# The Swiss VAT Law

The current law as of 1.1.2018





### **Preamble**

Dear Client, dear reader

On 1 January 2018, the regulations of the partially revised Swiss VAT law came into force. At the same time, the Swiss VAT rates have fallen for the first time in history.

We have taken this opportunity surrounding these changes to publish a current version of our VAT brochure. It is a handy edition of the relevant laws and ordinances. In addition, the preface contains a short and concise description of the function of VAT.

If you have further questions, please do not hesitate to contact our consultants.

January 2018

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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 2018)

The Federal Assembly of the Swiss Confederation, based on Article 130 of the Federal Constitution<sup>1</sup>, and having considered the Dispatch of the Federal Council dated 25 June 2008<sup>2</sup>, decrees:

### Title 1 General Provisions

### Art. 1 Subject and principles

<sup>1</sup> 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.

- <sup>2</sup> 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).
- <sup>3</sup> 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 BBI 2008 6885

### **Art. 2** Relationship to cantonal law

<sup>1</sup> 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.

<sup>2</sup> 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 2005<sup>3</sup> (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:
  - the transfer of the power to dispose of a good commercially in one's own name;
  - 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.<sup>4</sup> Sovereign activity means an activity of a public authority or of a person or organisation acting for 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.5 Closely related persons means:

### 3 SR **631.0**

4 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

5 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

 the owners of at least 20 per cent of the nominal or basic capital of a business or of an equivalent participation in a partnership, or persons associated with them.

- foundations and associations with which there is a particularly close economic, contractual or personal relationship; pension schemes are not regarded as closely related persons.
- i.6 donation means a voluntary contribution with the intention of enriching the recipient without expectation of a consideration in the VAT sense; a contribution also qualifies as a donation if:
  - 1. the contribution is mentioned on one or more occasions in a publication in neutral form, even if the name or the logo of the donor is used,
  - 2. it is a contribution by passive members and by patrons to associations or to charitable organisations; contributions by patrons to charitable organisations are also deemed to be donations if the charitable organisation voluntarily grants its patrons advantages in terms of its articles provided it informs the patron that they have no right to be granted the advantages.
- 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 Sampuoir

- <sup>1</sup> As long as the valley areas of Samnaun and Sampuoir remain outside Swiss customs territory, this Act applies in both valley areas only to services.<sup>7</sup>
- <sup>2</sup> 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 Valsot.<sup>8</sup>
- <sup>3</sup> The Federal Council regulates the details in consultation with the communes of Samnaun and Valsot. In doing so it shall take appropriate account of the savings resulting from the lower cost of levying the tax.<sup>9</sup>
- 6 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- As the legal successor to the commune of Tschlin, Valsot must from 1 Jan. 2013 compensate the Confederation for tax-free supplies made on its part of the customs enclave (AS 2012 3551).
- 8 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 9 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

### 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

- <sup>1</sup> The passing on of the tax is based on agreements governed by private law.
- <sup>2</sup> The civil courts are competent to judge disputes about the passing on of the tax.

### **Art. 7** Place of supply of goods

- <sup>1</sup> 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:
  - b. the transport or dispatch of the good to the customer or to a third party on his instructions begins.
- <sup>2</sup> The place of supply of electricity by cable, gas via the natural gas distribution network or district heating is deemed to be the place at which the recipients of the supply have their registered office or a permanent establishment for which the supply is made, or, in the absence of such a registered office or such a permanent establishment, the place where the electricity, gas or district heating is actually used or consumed.<sup>10</sup>
- <sup>3</sup> In the case of the supply of a good from abroad to Swiss territory, the place of supply is deemed to be on Swiss territory, provided the supplier:
  - a. has authorisation from the Federal Tax Administration (FTA) to import the good in its own name (declaration of subordination), and does not waive authorisation at the time of import; or

b.11 ... 12

### **Art. 8** Place of supply of a service

<sup>1</sup> 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 registered office or a permanent establishment for which the service is provided, or in the absence of such a registered

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Comes into force on 1 Jan. 2019.

Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

office or such a permanent establishment, its domicile or the place of his normal abode.

<sup>2</sup> 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 registered office or a permanent establishment, or in the absence of such a registered office 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 registered office or a permanent establishment, or, in the absence of such a registered office or such a permanent establishment, the domicile or the place from which the person works;
- 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, engineering 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 2 Domestic Tax Chapter 1 Taxable Person

### **Art. 10** Principle

<sup>1</sup> 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:

- a. makes supplies on Swiss territory through that business; or
- has its registered office, domicile or permanent establishment on Swiss territory.<sup>13</sup>

<sup>1bis</sup> A person carries on a business if he:

- a. independently performs a professional or commercial activity with the aim
  of sustainably earning income from supplies, irrespective of the amount of
  the inflow of funds that do not qualify as a consideration under Article 18
  paragraph 2; and
- b. acts externally under his own name. 14

<sup>1ter</sup> The purchase, holding and sale of interests under Article 29 paragraphs 2 and 3 qualifies as a business activity. <sup>15</sup>

<sup>2</sup> Exempt from tax liability under paragraph 1 is any person who:

- a. within one year generates on Swiss territory and abroad turnover from supplies of less than 100,000 francs that are not exempt from the tax without credit under Article 21 paragraph 2;
- b. carries on a business based abroad that exclusively makes one or more of the following types of supplies on Swiss territory irrespective of turnover:
  - 1. supplies exempt from the tax,
  - services whose place of supply in terms of Article 8 paragraph 1 is located on Swiss territory; not exempt from tax liability is, however, any person who supplies telecommunication or electronic services to recipients who are not liable to the tax.
  - 3. supplies of electricity in cables, gas via the natural gas distribution network and district heating to persons liable to the tax on Swiss territory;
- c. as a non-profit, voluntarily-run sporting or cultural association or as a charitable organisation generates on Swiss territory and abroad within one year a

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

turnover from supplies of less than 150,000 francs that are not exempt from the tax without credit under Article 21 paragraph 2.16

 $^{2\text{bis}}$  The turnover is calculated on the basis of the agreed considerations without the tax  $^{17}$ 

<sup>3</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> Exemption from tax liability must be waived for at least one tax period.

### Art. 12 Public authorities

- <sup>1</sup> Among the public authorities, taxable persons are the autonomous agencies of the Confederation, cantons and communes and the other public law institutions.
- <sup>2</sup> 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.
- <sup>3</sup> A taxable person that is part of a public authority is exempt from tax liability as long as less than 100,000 francs turnover per year derive from taxable supplies to persons other than public authorities. The turnover is measured by the agreed considerations without the tax.<sup>18</sup>
- <sup>4</sup> The Federal Council determines what supplies made by public authorities qualify as business activity and are therefore taxable.

### **Art. 13** Group taxation

- <sup>1</sup> Legal entities with their registered office 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.
- <sup>2</sup> 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.

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

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

### <sup>1</sup> Tax liability commences:

- a. for businesses with registered office, domicile or permanent establishment on Swiss territory: with the commencement of the business activity;
- for all other businesses: on making a supply for the first time on Swiss territory.

### <sup>2</sup> Tax liability ends:

- a. for businesses with registered office, domicile or permanent establishment on Swiss territory:
  - 1. on cessation of the business activity,
  - on liquidation of assets: with the conclusion of the liquidation procedure;
- b. for all other businesses: at the end of the calendar year in which a supply was made on Swiss territory for the last time.<sup>20</sup>
- <sup>3</sup> 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.
- <sup>4</sup> Waiver of the exemption from tax liability may be declared at the earliest for the beginning of the current tax period.
- <sup>5</sup> 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

- <sup>1</sup> 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;

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>20</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

c.21 any person or unincorporated entity, with the exception of pension schemes, 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.
- <sup>2</sup> 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.
- <sup>3</sup> Liability under Article 12 paragraph 3 of the Federal Act of 22 March 1974<sup>22</sup> on Administrative Criminal Law (ACLA) is reserved.
- <sup>4</sup> If a taxable person assigns claims from his business to third parties, the latter are liable on a subsidiary basis for the VAT included in the assignment if at the date of the assignment, the tax debt due to the FTA has not yet arisen and a certificate of shortfall is available.<sup>23</sup>
- <sup>5</sup> The person jointly and severally liable has in proceedings the same rights and obligations as the taxable person.

### **Art. 16** Succession to tax liability

- <sup>1</sup> 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.
- <sup>2</sup> 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.

<sup>21</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>&</sup>lt;sup>22</sup> SR **313.0** 

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

### **Chapter 2 Object of Taxation**

### Art. 18 Principle

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

- <sup>2</sup> 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;
  - 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

- <sup>1</sup> Mutually independent supplies are treated separately.
- <sup>2</sup> 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).
- <sup>3</sup> 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 eco-

nomic transaction and must be treated according to the character of the aggregate supply.

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

### **Art. 20** Attribution of supplies

- <sup>1</sup> A supply is deemed to be made by the person who appears to the outside world to be the supplier.
- <sup>2</sup> 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.
- <sup>3</sup> 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

- <sup>1</sup> A supply that is exempt from the tax without credit and for which taxation under Article 22 is not opted for is not taxable.
- <sup>2</sup> 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 1997<sup>24</sup>:
  - 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;

<sup>&</sup>lt;sup>24</sup> [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: Art. 18 of the Postal Services Act of 17 Dec. 2010 (SR 783.0)

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;
- 8.25 supplies provided by social assistance and social security institutions, supplies by charitable nursing and home aid (Spitex) organisations and by retirement, residential and nursing homes;
- supplies related to child and youth care provided by institutions specially fitted for the purpose;
- 10. supplies closely related to cultural and educational development of young people provided 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:<sup>26</sup>
  - supplies in the field of the education of children and young people, of instruction, of training, of further education and of professional retraining, including instruction given by private teachers or at private schools
  - 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;

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

 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, or, if not supplied directly, immediately perceivable by the public:<sup>27</sup>
  - a. theatrical, musical and choreographic performances and film shows,
  - b.<sup>28</sup> performances by actors, musicians, dancers and other performing artists, supplies from persons that make an artistic contribution to such performances, and supplies by fairground operators, including games of skill offered by the latter,
  - 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.<sup>29</sup>cultural services and the supply of cultural 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; the foregoing also applies to derivative works under Article 3 of the Copyright Act of 9 October 1992<sup>30</sup> that are of a cultural nature;
- 17.31 supplies made at events such as bazaars, flea markets and raffles held by organisations that perform activities that are exempt from the tax without credit in the field of non-profit-making sports and cultural creativity, in the field of health care, social assistance and social security, and child and youth care, and by charitable nursing and home care (Spitex) organisations and by retirement, residential and nursing homes, provided the events serve the purpose of supporting these organisations financially and are held exclusively for their benefit; supplies provided by social assistance and social security organisations through second hand shops when the turnover thus generated is used exclusively for their benefit;

<sup>27</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>&</sup>lt;sup>30</sup> SR **231.1** 

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS **2017** 3575; BBI **2015** 2615).

- 18.32 in the insurance industry
  - a. insurance and reinsurance supplies,
  - b. social insurance supplies,
  - the following supplies in relation to social insurance and prevention campaigns:
    - supplies made by social insurance schemes to each other
    - supplies made by executive bodies as part of their statutory duty to run prevention campaigns
    - supplies related to basic and continuing professional education and training,
  - d. supplies within the scope of the activity 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,
  - 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.<sup>33</sup> the distribution of units in collective investment schemes under Article 3 paragraph 1 of the Collective Investment Schemes Act of 23 June 2006<sup>34</sup> (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 man-

34 SR **951.31** 

<sup>32</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>33</sup> Amended by Annex No 2 of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBI 2012 3639).

agement 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,
  - 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,
  - 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 35

- 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;

### 28.36 supplies:

a. between organisational units within the same public authority,

Repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615). The correction by the Federal Assembly Drafting Committee dated 31 Aug. 2017 relates only to the French text (AS 2017 4857).

between private or public law companies owned wholly by public authorities and the public authorities that own them or their organisational units.

- between institutions or foundations that were founded exclusively by public authorities and the public authorities that founded them or their organisational units;
- 28bis. 37 the provision of staff by public authorities to other public authorities;
- 29. the exercise of arbitration functions;
- 30.38 supplies between education and research institutions that are involved in education and research cooperation, provided those supplies are made as part of the cooperation, irrespective of whether the education and research cooperation is liable to value added tax.
- <sup>3</sup> 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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.
- <sup>6</sup> Organisational units of a public authority under paragraph 2 number 28 are its agencies, its private and public companies, provided no other public authority or other third parties participate therein, and its institutions and foundations, provided the public authority founded them without the participation of other public authorities or other third parties.<sup>39</sup>
- <sup>7</sup> The Federal Council shall determine which institutions are deemed to be education and research institutions under paragraph 2 number 30.<sup>40</sup>

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

 $^{\rm I}$  The taxable person may, subject to paragraph 2, tax any supply exempt from the tax without credit (option), provided the tax is clearly detailed or a declaration is made on the tax return.  $^{\rm 41}$ 

- 37 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- <sup>38</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 39 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 40 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 41 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

- <sup>2</sup> The option is excluded for:
  - a. supplies under Article 21 paragraph 2 numbers 18, 19 and 23;
  - b.<sup>42</sup> supplies under Article 21 paragraph 2 numbers 20 and 21 if the good is used or is intended to be used by the recipient exclusively for private residential purposes.

