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

of 27 November 2009 (Status as of 1 January 2016)

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 leaseback 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. 1 VAT Act)

¹ On the supply of goods from abroad into Swiss territory, the place of supply is deemed to lie on Swiss territory if at the date of import the supplier possesses an approval from the Federal Tax Administration (FTA) to undertake the import in his own name (declaration of subjection).

² If the import is made in his 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 Paragraphs 1 and 2 do not apply if the supplier who possesses a declaration of subjection refrains from making the import in his own name. The supplier must disclose this waiver on the customer's invoice.

Art. 4² 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 lies 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. 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;

² Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

- 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. 5a³ Shipping traffic on Lake Constance, the Untersee and the Rhine to the Swiss border below Basel
(Art. 8 para. 2 let. e 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. 6a⁴ 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 within Switzerland and partly abroad or are on Lake Constance, and if the place of supply cannot be clearly determined as being within Switzerland or abroad, the supply is deemed to be made at the place where the person making the supply has his place of business, or a permanent establishment or, in the absence of such a place of business or such a permanent establishment, his domicile or the place from which he 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.

³ Inserted by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

⁴ Inserted by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

Art. 8 Tax liability

(Art. 10 para. 1 and 11 VAT Act)

¹ A person may only be liable for the tax if he carries on a business and:

- a. makes supplies on Swiss territory; or
- b. if he has on Swiss territory a place of business or permanent establishment, or in the absence of such a place of business or such a permanent establishment, his domicile or the place from which he works.

² Supplies on Swiss territory include supplies based on a declaration of subjection under Article 3.

Art. 9 Purchase, holding and sale of interests

(Art. 10 para. 1 VAT Act)

The purchase, holding and sale of interests within the meaning of Article 29 paragraphs 2 and 3 VAT Act constitute a business activity within the meaning of Article 10 paragraph 1 VAT Act.

Art. 9a⁵ Supplies subject to the acquisition tax

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

Only services are deemed to be supplies within the meaning of Article 10 paragraph 2 letter b VAT Act.

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. the electronic provision of music, films and games, including games of chance and lotteries.

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;

⁵ Inserted by No I of the Ordinance of 12 Nov. 2014, in force since 1 Jan. 2015 (AS 2014 3847).

- b. educational services within the meaning of Article 21 paragraph 2 number 11 VAT Act in interactive form;
- c. the mere lending for use of precisely designated equipment or equipment parts for the sole use of the lessee for the transmittal of data.

Art. 11 Commencement of tax liability and termination of the exemption from tax liability
(Art. 14 para. 3 VAT Act)

¹ For businesses previously exempt from tax liability the exemption from tax liability ends with the business year in which the relevant turnover threshold was exceeded. If the activity giving rise to tax liability was not carried on for the whole year, the turnover must be extrapolated to a full year.

² For businesses that commence their activity or extend their activity by taking over a business or opening a new business division, the exemption from tax liability ends with the commencement or extension of this activity, if at the time based on the circumstances it must be assumed that the relevant turnover threshold will be exceeded within the following twelve months.

³ If at the time of the commencement or extension of the activity it cannot yet be assessed whether the turnover threshold will be exceeded, at the latest after three months a re-assessment must be undertaken. If based on this assessment it must be assumed that the turnover threshold will be exceeded, the business may opt to commence the tax liability or end the exemption from tax liability either retroactively on the date of commencement or extension of this activity or on the date of the re-assessment, but at the latest at the beginning of the fourth month.

Section 2 Public Authorities

Art. 12 Taxable person
(Art. 12 para. 1 VAT Act)

¹ The sub-division of a public authority into agencies follows the classification in the financial accounts, provided this corresponds with the organisational and functional structure.

² Other public law institutions covered by Article 12 paragraph 1 VAT Act are:

- a. domestic and foreign public corporations such as special-purpose associations;
- b. public law institutions with their own legal personality;
- c. public law foundations with their own legal personality;
- d. simple partnerships of public authorities.

³ For purposes of cross-border collaboration, foreign public authorities may also be included in special-purpose associations and simple partnerships.

⁴ An institution within the meaning of paragraph 2 is a taxable person as a whole.

Art. 13 Educational and research cooperation

(Art. 12 para. 1 VAT Act)

¹ Supplies between educational and research institutions that are partners cooperating in education and research are exempt without credit from the tax, provided they take place in the context of the cooperation, regardless of whether the educational and research cooperation is a taxable person for VAT purposes.

² Educational and research institutions are:

- a. higher education institutions supported by the Confederation and cantons under Article 63a of the Federal Constitution⁶ in accordance with a legal basis;
- b. non-profit organisations under Article 3 letter j VAT Act and public authorities under Article 12 VAT Act;
- c. public hospitals, irrespective of their legal form.

³ Private sector businesses do not qualify as educational and research institutions.

Art. 14 Business supplies of a public authority

(Art. 12 para. 4 VAT Act)

The following supplies in particular of public authorities are of a business character and therefore taxable:⁷

1. services in the field of radio and television, telecommunication services and electronic services;
2. supplies of water, gas, electricity, thermal energy, ethanol, denaturing agents and similar goods;
3. transport of goods and people;
4. services in harbours and airports;
5. supplies of new finished goods for sale;
6. supplies of agricultural products by agricultural intervention agencies of public authorities;
7. organising fairs and exhibitions with a commercial character;
8. operating sports facilities, such as public baths and skating rinks;
9. warehousing;
10. activities of commercial advertising offices;
11. activities of travel agents;
12. supplies by factory canteens, staff restaurants, sales offices and similar establishments;
13. activities of public notaries;

⁶ SR 101

⁷ Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).

14. activities of surveying offices;
15. activities in the field of waste disposal;
16. activities financed by prepaid disposal fees based on Article 32a^{bis} of the Environmental Protection Act of 7 October 1983⁸ (EPA);
17. activities in the course of the construction of traffic infrastructure;
18. exhaust gas inspections;
19. advertising services.

Section 3 Group Taxation

Art. 15 Common management
(Art. 13 VAT Act)

There is common management if the behaviour of a legal entity is controlled by the majority of the votes, by contract or by other means.

Art. 16 Group members
(Art. 13 VAT Act)

¹ Unincorporated entities without legal capacity are equivalent to legal entities for the purpose of Article 13 VAT Act.

² Insurance agents may be members of a group.

³ ...⁹

Art. 17 Formation of a group
(Art. 13 VAT Act)

¹ The members of the VAT group may be freely determined from among those entitled to participate in the group taxation.

² The formation of several sub-groups is permissible.

Art. 18 Authorisation of group taxation
(Art. 13 and 67 para. 2 VAT Act)

¹ On application, the FTA shall authorise group taxation, provided the relevant conditions are met.

² The application must enclose written declarations by each group member, in which they declare their consent to group taxation and its effects and to joint representation by the group member or person designated in the application.

⁸ SR 814.01

⁹ Repealed by No I of the Ordinance of 12 Nov. 2014, with effect from 1 Jan. 2015 (AS 2014 3847).

³ The application must be submitted by the group representative. The group representative may be:

- a. a member of the VAT group domiciled in Switzerland; or
- b. a person who is not a member but who has his domicile or a place of business in Switzerland.

Art. 19 Changes in the group representation

(Art. 13 VAT Act)

¹ Resignation as representative of a VAT group is possible only at the end of a tax period. Notice of the resignation must be given to the FTA in writing at least one month in advance.

² If the former group representative resigns and written notice of a new group representative is not given to the FTA one month before the end of the tax period, the FTA may after prior warning designate one of the group members as the group representative.

³ The group members may jointly withdraw the mandate from the group representative provided that at the same time they designate a new group representative. Paragraph 1 applies by analogy.

Art. 20 Changes in the membership of the group

(Art. 13 VAT Act)

¹ If a member no longer fulfils the requirements for participating in the group taxation, the group representative must notify the FTA in writing.

² On application, the legal entity may join an existing group or a member can leave a group. The FTA authorises the entry or withdrawal for the beginning of the following or the end of the current tax period.

³ If a legal entity, for whom the requirements for participation in the group taxation were not formerly given, now fulfils the requirements, admission to an existing VAT group can also be applied for during the current tax period, provided the relevant application is submitted to the FTA in writing within 30 days of publication of the applicable change in the Commercial Register or after the requirements are met.

Art. 21 Administrative and accounting requirements

(Art. 13 VAT Act)

¹ The members must close their accounts on the same balance sheet date; this does not apply to holding companies if for accounting reasons they have a different balance sheet date.

² Every member must prepare an internal tax return, which must be consolidated in the VAT group's return.

Art. 22 Joint and several liability for group taxation

(Art. 15 para. 1 let. c VAT Act)

¹ The joint and several liability of a member of a VAT group extends to all tax, interest and cost claims that arise during its membership, with the exception of fines.

² If legal enforcement has been initiated against a group member, additional tax has been claimed by an assessment notice from the group representative or if an audit has been announced, a group member may not elude joint and several liability by withdrawing from the group.

Section 4 Liability on the Assignment of Claims**Art. 23** Amount of the assignment

(Art. 15 para. 4 VAT Act)

When part of a claim to a consideration is assigned, the VAT is also assigned in the same proportion. Assignment of a net claim without VAT is not possible.

Art. 24 Amount of the liability

(Art. 15 para. 4 VAT Act)

¹ Liability under Article 15 paragraph 4 VAT Act is limited to the amount of the VAT amount that has actually been collected by the assignee during an enforcement procedure against the taxable person from the time of pledge or from the time bankruptcy proceedings are opened.

² In a pledge or pledge realisation procedure against a taxable person, the FTA must inform the assignee immediately after receipt of the pledge deed of his liability.

³ After bankruptcy proceedings are opened against a taxable person, the FTA may claim on the liability of the assignee irrespective of prior notification.

Art. 25 Release from liability

(Art. 15 para. 4 VAT Act)

By remitting to the FTA the VAT also assigned and collected with the claim the assignee is released in the same amount from the liability.

Chapter 2 Object of Taxation**Section 1 Supply Relationship****Art. 26** Supplies to closely related persons

(Art. 18 para. 1 VAT Act)

The provision of supplies to closely related persons constitutes a supply relationship. Assessment is governed by Article 24 paragraph 2 VAT Act.

Art. 27 Prepaid disposal fees
(Art. 18 para. 1 VAT Act)

Private organisations within the meaning of Article 32a^{bis} EPA¹⁰ make supplies to manufacturers and importers through their activities. The prepaid disposal fees are a consideration for these services.

Art. 28 Cross-border posting of employees within a group of companies
(Art. 18 VAT Act)

A supply relationship does not exist in the cross-border posting of employees within a group, if:

- a. a foreign employer employs an employee in a deployment operation on Swiss territory belonging to the same group of companies or an employer employs an employee in a foreign deployment operation belonging to the same group;
- b. the employee works for the deployment operation but retains the employment contract with the posting business; and
- c. the wages, social security contributions and related expenses are charged by the posting employer to the deployment operation without a surcharge.

Art. 29 Subsidies and other public law contributions
(Art. 18 para. 2 let. a VAT Act)

Subsidies or other public contributions are in particular amounts paid by public authorities as:

- a. financial assistance within the meaning of Article 3 paragraph 1 of the Subsidies Act of 5 October 1990¹¹ (SubA);
- b. compensation within the meaning of Article 3 paragraph 2 letter a SubA, provided if a supply relationship exists;
- c. research contributions, provided the public authority does not have an exclusive right to the results of the research;
- d. cash flows comparable with letters a–c that are paid under cantonal and communal law.

