Is your business obliged to register for value added tax in Switzerland?

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Key takeaways

Even companies that do not have their registered office, a permanent establishment or any other local presence in Switzerland may be obliged to register for value added tax (VAT) in Switzerland.

The distinction between B2C and B2B services, which is commonplace in a number of other countries, is not currently applicable under Swiss VAT law. Plans are being made to change this approach.

In situations involving cross-border transactions, any permanent establishment is deemed to be a taxable entity that is independent of the head office for Swiss VAT purposes. Both a permanent establishment and a head office may be obliged to register for VAT in Switzerland in its own right, each potentially alongside the other.

When assessing whether a foreign business is obliged to register for VAT in Switzerland, a key consideration may be whether a given supply is classified for VAT purposes as a supply of goods or a supply of services. The concept of "supply of goods" is framed more broadly in Switzerland than in a number of other countries, including in particular the EU.

There are plans to amend the Swiss Value Added Tax Act to the effect that operators of (national and foreign) mail order platforms must declare and tax all supplies of goods made on the basis of orders placed through the platform.

Are non-Swiss businesses obliged to register for VAT in Switzerland?

The basic rule is as follows: A foreign business is obliged to register for VAT in Switzerland if the business has global revenues of at least CHF 100,000 in any given year and provides services that are deemed to have been provided in Switzerland for VAT purposes (Switzerland as the "place of supply").

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For the purposes of determining whether the place of supply is situated in Switzerland, in contrast to a number of other countries Switzerland has until now only distinguished between B2C and B2B services under exceptional circumstances. Specifically, a foreign business may be obliged to register for VAT in Switzerland even if the business effects supplies exclusively to customers in Switzerland that have registered for VAT. This is relevant in particular for supplies that are classified as supplies of goods for Swiss VAT purposes (in contrast to supplies of services).

How does Switzerland treat permanent establishments as against head offices?

In contrast to the position under VAT law in a number of other countries, for the purposes of Swiss VAT law a permanent establishment and a head office involved in cross-border transactions each qualify as separate taxable entitles (so-called "dual entity principle"). This means that a permanent establishment and a head office may each be obliged to register for VAT in Switzerland in its own right, and thus potentially alongside the other.

Moreover, supply relationships falling within the scope of VAT may even exist between a permanent establishment and a head office, which may for instance trigger liability for Swiss reverse charge VAT.

Are there any exceptions from the obligation to register for VAT in Switzerland?

If a foreign business provides exclusively certain types of supplies in Switzerland, that foreign business is not under any obligation to register for VAT in Switzerland. However, if any other supplies are also provided for which Switzerland is the place of supply, the business must then declare all of its taxable supplies in Switzerland for VAT purposes.

An exception of this type from Swiss VAT for foreign businesses exists in particular for supplies that are "exempt" from VAT (whether with or without input VAT credit), as well as for services (in contrast to the supply of goods) for which the Swiss VAT Act provides that the place of supply is situated at the location of the recipient of the supply.

However, where non-Swiss businesses provide particular services to customers that are not registered for VAT (e.g. private end consumers), including in particular telecommunications or qualifying electronic services, these businesses are not exempt from the duty to register for VAT in Switzerland.

Therefore, a key issue when determining whether an exemption from the duty to register for VAT in Switzerland applies may be whether, for Swiss VAT purposes, a supply is classified as a supply of goods or a supply of services.

The distinction between "supply of goods" and "supply of services" under Swiss VAT law may differ from the respective classification under the VAT law of other countries. For example, according to Swiss VAT law the lease of physical items and the conduct of work on goods (inspection, adjustments, maintenance, repair etc.) as well as installation on site qualify as supplies of goods and not as services. Thus, the provision of a software licence qualifies as a service, whereas the installation of software on site with the customer qualifies as a supply of goods.

Are you "supplying" goods or a service?

For the purposes of Swiss VAT law, the following qualify as the supply of goods:

- Establishing the ability to dispose of goods in one's own name;
- Delivering a physical item on which work has been carried out, even if this physical item is not changed as a result but is rather only examined, calibrated or adjusted, has its functioning checked or is processed in any other way;
- making a physical item available for operation or usage (e.g. hiring or leasing).

