

The Swiss VAT Law

The current law as of 1.1.2015



20
years
VAT

With the experts
of PwC

Preface

Dear clients,
Dear readers,

This year in Switzerland the VAT celebrates its 20th anniversary. In these 20 years it has frequently caused cold feet, outbreaks of sweating, stomach aches sleepless nights and stiff necks. However, it has also presented us with many exciting discussions and problems.

We are taking this anniversary of the VAT as an opportunity to issue an updated version of our VAT booklet. It is a handy issue of the relevant laws and ordinances. In addition, in the introduction the function of the VAT is outlined briefly and concisely. A further tool is a detailed glossary.

If you have further questions, our consultants will be pleased to assist you.

January 2015

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The Swiss VAT – an overview

1. Development of the Swiss VAT

The VAT is levied in Switzerland by the Confederation based on Art. 130 of the Swiss Constitution (SC). It was introduced in 1995 and from 1 January 1995 replaced the Turnover Tax, which had previously been levied. The legal basis was provided by the VAT Decree. It was an (independent) legislative decree directly based on the SC. The old VAT Decree governed in substance the most important areas, which a VAT law has to contain.

This ordinance was superseded on 1 January 2001 by the VAT Law (old VAT Law). At the same time the Federal Council issued the old VAT Ordinance. Heavy political pressure led in mid-2006 to the „pragmatic articles“ (Art. 15a and 45a old VAT Ordinance). The objective of these provisions was to curb the formalism of the Federal Tax Administration (FTA).

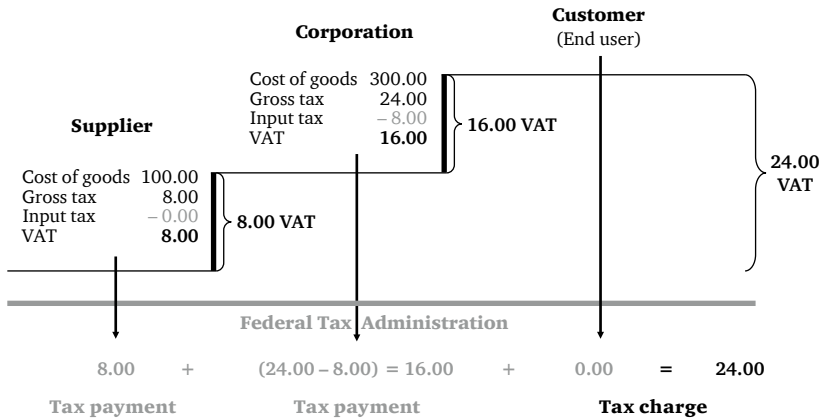
2. The current VAT Law of 2010

With the object of significantly simplifying the law, of increasing legal certainty, of enhancing transparency and improving customer friendliness, on 1 January 2010 a new VAT Law became effective. The ambitious plans of Ex-Federal Councillor Rudolf Merz to introduce a uniform tax rate of 6.1% and to abolish most existing tax exceptions were finally wrecked in Parliament at the end of 2011.

The new VAT Law (VAT Law) differs in significant aspects from the old VAT Law, which was in force until the end of 2009. For example, the concept of tax liability is completely new and the formal obstacles have been significantly reduced in the area of input tax deduction. Legal certainty has also been improved with the conclusive effect of tax audits and the right to legally binding information from the FTA. The enhanced customer friendliness of the FTA is demonstrated inter alia in the establishment of the right of the taxpayer to the performance of an audit.

3. Function and scope

Swiss VAT is based on the system of net all-phase taxation with input tax deduction.



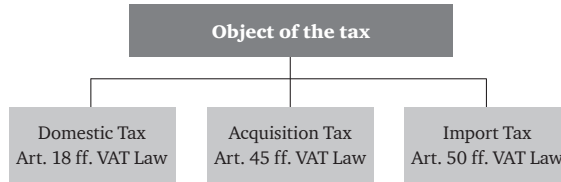
The tax is levied in principle at all stages of the production and distribution process. The illustration shows that each taxable turnover of a taxable person is taxed at each economic stage (all-phase tax). In each case the basis for taxation is the net turnover without VAT (net turnover tax). For purposes of determining the tax charge towards the FTA the part of the tax relating to the preceding supplies (input tax) is deducted from the tax amount. The tax claim is therefore calculated on the difference between the domestic tax payable, the Acquisition Tax and the Import Tax paid in the movement procedure and the input tax balance for the reporting period.

VAT is levied on inputs rendered domestically. Domestically means on Swiss territory (since 1 May 2009 this includes bonded warehouses and ports) and foreign territories under inter-state treaties. For VAT purposes the **Principality of Liechtenstein**, the German municipality **Büsingen am Hochrhein** and the Swiss enclave **Campione d'Italia** qualify as domestic territory. Special arrangements apply for the valley areas in the Canton of Graubünden, **Samnaun** and **Sampuoir**. The VAT Law grants privileges to these valley areas in that only services are taxed (Art. 4 VAT Law).

4. Object of the tax

In line with the principle of a general consumption tax, generally all turnovers of the taxable person should be subject to taxation. We meet VAT in three forms: as **Domestic Tax**, as **Acquisition Tax** and as **Import Tax**.

Accordingly the legislator focuses on the following taxable objects:



- tax on supplies rendered for a consideration in Switzerland by taxable persons (Domestic Tax, Art. 1 para. 2 lit. a VAT Law);
- tax on the acquisition of supplies from enterprises with their place of business abroad (Acquisition Tax, Art. 1 para. 2 lit. b VAT Law);
- tax on the import of goods (Import Tax, Art. 1 para. 2 lit. c VAT Law).

The Domestic Tax is levied only if there is a performance relationship. Such a performance relationship requires that there is an inherent economic connection between performance and consideration. This requires that, in addition to the presence of the taxable object, “the supply is rendered against consideration“. On the other hand the **Import Tax** is not conditional on a consideration. The taxable **cross-border movement** of goods can therefore be said to exist whether there is a consideration or not.

Certain transactions fall in principle within the scope of VAT, but are not taxed for measurement, socio-political or educational reasons. As these supplies are exempt from the tax without credit and in principle exclude the right to input tax deduction, one talks in this connection of pseudo-exemptions. In Art. 21 VAT Law these numerous tax exceptions are exhaustively listed.

In Art. 22 VAT Law the legislator has created a far-reaching option for the taxation of supplies exempt without credit from the tax. With the exception of turnovers in the finance and insurance field, and in some cases in the Real Estate area, the option can be made for all turnovers. In fact the option can be chosen for every supply. However in the Real Estate area it is dependent on the property not being used exclusively for

private (residential) purposes. Taxation of private rent or of private sales of property is therefore not possible. The consequence of the option is that persons entitled can deduct the input tax and transfer the tax incurred in connection with their supplies to customers.

In addition to the pseudo-exemptions mentioned, there are also genuine exemptions. Justification for these exemptions lies in the principle of competitive neutrality and the country of destination principle this requires. In Art. 23 VAT Law these genuine exemptions (exemptions of exports) are listed exhaustively.

5. Tax liability

Under Art. 10 para. 1 VAT Law a taxable person is anyone who, regardless of legal form, object and view to gain, carries on a business. A person who independently conducts a professional or a commercial business with the object of the sustainable generation of income from supplies and acts in his or her own name carries on a business. For the expression “business” it is irrelevant whether income is actually generated. For example, the preparation for or the cessation of economic activity is also part of the life cycle of a business. Anyone who in Switzerland generates less than CHF 100,000.– turnover within a year from taxable supplies (Art. 10 para. 1 lit. a VAT Law) is exempt from tax liability under Art. 10 para. 1 VAT Law. In this case there exists a right pursuant to Art. 11 VAT Law to waive exemption from the tax liability.

Tax liability begins with the commencement of business activity (Art. 14 para. 1 VAT Law) and ends with the cessation of business activity (Art. 14 para. 1 lit. a VAT Law) or, in the case of liquidations, on conclusion of the liquidation procedure (Art. 14 para. 1 lit. b VAT Law). Since 1 January 2015 enterprises with their place of business abroad, which render supplies in Switzerland and the Principality of Liechtenstein which are subject only to Acquisition Tax and generate a turnover of at least CHF 100,000 p.a., also constitute tax liability.

Political units (Art. 12 para. 1 VAT Law) are also subject to taxation on business activity. Art. 12 para. 3 VAT Law specifies in more detail the conditions for exemption from the tax liability in differentiated manner.

Art. 13 VAT Law governs **group taxation** (tax consolidation). Legal entities that are related to each other under common management can on application combine to form a single tax subject. It is not necessary to unite all of a group’s companies in one group. The choice of group members is flexible. However, the relevant deadlines for constitution/liquidation and entry/withdrawal must be observed.

Acquisition Tax is governed in Art 45 VAT Law. Services subject to the place of the recipient principle, but which the recipient uses or exploits domestically, are not subject to the Acquisition Tax. Persons already taxable have in principle to tax every acquisition of **services from abroad**, which are subject to the place of the recipient principle pursuant to Art. 8 para. 1 VAT Law, if the provider of the service domiciled abroad is not registered for VAT in Switzerland. If the taxable person uses the services procured for business purposes he can deduct the corresponding input taxes (Art. 28 para. 1 lit. b VAT Law).

6. Tax measurement base and tax rates

According to Art. 24 para. 1 VAT Law the tax is calculated on the **consideration**. The consideration also includes the reimbursement of all costs, even if such are invoiced separately, and the public law charges payable by the taxable person. In the case of a **delivery or service to a related person** (Art. 3 lit. h VAT Law) the consideration is the amount that would be agreed between independent third parties (Art. 24 para. 2 VAT Law). The measurement base on barter is governed by Art. 24 para. 3 and 4 VAT Law. What is not part of the consideration is covered by Art. 24 para. 6 VAT Law. Perquisites for **staff** are not covered by these provisions. Here one must distinguish whether an exchange is a wage in kind and para. 3 of this article applies or whether it is a gift, given in the interest of the business and that has no tax consequences. In such questions of definition an effort is made – wherever possible – to coordinate with the direct taxes.

The VAT Law foresees three tax rates. The tax is in general 8% (**normal rate**). A **privileged rate** of 2.5% applies (for an exhaustive list see Art. 25 para. 2 VAT Law). In addition (limited until 31 December 2017) a **special rate** of 3.8% is foreseen for **accommodation services** (Art. 25 para. 4 VAT Law). The tax rates of 8% and 2.5% also apply for the Acquisition Tax (Art. 46 VAT Law) and the Import Tax (Art. 55 VAT Law).

7. Input tax deduction

Input tax deduction is a key element of VAT and a core characteristic of the net all-phase tax. It eliminates the “taxe occulte” in particular. All input taxes incurred in the course of business activity can in principle be deducted under Art. 28 VAT Law. According to this article, input taxes can be claimed, even if they cannot be attributed clearly to the individual turnovers of the enterprise, but have obviously been incurred in the context of the general business activity of the taxable person concerned. For example, the input tax deduction is also possible, if no turnovers have (yet) been generated (e.g. start-ups) or if the turnover limit of CHF 100,000 is not attained. The input tax deduction is conditional only on proof of payment of the tax to the supplier.

The input tax deduction is to be reduced only on turnovers exempt without credit and on the receipt of subventions. Donations, dividends and other non-turnovers do not give rise to input tax reductions. Holding companies are entitled to input tax deduction in connection with the holding and management of investments.

If goods or services are used for private purposes or for the rendering of services, which are exempt from the tax without credit, the input taxes claimed in this connection are to be corrected as **own use** (Art 31 VAT Law). If the conditions for the input tax deduction arise later (**de-taxation**), the taxable person can deduct the input tax not yet written off under the terms of Art 32 VAT Law.

In the case of goods or services taken into use, the input tax deduction is to be corrected in the amount of the present value, whereby for moveable goods and services for every year expired one fifth can be amortised on the straight line basis, for non-moveable goods one twentieth.

If the taxable person has acquired a used customisable moveable good for delivery to a domestic customer without a VAT charge, it can make a **deemed input tax deduction** on the amount it paid.

Art. 37 VAT Law permits the taxable person simplified reporting methods. For example, a taxable person can report using the **net tax rate method**, if annually it does not generate a taxable turnover of more than CHF 5.02 million and in the same period – calculated using the applicable **net tax rate** – does not have to pay more than CHF 109,000 in tax (Art. 37 para. 1 VAT Law). Whoever elects for this method must retain the reporting method for at least one tax period (Art. 37 para. 4 VAT Law). If the taxable person elects to use the effective reporting method, it cannot change to the net tax rate method for at least three years. How the method functions is described in Art. 37 para. 2 VAT Law. Under the net tax rate the input taxes are taken as a **lump-sum**. The net tax rate method is practical because enterprises that elect for it are not obliged to determine individual input tax deductions. However, it conflicts with the legal character of the VAT. This kind of taxation is compatible with a net all-phase tax with input tax deduction only if the rates applied are realistically fixed. Political units and related institutions (e.g. hospitals, schools, associations and foundations) can, however, use the flat tax rate method (Art. 37 para. 5 VAT Law).

8. Procedures and criminal law

The competent **authorities** for levying the VAT are the FTA, Main Section VAT, for Domestic Tax and Acquisition Tax and the Federal Customs Administration for Import Tax. The authorities mentioned issue the necessary instructions and decisions. For the Domestic Tax and Acquisition Tax the VAT is based on the **self-assessment** system. Associated with this system are the obligations of taxable persons to register and de-register (Art. 66 VAT Law), to provide information (Art. 68 VAT Law) and to pay the tax. In addition, the taxable person must keep proper books of account and organise them in such a way that the facts necessary for the tax can be determined from them easily and reliably. The books must also be properly retained until the tax claim is absolutely time limited for ten years (business documents pertaining to property for 20 years (Art. 70 VAT Law)).

Simplifications have been introduced in connection with the **net tax rate method**. Its purpose is to simplify VAT reporting for the taxpayer. The FTA reviews observance by the taxpayers of the obligations mentioned, in particular the tax returns and tax payments (Art. 77 VAT Law).

If no records are available or if records are incomplete or obviously do not reflect the facts, a **discretionary assessment** is made (Art. 79 VAT Law).

The tax on imports is levied by the **Federal Customs Administration**. It issues the necessary decisions and directives. A **mixed assessment procedure** for the import tax is in place rather than a pure self-assessment. The taxable persons make the declaration and are assessed.

The **tax assessment** remains open both for the taxpayers and the administration until the expiry of the time limitation period. **Tax returns that have not become legally binding** can be retroactively corrected in this way. However, a tax claim becomes legally binding and therefore final, if a tax audit has taken place and an assessment notice based on it is accepted without reservation and paid by the taxable person (**Art. 43 VAT Law**).

The time limitation period is sub-divided into an **establishment time limitation** (right of the administration to establish a tax claim that is not yet legally enforceable) and an **enforcement time limitation** (right of the administration to enforce a legally enforceable tax claim). After a time limitation interruption declared by the administration (e.g. in connection with a tax audit) the establishment time limitation is reduced to two years (Art. 42 VAT Law). The right to establish the tax claim is in

any event time limited to ten years after the tax claim arose. After the expiry of the establishment time limitation period the self-assessment of the taxable person can no longer be altered. In addition to the establishment time limitation, Art. 91 VAT Law lays down a collection time limitation of five years for the collection of the tax.