Art. 30 Remittance of cash flows that do not constitute considerations
(Art. 18 para. 2 VAT Act)

¹ Cash flow remittances that do not constitute considerations under Article 18 paragraph 2 VAT Act, in particular within educational and research cooperation projects, are not subject to the tax.

² The input tax deduction under Article 33 paragraph 2 VAT Act must be made by the last payment recipient.

¹⁰ SR 814.01

¹¹ SR 616.1

Section 2 Plurality of Supplies

Art. 31 Special tools (Art. 19 para. 1 VAT Act)

¹ Special tools that a taxable person purchases, has made to order, or makes himself specially for the performance of a manufacturing contract constitute part of the supply of the goods that they are used to manufacture. It is irrelevant whether the special tools:

- a. are invoiced to the recipient of the supply separately or are included in the price of the products;
- b. are delivered to the recipient of the supply or to a third person designated by the recipient of the supply, or not after performance of the manufacturing contract.

² Special tools are in particular printing plates, photolithos and photo settings, punching and draw tools, gauges, jigs, pressing and spraying forms, castings, foundry modules, dies and films for printed circuits.

Art. 32 Aggregated units and combinations of supplies (Art. 19 para. 2 VAT Act)

Article 19 paragraph 2 VAT Act does not apply when determining whether in the case of combinations of supplies the place of supply lies on Swiss territory or abroad.

Art. 33 Applicability of the import tax assessment for the domestic tax (Art. 19 para. 2 VAT Act)

An import tax assessment under Article 112 also applies to the domestic tax, provided the combination of supplies was not processed or changed after the import assessment.

Section 3 Supplies exempt from the Tax without Credit

Art. 34 Human medical treatment (Art. 21 para. 2 no 3 VAT Act)

¹ Human medical treatment is the diagnosis and treatment of illnesses, injuries and other disorders of the physical and mental health of humans and activities that serve the prevention of human illnesses and health disorders.

² The following are equivalent to human medical treatment:

- a. special maternity services, such as check-ups, birth preparation or breast feeding advice;
- b. examinations, consultations and treatment related to artificial insemination, contraception or abortion;

- c. supplies of goods and supplies of services by a doctor or a dentist when destined for a medical report or an expert opinion for the assessment of social security claims.

³ The following in particular do not constitute human medical treatment:

- a. examinations, consultations and treatment solely for the purposes of enhancing wellbeing or performance or which are provided merely for aesthetic reasons, unless the examination, advice or treatment is provided by a doctor or dentist who is authorised to practise his profession on Swiss territory;
- b. the examinations carried out for the purpose of writing an expert report which are not related to a specific treatment of the person examined, except for the cases under paragraph 2 letter c;
- c. the dispensing of medicines or of medical appliances, unless they are used by the person providing the treatment in the course of human medical treatment;
- d. the dispensing of self-manufactured or purchased prostheses and orthopaedic equipment, even if this takes place in the course of human medical treatment; a prosthesis is a replacement body part that can be separated from the body without an operation and reinserted or attached;
- e. basic care actions; these constitute nursing care services under Article 21 paragraph 2 number 4 VAT Act.

Art. 35 Requirement for recognition as a provider of human medical treatment

(Art. 21 para. 2 no 3 VAT Act)

¹ A provider possesses a licence to practise his profession within the meaning of Article 21 paragraph 2 number 3 VAT Act, if he:

- a. is in possession of the licence to practise his profession independently required by the cantonal law; or
- b. is accredited to provide human medical treatment in accordance with the cantonal law.

² Members of human medical and nursing professions within the meaning of Article 21 paragraph 2 number 3 VAT Act are in particular:

- a. Doctors;
- b. Dentists;
- c. Dental technicians;
- c^{bis},¹² Dental hygienists;
- d. Psychotherapists;
- e. Chiropractors;

¹² Inserted by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

- f. Physiotherapists;
- g. Ergotherapists;
- h. Naturopaths, non-medical practitioners, natural non-medical practitioners;
- i. Childbirth carers and midwives;
- j. Nurses;
- k. Medical masseurs and masseuses;
- l. Speech therapists;
- m. Dietary advisers;
- n. Podologists.

Art. 36 Cultural supplies

(Art. 21 para. 2 nos 14 and 16 VAT Act)

¹ Performing artists within the meaning of Article 21 paragraph 2 number 14 letter b VAT Act are natural persons in accordance with Article 33 paragraph 1 of the Copyright Act dated 9 October 1992¹³ (CopA), to the extent their cultural services are directly provided to or experienced by the public. The legal form of the person invoicing such supplies is irrelevant for the qualification of the supply exempt from the tax without credit.

² Creators within the meaning of Article 21 paragraph 2 number 16 VAT Act are creators of works under Articles 2 and 3 CopA, to the extent they provide cultural supplies of services and supplies of goods.

Art. 37 Occupational benefits schemes

(Art. 21 para. 2 no. 18 VAT Act)

The turnovers under Article 21 paragraph 2 number 18 VAT Act also include the turnovers of occupational benefits schemes.

Art. 38 Supplies within the same public authority

(Art. 21 para. 2 no 28 VAT Act)

¹ Supplies within the same public authority are supplies between the organisational units of the same commune, the same canton or of the Confederation.

² Organisational units of the same commune, the same canton or of the Confederation are:

- a. their own agencies and combinations thereof in accordance with Article 12 paragraph 2 VAT Act;
- b. their own institutions without their own legal personality and their own foundations without their own legal personality;

- c. institutions with their own legal personality belonging only to this public authority;
- d. legal entities under private law belonging only to this public authority.

³ Supplies between different communes or between different cantons, supplies between communes and cantons and supplies between the Confederation and cantons or communes do not constitute supplies within the same public authority.

Art. 39 Option for the taxation of supplies exempt from the tax without credit
(Art. 22 VAT Act)

If the taxable person cannot opt for the tax by clearly detailing the tax on the invoice, the exercise of the option may be notified to the FTA by other means. Such an option is already possible if no supplies have yet been provided. Article 22 paragraph 2 VAT Act is reserved.

Section 4 Supplies exempt from the Tax with Credit

Art. 40 Direct export of goods provided for use or exploitation
(Art. 23 para. 2 no 2 VAT Act)

Transport or dispatch abroad is deemed to be direct within the meaning of Article 23 paragraph 2 number 2 VAT Act if prior to the export there is no further supply of goods on Swiss territory.

Art. 41 Tax exemption with credit for international air traffic
(Art. 23 para. 4 VAT Act)

¹ Exempt from the tax with credit are:

- a. transport by air where either the place of arrival or of departure lies on Swiss territory;
- b. transport by air from one foreign airport to another foreign airport crossing Swiss territory.

² Domestic sections of international flights are exempt from tax with credit if the flight is interrupted on Swiss territory only by a technical stopover or to change to a connecting flight.

Art. 42 Tax exemption with credit for international rail traffic
(Art. 23 para. 4 VAT Act)

¹ Cross-border transport by rail is exempt from the tax with credit, subject to paragraph 2, provided it is a section of a journey for which there is an international ticket. This includes:

- a. transport on sections of a journey where either the departure or the arrival station lies on Swiss territory;

- b. transport on domestic sections of a journey used in transit to link the departure and the arrival stations located abroad.

² For the tax exemption with credit, the portion of the ticket price covering the foreign section of the journey must be higher than the VAT not chargeable because of the tax exemption with credit.

³ No tax exemption with credit is granted on the sale of flat price tickets, in particular the GA Travelcards and the Half-Fare Travelcards that are used in whole or part for tax exempt transport.

Art. 43 Tax exemption with credit for international bus traffic

(Art. 23 para. 4 VAT Act)

¹ Exempt from the tax with credit is the transport of persons by bus or coach on sections of a journey which:

- a. pass predominantly over foreign territory; or
- b. are used in transit to link the places of departure and of arrival located abroad.

² Exempt from the tax with credit is the transport of persons on purely domestic sections of a journey solely in order to carry a person directly to a transport service under paragraph 1, provided it is invoiced together with the transport service under paragraph 1.

Art. 44 Tax exempt turnovers with credit in gold coins and fine gold

(Art. 107 para. 2 VAT Act)

¹ Exempt from the tax with credit are turnovers in:

- a. state minted gold coins with customs tariff numbers 7118.9010 and 9705.0000¹⁴;
- b.¹⁵ Gold for investment purposes with a minimum fineness of 995 per mille, in the form of:
 - 1. cast bars bearing a fineness mark and the stamp of a recognised assayer-melter, or
 - 2. pressed bars bearing a fineness mark and the stamp of a recognised assayer-melter or a responsibility mark registered in Switzerland;
- c.¹⁶ gold in the form of granules with a minimum fineness of 995 per mille, which have been packed and sealed by an accredited assayer-melter;
- d. unprocessed or semi-finished gold that is destined for refining or recovery;
- e. gold in the form of clippings and scrap.

¹⁴ SR **632.10** Annex

¹⁵ Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS **2013** 3839).

¹⁶ Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS **2013** 3839).

² Alloys with two or more per cent by weight gold or, if platinum is contained therein, with more gold than platinum also constitute gold within the meaning of paragraph 1 letters d and e.

Chapter 3 Assessment Basis and Tax Rates

Section 1 Assessment Basis

Art. 45 Considerations in foreign currency

(Art. 24 para. 1 VAT Act)

¹ For purposes of calculating the VAT payable, considerations paid in foreign currency must be converted into national currency at the date the tax claim arises.

² A consideration is in foreign currency if the invoice or the receipt is issued in foreign currency. If no invoice or receipt is issued, the book entry of the supplier applies. It is irrelevant whether the payment is in national or foreign currency and in which currency the change is paid.

³ For the conversion, the taxable person may elect to rely on the monthly average rate published by the FTA or the daily exchange rate (selling). For foreign currencies for which the FTA does not publish a monthly average rate, the daily exchange rate (selling) always applies.

⁴ Taxable persons that are members of a group of companies may use the internal group conversion rate for their conversion.

⁵ The procedure chosen (monthly average, daily or group rates) must be retained for at least one tax period.

Art. 46 Credit card commissions and cheque charges

(Art. 24 para. 1 VAT Act)

In particular credit card commissions, cheque charges, WIR rebates, etc. do not constitute reductions of considerations.

Art. 47 Supplies to employees

(Art. 24 VAT Act)

¹ On supplies to employees for consideration, the tax must be calculated on the consideration actually received. Article 24 paragraphs 2 and 3 VAT Act is reserved.

² Supplies made by the employer to employees which must be declared in the salary certificate are deemed to be made with consideration. The tax must be calculated on the amount that is also applicable for direct taxes.

³ Supplies which do not have to be declared in the salary certificate constitute supplies made without consideration and it is assumed that a business reason exists.

⁴ Where lump sums that are permissible for determining the wage elements applicable for direct tax purposes may also serve to assess the VAT, they may also be used for VAT purposes.

⁵ When applying paragraphs 2–4, it is irrelevant whether the persons concerned are closely related persons as stipulated under Article 3 letter h VAT Act.

Art. 48 Cantonal contributions to water, sewage or waste funds

(Art. 24 para. 6 let. d VAT Act)

¹ The FTA shall establish for every fund the amount of the deduction in per cent which applies to the individual affiliated waste disposal organisations and water-works.

² It shall take into consideration that:

- a. the fund does not pay out all the contributions received; and
- b. the taxable customers of waste disposal services and water supplies have deducted the tax thereon invoiced to them in full as input tax.

