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Newsletter

English

Value Solutions
Treuhand & Unternehmensberatung

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1. VAT on COVID-19 contributions

On May 7, 2021 the Swiss Federal Tax Administration (SFTA) published changes to the VAT treatment of COVID-19 contributions in VAT Information Sheet 05 "Subsidies and Donations."

According to Article 18(2)(a) of the VAT Act, COVID-19 contributions from the public sector are deemed subsidies, which normally result in an input tax reduction (Article 33(1) VAT Act). However, owing to the exceptional situation, the Federal Council has decided that taxpayers need not reduce input tax when receiving COVID-19 contributions.

Payments, interest rate reductions on loans, repayment waivers on loans and debt forbearance where the legal foundation (law, ordinance, regulation, decision, decree, etc.) is based on COVID-19 measures and which have been made since March 1, 2020 count as COVID-19 contributions.

These sums should be declared under item 910 of the VAT return (donations, dividends, damages, etc.) rather than item 200. If input tax reductions have been made already following receipt of COVID-19 contributions, they can be reversed with a correction or amendment return.

2. Restructuring of international corporate taxation – introduction of a minimum tax

The G-20 summit at Venice on July 10, 2021 decided to introduce minimum taxation for multinational groups from financial year 2023. The foundations for the tax reform were drawn up by the OECD. There are two pillars to the reform:

The first pillar extends the right to levy tax to market jurisdictions where a group does business, even if it has no presence in the country concerned. The OECD was originally keen to ensure that tech groups pay tax in market jurisdictions. However, taxation has now been extended to groups in other sectors (but not financials) with revenue over EUR 20 billion and a return on sales in excess of 10%. Market jurisdictions will be given the right to impose a tax of 20-30% on this excess profit. The introduction of consistent rules on taxing international groups is intended ensure that the digital tax introduced in some countries is abolished.

The second pillar stipulates a minimum tax of 15% on groups' profits. This rule is supposed to apply to groups with revenues of at least EUR 750 million. If the minimum tax in a country is not reached, the country in which the group parent is based has the right to tax the difference. This raises the question of whether Switzerland too will transpose the principles of international group taxation into national law. Simultaneously applying different tax rates to group companies – a minimum of 15% for group companies with revenues of at least EUR 750 million and a different rate for all the others – may breach the principle of equal rights. In two-thirds of cantons, the tax rates in force at present are less than 15%. There are still many unanswered questions, and the OECD is aiming to issue detailed rules on practical application by the end of 2021. Minimum taxation is an attempt to put an end to international tax competition. Switzerland may well have to reconsider its position to some extent and

promote its economy using ways other than just tax rates. Subsidies and non-fiscal compensation payments in particular are likely to be up for debate. This will be taking a cue from the EU, which already has an extensive system of promotion measures. The aim is for Switzerland to remain an attractive location compared to the international competition.

3. Change in the valuation of shares in unlisted companies held as private assets

Under Circular 28 of the Swiss Tax Conference (KS SSK 28), for the purposes of wealth tax, shares in unlisted companies held as private assets are valued using the mean value method. The wealth tax value of a company can be a significant burden for a taxpayer, especially if the shareholders are not receiving any dividend income from it. Maximum rates of cantonal wealth tax range from 0.13% in Nidwalden to 1.01% in Geneva.

One of the criticisms made in practice relates to the simplified method of calculation and the low capitalization rate of 7%, which often results in overvaluation. Hence KS SSK 28 has been revised as regards the capitalization rate and the valuation of start-ups, with the changes taking effect from fiscal 2021.

The new method is likely to see the capitalization rate rise by 2% compared to now. The Swiss Federal Tax Administration will continue to publish the capitalization rate annually as before.

Start-ups will also be valued at net asset value rather than on the latest financing round, as long as there are no representative business results available. The Zurich cantonal tax office has been using this method for some years already. Not all points that come in for criticism have been fixed, though:

- The deduction for minorities will still not be recognized when the shareholder receives a sufficient yield from a dividend.
- In future the capitalized earnings value will continue to be calculated as a perpetuity rather than restricted to a certain period.
- Special circumstances will also only be taken into account in very rare situations.

Despite the changes, the valuation of unlisted companies held as private assets will likely still be found baffling by many shareholders.

