

Partial revision of the Value Added Tax Act

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Key Take-aways

- 1.** The partial revision of the Value Added Tax Act is intended to keep pace with the increasing digitalization and globalization of the economy.
- 2.** One of the most important changes is the introduction of platform taxation, which aims to ensure uniform taxation of goods sold via electronic platforms.
- 3.** The introduction of a legal fiction, whereby a payment by the public sector is considered a subsidy if explicitly labelled as such, is intended to provide clarity.

1 Introduction

The partially revised VAT Act and the partially revised VAT Ordinance entered into force on 1 January 2025. The **core element** of the partial revision is the **introduction of platform taxation**. The partial revision also introduces **simplifications** for small and medium-sized enterprises (SMEs), as well as **new exemptions and reductions**, and **enhanced measures to combat fraud**.

2 Platform taxation

2.1. Key aspects

With the **partial revision that came into force on 1 January 2019**, foreign mail-order companies became subject to VAT as soon as they generated an annual revenue of more than CHF 100,000 with so-called small consignments (deliveries of goods with an import tax amount of less than CHF 5). As a result of this adjustment, many foreign mail-order companies were entered into the Swiss VAT register and are now subject to VAT. However, **the number of shipments from abroad that are not subject to VAT continued to rise**, indicating that the partial revision did not achieve the desired effect. Possible reasons for this include foreign distance sellers not fully complying with their VAT obligations, the understatement of the value of goods, and orders being placed via electronic platforms that are not involved in the sales process for VAT purposes.

These **loopholes** will be **addressed with the introduction of platform taxation**. An “electronic platform” is an electronic interface that enables direct online interaction between several persons for the purpose of providing a supply or service. For VAT purposes, supplies made via such electronic platforms are deemed to involve a “three-way relationship” between the supplier, the platform operator and the purchaser. In relation to the buyer, the supplier is considered to be the person who facilitates the supply using the electronic platform by bringing together sellers and buyers to conclude a contract on the platform.

Online retailers should review their business model

Due to the **legally fictitious three-party relationship**, a sale via an electronic platform results in a **chain transaction** for VAT purposes: the **first supply** is made by the seller to the platform operator, the **second supply** is made by the platform operator to the buyer. The second supply can only be allocated for VAT purposes if (i) it is a sale of goods, (ii) the buyer and seller are brought

together on the platform by the platform operator and (iii) the sale is concluded via the platform. The second supply attributed to the platform operator will then give rise to VAT liability under the usual conditions. This presupposes that the platform operator has its registered office or permanent establishment in Switzerland or that it provides services in Switzerland, and that the platform operator generates revenue of more than CHF 100,000 within one year, both in Switzerland and abroad, from services that are not exempt from VAT.

Risk of import bans, confiscation and destruction without compensation

Contrary to the fictitious three-party relationship for VAT purposes, the goods purchased via the platform are in reality delivered directly from the seller to the buyer. The **practical consequences** of this **should not be underestimated**. For example, the seller is obliged to issue an invoice, but the VAT invoice must be issued via the electronic platform. In some cases, the **seller** will no longer be allowed to display and invoice VAT, as the electronic platform will be responsible for invoicing. However, the seller is not completely relieved of their VAT obligations, as they remain **subsidiarily liable** for the amounts to be settled via the electronic platform. On the other hand, buyers run the risk of **import bans, confiscation and destruction** of goods ordered via electronic platforms, **without compensation**. Finally, the legally fictitious three-party relationship in the context of platform taxation only applies if the involvement of the platform is sufficiently intensive. Accordingly, **certain cases** are **excluded from platform taxation** where the platform is not actively involved in the ordering process or does not generate any direct revenue from the delivery transaction. This applies in particular to cases where the platform merely handles payment processing, provides advertising space, or redirects buyers to other platforms.

In addition, the FTA is empowered **to take administrative measures** against mail-order companies and online platforms that wrongly fail to register as taxable persons or fail to meet their billing and payment obligations, whereby the FTA must first **impose an import ban on the supplies** of the taxable person in question.

Furthermore, online platforms will be required to **provide information about companies** that offer goods or services on their platforms. This obligation is intended to create **more transparency** and increase the **accountability of platforms**.

