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Ordinance of the FDF on Electronic Data and Information (OEIDI)

of 11 December 2009 (Status as on 1 January 2010)

The Federal Department of Finance,

based on Article 125 of the Value Added Tax Ordinance of 27 November 2009¹
(VATO),

ordains:

Art. 1 Subject matter and purpose

This Ordinance regulates the technical, organisational and procedural requirements concerning the evidential value and control of data and information (electronic data) produced electronically or in a comparable manner in accordance with Articles 122–124 VATO.

Art. 2 Definitions

¹ In this Ordinance, *audit* means:

- a. the inspection of accounting books, accounting vouchers and business correspondence conducted electronically or in a comparable manner at the taxpayer's place of business or residence;
- b. the inspection of data that the taxpayer is required to make available on the basis of the applicable law conducted at the offices of the Federal Tax Administration (FTA).

² In this Ordinance, *electronic signatures* means advanced signatures which meet the following conditions in accordance with Article 2 letter b of the Federal Act of 19 December 2003² on Electronic Signatures (Electronic Signatures Act):

- a. They are based on a certificate issued in accordance with Article 3 of the Electronic Signatures Act by an accredited provider of certification services subject to the obligations in accordance with the fifth paragraph of the Electronic Signatures Act and containing the following indications:

AS 2009 6803

¹ SR 641.201

² SR 943.03

1. the serial number,
 2. the name of the individual or the company who/which owns the signature authentication key,
 3. the signature authentication key,
 4. the period of validity,
 5. and the name, the state of residence and the advanced electronic signature of the provider through which the certificate was issued.
- b. The requirements for generating signature keys and signature authentication keys in accordance with Article 6 paragraph 1 of the Electronic Signatures Act, as well as the requirements of signature creation devices according to Article 6 paragraph 2 letters b and c of the Electronic Signatures Act are met.

³ Provided they do not comprise any restrictions that exclude the application of this Ordinance, electronic signatures which meet the provisions of Article 14 paragraph 2^{bis} of the Swiss Code of Obligations³ are deemed equivalent to the electronic signatures in accordance with paragraph 2.

⁴ The FTA may issue technical and administrative regulations for advanced signatures and for certificates in accordance with paragraph 2, in particular concerning their generation, release and usage.

Art. 3 Evidential value

¹ The conditions for evidential value required in Article 122 paragraph 1 VATO are fulfilled when:

- a. electronic signatures are used to safeguard the transmission and storage of data;
- b. the certificate issued by a provider of certification services in accordance with Article 2 paragraph 2 was valid at the time when the signature was established;
- c. the electronic data is sufficiently checked before expiry of the storage period in accordance with Article 11 by means of electronic signature verification with respect to integrity, authenticity and signature authorisation, and in the case of automated processing, the electronic data is systematically verified after transmission has occurred, but at the latest before the data is used, and the result is documented;
- d. the public key needed to check the electronic signature is kept with the secured data; this also applies to certificates issued by an accredited provider of certification services in accordance with letter b, insofar as the certificates have not been published;
- e. on application of encryption tools, the key to decode encrypted data is retained;

³ SR 220

- f. no pseudonyms are used; and
- g. the keys may beyond doubt be considered as secure at the time of use.

² Electronic data which the recipient sends to the address of the supplier (e.g. credit note) or which he or she generates in the name of and for the account of the supplier (self-billing) require an acknowledgement of receipt by the supplier. The acknowledgement of receipt must fulfil the conditions in paragraph 1 and make clear reference to the data received.

³ An acknowledgement of receipt in accordance with paragraph 2 is also required if the supplier wishes to provide proof that the recipient has his or her place of business or residence abroad on the basis of electronically transmitted data alone.

Art. 4 Data security

¹ The data processing procedure applied must guarantee that all of the data which is to be processed and could be required for tax collection purposes is captured and in addition cannot be suppressed or altered unnoticed.

² All records of data and data processing systems which may be relevant for tax purposes and corresponding audits by the FTA must be protected against disappearance, unauthorised changes, destruction and theft by means of systematic directories and adequate access controls for data and premises.

Art. 5 Verifiability

¹ A procedural record must be made for every data processing system (e.g. accounting system).

² The provisions of Article 4 paragraph 1 of the Accounts Ordinance of 24 April 2002⁴ are applicable mutatis mutandis concerning the size and structure of this procedural record.

³ Master files and control tables must be documented.

⁴ The lifespan of entries and any amendments thereto must be retained and commented upon. It must be ensured that the entries and amendments can be reproduced legibly without unreasonable delay.

⁵ The use of numerical keys and codes is permitted exclusively for article designation. It requires that the meaning of the keys and codes is clear and may be determined without unreasonable delay by the sender as well as by the recipient of data.

Art. 6 Reproduction

¹ The taxpayer must ensure that the relevant data required for tax collection purposes and the working instructions and other organisational documents necessary for its comprehension, such as table settings, are readable without unreasonable delay.