The **time limitation for the Import Tax liability** follows Customs Law (Art. 56 VAT Law) and therefore continues to be 15 years. Consequently it differs from the absolute time limitation for the Domestic and the Acquisition Tax, which is only ten years.

Art. 68 VAT Law governs the **right to receive information**. On written enquiry within a reasonable period the taxable person receives a legally binding answer on the VAT consequences of specifically described facts.

Pursuant to Art. 72 VAT Law there is a possibility (but also an obligation) to **correct** errors in the **return** within 180 days of the end of a tax period (This “finalisation” enables the taxable person to make a correct VAT return when reconciling the turnover or drawing up the annual accounts based on the final accounting figures (without criminal consequences). The quarterly or (for the net tax rate method) half-yearly returns are in this sense provisional. The turnover reconciliation and the plausibility testing of the input tax are therefore very important.

The **tax audit** is governed in Art. 78 VAT Law and must be **concluded within one year** with an assessment notice pursuant to Art. 78 para. 5 VAT Law. The assessment notice establishes the amount of the tax liability in the period audited and always applies to the entire tax liability (tax on turnovers less input taxes). If the assessment notice is accepted and paid by the taxpayer without reservation, the tax claim is legally binding and can no longer be challenged, not even by the administration. If a taxpayer declares that he does not agree with the assessment notice he has the possibility of demanding from the FTA an order, which can be contested by appeal (or “leapfrog appeals”, if the order is justified in detail). The taxable person can on request demand an audit (Art. 78 para. 4 VAT Law). The audit must be performed within two years.

In addition the FTA grants **reliefs**, if the taxable person is not in a position to prepare the return correctly because of systematic errors that are difficult to discover (Art. 80 VAT Law).

Art 81 para. 3 VAT Law governs the principle of **free consideration of evidence**. roof may not be made dependent on the production of specific evidence (Art. 81 VAT Law). If punctual tax payment by a taxable person involves significant hardship, the FTA can extend the **payment deadline** or permit instalment payments (Art. 90 VAT Law).

In addition Art. 92 VAT Law regulates the tax abatement possibilities and, for example, tax payable only because of the non-observance of a formality can be abated (Art. 91 VAT Law). In addition **tax** that has been paid, but is not payable, can be **reclaimed**, provided the tax is not yet legally binding (Art. 94 VAT Law).

Decisions of the FTA can be contested within 30 days of delivery by **appeal** (Art. 83 para. 1 VAT Law). Appeal decisions can be further pursued within 30 days by **administrative appeal to the Federal Administrative Court** (Art. 31–33 of the Federal Law governing the Federal Administrative Court [**VGG**] in conjunction with Art. 50 Federal Act on Administrative Procedure Procedure [**VwVG**]). For certain cases (properly justified decisions of the FTA), Art. 83 para. 4 VAT Law foresees the “**leapfrog**” **appeal**, assuming that the taxpayer concurs. **Administrative appeal decisions of the Federal Administrative Court** are subject to appeal in public law matters to the Federal Court (Art. 82 ff. and 90 ff. of the Federal Law governing the Federal Court [**BGG**]), whereby the FTA also enjoys the right of appeal. The appeal period here is also 30 days (Art. 100 para. 1 **BGG**).

In respect of **Import Tax** legal action is also based on Customs Law legislation. Under Art. 116 para. 1 and 3 of the Customs Law an appeal can be submitted within 60 days to the Customs District Directorate. The decision can be pursued further by **administrative appeal** to the **Headquarters of the Federal Customs Administration** (Art. 116 para. 1bis Customs Law). The decision of the Headquarters of the Federal Customs Administration can be appealed further to the Federal Administrative Court, whose judgment can be contested by **administrative appeal on public law matters** to the Federal Court. Pursuant to Art. 116 para. 2 Customs Law the Customs Administration is represented in procedures before the Federal Administrative Court and the Federal Court by the Headquarters of the Federal Customs Administration. Otherwise the appeal procedure follows the general provisions of the administration of federal law (Art. 116 para. 4 Customs Law).

The VAT Law contains three **criminal offences**: The VAT Law contains three criminal offences: **tax evasion** (Art. 96 VAT Law), **infringement of procedural obligations** (Art. 98 VAT Law), both of which can also be caused through negligence, and **receiving untaxed goods** (Art. 99 VAT Law). These rules follow the tradition of the criminal provisions in the Federal Law governing Direct Federal Tax. In addition the objective criminal offence of tax evasion is differentiated and a distinction is made between false declaration, false qualification, evasion in the assessment procedure and qualified evasion. The criminal provisions are applicable to the Domestic and the Acquisition Tax and to Import Tax.

In general it can be stated that in the event of tax evasion aggravating circumstances result in a heavier penalty. Reliefs are provided by the possibility of non-punishable self-indictment (Art. 102 VAT Law). The time limitation for prosecution for violations is two years (Art. 105 VAT Law) and for evasions seven years.

9. Outlook

At the end of September 2014 the deadline for commenting on the partial revision of the VAT Law expired. The most important reform proposals are aimed at changes in tax liability, at adjustments to the supplies exempt without credit and at corrections to the Acquisition Tax. If a foreign enterprise provides (work) services in Switzerland, it should be taxable from the first franc, because it can be expected that worldwide it will exceed the turnover threshold of CHF 100,000. In this way the competitive disadvantage for domestic enterprises can be eliminated. As a makeshift measure, this aim is being achieved at 1 January 2015 with a change in the VAT Ordinance (Art. 92 VAT Ordinance). The tax exceptions for advertising services of charitable organisations and for parking spots on public land are to be abolished. On the other hand donations to charitable organisations are to be exempt from the tax without credit.

At present, the political will to reform the VAT further does not seem to be particularly strong. The discussions about the reform would, however, provide an opportunity to revise the law in such a way that it would offer a real locational advantage.

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

**Federal Act
on Value Added Tax
(Value Added Tax Act, VAT Act)**

of 12 June 2009 (Status as of 1 January 2014)

*The Federal Assembly of the Swiss Confederation,
based on Article 130 of the Federal Constitution¹,
and having considered the Dispatch of the Federal Council dated 25 June 2008²,
decrees:*

Title One: General Provisions:

Art. 1 Subject and principles

¹ The Confederation shall levy a general consumption tax based on the system of net all-phase taxation with input tax deduction (Value Added Tax). The purpose of the tax is to tax non-business end use on Swiss territory.

² As Value Added Tax, it levies:

- a. a tax on goods and services supplied for consideration by taxable persons on Swiss territory (domestic tax);
- b. a tax on the acquisition by recipients on Swiss territory of supplies from businesses domiciled abroad (acquisition tax);
- c. a tax on the import of goods (import tax).

³ The tax is levied on the following principles:

- a. competitive neutrality;
- b. efficiency of payment and imposition;
- c. transferability.

AS 2009 5203

¹ SR 101

² BBl 2008 6885

Art. 2 Relationship to cantonal law

¹ Ticket taxes and taxes on the transfer of title that are imposed by the cantons and communes do not qualify as taxes of the same nature as those defined in Article 134 of the Federal Constitution.

² They may be imposed to the extent they do not include Value Added Tax in their assessment basis.

Art. 3 Definitions

In this Act:

- a. *Swiss territory* means the territory of the Swiss Confederation together with the customs enclaves according to Article 3 paragraph 2 of the Customs Act of 18 March 2005³ (CustA);
- b. *Goods* means movable and immovable objects and electricity, gas, heating, refrigeration and the like;
- c. *Supply* means the concession of a usable economic asset to a third party in expectation of a consideration, even if it is required by law or based on an official order;
- d. *Supply of goods* means
 1. the transfer of the power to dispose of a good commercially in one's own name,
 2. the delivery of a good on which work has been performed, even if the good is not altered by the work, but only tested, calibrated, regulated, checked for its function or has been treated in another way,
 3. making a good available for use or exploitation;
- e. *Supply of services* means every supply that is not a supply of goods; a supply of services is also made if:
 1. intangible assets and rights are made available,
 2. an action is omitted or an action or a situation is tolerated;
- f. *Consideration* means an asset which the recipient or, in place of the recipient, a third party expends in return for receipt of a supply;
- g. *Sovereign activity* means an activity of a public authority without business character, in particular where it is not marketable and not in competition with activities of private suppliers, even if fees, contributions or other charges are levied for it;
- h. *Closely related persons* means the owners of qualifying interests in a business or persons associated with them; a qualifying interest is given if the thresholds specified in Article 69 of the Federal Act of 14 December 1990⁴ on Direct Federal Taxation (DFTA) are exceeded or if there is a corresponding interest in a non-corporate entity;

³ SR 631.0
⁴ SR 642.11

- i. *Donation* means a voluntary contribution with the intention of enriching the recipient without expectation of a reward in the VAT sense; a contribution also qualifies as a donation if the contribution is mentioned once or on several occasions in a publication in neutral form, even if the name or the logo of the donor is used; contributions by passive members and by patrons to associations or to charitable organisations are equivalent to donations;
- j. *Charitable organisation* means an organisation which fulfils the requirements that apply for Direct Federal Tax pursuant to Article 56 letter g DFTA;
- k. *Invoice* means any document by which the consideration for a supply is settled with a third party, irrespective of how the document is titled in business transactions.

Art. 4 Samnaun and Sempuoir

¹ As long as the valley areas of Samnaun and Sempuoir remain outside Swiss customs territory, this Act applies in both valley areas only to services.⁵

² The loss of tax revenue suffered by the Confederation as a result of paragraph 1 must be compensated for by the communes of Samnaun and Tschlin⁶.

³ The Federal Council regulates the details in consultation with the communes of Samnaun and Tschlin⁷. In doing so it shall take appropriate account of the savings resulting from the lower cost of levying the tax.

Art. 5 Indexation

The Federal Council shall decide on the adjustment of the Swiss franc amounts mentioned in Articles 31 paragraph 2 letter c, 37 paragraph 1, 38 paragraph 1 and 45 paragraph 2 letter b, as soon as the Swiss consumer price index has increased by more than 30 per cent since the most recent adjustment.

Art. 6 Passing on of the tax

¹ The passing on of the tax is based on agreements governed by private law.

² The civil courts are competent to judge disputes about the passing on of the tax.

Art. 7 Place of supply of goods

¹ The place of supply of goods is the place where:

- a. the good is located at the time of transfer of the power to dispose commercially of it, of its delivery or of its being made available for use or exploitation;

⁵ As the legal successor to the commune of Tschlin, Valsot must from 1 January 2013 compensate the Confederation for tax-free supplies made on its part of the customs enclave (AS 2012 3551).

⁶ From 1 Jan. 2013: Valsot

⁷ From 1 Jan. 2013: Valsot

- b. the transport or dispatch of the good to the customer or to a third party on his instructions begins.

² The place of supply of electricity and natural gas in pipes or cables is deemed to be the place at which the recipients of the supply have their place of business, or a permanent establishment for which the supply is made, or, in the absence of such a place of business or such a permanent establishment, their domicile or the place from which they work.

Art. 8 Place of supply of a service

¹ The place of supply of a service is deemed, subject to paragraph 2, to be the place at which the recipient of the service has its place of business or a permanent establishment for which the service is provided, or in the absence of such a place of business or such a permanent establishment, its domicile or the place of his normal abode.

² The place of supply of the following services is deemed to be:

- a. for services that are typically supplied directly in the physical presence of individuals, even if exceptionally they are supplied at a distance: the place where the person supplying the service has his place of business or a permanent establishment, or in the absence of such a place of business or such a permanent establishment the domicile or the place from which the person works; such services are in particular: healing treatments, therapies, nursing, personal hygiene, marriage, family and life counselling, social services and social welfare services and child and youth care;
- b. for services supplied by travel agencies and event organisers: the place where the person supplying the service has his place of business or a permanent establishment, or, in the absence of such a place of business or such a permanent establishment, the domicile or the place from which the person works;
- c. for services in the area of culture, the arts, sport, the science, scholarship, entertainment or similar services, including services of the event organiser and related services, if applicable: the place where these activities are actually performed;
- d. for restaurant supplies: the place where the supply is actually made;
- e. for passenger transport services: the place where transport actually takes place, as measured by the distance travelled; in the case of cross-border transport, the Federal Council may order that short internal distances may count as foreign and short distances abroad as internal distances;
- f. for services in connection with immovable property: the place where the property is situated; such services are in particular: brokerage, management, survey and valuation of the property, services in connection with the purchase or creation of rights in rem, services in connection with the preparation or the coordination of construction services, such as architectural, engi-

- neering and construction supervision services, surveillance of properties and buildings and accommodation services;
- g. for services in the area of international development cooperation and humanitarian help: the place for which the service is destined.

Art. 9 Avoidance of distortion of competition

In order to avoid a distortion of competition due to the double taxation or non-taxation of cross-border supplies, the Federal Council may, in divergence from Article 3, regulate the definition of supplies of goods and services and, in divergence from Articles 7 and 8, determine the place of supply.

Title Two: Domestic Tax

Chapter 1: Taxable Person

Art. 10 Principle

¹ Any person, irrespective of legal form, objects and intention to make a profit, is liable to the tax if that person carries on a business and is not exempt from tax liability under paragraph 2. A person carries on a business if that person:

- a. independently performs a professional or commercial activity with the aim of sustainably earning income from supplies; and
- b. acts externally under his own name.

² Exempt from tax liability under paragraph 1 is any person who:

- a. within one year generates on Swiss territory turnover from taxable supplies of less than 100,000 francs, unless he waives the exemption from tax liability; the turnover is measured by the agreed considerations without the tax;
- b. carries on a business based abroad that makes supplies on Swiss territory subject exclusively to the acquisition tax (Art. 45–49); not exempt from tax liability is, however, any person who carries on a business based abroad that supplies telecommunication or electronic services on Swiss territory to recipients who are not liable to the tax;
- c. as a non-profit, voluntarily-run sporting or cultural association or as a charitable organisation generates on Swiss territory a turnover from taxable supplies of less than 150,000 francs, unless he waives exemption from tax liability; the turnover is measured by the agreed considerations without the tax.

³ The place of business on Swiss territory and all domestic permanent establishments together represent a single taxable person.

Art. 11 Waiver of exemption from tax liability

¹ Any person who carries on a business and is exempt from tax liability under Article 10 paragraph 2 or 12 paragraph 3 has the right to waive exemption from tax liability.

² Exemption from tax liability must be waived for at least one tax period.

Art. 12 Public authorities

¹ Among the public authorities, taxable persons are the autonomous agencies of the Confederation, cantons and communes and the other public law institutions.

² Agencies may combine as a single taxable person. The combination may be elected for at the beginning of any tax period. It must be retained for at least one tax period.