Section 2 Tax Rates

Art. 49¹⁷ Medication

(Art. 25 para. 2 let. a no 8 VAT Act)

Medication is defined as:

- a. authorised ready-to-use medicinal products and premixed veterinary medicinal products in accordance with Article 9 paragraph 1 of the Therapeutic Products Act of 15 December 2000¹⁸ (TPA) and the related finished Galenic products;
- b. ready-to-use medicinal products that do not require authorisation under Article 9 paragraph 2 TPA, with the exception of human and animal whole blood;
- c. ready-to-use medicinal products that have been authorised for a limited period under Article 9 paragraph 4 TPA;
- d. non-authorised ready-to-use medicinal products under Article 36 paragraphs 1–3 of the Medicinal Products Licensing Ordinance of 17 October 2001¹⁹ and Article 7 of the Veterinary Medicinal Products Ordinance of 18 August 2004²⁰.

Art. 50 Newspapers and magazines without advertising character

(Art. 25 para. 2 let. a no. 9 VAT Act)

Newspapers and magazines without advertising character are printed matter that fulfils the following conditions:

¹⁷ Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).

¹⁸ SR 812.21

¹⁹ SR 812.212.1

²⁰ SR 812.212.27

- a. they appear periodically, at least twice a year;
- b. they provide up-to-date information or entertainment;
- c. they always bear the same title;
- d. they are consecutively numbered and contain the date and the frequency of publication;
- e. they are presented as newspapers or magazines;
- f. they are not made up predominantly of space for entering text or other material.

Art. 51 Books and other printed matter without advertising character

(Art. 25 para. 2 let. a no 9 VAT Act)

Printed matter which fulfils the following conditions constitutes books and other printed matter without advertising character:

- a. they are in the form of books, brochures or loose leaf books; loose leaf products are books if they consist of a binding cover, fitted with a screw post, spiral or ring binder and the loose leaf pages to be filed therein contain when complete at least 16 pages and the title of the work appears on the binding cover;
- b. including the jacket and the cover page they contain at least 16 pages, with the exception of children's books, printed music and parts of loose leaf works;
- c. the content is religious, literary, artistic, entertaining, educational, instructive, informative, technical or scientific;
- d. they are not designed to be written in or to store pictures for collection, with the exception of school and instruction books and certain children's books, such as exercise books with illustrations and supplementary text and drawing and painting books with designs and instructions.

Art. 52 Advertising character

(Art. 25 para. 2 let. a no 9 VAT Act)

¹ Printed matter has advertising character if its content is clearly designed to promote the business activity of the publisher or of a third party behind the publisher.

² The printed matter clearly promotes the business activity of the publisher or of a third party behind the publisher, if:

- a. the printed matter is obviously published for purpose of advertising the publisher or a third party behind the publisher; or
- b. the advertising content for the business activities of the publisher or of a third party behind the publisher represents more than half of the total surface of the printed matter.

³ Third parties behind the publisher are persons and businesses, on whose behalf the publisher acts, that control the publisher or other persons closely related to them within the meaning of Article 3 letter h VAT Act.

⁴ Both direct advertising, such as advertisements, and indirect advertising, such as advertorials or infomercials, for the publisher or for a third party behind the publisher constitute advertising.

⁵ Advertising content does not include advertisements and advertising for an independent third party.

Art. 53 Preparation on the premises and food service

(Art. 25 para. 3 VAT Act)

¹ Preparation is the cooking, heating, mixing, preparation and blending of food. The mere maintaining of the temperature of food ready for consumption is not considered preparation.

² Food service is in particular the arrangement of food on plates, the setting up of cold or warm buffets, the pouring of drinks, the laying and clearing of tables, the serving of the guests, the management or supervision of the serving staff and the operation and provisioning of self-service buffets.

Art. 54 Special consumption installations on the premises

(Art. 25 para. 3 VAT Act)

¹ Special installations for the consumption of food on the premises (consumption installations) consist of tables, bar tables, counters and other eating surfaces provided for consumption or similar installations, in particular in means of transport. It is irrelevant:

- a. to whom the installations belong;
- b. whether the customer actually uses the installation;
- c. whether the installations are sufficient to enable all customers to consume on the premises.

² The following do not constitute consumption installations:

- a. mere seating accommodation for resting purposes without associated tables;
- b. in kiosks or restaurants on camping sites: the tents and caravans of the tenants.

Art. 55 Food for takeaway or delivery

(Art. 25 para. 3 VAT Act)

¹ Delivery is the supply of food by the taxable person to customers at their homes or to another place designated by them without further preparation or service.

² Takeaway food is food which the customer takes after purchase to another place and does not consume on the premises of the supplier. The following in particular characterise takeaway food:

- a. the will expressed by the customer to take the food away;
- b. the handing over of the food in a special package suitable for transport;
- c. the handing over of food that is not suitable for immediate consumption.

³ The FTA shall provide for simplifications within the meaning of Article 80 VAT Act for certain sites and events.

Art. 56 Suitable organisational measure
(Art. 25 para. 3 VAT Act)

A suitable organisational measure is in particular the issue of receipts that indicate whether a restaurant supply, a delivery of food or a supply of goods for takeaway was provided.

Chapter 4 Invoicing and VAT Details

(Art. 26 para. 3 VAT Act)

Art. 57

Till receipts for amounts up to 400 francs need not contain details about the recipient of the supply. Such receipts do not entitle the recipient to a tax refund in the refund procedure.

Chapter 5 Input Tax Deduction

Section 1 General

Art. 58 Input tax deduction for foreign currency
(Art. 28 VAT Act)

Article 45 applies by analogy to the calculation of the deductible input taxes.

Art. 59 Proof
(Art. 28 para. 1it. a VAT Act)

¹ The domestic tax is deemed to be invoiced if it is recognisable to the recipient of the supply that the supplier has demanded payment of the VAT from him.

² The recipient of the supply does not have to verify whether the VAT was rightly demanded. If, however, he knows that the person that has transferred the tax is not registered as a taxable person, an input tax deduction is not permitted.

Art. 60 Input tax deduction for supplies abroad
(Art. 29 para. 1 VAT Act)

The input tax deduction for supplies made abroad is possible in the same amount, as if supplies had been made on Swiss territory and the option for the taxation of supplies had been exercised under Article 22 VAT Act.

Art. 61 Input tax deduction for gold coins and fine gold
(Art. 107 para. 2 VAT Act)

The tax on supplies of goods and on supplies of services which are used for turnovers under Article 44 and imports under Article 113 let. g may be deducted as input tax.

Section 2 Deemed Input Tax Deduction

Art. 62 Used good
(Art. 28 para. 3 VAT Act)

¹ A good within the meaning of Article 28 paragraph 3 VAT Act (used good) is understood to be a used, individualisable, movable good, which in its present condition or after repair can be re-used and whose parts are not sold separately from one another.

² Precious metals with customs tariff numbers 7106–7112²¹ and jewels with customs tariff numbers 7102–7105 do not constitute used goods.

Art. 63 Right to deduct deemed input tax
(Art. 28 para. 3 VAT Act)

¹ Provided the other requirements are met, the taxable person may also deduct deemed input tax on the lump sum paid for the purchase of used goods.

² A merely temporary use of the used goods between purchase and further supply to a customer on Swiss territory does not exclude the deemed input tax deduction. Article 31 paragraph 4 VAT Act is reserved.

³ The deemed input tax deduction is not permitted:

- a. if on purchase of the used good the notification procedure under Article 38 VAT Act was applied;
- b. if the taxable person imported the used good;
- c. if goods under Article 21 paragraph 2 VAT Act are purchased, with the exception of goods under Article 21 paragraph 2 number 24 VAT Act;
- d. if the taxable person acquired the good on Swiss territory from a person who imported the good exempt from the tax;
- e. on the part of the payment made under the claim settlement that exceeds the actual value of the good at the time it is taken over.

⁴ If the taxable person supplies the good to a customer abroad, he must cancel the deemed input tax deduction in the reporting period in which they were supplied.

²¹ SR 632.10 Annex

Art. 64 Records
(Art. 28 para. 3 VAT Act)

The taxable person must keep a record of the acquisition and supply of used goods. Separate records are to be kept for each lot in the case of used goods purchased for a lump-sum.

Section 3 Correction of the Input Tax Deduction

Art. 65 Methods of calculating the correction
(Art. 30 VAT Act)

The correction of the input tax deduction may be calculated:

- a. according to effective usage;
- b. using flat rate methods with flat rates laid down by the FTA;
- c. based on own calculations.

Art. 66 Flat rate methods
(Art. 30 VAT Act)

The FTA lays down flat rates in particular for:

- a. businesses of banks;
- b. the business of insurance companies;
- c. businesses of specially financed agencies of public authorities;
- d. the granting of loans and for interest income and income from trading in securities;
- e. the management of owned immovable property where taxation is not opted for under Article 22 VAT Act;
- f. Public transport businesses.

Art. 67 Own calculations
(Art. 30 VAT Act)

If the taxable person bases the correction of the input tax deduction on his own calculations, he must give evidence in detail concerning the facts underlying the calculations and carry out a plausibility test.

Art. 68 Choice of method
(Art. 30 VAT Act)

¹ The taxable person may use one or more methods to calculate the correction of the input tax deduction, provided the method(s) lead to an adequate result.

² Adequate is any use of one or more methods that takes account of the principle of efficiency of imposition, is auditable economically and allocates the input taxes according to their use for a particular activity.

Section 4 Own Use

Art. 69 Principles (Art. 31 VAT Act)

¹ The input tax deduction must be corrected in full on goods and services not put to use.

² The input tax deduction must be corrected on goods and services put to use that are still available at the time the requirements are no longer fulfilled and have a fair value. In the case of supply of services in the fields of consulting, accounting, staff recruitment, management and advertising, it is assumed they are exhausted at the time of their acquisition and are no longer available.

³ In the case of self-manufactured goods, for putting the infrastructure to use, a flat rate surcharge of 33 per cent must be made on the input taxes on materials and on any third party work on semi-finished goods. Alternatively, effective proof of the input taxes applicable to the use of the infrastructure may be provided.

⁴ If subsequently the requirements for the input tax deduction are only partially fulfilled, the correction must be made to the extent that the use no longer entitles the input tax deduction to be made.

Art. 70 Determination of the fair value (Art. 31 para. 3 VAT Act)

¹ The fair value must be calculated on the basis of the acquisition cost, for real estate excluding the value of the land and of value enhancing expenditures. Not to be considered are, however, the value maintenance expenditures. Value maintenance expenditures are those that serve only to maintain the value of the good and its ability to function, in particular service, maintenance, operating and repair costs.

² In determining the fair value of goods and services put to use, in the first tax period of use the loss in value must be considered for the entire tax period. In the last uncompleted tax period, on the other hand, no depreciation may be made unless the change in use occurs on the last day of the tax period.

Art. 71 Major immovable property renovations (Art. 31 VAT Act)

If the renovation costs in a construction phase exceed in total 5 per cent of the insurance value of the building prior to renovation, the input tax deduction must be corrected on the basis of the total costs, regardless of whether the costs are for value enhancing or maintenance expenditures.

Section 5 Subsequent Input Tax Deduction

Art. 72 Principles

(Art. 32 VAT Act)

¹ The input tax deduction may be corrected in full on goods and services not put to use.

