

NEWSLETTER

July 30, 2009

NEW VAT LAW TO ENTER INTO FORCE ON 1.1.2010 !!!

On June 10, 2009, the State Counsel has finalized the reform of the VAT Law that has been under discussion for a long time. This first part of the reform, which aims to simplify the VAT mechanism and to reduce the administrative processes, should enter into force on January 1st, 2010, provided that there is no referendum against the new law. The new law can be downloaded [here](#).

The second part of the reform, which should introduce a single VAT rate and suppress many of the exceptions, is not yet finalized and the Federal Chambers will work on the project starting this autumn.

This reform is a complete change of most of the articles of the VAT Law. A new federal ordinance is being currently prepared to detail the application of the new Law. There are numerous changes and we concentrate hereafter on the most important ones.

1. Liability

Currently

According to the current VAT Law (hereafter VATL), one is liable to VAT once his annual turnover exceeded CHF 75'000. There are two exceptions: for non-profit sports organizations and public entities which realize an annual turnover of less than CHF 150'000 and for the other tax payers who realize an annual turnover of less than CHF 250'000 with a net VAT to be paid of less than CHF 4'000 per year. Finally, one can opt to become subject to VAT if he realizes an annual taxable turnover of at least CHF 40'000.

Those rules are sometimes difficult to understand and create a so-called "occult tax" for all the tax payers who have to bear the input tax but who can not claim it back due to an insufficient turnover.

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New VAT Law

From January 1st, 2010, each entrepreneurial activity will be subject to VAT from the start of the activity. If the annual turnover is lower than CHF 100'000, the tax payer can be exempted from the tax liability. This means that the new law grants a real choice to the small business forms whether they want to be subject to VAT or not.

This will considerably simplify the liability rules of the VATL. The current exceptions will be deleted, as well as the possibility to opt for the liability. One only exception will remain, the one for non-profit sports and cultural organizations and public entities if the annual turnover is less than CHF 150'000.

2. Place of supply of services

Currently

The supply of services realized on the Swiss territory is subject to VAT. The question of the place of supply of services (= place where the service is supposed to be realized) is therefore of a great importance. Indeed, if the supply is supposed to have happened abroad (for instance a tax advice to a client living out of Switzerland), then the VAT does not have to be invoiced. There is also no reduction of the input tax recovery as it is not considered as an excluded turnover.

The current rules are difficult to understand, as the art. 14 VATL has to be read from the end to the start. The basic rule of the article is that a supply of services is usually realized where the supplier has its business domicile. This is nevertheless the case only as long as none of the exceptions of art. 14 par. 2 and 3 VATL are fulfilled. One shall therefore start at art. 14 par. 3 TVAL (supply realized where the recipient has its business domicile; limited list of services, such as advice, translation, advertising, etc.) and then, if the service is not listed, analyze whether it is under the restricted list of art. 14 par. 2 VATL (place where the service is rendered for services such as sport representation, lectures, transport or real estate), to finally conclude that the service is realized at the business domicile of the supplier if none of the above exception is fulfilled.

New VAT Law

The project fully modifies the rules regarding the place of supply of services. The general rule will be that the service is supposed to be realized where the recipient has its business domicile. There is a restricted list of exception for mainly supply of services in relation to real estate, sport, lecture, transport, travel agency, etc.

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Those changes are significant as it can be that a supply of services that is currently subject to VAT should be exempted from VAT under the new law and inversely. For all kind of cross-border supply of services, it will be necessary to analyze again under the new law whether it shall be invoiced with or without VAT. The question whether the foreign recipient shall register for Swiss VAT purpose in Switzerland will also need to be analyzed again.

3. Excluded transactions

Currently

Some transactions are excluded from VAT (see restricted list of art. 18 VATL). This means that no VAT has to be invoiced on those transactions, but also that the input tax linked to the supply of those transactions can not be recovered. This create a so-called "occult tax" for all business forms that realize some excluded turnover.

