

## Switzerland: Update on potential impact of the new mail-order regulation on subordination license set-ups

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### Executive summary

Switzerland's introduction of the new mail-order regulation effective 1 January 2019 will result in a shift of the place of supply for goods imported into Switzerland and consequently in a Value Added Tax (VAT) liability for foreign suppliers in Switzerland, as soon as the annual turnover threshold of CHF100,000 with small consignment supplies to Switzerland is exceeded. Consequently, VAT must be charged on **all** supplies of goods into Switzerland carried out by the supplier, who also has to perform the importation qualifying as "importer of record" for VAT purposes. As the VAT liability triggered by the mail-order regulation will not be limited to the small consignment supply but is expanded to all supplies, any subordination license held by the foreign supplier would become obsolete.

### Detailed discussion

#### **Current treatment of supplies of goods**

According to Art. 52 of the Value Added Tax Law (VATL), import tax is generally levied on the import of goods into Switzerland. For reasons of procedural economy, the Federal Customs Administration (FCA) currently waives the right to levy import tax on consignments whose tax amount is five francs or less

(so-called small consignments, Art. 53 para. 1 lit. a VATL). The Federal Tax Administration (FTA) defines a value of goods of a maximum of CHF65 (standard rate of 7.7%) or CHF200 (reduced rate of 2.5%) including shipping costs, as a reference value for small consignments.<sup>1</sup>

Since, according to Art. 7 para. 1 lit. b VATL, the place of supply of goods of a foreign supplier to Switzerland is essentially abroad, no Swiss VAT liability for foreign suppliers is created and thus, in the case of small consignments, taxation in Switzerland is currently entirely waived.

### New mail-order regulation as of 1 January 2019

The introduction of the new mail-order regulation was initially scheduled to come into effect at the same time that the partial revision of the VAT Act on 1 January 2018 took place. However, it has been postponed due to necessary system adjustments, which were not possible to be set up of 1 January 2018. The Federal Council confirmed on 15 August 2018 that the new regulation would finally come into force on 1 January 2019.

The overarching objective of the new regulations is, among others, to reduce the distortion of competition to the disadvantage of Swiss suppliers when it comes to small consignment supplies into Switzerland. Thus, an important change introduced with Art. 4a rev VAT Ordinance states that the place of supply of goods resulting from small consignment supplies into Switzerland should be **imported to Switzerland**, as soon as the annual turnover threshold of CHF100,000 for small consignments into Switzerland is reached. However, once reached, the threshold for small consignment items, that shifts the place of supply will apply to all supplies of goods (not only small consignments) into Switzerland and the supplier will become liable to Swiss VAT for all its supplies. Under the new mail-order regulation, the FCA will still not levy import tax on the small consignment items, however, it is levied on the remaining consignments, which can then be deducted as input tax by the supplier via its Swiss VAT registration according to its individual recovery rate.

According to the latest guidance published by the FTA on 20 November 2018, a supplier becomes liable to register for Swiss VAT as of 1 January 2019 if the threshold of CHF100,000 has been reached in calendar year 2018. Suppliers meeting the registration threshold in the course of calendar year 2019 must register in the calendar month after the threshold has been exceeded. **The FTA has, moreover, introduced the following additional requirement for taxable persons that fall under the mail-order**

**regulation:** (1) Registrants have to identify themselves as “mail-order suppliers” during the registration process; (2) Registrants have to agree to be recorded in the mail-order supplier list kept by the FTA; and (3) Taxable persons already registered for Swiss VAT purposes subject to the mail-order regulation have to report themselves to the FTA in order to be recorded on the mail-order supplier list.

### Impact on subordination license set-ups

The changes published on the FTA website on 15 August 2018 now provide the following details:

*From the following month [note: after reaching the above-mentioned turnover threshold], the place of supply of goods shall apply to all supply of goods of the supplier from abroad to Switzerland as if it were located in Switzerland. From this moment the imports must be done in the name of the supplier.*

This means that henceforth, **all deliveries**, including those that do not fall under the small consignment concept, must be imported by the foreign supplier in its own name.

It is not yet clear what impact operating with a subordination license will have on foreign suppliers. With this license, it was already possible to move the place of supply of goods to Switzerland, whereby the supplier could also actively waive the use of this license for certain transactions. This possibility of waiving the application of a subordination license is now in direct contradiction to the mail-order regulations. The foreign mail-order supplier that operates via a subordination license for existing supply chains and exceeds the turnover threshold of CHF100,000 per year for small consignments to Switzerland can no longer waive the application of the license and, thus, can no longer move the place of supply of goods to abroad. The subordination license seems to become obsolete. Suppliers with respective supply chains should take this point up individually with the FTA, since this rule would lead to distortion of competition with regard to companies that are not affected by the mail-order regulation.

### Challenges for suppliers

As an importer, the mail-order supplier must import all goods in its own name, and thus customs clearance fees and, if applicable, customs duties are incurred. In comparison to import tax, which can generally be reclaimed as input tax, customs clearance fees and customs duties represent costs that are levied on the importer. The mail-order supplier may need to revisit its agreements with clients and possibly consider the costs plus applicable VAT in the sales price.

In order to ensure efficient handling of imports for large quantities of supply of goods, the use of the centralized settlement procedure (CSP) of the federal customs administration should be considered and reviewed. Holders of a CSP account benefit from cashless customs clearance, but must meet certain requirements in advance.

Depending on the business model, the new mail-order regulation may have further legal implications, for example, product liability. Product liability in Switzerland is regulated by the *Product Liability Act* (PrHG), which is relevant to the new mail-order regulation. According to the PrHG the importer of goods is viewed as the manufacturer. Accordingly, a review of the far-reaching impact of the mail-order regulations may be advisable for the companies concerned.

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## Endnote

1. EIDGENÖSSISCHE STEUERVERWALTUNG, Information on the mail-order regulations as of 1 January 2019, 19.02.2018, <https://www.estv.admin.ch/estv/de/home/mehrwertsteuer/fachinformationen/revmwstg/regelung-fuer-den-versandhandel.html>.

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