² The input tax deduction may be corrected on goods and services put to use which still exist and have a fair value at the time the requirements for the input tax deduction are fulfilled. For services in the fields of consulting, accounting, staff recruitment, management and advertising, it is assumed that they are used on acquisition and thereafter cease to exist.

³ In the case of self-manufactured goods, for putting the infrastructure to use, a flat rate surcharge of 33 per cent may be made on the input taxes on materials and on any third party work on semi-finished goods. Alternatively, effective proof of input taxes applicable to the use of the infrastructure may be provided.

⁴ If subsequently the requirements for the input tax deduction are only partially fulfilled, the correction may be made only to the extent of the use entitling the input tax deduction to be made.

Art. 73 Determination of the fair value

(Art. 32 para. 2 VAT Act)

¹ The fair value must be calculated on the basis of the acquisition cost, for real estate excluding the value of the land and of value enhancing expenditures. Not to be considered are, however, the value maintenance expenditures. Value maintenance expenditures are those that serve only to maintain the value of the good and its ability to function, in particular service, maintenance, operating and repair costs.

² In determining the fair value of goods and services put to use, in the first tax period of use the loss in value must be considered for the entire tax period. In the last uncompleted tax period, on the other hand, no depreciation must be made unless the change in use occurs on the last day of the tax period.

Art. 74 Major renovations of immovable property

(Art. 32 VAT Act)

If the renovation costs in a construction phase exceed in total 5 per cent of the insurance value of the building prior to renovation, the entire input tax deduction may be corrected on the basis of the total costs, regardless of whether the costs are for value enhancing or maintenance expenditures.

Section 6 Reduction of the Input Tax Deduction

(Art. 33 para. 2 VAT Act)

Art. 75

¹ The input tax need not be reduced if the funds under Article 18 paragraph 2 letters a–c VAT Act are attributable to a business activity for which no input tax is incurred or for which no claim to input tax deduction exists.

² To the extent the funds under Article 18 paragraph 2 letters a–c VAT Act can be attributed to a specific business activity, only the input tax on the expenditures for this business activity must be reduced.

³ If the funds under Article 18 paragraph 2 letters a–c VAT Act are paid to cover an operating deficit, the input tax must be reduced overall in the proportion of these funds to the total turnover, excluding VAT.

Chapter 6 Calculation and Constitution of the Tax Claim

Section 1 Annual Accounts

(Art. 34 para. 3 VAT Act)

Art. 76²²

¹ Annual accounts must be drawn up in every calendar year, except for the year of incorporation.

² A change in the reporting date must be notified to the FTA in advance.

Section 2 Net Tax Rate Method

Art. 77 Principles

(Art. 37 para. 1–4 VAT Act)

¹ The taxable supplies made for consideration on Swiss territory must be considered in assessing whether the conditions under Article 37 VAT Act are fulfilled.

² The net tax rate method may not be chosen by taxable persons who:

- a. may report using the flat tax rate method under Article 37 paragraph 5 VAT Act;
- b. use the movement procedure under Article 63 VAT Act;
- c. use group taxation under Article 13 VAT Act;
- d. have their place of business or a permanent establishment in the valley areas of Samnaun or Sampuoir;

²² Not yet in effect

- e. generate more than 50 per cent of their turnovers from supplies to another taxable person who reports using the effective method and at the same time control or are controlled by that person.

³ Taxable persons who report using the net tax rate method may not voluntarily (opting) tax supplies under Article 21 paragraph 2 numbers 1–25, 27 and 29 VAT Act.

Art. 78 Submission to the net tax rate method on commencement of tax liability

(Art. 37 para. 1–4 VAT Act)

¹ Persons newly entered in the Register of Taxable Persons (VAT Register) who wish to submit to the net tax rate method must notify the FTA in writing within 60 days of notification of their VAT number.

² The FTA shall approve the use of the net tax rate method if in the first 12 months both the expected turnover and the expected taxes do not exceed the thresholds in Article 37 paragraph 1 VAT Act.

³ If no request is made within the period in paragraph 1, the taxable person must report for at least three years using the effective method before he may submit to the net tax rate method. An earlier change to the net tax rate method is possible if the FTA changes the net tax rate of the relevant branch of the industry or business.

⁴ Paragraphs 1–3 also apply to retroactive entries analogously.

⁵ The VAT chargeable on the stock of goods, the operating material and the fixed assets is taken into account in applying the net tax rate method.

Art. 79 Change from the effective reporting method to the net tax rate method

(Art. 37 para. 1–4 VAT Act)

¹ Taxable persons who wish to change from the effective reporting method to the net tax rate method must notify the FTA in writing at the latest 60 days after the beginning of the tax period from which the change is to be made. If the notification is late, the change is effective for the beginning of the subsequent tax period.

² The FTA shall approve the use of the net tax rate method if in the prior tax period neither of the thresholds in Article 37 paragraph 1 VAT Act was exceeded.

³ On changing from the effective reporting method to the net tax rate method, no corrections or changes shall be made to the stock of goods, the operating material and the fixed assets.

⁴ If simultaneously with submission to the net tax rate method the manner of reporting under Article 39 VAT Act is also changed, the following corrections must be made:

- a. if a change is made from agreed to collected considerations, the FTA shall credit the taxable person the tax at the appropriate statutory tax rate on the taxable supplies invoiced but not yet paid on the date of change (debtor

items) and at the same time charge the input tax on the taxable supplies invoiced to it, but not yet paid (creditor items);

- b. if a change is made from collected to agreed considerations, the FTA shall charge the tax on the debtor items existing on the date of change at the appropriate statutory tax rate and at the same time credit the input tax on the creditor items.

Art. 80 Withdrawal of approval

(Art. 37 para. 1–4 VAT Act)

The FTA may retroactively withdraw approval to use this reporting method from taxable persons who have been permitted to use the net tax rate method on the basis of false information.

Art. 81 Change from the net tax rate method to the effective reporting method

(Art. 37 para. 1–4 VAT Act)

¹ Taxable persons who wish to change from the net tax rate method to the effective method must notify the FTA in writing at the latest 60 days before the beginning of the tax period from which the change is to be made. If the request is late, the change is effective from the beginning of the subsequent tax period.

² Persons who exceed one or both thresholds laid down in Article 37 paragraph 1 VAT Act in two consecutive tax periods by up to 50 per cent must change to the effective reporting method at the beginning of the following tax period.

³ Persons who exceed one or both thresholds laid down in Article 37 paragraph 1 VAT Act by more than 50 per cent must change to the effective reporting method at the beginning of the following tax period. If the thresholds are exceeded in the first 12 months of submission to the net tax rate method, approval is withdrawn retroactively.

⁴ If one or both thresholds are exceeded by more than 50 per cent due to the takeover of all or part of the assets under the notification procedure, the taxable person may decide whether he wishes to change to the effective reporting method retroactively to the beginning of the tax period in which the takeover took place or at the beginning of the subsequent tax period.

⁵ On change to the effective reporting method, there are no corrections to the stock of goods, the operating material and the fixed assets.

⁶ If at the same time as the change to the effective reporting method the manner of reporting under Article 39 VAT Act is also changed, the following corrections must be made:

- a. if a change is made from agreed to collected considerations, the FTA shall credit the taxable person with the tax on the debtor items existing at the date of change at the approved net tax rates. No corrections are made to the creditor items;

- b. if a change is made from collected to agreed considerations, the FTA shall charge the tax on the debtor items existing at the date of the change at the approved net tax rates. No corrections are made to the creditor items.

Art. 82 End of tax liability
(Art. 37 para. 1–4 VAT Act)

¹ If a taxable person reporting under the net tax rate method ceases his business activities or if, due to failing to reach the turnover threshold in Article 10 paragraph 2 letter a VAT Act, he is exempt from tax liability, the turnovers generated prior to being removed from the VAT Register, the work in progress and, if reporting according to collected considerations, the debtor items are also to be reported at the approved net tax rates.

² The tax must be reported on the fair value of immoveable goods at the date of removal from the VAT Register at the normal rate, if:

- a. the good was purchased, constructed or converted by the taxable person when he used the effective method and he has claimed the input tax deduction;
- b. the good was purchased by the taxable person during the period when he reported using net tax rates, under the notification procedure from a taxable person reporting using the effective method.

³ In determining the fair value of immovable goods, for every year expired one twentieth is reduced on a straight line basis.

Art. 83 Takeover of assets under the notification procedure
(Art. 37 para. 1–4 VAT Act)

¹ If a taxable person reporting under the net tax rate method does not use or uses only to a lesser extent all or part of the assets taken over using the notification procedure under Article 38 VAT Act than the seller of a business entitled to deduct input tax, the procedure is as follows:

- a. if the seller reports under the net tax rate method, no corrections are made;
- b. if the seller reports under the effective method, on that part of the assets taken over which is used in future for a business activity not entitling him to deduct the input tax, own use within the meaning of Article 31 VAT Act must be reported taking into consideration Article 38 paragraph 4 VAT Act.

² If a taxable person reporting under the net tax rate method uses all or part of the assets taken over using the notification procedure under Article 38 VAT Act to a greater extent than the seller for a business activity entitling him to deduct the input tax, a correction is not permitted.

Art. 84 Reporting using net tax rates
(Art. 37 para. 1–4 VAT Act)

¹ Taxable persons must report their business activities at the net tax rates approved by the FTA.

² If a business activity ceases or a new business activity is begun or if the turnover shares of the business activities change in such a way that a new allocation of the net tax rates becomes necessary, the taxable person must contact the FTA.

³ Taxable persons for whom two different net tax rates have been approved must record the revenues for each of the net tax rates separately.

Art. 85 Approval of the use of a single net tax rate
(Art. 37 para. 1–4 VAT Act)

The taxable person is permitted to use a single net tax rate unless a case under Article 86 paragraph 1 or Article 89 paragraphs 3 or 5 applies.

Art. 86 Approval of the use of two net tax rates
(Art. 37 para. 1–4 VAT Act)

¹ The taxable person is permitted to use two net tax rates if:

- a. he carries on two or more business activities for which the net tax rates laid down by the FTA differ; and
- b. at least two of these business activities each has a share of more than 10 per cent of the total turnover.

² The 10 per cent threshold is calculated:

- a. for persons who become newly taxable and for taxable persons who take up a new business activity: based on the expected turnovers;
- b. for the other taxable persons: based on the turnover of the two preceding tax periods.

³ The turnovers of business activities with the same net tax rate must be accumulated in investigating whether the 10 per cent threshold is exceeded.

⁴ In the case of a taxable person who has been permitted the use of two net tax rates, if only one or more business activities for which the same net tax rate is provided exceed the 10 per cent threshold during two consecutive tax periods, the approval for the use of the second net tax rate lapses at the beginning of the third tax period.

Art. 87 Level of the approved net tax rates
(Art. 37 para. 1–4 VAT Act)

¹ If only two of the taxable person's business activities exceed the 10 per cent threshold, the use of the two net tax rates laid down for these businesses will be approved.

² If more than two business activities exceed the 10 per cent threshold, use of the following net tax rates is approved:

- a. the highest of the net tax rates that are laid down for the business activities whose share in the total turnover is more than 10 per cent;

- b. a second net tax rate which the taxable person selects from those tax rates that are laid down for the other business activities whose share in the total turnover is more than 10 per cent.

Art. 88 Taxation of the individual business activities

(Art. 37 para. 1–4 VAT Act)

The turnovers from the business activities of a taxable person who has been permitted the use of two net tax rates are taxable:

- a. at the higher approved net tax rate if the net tax rate laid down for the business activity in question lies above the lower approved rate;
- b. at the lower approved rate in the other cases.