³ A taxable person of a public authority is exempt from tax liability as long as not more than 25,000 francs turnover per year derive from taxable supplies to persons other than public authorities, and it remains exempt from tax liability as long as its turnover from taxable supplies to persons other than public authorities and to other public authorities does not exceed 100,000 francs in a year. The turnover is measured by the agreed considerations without the tax.

⁴ The Federal Council determines what supplies made by public authorities qualify as business activity and are therefore taxable.

Art. 13 Group taxation

¹ Legal entities with their place of business or a permanent establishment in Switzerland which are closely associated with one another under the common management of a single legal entity may on application combine as a single taxable person (a VAT group). The group may also include legal entities which do not carry on a business, and individuals.

² The decision to combine as a VAT group may be made for the beginning of any tax period. Termination of a VAT group is possible at the end of any tax period.

Art. 14 Commencement and termination of tax liability and of exemption from tax liability

¹ Tax liability commences with the commencement of the business activity.

² Tax liability ends:

- a. on cessation of the business activity;
- b. on liquidation of assets: with the conclusion of the liquidation procedure.

³ Exemption from tax liability ends as soon as the total of the turnovers generated in the last financial year reaches the threshold in Article 10 paragraph 2 letters a or c or 12 paragraph 3, or it is foreseeable that the threshold will be exceeded within 12 months of commencing or extending the business activity.

⁴ Waiver of the exemption from tax liability may be declared at the earliest for the beginning of the current tax period.

⁵ If the qualifying turnover of the taxable person does not reach the turnover threshold under Article 10 paragraph 2 letters a or c or 12 paragraph 3 and it is expected that the qualifying turnover will also not be reached in the following tax period, the taxable person must de-register. De-registration is not possible before the end of the tax period in which the qualifying turnover is not reached. Failure to de-register is deemed to be waiver of the exemption from tax liability under Article 11. The waiver applies from the beginning of the following tax period.

Art. 15 Joint liability

¹ Jointly and severally liable with the taxable person are:

- a. partners in a simple partnership, a general or limited partnership within the scope of their civil law liability;
- b. persons who voluntarily conduct or arrange an auction;
- c. every person or unincorporated entity that is a member of a VAT group (Art. 13) for all taxes payable by the group; if a person or unincorporated entity withdraws from the group, they are liable only for the tax claims that have arisen from their own business activity;
- d. on transfer of a business: the previous tax debtor for three years after the announcement or reporting of the transfer for tax claims that arose before the transfer;
- e. on termination of the tax liability of a wound up legal entity, trading company or partnership without legal personality: the persons entrusted with the liquidation up to the amount of the liquidation surplus;
- f. for the tax of a legal person that relocates its domicile abroad: the managing bodies up to the amount of the net assets of the legal entity.

² The persons designated in paragraph 1 letters e and f are liable only for the tax, interest and cost claims which arise or fall due under their management; their liability lapses if they can prove that they have done everything that could reasonably be expected of them to ascertain and satisfy the tax claim.

³ Liability under Article 12 paragraph 3 of the Federal Act of 22 March 1974⁸ on Administrative Criminal Law (ACLA) is reserved.

⁴ If a taxable person assigns claims from his business to third parties, he is liable on a subsidiary basis for the Value Added Tax included in the assignment, if at the date of the assignment the tax debt due to the Federal Tax Administration (FTA) has not yet arisen and a certificate of shortfall is available.

⁵ The person jointly and severally liable has in proceedings the same rights and obligations as the taxable person.

Art. 16 Succession to tax liability

¹ If a taxable individual dies, his rights and obligations pass to his heirs. They are jointly and severally liable for the taxes owed by the deceased up to the amount of their share of the estate, including amounts received in advance.

² A person who takes over a business acquires the tax rights and obligations of his legal predecessor.

Art. 17 Tax substitution

Satisfaction of the tax liability of foreign trading companies and foreign partnerships without legal personality is also the responsibility of their partners.

Chapter 2: Object of Taxation**Art. 18** Principle

¹ Domestic tax shall be levied on supplies made by taxable persons on Swiss territory for consideration; they are taxable unless this Act provides otherwise.

² Due to the absence of any supply, the following flows of funds in particular do not qualify as a consideration:

- a. subsidies and other public law contributions, even if they are paid on the basis of a public service agreement or a programme agreement pursuant to Article 46 paragraph 2 of the Federal Constitution;
- b. funds that tourist offices receive exclusively from public law tourist charges and which they employ on behalf of public authorities for the public good;
- c. contributions from cantonal water, sewage or waste funds to waste disposal institutions or waterworks;
- d. donations;
- e. contributions to businesses, in particular interest free loans, recapitalisation payments and written-off debts;
- f. dividends and other profit shares;
- g. contractually or legally regulated cost sharing payments that are paid by an organisational unit, in particular by a fund, to participants in a branch of the industry;
- h. deposits in particular on packaging and containers;
- i. payments of damages, satisfaction and the like;
- j. remuneration for employment, such as board members' and trustees' fees, remuneration of authorities or pay;
- k. reimbursements, contributions to and allowances for supplies of goods delivered abroad that are exempt from the tax under Article 23 paragraph 2 number 1;

1. charges, contributions or other payments received for sovereign activities.

Art. 19 Plurality of supplies

¹ Mutually independent supplies are treated separately.

² Two or more mutually independent supplies that are aggregated into one unit or are offered as a combination of supplies may be treated as a unit according to the predominant supply if they are made against an aggregate consideration and the predominant supply represents by value at least 70 per cent of the aggregate consideration (combination).

³ Supplies that are economically closely related and interact with one another in such a way that they must be regarded as an indivisible whole qualify as a unitary economic transaction and must be treated according to the character of the aggregate supply.

⁴ Ancillary supplies, in particular packaging, are treated for tax purposes in the same way as the main supply.

Art. 20 Attribution of supplies

¹ A supply is deemed to be made by the person who appears to the outside world to be the supplier.

² If a person acts in the name of and for account of another person, the supply is deemed to be made by the person represented if the representative:

- a. can prove that he is acting as an agent and can clearly identify the person represented; and
- b. the existence of an agency relationship is expressly notified to the recipient of the supply or is obvious in the circumstances.

³ If paragraph 1 applies in a triangular relationship, the supply relationship between the person appearing to the outside world and the person actually making the supply is qualified in the same way as the supply relationship between the person acting in relation to the outside world and the person receiving the supply.

Art. 21 Supplies exempt from the tax without credit

¹ A supply that is exempt from the tax without credit and for which taxation under Article 22 is not opted for is not taxable.

² Exempt from the tax without credit are:

1. the transport of goods that is included in the reserved services under Article 3 of the Postal Services Act of 30 April 1997⁹;

⁹ [AS 1997 2452, 2000 2355 Annex No. 23, 2003 4297, 2006 2197 Annex No. 85, 2007 5645, AS 2012 4993 Annex No. I]. See now (AS 2012 4993): Art. 18 of the Postal Services Act of 17 Dec. 2010 (SR 783.0)

2. hospital treatment and medical treatment in human medicine hospitals, including closely related supplies made by hospitals and medical treatment and diagnostic centres. The dispensing of self-manufactured or bought-in artificial limbs and orthopaedic equipment is deemed to be a taxable supply of goods;
3. human medical treatment provided by doctors, dentists, psychotherapists, chiropractors, physiotherapists, naturopaths, midwives, nursing professionals or members of similar medical and nursing professions, provided the suppliers possess a licence to practise their profession: the Federal Council regulates the details. The dispensing of self-manufactured or bought-in artificial limbs and orthopaedic equipment is deemed to be a taxable supply of goods;
4. the nursing care services supplied by nursing staff, nursing organisations and home aid (Spitex) or in homes, provided they are prescribed by a doctor;
5. the supply of human organs by recognised medical institutions and hospitals and of human whole blood by persons possessing the necessary licence;
6. the services of communities whose members are members of the professions listed in number 3, provided the services are supplied proportionately at cost price to the members for direct performance of their activities;
7. the transport of sick or injured persons or persons with disabilities in vehicles specially adapted for the purpose;
8. supplies that are made by social assistance and social security institutions, supplies by charitable nursing and home aid (Spitex) organisations and by retirement and nursing homes;
9. supplies related to child and youth care by institutions specially fitted for the purpose;
10. supplies closely related to cultural and educational development of young people by charitable youth exchange organisations; young people within the meaning of this provision are persons up to the age of 25;
11. the following supplies in the field of education and training, with the exception of restaurant and accommodation services supplied in this connection:
 - a. supplies in the field of the education of children and young people, of instruction, of training, of further education and of professional re-training, including instruction given by private teachers or at private schools,
 - b. courses, lectures, and other events of a scientific or educational nature; lecturing activity is exempt from the tax without credit, irrespective of whether the fee is paid to the instructing person or his employer,
 - c. examinations carried out in the area of education,
 - d. organisational services (including related ancillary services) provided by members of an institution that makes supplies exempt from the tax without credit under letters a–c, for this institution,
 - e. organisational services (including related ancillary services) for agencies of the Confederation, cantons and communes that make supplies

- exempt from the tax without credit under letters a–c with or without consideration;
12. the provision of staff by religious or philosophical non-profit institutions for purposes of treating the sick, of social assistance and of social security, of child and youth care, of education and training and for religious and charitable purposes and for the common good;
 13. supplies that non-profit institutions with political, trade union, economic, religious, patriotic, philosophical, philanthropic, ecological, sporting, cultural or civic objects provide to their members against a contribution laid down in statutes or regulations;
 14. cultural services of the types listed below supplied directly to the public, provided a special consideration is demanded for them:
 - a. theatrical, musical and choreographic performances and film shows,
 - b. performances by actors, musicians, dancers and other performing artists and showpersons, including games of skill,
 - c. visits to museums, galleries, monuments, historical sites and botanical and zoological gardens,
 - d. services of libraries, archives and places for storing documents, in particular the permitting of inspection of text, sound and image carriers on their premises; however, the supply of goods (including lending for use) by such institutions is taxable;
 15. considerations demanded for sporting events, including considerations for participation in such events (e.g. starting money), together with the ancillary services included;
 16. cultural services and the supply of works by their creators, such as authors, composers, film makers, painters, sculptors and services supplied by publishers and collecting societies in order to circulate these works;
 17. turnovers from events (such as bazaars and flea markets) held by organisations that perform activities that are exempt from the tax without credit in the field of health care, social assistance and social security, child and youth care and non-profit making sport, and by charitable nursing and home care (Spitex) organisations and by retirement homes, hostels and nursing homes, provided the events serve the purpose of supporting these organisations financially and are held exclusively for their benefit; turnovers of social assistance and social security organisations generated through second hand shops exclusively for their benefit;
 18. insurance and reinsurance turnovers, including turnovers from activities as insurance agents or insurance brokers;
 19. the following turnovers in the field of money and capital transactions:
 - a. the granting and brokerage of credits and the management of credits by the lenders,
 - b. the brokerage and assumption of liabilities, sureties and other securities and guarantees and the management of collateral by the lenders,

- c. turnovers, including those for brokerage, in deposits and current account transactions, in payment and transfer transactions, in business with money claims, cheques and other negotiable papers; however, the collection of debts on behalf of the creditor (debt collection business) is taxable,
 - d. turnovers, including brokerage, relating to legal tender (domestic and foreign legal tender, such as currency, bank notes, coins); taxable, however, are collectors' items (bank notes and coins) that are normally not used as legal tender,
 - e. turnovers (spot and forward transactions), including brokerage, of securities, rights and derivatives and of interests in companies and other forms of association; however, the safe-keeping and the management of securities, rights and derivatives and of interests (especially security deposits) including fiduciary investments are taxable,
 - f.¹⁰ the distribution of units in collective investment schemes under Article 3 paragraph 1 of the Collective Investment Schemes Act of 23 June 2006¹¹ (CISA), activities in accordance with Article 3 paragraph 2 CISA, and the management of collective investment schemes in accordance with CISA by persons, who manage or hold them in safekeeping, fund managements, depositary banks and their agents; agents are all individuals or legal entities, to whom the collective investments may delegate tasks under the CISA; the distribution of units in and the management of investment companies with fixed capital under Article 110 CISA are governed by letter e;
20. the transfer and the creation of rights in rem in immovable property and the supplies of communities of condominium owners to the condominium owners, to the extent the supplies consist of the provision of the communal property for use, its maintenance, its repair and other management and the supply of heating and similar goods;
21. the provision of immovable property and parts of immovable property for use or exploitation; taxable, however, are:
- a. the renting of residential and sleeping accommodation for guests and the renting of halls and rooms in hotels and restaurants,
 - b. the renting of camping sites,
 - c. the renting or leasing of non-public places for parking motor vehicles, unless it is a non-independent service ancillary to another property rental exempt from the tax without credit,
 - d. the renting and leasing of immovable equipment and machines belonging to an operating facility, but not to a sports facility,
 - e. the renting of safe deposit boxes,

¹⁰ Amended by Annex No 2 of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹¹ SR **951.31**

- f. the renting of exhibition stands and individual rooms in exhibition and congress buildings;
22. the supply of postal stamps valid on Swiss territory and other official stamps up to their printed value;
23. turnovers in betting, lottery and other games of chance involving wagers, to the extent they are subject to a special tax or other duties;
24. the supply of used movable goods, which were used exclusively for the provision of supplies exempt by this article from the tax without credit;
25. the supplies of compensation funds between themselves and the turnovers from responsibilities that are assigned to the compensation funds based on the Federal Act of 20 December 1946¹² on the Old Age and Survivors' Insurance or the family compensation funds based on the applicable law and which are a part of the social insurance system or serve occupational and social welfare and occupational training and development;
26. the sale of agricultural, forestry and market garden products cultivated in their own business by farmers, foresters or gardeners, the sale of cattle by cattle dealers, and the sale of milk by milk collection points to milk processing plants;
27. publicity services, which charitable organisations provide for the benefit of third parties or third parties for the benefit of charitable organisations;
28. supplies within the same public authority;
29. the exercise of arbitration functions.

³ Whether a supply mentioned in paragraph 2 is exempt from the tax without credit is determined, subject to paragraph 4, exclusively by its nature and regardless of who provides or receives the supply.

⁴ If a supply in paragraph 2 is exempt from the tax without credit based on the attributes either of the supplier or of the recipient of the supply, the exception applies only for supplies that are provided or received by a person with these attributes.

⁵ The Federal Council shall specify in more detail the supplies exempt from the tax without credit; in doing so it shall observe the principle of competitive neutrality.

Art. 22 Option for the taxation of supplies exempt from the tax without credit

¹ The taxable person may, subject to paragraph 2, tax any supply exempt from the tax without credit (option), provided the tax is clearly detailed on the invoice.

² The option is excluded for:

- a. supplies under Article 21 paragraph 2 numbers 18, 19 and 23;
- b. supplies under Article 21 paragraph 2 numbers 20 and 21 if the good is used by the recipient exclusively for private purposes.

¹² SR 831.10

Art. 23 Supplies exempt from the tax

¹ If a supply is exempt from the tax under this article, domestic tax is not payable on the supply.

