

**Swiss authorities level the playing field for non-resident companies selling into Switzerland – With effect from 1 January, 2019 VAT registration and VAT accounting obligations will now exist for many foreign companies selling into the Swiss market.**

## Change of the distance selling regulations as of January 1, 2019

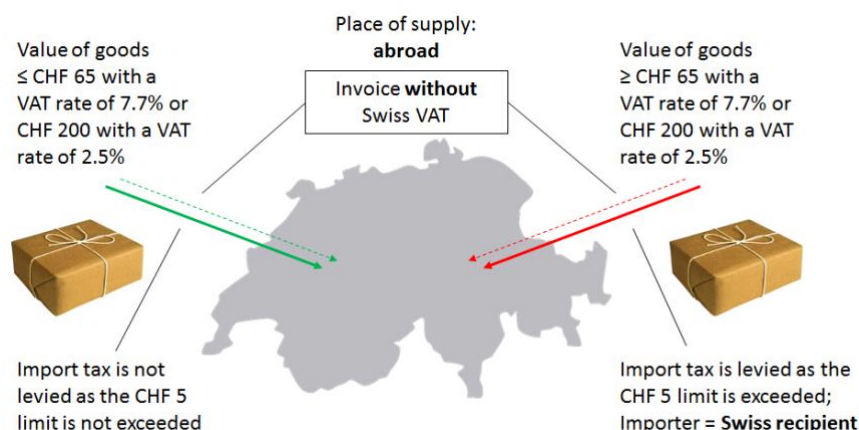
The partial revision of the Swiss VAT Act entered into force on January 1, 2018. However, it will not be completed until the enactment of the change regarding the distance-selling rules which has been postponed to January 1, 2019. Earlier this year, the Swiss Federal Tax Administration (FTA) published information on the new legal situation as well as the relating obligations for the taxpayers in more detail. However, the corresponding provisions of the Swiss VAT Ordinance have not yet been adopted and certain amendments may therefore still be necessary. In the following the new regulations and what distance selling companies need to know about the new rules are explained.

### What is the issue under the current legal situation?

The aim of the recent revision was to reduce the competitive distortion occurring between foreign and Swiss-based suppliers. Most of the unequal treatments have now been eliminated. However, there remains an inequality between foreign distance selling companies and Swiss-based suppliers.

When goods are imported into Switzerland, VAT amounts of up to CHF 5 are not levied on the imports of goods (import tax) for collection efficiency reasons. This rule is also known as the Low-Value-Consignment-Relief (LVCR). Contrary to the LVCR of the EU, the LVCR applies on the tax amount rather than on the assessment value. Given the relatively low VAT rates, the VAT amount of CHF 5 corresponds to a value of CHF 65 for goods subject to the standard VAT rate of 7.7% and CHF 200 for goods subject to the reduced VAT rate of 2.5% respectively. The assessment basis includes other costs such as shipping or customs duties.

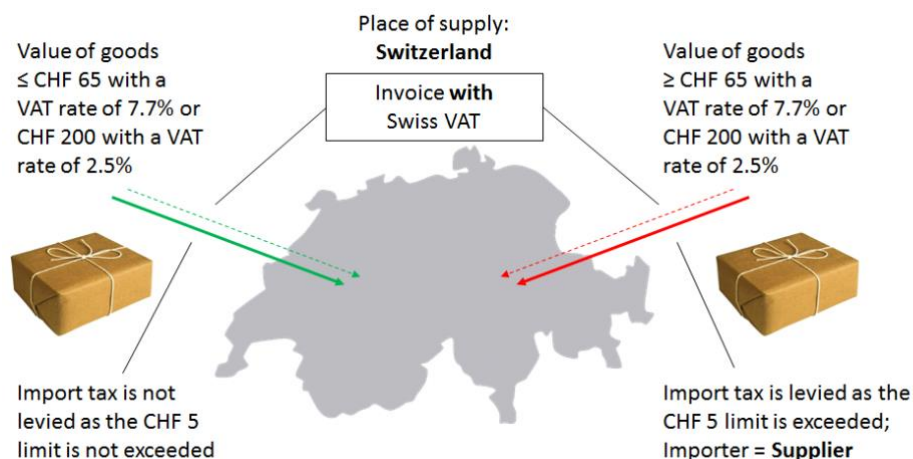
As a result, low value consignments shipped from abroad can benefit from a loophole, which leads to a competitive distortion between Swiss distance sellers and their foreign competitors.