Art. 89 Special rule for mixed branches of the industry

(Art. 37 para. 1–4 VAT Act)

¹ Mixed branches of the industry are branches of the industry in which several business activities are normally carried on which, if considered separately, would be reported using different net tax rates.

² The FTA shall lay down in an ordinance:

- a. the net tax rate applicable to each mixed branch of the industry;
- b. the usual main and ancillary business activities in the mixed branch of the industry.

³ Articles 86–88 apply for reporting using net tax rates if the share of one or more business activities usually ancillary to a branch of the industry for which under the FTA's ordinance the same net tax rate would apply exceed 50 per cent of the turnover of the main business and the business usually ancillary to an industry.

⁴ The 50 per cent threshold is calculated:

- a. for persons who become newly taxable and for taxable persons, who take up a new business: based on the expected turnovers;
- b. for the other taxable persons: based on the turnover in the two preceding tax periods.

⁵ If a taxable person who operates in a mixed branch of the industry also carries on business activities that are alien to the branch of the industry, reporting using net tax rates for these business activities is governed by Articles 86–88.

Art. 90 Special procedures

(Art. 37 para. 1–4 VAT Act)

¹ The FTA shall make a procedure for the approximate compensation of the input taxes incurred available to taxable persons reporting using the net tax rate method for:

- a. supplies of goods abroad, if the goods are self-manufactured or purchased with VAT being charged;

- b. supplies to beneficiaries under Article 2 of the Host State Act of 22 June 2007²³ (HSA), provided the place of supply lies on Swiss territory and for supplies of goods that the goods are self-manufactured or purchased with VAT being charged.

² Taxable persons reporting using the net tax rate method who acquire used goods under Article 62 for resale to a customer on Swiss territory may use the procedure made available by the FTA to compensate the deemed input tax. The procedure does not apply to used automobiles with an overall weight not exceeding 3,500 kg.

³ For businesses and events under Article 55 paragraph 3, the FTA provides for a flat rate arrangement for the approximate division of the turnovers between the two net tax rates.

Art. 91 Reporting of the acquisition tax

(Art. 37 para. 1–4 VAT Act)

Taxable persons reporting using the net tax rate method who acquire supplies from businesses with their place of business abroad under Articles 45–49 VAT Act, must pay the acquisition tax semi-annually at the appropriate statutory tax rate.

Art. 92 Own use

(Art. 37 para. 1–4 VAT Act)

Own use, with the exception of Article 83 paragraph 1 letter b, is taken into account in applying the net tax rate method.

Art. 93 Corrections of immovable goods

(Art. 37 para. 1–4 VAT Act)

¹ If an immovable good is no longer used in the business activities of the taxable person or is used newly for a business activity exempted from the tax without credit under Article 21 paragraph 2 VAT Act, the tax must be charged on the fair value at the normal rate provided:

- a. the good was purchased, constructed or converted by the taxable person when the person used the effective reporting method and claimed the input tax deduction;
- b. the good was purchased by the taxable person during the period when the person reported using the net tax rate method under the notification procedure from a taxable person applying the effective reporting method.

² To determine the fair value of the immovable goods, for every completed year the value is reduced by one twentieth on a straight line basis.

Art. 94 Supplies to closely related persons and employees

(Art. 37 para. 1–4 VAT Act)

¹ Supplies to closely related persons are, subject to Article 93, reported as follows when reporting using net tax rates:

- a. Purchased goods and services that are given or without consideration in the net tax rates and therefore do not have to be reported.
- b. Self-manufactured goods and services that are given or supplied without consideration are reported using the approved net tax rate at the value that would be agreed between independent third parties.
- c. Goods and services that are given or rendered for consideration are reported using the approved net tax rate at a value equal to the consideration paid, but at least at the amount that would be agreed between independent third parties.
- d. If reporting is done using two net tax rates and the supply cannot be allocated to a business activity, the higher rate is used.

² Using net tax rates for reporting, supplies to employees are treated as follows:

- a. Goods given and services supplied for consideration to employees are reported at the approved net tax rate.
- b. If reporting is done using two net tax rates and the supply cannot be allocated to a business activity, the higher rate is used.

³ If the person employed is a closely related person and if there is no legal entitlement under the employment contract to the supply, paragraph 1 applies. If there is a legal entitlement, paragraph 2 applies.

⁴ Supplies that must be included in the salary certificate for direct tax purposes always constitute supplies for consideration.

Art. 95 Sales of equipment and fixed assets

(Art. 37 para. 1–4 VAT Act)

Sales of equipment and fixed assets that are not used exclusively to make supplies that are exempt from the tax without credit must be reported at the approved net tax rate. If reporting is done using two net tax rates and the equipment or the fixed assets were used for both business activities, the considerations must be reported at the higher net tax rate.

Art. 96 Invoicing at an excessive tax rate

(Art. 37 para. 1–4 VAT Act)

If a taxable person reporting using net tax rates invoices a supply at an excessive tax rate, the person must, in addition to the VAT calculated at the net tax rate, also pay the difference between the tax calculated using the tax rate disclosed and the tax calculated using the tax rate under Article 25 VAT Act. The consideration is regarded as including VAT.

Section 3 Flat Tax Rate Method

Art. 97 Principles

(Art. 37 para. 5 VAT Act)

¹ Related institutions under Article 37 paragraph 5 VAT Act are in particular communal associations and other combinations of public authorities, parishes, private schools and boarding schools, private hospitals, medical treatment centres, rehabilitation centres, sanatoria, private home care organisations, old people's homes, nursing homes, seniors residences, charitable businesses, such as disabled workshops, hostels and special schools, operators of sports facilities and cultural centres subsidised by public authorities, cantonal building insurers, water cooperatives, public transport businesses, private law forest corporations subsidised by public authorities, organisers of non-recurring cultural and sports events, associations under Articles 60–79 of the Civil Code²⁴ (CC) and foundations under Articles 80–89^{bis} CC.

² There are no monetary thresholds for the use of the flat tax rate method.

³ Taxable persons who report using the flat tax rate method may not voluntarily tax supplies under Article 21 paragraph 2 numbers 1–25, 27 and 29 VAT Act (opting).

Art. 98 Submission to the flat tax rate method and change of the reporting method

(Art. 37 para. 5 VAT Act)

¹ Public authorities and related institutions under Article 97 paragraph 1 which wish to report using the flat tax rate method must notify the FTA in writing.

² The flat tax rate method must be retained for at least three tax periods. If the taxable person elects for the effective reporting method, the person may change to the flat tax rate method at the earliest after ten years. An earlier change is possible only if the FTA changes the flat tax rate for the business activity in question.

³ Changes to the reporting method are possible at the beginning of a tax period. They must be notified to the FTA in writing at the latest 60 days after the beginning of the tax period from which the change is to be made. If the notification is late, the change is effective at the beginning of the subsequent tax period.

Art. 99 Flat tax rate

(Art. 37 para. 5 VAT Act)

¹ When using the flat tax rate method, the tax claim is determined by multiplying the total of the considerations generated in a reporting period, including tax, by the flat tax rate approved by the FTA.

² The FTA establishes the flat tax rates taking account of the input tax amounts usual in the relevant branch of the industry. A business activity for which no flat tax rate has been established must be reported at the rate applicable for the net tax rate method.

³ The taxable person must report each of his business activities with the appropriate flat tax rate. The number of applicable flat tax rates is not limited.

Art. 100 Applicability of the rules of the net tax rate method

(Art. 37 para. 5 VAT Act)

Unless this Section provides otherwise, Articles 77–96 also apply.

Section 4 Notification Procedure

Art. 101 Part of the assets

(Art. 38 para. 1 VAT Act)

Every smallest unit in a business that is viable by itself constitutes a part of the assets.

Art. 102 Tax liability of the purchaser

(Art. 38 para. 1 VAT Act)

The notification procedure must also be used if the purchaser only becomes liable for the tax in connection with the transfer of all or part of the assets.

Art. 103 Invoice

(Art. 38 para. 1 VAT Act)

If the notification procedure is used, this must be stated on the invoice.

Art. 104 Voluntary use of the notification procedure

(Art. 38 para. 2 VAT Act)

Provided both parties are liable for the tax, the notification procedure may be used:

- a. on the transfer of immovable property or parts of immovable property;
- b. on application of the transferring person, if there are material interests.

Art. 105 Degree of use

(Art. 38 para. 4 VAT Act)

It is assumed that the seller has used the assets transferred entirely for the business activities entitling the input tax deduction. A different degree of use must be proved by the purchaser.

Section 5 Form of Reporting and Assignment of the Tax Claim**Art. 106** Change in the form of reporting under the effective method
(Art. 39 VAT Act)

¹ On changing from reporting under the collected considerations to reporting under the agreed considerations method, the taxable person must in the reporting period following the change:

- a. report the tax on the debtor items existing at the time of change; and
- b. deduct the input taxes on the creditor items existing at the time of change in connection with the business activities entitling the input tax deduction.

² On changing from reporting under the agreed considerations to the collected considerations method, the taxable person must in the reporting period following the change:

- a. deduct the debtor items existing at the time of change from the considerations collected in this reporting period; and
- b. deduct the input taxes on the creditor items existing at the time of the change from the input taxes paid in this reporting period.

³ If simultaneously with the change in the form of reporting the reporting method under Articles 36 and 37 VAT Act is also changed, Article 79 paragraph 4 or Article 81 paragraph 6 applies.

Art. 107 Change in the form of reporting when reporting under the net tax rate method
(Art. 39 VAT Act)

¹ On changing from reporting on the basis of the collected considerations to reporting on the basis of the agreed considerations, the taxable person must report the debtor items existing at the time of change at the approved net tax rates in the reporting period following the change.

² On changing from reporting on the basis of the agreed considerations to reporting on the basis of the collected considerations, the taxable person must deduct the debtor items existing at the time of the change from the considerations collected in this reporting period in the reporting period following the change.

³ If at the same time as changing of the form of reporting the reporting method is also changed, Article 79 paragraph 4 or Article 81 paragraph 6 applies.

Art. 108 Assignment and pledge of the tax claim
(Art. 44 para. 2 VAT Act)

On assignment and pledge of the tax claim, the confidentiality provisions under Article 74 VAT Act do not apply.

Title 3 Acquisition Tax

Art. 109 Supplies not subject to the acquisition tax
(Art. 45 VAT Act)

¹ Supplies that are exempt without credit from tax under Article 21 VAT Act or are exempt from tax under Article 23 VAT Act are not subject to acquisition tax.

² The supply of electricity in cables and natural gas in pipes under Article 7 paragraph 2 VAT Act to persons who are not liable for tax under Article 10 VAT Act is not subject to acquisition tax, but to domestic tax.

Art. 110 End of the use or exploitation with subsequent supply of the goods on Swiss territory
(Art. 45 para. 1 let. c VAT Act)

If a good that is made available for use or exploitation and which has been released for free circulation, is not directly assessed after the export procedure following the end of this use or exploitation (Art. 61 of the CustA²⁵), but delivered to a third person on Swiss territory, this person must pay the acquisition tax.

Art. 111 Data storage media without market value
(Art. 45 para. 1 let. b and 52 let. 2 VAT Act)

¹ Regardless of the storage device or the method of data storage, a data storage medium without market value is considered to be any device for storing data, which in the manner and nature and condition in which it is imported:

- a. cannot be purchased against payment of a consideration known at the time of import; and
- b. cannot be used contractually against payment of a non-recurring licence fee known at the time of import.