² Exempt from the tax are:

1. the supply of goods, unless provided for use or exploitation, that are transported or dispatched directly abroad;
2. the provision for use or exploitation, in particular the leasing or chartering of goods, provided they are transported or dispatched directly abroad and are predominantly used abroad by the recipient of the supply;
3. the supply of goods that were demonstrably subject to customs control on Swiss territory in connection with a transit procedure (Art. 49 CustA¹³), a customs warehousing procedure (Art. 50–57 CustA), a temporary admission procedure (Art. 58 CustA), or inward processing procedure (Art. 59 CustA), or because of storage in a bonded warehouse (Art. 62–66 CustA);
4. the movement or arranging for the movement of goods abroad for reasons unrelated to a supply of goods;
5. the transport or dispatch of goods in connection with the import of goods and all related supplies as far as the destination to which the goods are to be transported at the time the tax debt is incurred under Article 56; if no tax debt is incurred, the decisive time is governed by Article 69 CustA by analogy;
6. the transport or dispatch of goods and all related supplies in connection with the export of goods released for free circulation under customs law;
7. the provision of transport services and ancillary logistic activities, such as loading, unloading, trans-shipment, clearing or temporary warehousing, abroad or in connection with goods that are under customs control;
8. the supply of aircraft to airlines that carry on air transport and charter business commercially and whose turnovers from international flights exceed those from domestic traffic; the refurbishment, maintenance and servicing of aircraft which airlines have acquired as part of a supply of goods; the supply, maintenance and servicing of goods built into these aircraft or of goods for their operation; the supply of goods for the maintenance of these aircraft and services that are destined for the immediate needs of these aircraft and their loads;
9. the services of intermediaries acting expressly in the name of and for account of others, provided the brokered supply is either exempt from the tax under this article or is effected exclusively abroad; if the brokered supply is effected both on Swiss territory and abroad, that part of the brokerage that relates to supplies abroad or supplies that are exempt from the tax under this article is exempt from the tax;

¹³ SR 631.0

10. the supply of services in their own name by travel agents and organisers of events, to the extent they make use of supplies of goods and services by third parties that are provided abroad; if these supplies by third parties are provided both on Swiss territory and abroad, only that part of the service of the travel agent or of the organiser that relates to supplies abroad is exempt from the tax.
- 11.¹⁴the supply of goods under Article 17 paragraph 1^{bis} CustA to persons departing abroad or arriving from abroad by air.
- ³ A direct export under paragraph 2 number 1 is constituted if the good supplied is exported abroad or to an open customs warehouse or bonded warehouse without being used on Swiss territory. In serial transactions, the direct export extends to all suppliers involved. The good supplied may, prior to export, be processed or finished by agents of the non-taxable customer.
- ⁴ The Federal Council may, in order to safeguard competitive neutrality, exempt transport in cross-border air, rail or bus traffic from the tax.
- ⁵ The Federal Department of Finance (FDF) shall regulate the conditions by which domestic supplies of goods are exempt from the tax if being exported in tourist traffic and shall specify the evidence required.

Chapter 3: Assessment Basis and Tax Rates

Art. 24 Assessment basis

- ¹ The tax is calculated on the consideration actually received. The consideration includes in particular the reimbursement of all costs, even if they are invoiced separately, and the public law charges payable by the taxable person. Paragraphs 2 and 6 remain reserved.
- ² For supplies to closely related persons (Art. 3 let. h), the consideration is deemed to be the amount that would be agreed between independent third parties.
- ³ For barter transactions, the market value of each supply is deemed to be the consideration for the other supply.
- ⁴ For exchange repairs, the consideration covers only the wage for the work carried out.
- ⁵ For supplies made in lieu of payment, the consideration is deemed to be the amount which is thereby satisfied.
- ⁶ Not included in the assessment basis are:
- a. ticket taxes, immovable property transfer taxes and the VAT itself payable on the supply;

¹⁴ Inserted by No. 12 of the Federal Act of 17 Dec. 2010 on the Purchase of Goods in Duty-Free Shops at Airports, in force since 1 June 2011 (AS 2011 1743; BBl 2010 2169).

- b. amounts that the taxable person receives from the person receiving the supply as reimbursement of outlays made in his name and for his account, provided they are detailed separately (transitory items);
- c. the portion of the consideration that, on sale of an immovable good, relates to the value of the land;
- d. the cantonal contributions to water, sewage or waste funds included in the price of disposal and supply services, to the extent that these contributions are used by these funds to pay contributions to disposal organisations or waterworks.

Art. 25 Tax rates

¹ The tax rate is 8 per cent (normal rate)¹⁵, subject to paragraphs 2 and 3.

² The reduced tax rate of 2.5 per cent applies to:¹⁶

- a. the supply of the following goods:
 - 1. tap water,
 - 2. food and additives under the Foodstuffs Act of 9 October 1992¹⁷,
 - 3. cattle, poultry, fish,
 - 4. grains,
 - 5. seeds, planting roots and bulbs, living plants, cuttings, scions and cut flowers and branches, including those used in arrangements bouquets, wreaths, etc.; if invoiced separately, the supply of these goods is also subject to the reduced tax rate, even if it is made in combination with a supply taxable at the normal rate,
 - 6. animal feed, silage acids, scatterings for animals,
 - 7. fertilisers, pesticides, mulch and other vegetation used as covering material,
 - 8. medication,
 - 9. newspapers, magazines, books and other printed matter without advertising character of the kinds to be stipulated by the Federal Council;
- b. the supply of services of radio and television companies, with the exception of services of a commercial nature;
- c. the supplies under Article 21 paragraph 2 numbers 14–16;
- d. agricultural supplies that consist of land cultivation directly related to initial production or cultivation of initial production products connected with the land.

¹⁵ First part of sentence amended by No. I of the Ordinance of 21 April 2010 on the Increase in VAT rates for the Temporary Additional Financing of Invalidity Insurance, in force from 1 Jan. 2011 to 31 Dec. 2017 (AS 2010 2055).

¹⁶ Amended by No. I of the Ordinance of 21 April 2010 on the Increase in VAT rates for the Temporary Additional Financing of Invalidity Insurance, in force from 1 Jan. 2011 to 31 Dec. 2017 (AS 2010 2055).

¹⁷ SR 817.0

³ For foodstuffs that form part of restaurant supplies, the normal rate applies. A restaurant supply is the serving of foodstuffs provided the taxable person prepares or serves the foodstuffs on the customer's premises or the taxable person maintains special installations for their consumption on the spot. If on the other hand the foodstuffs are offered in vending machines or are destined to be taken away or delivered and suitable organisational measures have been taken for this purpose, the reduced tax rate is applicable.

⁴ Up to 31 December 2017, the tax on accommodation services is 3.8 per cent (special rate).¹⁸ An accommodation service is the provision of accommodation, including the serving of breakfast, even if it is invoiced separately.

⁵ The Federal Council shall specify in greater detail the goods and services designated in paragraph 2; in doing so it shall observe the principle of competitive neutrality.

Chapter 4: Invoicing and VAT Details

Art. 26 Invoice

¹ The supplier must on request issue the recipient of the supply with an invoice that satisfies the requirements of paragraphs 2 and 3.

² The invoice must clearly identify the supplier, the recipient and the nature of the supply and as a rule contain the following elements:

- a.¹⁹ the name and the location of the supplier in the form in which he presents himself in business transactions, a note that he is registered as a taxable person and the number under which he is entered in the Register of Taxable Persons;
- b. the name and location of the recipient of the supply in the form in which he presents himself in business transactions;
- c. the date or period of the provision of the supply, in the event that it differs from the invoice date;
- d. the nature, object and extent of the supply;
- e. the consideration for the supply;
- f. the applicable tax rate and the tax amount payable on the consideration; if the consideration includes the tax, details of the applicable tax rate suffice.

³ On invoices issued by automatic tills (receipts), information on the recipient of the supply need not be included provided the consideration disclosed on the receipt does not exceed an amount laid down by the Federal Council.

¹⁸ Amended by No I of the Federal Act of 21 June 2013, in force since 1 Jan. 2014 (AS 2013 3505; BBl 2013 925 937).

¹⁹ Amended by Annex No. 2 of the Federal Act of 18 June 2010 on the Business Identification Number, in force since 1 Jan. 2011 (AS 2010 4989; BBl 2009 7855).

Art. 27 Incorrect or unauthorised VAT details

¹ Any person not entered in the Register of Taxable Persons or who uses the notification procedure according to Article 38 may not include VAT details on invoices.

² Any person who includes VAT details on an invoice when not entitled to do so, or who details too high a tax for a supply, shall owe the tax detailed unless:

- a. the invoice is corrected in accordance with paragraph 4; or
- b. he proves that the Confederation has not suffered a loss of tax; tax is not lost if the recipient of the invoice has not made an input tax deduction or if the input tax claimed has been repaid to the Confederation.

³ The legal consequences of paragraph 2 also apply to credit notes, provided the recipient of the credit note does not in writing contest the excessive tax amount.

⁴ An invoice may be subsequently corrected within the period permitted by commercial law by a document requiring acknowledgement of receipt, which refers to and revokes the original invoice.

Chapter 5: Input Tax Deduction**Art. 28** Principle

¹ The taxable person may in the course of his business activity, subject to Articles 29 and 33, deduct the following input taxes:

- a. the domestic tax invoiced to him;
- b. the acquisition tax declared by him (Art. 45–49);
- c. the import tax paid or payable by him which has been assessed unconditionally or has been assessed conditionally and fallen due as well as the tax declared by him for the import of goods (Art. 52 and 63).

² If the taxable person has, in the course of a business activity entitling him to make an input tax deduction, procured agricultural, forestry or market garden products, cattle or milk from non-taxable farmers, foresters, gardeners, cattle dealers or milk collectors, he may deduct as input tax 2.5 per cent of the amount invoiced.²⁰

³ If the taxable person in the course of a business activity entitling him to make an input tax deduction has procured a used, individualisable, movable good for supply to a customer on Swiss territory without being charged VAT, he may make a deemed input tax deduction from the amount he has to pay. The amount paid is regarded as including the tax at the tax rate applicable at the time of acquisition.

⁴ Deduction of the input tax under paragraph 1 is permissible if the taxable person proves that he has paid the input tax.

²⁰ Amended by No. I of the Ordinance of 21 April 2010 on the Increase in VAT rates for the Temporary Additional Financing of Invalidity Insurance, in force from 1 Jan. 2011 to 31 Dec. 2017 (AS 2010 2055).

Art. 29 Exclusion of the right to input tax deduction

¹ There is no right to make an input tax deduction on supplies and the import of goods which are used to make supplies that are exempt without credit from the tax and where the option for their taxation has not been exercised.

² Notwithstanding paragraph 1, there is a right to make an input tax deduction in the course of a business activity entitling the taxable person to make an input tax deduction for the purchase, holding and sale of interests and for reorganisations as defined by Article 19 or 61 DFTA²¹.

³ Interests are participations in the capital of other businesses that are held with the intent of long-term investment and confer significant influence. Participations of at least 10 per cent in the capital are deemed to be an interest.

⁴ In the case of holding companies, the business activity of the businesses held by them that gives rise to the right to make an input tax deduction may be taken into account.

Art. 30 Mixed use

¹ If the taxable person also uses goods, parts thereof or services outside his business activity, or uses the same within his business activity both for supplies entitling the taxable person to make an input tax deduction and for supplies that are excluded from input tax deduction, he must correct the input tax deduction in proportion to their use.

² If such a pre-supply is predominantly used in the course of the business activity involving supplies entitling the taxable person to make an input tax deduction, the input tax may be deducted in full and corrected at the end of the tax period (Art. 31).

Art. 31 Own use

¹ If the conditions for input tax deduction are subsequently not fulfilled (own use), the input tax deduction must be corrected at the point in time at which the conditions are no longer fulfilled. The input tax previously deducted, including the parts corrected as a subsequent input tax deduction, must be repaid.

² Own use occurs in particular where the taxable person withdraws goods or services permanently or temporarily from his business, provided on procurement or contribution of the whole or of its components he has made an input tax deduction or he has procured the goods or services under the notification procedure according to Article 38 which:

- a. he uses outside his business activity, in particular for private purposes;
- b. he uses for a business activity which does not entitle him to make the input tax deduction under Article 29 paragraph 1;
- c. he hands over without consideration, without there being a business reason; in the case of gifts of up to 500 francs per person and year and of advertising

²¹ SR 642.11

gifts and samples with the aim of realising turnovers taxable or exempt from the tax, a business reason will be presumed automatically;

d. on the cessation of tax liability are still subject to his right of disposal.

³ If in the period between the receipt of the supply and the non-fulfilment of the conditions for the input tax deduction, the good or service was put to use, the input tax deduction must be corrected in the amount of the fair value of the good or the service. To determine the fair value, the input tax amount is reduced on a straight line basis for every year that has expired by a fifth for movable goods and for services, and by a twentieth for immovable goods. The accounting treatment is of no significance. The Federal Council may, in justified cases, stipulate departures from the depreciation rules.

⁴ If a good is used only temporarily outside the business activity or for a business activity not entitling the taxable person to make an input tax deduction, the input tax deduction must be corrected based on the amount of the tax that would be due on the rent that an independent third person would charge therefor.

Art. 32 Subsequent input tax deduction

¹ If the conditions for the input tax deduction arise later (subsequent input tax deduction), the input tax deduction may be made in the reporting period in which the conditions arose. The input tax not deducted earlier, including the portion corrected for own use, may be deducted.

² If the good or the service was put into use in the time between receipt or import of the supply and the occurrence of the conditions for the input tax deduction, the deductible input tax is limited to the fair value of the good or the service. To determine the fair value, the input tax amount is reduced on a straight line basis for every year that has expired by a fifth for movable goods and for services, and by a twentieth for immovable goods. The accounting treatment is of no significance. The Federal Council may, in justified cases, stipulate departures from the depreciation rules.

³ If a good is used only temporarily outside the business activity or for a business activity not entitling the input tax deduction, the input tax deduction must be corrected based on the amount of the tax that would be due on the rent that an independent third person would charge therefor.

Art. 33 Reduction of the input tax deduction

¹ Flows of funds that are not deemed to be consideration (Art. 18 para. 2), do not result in a reduction of the input tax deduction, subject to paragraph 2.

² The taxable person must reduce his input tax deduction proportionately if he receives money under Article 18 paragraph 2 letters a–c.

Chapter 6: Calculation, Constitution and Prescription of the Tax Claim

Section 1: Time of Assessment

Art. 34 Tax period

- ¹ The tax is levied by tax period.
- ² The tax period is the calendar year.
- ³ The FTA shall permit the taxable person on request to use the business year as the tax period.²²

Art. 35 Reporting period

- ¹ Within the tax period, the tax is reported:
 - a. as a rule quarterly;
 - b. for reporting using net tax rates (Art. 37 paras. 1 and 2): every six months;
 - c. if there are regular input tax surpluses: at the request of the taxable person, monthly.
- ² On application, the FTA shall permit, in justifiable cases, other reporting periods and shall stipulate the conditions therefor.

