

New Swiss VAT Act as from 2010



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On 12 June 2009, the Swiss Parliament passed the VAT Act reform bill on the final vote. This new legislation will completely replace the existing VAT law and brings with it significant changes in key areas of VAT. Unless a referendum is called (unlikely), the new VAT Act will come into effect on 1 January 2010. This leaves businesses with only a few months to prepare for the transition.

General overview and appraisal

Firstly, the VAT Act has been completely re-drafted and structured in order to bring it in line with previously neglected VAT principles and place the VAT system on a new basis. This is seen as a key to improving the understanding of VAT by taxpayers and, equally important, avoiding assessments by the authorities which are incompatible with the aims of VAT as a tax on private expenditure.

Secondly, the procedural position of the taxpayer has been improved. The new law seeks to provide for a fair assessment and more legal certainty. This is reflected by, e.g., replacing formal evidence requirements with a liberal consideration of all available evidence, a revised reporting and assessment procedure, the introduction of a statutory right to ask for binding tax clearance, and a reduction of the extensive penalty provisions under the current law.

Finally, the VAT Act 2010 will bring with it some liberalizations and simplifications for businesses, such as an extension of the right to register for VAT purposes on a voluntary basis and, thus, recover VAT on expenses prior to making output supplies, to opt for taxation of exempt supplies, to apply a flat rate scheme for small businesses, and a more generous treatment of mixed supplies.

Selected key points of the 2010 changes

Taxable person / tax liability

- Any business that commences economic activities is a taxable person. Start-ups may register for VAT and recover input tax prior to making output supplies. Failed businesses are no longer faced with the risk that refunded VAT amounts will be reclaimed.
- For businesses that make taxable supplies above a

certain value limit (CHF 100,000/150,000) registration for VAT is compulsory. Businesses with supplies below these limits are generally exempted, but entitled to be registered on a voluntary basis.

- The scope of the facilitation measure available to a group of companies under common control to apply to be treated as a single taxable person for VAT registration purposes (VAT grouping) has been extended.
- The head-office and branches of a company are seen as separate taxable persons for VAT purposes in respect of cross-border, intra-company services and cost allocations, but as a single taxable person if head-office and branch are established in Switzerland.
- In certain circumstances the purchaser of receivables will become jointly and severally liable for the tax due from the seller.

Scope of the tax / taxable base

- Under the new legislation, all events previously taxed under private use provisions will give rise to input tax adjustments, but no longer count towards the output tax liability.
- The option to tax exempt supplies will be significantly enlarged and no longer requires approval by the authorities. Treatment as a taxable supply (e.g., by invoicing VAT) suffices. With respect to the leasing of immovable property, only buildings or parts of buildings that are exclusively used for private purposes (e.g., as a dwelling) are excluded from the option to tax.
- New simplification rules for mixed supplies allow the bundling of supplies under a uniform VAT treatment.
- The rules on the attribution of supplies to a business will be changed, e.g., by easing the formal evidence requirements for direct agents who act on behalf of their principals.

- Various cantonal duties no longer form part of the taxable base.
- The margin scheme for second-hand goods will be replaced by a special input tax regime.

Place of supply for cross-border services

- As a new default rule, the place of taxation is in the country where the customer is established or has a fixed establishment to which the services are rendered.

Reverse charge procedure

- The reverse charge procedure will be extended to certain domestic supplies of goods by foreign suppliers if the supplier is not registered as non-established taxable person.

Recovery of VAT by businesses

- As a general rule, the right to recover input tax extends to any VAT charged on business purchases and expenses. Full or partial non-recoverability, e.g., due to exempt output supplies is seen as an exception. The 50% limit on the recovery of VAT charged on food and drink is lifted.
- The requirements for evidence of input tax will be eased; valid evidence is less dependent on the fulfillment of formal requirements.
- A consistent new system of input tax adjustments formerly taxed as self-supplies and private use is introduced. Rules for mixed use apportionment of input VAT apply only if inputs are used for taxable and exempt supplies without credit.
- Dividends and other outside the scope transactions do not exclude recovery. A new special regime applies to holding companies.
- Grants or donations must no longer be included in the pro rata calculation. Subsidies, however, still have a negative effect on the VAT recovery pro rata.

Reporting and assessment procedure

- The new tax period is the calendar year. Periodic returns are still to be filed for each calendar quarter, but are summarized in an annual VAT declaration.
- New rules on legal effect will be introduced. For the first time, tax periods audited by the authorities become final.
- Taxpayers have a statutory right to request a tax audit or the issuance of a binding tax ruling by the authorities which must be answered within reasonable time.

Penalties

- New penalty provisions are designed to make the tax system simpler and more consistent, e.g., the level of penalty is no longer determined by the

potential lost revenue only and new rules for the voluntary disclosure of errors and correction of returns are introduced.

Administrative guidance

Currently a new regulation is being drafted by order of the Federal Council which will clarify the administrative interpretation and application of the VAT Act 2010. Further guidance materials will be published by the VAT administration, but it is not expected that the existing guidance will be updated before 1 January 2010.

What needs to be done now?

All businesses will need to assess how the new VAT Act affects them.

They are well advised to review transactions and structures that may be affected by the new law, identify the scope of the required changes to systems and processes, and develop an action plan to ensure compliance by 1 January 2010. This review may also identify new tax planning opportunities.

As regards binding tax rulings issued by the authorities or advice received under the current law, their validity under the new law should be verified. Possible concerns and uncertainties should be addressed by requesting additional clearance from the authorities or expert analysis of the relevant changes.

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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