### **Art. 23** Supplies exempt from the tax

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

### <sup>2</sup> Exempt from the tax are:

- the supply of goods, unless provided for use or exploitation, that are transported or dispatched directly abroad;
- 2.43 the provision for use or exploitation, in particular the leasing or chartering of goods, provided the goods are predominantly used abroad by the recipient of the supply itself;
- 3.44 the supply of goods that were demonstrably subject to customs control on Swiss territory in connection with a transit procedure (Art. 49 CustA<sup>45</sup>), a customs warehousing procedure (Art. 50–57 CustA), a temporary admission procedure (Art. 58 CustA), or inward processing procedure (Art. 59 CustA), provided the procedure was concluded in the proper manner or with subsequent approval from the Federal Customs Administration (FCA);
- 3<sup>bis</sup>. <sup>46</sup> the supply of goods which because of storage in a bonded warehouse (Art. 62–66 CustA) were demonstrably subject to customs control on Swiss territory and which have not retrospectively lost this customs status;
- 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;

<sup>42</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>43</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>44</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>45</sup> SR 631.0

<sup>46</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

7.47 transport services and ancillary logistic activities, such as loading, unloading, trans-shipment, clearing or temporary warehousing:

- in which the place of supply of the service under Article 8 paragraph 1 is on Swiss territory, although the service itself is exclusively supplied abroad, or
- b. which are supplied in connection with goods subject to 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;
- 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:
- 11.48the supply of goods under Article 17 paragraph 1bis CustA to persons departing abroad or arriving from abroad by air.
- <sup>3</sup> 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.
- <sup>4</sup> The Federal Council may, in order to safeguard competitive neutrality, exempt transport in cross-border air, rail or bus traffic from the tax.
- <sup>5</sup> 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.

<sup>&</sup>lt;sup>47</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS **2017** 3575; BRI **2015** 2615)

<sup>&</sup>lt;sup>48</sup> 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; BBI **2010** 2169).

### Chapter 3 Assessment Basis and Tax Rates

### Art. 24 Assessment basis

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> For barter transactions, the market value of each supply is deemed to be the consideration for the other supply.
- <sup>4</sup> For exchange repairs, the consideration covers only the wage for the work carried out.
- <sup>5</sup> For supplies made in lieu of payment, the consideration is deemed to be the amount which is thereby satisfied.
- <sup>6</sup> Not included in the assessment basis are:
  - a. ticket taxes, immovable property transfer taxes and the VAT itself payable on the supply;
  - 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. 24** $a^{49}$ Margin taxation

- <sup>1</sup> If the person liable to tax has acquired collectors' items such as works of art, antiques and suchlike, in order to calculate the tax he may deduct the purchase price from selling price provided he has not deducted input tax from the purchase price (margin taxation). If the purchase price is higher than the selling price, the loss may be set off, in that the difference is deducted from taxable turnover.
- <sup>2</sup> If such collectors' items are imported by the reseller, the import tax paid may be added to the purchase price.

<sup>49</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>3</sup> A person is deemed to be a reseller if he acts for his own account or for the account of another on the basis of a purchase or sales commission agreement.

- <sup>4</sup> The Federal Council shall determine what is deemed to be a collectors' item.
- <sup>5</sup> If two or more collectors' items are purchased for an overall price, the tax may be calculated on the basis of the total difference between the overall selling price and the overall purchase price. The Federal Council shall regulate the requirements.

#### Art. 25 Tax rates

- <sup>1</sup> The tax rate is 7.7 per cent (standard rate)<sup>50</sup>, subject to paragraphs 2 and 3.
- <sup>2</sup> The reduced tax rate of 2.5 per cent applies to:<sup>51</sup>
  - a. the supply of the following goods:
    - 1. tap water,
    - 2.52 foodstuffs under the Foodstuffs Act of 20 June 2014<sup>53</sup>, with the exception of alcoholic beverages,
    - 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 standard rate,
    - 6. animal feed, silage acids, scatterings for animals,
    - fertilisers, pesticides, mulch and other vegetation used as covering material.
    - medication.
    - 9. newspapers, magazines, books and other printed matter without advertising character of the kinds to be stipulated by the Federal Council;
  - abis.54 electronic newspapers, magazines and books without advertising character as defined by the Federal Council;
  - b. the supply of services of radio and television companies, with the exception of services of a commercial nature:
- First part of the sentence amended by No II 1 of the O of 8 Nov. 2017 on the Temporary Increase in VAT Rates to Finance the Expansion of the Railway Infrastructure, in force since 1 Jan. 2017 until 31 Dec. 2030 (AS 2017 6305).
- Amended by No II 1 of the O of 8 Nov. 2017 on the Temporary Increase in VAT Rates to Finance the Expansion of the Railway Infrastructure, in force since 1 Jan. 2017 until 31 Dec. 2030 (AS **2017** 6305).
- 52 Amended by Annex No II 3 of the Foodstuffs Act of 20 June 2014, in force since 1 Mai 2017 (AS 2017 249; BBI 2011 5571).
- 53 SR 817.0
- 54 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

- 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
- <sup>3</sup> For foodstuffs that form part of restaurant supplies, the standard 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 foodstuffs, with the exception of alcoholic beverages, are destined to be taken away or for delivery, the reduced tax rate applies provided suitable organisational measures are taken to differentiate these supplies from restaurant supplies; if this is not the case, the standard rate applies. Where foodstuffs, with the exception of alcoholic beverages, are offered in vending machines, the reduced tax rate applies.<sup>55</sup>
- <sup>4</sup> The tax on accommodation services is 3.7 per cent (special rate). The special rate applies until 31 December 2020 or, in the event that the time limit in Article 196 number 14 paragraph 1 of the Federal Constitution is extended, until 31 December 2027 at the latest. An accommodation service is the provision of accommodation, including the serving of breakfast, even if it is invoiced separately.<sup>56</sup>
- <sup>5</sup> 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

- <sup>1</sup> The supplier must on request issue the recipient of the supply with an invoice that satisfies the requirements of paragraphs 2 and 3.
- <sup>2</sup> The invoice must clearly identify the supplier, the recipient and the nature of the supply and as a rule contain the following elements:
  - a.<sup>57</sup> 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;
- 55 Amended by No IV of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 56 Amended by No IV of the FA of 16 June 2016, in force since 1 Jan. 2018 (AS 2017 7667; BBI 2017 3429 3443).
- 57 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; BBI 2009 7855).

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.
- <sup>3</sup> 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.

#### Art. 27 Incorrect or unauthorised VAT details

- <sup>1</sup> 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.
- <sup>2</sup> 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.58 he shows probable cause 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.
- <sup>3</sup> The legal consequences of paragraph 2 also apply to credit notes, unless the recipient of the credit note contests in writing the tax detailed without authorisation or the excessive tax amount.<sup>59</sup>
- <sup>4</sup> 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

- <sup>1</sup> 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);

<sup>58</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

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).

- <sup>2</sup> 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.<sup>60</sup>
- <sup>3</sup> Deduction of the input tax under paragraph 1 is permissible if the taxable person proves that he has paid the input tax.<sup>61</sup>

#### **Art. 28***a*<sup>62</sup> Deduction of notional input tax

- <sup>1</sup> The taxable person may deduct notional input tax if:
  - a. he acquires an individualisable moveable good in the course of a business activity entitling him to make an input tax deduction; and
  - b. the VAT on acquisition of the good has not been openly passed on to him.
- <sup>2</sup> The notional input tax is calculated on the basis of the amount paid by the taxable person. The amount paid is regarded as including the tax at the tax rate applicable at the time of acquisition.
- <sup>3</sup> No notional input tax may be deducted in respect of goods subject to margin taxation under Article 24a.

#### **Art. 29** Exclusion of the right to input tax deduction

<sup>1</sup> 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.

<sup>1 bis</sup> An input tax deduction for supplies made abroad is possible to the same extent as if they had been made on Swiss territory and taxation had been opted for under Article 22.63

- <sup>2</sup> 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 DFTA<sup>64</sup>.
- Amended by No II 1 of the O of 8 Nov. 2017 on the Temporary Increase in VAT Rates to Finance the Expansion of the Railway Infrastructure, in force since 1 Jan. 2017 until 31 Dec. 2030 (AS **2017** 6305).
- Originally: para. 4. Original version of para. 3 repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 62 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 63 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS **2017** 3575; BBI **2015** 2615).
- 64 SR **642.11**

<sup>3</sup> 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.

<sup>4</sup> In order to ascertain the deductible input tax, holding companies may base their calculation on the business activity of the businesses held by them that gives rise to the right to make an input tax deduction.<sup>65</sup>

#### Art. 30 Mixed use

- <sup>1</sup> 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.
- <sup>2</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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 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.
- <sup>3</sup> 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

<sup>65</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

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.

<sup>4</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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

- <sup>1</sup> The tax is levied by tax period.
- <sup>2</sup> The tax period is the calendar year.

<sup>3</sup> The FTA shall permit the taxable person on request to use the business year as the tax period.<sup>66</sup>

#### **Art. 35** Reporting period

- <sup>1</sup> 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;
  - if there are regular input tax surpluses: at the request of the taxable person, monthly.
- <sup>2</sup> 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

- <sup>1</sup> In principle, the effective reporting method must be used.
- <sup>2</sup> 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 5,005,000 francs turnover from taxable supplies annually and in the same period does not have to pay more than 103,000 francs in tax, calculated at the net tax rate that applies to him, he may report under the net tax rate method  $^{67}$
- <sup>2</sup> 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.
- <sup>3</sup> 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.<sup>68</sup>

Not yet in effect

68 Second sentence amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No II 1 of the O of 8 Nov. 2017 on the Temporary Increase in VAT Rates to Finance the Expansion of the Railway Infrastructure, in force since 1 Jan. 2017 until 31 Dec. 2030 (AS **2017** 6305).

<sup>4</sup> 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.

<sup>5</sup> 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

- <sup>1</sup> 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.69 reorganisations in accordance with Articles 19 or 61 DFTA<sup>70</sup>;
  - b.<sup>71</sup> other transfers of all or part of assets to another taxable person in the context of an incorporation, liquidation, reorganisation, sale of business or a legal transaction regulated in the Mergers Act of 3 October 2003<sup>72</sup>.
- <sup>2</sup> The Federal Council may determine other cases in which the notification procedure must be, or may be, used.
- <sup>3</sup> The notifications must be made in the course of ordinary reporting.
- <sup>4</sup> 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.
- <sup>5</sup> 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

- <sup>1</sup> The tax shall be reported based on the agreed consideration.
- <sup>2</sup> The FTA shall allow the taxable person on application to report on the basis of the consideration collected.
- 69 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- <sup>70</sup> SR **642.11**
- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 72 SR **221.301**

- <sup>3</sup> The form of reporting chosen must be retained for at least one tax period.
- <sup>4</sup> 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
  - 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

- <sup>1</sup> 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;
  - 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;
  - with the collection of the consideration on advance payments for supplies not exempt from the tax and for supplies without invoice.
- <sup>2</sup> 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.
- <sup>3</sup> 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).
- <sup>4</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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

- <sup>1</sup> The right to establish a tax claim prescribes five years from the end of the tax period in which the tax claim was established.
- <sup>2</sup> 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.

- <sup>3</sup> 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.
- <sup>4</sup> 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).
- <sup>5</sup> Interruption and suspension are effective towards all persons liable for payment.
- <sup>6</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> Until they are legally binding, the returns submitted and paid may be corrected.

#### **Art. 44** Assignment and pledge of the tax claim

- <sup>1</sup> The taxable person may assign and pledge his tax claim in accordance with the provisions of private law.
- <sup>2</sup> The rights of the FTA, namely to object and to take measures to secure the tax, are not affected by the assignment or pledge.<sup>73</sup>

#### Title 3 Acquisition Tax

#### **Art. 45** Liability for acquisition tax

- <sup>1</sup> The following are subject to the acquisition tax:
  - a.<sup>74</sup> supplies of services by businesses based abroad that are not entered in the Register of Taxable Persons where the place of supply under Article 8 para-

<sup>73</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>74</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

- graph 1 is situated on Swiss territory, with the exception of telecommunication or electronic services supplied to non-taxable recipients;
- b. the import of data storage media without market value with the services and rights included therein (Art. 52 para. 2);
- c.<sup>75</sup> supplies of immovable goods on Swiss territory that are not subject to import tax and which are made by businesses based abroad and which are not entered in the Register of Taxable Persons, with the exception of making such goods available for use or exploitation;
- d.76 the supply of electricity in cables, gas via the natural gas distribution network and district heating by businesses based abroad to persons liable to tax on Swiss territory.
- <sup>2</sup> The recipient of supplies under paragraph 1 is liable to the tax, provided he:<sup>77</sup>
  - a. is liable to the tax under Article 10; or
  - b.<sup>78</sup> procures such supplies for more than 10,000 francs in the calendar year.