Section 2: Amount of the Tax Claim and Notification Procedure

Art. 36 Effective reporting method

- ¹ In principle, the effective reporting method must be used.
- ² When applying the effective reporting method, the tax claim is calculated as the difference between the domestic tax payable, the acquisition tax (Art. 45) and import tax declared in the transfer procedure (Art. 63) and the input tax credit for the corresponding reporting period.

Art. 37 Reporting using the net tax rate and the flat tax rate methods

- ¹ If a taxable person does not generate more than 5,020,000 francs turnover from taxable supplies annually and in the same period does not have to pay more than 109,000 francs in tax, calculated at the net tax rate that applies to him, he may report under the net tax rate method.²³
- ² When using the net tax rate method, the tax claim is determined by multiplying the sum of the taxable considerations, including tax, generated in the reporting period by the net tax rate approved by the FTA.

²² Not yet in effect

²³ Amended by No. I of the Ordinance of 21 April 2010 on the Increase in VAT rates for the Temporary Additional Financing of Invalidity Insurance, in force from 1 Jan. 2011 to 31 Dec. 2017 (AS **2010** 2055).

³ The net tax rates take into account the input tax amounts usual in the relevant branch of the industry. They are fixed by the FTA after consultation with the industry association concerned; the Swiss Federal Audit Office shall regularly review the appropriateness of the net tax rates.

⁴ Authorisation to report under the net tax rate method must be requested from the FTA and the method must be used for at least one tax period. If the taxable person elects for the effective reporting method, he may not change to the net tax rate method for at least three years. Changes are possible for the beginning of a tax period.

⁵ Public authorities and related institutions, in particular private hospitals and schools or licensed transport undertakings and associations and foundations may report using the flat tax rate method. The Federal Council shall regulate the details.

Art. 38 Notification procedure

¹ If the tax calculated at the statutory rate on the sales price exceeds 10,000 francs or if the sale is made to a closely related person, the taxable person must fulfil his reporting and tax payment obligation by notification in the following cases:

- a. reorganisations in accordance with Articles 19 and 61 of the Federal Act of 14 December 1990²⁴ on Direct Federal Taxation;
- b. other transfers of all or part of assets to another taxable person in the context of an incorporation, a liquidation, a reorganisation or of another legal transaction specified in the Mergers Act of 3 October 2003²⁵.

² The Federal Council may determine other cases in which the notification procedure must be, or may be, used.

³ The notifications must be made in the course of ordinary reporting.

⁴ By using the notification procedure, the acquirer accepts the seller's assessment basis and the level of use entitling to an input tax deduction in respect of the assets transferred.

⁵ If in the cases mentioned in paragraph 1 the notification procedure was not applied but security is provided for the tax claim, the notification procedure may no longer be ordered.

Section 3: Constitution, Modification and Prescription of the Tax Claim

Art. 39 Form of reporting

¹ The tax shall be reported based on the agreed consideration.

² The FTA shall allow the taxable person on application to report on the basis of the consideration collected.

²⁴ SR 642.11

²⁵ SR 221.301

³ The form of reporting chosen must be retained for at least one tax period.

⁴ The FTA may require the taxable person to report on the basis of the consideration collected if:

- a. he receives to a significant extent considerations before he performs the supply or issues an invoice; or
- b. there is reasonable suspicion that the taxable person is abusing the procedure of reporting based on agreed considerations to obtain an unlawful benefit for himself or a third party.

Art. 40 Constitution of the tax claim

¹ If reporting is on the basis of agreed considerations, the right to make an input tax deduction is constituted at the time of receipt of the invoice. The turnover tax debt is incurred:

- a. on invoicing;
- b. with the issue of a partial invoice or with the collection of the partial payment, if the supplies give rise to a series of partial invoices or partial payments;
- c. with the collection of the consideration on advance payments for supplies not exempt from the tax and for supplies without invoice.

² If reporting is based on collected considerations, the right to make an input tax deduction is constituted at the time of payment. The turnover tax liability is incurred on collection of the consideration.

³ The right to make an input tax deduction based on the acquisition tax is constituted at the time of reporting the acquisition tax (Art. 47).

⁴ The right to make an input tax deduction based on the import tax is constituted at the end of the reporting period in which the tax was established.

Art. 41 Subsequent modification of the turnover tax liability and of the input tax deduction

¹ If the recipient of the supply corrects paid or agreed considerations, the turnover tax liability must be adjusted at the time when the correction is booked or the corrected consideration is collected.

² If the consideration expended by the taxable person is corrected, the turnover tax liability must be adjusted at the time when the correction is booked or the corrected consideration is paid.

Art. 42 Prescription of the right to establish the tax

¹ The right to establish a tax claim prescribes five years from the end of the tax period in which the tax claim was established.

² This prescriptive period is interrupted by a written declaration requiring confirmation of receipt that is aimed at establishing or correcting the tax claim, a ruling, a

decision on an objection, or a judgment. A corresponding interruption of the prescriptive period may also be achieved by the announcement of an audit under Article 78 paragraph 3 or the commencement of an unannounced audit.

³ If the prescriptive period is interrupted by the FTA or an appeal body, the prescriptive period begins to run again. It then runs for two years.

⁴ The prescriptive period shall be suspended for as long as proceedings under this Act relating to tax offences are being conducted in respect of the relevant tax period and the person liable for payment has been notified (Art. 104 para. 4).

⁵ Interruption and suspension are effective towards all persons liable for payment.

⁶ The right to establish the tax claim in any case prescribes 10 years from the end of the tax period in which the tax claim arose.

Art. 43 Validity of the tax claim

¹ The tax claim is made legally binding by:

- a. a ruling that has become legally binding, a decision on an objection that has become legally binding or a judgment that has become legally binding;
- b. the written recognition or payment without reservation of an assessment notice by the taxable person;
- c. the prescription of the right to establish the tax.

² Until they are legally binding, the returns submitted and paid may be corrected.

Art. 44 Assignment and pledge of the tax claim

¹ The taxable person may assign and pledge his tax claim in accordance with the provisions of private law.

² The rights of the FTA, namely defence against claims of the debtor and the measures to secure the tax, are not affected by the assignment or pledge.

Title Three: Acquisition Tax

Art. 45 Liability for acquisition tax

¹ The following are subject to the acquisition tax:

- a. supplies of services by businesses with their place of business abroad that are not entered in the Register of Taxable Persons, if the place of supply under Article 8 paragraph 1 is situated on Swiss territory;
- b. the import of data storage media without market value with the services and rights included therein (Art. 52 para. 2);
- c. supplies of goods on Swiss territory by businesses with their place of business abroad that are not entered in the Register of Taxable Persons, if these supplies of goods are not subject to the import tax.

² The recipient on Swiss territory of supplies under paragraph 1 is liable to the tax, provided he:

- a. is liable to the tax under Article 10; or
- b. in the calendar year procures such supplies for more than 10,000 francs and in the cases of paragraph 1 letter c, he has been informed in writing in advance by the competent authority about the liability for acquisition tax.

Art. 46 Tax assessment and tax rates

The provisions of Articles 24 and 25 apply to tax assessment and the tax rates.

Art. 47 Tax and reporting period

¹ For taxable persons under Article 45 paragraph 2 letter a, the same tax and reporting periods apply as for the domestic tax (Art. 34 and 35).

² The tax and reporting period for taxable persons under Article 45 paragraph 2 letter b is the calendar year.

Art. 48 Constitution and prescription of the right to establish the acquisition tax debt

¹ The acquisition tax debt is incurred:

- a. with the payment of the consideration for the supply;
- b. in the case of taxable persons under Article 45 paragraph 2 letter a who report on the basis of agreed considerations (Art. 40 para. 1) at the time of receipt of the invoice, and for supplies without invoicing on payment of the consideration.

² Prescription of the right to establish the tax and legally binding effect are governed by Articles 42 and 43.

Art. 49 Joint and several liability, tax succession and substitution

For joint and several liability, tax succession and substitution, the provisions of Articles 15–17 apply.

Title Four: Import Tax

Art. 50 Applicable law

For the tax on the import of goods, the customs legislation applies, unless the following provisions provide otherwise.

Art. 51 Tax liability

¹ Any person who is a customs debtor under Article 70 paragraphs 2 and 3 CustA²⁶ is liable to the tax.

² Joint and several liability under Article 70 paragraph 3 CustA does not apply to persons who file customs declarations commercially (Art. 109 CustA) if the importer:

- a. is entitled to make an input tax deduction (Art. 28);
- b. has the import tax debt charged via the account of the centralised settlement procedure (CSP) of the Federal Customs Administration (FCA); and
- c. has commissioned the person who files customs declarations commercially to act as his direct agent.

³ The FCA may require the person who issues customs declarations commercially to provide evidence of his authority as an agent.

Art. 52 Taxable object

¹ The taxable object is:

- a. the import of goods, including the services and rights contained therein;
- b. the release of goods under Article 17 paragraph 1^{bis} CustA²⁷ for free circulation by persons arriving by air from abroad.²⁸

² If, on the import of data storage media, no market value can be established, no import tax is due thereon and the provisions concerning the acquisition tax (Art. 45–49) apply.

³ The provisions of Article 19 apply to a plurality of supplies.

Art. 53 Tax exempt imports

¹ Exempt from the tax is the import of:

- a. goods in small quantities, of insignificant value or with an insignificant tax amount; the FDF shall issue more detailed provisions;
- b. human organs by recognised medical institutions and hospitals and of human whole blood by persons possessing the necessary licence;
- c. works of art that were personally created by painters or sculptors and are brought onto Swiss territory by them or on their behalf, subject to Article 54 paragraph 1 letter c;
- d. goods that are exempt from customs duties under Article 8 paragraph 2 letters b–d, g and i–l CustA²⁹;

²⁶ SR 631.0

²⁷ SR 631.0

²⁸ Amended by No. 12 of the Federal Act of 17 Dec. 2010 on the Purchase of Goods in Duty-Free Shops at Airports, in force since 1 June 2011 (AS 2011 1743; BBl 2010 2169).

- e. goods under Article 23 paragraph 2 number 8 that are imported as part of a supply of goods by airlines under Article 23 paragraph 2 number 8 or are brought onto Swiss territory by such airlines, provided they have procured the goods prior to import as part of a supply of goods and after the import use them for their own business activities entitling the taxable person to make an input tax deduction (Art. 28);
 - f. goods that have been assessed under the export procedure (Art. 61 CustA) and are returned unaltered to the consignor on Swiss territory, provided they have not been exempt from the tax because of export; if the amount of tax is substantial, the tax exemption with credit is granted by reimbursement; the provisions of Article 59 apply by analogy;
 - g. electricity and natural gas in pipes or cables;
 - h. goods that are declared tax free in treaties governed by international law;
 - i. goods that are imported onto Swiss territory for temporary admission under Articles 9 and 58 CustA or for inward processing under Articles 12 and 59 CustA under the procedure with entitlement to reimbursement, subject to Article 54 paragraph 1 letter d;
 - j. goods that are temporarily imported onto Swiss territory by a person registered on Swiss territory as a taxable person for job processing under a work and labour contract and which are assessed under the procedure for inward processing as being conditionally due for payment (suspensive procedure) (Art. 12 and 59 CustA);
 - k. goods that were exported from Swiss territory under Article 9 and 58 CustA for temporary admission or under Articles 13 and 60 CustA for outward job processing under a work and labour contract and are returned to the consignor on Swiss territory, subject to Article 54 paragraph 1 letter e;
 - l. goods that have been taken abroad for job processing under a work and labour contract under the export procedure (Art. 61 CustA) and are returned to the consignor on Swiss territory, subject to Article 54 paragraph 1 letter f.
- ² The Federal Council may exempt from the import tax goods that it declares exempt from customs duties under Article 8 paragraph 2 letter a CustA.

Art. 54 Calculation of the tax

¹ The tax is calculated:

- a. on the consideration, if the goods are imported in fulfilment of a sales or commission transaction;
- b. on the consideration for supplies of goods under work and labour contracts or for work within the meaning of Article 3 letter d number 2 using goods released for free circulation (Art. 48 CustA³⁰) and carried out by a person not registered on Swiss territory as a taxable person;

²⁹ SR 631.0

³⁰ SR 631.0

- c. on the consideration for work carried out abroad on behalf of artists and sculptors on their own works of art (Art. 3 let. d no. 2), provided the works of art were brought onto Swiss territory by them or on their behalf;
- d. on the consideration for the use of goods that were imported for temporary admission under Articles 9 and 58 CustA, provided the amount of tax due on this consideration is substantial; if no or a reduced consideration is demanded for the temporary use, the consideration that would be charged by an independent third party applies;
- e. on the consideration for the work carried out abroad on goods (Art. 3 let. d no. 2) that were exported under Articles 9 and 58 CustA for temporary admission or under Articles 13 and 60 CustA for outward job processing under a work and labour contract and are returned to the consignor on Swiss territory;
- f. on the consideration for the work carried out abroad on goods (Art. 3 let. d no. 2), provided they have been taken abroad for job processing under a work and labour contract under the export procedure (Art. 61 CustA) and are returned to the consignor on Swiss territory;
- g. on the market value in the remaining cases; the market value is what the importer, at the level at which the import is effected, would have to pay to obtain the same goods from an independent supplier in the source land of the goods at the time that the import tax debt is incurred under Article 56 under the conditions of free competition.

² If the tax calculation is based on the consideration, the consideration paid or payable by the importer or by a third party in his stead under Article 24 applies, subject to Article 18 paragraph 2 letter h. If the consideration is altered subsequently, Article 41 applies by analogy.

³ The assessment basis must include, if not already included:

- a. the taxes, customs duties and other charges incurred outside Swiss territory and as a result of the import, with the exception of the Value Added Tax being levied;
- b. the costs of the transport or dispatch and all related supplies as far as the destination on Swiss territory to which the goods are to be transported at the time import tax debt under Article 56 is incurred; if this location is unknown, the destination is the place where the trans-shipment takes place on Swiss territory after import tax debt is incurred.

⁴ If doubt exists as to the correctness of the customs declaration or values are lacking, the FCA may estimate the tax assessment basis at its fair discretion.

⁵ Price or value information expressed in foreign currency adduced in determining the assessment basis must be converted into Swiss francs at the exchange rate (offer) prevailing on the stock exchange day immediately prior to the incurrence of the import tax debt under Article 56.

Art. 55³¹ Tax rates

- ¹ The tax on the import of goods is 8 per cent, subject to paragraph 2.
- ² The tax is 2.5 per cent on the import of goods under Article 25 paragraph 2 letter a.

Art. 56 Incurrence, prescription and payment of the import tax debt

- ¹ The import tax debt is incurred at the same time as the customs debt (Art. 69 CustA³²).
- ² Taxable persons under Article 51 who settle the import tax debt via the CSP are allowed a period of 60 days after issue of the invoice to make payment; exceptions are imports made by tourists, which must be reported orally for customs assessment.
- ³ In relation to security, facilities may be granted if collection of the tax is not endangered as a result.
- ⁴ The import tax debt prescribes at the same time as the customs debt (Art. 75 CustA). The prescriptive period is suspended for as long as criminal proceedings in respect of tax offences under this Act are in process and the person liable for payment has been informed (Art. 104 para. 4).
- ⁵ If the import tax debt changes as a result of subsequent adjustment of the consideration, in particular as a result of revision of the contract or because of price adjustments between related businesses based on recognised guidelines, the tax that has been assessed too low must be notified to the FCA within 30 days of the adjustment. The notification and the adjustment of the tax assessment may be dispensed with if the additional tax payable could be deducted as input tax under Article 28.

