MWST-NEWS VAT SUPPORT NEWSLETTER | HILTPOLD VAT SUPPORT

**Any person, irrespective of legal form, objects and intention to make a profit, who carries on a business and who performs supplies with this business within Swiss territory and, in doing so, generates at least CHF 100,000 turnover in one year from supplies within Swiss territory and abroad that are not VAT exempt, is liable to pay tax.**

# Switzerland is changing VAT liability for foreign companies: factual elimination of the turnover limit as of 1 January 2018

## Starting position

In terms of VAT liability, Swiss law has **until now** only taken into account turnover from Swiss domestic supplies. This also applies to foreign companies. In neighbouring countries, however, foreign companies become liable for tax from the very first euro. Swiss legislators wanted to resolve this distortion of competition through the acquisition tax (passing the tax liability onto the recipient of the supply/reverse charge mechanism). However, this couldn't be enforced in practice. Instead, since **1 January 2018,** global turnover will be the deciding factor for (the exemption from) VAT liability in Switzerland.

## Subjective tax exemption: global turnover is the deciding factor

According to new wording in the legislation, anyone generating less than CHF 100,000 in turnover in one year from supplies within Swiss territory and abroad that are not VAT exempt – in other words exempt without credit – is now exempt from VAT liability. Whether a supply is exempt from VAT or not is assessed under Swiss law.

Thus, from 1 January 2018, every foreign business that makes supplies within Swiss territory is, in principle, subject to tax – provided the company does not prove that it generates less than CHF 100,000 in turnover globally from supplies that are not exempt from tax.

Put simply, Swiss and foreign companies whose annual turnover totals a six-digit CHF figure, will in future only be exempt from VAT if they do not make any supplies at all within Swiss territory or only makes supplies that are exempt from VAT.

**Tax exemption for foreign companies**

In concrete terms, tax exemption for foreign businesses will be regulated differently to that for Swiss companies. Foreign businesses – irrespective of how big their turnover is – will also be exempt from VAT from 1 January 2018 if they make supplies within Swiss territory which fall exclusively under one of the following three categories:

1. Supplies that are exempt from VAT (with credit);
2. Swiss domestic services pursuant to Art. 8 para 1 MWSTG (Swiss VAT Act) ('Catalogue services'); however, no exemption shall be granted to foreign providers of telecommunications or electronic services to persons not registered in the VAT register;
3. Energy supply to persons within Swiss territory who are registered in the VAT register (electricity by cable, gas via the natural gas distribution network and district heating).

**Start of the tax liability**

**Up until now**, the same rules applied for Swiss and foreign companies at the start of the tax liability. From 2018, foreign companies will be subject to different rules as to when they are allowed, or required, to register as taxable persons in Switzerland;

- Businesses without residence in Switzerland **may** only register in the VAT register if they make supplies within Swiss territory.

- Foreign businesses **must** generally register in Switzerland as taxable persons if they make supplies within Swiss territory for the first time and generate an annual six-digit turnover in francs globally from supplies that are not exempt from tax.

Registering does not take place retrospectively at the start of the calendar year; instead, it takes place throughout the year on the date the supply is performed. When determining the date of the supply, the invoice date is primarily taken into account. If registration is supposed to take place earlier, the date the supply was made on can be proven by providing the relevant evidence, such as contracts. The refund procedure remains available for businesses until registration date.

**End of the tax liability**

**Up until now**, the same rules applied for Swiss and foreign businesses at the end of the tax liability. From 2018, new rules apply for foreign businesses deregistering from the VAT register:

- Deregistration can take place at the end of the calendar year in which a supply was made within Swiss territory for the last time. Foreign businesses must deregister at the latest when finalising[1] the last tax period[2] in which they made supplies within Swiss territory.

- Should a taxable person not deregister and it emerges that no further supplies were made within Swiss territory in the subsequent tax period, the person will be removed retrospectively at the end of the calendar year in which the last supply was performed. For foreign businesses that cannot apply the refund procedure in the absence of reciprocal rights, input tax, which has in the interim been declared, can be reclaimed.

**Interim regulation**

Foreign businesses without permanent establishments within Swiss territory must now review whether they are obliged to register for VAT in Switzerland as of 1 January 2018. Provided they made or are still going to make taxable supplies within Swiss territory in the calendar year 2017, their VAT liability in Switzerland begins on 1 January 2018 if, in the calendar year 2017, they generated a turnover of at least CHF 100,000 from supplies in Switzerland or abroad that are not exempt from VAT and it is assumed that they will also make taxable supplies within Swiss territory in the calendar year 2018. If the supplies were not performed throughout the whole of 2017, turnover must be converted to a complete year.

