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Ordinance on Value Added Tax (Value Added Tax Ordinance, VAT Ordinance)

of 27 November 2009 (Status as of 1 January 2022)

The Swiss Federal Council,
based on the Value Added Tax Act of 12 June 2009¹ (VAT Act),
ordains:

Title 1 General Provisions

Art. 1 Swiss territory (Art. 3 let. a VAT Act)

Swiss ocean-going ships do not qualify as territory of the Swiss Confederation for the purposes of Article 3 letter a VAT Act.

Art. 2 Pledge and special terms of sale (Art. 3 let. d VAT Act)

¹ The sale of goods represents a supply of goods even if a reservation of title is recorded.

² The transfer of ownership of goods as security or as a pledge does not represent a supply of goods. If the right under the transfer of ownership as security or under the pledge is enforced, a supply of goods takes place.

³ A sale of goods with simultaneous leaseback to the seller for use (sale and lease-back business) does not qualify as a supply of goods if at the time of the conclusion of the contract a re-transfer is agreed. In this case the service of the lessor does not qualify as making goods available for use, but as a financing service under Article 21 paragraph 2 number 19 letter a VAT Act.

Art. 3 Declaration of subjection on import of goods(Art. 7 para. 3 let. a VAT Act)²¹ ...³

² If the import is made in the supplier's own name based on a declaration of subjection, for serial transactions the prior supplies of goods are deemed to be made abroad and the subsequent supplies on Swiss territory.

³ If the supplier does not intend to import in its own name, it must disclose this on the customer's invoice.⁴

Art. 4⁵ Supply of goods from abroad onto Swiss territory from a warehouse on Swiss territory

(Art. 7 para. 1 VAT Act)

In relation to goods that have been moved from abroad into a warehouse on Swiss territory and are delivered from this warehouse, the place of supply is located abroad if the recipient of the supply and the consideration to be paid are known at the time the goods are moved onto Swiss territory and the goods are released for free circulation at the time of supply.

Art. 4a⁶ Time of change in the place of supply in respect of mail-order supplies

(Art. 7 para. 3 let. b VAT Act)

¹ Where goods supplied from abroad onto Swiss territory are exempt from import tax because of the negligible amount of tax due, the place of supply is deemed to be abroad until the end of the month in which the supplier reaches the turnover threshold of 100 000 francs from such supplies.

² From the following month the place of supply for all supplies made by the supplier from abroad onto Swiss territory is deemed to be on Swiss territory. From this time, the supplier must import the goods in its own name.

³ The place of supply remains on Swiss territory until the end of any calendar year in which the supplier fails to reach the turnover threshold of 100 000 francs from supplies in accordance with paragraph 1.

⁴ If the supplier fails to reach the turnover threshold but does not notify the FTA of this fact in writing, the supplier is deemed to be subject to the VAT Act in accordance with Article 7 paragraph 3 letter a.

² Amended by No I of the O of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

³ Repealed by No I of the O of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS **2017** 6307).

⁴ Amended by No I of the O of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

⁵ Amended by No I of the O of 30 Oct. 2013, in force since 1 Jan. 2014 (AS **2013** 3839).

⁶ Inserted by No I of the O of 15 Aug. 2018, in force since 1 Jan. 2019 (AS **2018** 3143).

Art. 5 Permanent establishment

(Art. 7 paras. 2, 8 and 10 para. 3 VAT Act)

¹ A permanent establishment is a fixed place of business through which the activity of the business is wholly or partly carried on.

² In particular the following qualify as permanent establishments:

- a. branches;
- b. factories;
- c. workshops;
- d. points of purchase or sale;
- e. permanent representations;
- f. mines and other sites for the extraction of natural resources;
- g. construction and assembly sites lasting for at least twelve months;
- h. property used for agricultural, grazing and forestry purposes.

³ In particular the following are not permanent establishments:

- a. pure distribution warehouses;
- b. means of transport that are employed for their original purpose;
- c. information, representation and advertising offices of businesses that are authorised only to perform corresponding support activities.

Art. 5a⁷ Shipping traffic on Lake Constance, the Untersee and the Rhine to the Swiss border below Basel

(Art. 8 para. 2 let. c VAT Act)

Passenger transport by ship on Lake Constance, the Untersee and the Rhine between the Untersee and the Swiss border below Basel is deemed to be a supply made abroad.

Art. 6 Transport services

(Art. 9 VAT Act)

A transport service is also given if a means of transport with operating staff is made available for transport purposes.