Art. 57 Interest on late payment

- ¹ If the import tax debt is not paid on time, interest on the late payment is due.
- ² The liability for interest on late payment begins:
 - a. where payment is made via the CSP: on expiry of the payment terms granted;
 - b. where the tax is levied on the consideration under Article 54 paragraph 1 letter d: on expiry of the payment terms granted;
 - c. where an improper reimbursement of taxes is reclaimed: on the date of reimbursement;
 - d. in all other cases: on the incurrence of the import tax debt under Article 56.
- ³ The liability for interest on late payment also continues during appeal proceedings and instalment payments.

³¹ Amended by No. I of the Ordinance of 21 April 2010 on the Increase in VAT rates for the Temporary Additional Financing of Invalidity Insurance, in force from 1 Jan. 2011 to 31 Dec. 2017 (AS 2010 2055).

³² SR 631.0

Art. 58 Exceptions to liability for interest on late payment

Interest on late payment is not imposed if:

- a. the import tax debt has been secured by a cash deposit;
- b. goods released for free circulation (Art. 48 CustA³³) are first provisionally assessed (Art. 39 CustA) and at the time of acceptance of the customs declaration, the importer was registered on Swiss territory as a taxable person;
- c. goods conditionally assessed (Art. 49, 51 para. 2 letter b, 58 and 59 CustA) which have been imported by a person registered on Swiss territory as a taxable person are declared for another customs procedure (Art. 47 CustA);
- d. goods stored without securing the tax (Art. 51 para. 2 letter a and 62 para. 3 CustA) are declared for another customs procedure and the person with the power of disposal over these goods at the time of storage was registered on Swiss territory as a taxable person;
- e. the goods must be declared periodically for the customs assessment procedure (Art. 42 para. 1 letter c CustA) or are subsequently assessed under a simplified customs assessment procedure (Art. 42 para. 2 CustA) and the importer was registered on Swiss territory as a taxable person at the time of the import.

Art. 59 Right to refund of the tax and prescription

¹ Where excess taxes have been imposed or taxes are not due, there is a right to a refund.

² Not refunded are excess taxes imposed, taxes not due and taxes no longer due as a result of a subsequent assessment of the goods under Articles 34 and 51 paragraph 3 CustA³⁴ or because of their re-export under Articles 49 paragraph 4, 51 paragraph 3, 58 paragraph 3 and 59 paragraph 4 CustA if the importer is registered on Swiss territory as a taxable person and may deduct the tax payable or paid to the FCA as input tax under Article 28.

³ The right prescribes five years from the end of the calendar year in which it was constituted.

⁴ The prescriptive period is interrupted if the right is enforced against the FCA.

⁵ It is suspended for as long as appeal proceedings in respect of the enforcement of the right are pending.

⁶ The right to a refund of excess taxes imposed or taxes not due in any event prescribes 15 years from the end of the calendar year in which it was constituted.

Art. 60 Refund because of re-export

¹ The tax imposed on import shall be refunded on application if the conditions for an input tax deduction under Article 28 are not met and:

³³ SR 631.0

³⁴ SR 631.0

- a. the goods are re-exported unaltered without prior handover to a third party as part of a supply of goods on Swiss territory and without having been used earlier; or
 - b. the goods were used on Swiss territory, but are re-exported as a result of cancellation of the supply of goods; in this case the refund is reduced by the amount that represents the tax on the consideration for use of the goods or on the loss of value caused by use of the goods and on the non-refunded import customs duties and duties based on non-customs-based federal laws.
- ² The tax is refunded only if:
- a. the re-export takes place within five years of the end of the calendar year in which the tax was imposed; and
 - b. the goods exported are proven to be identical to those imported earlier.
- ³ The refund may in a specific case be made dependent on proper declaration in the import state.
- ⁴ Applications for a refund must be submitted on declaration for the export procedure. Subsequent refund applications may be considered if they are submitted in writing to the FCA within 60 days of issue of the export document with which the goods were assessed under the export procedure (Art. 61 CustA³⁵).

Art. 61 Refund interest

- ¹ Refund interest shall be paid in respect of the period that elapses before the refund is paid:
- a. in the case of refunds of excess tax or tax not due under Article 59: from the 61st day after receipt of the written claim by the FCA;
 - b. in respect of refunds of the tax as a result of re-export under Article 60: from the 61st day after receipt of the application by the FCA;
 - c. in respect of procedures with conditional payment liability (Art. 49, 51, 58 and 59 CustA³⁶): from the 61st day after due conclusion of the procedure.
- ² The interest-free period of 60 days does not begin to run until:
- a. all documents necessary to establish the facts and evaluate the request have been received by the FCA;
 - b. the objection to the assessment decision satisfies the requirements of Article 52 of the Federal Act of 20 December 1968³⁷ on Administrative Procedure (APA);
 - c. the bases for calculating the tax on the consideration under Article 54 paragraph 1 letter d are known to the FCA.
- ³ Refund interest is not paid on a tax remission under Article 64.

³⁵ SR 631.0

³⁶ SR 631.0

³⁷ SR 172.021

Art. 62 Competence and procedure

¹ The import tax is levied by the FCA. It issues the necessary orders and rulings.

² The executive bodies of the FCA are authorised to undertake all the investigations that are necessary to examine the facts significant to the assessment of the tax. Articles 68–70, 73–75 and 79 apply by analogy. The FCA may, by agreement with the FTA, transfer investigations relating to persons registered on Swiss territory as taxable persons to the FTA.

Art. 63 Transfer of the tax payment

¹ Taxable importers registered with the FTA as taxable persons that report using the effective method may, instead of paying the tax payable on the import of goods to the FCA, declare it in their periodic tax return to the FTA (transfer procedure), provided they regularly import and export goods and significant input tax surpluses result.

² If the goods imported under the transfer procedure are further processed or finished on Swiss territory after the import, the FTA may authorise taxable persons to supply the processed or finished goods to other taxable persons without calculating the tax.

³ The Federal Council stipulates the details of the transfer procedure.

Art. 64 Tax remission

¹ A remission may be granted for all or part of the import tax, if:

- a. goods held in the custody of the FCA or made subject to a transit procedure (Art. 49 CustA³⁸), a customs warehousing procedure (Art. 50–57 CustA), a temporary admission procedure (Art. 58 CustA) or a procedure of inward processing (Art. 59 CustA) are destroyed in whole or in part by chance, act of God or with official approval;
- b. goods released for free circulation by official decree are destroyed in whole or in part or are again exported from Swiss territory;
- c. a subsequent claim in terms of Article 85 CustA would, in view of special circumstances, constitute an unreasonable burden on the taxable person under Article 51;
- d. the person responsible for the customs declaration (e.g. the forwarding agent) cannot recover the tax from the importer because of the latter's insolvency, and the importer was at the time of the acceptance of the customs declaration registered as a taxable person on Swiss territory; insolvency of the importer must be assumed if repayment of the debt due to the person responsible for the customs declaration appears to be seriously at risk.

² The Directorate General of Customs decides on the tax remission on written application supported by the necessary evidence.

³ The period for submission of an application is:

³⁸ SR 631.0

- a. on assessment with unconditional import tax debt: one year after the issue of the import document with which the import tax was assessed;
- b. on assessment with conditional import tax debt: one year after conclusion of the customs procedure chosen.

Title Five: Procedural Law for Domestic and Acquisition Tax

Chapter 1: General Procedural Provisions

Art. 65

¹ The FTA is responsible for the imposition and the collection of the domestic and the acquisition tax.

² In order to ensure that the tax is imposed and collected in accordance with the law, the FTA shall issue all the necessary instructions, unless the issue of such is expressly reserved to another authority.

³ It publishes without delay all good practice regulations that are not exclusively of an internal administrative nature.

⁴ All administrative acts must be carried out expeditiously.

⁵ The taxable person may be burdened by the tax imposition only to the extent this is absolutely necessary for enforcement of this Act.

Chapter 2: Rights and Obligations of the Taxable Person

Art. 66 Registration and de-registration as a taxable person

¹ Persons who are taxable under Article 10 must register with the FTA of their own accord in writing within 30 days of the commencement of their tax liability. The Administration shall issue them with a non-transferable number in accordance with the requirements of the Federal Act of 18 June 2010³⁹ on the Business Identification Number, which is registered.⁴⁰

² If tax liability ends in accordance with Article 14 paragraph 2, the taxable person must de-register with the FTA in writing within 30 days of the end of the business activity, and at the latest on conclusion of the liquidation proceedings.

³ Any person who becomes taxable solely because of the acquisition tax (Art. 45 para. 2) must register with the FTA in writing within 60 days of the end of the calendar year in which he is liable for tax and at the same time declare the supplies procured.

³⁹ SR 431.03

⁴⁰ Second sentence amended by Annex No. 2 of the Federal Act of 18 June 2010 on the Business Identification Number, in force since 1 Jan. 2011 (AS 2010 4989; BBl 2009 7855).

Art. 67 Tax representation

¹ Taxable persons without a domicile or place of business on Swiss territory must appoint a representative to perform their procedural obligations who has his domicile or place of business on Swiss territory.

² In the case of group taxation (Art. 13), the VAT group must appoint a representative to fulfil their procedural obligations who has his domicile or place of business in Switzerland.

³ The appointment of a representative under paragraphs 1 and 2 does not constitute a permanent establishment in accordance with the direct tax provisions.

Art. 68 Obligation to provide information

¹ The taxable person must provide the FTA in good faith with information on all matters that to the best of his knowledge and belief could be of significance to tax liability or for assessment of the tax, and must submit the documents required.

² Professional confidentiality as protected by law is reserved. Persons subject to professional confidentiality are obliged to open their books or records, but may conceal the names and addresses of their clients or replace them with codes, but not their domicile or place of business. In cases of doubt, at the request of the FTA or of the taxable person, the president of the competent chamber of the Federal Administrative Court shall appoint neutral experts as controlling bodies.

Art. 69 Right to receive information

In response to a written enquiry made by the taxable person about the VAT consequences of a specific set of circumstances, the FTA shall provide information within a reasonable period. The information is legally binding on the enquiring taxable person and the FTA; it may not be used in relation to any other set of circumstances.

Art. 70 Accounting and retention of records

¹ The taxable person must keep his books of account and records in accordance with the principles of commercial law. The FTA may in exceptional cases impose more extensive recording obligations if this is essential for proper imposition of the VAT.

² The taxable person must retain in a proper manner his books of account, receipts, business documents and other records until the right to establish the tax claim has prescribed (Art. 42 para. 6). Articles 958*f* of the Code of Obligations⁴¹ applies.⁴²

³ Business documents that are required in connection with the calculation of a subsequent input tax deduction and own use of immovable goods must be retained for 20 years (Art. 31 para. 3 and 32 para. 2).

⁴¹ SR 220

⁴² Second sentence amended by Annex No 4 of the Federal Act of 23 Dec. 2011 (Accounting Law), in force since 1 Jan. 2013 (AS 2012 6679; BBl 2008 1589).

⁴ The Federal Council shall stipulate the conditions under which receipts that are necessary under this Act for enforcement of the tax may be transmitted and retained in paperless form.

Art. 71 Filing of the return

¹ The taxable person must of his own accord file a return in respect of the tax claim in the prescribed form to the FTA within 60 days of the end of the reporting period.

² If the tax liability ends, the period runs from this date.

Art. 72 Correction of errors in the return

¹ If the taxable person discovers errors in his tax returns in the course of drawing up his annual accounts, he must correct them at the latest in the return for the reporting period in which the 180th day after the end of the relevant business year falls.

² The taxable person is obliged to retrospectively correct recognised errors in returns relating to past tax periods unless the tax claims for these tax periods have become legally binding or have prescribed.

³ The retrospective corrections of the returns must be notified in the form specified by the FTA.

⁴ In the case of system-based errors that are difficult to ascertain, the FTA may grant the taxable person facilities under Article 80.

Chapter 3: Obligation of Third Parties to provide Information

Art. 73

¹ Third parties obliged to provide information under paragraph 2 must at the request of the FTA and free of charge:

- a. provide all information that is necessary to establish tax liability or to calculate the tax claim against a taxable person;
- b. permit the inspection of books of account, receipts, business documents and other records if the required information is not available from the taxable person.

² A third party obliged to provide information is a person who:

- a. could be a taxable person;
- b. is liable for the tax in addition to or instead of the taxable person;
- c. has received or supplied goods or services;
- d. holds a qualifying interest in a company subject to group taxation.

³ Professional confidentiality as protected by law is reserved.

Chapter 4: Rights and Obligations of the Authorities

Art. 74 Confidentiality

¹ Any person entrusted with or consulted on the execution of this Act must maintain confidentiality about the information of which he has become aware in the performance of his duties towards other authorities and private persons and must not grant unauthorised persons access to official documents.

² There is no duty of confidentiality:

- a. when providing administrative assistance under Article 75 and in fulfilling an obligation to report criminal acts;
- b. towards executive bodies of the judiciary or administration if the authority entrusted with the implementation of this Act has been authorised by the Federal Department of Finance to provide information;
- c. in a particular case towards the debt enforcement and bankruptcy authorities or in the reporting of debt enforcement or bankruptcy offences to the disadvantage of the FTA;
- d.⁴³ for the following information entered in the Register of Taxable Persons: the number under which he is registered, address and business activity, and beginning and end of tax liability.

Art. 75 Administrative assistance

¹ The tax authorities of the Confederation, cantons, districts, administrative areas and communes shall support each other mutually in fulfilling their tasks; they must prepare the appropriate reports, provide the information required and permit the inspection of files free of charge.

² The administrative authorities of the Confederation and the autonomous federal organisations and establishments and all other authorities of the cantons, districts, administrative areas and communes not mentioned in paragraph 1 are obliged to provide information to the FTA if the information requested may be of significance for the enforcement of this Act and for the collection of the tax; the information must be provided free of charge. On request, documents must be forwarded to the FTA free of charge.

³ Information may be refused only if its provision conflicts with essential public interests or the information would significantly hinder the authority contacted in the performance of its task. Postal and telecommunications confidentiality must be observed.

⁴ Disputes relating to the obligation of administrative authorities of the Confederation to provide information are decided by the Federal Council. Disputes relating to the obligation of authorities of the cantons, districts, administrative areas and communes to provide information are decided by the Federal Supreme Court (Art. 120

⁴³ Amended by Annex No. 2 of the Federal Act of 18 June 2010 on the Business Identification Number, in force since 1 Jan. 2011 (AS 2010 4989; BBl 2009 7855).

of the Federal Supreme Court Act of 17 June 2005⁴⁴) if the cantonal government has refused the request for information.