⁴ SR 221.431

² Moreover, the taxpayer is obliged to provide all necessary documents for comprehension of the data and organisational documents, and if necessary furnish reproductions which are readable without the need for other aids.

³ Data stored for tax collection purposes must be presented unchanged and complete when reproduced, as well as easily comprehensible.

Art. 7 Availability

¹ The FTA is authorised to inspect on site any stored data relevant for tax collection purposes and is entitled to use the data processing system of the taxpayer to conduct such an examination. An examination of this data may also take place at another location on Swiss territory determined by the taxpayer, or at the offices of the FTA with the taxpayer's consent.

² The FTA may request that the relevant data required for tax collection purposes be processed digitally in accordance with its instructions or that the stored electronic data be put at its disposal free of charge on a data carrier capable of automated processing specified by the FTA, insofar as this is necessary for the inspection.

³ The taxpayer must take all necessary precautions to ensure that data access by the FTA does not result in data being altered or any other damage occurring to its data processing systems. The consequences of not fulfilling such diligence obligations shall be borne solely by the taxpayer concerned.

Art. 8 Audit trail

¹ It must be possible to check each business transaction individually at all stages from the accounting voucher to the accounting books and from there to the value added tax return without unreasonable delay or significant cost, as well as in the other direction.

² Individual items contained in condensed figures must remain traceable.

³ It must be possible to reconcile the archived data with the input tax account.

⁴ Business transactions must be recorded in a transaction journal containing in full all movements (in/out) of electronic data relevant for tax collection purposes.

⁵ Archiving, any conversions and other operations must be recorded in a protocol.

Art. 9 Inclusion of a third party

¹ The inclusion of third parties in the flow of data between the supplier and the recipient is permissible for data relevant for tax collection purposes (e.g. invoicing) only if the following conditions are met:

- a. An agreement exists between the principal and the intervening third party which authorises the third party to pass on data. Should data be passed on in electronic form for invoicing or establishment of a statement of account or credit note issuing, there must be an explicit or implicit authorisation for each individual data transfer which is apparent to the recipient.

- b. The complete and unaltered transfer of data received via remote data transfer or data carrier exchange is ensured by means of measures and adequate checks in accordance with Article 3 paragraph 1.
- c. Any processing of the data received which occurs before its transfer remains verifiable and can be rendered readable without unreasonable delay.

² In the event of collective invoicing for the supply of goods and services of several suppliers to one recipient, only the supplies of one of these suppliers may be included in one amount.

³ It is always the principal (supplier or recipient) who remains responsible towards the FTA, regardless of any agreement reached between the principal and the intervening third party.

⁴ Intervening third parties are subject to the same obligation to provide information as the party required to provide information under Article 73 of the Value Added Tax Act of 12 June 2009⁵ (VAT Act).

⁵ Intervening third parties must be entered in the Swiss commercial register.

Art. 10 Storage

¹ Electronic data relevant for tax collection purposes must be stored by the sender and the recipient in the original form in which it was transferred and in its entirety on data carriers capable of automated processing. Storage exclusively in printed form or on microfilm is not permitted.

² When converting data relevant for tax collection purposes into another format (in-house format), both versions must be stored and recorded with the same index. The converted version must be marked accordingly.

³ The data relevant for tax collection purposes must be directly accessible by the taxpayer during the storage period set out in Article 11. It must be ensured that this data is readable and digitally analysable without unreasonable delay from a single location on Swiss territory.

⁴ Data carriers may be stored abroad only if access, reproduction and availability of the data relevant for tax collection purposes can be ensured at all times.

Art. 11 Duration of storage

The duration of storage and deletion of electronic data relevant for tax collection purposes is subject to the provisions of Article 70 paragraphs 2 and 3 of the VAT Act⁶ as well as Article 41 of the Customs Act of 18 March 2005⁷.

⁵ SR 641.20

⁶ SR 641.20

⁷ SR 631.0

Art. 12 Monitoring of information technology developments

¹ The FTA continually monitors technical developments concerning the information technologies relevant for tax collection purposes.

² To this end, it fosters the necessary contacts with leading active users.

Art. 13 Amendment of current legislation

The Ordinance of the Department of Finance of 30 January 2002⁸ on Electronic Data and Information is repealed.

Art. 14 Transitional provisions

¹ As long as taxpayers are unable to obtain certificates from recognised providers of certification services in accordance with Article 2 paragraph 2 of the Electronic Signatures Act⁹, the FTA will also accept certificates issued by a provider of certification services which demonstrably and unequivocally fulfils the requirements which at a given time would enable it to be recognised by the certification authority as such under Article 4 of the Electronic Signatures Act.

² Certificates which were accepted by the FTA based on paragraph 1 retain their validity for at most one year from the point in time when certificates in accordance with Article 2 paragraph 2 became available from a provider of certification services in accordance with Article 3 of the Electronic Signatures Act.

Art. 15 Commencement

This Ordinance comes into force on 1 January 2010.

⁸ AS 2002 259, 2007 4689
⁹ SR 943.03