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

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

Please note: this translation does not yet include the amendments of 01.01.2016

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

Title 1: General Provisions:

Art. 1 Subject and principles

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

² As Value Added Tax, it levies:

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

³ The tax is levied on the following principles:

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

AS 2009 5203

¹ SR 101

² BBl 2008 6885

Art. 2 Relationship to cantonal law

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

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

Art. 3 Definitions

In this Act:

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

³ SR 631.0

⁴ SR 642.11

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

Art. 4 Samnaun and Sampoivre

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

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

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

Art. 5 Indexation

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

Art. 6 Passing on of the tax

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

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

Art. 7 Place of supply of goods

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

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

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

⁶ From 1 Jan. 2013: Valsot

⁷ From 1 Jan. 2013: Valsot

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

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

Art. 8 Place of supply of a service

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

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

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

neering and construction supervision services, surveillance of properties and buildings and accommodation services;

- g. for services in the area of international development cooperation and humanitarian help: the place for which the service is destined.

Art. 9 Avoidance of distortion of competition

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

Title 2: Domestic Tax

Chapter 1: Taxable Person

Art. 10 Principle

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

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

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

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

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

Art. 11 Waiver of exemption from tax liability

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

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

Art. 12 Public authorities

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

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

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

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

Art. 13 Group taxation

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

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

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

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

² Tax liability ends:

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

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

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

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

Art. 15 Joint liability

¹ Jointly and severally liable with the taxable person are:

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

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

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

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

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

Art. 16 Succession to tax liability

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

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

Art. 17 Tax substitution

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

Chapter 2: Object of Taxation

Art. 18 Principle

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

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

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

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

Art. 19 Plurality of supplies

¹ Mutually independent supplies are treated separately.

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

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

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

Art. 20 Attribution of supplies

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

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

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

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

Art. 21 Supplies exempt from the tax without credit

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

² Exempt from the tax without credit are:

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

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

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

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

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

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

¹¹ SR **951.31**

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

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

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

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

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

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

² The option is excluded for:

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

¹² SR 831.10

Art. 23 Supplies exempt from the tax

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

² Exempt from the tax are:

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

¹³ SR 631.0

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

Chapter 3: Assessment Basis and Tax Rates

Art. 24 Assessment basis

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

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

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

Art. 25 Tax rates

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

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

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

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

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

¹⁷ SR **817.0**

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

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

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

Chapter 4: Invoicing and VAT Details

Art. 26 Invoice

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

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

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

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

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

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

Art. 27 Incorrect or unauthorised VAT details

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

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

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

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

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

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

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

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

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

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

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

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

Art. 29 Exclusion of the right to input tax deduction

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

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

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

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

Art. 30 Mixed use

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

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

Art. 31 Own use

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

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

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

²¹ SR 642.11

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

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

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

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

Art. 32 Subsequent input tax deduction

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

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

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

Art. 33 Reduction of the input tax deduction

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

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

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

Section 1: Time of Assessment

Art. 34 Tax period

¹ The tax is levied by tax period.

² The tax period is the calendar year.

³ The FTA shall permit the taxable person on request to use the business year as the tax period.²²

Art. 35 Reporting period

¹ Within the tax period, the tax is reported:

- a. as a rule quarterly;
- b. for reporting using net tax rates (Art. 37 paras. 1 and 2): every six months;
- c. if there are regular input tax surpluses: at the request of the taxable person, monthly.

² On application, the FTA shall permit, in justifiable cases, other reporting periods and shall stipulate the conditions therefor.

Section 2: Amount of the Tax Claim and Notification Procedure

Art. 36 Effective reporting method

¹ In principle, the effective reporting method must be used.

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

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

¹ If a taxable person does not generate more than 5,020,000 francs turnover from taxable supplies annually and in the same period does not have to pay more than 109,000 francs in tax, calculated at the net tax rate that applies to him, he may report under the net tax rate method.²³

²² Not yet in effect

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

² When using the net tax rate method, the tax claim is determined by multiplying the sum of the taxable considerations, including tax, generated in the reporting period by the net tax rate approved by the FTA.

