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New and Revised Swiss VAT Publications



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The Swiss Federal Tax Administration (SFTA) has recently published revised versions of its administrative Value Added Tax (VAT) guidance to taxable persons. The new guidance comprises the VAT Guide, six Special Brochures, 24 Business Guides, and 17 VAT Information Sheets – all in all, not less than 2,500 pages.

By the end of the second semester 2008, all Swiss VAT publications are expected to be available in revised form and will be applied retroactively as from 1 January 2008. Key revisions to the previous statements of practice are addressed below.

Immovable Property

With respect to the transfer of buildings or part thereof, and of the land on which they stand, the taxable person now has three alternatives to choose from. The supply may be treated as:

1. VAT exempt without credit for input tax. This alternative enables the transferee to acquire the property without paying VAT and avoids the VAT leakage associated with mixed use or changes of the proportion of taxable use during the adjustment period or the prior use of the property by the transferor. However, the transferor may become liable to make adjustments of input tax under the capital goods scheme.
2. Taxable with a waiver of exemption. The revised rules no longer require the transferor to have previously used the property for taxable purposes. However, the transferor must be a taxable person prior to the transfer of the property and the transferee must, at least partly, put the property to taxable use. Although the transferor may be in a position to recover VAT on previous purchases due to a change of use, the transferee is not entitled to fully recover the VAT incurred on the purchase price of the property (value of the buildings) if the transferee uses the property partly for making exempt supplies.
3. Transfer of a going concern (TOGC) with application of the notification procedure. TOGC status is available without regard to the prior use of the

property by the transferor and regardless of whether the property qualifies as a going concern or part thereof. The transferee, however, must use the property, at least partially, for taxable purposes. If the extent of the taxable and the non-taxable use by the transferee is identical to that of the transferor, the transferee may refer to the prior use of the transferor in order to avoid adjustments of input tax. The burden of proof, however, is with the transferee.

VAT Grouping

A Swiss permanent establishment of a foreign taxable person may now be part of a Swiss VAT group, even if it is not a registered branch. Further, a VAT group may be formed if the intra-group turnover is above the applicable registration threshold for a compulsory or voluntary VAT registration, even if the turnover generated from supplies to third parties alone would not confer taxable person status. The joint and several liability of all group members for any VAT due from the representative member no longer extends to administrative fines.

Organisation of Events

Contrary to previous statements of practice, the services of event organisers acting in the name and on behalf of the event host are now deemed to be supplied where the recipient is established. As a consequence, Swiss organisers are no longer required to charge Swiss VAT to their foreign clients, but can zero-rate their services. VAT erroneously charged as from 1 January 2008 is no longer recoverable for foreign taxable persons. Swiss event hosts, on the other hand, may have to account for Swiss VAT on their purchases of organisational services from abroad under the reverse charge regime.

Research and Analysis

The new place of taxation of analysis services related to research designated to solve a specific technical, economic or legal question of the customer, as well as stand-alone analysis services is the place where the recipient is established. If such services are rendered to a customer established abroad, a Swiss taxable person may apply the zero-rate. A Swiss customer, on the other hand, may become liable to account for Swiss VAT on the purchase of research or analysis from abroad under the reverse charge regime.

Education and Training

It is often difficult to determine whether services are business-specific taxable training or VAT exempt general education. If a taxable person purchases educational or training services for its operational needs and for its own personnel, they are now seen as taxable services. This may lead to the taxation of educational or training services even if not all participants are pursuing a business-specific purpose.

Inter-company Cost Allocations

Inter-company cost allocations by a Swiss taxable person to its foreign affiliates or fixed establishments may be taxed or zero-rated depending on the purpose in the relevant cost allocation agreement or invoice. Swiss taxable persons wishing to zero-rate outbound cost allocations for services supplied where received are well advised to make explicit reference to the underlying purpose in the relevant cost allocation agreements or invoices in order to meet the documentary evidence requirements for zero-rating. In the past, cost allocations were generally seen by the SFTA as taxable supplies.

Apportionment of Input Tax

Taxable persons that generate turnover from taxable as well as exempt supplies are not entitled to fully recover the VAT incurred on their purchases of goods and services. A new apportionment method has been introduced that allows a simplified calculation of the non-deductible portion by reverse application of the flat rate for the business in question. A taxable person can calculate the non-deductible portion of VAT by comparing the (hypothetical) VAT due on its exempt supplies at the standard rate with the VAT due under the business specific flat rate. The difference is the non-deductible amount. This method also may be used to show that a taxable person has not obtained an unjustified tax advantage by applying any other of the available apportionment methods.

Appraisal

The revisions discussed here are, all in all, good news for taxpayers. In particular, the new choice about the VAT treatment of property transactions provides welcome leeway for VAT and cash-flow optimisation. However, the new and revised publications which are likely to be more controversial have not been published yet. Furthermore, it should be remembered that the revision of the Swiss VAT guidance issued by the SFTA was heralded in 2005 as a completely new and user-friendly approach. Regrettably, it appears that any attempt to restructure and rewrite the administrative VAT guidance in order to improve readability and condense the excessive bulk of special brochures, business guides and information sheets has been abandoned along the way. Reading 2,500 pages asks a lot from taxable persons considering that the Swiss VAT return form is a one page document. Finally, it should be noted that any oral or written confirmation by the SFTA as to the VAT treatment of a specific transaction that conflicts with the new and revised VAT publications is no longer valid as from 1 January 2008.

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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