In order to reduce the issue with the occult tax, the VATL allows the tax payers to opt to tax some of the excluded transactions. The possibilities to opt are listed at art. 26 VATL. It is not possible to opt for insurance and financial turnovers. The option for medical and real estate turnover is possible only if the transaction is concluded with another tax payer. The option is then in force for 5 years.

New VAT Law

First, the list of art. 18 VATL has been slightly modified. The main change is for farmers who will realize an excluded (and no more exempted) turnover for the sale of the products of their farm. The other changes relate mainly to a precision of the current practice, notably regarding pension funds, public entities and arbitrage functions.

The possibility to opt for taxation of some of the excluded turnovers will be extended. No option will be allowed for insurance and financial transactions and newly also for bets, lotteries and other gambles transactions. For real estate transactions, it can be opted only if the real estate is used exclusively for private purposes.

The process how to opt will deeply change. It will be up to the tax payer to decide for each transaction whether he wants to opt or not. The option will be realized by simply mentioning clearly the VAT on the invoice. It will therefore be possible to freely decide to submit some transactions to VAT while others are not, and this during the same VAT period. On the other way, this method will seriously complicate the methods to deduct the input tax, as it will be necessary to make a distinction between which input tax is linked to a transaction with VAT and which is not.

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4. Others

Self supply

Self supply with respect to construction work will no more represent a taxable turnover anymore.

Food and beverages

The input tax linked to food and beverages will be fully recoverable (currently at only 50%).

Formal requirements

The Federal tax authority had already made some progress regarding the formal requirements of invoices. With the new law, it will no more be necessary to have a VAT conform invoice, it will be sufficient to demonstrate that the VAT has been paid.

Margin taxation to disappear

For used goods, instead of the current margin taxation, a fictive input VAT deduction will be introduced, while the transaction will be fully subject to VAT. The federal ordinance will detail the application of this method.

Input tax reduction

There will be no more input tax reduction for gifts received (new) and financial recapitalizations (as per Federal Court decisions on the topic).

Possibility to ask for a VAT audit

The tax payer can request a VAT audit from the Federal Tax authority. It shall then do it within the next two years. After the audit, it has 360 days to issue its decision. The federal Council still needs to analyze the legal validity of this process and to determine its entry in force.

Higher penalties

The caps for the penalties in case of a tax avoidance have been seriously increased. The caps are now between CHF 200'000 and CHF 800'000. If the tax saving due to the tax avoidance has been higher than the caps, the penalty can be as much as two times the amount of the realized tax saving.

The new law also introduces the possibility of a self-denunciation to avoid a penal procedure, which does not exist in the current law.

Prescription

There were discussions to lower the prescription deadline to 3 years. Finally the Chambers decided to maintain it to 5 years.

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5. Conclusion

This new law deeply changes the current VATL. If the main principles will remain the same, it will set in written part of the current practice and will simplify a bit the understanding of the Swiss VAT Law. Nevertheless, one should recognize that this new law still holds a lot of open questions, notably regarding formal requirements, input tax deduction and understanding of the new articles. The Federal tax authority will then surely still play a great role in defining how to understand the VAT law with all its brochures and publications, although one of the purposes of the reform was to reduce the role of those publications in the application of the VATL.

Finally, one should regret that this new law did not simplify some of the most complex rules of the Swiss VATL, notably regarding self-supply, value of the transactions and the various methods to recover the input tax.

The second part of the VAT reform (notably tax rate and excluded transactions) will be examined by the federal Chambers since this autumn. This should not be mixed with the vote of Swiss people of September 27, 2009, regarding a temporary increase of the VAT rates to finance the invalidity insurance. Regarding that topic, the Federal Council has already decided that the entry in force – if the increase is accepted – will be postponed to January 1st, 2011, due to the current economic crisis.

For any questions you may have on the subject, Daniel Spitz is at your disposal to discuss it.

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