4. DAC (Directive on Administrative Cooperation) – Transfer Pricing

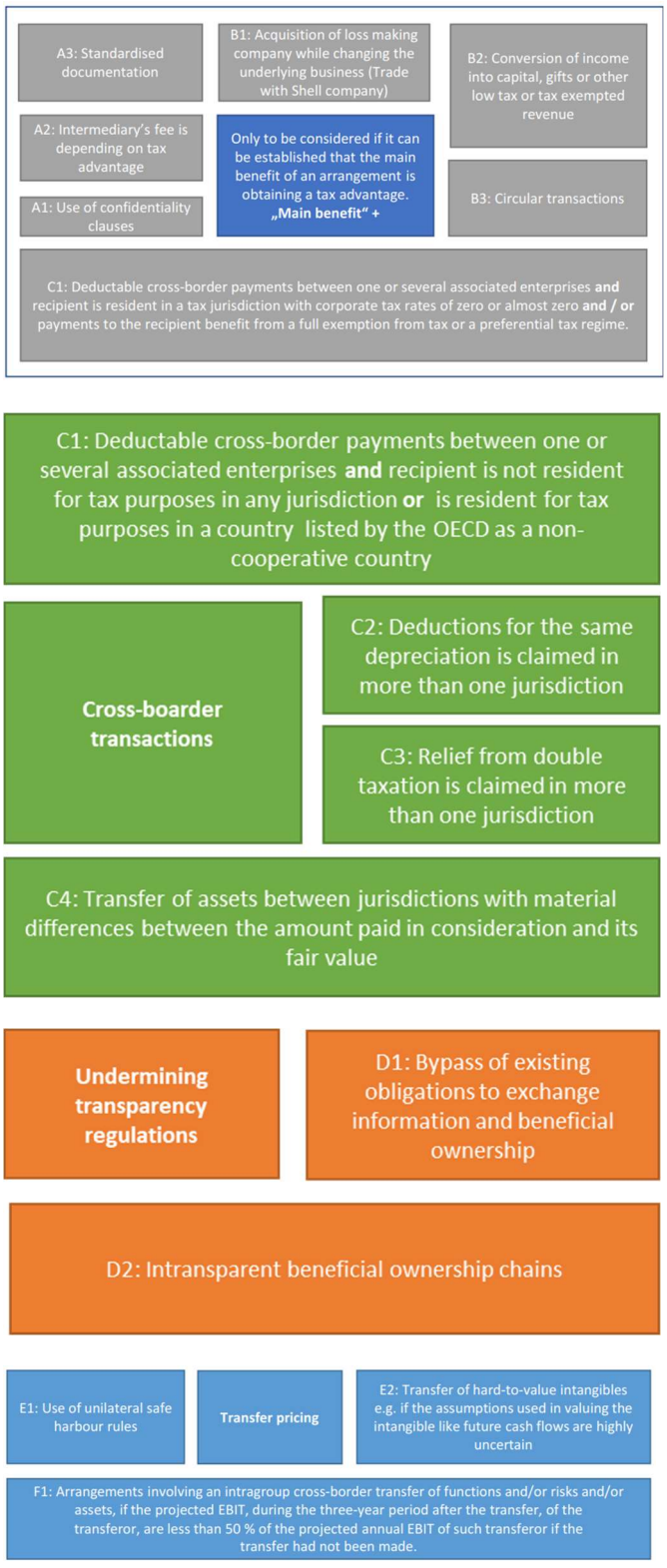
In May 2018 the Council of the European Union amended Directive 2011/16 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (such as, for example, transfer pricing for group companies). As the Directive has now been amended six times since it was initially approved in 2011, it is referred to as DAC6.

The aim of the Directive is to protect the tax bases of Member States from erosion. To this end, the tax authorities of Member States are meant to receive comprehensive and relevant information about potentially aggressive tax arrangements. The tax authorities should then be in a position to enact new legislation promptly or conduct tax audits. Tougher measures are also to be taken against intermediaries who assist in such aggressive tax arrangements.

Annex IV to the Directive lists four categories of hallmarks which indicate tax avoidance or abuse. Highly relevant for Swiss groups with an international footprint are international arrangements that secure a tax advantage, such as an international transfer pricing strategy.

DAC6 stipulates that any cross-border arrangement that contains at least one of the hallmarks listed is reportable. An arrangement is cross-border if at least two Member States or one Member State and a third country are concerned.

Hallmarks in accordance with annex IV of the regulation



According to DAC6, the reporting obligation lies with the EU intermediary. If no EU or other intermediary is involved, the reporting obligation passes to the taxpayer resident in the EU. Tax advisors, accountants, lawyers and banks are specifically designated as intermediaries. Under DAC6, the intermediaries must be resident for tax purposes in an EU Member State or have some other connection.