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

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

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

Art. 38 Notification procedure

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

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

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

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

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

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

²⁴ SR 642.11

²⁵ SR 221.301

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

Art. 39 Form of reporting

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

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

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

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

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

Art. 40 Constitution of the tax claim

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

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

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

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

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

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

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

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

Art. 42 Prescription of the right to establish the tax

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

² This prescriptive period is interrupted by a written declaration requiring confirmation of receipt that is aimed at establishing or correcting the tax claim, a ruling, a decision on an objection, or a judgment. A corresponding interruption of the prescriptive period may also be achieved by the announcement of an audit under Article 78 paragraph 3 or the commencement of an unannounced audit.

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

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

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

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

Art. 43 Validity of the tax claim

¹ The tax claim is made legally binding by:

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

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

Art. 44 Assignment and pledge of the tax claim

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

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

Title 3: Acquisition Tax**Art. 45** Liability for acquisition tax

¹ The following are subject to the acquisition tax:

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

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

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

Art. 46 Tax assessment and tax rates

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

Art. 47 Tax and reporting period

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

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

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

¹ The acquisition tax debt is incurred:

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

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

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

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

Title 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

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

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

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

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

Art. 52 Taxable object

¹ The taxable object is:

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

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

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

²⁶ SR 631.0

²⁷ SR 631.0

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

Art. 53 Tax exempt imports

¹ Exempt from the tax is the import of:

- a. goods in small quantities, of insignificant value or with an insignificant tax amount; the FDF shall issue more detailed provisions;
- b. human organs by recognised medical institutions and hospitals and of human whole blood by persons possessing the necessary licence;
- c. works of art that were personally created by painters or sculptors and are brought onto Swiss territory by them or on their behalf, subject to Article 54 paragraph 1 letter c;
- d. goods that are exempt from customs duties under Article 8 paragraph 2 letters b–d, g and i–l CustA²⁹;
- e. goods under Article 23 paragraph 2 number 8 that are imported as part of a supply of goods by airlines under Article 23 paragraph 2 number 8 or are brought onto Swiss territory by such airlines, provided they have procured the goods prior to import as part of a supply of goods and after the import use them for their own business activities entitling the taxable person to make an input tax deduction (Art. 28);
- f. goods that have been assessed under the export procedure (Art. 61 CustA) and are returned unaltered to the consignor on Swiss territory, provided they have not been exempt from the tax because of export; if the amount of tax is substantial, the tax exemption with credit is granted by reimbursement; the provisions of Article 59 apply by analogy;
- g. electricity and natural gas in pipes or cables;
- h. goods that are declared tax free in treaties governed by international law;
- i. goods that are imported onto Swiss territory for temporary admission under Articles 9 and 58 CustA or for inward processing under Articles 12 and 59 CustA under the procedure with entitlement to reimbursement, subject to Article 54 paragraph 1 letter d;
- j. goods that are temporarily imported onto Swiss territory by a person registered on Swiss territory as a taxable person for job processing under a work and labour contract and which are assessed under the procedure for inward processing as being conditionally due for payment (suspensive procedure) (Art. 12 and 59 CustA);
- k. goods that were exported from Swiss territory under Article 9 and 58 CustA for temporary admission or under Articles 13 and 60 CustA for outward job processing under a work and labour contract and are returned to the consignor on Swiss territory, subject to Article 54 paragraph 1 letter e;
- l. goods that have been taken abroad for job processing under a work and labour contract under the export procedure (Art. 61 CustA) and are returned to the consignor on Swiss territory, subject to Article 54 paragraph 1 letter f.

² The Federal Council may exempt from the import tax goods that it declares exempt from customs duties under Article 8 paragraph 2 letter a CustA.

