

# Tax Alert

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## Changes to practice as of January 1, 2008 Swiss Federal Tax Administration issues revised publication for VAT

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The Swiss Federal Tax Administration (SFTA) issued the first part of the revised publication for VAT on January 28 under the link <http://www.estv.admin.ch/d/mwst/dokumentation/publikationen/index.htm>. The SFTA has undertaken reappraisals in several areas. The changes to practice resulting thereof come into effect as of January 1, 2008. In the following, the most important changes are addressed shortly.

### Real estate

At the transfer of real estate there is now the possibility to opt for either of the following alternatives:

- Transfer as VAT exempt turnover according to art. 18 para. 20 VAT Law. This type of transfer allows the buyer to acquire real estate without VAT history, however, it can lead to taxation on self-supply for the person transferring.
- Option for taxation of the sale (sales price without value of the land) according to art. 26 VAT Law. A sale with option is now possible regardless whether the real estate has been used for taxable purposes prior to the transfer. Precondition is however that the seller of the real estate was already registered for Swiss VAT purposes before the sale and that the acquirer at least partially uses the real estate for taxable purposes. The sale of real estate with option can be unfavorable for the acquirer since he is only allowed to

deduct the VAT levied on the sales price to the extent that he uses the acquired real estate for taxable purposes.

- Application of the notification procedure on the transfer of one or more real estate properties, regardless whether the real estate has been used for taxable purposes prior to the transfer and whether the real estate represents an organizational unit (“Teilvermögen”). Thus, it is now possible to transfer a single real estate property under the application of the notification procedure. Nevertheless, it is a precondition that the acquirer at least partially uses the real estate for a taxable purpose. The acquirer steps into the position of the seller with respect to the former use of the real estate. Consequently he does not have to account for tax on self-supply on the part used for non-taxable purposes prior to the transfer, provided that the former use can be coherently substantiated. It is in this proof where most probably lies the crux of this alternative.

### VAT-Grouping

A permanent establishment of a foreign company located in Switzerland can now be included in a VAT-group, irrespective of its registration in the Swiss Commercial Registry. Furthermore, group taxation is now also permitted if the decisive minimum turnover of CHF 40,000 is not reached with third parties but between the members of the

VAT group. Fines of the VAT-group are not subject to joint liability.

### Organization of events

If an event organizer (“Organisator”) acts as direct representative of the promoter of the event (“Veranstalter”), the place of supply of the organizing service is now deemed to be at the domicile of the recipient of services (art. 14 para. 3 VAT Law). According to the earlier practice, the place of supply was deemed to be at the domicile of the service provider (art 14 para. 1 VAT Law). The new place of service needs to be considered particularly when invoicing recipients established abroad: As of January 1, 2008, recipients established abroad will no longer get Swiss VAT charged on such services refunded. If the conditions of a direct representation are not fulfilled, the place of supply needs to be determined for each supply separately.

### Congresses, seminars, etc.

In case of lump-sum invoicing of training services in combination with catering services (with VAT), the supplier may now fully deduct input tax on the catering services acquired (before, exclusion of input tax deduction of 50%). The recipient may demand the disclosure of the value of the catering services, so that he can accurately make the exclusion of input tax deduction of 50%.

### Leasing of motor vehicles

Excess value, which is credited and dis-

bursed to the lessee by the retailer of motor vehicles upon expiration of the leasing, are newly regarded as part of the motor vehicle purchase price and may be accounted for in the application of the margin taxation.

### Appraisal

The SFTA has decided to issue the revised publications in two portions. With the now published portion largely undisputed changes entered into force. However, the publication of the second portion can not be expected within the next few weeks, which is rather unsatisfactory.

The aforementioned **changes to practice** do **not apply retroactively**. It needs however to be considered that the revised publications also include **practice specifications**, which might not be known in detail by all tax payers. These practice specifications have **retroactive effect**.

Especially the changes to practice in the area of real estate are of significant importance. The introduced changes open new possibilities in the field of real estate transactions. However, they also bear new risks, which need to be determined thoroughly in each case. ■

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