2.2. Other aspects

Beyond that, the following issues need to be considered in the context of platform taxation:

- Platform taxation applies not only to cross-border deliveries of goods, but **also to domestic deliveries**. Deliveries of goods via a platform are subject to this taxation, regardless of whether they are imported into the country or delivered within Switzerland.
- No distinction is made between domestic and foreign sellers, or between taxable and non-taxable sellers. The only decisive factor is whether the sale is made via an electronic platform. This means that platform taxation **also applies to consumer-to-consumer sales**, making private sales taxable.
- Platform taxation **only applies to supplies of goods** where the recipient is authorized to dispose of an item economically in their own name. **Rental transactions, supplies under contracts for work and labour, and all services are excluded.**

Possibility of annual invoicing represents simplification

3 Further changes

3.1. Tax relief and exemptions

Monthly hygiene products are now subject to the **reduced** VAT rate.

The following services are now also **exempt** from VAT:

- **Travel services:** Travel services resold by travel agencies and related travel agency services are exempt. Accordingly, only domestic travel agencies are directly affected by this change, as foreign travel agencies have no place of establishment in the country.
- **Cultural events:** Fees for active participation in cultural events are now exempt from VAT.
- **Medical treatment:** Coordinated care services related to medical treatment.
- **Infrastructure for attending physicians:** The provision of infrastructure in outpatient clinics and day clinics.
- **Spitex services:** Nursing and domestic services provided by private Spitex.
- **Provision of personnel:** Provision of personnel by all non-profit organizations.
- **Investment Groups of Investment Foundations:** Offering and managing investment groups within the framework of occupational pension schemes (OP).

3.2. Subsidies

Subsidies are financial resources granted **without remuneration** and must therefore be distinguished from taxable supply relationships. Such a taxable supply relationship presupposes that a service is provided in return for payment and that there is an internal economic link between the service and the payment. **In the case of subsidies, either the service or the economic link is absent.** In most cases, it is clear who provides the funds and who receives them. Difficulties may arise when the recipient of the benefit cannot be clearly identified.

New tax exemptions and reduction are to be welcomed

The partial revision introduces a **fiction** whereby a **payment by the public sector is considered a subsidy or contribution under public law** and, therefore, does not constitute a service relationship if the **payment is explicitly labelled as such**. This means that such payments are outside the scope of VAT as there is no exchange of services and therefore a so-called non-remuneration. However, it is clarified that **the taxable procurement of goods and services for the public sector's own needs remains subject to the service relationship and is therefore taxable.**

3.3. Fight against fraud

3.3.1 Serial bankruptcies

The FTA is now empowered to require security from members of the management of legal entities if they have simultaneously served on the management bodies of at least two other legal entities that have gone bankrupt within a short period of time. This security is used to cover the company's tax debts and to act against companies that repeatedly go bankrupt.

3.3.2 Transfer of emission rights, certificates, and similar environmental attestations

The transfer of emission rights, certificates, and similar environmental attestations was previously susceptible to fraud because, when purchasing from foreign sellers who were not subject to VAT, domestic buyers had to account for VAT by means of purchase tax. To prevent such abuses, a general purchase tax obligation was introduced. This also applies if the purchase is made from a domestic seller. This is intended to ensure proper taxation and prevent the use of these rights and certificates for illegal or unauthorized purposes.

3.4. Simplification of value added tax

Small and medium-sized enterprises now have the option of **paying** their VAT **annually**, with the **obligation to pay in instalments**. This option offers significant advantages, particularly in terms of **reducing administrative burdens** and **improving liquidity**. Another advantage is that it may **reduce** the number of **late payments**, as businesses are no longer burdened with a large one-off payment. **In the case of provisional tax payments, interest on arrears is payable without prior notice** if the payment is not made, is only partially made or is made late. This applies to all types of provisional tax amounts, regardless of whether they are reported in annual, monthly, quarterly, semi-annual or other statements.

Foreign companies that become taxable in Switzerland must appoint a representative to act as a contact person for the FTA. The FTA may now exempt the taxpayer **from this obligation under certain conditions**.

4 Conclusion

Companies that are active in **online trading** should carefully **examine** the **impact of platform taxation** on their business model and **take appropriate measures if necessary**. Unfortunately, not all detailed questions are likely to have been clarified at this time, especially as the consultation for the relevant VAT industry information on electronic platforms ran until 10 December 2024. As a result, ongoing adjustments are to be expected.

Apart from this, the **simplifications introduced** with the partial revision, particularly the option of annual statements, as well as the **new tax exemptions** and new tax reduction, are very **welcome** and it is recommended that these be utilized wherever possible.



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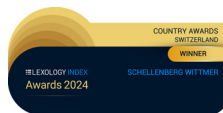
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