Art. 54 Calculation of the tax

¹ The tax is calculated:

- a. on the consideration, if the goods are imported in fulfilment of a sales or commission transaction;
- b. on the consideration for supplies of goods under work and labour contracts or for work within the meaning of Article 3 letter d number 2 using goods released for free circulation (Art. 48 CustA³⁰) and carried out by a person not registered on Swiss territory as a taxable person;
- c. on the consideration for work carried out abroad on behalf of artists and sculptors on their own works of art (Art. 3 let. d no. 2), provided the works of art were brought onto Swiss territory by them or on their behalf;
- d. on the consideration for the use of goods that were imported for temporary admission under Articles 9 and 58 CustA, provided the amount of tax due on this consideration is substantial; if no or a reduced consideration is demanded for the temporary use, the consideration that would be charged by an independent third party applies;
- e. on the consideration for the work carried out abroad on goods (Art. 3 let. d no. 2) that were exported under Articles 9 and 58 CustA for temporary admission or under Articles 13 and 60 CustA for outward job processing under a work and labour contract and are returned to the consignor on Swiss territory;
- f. on the consideration for the work carried out abroad on goods (Art. 3 let. d no. 2), provided they have been taken abroad for job processing under a work and labour contract under the export procedure (Art. 61 CustA) and are returned to the consignor on Swiss territory;
- g. on the market value in the remaining cases; the market value is what the importer, at the level at which the import is effected, would have to pay to obtain the same goods from an independent supplier in the source land of the goods at the time that the import tax debt is incurred under Article 56 under the conditions of free competition.

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

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

- a. the taxes, customs duties and other charges incurred outside Swiss territory and as a result of the import, with the exception of the Value Added Tax being levied;

³⁰ SR 631.0

- b. the costs of the transport or dispatch and all related supplies as far as the destination on Swiss territory to which the goods are to be transported at the time import tax debt under Article 56 is incurred; if this location is unknown, the destination is the place where the trans-shipment takes place on Swiss territory after import tax debt is incurred.

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

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

Art. 55³¹ Tax rates

¹ The tax on the import of goods is 8 per cent, subject to paragraph 2.

² The tax is 2.5 per cent on the import of goods under Article 25 paragraph 2 letter a.

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

¹ The import tax debt is incurred at the same time as the customs debt (Art. 69 CustA³²).

² Taxable persons under Article 51 who settle the import tax debt via the CSP are allowed a period of 60 days after issue of the invoice to make payment; exceptions are imports made by tourists, which must be reported orally for customs assessment.

³ In relation to security, facilities may be granted if collection of the tax is not endangered as a result.

⁴ The import tax debt prescribes at the same time as the customs debt (Art. 75 CustA). The prescriptive period is suspended for as long as criminal proceedings in respect of tax offences under this Act are in process and the person liable for payment has been informed (Art. 104 para. 4).

⁵ If the import tax debt changes as a result of subsequent adjustment of the consideration, in particular as a result of revision of the contract or because of price adjustments between related businesses based on recognised guidelines, the tax that has been assessed too low must be notified to the FCA within 30 days of the adjustment. The notification and the adjustment of the tax assessment may be dispensed with if the additional tax payable could be deducted as input tax under Article 28.

Art. 57 Interest on late payment

¹ If the import tax debt is not paid on time, interest on the late payment is due.

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

³² SR 631.0

- ² The liability for interest on late payment begins:
- a. where payment is made via the CSP: on expiry of the payment terms granted;
 - b. where the tax is levied on the consideration under Article 54 paragraph 1 letter d: on expiry of the payment terms granted;
 - c. where an improper reimbursement of taxes is reclaimed: on the date of reimbursement;
 - d. in all other cases: on the incurrence of the import tax debt under Article 56.
- ³ The liability for interest on late payment also continues during appeal proceedings and instalment payments.

Art. 58 Exceptions to liability for interest on late payment

Interest on late payment is not imposed if:

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

Art. 59 Right to refund of the tax and prescription

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

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

³³ SR 631.0

³⁴ SR 631.0

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

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

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

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

Art. 60 Refund because of re-export

¹ The tax imposed on import shall be refunded on application if the conditions for an import 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.

