the goods to local customers or acquires them. Nevertheless, the FTA does not oblige the foreign supplier to register or to charge Swiss VAT on the local sales, if the consignee or commissionaire and the sale price are known when the goods are Customs cleared. Flexibility regarding the sale price is granted, as slow-moving items, volume discounts, special offers and the like do not preclude the application of the consignment stock simplification.

Supply of e-books, e-papers and audiobooks

With the enactment of the revised VAT Act, Switzerland aligned the VAT treatment of e-books, e-papers and audiobooks with the physical versions of such products. The reduced rate of 2.5% now applies to all books and newspapers, irrespective of whether they are supplied physically or electronically or in audio format.

However, the FTA recently published its administrative practices and takes the view that an excerpt of an electronically supplied book, such as a summary or an individual chapter of that book, will continue to be taxed at the standard rate. Surprisingly, online access to an individual newspaper article, which could be compared to an excerpt of a book, will be taxed at the reduced rate. While audiobooks now benefit from the reduced rate, podcasts remain taxable at the higher rate. It is obvious these administrative practices will be subject to further development. Foreign suppliers of such products, therefore, would be well advised to keep an eye on further developments in this sector.

Low value consignment relief (LVCR) and distance selling rules

Switzerland's LVCR rules are slightly different from those of the EU. Import VAT is only levied if the VAT amount exceeds CHF 5 (\$5.35). Therefore, standard-rate supplies with a value below \$69.35 or reduced-rate supplies below \$213.60 can be imported without paying Swiss import VAT.

In order to further reduce the competitive distortion resulting from such LVCR supplies, as of January 1 2019, Switzerland will implement a new place of supply rule when a foreign supplier is providing LVCR supplies in excess of \$107,000 per year to Swiss customers. The enactment of this



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new rule has been delayed by one year in order to grant sufficient time for implementation. Distance selling companies that are benefitting from the LVCR must take the necessary steps in order to be compliant as of the beginning of next year.

Outlook

Overall, the new rules implemented seem to be well balanced and will help to reduce competitive distortion occurring between foreign and Swiss-based suppliers. Companies that were occasionally supplying goods or services in the past should check if, based on the revised rules, they are required to register for VAT and take necessary actions to be compliant. Further developments will certainly take place, and these changes must be monitored.

Last but not least, another topic worth mentioning as indirectly linked to VAT in Switzerland relates to Switzerland's decision back in 2015 to broaden the application of the broadcasting tax to include companies. The respective rules will become effective as of January 1 2019. By then, all companies registered for Swiss VAT purposes will have to pay an annual broadcasting tax (or TV licence fee). The fee starts at \$390 for companies with an annual worldwide turnover of between \$535,000 and \$1.07 million. The broadcasting tax is capped at \$38,000 for companies whose worldwide turnover is \$1 billion. The amount will be collected by the FTA in early 2019 based on the turnover figures reported during the course of 2018. According to the FTA's explanations set forth on various occasions, it intends to levy this broadcasting tax on foreign companies as well. It seems highly questionable that such a

tax, which is designed to be levied on the consumption of Swiss television content, must be paid by foreign suppliers of goods and services who are VAT registered. It is unlikely that foreign suppliers will, on the basis of their VAT registration, consume any content provided by Swiss television. This change has not been finalised, and there is hope that ultimately this tax will only be collected from Swiss-based

entities. One can imagine that Switzerland would never accept that, for example, the UK would impose its TV licence fee on Swiss enterprises purely on the basis that they were doing business in the UK and had a UK VAT number. Therefore it would seem unreasonable that foreign VAT payers wishing to be VAT compliant in Switzerland would have to pay this additional fee.