#### **Art.** $45a^{79}$ Supplies not subject to acquisition tax

Supplies that are exempt from domestic tax without credit under Article 21 or exempt from the domestic tax under Article 23 are not subject to the 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

- <sup>1</sup> 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).
- <sup>2</sup> 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

- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 76 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 79 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>&</sup>lt;sup>1</sup> 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.

<sup>2</sup> 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 4 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

- <sup>1</sup> Any person who is a customs debtor under Article 70 paragraphs 2 and 3 CustA<sup>80</sup> is liable to the tax.
- <sup>2</sup> 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.81 has the import tax debt charged via the FCA's centralised settlement procedure (CSP) account; and
  - has commissioned the person who files customs declarations commercially to act as his direct agent.
- <sup>3</sup> The FCA may require the person who issues customs declarations commercially to provide evidence of his authority as an agent.<sup>82</sup>

#### Art. 52 Taxable object

<sup>1</sup> The taxable object is:

80 SR **631.0** 

- 81 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 82 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

- a. the import of goods, including the services and rights contained therein;
- the release of goods under Article 17 paragraph 1<sup>bis</sup> CustA<sup>83</sup> for free circulation by persons arriving by air from abroad.<sup>84</sup>

<sup>2</sup> If, on the import of data storage media, no market value can be established and if the import is not exempt from tax under Article 53, no import tax is due thereon and the provisions concerning the acquisition tax (Art. 45–49) apply.<sup>85</sup>

<sup>3</sup> The provisions of Article 19 apply to a plurality of supplies.

#### Art. 53 Tax exempt imports

- <sup>1</sup> 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;
  - 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 CustA<sup>86</sup>;
  - 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.87 electricity in cables, gas via the natural gas distribution network and district heating;
  - h. goods that are declared tax free in treaties governed by international law;

84 Amended by No. I 2 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; BBI 2010 2169).

<sup>83</sup> SR **631.0** 

<sup>85</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>86</sup> SR **631.0** 

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

 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;
- 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.
- <sup>2</sup> 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 Assessment basis<sup>88</sup>

<sup>1</sup> The tax is calculated:

- a. on the consideration, if the goods are imported in fulfilment of a sales or commission transaction;
- 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 CustA<sup>89</sup>) and carried out by a person not registered on Swiss territory as a taxable person;
- 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

<sup>88</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>89</sup> SR **631.0** 

- 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.90 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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. 91 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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. 5592 Tax rates

<sup>1</sup> The tax on the import of goods is 7.7 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 and  $a^{\rm bis},^{93}$ 

The correction by the Federal Assembly Drafting Committee of 28 April 2016, published on 10 May 2016, concerns the French text only (AS 2016 1357).

91 The correction by the Federal Assembly Drafting Committee of 28 April 2016, published on 10 May 2016, concerns the French text only (AS 2016 1357).

Amended by No II 1 of the O of 8 Nov. 2017 on the Temporary Increase in VAT Rates to Finance the Expansion of the Railway Infrastructure, in force since 1 Jan. 2017 until 31 Dec. 2030 (AS **2017** 6305).

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

- <sup>1</sup> The import tax debt is incurred at the same time as the customs debt (Art. 69 CustA<sup>94</sup>).
- <sup>2</sup> 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.
- <sup>3</sup> In relation to security, facilities may be granted if collection of the tax is not endangered as a result.
- <sup>4</sup> 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).
- <sup>5</sup> 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

- <sup>1</sup> If the import tax debt is not paid on time, interest on the late payment is due.
- <sup>2</sup> 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:
  - 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.
- <sup>3</sup> The liability for interest on late payment also continues during appeal proceedings and instalment payments.

#### **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;

<sup>93</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>94</sup> SR **631.0** 

b. goods released for free circulation (Art. 48 CustA<sup>95</sup>) 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. 96 goods conditionally assessed (Art. 49, 51 para. 2 letter b, 58 and 59 CustA) on conclusion of the customs procedure
  - 1. are re-exported, or
  - 2. are placed under another customs procedure (Art. 47 CustA);
- cbis.97 in the case of goods conditionally assessed, the importer was registered on Swiss territory as a taxable person at the time of acceptance of the customs declaration;

d. 98 ...

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

- <sup>1</sup> Where excess taxes have been imposed or taxes are not due, there is a right to a refund.
- <sup>2</sup> 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 CustA<sup>99</sup> 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.
- <sup>3</sup> The right prescribes five years from the end of the calendar year in which it was constituted.
- <sup>4</sup> The prescriptive period is interrupted if the right is enforced against the FCA.
- <sup>5</sup> It is suspended for as long as appeal proceedings in respect of the enforcement of the right are pending.
- <sup>6</sup> 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.

95 SR **631.0** 

- Mended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 97 Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 98 Repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

99 SR **631.0** 

#### **Art. 60** Refund because of re-export

<sup>1</sup> 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:

- 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.
- <sup>2</sup> 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.
- <sup>3</sup> The refund may in a specific case be made dependent on proper declaration in the import state.
- <sup>4</sup> 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 CustA<sup>100</sup>).

#### Art. 61 Refund interest

- <sup>1</sup> 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 CustA<sup>101</sup>): from the 61<sup>st</sup> day after due conclusion of the procedure.
- <sup>2</sup> The interest-free period of 60 days does not begin to run until:
  - all documents necessary to establish the facts and evaluate the request have been received by the FCA;
  - the objection to the assessment decision satisfies the requirements of Article 52 of the Federal Act of 20 December 1968<sup>102</sup> on Administrative Procedure (APA);

<sup>100</sup> SR **631.0** 101 SR **631.0** 

c. the bases for calculating the tax on the consideration under Article 54 paragraph 1 letter d are known to the FCA.

<sup>3</sup> Refund interest is not paid on a tax remission under Article 64.

#### **Art. 62** Competence and procedure

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

<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> The Federal Council stipulates the details of the transfer procedure.

#### Art. 64 Tax remission

<sup>1</sup> 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 CustA<sup>103</sup>), 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;
- 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

<sup>102</sup> SR 172.021

<sup>103</sup> SR **631.0** 

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.

- <sup>2</sup> The Directorate General of Customs decides on the tax remission on written application supported by the necessary evidence.
- <sup>3</sup> The period for submission of an application is:
  - a. on assessment with unconditional import tax debt: one year after the issue of the import document with which the import tax was assessed;
  - on assessment with conditional import tax debt: one year after conclusion of the customs procedure chosen.

## Title 5 Procedural Law for Domestic and Acquisition Tax Chapter 1 General Procedural Provisions

#### Art. 65

- <sup>1</sup> The FTA is responsible for the imposition and the collection of the domestic and the acquisition tax.
- <sup>2</sup> 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.
- <sup>3</sup> It publishes without delay all good practice regulations that are not exclusively of an internal administrative nature.
- <sup>4</sup> All administrative acts must be carried out expeditiously.
- <sup>5</sup> 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

<sup>1</sup> 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 2010<sup>104</sup> on the Business Identification Number, which is registered.<sup>105</sup>

<sup>&</sup>lt;sup>104</sup> SR **431.03** 

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; BBI 2009 7855).

<sup>2</sup> 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.

<sup>3</sup> 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.

#### **Art. 67** Tax representation

- <sup>1</sup> Taxable persons without a domicile, registered office or permanent establishment on Swiss territory must appoint a representative to perform their procedural obligations who has his domicile, registered office or permanent establishment on Swiss territory.
- <sup>2</sup> 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
- <sup>3</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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, registered office or permanent establishment. 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

<sup>1</sup> 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.

<sup>2</sup> 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 958f of the Code of Obligations<sup>106</sup> applies.<sup>107</sup>

- <sup>3</sup> 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).
- <sup>4</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> If the tax liability ends, the period runs from this date.

#### **Art. 72** Correction of errors in the return

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> The retrospective corrections of the returns must be notified in the form specified by the FTA.
- <sup>4</sup> 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

- <sup>1</sup> 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;

<sup>106</sup> SR 220

<sup>107</sup> 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; BBI 2008 1589).

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.

- <sup>2</sup> 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.
- <sup>3</sup> Professional confidentiality as protected by law is reserved.

## Chapter 4 Rights and Obligations of the Authorities Section 1 Confidentiality and Administrative Assistance<sup>108</sup>

#### **Art. 74** Confidentiality

<sup>1</sup> 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.

- <sup>2</sup> 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;
  - 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.<sup>109</sup> 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

<sup>1</sup> The tax authorities of the Confederation, cantons, districts, administrative areas and communes shall support each other mutually in fulfilling their tasks; they must

<sup>&</sup>lt;sup>108</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS **2017** 3575; BBI **2015** 2615).

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; BBI 2009 7855).

prepare the appropriate reports, provide the information required and permit the inspection of files free of charge.

- <sup>2</sup> 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 under this Act or for collecting the business fee under the Federal Act of 24 March 2006<sup>110</sup> on Radio and Television; the information must be provided free of charge. On request, documents must be forwarded to the FTA free of charge. <sup>111</sup>
- <sup>3</sup> 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.
- <sup>4</sup> 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 of the Federal Supreme Court Act of 17 June 2005<sup>112</sup>) if the cantonal government has refused the request for information.
- <sup>5</sup> 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.** 75*a*<sup>113</sup> International administrative assistance

- <sup>1</sup> 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.
- <sup>2</sup> It provides administrative assistance by analogous application of Article 115*a* to 115*i* CustA<sup>114</sup>.

114 SR **631.0** 

<sup>110</sup> SR **784.40** 

Amended by Annex No 3 of the Federal Act of 26 Sept. 2014, in force since 1 July 2016 (AS 2016 2131; BBI 2013 4975).

<sup>112</sup> SR 173.110

<sup>113</sup> 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).

#### Section 2 Data Protection 115

#### **Art. 76**<sup>116</sup> Processing of data

<sup>1</sup> In order to fulfil its statutory duties, the FTA is permitted to process sensitive personal data and personality profiles, including data on administrative and criminal prosecutions and sanctions.

<sup>2</sup> It may systematically use the Old-Age and Survivors' Insurance number as defined in Article 50*c* of the Federal Act of 20 December 1946<sup>117</sup> on Old-Age and Survivors' Insurance to establish tax liability.

#### **Art. 76***a*<sup>118</sup> Information system

<sup>1</sup> The FTA shall operate an information system for processing personal data and sensitive personal data on administrative and criminal proceedings and sanctions, and personality profiles.

<sup>2</sup> The system serves the following purposes:

- a. establishing the tax liability of individuals, legal entities and partnerships;
- b. establishing taxable supplies as well as levying and reviewing the tax due thereon and the deductible input tax;
- reviewing the supplies claimed as exempt from tax without credit and the related input tax;
- d. reviewing the tax exemption with credit of supplies that are by law subject to the tax or which have been voluntarily submitted to the tax (option for taxation);
- e. carrying out the checks on import and export receipts relevant to the levying of value added tax;
- f. ensuring the collection of the taxes due from taxable persons and persons jointly liable;
- g. imposing and enforcing administrative or criminal sanctions;
- h. processing requests for administrative or mutual legal assistance;
- i. combating tax crime;
- i. keeping the statistics required for the collection of the tax;
- k. producing analyses and risk profiles.

Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>117</sup> SR **831.10** 

<sup>&</sup>lt;sup>118</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>3</sup> The information system may contain the following personal data, including sensitive personal data:

- a. data on the identity of persons;
- b. data on economic activities;
- c. data on income and financial circumstances;
- d. data on tax matters:
- e. data on contractual obligations and assignments of claims;
- f. data on debt enforcement, bankruptcy and attachment proceedings;
- g. personality profiles under Article 3 letter d of the Federal Act of 19 June 1992<sup>119</sup> on Data Protection;
- h. data on the compliance with tax obligations;
- i. data on suspicion of offences;
- j. data on offences, seized goods and evidence;
- data on administrative and criminal proceedings and on administrative and mutual legal assistance proceedings.

#### Art. $76b^{120}$ Disclosure of personal data

<sup>1</sup> In order to fulfil its statutory duties under Article 10 of the Federal Audit Office Act of 28 June 1967<sup>121</sup>, the Swiss Federal Audit Office shall have access to the FTA information system.