² The data storage medium may in particular carry computer programmes and files, their updates and upgrades and sound and image data.

³ Crucial for the assessment of whether a data storage medium is a data storage medium without market value is the medium itself with the services included therein and the related rights not considering the legal transaction leading to the import.

⁴ The following goods are in particular deemed equivalent to data storage media without market value, provided the goods are acquired by the customer as a result of an independent legal transaction:

- a. plans, drawings and illustrations, in particular by architects, engineers, graphic artists and designers;
- b. legal opinions from lawyers, reports from experts, translations, research and test results and results of analyses, valuations and similar;
- c. certificated rights and intellectual property.

²⁵ SR 631.0

Title 4 Import Tax**Chapter 1 Plurality of Supplies and Exemption from the Import Tax****Art. 112 Aggregations and combinations of supplies**
(Art. 52 para. 3 and 19 para. 2 VAT Act)

¹ If an import assessment under Article 19 paragraph 2 VAT Act is requested, a cost calculation must be submitted at the time of customs clearance.

² The cost calculation must show:

- a. the direct costs of the individual supplies;
- b. the total consideration.

³ Cost elements that cannot be fully allocated to the individual supplies, such as overheads, profit or transport costs, must be allocated to the individual supplies by value.

⁴ The Federal Customs Administration (FCA) may from case to case demand further documentation in order to review the calculation.

Art. 113 Exemption from import tax
(Art. 53 para. 2 and 107 para. 2 VAT Act)

Exempt from the import tax are:

- a. goods for heads of state and for diplomatic, consular and international organisations and their members which are duty free under Article 6 of the Customs Ordinance dated 1 November 2006²⁶ (CustO);
- b. coffins, urns and related decoration that are duty free under Article 7 CustO;
- c. prizes, mementos and gifts that are duty free under Article 8 CustO;
- d. restaurant car inventories that are tax free under Article 10 CustO;
- e. inventories, spare parts and equipment on ships that are duty free under Article 11 CustO;
- f. inventories, spare parts and equipment on aircraft that are duty free under Article 12 CustO;
- g. gold coins and fine gold under Article 44.

Chapter 2 Establishment of and Security for the Import Tax Debt

Art. 114 Security for payment of the tax over the FCA's centralised settlement procedure

(Art. 56 para. 3 VAT Act)

If the tax is paid via the centralised settlement procedure (CSP), the FCA may require a lump-sum security based on its risk assessment. It is calculated as follows:

- a. at least 20 per cent of the tax accrued within a period of 60 days, provided the importer is registered with the FTA as a taxable person and the conditions of the CSP are observed;
- b. 100 per cent of the tax accrued within a period of 60 days if the importer is not registered with the FTA as a taxable person or the conditions of the CSP are not observed.

Art. 115 Amount of the security for a conditional tax claim and for payment reliefs

(Art. 56 para. 3 VAT Act)

¹ The amount of the security for conditional tax claims or in cases, in which payment reliefs under Article 76 paragraph 1 CustA²⁷ are granted:

- a. 100 per cent on storage of bulk goods;
- a^{bis,28} a maximum of 10 per cent for the authorised economic operator (AEO) under Article 42a CustA;
- b. at least 25 per cent in other cases.

² For international transits, the amount of the security is governed by international treaties.

Art. 116 Subsequent adjustment of the considerations

(Art. 56 para. 5 VAT Act)

¹ The notification of a subsequent adjustment of the considerations must contain the following information:

- a. beginning and end date of the period for which the considerations are subsequently adjusted;
- b. the considerations calculated in this period;
- c. the total of the adjustments of the considerations;
- d. the allocation of the adjustment of the considerations to the various tax rates.

²⁷ SR 631.0

²⁸ Inserted by Annex No 2 of the Ordinance of 18 Nov. 2015, in force since 1 Jan. 2016 (AS 2015 4917)

² Price and value details in foreign currency adduced for the determination of the adjustment of the considerations must be converted into Swiss francs at the average exchange rate (selling) for the period.

³ The FCA may from case to case demand further documentation in order to determine the import tax liability.

Chapter 3 Transfer of the Tax Payment

Art. 117 Transfer of the import tax payment (Art. 63 VAT Act)

¹ Persons who wish to pay taxes under the transfer procedure require authorisation from the FTA.

² If doubt exists as to whether the requirements for the transfer of the import tax are fulfilled, the FCA shall levy the tax.

³ The prescription of import tax liability that has been transferred is governed by Article 42 VAT Act.

⁴ The FTA shall regulate execution in consultation with the FCA.

Art. 118 Conditions for authorisation (Art. 63 VAT Act)

¹ Authorisation is granted if the taxable person:

- a. reports the VAT under the effective method;
- b. regularly imports and exports goods as part of his business activities;
- c. keeps a detailed import, inventory and export control for these goods;
- d. in his periodic tax returns with the FTA regularly reports input tax surpluses on imports and exports of goods under letter b of more than 50,000 francs per year that arise from the payment of import tax to the FCA; and
- e. guarantees the correct functioning of the procedure.

² The grant or extension of the authorisation may be made conditional on the provision of security in the amount of the anticipated claims.

Art. 119 Lapse of the conditions for authorisation (Art. 63 VAT Act)

If any of the conditions for authorisation under Article 118 paragraph 1 letters a–d are no longer fulfilled, the taxable person must inform the FTA in writing without delay.

Art. 120 Withdrawal of the authorisation
(Art. 63 VAT Act)

Authorisation is withdrawn if the taxable person no longer guarantees the correct functioning of the procedure.

Art. 121 Non-levying of the domestic tax
(Art. 63 para. 2 VAT Act)

Articles 118–120 apply by analogy for authorisation under Article 63 paragraph 2 VAT Act.

Title 5 Procedural Law for Domestic and Acquisition Tax

Chapter 1 Rights and Obligations of the Taxable Person

Section 1 Electronic Data and Information

Art. 122 Principle
(Art. 70 para. 4 VAT Act)

¹ Data and information transmitted and stored electronically or in a similar manner that are relevant for claiming input tax, or levying or collecting tax, have the same evidentiary value as data and information that are readable without auxiliary means, provided the following requirements are met:

- a. proof of origin;
- b. proof of integrity;
- c. dispatch cannot be contested.

² Special legal provisions that require the transmission or storage of the data and information mentioned in a particular form are reserved.

Art. 123 Availability and reproduction
(Art. 70 para. 1 and 4 VAT Act)

The availability of data and information relevant for the imposition or the collection of the tax stored electronically or in similar manner is governed by the provisions of Section 3 of the Accounts Ordinance of 24 April 2002²⁹. The taxable person must ensure that such data and information can be made available in a comprehensible readable form throughout the retention period prescribed by law. The person must provide the means required for this purpose.

Art. 124 Electronic communication with the authorities
(Art. 70 para. 4 VAT Act)

¹ Receipts may be transmitted to the FTA electronically, provided the FTA has expressly declared that electronic transmission is permissible.

²⁹ SR 221.431

² Electronic data and information subject to Article 74 VAT Act must be transmitted in encoded form if generally accessible networks are used.

³ Otherwise the Ordinance of 17 October 2007³⁰ on Electronic Transmission in Administrative Proceedings applies.

Art. 125 Implementation rules

(Art. 70 para. 4 VAT Act)

The Federal Department of Finance shall issue rules of a technical, organisational and procedural nature to ensure in an appropriate manner the security, confidentiality and control of data and information created, transmitted and stored electronically or in comparable manner according to the provisions of this Section.

Section 2 Return

Art. 126 Effective reporting method

(Art. 71 and 72 VAT Act)

¹ When using the effective reporting method, the taxable person must for reporting to the FTA record the following figures in a suitable manner:

- a. the total of all considerations subject to domestic tax; this includes in particular the considerations for:
 1. taxed supplies, classified by tax rates,
 2. supplies that are taxed voluntarily under Article 22 VAT Act (Option),
 3. supplies that are exempt from the tax under Article 23 VAT Act,
 4. supplies to beneficiaries under Article 2 HSA³¹ that are exempt from the VAT under Article 143 of this Ordinance,
 5. supplies for which the notification procedure under Article 38 VAT Act was used,
 6. supplies that are exempt from tax without credit under Article 21 VAT Act;
- b. abatements of the consideration when reporting under agreed considerations, to the extent they are not taken into consideration in another field;
- c. the following, which do not fall within the scope of VAT:
 1. considerations from supplies, whose place of supply lies abroad under Articles 7 and 8 VAT Act,
 2. flows of funds not qualifying as considerations under Article 18 paragraph 2 let. a–c VAT Act,
 3. other flows of funds not qualifying as considerations under Article 18 paragraph 2 let. d–l VAT Act;

³⁰ [AS 2007 5093. AS 2010 3031 Art. 13]. See today: Ordinance of 18 June 2010 on Electronic Transmission in Administrative Proceedings (SR 172.021.2).

³¹ SR 192.12

- d. the total of the considerations for supplies subject to the acquisition tax, classified by tax rates;
 - e. the total of all deductible input taxes before corrections and reductions under letter f, classified into:
 - 1. input tax on cost of materials and services,
 - 2. input tax on investments and other operating costs,
 - 3. de-taxation;
 - f. the amounts by which the input tax deduction must be corrected or reduced as a result of:
 - 1. mixed use under Article 30 VAT Act,
 - 2. own use under Article 31 VAT Act,
 - 3. receipt of flows of funds that do not constitute considerations under Article 33 paragraph 2 VAT Act;
 - g. the total of the import tax reported under the transfer procedure.
- ² The FTA may consolidate several figures under paragraph 1 into one field of the reporting form or refrain from requiring them in the periodic reporting.

Art. 127 Reporting under the net tax rate or the flat tax rate method
(Art. 71 and 72 VAT Act)

¹ When using the net tax rate or flat tax rate method, the taxable person must record the following figures in a suitable manner for reporting to the FTA:

- a. the total of all considerations subject to domestic tax; this includes in particular the considerations for:
 - 1. taxed supplies, classified by net tax rates or flat tax rates,
 - 2. supplies that are exempt from the tax under Article 23 VAT Act,
 - 3. supplies to beneficiaries under Article 2 HSA³² that are exempt from VAT under Article 143 of this Ordinance,
 - 4. supplies for which the notification procedure under Article 38 VAT Act was used,
 - 5. supplies that are exempt from the tax without credit under Article 21 VAT Act;
- b. abatements of the consideration when reporting under agreed considerations, to the extent they are not taken into consideration in another field;
- c. the following, which do not fall within the scope of VAT:
 - 1. considerations from supplies, whose place of supply lies abroad under Articles 7 and 8 VAT Act,
 - 2. flows of funds not qualifying as considerations under Article 18 paragraph 2 letters a–c VAT Act,

³² SR 192.12

3. other flows of funds not qualifying as considerations under Article 18 paragraph 2 letters d–l VAT Act;
- d. the total of the considerations for supplies subject to the acquisition tax classified by tax rates;
- e. tax compensations arising from the use of a special procedure made available by the FTA under Article 90 paragraphs 1 and 2;
- f. the fair value of the immovable goods under Article 93 that are no longer used for business purposes or are newly used for a business activity exempt from the tax without credit under Article 21 paragraph 2 VAT Act.

² The FTA may consolidate several figures under paragraph 1 under one field of the reporting form or refrain from requiring them in the periodic reporting.