² The tax is refunded only if:

- a. the re-export takes place within five years of the end of the calendar year in which the tax was imposed; and
- b. the goods exported are proven to be identical to those imported earlier.

³ The refund may in a specific case be made dependent on proper declaration in the import state.

⁴ Applications for a refund must be submitted on declaration for the export procedure. Subsequent refund applications may be considered if they are submitted in writing to the FCA within 60 days of issue of the export document with which the goods were assessed under the export procedure (Art. 61 CustA³⁵).

Art. 61 Refund interest

¹ Refund interest shall be paid in respect of the period that elapses before the refund is paid:

- a. in the case of refunds of excess tax or tax not due under Article 59: from the 61st day after receipt of the written claim by the FCA;
- b. in respect of refunds of the tax as a result of re-export under Article 60: from the 61st day after receipt of the application by the FCA;

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

Art. 62 Competence and procedure

- ¹ The import tax is levied by the FCA. It issues the necessary orders and rulings.
- ² The executive bodies of the FCA are authorised to undertake all the investigations that are necessary to examine the facts significant to the assessment of the tax. Articles 68–70, 73–75 and 79 apply by analogy. The FCA may, by agreement with the FTA, transfer investigations relating to persons registered on Swiss territory as taxable persons to the FTA.

Art. 63 Transfer of the tax payment

- ¹ Taxable importers registered with the FTA as taxable persons that report using the effective method may, instead of paying the tax payable on the import of goods to the FCA, declare it in their periodic tax return to the FTA (transfer procedure), provided they regularly import and export goods and significant input tax surpluses result.
- ² If the goods imported under the transfer procedure are further processed or finished on Swiss territory after the import, the FTA may authorise taxable persons to supply the processed or finished goods to other taxable persons without calculating the tax.
- ³ The Federal Council stipulates the details of the transfer procedure.

Art. 64 Tax remission

- ¹ A remission may be granted for all or part of the import tax, if:
- a. goods held in the custody of the FCA or made subject to a transit procedure (Art. 49 CustA³⁸), a customs warehousing procedure (Art. 50–57 CustA), a temporary admission procedure (Art. 58 CustA) or a procedure of inward processing (Art. 59 CustA) are destroyed in whole or in part by chance, act of God or with official approval;

³⁶ SR 631.0

³⁷ SR 172.021

³⁸ SR 631.0

- b. goods released for free circulation by official decree are destroyed in whole or in part or are again exported from Swiss territory;
 - c. a subsequent claim in terms of Article 85 CustA would, in view of special circumstances, constitute an unreasonable burden on the taxable person under Article 51;
 - d. the person responsible for the customs declaration (e.g. the forwarding agent) cannot recover the tax from the importer because of the latter's insolvency, and the importer was at the time of the acceptance of the customs declaration registered as a taxable person on Swiss territory; insolvency of the importer must be assumed if repayment of the debt due to the person responsible for the customs declaration appears to be seriously at risk.
- ² The Directorate General of Customs decides on the tax remission on written application supported by the necessary evidence.
- ³ The period for submission of an application is:
- a. on assessment with unconditional import tax debt: one year after the issue of the import document with which the import tax was assessed;
 - b. on assessment with conditional import tax debt: one year after conclusion of the customs procedure chosen.

Title 5: Procedural Law for Domestic and Acquisition Tax

Chapter 1: General Procedural Provisions

Art. 65

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

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

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

⁴ All administrative acts must be carried out expeditiously.