⁵ The organisations entrusted with public law tasks have, in the context of these tasks, the same obligation to provide information as the authorities; paragraph 4 applies by analogy.

Art. 75a⁴⁵ International administrative assistance

¹ Within the scope of its remit, the FTA may, on their request, provide administrative assistance to foreign authorities in performing their tasks, specifically in ensuring correct application of VAT law and in preventing, exposing and prosecuting breaches of VAT law, insofar as this is provided for in an international agreement.

² It provides administrative assistance by analogous application of Article 115a to 115i of the Customs Act⁴⁶.

Art. 76 Automated processing and storage of data

¹ The FTA is authorised to process the data and information necessary for imposition and collection of the tax; this also includes information about administrative and criminal prosecutions and sanctions. For this purpose, it shall maintain the necessary data collections and the means to process and store them.

² The Federal Council shall issue the required provisions on the organisation, processing and storage of the data and information, in particular the data to be collected, access, processing rights, period of storage, deletion, and protection against unseen modification.

³ The FTA may make the necessary data and information accessible online to the persons in the FCA entrusted with the imposition and collection of VAT. The provisions concerning confidentiality and administrative assistance (Art. 74 and 75) apply.

⁴ The documents stored on the basis of this provision are equivalent to the originals.

Art. 77 Review

The FTA shall review the fulfilment of the obligation to register as a taxable person and the tax returns and payments.

Art. 78 Audit

¹ The FTA may perform audits of taxable persons to the extent this is necessary to clarify the circumstances. For this purpose, these persons must grant the FTA access

⁴⁴ SR 173.110

⁴⁵ Inserted by Annex No 3 of the Tax Administrative Assistance Act of 28 Sept. 2012, in force since 1 Feb. 2013 (AS 2013 231; BBl 2011 6193).

⁴⁶ SR 631.0

to their accounts and related receipts. The same applies to third parties obliged to provide information under Article 73 paragraph 2.

² The demand for and review of comprehensive documentation by the FTA is also regarded as an audit.

³ Written notice must be given of an audit. In justifiable and exceptional cases, notification of an audit may be waived.

⁴ The taxable person may make a justified request for an audit to be carried out. The audit must be performed within two years.⁴⁷

⁵ The audit must be concluded within 360 days of notification with an assessment notice; it states the amount of the tax claim in the period audited.

⁶ The findings relating to third parties made during an audit under paragraphs 1–4 of a bank or savings institution as defined in the Banking Act of 8 November 1934⁴⁸, of the Swiss National Bank or a mortgage bond clearing house, or of a stock exchange, a securities dealer or a recognised auditor as defined by the Stock Exchange Act of 24 March 1995⁴⁹ may be used exclusively for the enforcement of this Act. Banking secrecy and professional confidentiality under the Stock Exchange Act of 24 March 1995 must be observed.

Art. 79 Assessment according to best judgement

¹ If no records or only incomplete records are available or if the results reported obviously do not reflect the true circumstances, the FTA shall make an assessment according to its best judgement of the tax claim.

² The tax claim is established with an assessment notice.

Art. 80 Simplifications

If the exact establishment of individual facts important to the assessment of the tax would cause excessive inconvenience to the taxable person, the FTA shall grant facilities and allow the tax to be determined approximately, provided that as a result there is no significant loss of or increase in the tax, no material distortion of the competitive situation and no excessive complication of the tax return for other taxable persons and the tax audit.

Chapter 5: Ruling and Appeal Procedures

Art. 81 Principles

¹ The provisions of the APA⁵⁰ apply. Article 2 paragraph 1 APA does not apply to the VAT procedure.

⁴⁷ Not yet in force.

⁴⁸ SR **952.0**

⁴⁹ SR **954.1**

⁵⁰ SR **172.021**

² The authorities shall establish the legally relevant circumstances ex officio.

³ The principle of the free consideration of evidence applies. It is not permissible to make proof dependent on the production of specific evidence.

Art. 82 FTA rulings

¹ The FTA shall issue ex officio or on application of the taxable person all rulings necessary for the imposition of the tax, in particular if:

- a. the existence or scale of the tax liability is disputed;
- b. the registration or de-registration in the Register of Taxable Persons is disputed;
- c. the existence or amount of the tax claim, of joint liability or of the entitlement to a refund of taxes is disputed;
- d. the taxable person or persons jointly liable fail to pay the tax;
- e. other obligations arising under this Act or from ordinances based on it are not recognised or not fulfilled;
- f. in a specific case and as a precautionary measure it is ordered or appears necessary to establish the tax liability, the tax claim, the principles for the assessment of the tax, the applicable tax rate or joint liability.

² Written notice of rulings shall be given to the taxable person. Notice must include instructions on the right of appeal and an appropriate statement of the grounds for the ruling.

Art. 83 Objection

¹ Rulings of the FTA may be contested by filing an objection within 30 days of notification.

² The objection must be filed with the FTA in writing. It must contain the petition, the grounds for the objection citing the evidence and the signature of the appellant or of his representative. The representative must identify himself by written power of attorney. The evidence must be described in the letter of objection and enclosed with it.

³ If the objection does not satisfy these requirements or if the petition or its grounds lack the necessary clarity, the FTA shall grant the objecting party a short period to revise the same. It shall combine this additional period with the warning that if the period expires unused, a decision will be made based on the files or, if the petition, grounds, signature or power of attorney is not provided, that the objection will not be considered.

⁴ If the objection is raised against a properly justified ruling of the FTA, on application or with the consent of the objecting party it must be forwarded as an appeal to the Federal Administrative Court.

⁵ The objection procedure must be continued despite withdrawal of the objection if there are indications that the contested ruling does not comply with the applicable provisions of the law.

Art. 84 Costs and compensation

¹ In general, no costs are charged in ruling and objection procedures. No legal costs are awarded.

² Regardless of the outcome of the proceedings, procedural costs may be imposed on the person or authority that culpably caused them.

Art. 85 Review, explanation and correction

The review, explanation and correction of assessment notices, rulings and objection decisions of the FTA are governed by Articles 66–69 APA⁵¹.

Chapter 6: Collection

Art. 86 Payment of the tax

¹ The taxable person must settle the tax claim that arose in the reporting period within 60 days of the end of that period.

² If the taxable person makes no payment or a payment that is obviously insufficient, the FTA, after issuing a reminder, shall seek to enforce its claim for the tax amount provisionally payable for the reporting period in question. If no return has been filed for the taxable person or the return is obviously inadequate, the FTA shall first make an assessment according to its best judgement of the tax amount provisionally payable.

³ By filing his opposition, the taxable person instigates the procedure to have his opposition set aside. The FTA is responsible for setting aside the opposition in the ruling and appeal procedure.

⁴ The ruling on the opposition may be contested by filing an objection with the FTA within 10 days of it being issued. The objection decision is final, subject to paragraph 5.

⁵ If the tax amount provisionally payable that is the subject of the enforcement proceedings is the result of an assessment made by the FTA according to its best judgement, an appeal may be filed in the Federal Administrative Court against the objection decision. The appeal has no suspensive effect, unless the court so orders on justified application. The Federal Administrative Court makes the final decision.

⁶ Article 85a of the Federal Act of 11 April 1889⁵² on Debt Collection and Bankruptcy (DCBA) does not apply.

⁵¹ SR 172.021

⁵² SR 281.1

⁷ The collection of a tax amount under paragraph 2 does not affect the assessment of the final tax claim. It is governed by Articles 72, 78 and 82.

⁸ Instead of a payment of the tax amount, the taxable person may provide security in accordance with to Article 93 paragraph 7.

⁹ Immediately after receipt of the payment or the security, the FTA shall withdraw its debt enforcement claim.

Art. 87 Interest on late payment

¹ In the event of late payment, interest is payable without reminder.

² Interest on late payment is not payable on an additional charge if it is the result of an error which, if it had been correctly processed, would not have led to loss of tax for the Confederation.

Art. 88 Refunds to the taxable person

¹ If the tax return discloses a surplus in favour of the taxable person, it is refunded.

² The foregoing paragraph does not apply in the event of:

- a. the set-off of this surplus against import tax liabilities, even if they are not yet due;
- b. the use of the surplus as security for tax under Article 94 paragraph 1;
- c. the use of the surplus for set-off among federal agencies.

³ The taxable person may reclaim taxes paid but not due if the tax has not yet been legally established.

⁴ If the surplus under paragraph 1 or the refund under paragraph 3 is paid out later than 60 days after receipt of the tax return or of the written claim to the entitlement by the FTA, interest shall be paid on the amount due for the period from the 61st day until payment or refund.

Art. 89 Debt collection

¹ If the claim for tax, interest, costs and fines is not satisfied, the FTA shall instigate debt collection proceedings and take whatever civil and enforcement measures that serve the purpose.

² If the tax claim or the fine has not yet been legally established and if it is disputed, the FTA shall issue a ruling. Until a legally binding ruling is issued, the final ranking of creditors is suspended.

³ By filing opposition to the enforcement proceedings, the taxable person instigates the procedure for to have his opposition set aside. The FTA is responsible for setting aside the opposition.

⁴ Legally enforceable rulings and objection decisions of the FTA relating to taxes, interest, costs and fines are equivalent to enforceable court judgments under Article 80 DCBA⁵³.

⁵ The tax claim exists regardless of whether it is entered in public inventories or on public notices to creditors.

⁶ The taxes incurred in the context of enforcement proceedings represent exploitation costs.

⁷ The FTA may in justified cases waive the collection of the tax if the enforcement proceedings are not expected to be successful.

Art. 90 Payment facilities

¹ If payment of the tax, interest and costs within the prescribed period causes the taxable person significant hardship, the FTA and the taxable person may agree on an extension of the payment period or on instalment payments.

² Payment facilities may be made subject to the provision of appropriate security.

³ Payment facilities lapse if the requirements lapse or if the conditions to which they are tied are not fulfilled.

⁴ The submission of an application for an agreement on payment facilities does not lead to the suspension of enforcement proceedings.

Art. 91 Prescription of the right to collect tax

¹ The right to enforce the tax claim, interest and costs prescribes five years from the time when the corresponding claim becomes legally binding.

² The prescriptive period is suspended as long as the taxable person cannot be proceeded against in Switzerland.

³ The prescriptive period is interrupted by every action requesting payment and every moratorium by the FTA and by every assertion of the claim by the taxable person.

⁴ Interruption and suspension are effective towards all persons liable for payment.

⁵ Prescription applies in any event ten years after the end of the year in which the claim became legally binding.

⁶ If a certificate of shortfall is issued in respect of a tax claim, the prescriptive period for collection is governed by the provisions of the DCBA⁵⁴.

Art. 92 Tax abatement

¹ The FTA may abate bindingly assessed taxes in whole or in part if the taxable person:

⁵³ SR 281.1

⁵⁴ SR 281.1

- a. has for an excusable reason not invoiced and collected the tax, a retroactive transfer is not possible or reasonable and payment of the tax would result in serious hardship;
 - b. owes the tax simply as a result of not observing formal regulations or of processing errors and it is obvious or the taxable person proves that there is no loss of tax for the Confederation; or
 - c. for an excusable reason could not fulfil his assessment obligations, but can prove or show credibly in retrospect that the assessment according to its best judgement undertaken by the FTA is too high; in this case tax abatement is possible only up to the amount over-assessed.
- ² The FTA may also consent to a tax abatement or waive security for its claim in composition proceedings.
- ³ The request for abatement must be justified in writing and be submitted to the FTA together with the necessary evidence. There is no right of objection to the ruling of the FTA. An appeal may be made to the Federal Administrative Court.
- ⁴ The submission of a request for a tax abatement does not lead to the suspension of enforcement proceedings for legally assessed taxes.
- ⁵ The tax abatement procedure is free of cost. However, costs may be imposed in full or in part on the person submitting the request if he has submitted an obviously unjustified request.
- ⁶ The Federal Council shall stipulate in detail the conditions and the procedure for tax abatement.

Chapter 7: Security for the Tax

Art. 93 Security

- ¹ The FTA may require security for taxes, interest and costs, even if they are not bindingly assessed or due, if:
- a. their payment on time appears to be at risk;
 - b. the taxable person makes preparations to give up his domicile or place of business or his permanent establishment in Switzerland or to be deleted from the Swiss Commercial Register;
 - c. the taxable person is in arrears with his payment;
 - d. the taxable person takes over all or part of a business over which bankruptcy proceedings have been commenced;
 - e. the taxable person submits returns that are obviously too low.
- ² If the taxable person waives exemption from tax liability (Art. 11) or opts for the taxation of supplies exempt without credit (Art. 22), the FTA may demand from the person security pursuant to paragraph 7.

³ The ruling requiring security must cite the legal reason for the security, the amount to be secured and the office that accepts the security; it qualifies as a freezing order in terms of Article 274 DCBA⁵⁵. There is no right of objection against the ruling requiring security.

⁴ An appeal may be filed against the ruling before the Federal Administrative Court.

⁵ Appeals against rulings requiring security do not have suspensive effect.

⁶ The service of a ruling concerning the tax claim qualifies as the raising of an action under Article 279 DCBA. The period for instituting debt collection procedures begins to run when the ruling concerning the tax claim becomes legally binding.

⁷ Security must be provided by cash deposit, solvent guarantees, bank guarantees, mortgage certificates, life insurance policies with surrender value, listed Swiss franc bonds issued by Swiss borrowers or cash bonds issued by Swiss banks.

Art. 94 Other collateral measures

¹ A surplus on the tax return in favour of the taxable person may:

- a. be set off against debts from prior periods;
- b. be credited for set-off against anticipated amounts payable for subsequent periods if the taxable person is in arrears with the payment of tax or for other reasons it appears probable that the tax claim is at risk; the amount credited carries interest from the 61st day after receipt by the FTA of the tax return until the date of the set-off at the rate that applies to refund interest; or
- c. be set off against security required by the FTA.

² In the case of taxable persons without a domicile or place of business in Switzerland, the FTA may also require security for anticipated debts under Article 93 paragraph 7.

³ If payments are repeatedly in arrears, the FTA may require the taxable person to make monthly or half-monthly advance payments.

Art. 95 Deletion from the Commercial Register

A legal entity or a permanent establishment of a foreign business may not be deleted from the Swiss Commercial Register until the FTA has notified the administration competent for keeping the register that the tax due has been paid or security has been provided.

⁵⁵ SR 281.1

Title Six: Criminal Provisions**Art. 96** Tax evasion

¹ Any person who wilfully or negligently reduces the tax claim to the detriment of the state:

- a. by not declaring in a tax period all receipts, declaring receipts from supplies exempt from the tax that are too high, not declaring all supplies subject to acquisition tax or by declaring expenses entitling to an input tax deduction that are too high;
- b. by obtaining an incorrect refund; or
- c. by obtaining an unjustified tax abatement

shall be liable to a fine not exceeding 400,000 francs.

² The fine shall not exceed 800,000 francs if the tax evaded in the cases mentioned in paragraph 1 is transferred in a form that entitles the taxable person to make an input tax deduction.