## New rules as of January 1, 2019

Switzerland decided not to abolish the LVCR rules on the import of such shipment. The reasons here are clear, as this would only increase the administrative costs of the import VAT collection. Instead, Switzerland decided to implement a new place of supply rule that does not depend on who acts as the importer of records of such shipments.

The new rules foresee that if a distance selling company realizes an annual turnover of at least CHF 100,000 from such LVCR shipments to Swiss clients, the place of supply is automatically shifted into Switzerland and, therefore, considered as domestic supplies which are subject to Swiss VAT. Furthermore, the foreign supplier is deemed to be the importer of record. The new rules regarding the importer of record will however not be relevant at all given the fact that no import VAT is levied on the individual shipment if the VAT amount is below the LVCR amount of CHF 5. It is, however, relevant that the foreign distance selling company must register and charge VAT on its shipments to Swiss clients, irrespectively whether import VAT is collected upon importation or not. Furthermore, it is also important to note that due to the force of attraction of a Swiss VAT registration, all other local supplies rendered by such a company will become subject to VAT. This typically includes services rendered to Swiss recipients which would fall under the reverse-charge provisions if the supplier was not VAT-registered in Switzerland.



## Are there any other things to know about the new distance selling provisions?

The FTA will publish on its website a list of the foreign based companies which are performing distance-sales and are registered in the Swiss VAT register. Once the company applies for a Swiss VAT registration and informs the FTA that it will carry out a distance selling activity, it will be listed. The purpose of this list is to allow providers of customs clearance services to identify who will be responsible for the payment of the potential import VAT should import VAT be due. Therefore, the FTA requires that a foreign distance selling company identifies itself and contacts the VAT authority in case the company is not listed for whatever reason.

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If a foreign company is already registered for Swiss VAT purposes due to other local supplies than small consignments and starts a distance selling activity to Switzerland, these will not become domestic supplies and continue to be considered foreign turnover provided the threshold of CHF 100,000 per year from small consignment deliveries is not exceeded. The same applies if a foreign company is not registered at all and performs distance selling activities for less than CHF 100,000 per year.

Overall, foreign companies affected by the new rules should start adapting their processes when selling goods into Switzerland that were considered LVCR shipments in the past. Apart from the VAT registration, it will be key to adapt the pricing, the invoicing, the General Terms and Conditions as well as providing clear instructions to the freight carrier in charge of the shipments. In order to speed up the importation process and to ensure a fast and uncomplicated claim of any import VAT levied on such shipments, companies might also envisage to open a Customs Clearance Account on which customs duties and import VAT is charged separately. Such Customs Clearance Accounts do not prevail the payment of the import duties and import VAT, but provides a payment term of three days (import duties) and 60 days respectively for the import VAT. Furthermore, it helps tracing the import VAT that a company can reclaim when it files its quarterly VAT returns.

In summary, the Swiss distance selling rules will significantly change going forward and increase the complexity for distance selling traders. It remains to be seen if this will really level out the playing field. Maintaining the current LVCR provisions which will not lead to an increase of the workload for the Customs Administration seems more important to the Swiss Government than the correct levying of the VAT on such sales. Whether or not foreign distance sellers decide to be compliant, especially if the FTA does not have any enforcement possibilities, is not yet clear. It might well be that these rules, that differ from the EU-rules and that require a combined effort from the supplier and from the customs agent or the freight forwarder, will remain applicable on paper, but not in practice.