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

Chapter 2: Rights and Obligations of the Taxable Person

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

¹ Persons who are taxable under Article 10 must register with the FTA of their own accord in writing within 30 days of the commencement of their tax liability. The

Administration shall issue them with a non-transferable number in accordance with the requirements of the Federal Act of 18 June 2010³⁹ on the Business Identification Number, which is registered.⁴⁰

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

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

Art. 67 Tax representation

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

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

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

Art. 68 Obligation to provide information

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

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

Art. 69 Right to receive information

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

³⁹ SR 431.03

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

Art. 70 Accounting and retention of records

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

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

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

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

Art. 71 Filing of the return

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

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

Art. 72 Correction of errors in the return

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

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

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

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

Chapter 3: Obligation of Third Parties to provide Information**Art. 73**

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

⁴¹ SR 220

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

- a. provide all information that is necessary to establish tax liability or to calculate the tax claim against a taxable person;
 - b. permit the inspection of books of account, receipts, business documents and other records if the required information is not available from the taxable person.
- ² A third party obliged to provide information is a person who:
- a. could be a taxable person;
 - b. is liable for the tax in addition to or instead of the taxable person;
 - c. has received or supplied goods or services;
 - d. holds a qualifying interest in a company subject to group taxation.
- ³ Professional confidentiality as protected by law is reserved.

Chapter 4: Rights and Obligations of the Authorities

Art. 74 Confidentiality

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

² There is no duty of confidentiality:

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

Art. 75 Administrative assistance

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

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

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

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

⁴ Disputes relating to the obligation of administrative authorities of the Confederation to provide information are decided by the Federal Council. Disputes relating to the obligation of authorities of the cantons, districts, administrative areas and communes to provide information are decided by the Federal Supreme Court (Art. 120 of the Federal Supreme Court Act of 17 June 2005⁴⁴) if the cantonal government has refused the request for information.

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

Art. 75a⁴⁵ International administrative assistance

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

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

Art. 76 Automated processing and storage of data

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

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

⁴⁴ SR 173.110

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

⁴⁶ SR 631.0

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

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

Art. 77 Review

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

Art. 78 Audit

¹ The FTA may perform audits of taxable persons to the extent this is necessary to clarify the circumstances. For this purpose, these persons must grant the FTA access to their accounts and related receipts. The same applies to third parties obliged to provide information under Article 73 paragraph 2.

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

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

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

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

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

Art. 79 Assessment according to best judgement

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

² The tax claim is established with an assessment notice.

⁴⁷ Not yet in force.

⁴⁸ SR 952.0

⁴⁹ SR 954.1

Art. 80 Simplifications

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

Chapter 5: Ruling and Appeal Procedures**Art. 81** Principles

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

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

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

Art. 82 FTA rulings

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

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

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

Art. 83 Objection

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

⁵⁰ SR 172.021

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

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

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

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

Art. 84 Costs and compensation

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

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

Art. 85 Review, explanation and correction

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

Chapter 6: Collection

Art. 86 Payment of the tax

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

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

⁵¹ SR 172.021

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

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

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

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

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

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

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

Art. 87 Interest on late payment

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

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

Art. 88 Refunds to the taxable person

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

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

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

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

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

⁵² SR 281.1

Art. 89 Debt collection

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

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

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

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

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

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

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

Art. 90 Payment facilities

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

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

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

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

Art. 91 Prescription of the right to collect tax

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

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

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

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

⁵³ SR 281.1

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

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

Art. 92 Tax abatement

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

- a. has for an excusable reason not invoiced and collected the tax, a retroactive transfer is not possible or reasonable and payment of the tax would result in serious hardship;
- b. owes the tax simply as a result of not observing formal regulations or of processing errors and it is obvious or the taxable person proves that there is no loss of tax for the Confederation; or
- c. for an excusable reason could not fulfil his assessment obligations, but can prove or show credibly in retrospect that the assessment according to its best judgement undertaken by the FTA is too high; in this case tax abatement is possible only up to the amount over-assessed.

² The FTA may also consent to a tax abatement or waive security for its claim in composition proceedings.

³ The request for abatement must be justified in writing and be submitted to the FTA together with the necessary evidence. There is no right of objection to the ruling of the FTA. An appeal may be made to the Federal Administrative Court.

⁴ The submission of a request for a tax abatement does not lead to the suspension of enforcement proceedings for legally assessed taxes.

⁵ The tax abatement procedure is free of cost. However, costs may be imposed in full or in part on the person submitting the request if he has submitted an obviously unjustified request.