<sup>2</sup> The FTA may disclose data under Article 76*a* paragraph 3 or make it accessible online to the persons in the FCA entrusted with the imposition and collection of VAT or with the conduct of criminal and administrative proceedings, provided this is necessary for them to fulfil their duties.

#### **Art.** $76c^{122}$ Safeguarding data and documents

<sup>1</sup> Data and documents that are used and processed in the application of this Act must be carefully and systematically held in safekeeping and protected against any damage.

<sup>2</sup> The documents stored on the basis of this provision are equivalent to the originals.

<sup>119</sup> SR 235.1

<sup>120</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>121</sup> SR 614.0

<sup>122</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

#### **Art.** $76d^{123}$ Implementing provisions

The Federal Council shall issue implementing provisions on:

- a. the information system;
- b. the categories of personal data processed;
- the catalogue of sensitive personal data on administrative and criminal proceedings and sanctions;
- d. rights to access and process data;
- e. the retention period for the data; and
- f. the archiving and destruction of the data.

#### Section 3 Securing the Correct Tax Payment<sup>124</sup>

#### 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

- <sup>1</sup> 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 to their accounts and related receipts. The same applies to third parties obliged to provide information under Article 73 paragraph 2.
- <sup>2</sup> The demand for and review of comprehensive documentation by the FTA is also regarded as an audit.
- <sup>3</sup> Written notice must be given of an audit. In justifiable and exceptional cases, notification of an audit may be waived.
- <sup>4</sup> The taxable person may make a justified request for an audit to be carried out. The audit must be performed within two years.
- <sup>5</sup> 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.
- <sup>6</sup> The findings relating to third parties made during an audit under paragraphs 1 to 4 of a bank or savings institution as defined in the Banking Act of 8 November 1934<sup>125</sup>, of the Swiss National Bank, of a mortgage bond clearing house, of a securities dealer as defined in the Stock Exchange Act of 24 March 1995<sup>126</sup>, or of a finan-

<sup>&</sup>lt;sup>123</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>124</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>125</sup> SR 952.0

<sup>126</sup> SR 954.1

cial market infrastructure as defined in the Financial Market Infrastructure Act of 19 June 2015<sup>127</sup> may be used exclusively for the enforcement of value added tax. Professional secrecy under the Banking Act, the Stock Exchange Act and the Financial Market Infrastructure Act must be observed. <sup>128</sup>

#### **Art. 79** Assessment according to best judgement

<sup>1</sup> 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.

<sup>2</sup> 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

- <sup>1</sup> The provisions of the APA<sup>129</sup> apply. Article 2 paragraph 1 APA does not apply to the VAT procedure.
- <sup>2</sup> The authorities shall establish the legally relevant circumstances ex officio.
- <sup>3</sup> 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

- <sup>1</sup> 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;
  - the registration or de-registration in the Register of Taxable Persons is disputed;

129 SR 172.021

<sup>127</sup> SR **958.1** 

Amended by Annex No 6 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5339; BBI 2014 7483)

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.
- <sup>2</sup> 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

- <sup>1</sup> Rulings of the FTA may be contested by filing an objection within 30 days of notification.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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

- <sup>1</sup> In general, no costs are charged in ruling and objection procedures. No legal costs are awarded.
- <sup>2</sup> 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 APA<sup>130</sup>.

#### **Chapter 6** Collection

#### **Art. 86** Payment of the tax

- <sup>1</sup> The taxable person must settle the tax claim that arose in the reporting period within 60 days of the end of that period.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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.
- <sup>6</sup> Article 85*a* of the Federal Act of 11 April 1889<sup>131</sup> on Debt Collection and Bankruptcy (DCBA) does not apply.
- <sup>7</sup> The collection of a tax amount under paragraph 2 does not affect the final tax claim under Articles 72, 78 and 82 from being established. If the tax claim cannot be established due to a failure of the taxable person to act, in particular because he fails to correct errors under Article 72 or to request a ruling under Article 82, on the prescription of the right to establish the tax, the tax amounts established by the FTA under paragraph 2 become the tax claim.<sup>132</sup>
- <sup>8</sup> Instead of a payment of the tax amount, the taxable person may provide security in accordance with to Article 93 paragraph 7.

<sup>130</sup> SR 172.021

<sup>131</sup> SR **281.1** 

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

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

#### Art. 87 Interest on late payment

- <sup>1</sup> In the event of late payment, interest is payable without reminder.
- <sup>2</sup> 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

- <sup>1</sup> If the tax return discloses a surplus in favour of the taxable person, it is refunded.
- <sup>2</sup> 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.
- <sup>3</sup> The taxable person may reclaim taxes paid but not due if the tax claim is not yet legally binding. <sup>133</sup>
- <sup>4</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> If the tax claim is not yet legally binding 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.<sup>134</sup>
- <sup>3</sup> 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.
- 4 135
- 133 Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- Repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>5</sup> The FTA must register the tax claim in the public inventories or on public notices to creditors. <sup>136</sup>

- <sup>6</sup> The taxes incurred in the context of enforcement proceedings represent exploitation costs.
- <sup>7</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> Payment facilities may be made subject to the provision of appropriate security.
- <sup>3</sup> Payment facilities lapse if the requirements lapse or if the conditions to which they are tied are not fulfilled.
- <sup>4</sup> 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

- <sup>1</sup> The right to enforce the tax claim, interest and costs prescribes five years from the time when the corresponding claim becomes legally binding.
- <sup>2</sup> The prescriptive period is suspended as long as the taxable person cannot be proceeded against in Switzerland.
- <sup>3</sup> 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.
- <sup>4</sup> Interruption and suspension are effective towards all persons liable for payment.
- <sup>5</sup> Prescription applies in any event ten years after the end of the year in which the claim became legally binding.
- <sup>6</sup> 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 DCBA<sup>137</sup>.

#### **Art. 92** Tax remission

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

<sup>136</sup> Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>&</sup>lt;sup>137</sup> SR **281.1** 

 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.
- <sup>2</sup> The FTA may also consent to a tax abatement or waive security for its claim in composition proceedings.
- <sup>3</sup> 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.
- <sup>4</sup> The submission of a request for a tax abatement does not lead to the suspension of enforcement proceedings for legally assessed taxes.
- <sup>5</sup> 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.

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#### Chapter 7 Security for the Tax

#### Art. 93 Security

- <sup>1</sup> 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;
  - the taxable person makes preparations to give up his domicile, registered office or 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.

<sup>138</sup> Repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>2</sup> 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.

- <sup>3</sup> 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 DCBA<sup>139</sup>. There is no right of objection against the ruling requiring security.
- <sup>4</sup> An appeal may be filed against the ruling before the Federal Administrative Court.
- <sup>5</sup> Appeals against rulings requiring security do not have suspensive effect.
- <sup>6</sup> 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.
- <sup>7</sup> 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

- <sup>1</sup> 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 61<sup>st</sup> 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.
- <sup>2</sup> In the case of taxable persons without a domicile, registered office or permanent establishment in Switzerland, the FTA may also require security for anticipated debts under Article 93 paragraph 7.
- <sup>3</sup> 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.

#### **Title 6** Criminal Provisions

#### Art. 96 Tax evasion

<sup>1</sup> 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.

- <sup>2</sup> 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.
- <sup>3</sup> 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
- <sup>4</sup> 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.

- <sup>5</sup> An attempt to commit tax evasion is also an offence.
- <sup>6</sup> 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

<sup>1</sup> The fine is determined by applying Article 106 paragraph 3 of the Swiss Criminal Code (SCC)<sup>140</sup>; Article 34 SCC may be applied by analogy. If the tax advantage

<sup>140</sup> SR 311.0

obtained by the act is greater than the threatened penalty and the offence was committed wilfully, the fine may be increased to a maximum of two times the tax advantage.

<sup>2</sup> 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:
- 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 ACLA<sup>141</sup> would require investigations the cost of which 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

- <sup>1</sup> Articles 7, 9, 11 and 12 paragraphs 4 and 13 ACLA<sup>142</sup> do not apply.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> A legal entity reports itself through its executive bodies or representatives. Joint and several liability under Article 12 paragraph 3 ACLA<sup>143</sup> of the executive bodies or of the representatives does not apply and no prosecution will be brought.
- <sup>4</sup> A correction of the return under Article 72 paragraph 2 qualifies as self-reporting.

<sup>141</sup> SR 313.0

<sup>142</sup> SR 313.0

<sup>143</sup> SR 313.0

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#### Art. 103 Prosecution

<sup>1</sup> With the exception of Articles 63 paragraphs 1 and 2, 69 paragraph 2, 73 paragraph 1 last sentence and 77 paragraph 4, the ACLA<sup>144</sup> governs prosecution.

- $^2$  Prosecution is the responsibility of the FTA for domestic tax and acquisition tax, and of the FCA for import tax.
- <sup>3</sup> 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
- <sup>4</sup> Prosecution may be dispensed with if the level of culpability and the consequences of the crime are negligible (Art. 52 SCC<sup>145</sup>). In these cases a non-intervention or no-proceedings ruling is issued.
- <sup>5</sup> 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

- <sup>1</sup> The accused has the right to fair criminal proceedings in accordance with the Federal Constitution and the relevant legislation on criminal procedure.
- <sup>2</sup> The accused is not obliged to incriminate himself in criminal proceedings.
- <sup>3</sup> 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.
- <sup>4</sup> 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

- <sup>1</sup> 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. 146 in relation to domestic and acquisition tax:
    - 1. in the case of contraventions under Article 96 paragraphs 1–3: six months after the relevant tax claim becomes legally binding;
    - 2. for tax evasion offences under Article 96 paragraph 4: two years after the relevant tax claim becomes legally binding;
    - 3. for offences under Article 97 paragraph 2 and under Articles 14–17 ACLA<sup>147</sup>: seven years after the end of the relevant tax period.
- 144 SR 313.0
- <sup>145</sup> SR **311.0**
- Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).
- 147 SR 313.0

c.<sup>148</sup> in relation to import tax: for all misdemeanours and contraventions under Articles 96, 97 paragraph 2 and 99 and in the case of misdemeanours under Articles 14–17 ACLA: in seven years;

d. and e. 149 ...

- <sup>2</sup> 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
- <sup>3</sup> The prescriptive period for the payment and refund obligation under Article 12 ACLA is governed:
  - a. in principle by Article 42;
  - 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.
- <sup>4</sup> 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

- <sup>1</sup> The fines and costs imposed in the criminal proceedings in respect of tax offences are collected in accordance with Articles 86–90. Article 36 SCC<sup>150</sup> applies.
- <sup>2</sup> Prescription of the right to collect fines and costs are governed by Article 91.

# Title 7 Final Provisions Chapter 1 Implementing Provisions

#### Art. 107 Federal Council

<sup>1</sup> The Federal Council:

- a. regulates the relief from VAT for beneficiaries under Article 2 of the Host State Act of 22 June 2007<sup>151</sup> who are exempt from liability for tax;
- b. determines the requirements that customers who have their domicile, registered office or permanent establishment 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, registered office or permanent establishment; in

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Repealed by No I of the FA of 30 Sept. 2016, with effect from 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>&</sup>lt;sup>150</sup> SR **311.0** 

<sup>151</sup> SR 192.12

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principle the same requirements apply as exist for domestic taxable persons in respect of the input tax deduction;

- c. 152 regulates the VAT treatment of supplies to persons who are employees and at the same time closely related persons; in doing so, it shall take account of the treatment of such supplies in the case of direct federal taxation and may specify exceptions to Article 24 paragraph 2.
- <sup>2</sup> The Federal Council may issue provisions departing from this Act concerning the taxation of turnovers on imports of gold coins and fine gold.
- <sup>3</sup> 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.

#### **Art. 109** Consultative committee

- <sup>1</sup> The Federal Council may appoint a consultative committee comprising representatives of taxable persons, the cantons, academia, tax specialists, and consumers. <sup>153</sup>
- <sup>2</sup> 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.
- <sup>3</sup> 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 1999<sup>154</sup> is repealed.

<sup>152</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

 <sup>154 [</sup>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]

#### **Art. 111** Amendment of current law

The following federal acts are amended as follows:

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#### **Chapter 3** Transitional Provisions

#### **Art. 112** Application of the previous law

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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.

#### **Art. 113** Application of the new law

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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.

The amendments may be consulted under AS **2009** 5203.

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#### **Art. 115** Change of the tax rates

<sup>1</sup> If the tax rates change, Articles 112 and 113 apply by analogy. The Federal Council shall update the maximum amounts laid down in Article 37 paragraph 1 as appropriate. <sup>156</sup>

<sup>2</sup> 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.