Art. 6a⁸ Place of supply for restaurant, cultural and similar supplies while transporting passengers in border areas

(Art. 9 VAT Act)

¹ If supplies under Article 8 paragraph 2 letters c and d VAT Act are made while transporting passengers in border areas that are partly on Swiss territory and partly abroad or are on Lake Constance, and if the place of supply cannot be clearly deter-

⁷ Inserted by No I of the O of 12 Oct. 2011, in force since 1 Jan. 2012 (AS **2011** 4739).

⁸ Inserted by No I of the O of 12 Oct. 2011, in force since 1 Jan. 2012 (AS **2011** 4739).

mined as being on Swiss territory or abroad, the supply is deemed to be made at the place where the person making the supply has its place of business, or a permanent establishment or, in the absence of such a place of business or such a permanent establishment, its domicile or the place from which it works.

² If the taxable person proves that a supply under paragraph 1 was made abroad, Article 8 paragraph 2 letters c and d VAT Act applies.

Title 2 Domestic Tax

Chapter 1 Taxable Person

Section 1 Business Activity and Turnover Threshold

Art. 7 Permanent establishments of foreign businesses
(Art. 10 VAT Act)

All permanent establishments on Swiss territory of a business domiciled abroad qualify together as a single independent taxable person.

Art. 8⁹

Art. 9¹⁰ Exemption and termination of the exemption from tax liability for Swiss businesses
(Art. 10 para. 2 let. a and c and 14 para. 1 let. a and 3 VAT Act)

¹ Businesses with place of business, domicile or permanent establishment on Swiss territory that commence their activity or extend their activity by taking over a business or opening a new business division are exempt from tax liability if at the time, based on the circumstances, it must be assumed that the turnover threshold referred to in Article 10 paragraph 2 letter a or c VAT Act for supplies made on Swiss territory and abroad will not be achieved in the following twelve months. If it is not yet possible at the time to assess whether the turnover threshold will be achieved, a re-assessment must be carried out within three months at the latest.

² Where it must be assumed based on the re-assessment that the turnover threshold will be achieved, the exemption from tax liability ends either:

- a. on the date of commencement or expansion of the activity; or
- b. on the date of the re-assessment, but at the latest at the beginning of the fourth month.

³ For businesses previously exempt from tax liability, the exemption from tax liability ends with the business year in which the relevant turnover threshold is achieved. If the activity giving rise to tax liability was not carried on for a full year, the turnover must be extrapolated to a full year.

⁹ Repealed by No I of the O of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS **2017** 6307).

¹⁰ Amended by No I of the O of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

Art. 9a¹¹ Exemption and termination of the exemption from tax liability for foreign businesses

(Art. 10 para. 2 let. a and c and 14 para. 1 let. b and 3 VAT Act)

¹ Businesses that do not have a place of business, domicile or permanent establishment on Swiss territory that make a supply for the first time on Swiss territory are exempt from tax liability if at the time, based on the circumstances, it must be assumed that the turnover threshold referred to in Article 10 paragraph 2 letter a or c VAT Act for supplies made on Swiss territory and abroad not will be achieved within the following twelve months. If it is not yet possible at the time to assess whether the turnover threshold will be achieved, a re-assessment must be carried out within three months at the latest.

² Where it must be assumed based on the re-assessment that the turnover threshold will be achieved, the exemption from tax liability ends either:

- a. when a supply is made for the first time on Swiss territory; or
- b. on the date of the re-assessment, but at the latest at the beginning of the fourth month.

³ For businesses previously exempt from tax liability, the exemption from tax liability ends with the business year in which the relevant turnover threshold is achieved. If the activity giving rise to tax liability was not carried on for a full year, the turnover must be extrapolated to a full year.

Art. 10 Telecommunication and electronic services

(Art. 10 para. 2 let. b VAT Act)

¹ Telecommunication and electronic services are in particular:

- a. radio and television services;
- b. the provision of access authorisation, in particular to fixed line and mobile networks, to satellite communication and to other information networks;
- c. the provision and guarantee of data transfer capacity;
- d. the provision of websites, webhosting, and the tele-servicing of programs and equipment;
- e. the electronic provision of software and its updating;
- f. the electronic provision of images, texts and information and the provision of databases;
- g.¹² the electronic provision of music, films and games, including gambling.

² Telecommunication or electronic services do not include in particular:

- a. the mere communication between the persons providing and receiving the service by wire, wireless, optical or other electro-magnetic media;

¹¹ Inserted by No I of the O of 12 Nov. 2014 (AS **2014** 3847). Amended by No I of the O of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

¹² Amended by Annex 2 No II 2 of the Gambling Ordinance of 7 Nov. 2018, in force since 1 Jan. 2019 (AS **2018** 5155).