Art. 128 Additional documentation
(Art. 71 and 72 VAT Act)

¹ The FTA may require the taxable person to submit, in particular, the following documentation:

- a. a summary of the details mentioned in Article 126 or 127 for the entire tax period (declaration for the tax period);
- b. the duly signed annual accounts or, if the taxable person is not required to keep books of account, a schedule of the receipts and expenditures as well as of the assets of the business at the beginning and end of the tax period;
- c. the audit report, if one must be issued for the taxable person;
- d. a turnover reconciliation under paragraph 2;
- e. for taxable persons who report using the effective reporting method, an input tax reconciliation under paragraph 3;
- f. for taxable persons who report using the effective reporting method, a schedule showing the calculation of the input tax corrections and reductions undertaken, from which the input tax corrections under Article 30 VAT Act, the own use cases under Article 31 VAT Act and the input tax reductions under Article 33 paragraph 2 VAT Act is apparent.

² From the turnover reconciliation it must be apparent how the declaration for the tax period, taking account of the different tax rates or the net tax rates and flat tax rates can be reconciled with the annual accounts. To be considered in particular are:

- a. the operating turnover reported in the accounts;
- b. the revenues booked on expense accounts (expense reductions);
- c. the charges within a group of companies that are not included in the operating turnover;
- d. the sales of equipment;
- e. the advance payments;
- f. the other receipts that are not included in the operating turnover;

- g. the payments in kind;
- h. the reductions in earnings;
- i. the bad debts; and
- j. the closing entries, such as periodic accruals and deferrals, the provisions and internal re-bookings that are not turnover relevant.

³ From the input tax reconciliation it must be apparent that the input taxes according to the input tax accounts or to other records have been reconciled with the input taxes declared.

⁴ The demand for additional documentation under paragraphs 1–4 does not represent a demand for comprehensive documentation within the meaning of Article 78 paragraph 2 VAT Act.

Art. 129 Correction
(Art. 72 VAT Act)

Errors in past returns must be corrected separately from the ordinary returns.

Chapter 2 Obligation of Third Parties to provide Information

(Art. 73 para. 2 let. c VAT Act)

Art. 130

The obligation of third parties to provide information under Article 73 paragraph 2 letter c VAT Act does not apply to documents which

- a. have been entrusted to the person obliged to provide information in order to make the supply;
- b. the person obliged to provide information has prepared himself in order to make the supply.

Chapter 3 Rights and Obligations of the Authorities

Section 1 Automated Processing and Storage of Data

Art. 131 Purpose of data processing and nature of the data
(Art. 76 para. 2 VAT Act)

The FTA may process the following data and information for the tasks set out below:

- a.³³ establishment of the tax liability of individuals and legal entities and partnerships: names, legal form, Commercial Register entry, date of birth or date of establishment, address, domicile or place of business, telecommunications

³³ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

numbers, e-mail address, place of origin, nature of business, generated or anticipated turnovers, date of entry and deletion, bank connection, details necessary for the legal representative, and in the case of sole proprietors, the OASI insurance number;

- b. establishment of the taxable supplies and the imposition and control of the tax due thereon and of the deductible input taxes: data and information from books of account, receipts, business documents and other records, tax returns and correspondence and business figures;
- c. control of the supplies claimed as exempt from the tax without credit and of the related input taxes: data and information from books of account, receipts, business documents and other records, tax returns and correspondence;
- d. control of the tax exemption with credit of supplies that are subject to the tax by law or are voluntarily taxed (Option): data and information from books of account and receipts and proof of the place of rendering the supply;
- e. performance of the controls of import and export receipts necessary for the imposition of the VAT: data from the FCA database;
- f. ensuring the collection of the taxes payable by the taxable and jointly and severally liable persons: data and information about legal enforcement, bankruptcy and attachment proceedings, about the period and amount of assignments of the claim and about the amount of taxable assigned claims, about the financial circumstances, such as cash, postal and bank accounts, securities, property and other movable valuables and undistributed inheritances;
- g. imposition and execution of administrative or criminal law sanctions: data and information about the violations revealed in administrative and criminal procedures and about the reasons for criminal sentences, such as income and financial circumstances;
- h. keeping the statistics necessary for the imposition of the tax: data and information about business figures;
- i. branch of industry and regional risk analyses: the available tax data.

Art. 132 Processing of the data and information

(Art. 76 para. 2 VAT Act)

¹ Data are processed for purposes of fulfilling the legally prescribed tasks exclusively by employees of the FTA or by qualified staff under the control of the FTA.

² The FTA may compile and store data and information that it itself collects or consolidates or receives from persons involved in procedures, third parties or authorities electronically or in similar manner, provided they can at all times be made readable and cannot be altered.

³ Special legal rules that require the submission or storage of data and information in a particular form are reserved.

Art. 133 Organisation and operation

(Art. 76 para. 2 and 3 VAT Act)

¹ The FTA's electronic information systems are operated as independent applications or on the office automation platform of the Federal Office of Information Technology, Systems and Telecommunication (OFIT) or of other suppliers on behalf of the FTA.

² The FDF may stipulate in more detail the organisation and the operation of the FTA's information systems.

Art. 134 Data security

(Art. 76 para. 2 VAT Act)

¹ The data and the data storage media used to process them must be safeguarded against unauthorised use, alteration or destruction and theft.

² Data security is governed by the Ordinance of 14 June 1993³⁴ to the Federal Data Protection Act and the Section 3 of the Federal Information Technology Ordinance of 26 September 2003³⁵ and the recommendations of the Federal Strategy Unit for IT.

³ Within its sphere, the FTA shall take appropriate organisational and technical measures to secure the data.

Art. 135 Data protection advice

(Art. 76 para. 2 VAT Act)

¹ The FTA shall appoint a person responsible for data protection and data security advice.

² The person shall monitor compliance with the data protection provisions and ensure in particular a regular review of the correctness and security of the data.

³ The person shall also ensure that regular checks are made on the correctness and the complete transfer of the data collected to data storage media.

Art. 136 Statistics

(Art. 76 para. 2 VAT Act)

¹ The FTA shall compile and maintain statistics to the extent necessary for the performance of its statutory tasks.

² It may provide the federal and cantonal authorities and other interested persons with data for statistical purposes, provided they are anonymised and permit no inferences as to the persons in question. Article 10 paragraphs 4 and 5 of the Federal Statistics Act of 9 October 1992³⁶ are reserved.

³⁴ SR 235.11

³⁵ [AS 2003 3687, 2007 3401 Art. 22 para. 2, 2010 635 Annex No 2, 2011 4491, AS 2011 6093 Art. 29 para. 1]. See today: the Federal Information Technology Ordinance of 9 Dec. 2011 (SR 172.010.58).

³⁶ SR 431.01

³ Non-anonymised data may be used for internal business audits and for internal business planning.

Art. 137 Evaluation of the FTA's intranet and internet service

(Art. 76 para. 2 VAT Act)

¹ For the evaluation of its intranet and internet service, the FTA may process data from persons who make use of this service (log files).

² The data may be processed only for this analysis and only as long as necessary. After the evaluation they must be deleted or anonymised.

Art. 138 Retention period, deletion and archiving of the data

(Art. 76 para. 2 VAT Act)

¹ The FTA shall delete the data and information at the latest after expiry of the periods laid down in Article 70 paragraphs 2 and 3 VAT Act and in Article 105 VAT Act. Excepted are data that are repeatedly required for the imposition of the VAT.

² Prior to deletion the data shall be offered to the Federal Archives in accordance with the Archiving Act of 26 June 1998³⁷ for archiving. Tax secrecy is reserved.

Art. 139 Online disclosure of data

(Art. 76 para. 3 VAT Act)

The FTA shall make the data under Article 131 accessible online to the persons in the FCA entrusted with the imposition and the collection of the VAT, to the extent that these data are necessary for the correct and complete assessment of the import tax.

Section 2 **Audit**

(Art. 78 para. 2 VAT Act)

Art. 140

A demand for comprehensive documentation is deemed to have been made if a demand for the books of account for a financial year is made with or without the related booking receipts.

Chapter 4 Ruling and Appeal Procedures

Art. 141 Appeal procedures (Art. 81 VAT Act)

The FTA is entitled within the meaning of Article 89 paragraph 2 letter a of the Federal Supreme Court Act of 17 June 2005³⁸ to appeal to the Federal Court.

Art. 142 Enforcement costs (Art. 86 VAT Act)

If the debt enforcement claim under Article 86 paragraph 9 VAT Act is withdrawn, the taxable person bears the enforcement costs incurred.

Title 6 Relief from VAT for Beneficiaries who are exempt from VAT under the HSA

Art. 143 Entitlement to claim tax relief (Art. 107 para. 1 let. a VAT Act)

¹ Institutional and individual beneficiaries are entitled to claim relief from VAT.

² Institutional beneficiaries are:

- a. beneficiaries under Article 2 paragraph 1 HSA³⁹ who are exempt from the indirect taxes in accordance with public international law, an agreement concluded with the Federal Council for exemption from the indirect taxes or a decision of the Federal Department of Foreign Affairs (FDFA) under Article 26 paragraph 3 HSA;
- b. beneficiaries under Article 2 paragraph 1 HSA domiciled abroad, to the extent they are exempt from the indirect taxes in accordance with their foundation deeds, a protocol concerning the privileges and immunities or other public international law agreements.

³ Individual beneficiaries are:

- a. heads of state and government while actually exercising an official function in Switzerland and persons in their entourage who enjoy diplomatic status;
- b. diplomatic representatives, consular officials, and persons in their entourage, provided they enjoy the same diplomatic status as the former in Switzerland;
- c. high officials of institutional beneficiaries under paragraph 2 letter a who enjoy diplomatic status and the persons in their entourage, to the extent they enjoy the same diplomatic status in Switzerland provided they are exempt from indirect taxes on the basis of an agreement between the Federal Coun-

³⁸ SR 173.110

³⁹ SR 192.12

cil or the FDFA and the institutional beneficiaries in question or on the basis of a unilateral decision of the Federal Council or of the FDFA;

- d. delegates to international conferences, who enjoy diplomatic status, if the international conference they are attending is itself exempt from the indirect taxes in accordance with paragraph 2 letter a;
- e. persons carrying out an international mandate under Article 2 paragraph 2 letter b HSA, who enjoy diplomatic status in Switzerland and are exempt from the indirect taxes on the basis of a decision of the Federal Council and the persons in their entourage, provided such enjoy the same diplomatic status.

⁴ Swiss citizens have no claim to tax relief.

⁵ Relief from VAT is effected by tax exemption at source under Articles 144 and 145 and, in exceptional cases, by refund under Article 146.

Art. 144 Tax exemption
(Art. 107 para. 1 let. a VAT Act)

¹ Exempt from the tax are:

- a. supplies of goods and services on Swiss territory by taxable persons to institutional and individual beneficiaries;
- b. the acquisition of supplies of services from businesses with their place of business abroad by institutional and individual beneficiaries.

² The tax exemption applies only to supplies of goods and supplies of services:

- a. to individual beneficiaries if they are exclusively for personal use;
- b. to institutional beneficiaries if they are exclusively for official use.

Art. 145 Conditions for the tax exemption
(Art. 107 para. 1 let. a VAT Act)

¹ An institutional beneficiary that wishes to claim a tax exemption must before every acquisition of supplies certify on the official form that the supplies acquired are for official use.