#### **Art. 115***a*<sup>157</sup> Transitional provision to the Amendment of 30 September 2016

The input tax deduction may not be retrospectively cancelled on collectors' items such as works of art, antiques and suchlike in respect of which input tax was already deducted before the Amendment of 30 September 2016 comes into force, provided the sale is made on Swiss territory and VAT is paid on the entire selling price.

#### Chapter 4 Referendum and Commencement

#### Art. 116

- <sup>1</sup> This Act is subject to an optional referendum. <sup>158</sup>
- <sup>2</sup> 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.<sup>159</sup>
- <sup>3</sup> If a referendum is requested and if the Act is approved by popular vote, the Federal Council shall determine the commencement date.

Amended by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

<sup>157</sup> Inserted by No I of the FA of 30 Sept. 2016, in force since 1 Jan. 2018 (AS 2017 3575; BBI 2015 2615).

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

<sup>159</sup> Art. 78 para. 4 comes into force on 1 January 2012 (AS **2011** 4737).

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 30 January 2018)

The Swiss Federal Council, based on the Value Added Tax Act of 12 June 2009<sup>1</sup> (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)

- <sup>1</sup> The sale of goods represents a supply of goods even if a reservation of title is recorded
- <sup>2</sup> 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.
- <sup>3</sup> 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. 3 let. a VAT Act)<sup>2</sup>

1 3

<sup>2</sup> If the import is made in the supplier's 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.

<sup>3</sup> If the supplier does not intend to import in its own name, it must disclose this on the customer's invoice <sup>4</sup>

# **Art. 4**<sup>5</sup> 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 is located 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)

- <sup>2</sup> 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.
- <sup>3</sup> In particular the following are not permanent establishments:
  - a. pure distribution warehouses;
- Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).
- Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 5 Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

<sup>&</sup>lt;sup>1</sup> A permanent establishment is a fixed place of business through which the activity of the business is wholly or partly carried on.

- 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. 5*a*<sup>6</sup> 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. 6a<sup>7</sup> Place of supply for restaurant, cultural and similar supplies while transporting passengers in border areas

(Art. 9 VAT Act)

<sup>1</sup> If supplies under Article 8 paragraph 2 letters c and d VAT Act are made while transporting passengers in border areas that are partly on Swiss territory and partly abroad or are on Lake Constance, and if the place of supply cannot be clearly determined as being on Swiss territory or abroad, the supply is deemed to be made at the place where the person making the supply has its place of business, or a permanent establishment or, in the absence of such a place of business or such a permanent establishment, its domicile or the place from which it works.

<sup>2</sup> 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.

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

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

#### Art. 88

**Art. 9**9 Exemption and termination of the exemption from tax liability for Swiss businesses

(Art. 10 para. 2 let. a and c and 14 para. 1 let. a and 3 VAT Act)

- <sup>1</sup> Businesses with place of business, domicile or permanent establishment on Swiss territory that commence their activity or extend their activity by taking over a business or opening a new business division are exempt from tax liability if at the time, based on the circumstances, it must be assumed that the turnover threshold referred to in Article 10 paragraph 2 letter a or c VAT Act for supplies made on Swiss territory and abroad will not be achieved in the following twelve months. If it is not yet possible at the time to assess whether the turnover threshold will be achieved, a reassessment must be carried out within three months at the latest.
- <sup>2</sup> Where it must be assumed based on the re-assessment that the turnover threshold will be achieved, the exemption from tax liability ends either:
  - a. on the date of commencement or expansion of the activity; or
  - b. on the date of the re-assessment, but at the latest at the beginning of the fourth month.
- <sup>3</sup> For businesses previously exempt from tax liability, the exemption from tax liability ends with the business year in which the relevant turnover threshold is achieved. If the activity giving rise to tax liability was not carried on for a full year, the turnover must be extrapolated to a full year.
- Art.  $9a^{10}$  Exemption and termination of the exemption from tax liability for foreign businesses

(Art. 10 para. 2 let. a and c and 14 para. 1 let. b and 3 VAT Act)

- <sup>1</sup> Businesses that do not have a place of business, domicile or permanent establishment on Swiss territory that make a supply for the first time on Swiss territory are exempt from tax liability if at the time, based on the circumstances, it must be assumed that the turnover threshold referred to in Article 10 paragraph 2 letter a or c VAT Act for supplies made on Swiss territory and abroad not will be achieved within the following twelve months. If it is not yet possible at the time to assess whether the turnover threshold will be achieved, a re-assessment must be carried out within three months at the latest
- <sup>2</sup> Where it must be assumed based on the re-assessment that the turnover threshold will be achieved, the exemption from tax liability ends either:
  - a. when a supply is made for the first time on Swiss territory; or

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

Inserted by No I of the Ordinance of 12. Nov. 2014 (AS 2014 3847). Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

b. on the date of the re-assessment, but at the latest at the beginning of the fourth month.

<sup>3</sup> For businesses previously exempt from tax liability, the exemption from tax liability ends with the business year in which the relevant turnover threshold is achieved. If the activity giving rise to tax liability was not carried on for a full year, the turnover must be extrapolated to a full year.

### Art. 10 Telecommunication and electronic services (Art. 10 para. 2 let. b VAT Act)

- <sup>1</sup> 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.
- <sup>2</sup> 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;
  - 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. 1111

<sup>11</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

#### **Section 2** Public Authorities

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

<sup>1</sup> 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

- <sup>2</sup> Other public law institutions covered by Article 12 paragraph 1 VAT Act are:
  - a. Swiss 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.

#### Art. 1312

## 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: 13

- services in the field of radio and television, telecommunication services and electronic services:
- 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;
- 6.14 ...
- 7. organising fairs and exhibitions with a commercial character;
- 8. operating sports facilities, such as public baths and skating rinks;
- 9. warehousing;

<sup>&</sup>lt;sup>3</sup> For purposes of cross-border collaboration, foreign public authorities may also be included in special-purpose associations and simple partnerships.

<sup>&</sup>lt;sup>4</sup> An institution within the meaning of paragraph 2 is a taxable person as a whole.

Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

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

<sup>14</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

- 10. activities of commercial advertising offices;
- 11. activities of travel agents;
- 12. supplies by factory canteens, staff restaurants, sales offices and similar establishments;
- 13. activities of public notaries;
- 14. activities of surveying offices;
- 15. activities in the field of waste disposal;
- 16. activities financed by prepaid disposal fees based on Article 32*a*<sup>bis</sup> of the Environmental Protection Act of 7 October 1983<sup>15</sup> (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)

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

<sup>&</sup>lt;sup>1</sup> Unincorporated entities without legal capacity are equivalent to legal entities for the purpose of Article 13 VAT Act.

<sup>&</sup>lt;sup>2</sup> Insurance agents may be members of a group.

<sup>3 ...16</sup> 

<sup>&</sup>lt;sup>1</sup> The members of the VAT group may be freely determined from among those entitled to participate in the group taxation.

<sup>&</sup>lt;sup>2</sup> The formation of several sub-groups is permissible.

<sup>15</sup> SR 814.01

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

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

- <sup>1</sup> On application, the FTA shall authorise group taxation, provided the relevant conditions are met.
- <sup>2</sup> 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.
- <sup>3</sup> The application must be submitted by the group representative. The group representative may be:
  - a. a member of the VAT group domiciled on Swiss territory; or
  - b. a person who is not a member but who has its domicile or a place of business on Swiss territory.

### Art. 19 Changes in the group representation (Art. 13 VAT Act)

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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)

- <sup>1</sup> If a member no longer fulfils the requirements for participating in the group taxation, the group representative must notify the FTA in writing.
- <sup>2</sup> 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.
- <sup>3</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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

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)

- <sup>1</sup> 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 bank-ruptcy proceedings are opened.
- <sup>2</sup> 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 its liability.
- <sup>3</sup> 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<sup>17</sup> 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 32*a*<sup>bis</sup> EPA<sup>18</sup> 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

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

- 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
- 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 1990<sup>19</sup> (SubA);
- b. compensation within the meaning of Article 3 paragraph 2 letter a SubA, provided if a supply relationship exists;
- research contributions, provided the public authority does not have an exclusive right to the results of the research;

<sup>17</sup> The correction of 12 Dec. 2017 only concerns the French text (AS **2017** 7263).

<sup>18</sup> SR **814.01** 

<sup>19</sup> SR **616.1** 

 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)

<sup>1</sup> 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.

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

#### **Section 2** Plurality of Supplies

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

- <sup>1</sup> Special tools that a taxable person purchases, has made to order, or makes himself specifically 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;
  - 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.
- <sup>2</sup> Special tools are in particular printing plates, photolithos and photo settings, punching and draw tools, gauges, jigs, pressing and spraying forms, castings, found-ry modules, dies and films for printed circuits.

# Art. 32<sup>20</sup> Aggregated units and combinations of supplies (Art. 19 para. 2 VAT Act)

Article 19 paragraph 2 VAT Act applies by analogy when determining whether in the case of combinations of supplies the place of supply is located on Swiss territory or abroad.

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

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

<sup>20</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

#### Section 3 Supplies exempt from the Tax without Credit

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

<sup>1</sup> 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.

<sup>2</sup> The following are equivalent to human medical treatment:

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

<sup>3</sup> The following in particular do not constitute human medical treatment:

- 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 or her 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;
- 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)

<sup>1</sup> A provider possesses a licence to practise its profession within the meaning of Article 21 paragraph 2 number 3 VAT Act, if it:

a. is in possession of the licence to practise its profession independently required by the cantonal law; or

- b. is accredited to provide human medical treatment in accordance with the cantonal law
- <sup>2</sup> 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;
  - cbis.21 Dental hygienists;
  - d. Psychotherapists;
  - e. Chiropractors;
  - 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;
  - 1. Speech therapists;
  - m. Dietary advisers;
  - n. Podologists.

#### Art. 36 Cultural supplies

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

1 22

<sup>&</sup>lt;sup>2</sup> 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.

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

<sup>22</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

#### Art. 3723

## Art. 38<sup>24</sup> Cooperation between public authorities (Art. 21 para. 2 Sec. 28 let. b and c VAT Act)

<sup>1</sup> Interests of public authorities in private or public companies within the meaning of Article 21 paragraph 2 number 28 letter b VAT Act include both direct and indirect equity interests.

<sup>2</sup> Institutions and foundations established by public authorities within the meaning of Article 21 paragraph 2 number 28 letter c VAT Act include institutions and foundations both directly and indirectly established by public authorities.

<sup>3</sup> The tax exemption extends to:

- supplies between private or public companies whose equity interests are held exclusively by public authorities, and companies held exclusively by such companies, whether directly or indirectly, or institutions and foundations directly or indirectly established by such companies;
- b. supplies between institutions or foundations established exclusively by public authorities and companies held exclusively by such institutions or foundations, whether directly or indirectly, or institutions and foundations directly or indirectly established by such institutions and foundations.

# **Art. 38***a*<sup>25</sup> Educational and research institutions (Art. 21 para. 7 VAT Act)

- <sup>1</sup> Educational and research institutions are:
  - a. higher education institutions supported by the Confederation and cantons under Article 63a of the Federal Constitution<sup>26</sup> in accordance with a legal basis:
  - 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.
- <sup>2</sup> Private sector businesses do not qualify as educational and research institutions.

<sup>26</sup> SR 101

<sup>23</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

<sup>24</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>25</sup> Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

# Art. 39<sup>27</sup> Option for the taxation of supplies exempt from the tax without credit (Art. 22 VAT Act)

The option for declaration in the tax return must be exercised in the tax period in which the sales tax debt arose. On expiry of the finalisation deadline under Article 72 paragraph 1 VAT Act, it is no longer possible to exercise the option or not to continue with an exercised option.

#### **Section 4** Supplies exempt from the Tax with Credit

#### Art. 4028

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

- 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.

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

<sup>1</sup> 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;
- transport on Swiss sections of a journey used in transit to link the departure and the arrival stations located abroad.

<sup>&</sup>lt;sup>1</sup> Exempt from the tax with credit are:

<sup>&</sup>lt;sup>2</sup> 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.

<sup>&</sup>lt;sup>2</sup> 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.

<sup>27</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

<sup>3</sup> 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)

- <sup>1</sup> 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
- <sup>2</sup> Exempt from the tax with credit is the transport of persons on purely Swiss 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)

- <sup>1</sup> Exempt from the tax with credit are turnovers in:
  - a. state minted gold coins with customs tariff numbers 7118.9010 and 9705.0000<sup>29</sup>;
  - b.<sup>30</sup> Gold for investment purposes with a minimum fineness of 995 per mille, in the form of:
    - cast bars bearing a fineness mark and the stamp of a recognised assayer-melter or
    - pressed bars bearing a fineness mark and the stamp of a recognised assayer-melter or a responsibility mark registered on Swiss territory;
  - c.<sup>31</sup> 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.

<sup>&</sup>lt;sup>2</sup> 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.