If a business is subject to value-added tax in Switzerland, it must register with the Federal Tax Administration (FTA) on its own initiative. The implementation ordinance relating to these legislative changes is not yet definitive and there are as yet no administrative practice publications. However, we do expect the FTA to grant businesses a deadline of up to 31 January 2018 for registration. It is reasonable for any relevant preparation work to be carried out up until this date (e.g. application for VAT number, EDP changes).

**Features specific to Switzerland: definition of "supply of goods"**

When reviewing VAT liability, it should be noted that the term "supply of goods" has a broader meaning in Swiss VAT legislation than it does in the EU. Not only does supply of goods mean the transfer of economic control over goods, it also includes the execution of work on goods and even the rental and leasing of goods (Art. 3 let. d MWSTG).

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[1] Finalising is the task of reconciling VAT statements with the annual accounts and separately reporting any errors detected within 240 days from the end of the relevant financial year.

[2] The only tax period currently applied is the calendar year (Art. 34 para 2 MWSTG).

**Possible VAT rate reduction as of 1 January 2018**

In conjunction with the 'Altersvorsorge 2020' (pension scheme 2020) reform, there may also be changes in the VAT rates in Switzerland as of 1 January 2018. This reform has to be accepted in a public vote. The vote will take place on 24 September 2017. Up until then, there are two possible scenarios as to what form the VAT rates will take as of 1 January 2018:

- If the reform of the pension scheme 2020 fails, there will be a reduction in the standard rate and special rate on supplies of accommodation (marked in red below) as well as certain net tax rates and flat tax rates[3].
- If the people vote in favour of the pension reform, the status quo applies for VAT rates (marked in green below).

| | **Standard rate** | **Special rate on supplies of accommodation** | **Reduced rate** |
|---|---|---|---|
| **Current VAT rates** | **8.00%** | **3.80%** | **2.50%** |
| **- Discontinuation additional funding disability insurance 31/12/2017** | **-0.40%** | **-0.20%** | **-0.10%** |
| **+ VAT increase FABI (01/01/2018 – 31/12/2030** | **+0.10%** | **+0.10%** | **+0.10%** |
| **Status 01/01/2018 WITHOUT reform of the 'Altersvorsorge 2020'** | **7.70%** | **3.70%** | **2.50%** |
| ***+ (possible) Reform of the 'Altersvorsorge 2020' as of 01/01/2018*** | ***+0.30%*** | ***+0.10%*** | ***0.00%*** |
| **Status 01/01/2018 WITH 'Altersvorsorge 2020' reform** | **8.00%** | **3.80%** | **2.50%** |

Uncertainty over how the Swiss VAT rates will develop also affects foreign businesses who make (or receive) supplies in Switzerland.

[3] Net tax rates and flat tax rates are industry rates that take into account, in terms of a flat rate, the whole input tax included in the purchase of goods, services, equipment and capital goods, as well as general costs. Businesses that use this declaration method, subject to approval, are not required to register input tax amounts, but are also not able to reclaim them.

**Tax representation**

Foreign companies without a business domicile in Switzerland must instruct a tax representative who has residence or business domicile in Switzerland who will represent them when dealing with the Swiss authorities. VAT Support GmbH specialises in providing individualised and expert advice and support to domestic and foreign companies in every aspect of Swiss value-added tax, offering the following services amongst others:

- Establishing whether and from when VAT registration in Switzerland is required and/or possible
- Carrying out VAT registration and acting as a tax representative (tax proxy)
- Preparation of periodic VAT declarations
- Handling of correspondence with FTA
- Acting as a correspondence address (e.g. for Swiss carriers)
- Claiming back Swiss VAT through the refund procedure together with a formal review of purchase invoices

**New mail-order business regulation as of 1 January 2019**

The partial revision of the Swiss value-added tax act has also resulted in changes to the place of supply for small consignments that are exempt from import tax. **If** the (as a general rule) foreign supplier generates an annual turnover from small consignments, for which the import tax is equal to or less than CHF 5, equal to or greater than CHF 100.000, the place of taxation will in future be relocated from abroad to Swiss territory. The supplier will subsequently be subject to Swiss VAT. However, this change will not take effect until 1 January 2019.