³ Any person who reduces the tax due to the state by declaring the tax factors relevant for establishment of the tax truthfully, but qualifying them incorrectly for tax purposes, in that he wilfully fails to properly apply clear legal provisions, instructions from the authorities or published practice rules and does not inform the authorities thereof in writing in advance shall be liable to a fine of up to 200,000 francs. If the offence is committed through negligence, the fine is up to 20,000 francs.

⁴ Any person who reduces the tax claim to the detriment of the state:

- a. by wilfully or negligently failing to declare or incorrectly declaring or concealing goods on import;
- b. by wilfully failing to provide information or providing false or incomplete information in response to an enquiry during an official audit or administrative procedure that has as its object the establishment of the tax claim or tax abatement

shall be liable to a fine not exceeding 800,000 francs.

⁵ An attempt to commit tax evasion is also an offence.

⁶ If the tax advantage is obtained on the basis of an incorrect return, the offence of tax evasion is not subject to a penalty until the period for correction of errors in the return has expired (Art. 72 para. 1) and the error has not been corrected.

Art. 97 Determination of the penalty and aggravated tax evasion

¹ The fine is determined by applying Article 106 paragraph 3 of the Swiss Criminal Code (SCC)⁵⁶; Article 34 SCC may be applied by analogy. If the tax advantage obtained by the act is greater than the threatened penalty and the offence was com-

⁵⁶ SR 311.0

mitted wilfully, the fine may be increased to a maximum of two times the tax advantage.

² In aggravating circumstances, the maximum fine that the offence carries may be increased by half. At the same time, a custodial sentence not exceeding two years may be imposed. Aggravating circumstances are:

- a. soliciting one or more persons to commit an offence against VAT law;
- b. committing offences against VAT law for commercial gain.

Art. 98 Infringement of procedural obligations

Any person who wilfully or negligently:

- a. does not register as a taxable person;
- b. despite being issued with a written demand, does not submit a tax return on time;
- c. does not declare the tax in the right period;
- d. does not provide security properly;
- e. does not keep, complete, retain or present books of account, vouchers, business documents and other records properly;
- f. despite being issued with a written demand, does not give or gives false information, or does not declare or declares incorrectly the data and goods necessary for the tax imposition or for review of the tax liability;
- g. details on invoices VAT that is not payable or is not payable in the amount stated;
- h. by quoting a register number, falsely claims to be entered in the Register of Taxable Persons;
- i. despite being warned, obstructs, hinders or makes impossible the proper performance of an audit.

shall be liable to a fine unless the offence carries a higher penalty under another provision.

Art. 99 Receiving untaxed goods

Any person who purchases, receives as a gift, receives as a pledge or otherwise takes possession of, conceals, helps to sell or brings into circulation goods, in respect of which he knows or must assume that the import tax payable has been wilfully evaded shall be liable to the same penalty as applies to the principle offender.

Art. 100 Violations in business operations

If a fine not exceeding 100,000 francs would be applicable and if the tracing of the offenders under Article 6 ACLA⁵⁷ would require investigations the cost of which

⁵⁷ SR 313.0

would be disproportionate to the penalty otherwise forfeited, the authority may dispense with pursuing the offenders and instead order the business (Art. 7 ACLA) to pay the fine.

Art. 101 Concurrent offences

¹ Articles 7, 9, 11 and 12 paragraphs 4 and 13 ACLA⁵⁸ do not apply.

² The imposition of a penalty under Article 98 letter a of this Act does not preclude the imposition of a penalty under Articles 96 and 97.

³ The imposition of a penalty under Article 14 ACLA precludes the imposition of an additional penalty for the same criminal act under Articles 96 and 97 of this Act.

⁴ If an act meets the criterion of evasion of import tax or of receipt of untaxed goods as well as offence to be pursued by the FCA against other federal tax decrees, the penalty for the most serious violation shall be imposed; it may be increased appropriately.

⁵ If the perpetrator through one or more acts fulfils the requirements for the imposition of two or more penalties that fall within the area of competence of the FTA, the penalty for the most serious violation shall be imposed; it may be increased appropriately.

Art. 102 Self-reporting

¹ If the taxable person reports himself for an offence under this Act before it comes to the attention of the competent authority, he will not be prosecuted if:

- a. the person assists the authority in a reasonable manner in establishing the tax payable or refundable; and
- b. the person makes a serious effort to pay the tax due or refundable.

² If a non-taxable person who has committed an offence under this Act or has participated in such an offence reports the offence, he will not be prosecuted.

³ A legal entity reports itself through its executive bodies or representatives. Joint and several liability under Article 12 paragraph 3 ACLA⁵⁹ of the executive bodies or of the representatives does not apply and no prosecution will be brought.

⁴ A correction of the return under Article 72 paragraph 2 qualifies as self-reporting.

Art. 103 Prosecution

¹ With the exception of Articles 63 paragraphs 1 and 2, 69 paragraph 2, 73 paragraph 1 last sentence and 77 paragraph 4, the ACLA⁶⁰ governs prosecution.

² Prosecution is the responsibility of the FTA for domestic tax and acquisition tax, and of the FCA for import tax.

⁵⁸ SR 313.0

⁵⁹ SR 313.0

⁶⁰ SR 313.0

³ In closely related criminal cases in which both the FTA and the FCA have jurisdiction, the FTA may by agreement with the FCA decide to join the prosecutions under one of the two authorities.

⁴ Prosecution may be dispensed with if the level of culpability and the consequences of the crime are negligible (Article 52 SCC⁶¹). In these cases a non-intervention or no-proceedings ruling is issued.

⁵ If the competent authority must also investigate or judge other offences to which the ACLA applies, paragraph 1 applies to all offences.

Art. 104 Procedural guarantees

¹ The accused has the right to fair criminal proceedings in accordance with the Federal Constitution and the relevant legislation on criminal procedure.

² The accused is not obliged to incriminate himself in criminal proceedings.

³ The information (Art. 68 and 73) given by the accused in the criminal proceedings or evidence from an audit under Article 78 may be used in criminal proceedings only if the accused consents thereto.

⁴ The opening of a criminal investigation must be notified in writing to the suspect without delay unless there is good cause for not doing so.

Art. 105 Prescription of the right to prosecute

¹ The right to initiate a criminal investigation prescribes as follows:

- a. for infringements of procedural obligations: at the time when the tax claim relating to the offence becomes legally binding;
- b. for tax evasion offences: six months after the relevant tax claim becomes legally binding, subject to letters c and d;
- c. for tax evasion offences under Article 96 paragraph 4: two years after the relevant tax claim becomes legally binding;
- d. for all evasion offences relating to import tax: seven years;
- e. for offences under Article 99 and under Articles 14–17 ACLA⁶²: seven years after the end of the relevant tax period.

² The prescriptive period for prosecution ceases to apply if before expiry of the prescriptive period a summary penalty order or a judgment in the first instance is issued.

³ The prescriptive period for the payment and refund obligation under Article 12 ACLA is governed:

- a. in principle by Article 42;

⁶¹ SR 311.0

⁶² SR 313.0

- b. if an offence covered by Article 96 paragraph 4, 97 paragraph 2 or 99 or by Articles 14–17 ACLA is fulfilled, by paragraphs 1 and 2.
- ⁴ The right to conduct a criminal investigation that has already been initiated prescribes after five years; the prescriptive period is suspended for as long as the accused person is abroad.

Art. 106 Collection of fines and costs and prescription

¹ The fines and costs imposed in the criminal proceedings in respect of tax offences are collected in accordance with Articles 86–90. Article 36 SCC⁶³ applies.

² Prescription of the right to collect fines and costs are governed by Article 91.

Title Seven: Final Provisions

Chapter 1: Implementing Provisions

Art. 107 Federal Council

¹ The Federal Council:

- a. regulates the relief from VAT for beneficiaries under Article 2 of the Host State Act of 22 June 2007⁶⁴ who are exempt from liability for tax;
- b. determines the requirements that customers who have their domicile or place of business abroad must satisfy in order to be eligible for a refund of tax levied on Swiss territory on supplies made to them or on their imports that are covered by reciprocal law of the land in which they have their domicile or place of business; in principle the same requirements apply as exist for domestic taxable persons in respect of the input tax deduction.

² The Federal Council may issue provisions departing from this Act concerning the taxation of turnovers on imports of gold coins and fine gold.

³ The Federal Council issues the implementing regulations.

Art. 108 Federal Department of Finance

The FDF:

- a. defines market conform interest rates for interest on late payment and refunds and updates them periodically;
- b. determines the cases in which interest on late payment is not imposed;
- c. stipulates up to what amount negligible amounts of interest on late payment and refunds will not be imposed or are not payable.

⁶³ SR 311.0

⁶⁴ SR 192.12

Art. 109 Consultative committee

¹ The Federal Council may appoint a consultative committee comprising representatives of taxable persons, the cantons, academia, tax specialists, consumers and of the Federal Administration.

² The consultative committee advises on amendments to this Act and to the implementing provisions and practice rules based on it in relation to their effects on taxable persons and the economy.

³ It comments on drafts and may issue recommendations for amendments of its own accord.

Chapter 2: Repeal and Amendment of Current Law**Art. 110** Repeal of current law

The VAT Act of 2 September 1999⁶⁵ is repealed.

Art. 111 Amendment of current law

The following federal acts are amended as follows:

...⁶⁶

Chapter 3: Transitional Provisions**Art. 112** Application of the previous law

¹ The previous statutory provisions and the regulations issued on the basis thereof remain, subject to Article 113, applicable to all matters that occurred and legal circumstances that arose while they were valid. Prescription continues to be governed by Articles 49 and 50 of the previous law.

² Supplies made before this Act came into force and imports of goods for which the import tax debt arose before this Act came into force are governed by the former law.

³ Supplies made in part before this Act came into force must be taxed under former law for this part. Supplies made in part after this Act comes into force are taxable under the new law for this part.

⁶⁵ [AS 2000 1300 1134, 2001 3086, 2002 1480, 2004 4719 Annex No. II 5, 2005 4545 Annex No. 2, 2006 2197 Annex No. 52 2673 5379 Annex No. II 5, 2007 1411 Annex No. 7 3425 Annex No. 1 6637 Annex No. II 51]

⁶⁶ The amendments may be consulted under AS 2009 5203.

Art. 113 Application of the new law

¹ In order to determine whether the exemption from tax liability under Article 10 paragraph 2 exists when this Act comes into force, the new law shall be applied to the supplies taxable under this Act generated in the twelve months prior to it coming into force.

² The provisions on retrospective input tax deduction under Article 32 also apply to supplies that did not entitle the taxable person to make an input tax deduction before this Act came into force.

³ Subject to Article 91, the new procedural law applies to all procedures pending on the date that this Act comes into force.

Art. 114 Election options

¹ Taxable persons may, when this Act comes into force, again make use of the election options provided for in this Act. If the election options are linked to specific deadlines, they begin to run again on the date that this Act comes into force.

² If the taxable person does not respond to the election options within 90 days of this Act coming into force, it is assumed that the person is abiding by his election, provided this continues to be legally possible.

Art. 115 Change of the tax rates

¹ If the tax rates change, the transitional regulations apply by analogy. The Federal Council shall update the maximum amounts laid down in Article 37 paragraph 1 as appropriate.

² Taxable persons must be allowed sufficiently long periods for the reporting of the tax amounts at the previous rates that are geared to the nature of the supply and service agreements.

Chapter 4: Referendum and Commencement**Art. 116**

¹ This Act is subject to an optional referendum.⁶⁷

² Subject to paragraph 3, it shall come into force on 1 January 2010. The Federal Council shall stipulate the commencement date for Article 34 paragraph 3 and 78 paragraph 4.

³ If a referendum is requested and if the Act is approved by popular vote, the Federal Council shall determine the commencement date.

⁶⁷ The deadline for a referendum for this Act expired on 1 October 2009 (BBI 2009 4407).

Transitional Provision to the Amendment of 19 March 2010⁶⁸

Until the relevant provision of the VAT Act comes into force, supplies that executive bodies of the Unemployment Insurance Fund make to each other and supplies that these executive bodies make on the basis of their statutory duties or which serve the provision of occupational or social benefits or vocational and professional education and training are exempt from Value Added Tax.

⁶⁸ AS 2011 1167; BBl 2008 7733

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

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

of 27 November 2009 (Status as of 1 January 2015)

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 subsection under Article 3 VAT Act.

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;

⁶ SR 101

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

13. Activities of public notaries;
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 626.1

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 Eingefügt durch 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;

¹³ SR 231.1

- 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 Appendix

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 Customs Act of 18 March 2005²⁵), 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;

²⁵ SR 631.0

- c. certificated rights and intellectual property.

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;
- 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.

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.

²⁷ SR 631.0

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 2002²⁸. 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.

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 2007²⁹ 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, confidentiali-

²⁸ SR 221.431

²⁹ SR 172.021.2

ty 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 HSA³⁰ 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;
- 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:

³⁰ SR 192.12

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 HSA³¹ 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,
 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.

³¹ SR 192.12

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.³² 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 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;

³² Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

- 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 1993³³ to the Federal Data Protection Act and the Section 3 of the Federal Information Technology Ordinance of 26 September 2003³⁴ 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 1992³⁵ are reserved.

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.

³³ SR 235.11

³⁴ SR 172.010.58

³⁵ SR 431.01

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 1998³⁶ 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 2005³⁷ 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.

³⁶ SR 152.1

³⁷ SR 173.110

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 HSA³⁸ 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 Council 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.

³⁸ SR 192.12

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 1996³⁹, on Articles 30 and 31 of the Ordinance of 23 August 1989⁴⁰ 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 1985⁴¹ 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.

³⁹ SR 641.611

⁴⁰ SR 631.144.0

⁴¹ SR 631.145.0

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 FDFA, 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 FDFA, 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.

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 1961⁴² on Diplomatic Relations and dated 24 April 1963⁴³ on Consular Relations and of the Headquarters Agreement are reserved.

⁴² SR 0.191.01

⁴³ SR 0.191.02

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.

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 8th: Value Added Tax Consultative Commission⁴⁴

Art. 157⁴⁵ 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 1997⁴⁶.

Art. 158⁴⁷ 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.

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.⁴⁸

⁴⁴ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

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

⁴⁶ SR 172.010

⁴⁷ Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).

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

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.

Title 9: Final Provisions**Chapter 1: Repeal and Amendment of Current Law****Art. 163**

The Ordinance of 29 March 2000⁴⁹ to the Federal Act on Value Added Tax is repealed.

⁴⁹ [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]

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.⁵⁰ 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 1999⁵¹.

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.⁵²

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.

⁵⁰ Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).

⁵¹ [AS 2000 1300]

⁵² Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

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11; 14(4); 14(5)

Vouchers

70(2); 70(4); 73(1)b; 78(1); 98e

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W

Wage

24(4)

Waiver of exemption

XV

11; 14(4); 14(5)

Water

25(2)a1

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Works of art

53(1)c; 54(1)c

Y

Youth care

8(2)a; 21(2)9; 21(2)12; 21(2)17

Youth exchange organisations

21(2)10

Young people

21(2)10; 21(2)11a

Z

Zoological gardens

21(2)14c

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Notes

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