<sup>29</sup> SR 632.10 Annex

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

<sup>31</sup> Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

#### **Chapter 3** Assessment Basis and Tax Rates

#### Section 1 Assessment Basis

### Art. 45 Considerations in foreign currency (Art. 24 para. 1 VAT Act)

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> The conversion is made on the basis of the rate of exchange published by the FTA, whereby the taxable person may elect to use the average monthly rate or the daily exchange rate.<sup>32</sup>
- <sup>3bis</sup> Where the FTA does not publish an exchange rate for a foreign currency, the daily exchange rate for the sale of the foreign currency published by a Swiss bank applies.<sup>33</sup>
- <sup>4</sup> Taxable persons that are members of a group of companies may use the group conversion rate for their conversion. This rate must be applied both to supplies within the group of companies and in relation to third parties.<sup>34</sup>
- <sup>5</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- 32 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 33 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 34 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>3</sup> 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.

- <sup>4</sup> 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.
- <sup>5</sup> 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.<sup>35</sup>

## Art. 48 Cantonal contributions to water, sewage or waste funds (Art. 24 para. 6 let. d VAT Act)

<sup>1</sup> 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 waterworks.

- <sup>2</sup> It shall take into consideration that:
  - a. the fund does not pay out all the contributions received; and
  - the taxable customers of waste disposal services and water supplies have deducted the tax thereon invoiced to them in full as input tax.

#### Section 1*a*<sup>36</sup> Margin Taxation

# Art. 48a Works of art, antiques and other collectors' items (Art. 24a para. 4 VAT Act)

<sup>1</sup> "Works of art" means the following physical works by creators as referred to in Article 21 paragraph 2 number 16 VAT Act:

- a. pictorial works personally created by artists such as oil paintings, water colours, pastels, drawings, collages and the like; exempted therefrom are plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas:
- original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or more plates executed entirely by hand by the artist, irrespective of the process or of the material employed, but not including any mechanical or photomechanical process;
- serigraphs that display the features of an original individually created artistic work, have been produced in limited numbers and have been executed from reproduction forms completely hand-made by the creator;

The correction of 12 Dec. 2017 only concerns the French text (AS 2017 7263).
 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

- d. original sculptures and statuary, in any material, provided that they are executed entirely by the artist; sculpture casts the production of which is in limited numbers and supervised by the artist or his successors in title;
- e. tapestries and wall textiles made by hand from original designs provided by artists, provided that the production is in limited numbers;
- f. individual pieces of ceramics executed entirely by the artist and signed by him or her:
- g. enamels on copper, executed entirely by hand, produced in limited numbers and bearing the signature of the artist or the studio;
- h. photographs taken by the artist, printed by him or her or under his or her supervision in limited numbers, signed and numbered;
- i. works of art personally created by the artist in limited numbers that are not mentioned in letters a-h.
- <sup>2</sup> Antiques are moveable goods that are more than 100 years old.
- <sup>3</sup> Collectors' items are in particular also:
  - a. postage stamps, revenue stamps, postmarks first day covers, postal stationery and the like, used, or if unused not current and not intended to be current:
  - zoological, botanical, mineralogical or anatomical collectors' items and collections; collectors' items of historic, archaeological, palaeontological, ethnological or numismatic interest;
  - c. motor vehicles first registered on purchase more than 30 years previously;
  - d. wines and other alcoholic beverages the vintage of which is displayed and which may be individualised by numbering or by other means;
  - goods made of precious metal, clad with precious metal, gemstones, precious stones and the like, such as jewellery, watches and coins, that have a collector's value.

# Art. 48b Margin taxation of goods purchased for a total price (Art. 24a para. 5 VAT Act)

- <sup>1</sup> Where the reseller has purchased collectors' items for a total price, it must apply the margin taxation to the sale of all these collectors' items.
- <sup>2</sup> The consideration from the resale of individual collectors' items purchased for a total price must be declared in the reporting period in which it was generated. As soon as the considerations exceed the total price when added together, they become taxable.
- <sup>3</sup> Where collectors' items are purchased with other goods for a total price the margin taxation only applies if the portion of the purchase price attributable to the collectors' items can be estimated.

### Art. 48c Invoicing (Art. 24a VAT Act)

Where the taxable person details the tax on the resale of collectors' items clearly on the invoice, it must pay the tax and may neither apply margin taxation nor deduct the notional input tax.

#### Art. 48*d* Records

(Art. 24a VAT Act)

The taxable person must carry out a check at the time of acquisition and sale in relation to the collectors' items. In the case of goods purchased for a total price, separate records must be kept for each overall purchase.

#### Section 2 Tax Rates

#### **Art. 49**<sup>37</sup> Medication

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

Medication is defined as:

- 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 2000<sup>38</sup> (TPA) and the related finished Galenic products;
- 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:
- 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 2001<sup>39</sup> and Article 7 of the Veterinary Medicinal Products Ordinance of 18 August 2004<sup>40</sup>.

# 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:

- a. they appear periodically, at least twice a year;
- 37 Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).
- 38 SR **812.21**
- 39 SR 812.212.1
- 40 SR **812.212.27**

- 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;
- they are not made up predominantly of space for entering text or other material.

# Art. 50a<sup>41</sup> Electronic newspapers and magazines without advertising character (Art. 25 para. 2 let. abis VAT Act)

<sup>1</sup> Electronic newspapers and magazines without advertising character are electronic products that:

- a. are transmitted electronically or offered on data carriers;
- b. are predominantly text or image-based; and
- essentially fulfil the same purpose as printed newspapers and magazines under Article 50

### 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.

<sup>&</sup>lt;sup>2</sup> Electronic newspapers and magazines without advertising character also include audio newspapers and magazines whose content largely corresponds to that of the original work.

Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

### Art. 51a<sup>42</sup> Electronic books without advertising character (Art. 25 para. 2 let. abis VAT Act)

- <sup>1</sup> Electronic books without advertising character are electronic products that:
  - a. are transmitted electronically or offered on data carriers;
  - are self-contained, predominantly text or image-based and non-interactive individual works; and
  - c. serve essentially the same function as printed books in terms of Article 51.
- <sup>2</sup> Electronic books without advertising character also include audiobooks whose content largely corresponds to that of the original work.

### Art. 52<sup>43</sup> Advertising character (Art. 25 para, 2 let. a no 9 VAT Act)

- <sup>1</sup> Printed and electronic products have advertising character if their content is clearly designed to promote the business activity of the publisher or of a third party behind the publisher.
- <sup>2</sup> Third parties behind a publisher are:
  - a. persons and businesses, on whose behalf the publisher acts; or
  - b. other persons closely related to the publisher within the meaning of Article 3 letter h VAT Act
- <sup>3</sup> Advertising is both direct advertising, such as advertisements, and indirect advertising, such as advertorials or infomercials.

# Art. 53 Preparation on the premises and food service (Art. 25 para. 3 VAT Act)

- <sup>1</sup> Preparation is the cooking, heating, mixing, preparation and blending of food<sup>44</sup>. The mere maintaining of the temperature of food ready for consumption is not considered preparation.
- <sup>2</sup> 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.

43 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Revision of term relevant only to Swiss language versions in accordance with Annex No 1 of the Ordinance on Foodstuffs and Utility Articles of 16 Dec. 2016, in force since 1 May 2017 (AS 2017 283).

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<sup>42</sup> Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

# Art. 54 Special consumption installations on the premises (Art. 25 para. 3 VAT Act)

<sup>1</sup> 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.
- <sup>2</sup> The following do not constitute consumption installations:
  - a. mere seating accommodation for resting purposes without associated tables;
  - 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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.

# 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.

<sup>&</sup>lt;sup>3</sup> The FTA shall provide for simplifications within the meaning of Article 80 VAT Act for certain sites and events.

#### 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)

#### Art. 6045

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.

<sup>&</sup>lt;sup>1</sup> The Swiss 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 it.

<sup>&</sup>lt;sup>2</sup> The recipient of the supply does not have to verify whether the VAT was rightly demanded. If, however, it knows that the person that has transferred the tax is not registered as a taxable person, an input tax deduction is not permitted.

<sup>45</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

#### **Section 2**<sup>46</sup> **Deduction of Notional Input Tax**

### Art. 62 Precious metals and gemstones

(Art. 28a para. 1 let. a VAT Act)

Precious metals with tariff numbers 7106–7112<sup>47</sup> and gemstones with tariff numbers 7102–7105 are not individualisable moveable goods.

### Art. 63 Right to deduct notional input tax

(Art. 28a para. 1 and 2 VAT Act)

- <sup>1</sup> Where exclusively individualisable moveable goods are purchased for a total price, notional input tax may be deducted.<sup>48</sup>
- <sup>2</sup> The deduction of notional input tax is not permitted if the total price covers any collectors' items (Art. 48*a*) or non-individualisable moveable goods and the share of the purchase price attributable to goods referred to in Article 28*a* VAT Act cannot be estimated.
- <sup>3</sup> The deduction of notional input tax is not permitted where:
  - a. the notification procedure under Article 38 VAT Act was applied on the purchase of the good;
  - b. the taxable person imported the good;
  - c. goods under Article 44 paragraph 1 letters a and b and paragraph 2 have been purchased;
  - d. the taxable person knows or should have known that the good was imported exempt from the tax.
- <sup>4</sup>In the case of payments made under the claim settlement, notional input tax may only be deducted based on the actual value of the good at the time that it is taken over

#### Art. 64

Repealed

#### **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;

<sup>46</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>47</sup> SR **632.10** Annex

The correction of 12 Dec. 2017 only concerns the Italian text (AS **2017** 7263).

- 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;
- 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 its own calculations, it 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)

#### Section 4 Own Use

## Art. 69 Principles (Art. 31 VAT Act.)

<sup>&</sup>lt;sup>1</sup> 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.

<sup>&</sup>lt;sup>2</sup> 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.

<sup>&</sup>lt;sup>1</sup> The input tax deduction must be corrected in full on goods and services not put to use

<sup>&</sup>lt;sup>2</sup> 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.

- <sup>3</sup> 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.
- <sup>4</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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)

- <sup>1</sup> The input tax deduction may be corrected in full on goods and services not put to use
- <sup>2</sup> 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.
- <sup>3</sup> 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.

<sup>4</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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.

#### Calculation and Constitution of the Tax Claim Chapter 6

#### Section 1 **Annual Accounts**

(Art. 34 para. 3 VAT Act)

Art. 7649

#### Section 2 Net Tax Rate Method

#### Art. 77 Principles

(Art. 37 para. 1-4 VAT Act)

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

- 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;
- use group taxation under Article 13 VAT Act;
- have their place of business or a permanent establishment in the valley areas of Samnaun or Sampuoir;
- e.<sup>50</sup> generate more than 50 per cent of their turnovers from taxable supplies to another taxable person who reports using the effective method where the persons involved are under the same management.

<sup>3</sup> Taxable persons who report using the net tax rate method may not opt for the taxation of supplies under Article 21 paragraph 2 numbers 1–24, 27, 29 and 30 VAT Act. If the tax is nevertheless invoiced, the tax charged must be paid to the FTA with reservation of Article 27 paragraph 2 VAT Act. 51

#### Art. 78 Submission to the net tax rate method on commencement of tax liability (Art. 37 para. 1-4 VAT Act)

<sup>1</sup> 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.

<sup>2</sup> 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.

49 Comes into force at a later date.

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

51 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>&</sup>lt;sup>2</sup> The net tax rate method may not be chosen by taxable persons who:

<sup>3</sup> If no request is made within the period in paragraph 1, the taxable person must report for at least three years using the effective reporting method before it may submit to the net tax rate method. An earlier change of the reporting method is possible at the time of any adjustment to the net tax rate that is not due to a change in the rates of taxation under Articles 25 and 55 VAT Act.<sup>52</sup>

<sup>5</sup> The VAT chargeable on the stock of goods, the operating material and the fixed assets at the start of tax liability is taken into account in applying the net tax rate method. No subsequent input tax deduction may be made.

# Art. 79 Change from the effective reporting method to the net tax rate method (Art. 37 para. 1–4 VAT Act)

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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. The foregoing does not apply to a correction under Article 93 where immovable goods are used after the change to a negligible extent for an activity entitling the input tax deduction to be made.<sup>53</sup>

<sup>4</sup> 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.

<sup>&</sup>lt;sup>4</sup> Paragraphs 1–3 also apply to retroactive entries analogously.

<sup>52</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>53</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

### 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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 it 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.
- <sup>5</sup> On change from the net tax rate method to the effective reporting method, there are no corrections to the stock of goods, the operating material and the fixed assets. The foregoing does not apply to a subsequent input tax deduction under Article 32 VAT Act if the stock of goods, the operating material and the fixed assets are used to a greater extent after the change for an activity entitling the input tax deduction to be made <sup>54</sup>
- <sup>6</sup> 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;

<sup>54</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

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)

<sup>1</sup> If a taxable person reporting under the net tax rate method ceases its business activities or if, due to failing to reach the turnover threshold in Article 10 paragraph 2 letter a VAT Act, it 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.

