

NewsLetter

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New Swiss VAT Statements of Practice

The Swiss Federal Tax Administration (FTA) has published a number of important changes to the sizeable body of statements of practice and extra-statutory concessions on Value Added Tax (VAT). Such statements of practice and concessions are not legally enforceable, but are followed on a consistent basis by the FTA to ensure that taxpayers in similar circumstances are treated the same way. Changes include several welcome simplifications for the benefit of Swiss and foreign companies doing business in Switzerland.

Changes as from 1 January 2005

The following simplifications are effective as from 1 January 2005.

Evidence of Input Tax (VAT Invoices)



Jan Ole Luuk
+41 1 265 76 12
jluuk@wwp.ch

To reclaim VAT charged as input tax, a taxable person must hold valid evidence that he or she has received a taxable supply of goods or services. In principle, the taxable person must hold a VAT invoice drawn up in accordance with Art. 37 of the VAT Act 1999.

Under the new official practice

less detailed VAT invoices will count as acceptable evidence of input tax paid:

- Till roll receipts, car park tickets and receipts issued by retailers for road fuel purchases for CHF 400 or less – including VAT – do not require the name and address of the customer (threshold increased from CHF 200).
- Invoices addressed to branches or other places of business count as acceptable evidence of input tax, regardless of whether these places of business are recorded in the commercial register or register of taxable persons (extra-statutory concession).
- Invoices addressed to foreign businesses registered for VAT purposes in Switzerland no longer require the name and address of their fiscal representative.

Importation of Goods

VAT paid or payable on the importation of goods from a place outside Switzerland was previously recoverable as input tax only if the taxable person was identified as the importer of record on the original import document. Under the new official practice, a taxable person is entitled to deduct or reclaim import VAT even if a third party, such as a customs agent, is identified as the importer of record. However, the taxable person must hold the original import document and the underlying sales invoice from the foreign supplier must be made out in his name.

Contracts for Work and Materials

Foreign businesses that perform contracts for work and materials are liable to register for VAT purposes in Switzerland and account for VAT on their supplies of goods if (i) the goods are installed or assembled in Switzerland by or for the account of the foreign supplier and (ii) the foreign supplier's annual turnover in Switzerland is above the registration threshold. If the foreign supplier is not required to register for VAT purposes in Switzerland at the time of importation of the materials, the foreign supplier must be identified in the official import documents as the importer of record in care of the Swiss customer. Under the new official practice, the FTA generally abstains from taxing the supply of goods by the foreign supplier if he or she is retroactively registered for VAT purposes in Switzerland. However, if the Swiss customer holds the original import documents and has deducted the import VAT as input tax, the foreign supplier is not entitled to recover the import VAT paid, as well.

Incorporation and Share Issue Costs

According to the new official practice, the FTA no longer regards the issue of shares in a corporation as VAT-exempt supplies in respect of which companies are denied recovery of VAT on the related costs of service providers, such as lawyers, bankers and other consultants. Instead companies may treat VAT incurred on such expenses as deductible input tax to the extent allowed for other overhead costs of their business. The same applies to VAT

incurred on costs related to the incorporation of a company, including pre-corporation and pre-registration costs.

Correction of VAT Invoices

If the supplier has issued a deficient VAT invoice (i.e., lacking details such as the supplier's VAT number, the date on which the goods or services were supplied, the quantity and nature of the goods supplied or the extent and nature of the services rendered, or the VAT rate applied), the recipient may ask his supplier to correct the invoice by duly completing and signing the official forms no. "1310" or "1550". Under the new official practice, the FTA no longer charges interest (5%) for the period between the deduction of input tax with respect to the deficient VAT invoice and the receipt of the written acknowledgement from the supplier.

Intra-group Invoices in Foreign Currency

If supplies of goods and services are contracted for and invoiced in a foreign currency, the VAT payable by the supplier and deductible by the customer previously had to be calculated by converting the foreign currency into Swiss francs at the official exchange rate published by the FTA. According to the new official practice, the FTA accepts that corporate groups use their own exchange rates for the calculation of VAT on all intra-group transactions. However, any VAT charged on such transactions that is not fully recoverable as input tax by the recipient group company must still be converted into Swiss francs using the official exchange rates.

Exclusive Purchasing Agreements

The granting of interest free loans by exclusive suppliers (e.g., breweries) to their customers (e.g., innkeepers) is no longer regarded as non-monetary consideration for the obligation to exclusively buy goods from the supplier.

Changes Planned for 1 July 2005

The FTA also has made a preliminary announcement of further simplifications to become effective as from 1 July 2005. Specific details are not yet definite, but changes are planned in the following areas:

- Apportionment of input tax (dual-use inputs)
- VAT treatment of composite supplies
- Change of use adjustments
- Offshore companies
- VAT transfer pricing methods (cost-plus)

Export Evidence

With respect to the documentary evidence which is required for a supply of goods exported outside Switzer-

land to be "zero-rated", the Swiss Federal Supreme Court held on 6 March 2001 (2A.467/2000) that the customs declaration and the underlying sales invoice must clearly identify the goods and their correct value. Consequently, the Court ruled that if the goods are over- or undervalued in these official and commercial documents, the documentary evidence is inadequate for zero-rating the supply of goods. Despite this case law, the FTA has unofficially announced that it will now examine only whether the export exemption can be evidenced with reference to the description of goods in the relevant documents by means of quantity, nature of the goods, weight, possibly commodity description and customs classification codes, etc. Inaccuracies in the customs declaration and the underlying sales invoice as to the actual value of the goods no longer invalidate the documentary export evidence (but remain a regulatory offence).

New Publications Concept

VAT is a continually evolving tax and the plethora of official publications often confuses rather than clarifies requirements for VAT compliance. In view of the administrative burden, especially on small and medium-sized enterprises (SME), the FTA plans to restructure its VAT publications in 2005: Most VAT Notices, Guides and Business Briefs will be integrated into a comprehensive VAT Guide for tax professionals and a condensed version will address the practical needs of SME's.

NewsLetter

The ww&p NewsLetter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this NewsLetter should seek specific advice on the matters which concern them.

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**Walder Wyss & Partners
Attorneys at Law**

Münstergasse 2
P.O. Box 2990
CH-8022 Zurich
Phone +41 1 265 75 11
Fax +41 1 265 75 50
reception@wwp.ch
www.wwp.ch

London Representative Office
9 Gray's Inn Square
London WC1R 5JQ
Phone +44 20 7405 2043
Fax +44 20 7405 0605