⁶ The Federal Council shall stipulate in detail the conditions and the procedure for tax abatement.

Chapter 7: Security for the Tax

Art. 93 Security

¹ The FTA may require security for taxes, interest and costs, even if they are not bindingly assessed or due, if:

- a. their payment on time appears to be at risk;

⁵⁴ SR 281.1

- b. the taxable person makes preparations to give up his domicile or place of business or his permanent establishment in Switzerland or to be deleted from the Swiss Commercial Register;
- c. the taxable person is in arrears with his payment;
- d. the taxable person takes over all or part of a business over which bankruptcy proceedings have been commenced;
- e. the taxable person submits returns that are obviously too low.

² If the taxable person waives exemption from tax liability (Art. 11) or opts for the taxation of supplies exempt without credit (Art. 22), the FTA may demand from the person security pursuant to paragraph 7.

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

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

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

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

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

Art. 94 Other collateral measures

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

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

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

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

⁵⁵ SR 281.1

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

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

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

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

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

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

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

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

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

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

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

Art. 97 Determination of the penalty and aggravated tax evasion

¹ The fine is determined by applying Article 106 paragraph 3 of the Swiss Criminal Code (SCC)⁵⁶; Article 34 SCC may be applied by analogy. If the tax advantage obtained by the act is greater than the threatened penalty and the offence was committed wilfully, the fine may be increased to a maximum of two times the tax advantage.

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

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

Art. 98 Infringement of procedural obligations

Any person who wilfully or negligently:

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

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

Art. 99 Receiving untaxed goods

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

⁵⁶ SR 311.0

Art. 100 Violations in business operations

If a fine not exceeding 100,000 francs would be applicable and if the tracing of the offenders under Article 6 ACLA⁵⁷ would require investigations the cost of which would be disproportionate to the penalty otherwise forfeited, the authority may dispense with pursuing the offenders and instead order the business (Art. 7 ACLA) to pay the fine.

Art. 101 Concurrent offences

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

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

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

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

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

Art. 102 Self-reporting

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

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

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

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

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

⁵⁷ SR 313.0

⁵⁸ SR 313.0

⁵⁹ SR 313.0

Art. 103 Prosecution

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

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

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

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

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

Art. 104 Procedural guarantees

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

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

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

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

Art. 105 Prescription of the right to prosecute

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

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

⁶⁰ SR 313.0

⁶¹ SR 311.0

⁶² SR 313.0

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

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

- a. in principle by Article 42;
- b. if an offence covered by Article 96 paragraph 4, 97 paragraph 2 or 99 or by Articles 14–17 ACLA is fulfilled, by paragraphs 1 and 2.

⁴ The right to conduct a criminal investigation that has already been initiated prescribes after five years; the prescriptive period is suspended for as long as the accused person is abroad.

Art. 106 Collection of fines and costs and prescription

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

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

Title 7: Final Provisions

Chapter 1: Implementing Provisions

Art. 107 Federal Council

¹ The Federal Council:

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

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

³ The Federal Council issues the implementing regulations.

Art. 108 Federal Department of Finance

The FDF:

⁶³ SR 311.0

⁶⁴ SR 192.12

- 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

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

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

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

Chapter 2: Repeal and Amendment of Current Law

Art. 110 Repeal of current law

The VAT Act of 2 September 1999⁶⁵ is repealed.

Art. 111 Amendment of current law

The following federal acts are amended as follows:

...⁶⁶

Chapter 3: Transitional Provisions

Art. 112 Application of the previous law

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

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

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

⁶⁶ The amendments may be consulted under AS 2009 5203.

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

Art. 113 Application of the new law

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

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

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

Art. 114 Election options

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

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

Art. 115 Change of the tax rates

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

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

Chapter 4: Referendum and Commencement

Art. 116

¹ This Act is subject to an optional referendum.⁶⁷

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

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

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

Transitional Provision to the Amendment of 19 March 2010⁶⁸

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

⁶⁸ AS 2011 1167; BBI 2008 7733