<sup>2</sup> On the date of removal from the VAT Register, the tax must be reported on the fair value of immoveable goods at the standard rate applicable at that time, provided:<sup>55</sup>

- a. the good was purchased, constructed or converted by the taxable person when it used the effective method and it has claimed the input tax deduction;
- b.<sup>56</sup> the good was purchased by the taxable person under the notification procedure from a taxable person reporting using the effective method.

<sup>3</sup> 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)

<sup>1</sup> If, from the date of the takeover, a taxable person reporting under the net tax rate method does not use all or part of the assets taken over using the notification procedure under Article 38 VAT Act or uses such assets only to a lesser extent than the seller of a business entitled to deduct input tax, the procedure is as follows:<sup>57</sup>

- 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.

<sup>2</sup> 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.

<sup>55</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>57</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

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

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

- <sup>2</sup> 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.
- <sup>3</sup> 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)

- <sup>1</sup> The taxable person is permitted to use two net tax rates if:
  - a. it carries on two or more business activities for which the net tax rates laid down by the FTA differ; and
  - b.58 at least two of these business activities each has a share of more than 10 per cent of the total turnover from taxable supplies.
- <sup>2</sup> 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.
- <sup>3</sup> The turnovers of business activities with the same net tax rate must be accumulated in investigating whether the 10 per cent threshold is exceeded.
- <sup>4</sup> 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)

<sup>1</sup> 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.

<sup>58</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>2</sup> 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)

- <sup>1</sup> 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.

<sup>2</sup> In cases under Article 19 paragraph 2 VAT Act, the entire consideration may be reported at the approved net rate tax applicable to the majority of the supply. However, if the supplies are all subject to the same tax rate under Article 25 VAT Act, the entire consideration must be reported at the higher approved net rate tax unless the taxable person can show which parts of the consideration apply to the individual supplies.<sup>59</sup>

## Art. 89 Special rule for mixed branches of the industry (Art. 37 para. 1–4 VAT Act)

<sup>1</sup> 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.

- <sup>2</sup> 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.
- <sup>3</sup> Articles 86–88 apply to 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 taxable main business and the taxable business usually ancillary to an industry.<sup>60</sup>
- <sup>4</sup> The 50 per cent threshold is calculated:

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>59</sup> Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

- 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.

<sup>5</sup> 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)

<sup>1</sup> 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:

- 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 2007<sup>61</sup> (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.

<sup>2</sup> Taxable persons reporting using the net tax rate method who purchase individualisable moveable goods without openly transferred tax may use the procedure made available by the FTA to compensate the notional input tax. The procedure does not apply to used automobiles with an overall weight not exceeding 3,500 kg or to goods:

- a. that the taxable person has accepted under the notification procedure from a person reporting using the effective method;
- b. that the taxable person knows or should have known were imported exempt from the tax:
- c. that the taxable person acquired exempt from the tax on Swiss territory; or
- d. that the taxable person accepted as part of a claim settlement, provided the payments made exceed the actual value of the good at the time of acceptance.<sup>62</sup>

 $^{2\text{bis}}$  The procedure under paragraph 2 applies in an analogous manner when collectors' items (Art. 48a) are sold. $^{63}$ 

<sup>3</sup> 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.

61 SR 192.12

62 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

63 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).

## 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)

<sup>1</sup> 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 standard rate at that time provided:<sup>64</sup>

- 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.65 the good was purchased by the taxable person under the notification procedure from a taxable person applying the effective reporting method.
- <sup>2</sup> 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)<sup>66</sup>

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

- a. and b.67
- c.68 goods and services 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;
- 64 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 65 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 66 The correction of 12 Dec. 2017 only concerns the French text (AS **2017** 7263).
- Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).
- 68 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

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.

- 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.

## Art. 95<sup>71</sup> 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 provide 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)

<sup>1</sup> 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,

<sup>&</sup>lt;sup>2</sup> Using net tax rates for reporting, supplies to employees are treated as follows:

<sup>&</sup>lt;sup>3</sup> For closely related persons who are also employees, paragraph 2 applies.<sup>69</sup>

<sup>&</sup>lt;sup>4</sup> Supplies that must be included in the salary certificate for direct tax purposes always constitute supplies for consideration. The tax must be calculated on the amount that is also applicable for direct tax purposes.<sup>70</sup>

<sup>69</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

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 Code<sup>72</sup> (CC) and foundations under Articles 80–89<sup>bis</sup> CC.

- <sup>2</sup> There are no monetary thresholds for the use of the flat tax rate method.
- <sup>3</sup> Taxable persons who report using the flat tax rate method may not opt for the taxation of supplies under Article 21 paragraph 2 numbers 1–25, 27 and 29 VAT Act. If the tax is nevertheless invoiced, the tax charge must be paid to the FTA with reservation of Article 27 paragraph 2 VAT Act.<sup>73</sup>
- <sup>4</sup> Autonomous agencies under Article 12 paragraph 1 VAT Act that merge to form a single taxable entity (Art. 12 para. 2 VAT Act) may apply the flat rate tax method.<sup>74</sup>
- Art. 98 Submission to the flat tax rate method and change of the reporting method

(Art. 37 para. 5 VAT Act)

- <sup>1</sup> 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.
- <sup>2</sup> 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 of the reporting method is possible at the time of any adjustment to the flat tax rate that is not due to a change in the rates of taxation under Articles 25 and 55 VAT Act.<sup>75</sup>
- <sup>3</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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
- 72 SR 210
- 73 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 74 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

has been established must be reported at the rate applicable for the net tax rate method.

<sup>3</sup> The taxable person must report each of its business activities with the appropriate flat tax rate. The number of applicable flat tax rates is not limited.

# Art. 99*a*<sup>76</sup> Reporting the acquisition tax (Art. 37 para. 5 VAT Act)

Taxable persons reporting using the flat tax rate method who acquire supplies from businesses with their place of business abroad in accordance with Articles 45–49 VAT Act must pay the acquisition tax on a quarterly basis at the relevant statutory tax rate

# 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.

<sup>76</sup> Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

### 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)

<sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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 or the flat rate tax method

  (Art. 39 VAT Act)<sup>77</sup>
- <sup>1</sup> 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 claims existing at the time of change at the approved net tax rates or, where applicable, flat tax rates in the reporting period following the change.<sup>78</sup>
- <sup>2</sup> 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

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307). debtor items existing at the time of the change from the considerations collected in this reporting period in the reporting period following the change.

<sup>3</sup> 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 und 11079

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

- <sup>1</sup> 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.
- <sup>2</sup> The data storage medium may in particular carry computer programmes and files, their updates and upgrades and sound and image data.
- <sup>3</sup> 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.
- <sup>4</sup> The following goods are in particular deemed equivalent to data storage media without market value, provided the goods are acquired by the customer as a result of an independent legal transaction:
  - a. plans, drawings and illustrations, in particular by architects, engineers, graphic artists and designers;
  - b. legal opinions from lawyers, reports from experts, translations, research and test results and results of analyses, valuations and similar;
  - c. certificated rights and intellectual property.

Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

#### 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)

<sup>1</sup> 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.

- a. the direct costs of the individual supplies;
- b. the total consideration.
- <sup>3</sup> 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.
- <sup>4</sup> 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 2006<sup>80</sup> (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.

<sup>&</sup>lt;sup>2</sup> The cost calculation must show:

#### 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)

<sup>1</sup> The amount of the security for conditional tax claims or in cases, in which payment reliefs under Article 76 paragraph 1 CustA<sup>81</sup> are granted:

- a. 100 per cent on storage of bulk goods;
- a<sup>bis</sup>.82 a maximum of 10 per cent for the authorised economic operator (AEO) under Article 42a CustA;
- b. at least 25 per cent in other cases.

# Art. 116 Subsequent adjustment of the considerations (Art. 56 para. 5 VAT Act)

<sup>1</sup> 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.

<sup>&</sup>lt;sup>2</sup> For international transits, the amount of the security is governed by international treaties

<sup>81</sup> SR 631.0

<sup>82</sup> Inserted by Annex No 2 of the Ordinance of 18 Nov. 2015, in force since 1 Jan. 2016 (AS 2015 4917)

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

#### Chapter 3 Transfer of the Tax Payment

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

- <sup>1</sup> Persons who wish to pay taxes under the transfer procedure require authorisation from the FTA.
- <sup>2</sup> If doubt exists as to whether the requirements for the transfer of the import tax are fulfilled, the FCA shall levy the tax.
- <sup>3</sup> The prescription of import tax liability that has been transferred is governed by Article 42 VAT Act.

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

- <sup>1</sup> Authorisation is granted if the taxable person:
  - a. reports the VAT under the effective method;
  - b. regularly imports and exports goods as part of its business activities;
  - c. keeps a detailed import, inventory and export control for these goods;
  - d.83 in its periodic tax returns with the FTA regularly reports input tax surpluses on imports and exports of goods under letter b of more than 10,000 francs per year that arise from the payment of import tax to the FCA; and
  - e. guarantees the correct functioning of the procedure.

# Art. 119 Lapse of the conditions for authorisation

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.

<sup>&</sup>lt;sup>2</sup> 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.

<sup>&</sup>lt;sup>4</sup> The FTA shall regulate execution in consultation with the FCA.

<sup>&</sup>lt;sup>2</sup> The grant or extension of the authorisation may be made conditional on the provision of security in the amount of the anticipated claims.

<sup>83</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

### Art. 120 Withdrawal of the authorisation

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

### Art. 121 Non-levying of the Swiss 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 184 Opting not to register as a Taxable Person

(Art. 66 para. 1 VAT Act)

#### Art. 121a

Businesses that exclusively provide supplies on Swiss territory that are exempt from tax without credit may opt not to register with the FTA as a taxable person. The foregoing also applies to businesses without a place of business, domicile or permanent establishment on Swiss territory if they also make supplies for which they are exempt from tax under Article 10 paragraph 2 letter b VAT Act.

#### Section1a Paperless Receipts

(Art. 70 para. 4 VAT Act)85

#### Art. 12286

For the transmission and retention of paperless receipts, Articles 957–958*f* of the Code of Obligations<sup>87</sup> and the Accounts Ordinance of 24 April 2002<sup>88</sup> apply.

#### Art. 123-12589

- 84 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 85 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 86 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 87 SR **220**
- 88 SR 221.431
- 89 Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

#### Section 2 Reporting

### Art. 126 Effective reporting method (Art. 71 and 72 VAT Act)

<sup>1</sup> 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 Swiss 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 HSA<sup>90</sup> that are exempt from the VAT under Article 143 of this Ordinance,
  - supplies for which the notification procedure under Article 38 VAT Act was used.
  - 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:
  - considerations from supplies, whose place of supply lies abroad under Articles 7 and 8 VAT Act,
  - flows of funds not qualifying as considerations under Article 18 paragraph 2 let. a-c VAT Act,
  - 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:
  - input tax on cost of materials and services.
  - 2. input tax on investments and other operating costs,
  - de-taxation:
- f. the amounts by which the input tax deduction must be corrected or reduced as a result of:
  - 1. mixed use under Article 30 VAT Act,
  - 2. own use under Article 31 VAT Act,
  - 3. receipt of flows of funds that do not constitute considerations under Article 33 paragraph 2 VAT Act;

- g. the total of the import tax reported under the transfer procedure.
- <sup>2</sup> 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)

- <sup>1</sup> 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 Swiss 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 HSA<sup>91</sup> that are exempt from VAT under Article 143 of this Ordinance,
    - supplies for which the notification procedure under Article 38 VAT Act was used,
    - 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:
    - 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,
    - 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.

<sup>&</sup>lt;sup>2</sup> 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)

<sup>1</sup> 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.
- <sup>2</sup> 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);
  - 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.

<sup>&</sup>lt;sup>3</sup> 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

<sup>&</sup>lt;sup>4</sup> 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

- 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 Data Protection<sup>92</sup>

## Art. 131<sup>93</sup> Data protection advice (Art. 76 para. 1 VAT Act)

- <sup>1</sup> The FTA shall designate a person responsible for data protection and data security advice
- <sup>2</sup> This person shall monitor compliance with the data protection provisions and in particular ensure that a regular review is made of the accuracy and security of the data.
- <sup>3</sup> He or she shall also ensure that regular checks are carried out relating to the accuracy and complete transfer of the gathered data onto data carriers.

# Art. 132 Processing of the data (Art. 76 para. 2 VAT Act)<sup>94</sup>

<sup>1</sup> 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.

