Last month, the Swiss Federal Tax Authority (“FTA”) announced that the VAT reform measure in relation to low value imports would be postponed from 1 January 2018 to 1 January 2019. This in turn, prompted many opposing reactions from diverse stakeholders. Overseas sellers, no doubt impacted by the revised law, will be pleased with this delay, provided they are even aware of the upcoming changes. Online marketplaces and logistic providers may also be relieved now they have more time to consider the impact of the law and contemplate the required action within their organisation. Others however, are perhaps less happy. One article titled “Das Millionengeschenk” (a gift in millions) in the newspaper “Handelszeitung” on 29.06.2017 estimated that the FTA would lose up to CHF 20 million in VAT revenue because of the delay and that the wider Swiss economy would suffer losses of up to CHF 1 billion in revenues because of the overseas sellers’ price advantages. What does this entail?

**VAT exemption for low value imported goods**

Currently, imports of goods valued at less than CHF 62.50¹ (low value goods) are exempt from both Swiss customs duty and import VAT. Historically, this exemption was meant to speed up the customs clearance process, as the cost of the tax collection often exceeds (including the time required) that of the amount collected. However, with the development of interest and e-commerce, this exemption gives an additional price advantage to many overseas sellers catering the Swiss market via their own websites or online marketplaces. According to the same article by the “Handelszeitung” mentioned above, the Swiss Post processes more than 30,000 packages from overseas a day. Evidently, this exemption has been exploited and abused by some sellers, who deliberately underreport the value of the goods being imported in order to gain a tax advantage.

**The revised Swiss VAT law**

Under the revised Swiss VAT law, coming into effect from 1 January 2018, the current import VAT exemption will remain unchanged. Nonetheless, overseas sellers will be required to register for VAT purposes in Switzerland and charge Swiss VAT on sales benefitting from the exemption, should these sales exceed an annual threshold of CHF 100,000. The main purpose of this new measure is to create a level playing field for businesses in and outside of Switzerland, as far as VAT is concerned.

However, thus far the details explaining the implementation of this new measure are outstanding. In part, this could be part of the reason as to why this measure may now have been postponed to 2019.

The revised Swiss VAT law does not abolish the import VAT exemption. Instead, it imposes a VAT registration obligation on overseas sellers, in the case that their turnover from imports of low value goods into Switzerland should exceed CHF 100,000. This means that some sellers can still benefit from the import exemption and do not need to register for Swiss VAT. The complexity of the matter is further enhanced by the fact that, sellers who are registered for Swiss VAT, potentially only need to charge VAT on the sales of goods which are qualified for the import exemption. However, they need not charge VAT on those where the value of the goods exceeds the import exemption threshold (for which the Swiss customers are still responsible for the customs duties and import VAT).

This new registration threshold could potentially lead to tremendous practical issues. Apart from the sellers themselves, how can a third party, in this case the FTA, determine whether a seller should register for Swiss VAT or not?

¹The VAT amount on which would have been due is less than CHF 5, e.g. for goods which are subject to the standard 8% VAT rate, the import value of the goods is less than CHF 62.5.
Swiss VAT reform: imports of low value goods

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This becomes especially difficult considering that those sellers are established outside of Switzerland. Will the FTA require the logistic providers (e.g. Swiss Post) and/or the online marketplaces to provide data so that the FTA can accurately assess the sellers’ situation? How can the logistic providers or the online marketplaces provide accurate data to the FTA, given that many sellers trade on different online marketplaces under different names or even under different accounts on the same platform? Such a request will no doubt present an important administrative burden for them.

Furthermore, if the FTA identifies a seller who is not in compliance, what effective measures can the FTA take to enforce the law, in order to pursue debt from an overseas seller – for example based in Far East Asia. The possibility exists that some sellers will simply close their existing businesses and start new ones under a different name. It may be possible that Switzerland could introduce a new measure to hold the marketplaces or the logistic providers jointly and severally liable for the VAT due by the overseas sellers. The UK seems to be having some success in this regard since the introduction of a similar regime in September 2016. However, the FTA does not have such a power under the current Swiss VAT law. Furthermore, the possible introduction of this power would probably take at least two years.

Interestingly, the EU is also contemplating similar measures under the EU VAT Action Plan. It has been proposed that from 1 January 2021, import VAT exemption, which currently applies to low value imported goods (commonly known as Low Level Consignment Relief) will be abolished. Non-EU sellers can choose to register for VAT in an EU Member State under the One-Stop-Shop scheme and pay VAT depending on the destination of the goods. Or as an alternative, the logistic provider who imports the goods into the EU will declare and pay VAT on behalf of the EU consumers. Unlike the intended revised Swiss law, under the EU proposal, all imports into the EU will be subject to VAT without exception. If an oversea seller does not register for VAT in the EU, the logistics provider will need to pay the VAT on import. The details of implementation may be also lacking now, however, as mentioned above, this is set for enactment only as of 2021.

It may therefore be wise of the FTA to delay the introduction of the new law, so that it has more time to implement something apt for practice, while minimizing the adverse impact on other businesses. For the overseas sellers, the online marketplaces and the logistic providers, it is important to have and maintain a dialogue with the FTA on the details of implementation and to be prepared for the changes to come.

2Goods with a value of under EUR 22 or EUR 10 depending on the EU Member States of import.

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