For the purposes of these regulations, "physical items" include both movable and non-movable items as well as electricity, gas, heating, cooling and similar items.

For the purposes of Swiss VAT law, a service is classified as any performance not involving the supply of goods. This also includes the grant of rights, such as e.g. licences.

Is the place of supply situated in Switzerland?

For Swiss VAT purposes, the place of supply of goods is deemed to be in Switzerland ("Switzerland as the place of supply") if the relevant item is located in Switzerland at the time when the economic power to dispose of the object passes to the buyer or if the object is located in Switzerland at the time it is processed or made available for usage.

If an item is carried or shipped, for Swiss VAT purposes such a supply including carriage / shipment is deemed to have occurred at the place from which the carriage or shipment started. This means that, if a physical item is carried / shipped to Switzerland from abroad, this supply is deemed to have been made from outside Switzerland, with the result that no obligation to register for VAT in Switzerland arises in respect of this shipment considered on its own.

There are some differences in the applicable rules in the event that goods are supplied from abroad to Switzerland where they include assembly or installation in Switzerland.

In addition, Switzerland applies special rules for cross-border mail order trading. These rules apply where a business earns at least CHF 100,000 in revenues each year from low-value shipments (amount of import tax is CHF 5 or lower) that are carried or shipped to Switzerland from abroad. In such cases, these supplies are deemed to have been made in Switzerland and the foreign business is obliged to register for VAT in Switzerland. In such cases, it is irrelevant whether or not these low-value shipments are made to customers that are registered for VAT.

Where a service is not a service of a particular type for which Swiss VAT law provides for special rules governing the place of supply, services are deemed to have been provided in Switzerland for VAT purposes if the recipient of the service is situated in Switzerland.

What procedural rules have to be complied with?

Businesses are obliged to register for VAT with the Swiss VAT authorities on their own initiative within 30 days of the time they become obliged to register for VAT.

As a general rule, VAT returns must be submitted quarterly in Switzerland. Under the terms of the applicable Swiss legislation, business documentation that is relevant in this regard must be retained (for at least 10 years) and must be made available to the Swiss tax authorities for examination in Switzerland. The Swiss VAT authorities may also examine any turnover achieved by the business with the underlying place of supply outside Switzerland, specifically for the purpose of calculating the input tax pro rata.

Foreign businesses that are obliged to register for VAT in Switzerland must appoint a representative for the purpose of compliance with their procedural obligations under Swiss VAT law. This representative must be based in Switzerland, although does not require in addition any specific licence or other special qualification. For example, it is possible to appoint another Swiss group entity as the representative.

Foreign businesses that are obliged to register for VAT in Switzerland must as a general rule lodge collateral at the time they are included in the Swiss VAT register (deposit with the Swiss VAT authorities or guarantee issued by a bank based in Switzerland). The guarantee or deposit generally amounts to 3% of taxable domestic supplies (without exports), subject to a minimum of CHF 2,000 and a maximum of CHF 250,000.

What changes are planned?

Plans are being made in Switzerland to partially reform the Swiss Value Added Tax Act, with the changes anticipated to take effect no earlier than 2023.

Reverse charge mechanism

It is planned, amongst other things, that future supplies will be subject to the reverse charge mechanism more often where the recipient of the supply is situated in Switzerland. A foreign business will no longer be obliged to register for VAT in Switzerland in respect of these services.

However, where the foreign business is obliged to register for VAT in Switzerland (on whatever grounds), the business will still have to declare VAT itself as the supplier in respect of all supplies for which Switzerland is the place of supply.

Foreign businesses that are currently registered for VAT in Switzerland should consider whether they will be able to de-register following the entry into force of the amended Value Added Tax Act, and whether they wish to do so.

Taxation of online platforms

The taxation of platforms is a topical issue in a great many countries. For example, the EU has adopted regulations providing that online marketplaces may be obliged to pay tax in respect of

supplies made by businesses that do not have a registered office or permanent establishment in the EU.

Following the amendment of the Swiss Value Added Tax Act it is now envisaged that (Swiss or foreign) operators of online platforms will have to declare and tax all supplies of goods sold through the platform. As a result, the platform itself will become liable to pay VAT in Switzerland, and not the individual sellers. However, this rule is only envisaged for qualifying supplies of goods, and not for services such as e.g. accommodation services.

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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