<sup>92</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>93</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>94</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>2</sup> The FTA may compile and store data that it itself collects or consolidates or receives from persons involved in procedures, third parties or authorities electronically or in another form.<sup>95</sup>

3 ...96

### **Art. 133**97 Responsibility for the information system

(Art. 76a para. 1 and 76d let. a VAT Act)

The FTA is responsible for the secure operation and the maintenance of the information system and for the legality of the data processing.

#### Art. 13498 Data categories

(Art. 76a para. 1 and 3 as well as 76d let. b and c VAT Act)

The data that the FTA may process under Article 76a paragraph 3 VAT Act are as follows:

- a. information about the identity of persons: in particular names, legal form, entry in the commercial registry, date of birth or date of foundation, address, place of residence and of business, telecommunication numbers, email address, place of origin, bank account, legal representative, OASI insurance number;
- information about economic activities: nature of the business activity, turnovers achieved or anticipated, date of registration or deletion, place of the provision of supplies and information about the dispatch, import and export of goods that is required for the imposition of VAT;
- information about income and financial circumstances: in particular information from business records, operational figures, properties, cash, postal and bank accounts, securities and other moveable valuables, and undistributed inherited assets;
- d. information about tax affairs: tax returns;
- e. information about debts and claim assignments: period and amount of claim assignments, amount of taxable assigned claims;
- information about debt enforcement, bankruptcy and attachment proceedings: debt enforcement, bankruptcy, composition and attachment proceedings, judicial and non-judicial acts in relation to the exercise of rights;
- information about compliance with tax obligations: compliance with obligations to cooperate on tax matters, payment on time of taxes due, accounting

<sup>95</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

<sup>97</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>98</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

- obligations, findings made in the course of audits, and information required for ensuring the collection of the taxes due by tax payers and jointly and severally liable persons;
- information about any suspicion of violations, about offences, seized goods and evidence and about criminal proceedings; justified suspicion of violations, seized goods and evidence, offences and the resulting sanctions and additional tax claims under Article 12 of the Federal Act of 22 March 197499 on Administrative Criminal Law:
- information about administrative proceedings: data on administrative and tax-related judicial proceedings required for the issue of assessment notices and for the assessment of rights to tax refunds and applications for tax waivers:
- i. information about administrative and mutual assistance proceedings: requesting authority, date and subject matter of the application, persons concerned, outcome of the procedure and the nature of the measures.

#### Art. 135100 **Statistics** (Art. 76 para. 2 VAT Act)

- <sup>1</sup> The FTA shall compile and maintain statistics to the extent necessary for the performance of its statutory tasks.
- <sup>2</sup> 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 1992<sup>101</sup> are reserved.
- <sup>3</sup> Non-anonymised data may be used for internal business audits and for internal business planning.

#### Art. 136102 Disclosure of data to the FCA (Art. 76b para. 2 VAT Act)

The FTA shall make the data under Article 134 accessible online to the persons in the FCA responsible for the imposition and collection of value added tax to the extent that these data are required for the correct and complete assessment of the import tax or for the conduct of criminal or administrative proceedings.

SR 313.0

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307). 101 SR **431.01** 

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

# Art. 137<sup>103</sup> Retention period, destruction and archiving of the data (Art. 76c para. 1 and 76d let. e and f VAT Act)

<sup>1</sup> The FTA shall destroy the data 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.

<sup>2</sup> Prior to destroy the data shall be offered to the Federal Archives in accordance with the Archiving Act of 26 June 1998<sup>104</sup> for archiving.

## Art. 138<sup>105</sup> Evaluation of the FTA's internet service (Art. 76d VAT Act)

- <sup>1</sup> For the evaluation of its internet service, the FTA may process data from persons who make use of this service (log files).
- <sup>2</sup> The data may be processed only for this analysis and only as long as necessary. After the evaluation they must be destroyed or anonymised.

Art. 139106

#### 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 2005<sup>107</sup> to appeal to the Federal Court.

<sup>104</sup> ŠR **152.1** 

107 SR 173.110

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018
 (AS 2017 6307).

<sup>105</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>106</sup> Repealed by No I of the Ordinance of 18 Oct. 2017, with effect from 1 Jan. 2018 (AS 2017 6307).

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

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

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

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

- a. beneficiaries under Article 2 paragraph 1 HSA<sup>108</sup> 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.

#### <sup>3</sup> Individual beneficiaries are:

- heads of state and government while actually exercising an official function on Swiss territory and persons in their entourage who enjoy diplomatic status;
- diplomatic representatives, consular officials, and persons in their entourage, provided they enjoy the same diplomatic status as the former on Swiss territory;
- 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 on Swiss territory 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 on Swiss territory and are exempt

<sup>&</sup>lt;sup>1</sup> Institutional and individual beneficiaries are entitled to claim relief from VAT.

<sup>&</sup>lt;sup>2</sup> Institutional beneficiaries are:

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.

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

- <sup>1</sup> Exempt from the tax are:
  - supplies of goods and services on Swiss territory by taxable persons to institutional and individual beneficiaries;
  - b.<sup>109</sup> the acquisition of supplies from businesses with their place of business abroad by institutional and individual beneficiaries.
- <sup>2</sup> 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)

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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 Min-

<sup>&</sup>lt;sup>4</sup> Swiss citizens have no claim to tax relief.

<sup>&</sup>lt;sup>5</sup> Relief from VAT is effected by tax exemption at source under Articles 144 and 145 and, in exceptional cases, by refund under Article 146.

<sup>109</sup> Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

eral Oil Tax Ordinance of 20 November 1996<sup>110</sup>, on Articles 30 and 31 of the Ordinance of 23 August 1989<sup>111</sup> on the Customs Privileges of Diplomatic Missions in Bern and Consular Posts on Swiss territory and of Articles 28 and 29 of the Ordinance of 13 November 1985<sup>112</sup> on the Customs Privileges of International Organisations, of States in their relations with such Organisations and of Special Missions of Foreign States. In this case the supplier must be able to prove that the FCA has not levied the mineral oil tax or has refunded it.

#### Art. 146 Tax refund

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

- <sup>1</sup> 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.
- <sup>2</sup> For the tax refund, Article 145 paragraph 3 applies by analogy.
- <sup>3</sup> An institutional beneficiary may not make more than two applications for a tax refund per calendar year. The official form must be used.
- <sup>4</sup> 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.
- <sup>5</sup> 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)

<sup>1</sup> 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

- 110 SR **641.611**
- 111 SR **631.144.0**
- 112 SR **631.145.0**

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.

<sup>2</sup> The provisions of the Vienna Conventions dated 18 April 1961<sup>113</sup> on Diplomatic Relations and dated 24 April 1963<sup>114</sup> on Consular Relations and of the Headquarters Agreement are reserved.

## Art. 150 Voluntary taxation of supplies exempt without credit (Art. 107 para. 1 let. a VAT Act)

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

# Title 7 Refund of VAT to Customers with Domicile or Place of Business Abroad

# Art. 151 Persons entitled to claim (Art. 107 para. 1 let. b VAT Act)

<sup>1</sup> 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 the territory of the Swiss Confederation against a consideration provided they also:<sup>115</sup>

- 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.

<sup>113</sup> SR **0.191.01** 

<sup>114</sup> SR 0.191.02

Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

- $^2$  The entitlement to a tax refund remains intact if the person is exempt from tax liability under Article 10 paragraph 2 letter b VAT Act and does not waive this exemption.  $^{116}$
- <sup>3</sup> 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)

- <sup>1</sup> Reciprocal right is deemed to be given if:
  - a. businesses with their domicile or place of business on Swiss territory 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;
  - 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 on Swiss territory.
- <sup>2</sup> 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)

<sup>1</sup> The tax refund is commensurate in scope and limitations with the right of input tax deduction under Articles 28–30 and 33 paragraph 2 VAT Act. A refund is made at a rate of tax that is no higher than the statutory maximum rate for the supply concerned. Value added tax paid on supplies that are not subject to or exempt from tax under the VAT Act is not refunded.<sup>117</sup>

- <sup>2</sup> 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 the territory of the Swiss Confederation for the acquisition of supplies of goods and supplies of services that they charge on to customers. <sup>118</sup>
- <sup>3</sup> Repayable taxes are refunded only if their amount in a calendar year reaches at least 500 francs.
- Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 117 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

#### 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)

<sup>1</sup> 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.

#### Art. 156 Refund interest

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

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

#### Title 8 Value Added Tax Consultative Commission<sup>119</sup>

#### Art. 157120 Status

(Art. 109 VAT Act)

The Value Added Tax Consultative Commission (Consultative Commission) is an extra-parliamentary commission under Article 57*a* of the Government and Administrative Organisation Act of 21 March 1997<sup>121</sup>.

#### **Art. 158**<sup>122</sup> Composition of the Consultative Commission

(Art. 109 VAT Act)

The Consultative Commission comprises fourteen permanent members.

- Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).
- 120 Amended by No I of the Ordinance of 12 Oct. 2011, in force since 1 Jan. 2012 (AS 2011 4739).
- 121 SR 172.010
- 122 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

<sup>&</sup>lt;sup>2</sup> The FTA's form must be used for the application.

<sup>&</sup>lt;sup>3</sup> The applicant must appoint a representative with domicile or with a place of business on Swiss territory.

<sup>&</sup>lt;sup>4</sup> The tax displayed on cash receipts may not be refunded.

<sup>&</sup>lt;sup>5</sup> The FTA may demand further details and documentation.

### Art. 159 Method of work and secretariat

<sup>1</sup> The Consultative Commission meets as necessary. Meetings are convened by the chairperson.

 $^{1 ext{bis}}$  The FTA attends the meetings of the Consultative Commissions in an advisory capacity. $^{123}$ 

<sup>2</sup> The FTA performs the administrative secretarial work and takes the minutes; the minutes shall include the recommendations of the Consultative Commissions and any majority and minority opinions.<sup>124</sup>

### Art. 160<sup>125</sup> Comments and recommendations

The Consultative Commission submits its comments and recommendations to the FDF. It may disclose any majority and minority opinions.

### Art. 161 Power of decision (Art. 109 VAT Act)

<sup>1</sup> The Consultative Commission has no power of decision.

## Art. 162<sup>127</sup> Public information (Art. 109 VAT Act)

<sup>1</sup> 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 on the FTA website<sup>128</sup> at the same time that the invitation to the meeting of the Consultative Commission at which they are expected to be discussed is sent.

<sup>2</sup> With the consent of the FTA, the Consultative Commission may provide the public with information about its business.

- 123 Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 124 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 125 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).
- 126 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).
- 127 Amended by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS **2017** 6307).
- www.estv.admin.ch > Mehrwertsteuer > Fachinformationen > Konsultativgremium.

<sup>&</sup>lt;sup>2</sup> The decision to establish practice lies with the FTA. <sup>126</sup>

#### **Title 9** Final Provisions

#### Chapter 1 Repeal and Amendment of Current Law

#### Art. 163

The Ordinance of 29 March 2000129 to the Federal Act on Value Added Tax is repealed.

#### **Chapter 2** Transitional Provisions

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

The assignee is liable only for the VAT on receivables which it 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.<sup>130</sup> 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 1999<sup>131</sup>.

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

<sup>1</sup> 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.

- <sup>2</sup> 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.
- <sup>3</sup> Where Article 114 paragraph 2 VAT Act provides for a notice period of 90 days, this notice period takes precedence over the 60-day notice period under Articles 79, 81 and 98 of this Ordinance. <sup>132</sup>

<sup>129 [</sup>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]

<sup>130</sup> Amended by No I of the Ordinance of 18 June 2010, in force since 1 Jan. 2010 (AS 2010 2833).

<sup>131 [</sup>AS **2000** 1300]

<sup>132</sup> Amended by No I of the Ordinance of 30 Oct. 2013, in force since 1 Jan. 2014 (AS 2013 3839).

Art. 166a<sup>133</sup> Transitional provision to the Amendment of 18 October 2017 (Art. 10 para. 1 let. a VAT Act)

In the case of foreign businesses without a permanent establishment on Swiss territory that have made taxable supplies on Swiss territory in the twelve months before this Ordinance comes into force, the exemption from tax liability under Article 9a terminates when this Ordinance comes into force, provided in these twelve months they have reached the turnover threshold under Article 10 paragraph 2 letter a or c VAT Act for supplies on Swiss territory and abroad that are not exempt from the tax without credit and it must be assumed that they will also provide taxable supplies on Swiss territory in the twelve months following this Ordinance coming into force. If the supplies were not made for the entire twelve months before this Ordinance comes into force, the turnover must be extrapolated to a full year.

#### **Chapter 3** Commencement Date

#### Art. 167

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

<sup>&</sup>lt;sup>2</sup> Article 76 comes into force at a later date.

<sup>133</sup> Inserted by No I of the Ordinance of 18 Oct. 2017, in force since 1 Jan. 2018 (AS 2017 6307).

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### **Notes**