² An individual beneficiary who wishes to claim tax exemption must before every acquisition of supplies have certified by the institutional beneficiary to which the person belongs, on the official form, that the person enjoys the status under Article 143 paragraph 3, which confers entitlement to tax free acquisition. The individual beneficiary must hand over the official form signed in person to the supplier and identify himself on every acquisition of supplies with the identification card issued by the competent federal authority.

³ A tax exemption under Article 144 paragraph 1 letter a may be claimed only if the effective acquisition price for the supplies indicated on the invoice or an equivalent document is at least 100 francs, including tax. This minimum amount does not apply to telecommunications and electronic services under Article 10 and for supplies of water in pipes, gas and electricity by utility companies.

⁴ The conditions under paragraphs 1–3 for claiming tax exemption do not apply to acquisitions of motor fuel for which the institutional or the individual beneficiary may claim exemption from the mineral oil tax based on Articles 26–28 of the Mineral Oil Tax Ordinance of 20 November 1996⁴⁰, on Articles 30 and 31 of the Ordinance of 23 August 1989⁴¹ on the Customs Privileges of Diplomatic Missions in Bern and Consular Posts in Switzerland and of Articles 28 and 29 of the Ordinance of 13 November 1985⁴² on the Customs Privileges of International Organisations, of States in their relations with such Organisations and of Special Missions of Foreign States. In this case the supplier must be able to prove that the FCA has not levied the mineral oil tax or has refunded it.

Art. 146 Tax refund

(Art. 107 para. 1 let. a VAT Act)

¹ In justified cases, the FTA may on application refund tax amounts already paid for which a claim to tax relief exists; it may, in consultation with the FDFÄ, charge a processing fee for this service.

² For the tax refund, Article 145 paragraph 3 applies by analogy.

³ An institutional beneficiary may not make more than two applications for a tax refund per calendar year. The official form must be used.

⁴ Individual beneficiaries may not make more than one application for a tax refund per calendar year. The applications by individual persons must be collected by the organisation to which they belong for submission once annually.

⁵ The FTA may, in consultation with the FDFÄ, set a minimum refund amount per application. No payment interest is paid on the refund amounts.

Art. 147 Retention obligation

(Art. 107 para. 1 let. a VAT Act)

The taxable person must retain in full the originals of the official forms used, together with the other receipts, in accordance with Article 70 paragraph 2 VAT Act. For electronically transmitted and stored official forms, Articles 122–125 apply by analogy.

Art. 148 Input tax deduction

(Art. 107 para. 1 let. a VAT Act)

The tax on supplies of goods, on imports of goods and on supplies of services that are used to effect tax free supplies to institutional and individual beneficiaries may be deducted as input tax.

⁴⁰ SR 641.611

⁴¹ SR 631.144.0

⁴² SR 631.145.0

Art. 149 Subsequent tax collection and offences

(Art. 107 para. 1 let. a VAT Act)

¹ If the conditions for a tax exemption under Articles 144 and 145 are not met or subsequently not fulfilled, in cases of tax exemption under Article 144 paragraph 1 letter a the institutional or the individual beneficiary is obliged to pay the taxable person an amount equivalent to the tax due. If this amount is not paid, it is due by the taxable person, to the extent this person is at fault. Institutional and individual beneficiaries are obliged to pay the tax subsequently on the acquisition of supplies of services from businesses with their place of business abroad.

² The provisions of the Vienna Conventions dated 18 April 1961⁴³ on Diplomatic Relations and dated 24 April 1963⁴⁴ on Consular Relations and of the Headquarters Agreement are reserved.

Art. 150 Voluntary taxation of supplies exempt without credit

(Art. 107 para. 1 let. a VAT Act)

The FTA can approve the voluntary taxation of the supplies referred to in Article 21 paragraph 2 numbers 20 and 21 VAT Act, without the value of the land, provided they have been made to institutional beneficiaries under Article 143 paragraph 2 letter a, regardless whether the institutional beneficiary is liable for tax on Swiss territory or not. This option is limited to properties and parts of properties used for administrative purposes, and in particular to offices, conference rooms, warehouses, parking places, or which are intended as the residence of the head of a diplomatic mission, a permanent mission or another representative in inter-governmental organisations or of a consular post.

Title 7
Refund of VAT to Customers with Domicile or Place of Business Abroad**Art. 151** Persons entitled to claim

(Art. 107 para. 1 let. b VAT Act)

¹ The right to a refund of the taxes incurred under Article 28 paragraph 1 letter a and c VAT Act shall be granted to persons who import goods or have supplies made on Swiss territory against a consideration provided they also:

- a. have their domicile, place of business or permanent establishment abroad;
- b. are not a taxable person on Swiss territory;
- c. do not make supplies on Swiss territory subject to paragraph 2; and
- d. prove to the FTA their business character in the state of their domicile, of their place of business or of the permanent establishment.

⁴³ SR 0.191.01

⁴⁴ SR 0.191.02

² The entitlement to tax refund remains intact if the person only:

- a. arranges transports that are exempt from the tax under Article 23 paragraph 2 numbers 5–7 VAT Act; or
- b. makes supplies of services that are subject to the acquisition tax.

³ Refund of the tax is conditional on the state of residence or of place of business or of the permanent establishment of the applicant business granting a corresponding reciprocal right.

Art. 152 Reciprocal right

(Art. 107 para. 1 let. b VAT Act)

¹ Reciprocal right is deemed to be given if:

- a. businesses with their domicile or place of business in Switzerland have the right to claim refunds in the foreign state concerned of the VAT paid on supplies acquired there which in scope and restrictions is commensurate with the right of input tax deduction which businesses resident in the foreign state enjoy;
- b. in the foreign state concerned a tax comparable with the Swiss VAT is not imposed; or
- c. in the foreign state concerned a different type of sales tax from the Swiss VAT is imposed, which affects businesses with their domicile or place of business in the foreign state in the same way as businesses with their domicile or place of business in Switzerland.

² The FTA shall maintain a list of the states with which a reciprocal right declaration has been exchanged under paragraph 1 letter a.

Art. 153 Scope of the tax refund

(Art. 107 para. 1 let. b VAT Act)

¹ The tax refund for the VAT paid on Swiss territory is commensurate in scope and limitations with the right of input tax deduction under Articles 28–30 VAT Act.

² Travel agents and organisers of events with their place of business abroad are not entitled to refunds of the taxes which have been invoiced to them on Swiss territory for the acquisition of supplies of goods and supplies of services that they charge on to customers.

³ Repayable taxes are refunded only if their amount in a calendar year reaches at least 500 francs.

Art. 154 Refund period

(Art. 107 para. 1 let. b VAT Act)

The application for a refund must be made within six months of the end of the calendar year in which an invoice supporting the claim for refund was issued for the supply made.

Art. 155 Procedure

(Art. 107 para. 1 let. b VAT Act)

¹ The application for a tax refund must be addressed to the FTA with the suppliers' original invoices or with the FCA's assessment advice. The original invoices must meet the requirements under Article 26 paragraph 2 VAT Act and be in the name of the applicant.

² The FTA's form must be used for the application.

³ The applicant must appoint a representative with domicile or with a place of business in Switzerland.

⁴ The tax displayed on cash receipts may not be refunded.

⁵ The FTA may demand further details and documentation.

Art. 156 Refund interest

(Art. 107 para. 1 let. b VAT Act)

If the tax refund is paid out later than 180 days after receipt of the complete application by the FTA, refund interest set by the FDF is paid for the period from the 181st day until payment, provided the relevant state grants reciprocal rights.

Title 8 Value Added Tax Consultative Commission⁴⁵**Art. 157⁴⁶** Status

(Art. 109 VAT Act)

The Value Added Tax Consultative Commission (Consultative Commission) is an extra-parliamentary commission under Article 57a of the Government and Administrative Organisation Act of 21 March 1997⁴⁷.

Art. 158⁴⁸ Composition of the Consultative Commission

(Art. 109 VAT Act)

¹ The Consultative Commission consists of the Head of the Main Division Value Added Tax of the FTA and fourteen permanent members chosen from the taxable persons, the cantons, academia, business, tax advisers and consumers.

² The Head of the Main Division Value Added Tax of the FTA takes the chair. He or she shall request the Federal Council to appoint a permanent member as his or her deputy.

⁴⁵ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

⁴⁶ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

⁴⁷ SR 172.010

⁴⁸ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

³ He or she may invite other representatives of the Federal Administration or of the branches of industry concerned to the meetings of the Consultative Commission.

Art. 159 Method of work and secretariat

(Art. 109 VAT Act)

¹ The Consultative Commission meets as necessary. Meetings are convened by the chairperson.

² The Main Division Value Added Tax performs the secretarial work assigned to it by the chairperson and takes the minutes.⁴⁹

Art. 160 Comments and recommendations

(Art. 109 VAT Act)

¹ The chairperson listens to the members and receives their comments and recommendations.

² Minutes are kept of the discussions. They contain the recommendations of the consultative body and any majority and minority opinions.

Art. 161 Power of decision

(Art. 109 VAT Act)

¹ The Consultative Commission has no power of decision.

² The decision to establish practice lies with the Main Division Value Added Tax of the FTA.

Art. 162 Official secrecy and information

(Art. 109 VAT Act)

¹ The discussions and the documents laid before or drawn up by the Consultative Commission are confidential. This does not include drafts of established practice by the FTA; these are published electronically at the same time that they are sent with the invitation to the meeting of the Consultative Commission at which they are scheduled to be approved.

² The members are subject to the regulations on official secrecy applicable for federal employees. The obligation to maintain official secrecy continues also after withdrawal from the Consultative Commission.

³ With the approval of the chairperson, the cases of the Consultative Commission may be made public.

⁴⁹ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

Title 9 Final Provisions

Chapter 1 Repeal and Amendment of Current Law

Art. 163

The Ordinance of 29 March 2000⁵⁰ to the Federal Act on Value Added Tax is repealed.

Chapter 2 Transitional Provisions

Art. 164 Subsidiary liability on assignment (Art. 15 para. 4 VAT Act)

The assignee is liable only for the VAT on receivables which he acquires under a global assignment concluded after 1 January 2010.

Art. 165 Subsequent input tax deduction (Art. 32 VAT Act)

The provisions concerning subsequent input tax deduction do not apply to:

- a.⁵¹ flows of funds not qualifying as considerations (Art. 18 para. 2 VAT Act), which after the new law comes into force no longer result in a reduction of the input tax deduction under Article 33 paragraph 2 VAT Act;
- b. own supplies taxed as own use for construction purposes under Article 9 paragraph 2 of the VAT Act dated 2 September 1999⁵².

Art. 166 Choice of method (Art. 37 and 114 VAT Act)

¹ When the VAT Act comes into force, the notice periods under Article 37 paragraph 4 VAT Act for changing from the effective reporting method to the net tax rate method and vice versa begin to run again.

² When the VAT Act comes into force, the notice periods under Article 98 paragraph 2 for changing from the effective reporting method to the flat tax rate method and vices versa begin to run again.

³ Where Article 114 paragraph 2 VAT Act provides for a notice period of 90 days, this notice period takes precedence over the 60 days notice period under Articles 79, 81 and 98 of this Ordinance.⁵³

⁵⁰ [AS 2000 1347, 2001 3294 No II 4, 2004 5387, 2006 2353 4705 No II 45, 2007 1469 Annex 4 No 24 6657 Annex No 9]

⁵¹ Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).

⁵² [AS 2000 1300]

⁵³ Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

Chapter 3 Commencement Date**Art. 167**

¹ This Ordinance, with the exception of Article 76, comes into force on 1 January 2010.

² Article 76 comes into force at a later date.