All arrangements where the first step had been implemented after June 25, 2018 had to be reported by August 31, 2020. For all new reportable arrangements since July 1, 2020 a report must be filed within 30 days. The details of the intermediary, the user, the hallmarks met and the parties concerned must be provided.

Breaches of the reporting obligation are punishable, for example, under the German implementation act, by a fine of up to EUR 25,000.

Given the improved exchange of information between EU Member States on cross-border transactions in general and transfer pricing in particular, the assumption is that payments between group companies in different countries with no or insufficient substantiating evidence will increasingly become a focus for the tax authorities. In order to avoid unnecessary stress in the event of a tax audit, individualized documentation should be drawn up at an early stage demonstrating that transactions carried out stand up to the arm's length principle.

5. Electronic accounting

Digitalization is everywhere, increasingly in the public eye, and success in future will only be open to those who deploy it. In practice, however, especially at SMEs, there is a degree of (legal) uncertainty about digital change - particularly when it comes to moving to digital document management; also, many companies are receiving electronic vouchers such as pdf invoices, and VAT questions are arising as a consequence too.

This is what the law says:

Article 958f(III) of the Code of Obligations stipulates as follows: "Accounting records and supporting documents may be kept on paper, electronically or in a similar manner, provided they can be matched up to the underlying transactions and situations and easily made legible again at any time."

What this might mean in practice and what conditions have to be met is governed by the Accounts Ordinance (AccO, Section 3, Articles 5-10), which states that the following conditions must be met:

- Availability and readability (Article 6)
- Separation of archived and current information (Article 7)
- Protecting archived information against unauthorized access (Article 8)
- Inalterability (Article 9)
- Completeness and accuracy (Article 10)
- Logging the transfer of data (Article 10)

So, we can conclude that it is in principle permitted to scan paper vouchers, destroy the originals and retain the vouchers only in digital format. To make a full switch to digital document management, however, needs a cleanly implemented process that meets all the requirements set down in the Code of Obligations and the Accounting Ordinance.

Under VAT law too, inalterability, the time of saving and the indisputability of dispatch are crucial when it comes to electronic documents. The best way to meet the electronic voucher requirements of commercial and VAT law is an electronic signature as defined in the Electronic Signatures Act (ESigA), but other solutions are possible. If pdf invoices without an electronic signature are sent instead of paper ones, it is advisable to notify the recipients and ask their consent. Since electronic documents may not be acceptable as evidence (for VAT purposes), it is not impossible that the recipient of the supply may have problems with the input tax deduction in the event of an audit by the Swiss tax authorities, unless the underlying transaction and the exchange of services that has taken place can be demonstrated some other way.

In-house news

Congratulations

The **Value Solutions Group** celebrates its 20th anniversary in summer 2021.

New Team Members

Patrick Biedermann, Swiss CPA: Entry as of 01 May 2021

Jay Behringer, Fiduciary with Swiss Examination: Entry as of 21 June 2021

Medina Zukic, Fiduciary Administrator: Entry as of 01 August 2021

Julia Garovi, Fiduciary Administrator: Entry as of 01 August 2021

Tabea Rohdewald, Trainee: Entry as of 01 August 2021

Michèle Sidler, Bachelor of Science in Business Administration: Entry as of 16 August 2021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Total range of services

Tax consultancy

We take a holistic approach to tax planning, assist you in your tax planning and represent your interests with the authorities.

- Advice on all tax matters relating to company formations, conversions, mergers, divisions, renovations, liquidations, registered address relocation and succession planning
- Fiscal advice for company acquisitions and sales, joint ventures and MBOs/MBIs
- Annual statement assistance for tax purposes, preparation of tax returns and representing your interests with the tax authorities

Trust services & management consulting

Let us handle all business, taxation and legal financial and business issues for you.

- Development of efficient accounting solutions and implementation on your premises or at our offices
- Timely monitoring of finances and situation-specific information
- Support with recurring tasks such as VAT returns, payroll administration and insurance issues
- Advice on all corporate finance matters such as M & A services, transactions, private placements, financing, etc.

Auditing

We advise and assist you in controlling and monitoring your company. We develop solutions to enable you to react to any changes in the economic and regulatory environment in time.

- Examination of financial statements, prepared in accordance with national or international accounting standards
- Examination of pension funds, public corporations or revisions in terms of the Money Laundering Act
- Audit of the internal control system and the acceptance of internal audit assignments

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