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English translation of the French original circular verbal note dated 28 April 2014

The Federal Department of Foreign Affairs – Protocol - presents its compliments to the diplomatic missions in Switzerland and has the honour to communicate to them the following information regarding **the exemption of the value added tax (VAT)**.

In a circular verbal note dated 27 January 2004, the Department informed the diplomatic missions of the conditions under which the diplomatic missions and consular posts (foreign representations), as well as the members of their staff with diplomatic status and career consular officers may benefit from VAT exemption on goods they acquire and services they receive for official or personal use. The website of the Federal Department of Foreign Affairs also has an informative note on VAT ¹, setting out the procedures to be followed.

The Department would like to take this opportunity to remind the foreign representations of the **basic rules governing exemption at source from VAT and its exceptional reimbursement**, and to inform them of the **new rules** introduced by the Main Division of VAT of the Federal Tax Administration, the federal competent authority, with the approval of the Federal Department of Foreign Affairs (FDFA).

Basic rules:

- Beneficiaries of VAT exemption, whether foreign representations or individuals with diplomatic status or consular officers, **must** ask suppliers to grant them **VAT exemption at source** by presenting the former with the applicable VAT form. Individual beneficiaries must also present their “B” or “C” legitimization card issued by the FDFA or their “Ci” permit obtained in exchange for their “B” or “C” legitimization card.
- Should exemption at source not be granted (e.g. due to refusal on the part of the supplier or failure on the part of the applicant to submit the relevant form), the foreign representation or the individual beneficiary may submit an exceptional request for reimbursement to the Main Division of VAT. Under no circumstances does the exceptional request option replace the requirement to request exemption at source, which remains the rule.

¹ Information note on VAT: <http://www.eda.admin.ch/eda/en/home/serv/provi/resadm/fiscal.html>

Foreign representations (diplomatic missions and career consular posts):

Procedure:

- Foreign representations must indicate, in general terms, **the nature of the goods or services for which exemption at source is requested** on each VAT form "A" they submit to suppliers.
- The Main Division of VAT carries out regular checks on Swiss suppliers that are subject to this tax. Its inspectors frequently find that the VAT forms "A" held by suppliers in their accounts do not comply with current rules because the applicant has provided no indication of the nature of the goods acquired or services delivered.

Acquisitions intended for official use:

- The term "official use" refers to all goods that foreign representations have acquired or services that they have received **in a strictly official capacity**.
- Foreign representations may not acquire, in their name, VAT-exempt goods or services intended for personal use or for use by third parties (for example, purchases destined for personal use by members of staff, including the head of mission or post, or by visiting dignitaries to Switzerland). Foreign representations are also not permitted to acquire, in their name, VAT-exempt goods that are destined for export, even if their authorities are the intended user.

Official delegations to Switzerland:

- The Department encloses a copy of its circular verbal note dated 27 January 2004, in which it requests that the foreign representations comply with the prescribed procedure by asking a supplier for exemption at source solely in the case of official delegation visits and indicating **the reasons for the official visit** on the VAT form "A". **Under no circumstances** is VAT exemption granted for the living expenses incurred by dignitaries as part of a private trip to Switzerland.
- The Main Division of VAT carries out regular checks on Swiss suppliers subject to this tax. Should a tax inspector find during his investigations that the accounts of a supplier (for example, a hotel or car hire firm) contain an invoice without VAT relating to a visit by one or several individuals, but that the accompanying VAT form "A" provides no indication of the official nature or purpose of the visit, he will refer the case to line management, which in turn will ask the Department to seek clarification from the relevant foreign representation. As a consequence, the foreign representation may be liable to refund the supplier with the VAT that was unduly exempted at source.

Exceptional requests for VAT reimbursement:

- If the Main Division of VAT should find that the invoices enclosed with an exceptional request for reimbursement of VAT on services that **do not meet official use criteria** (for example, purchases that are intended for private use or that bear no relation to the official goal pursued by the beneficiary institution), it will disregard them and return them to the foreign representation.

Individuals with diplomatic status or career consular officers who benefit from VAT exemption:

Acquisitions intended for personal use:

The term "personal use" refers to all goods acquired or services received by individual beneficiaries either **strictly in a personal capacity or for use by individuals who are**

authorised to accompany them and who also have diplomatic or consular status in Switzerland. However, they may not acquire goods or services exempt from VAT for use by third parties who are not members of their household (for example, the purchase of gifts for individuals other than those family members who have diplomatic status).

- Individual beneficiaries may acquire goods or services that are exempt from VAT strictly for their personal use, and not for use by family members who do not have diplomatic or consular status. This means that for goods and services acquired by such households, the applicant must ask the supplier to issue two invoices: one with the VAT exempted at source for the beneficiary, the other with VAT for family members who are not entitled to this tax exemption at source. A single invoice will be accepted, provided that there is a clear distinction between the services received by the beneficiary and those received by non-beneficiaries, and that the requisite VAT treatment is applied.
- With regard to construction, conversion or renovation work on property acquired jointly by an individual beneficiary and a person who does not have diplomatic or consular status (for example, a spouse, partner or cohabiting partner who is not deemed to be a family member within the meaning of the law applicable in Switzerland, or who is a Swiss national), only half of the work may be exempted from VAT, in other words the beneficiary's share exclusive of the share of the co-owner who does not benefit from VAT exemption at source. The same invoicing rules apply here as in the case set out in the preceding paragraph.

Exceptional requests for reimbursement

- Given that reimbursement is permitted only in exceptional cases, the Main Division of VAT has decided to restrict the number of invoices that can be submitted in a reimbursement request. Henceforth a maximum of **50 invoices** may be enclosed with the annual reimbursement request, and these must be equal to or in excess of CHF 100, respectively, from the first Swiss franc of IT, telecommunications, gas, water and electricity bills. The beneficiary as well as individuals who are authorised to accompany them and also have diplomatic or consular status in Switzerland may present a grouped VAT reimbursement request (maximum of 50 invoices) only once per calendar year. The Main Division of VAT shall disregard any additional invoices enclosed with the application and shall return these to the applicant via the foreign representation.
- In the case of VAT reimbursement requests for work carried out on property acquired by an individual beneficiary, the latter must now also enclose a **copy of the relevant land register entry**. Should the land register entry indicate that the beneficiary co-owns the property with a person who is not entitled to VAT exemption, the Main Division of VAT will reimburse only half of the VAT amount, which equates to the beneficiary's share. If the applicant fails to enclose a copy of the land register entry for the property with the exceptional request, the Main Division of VAT shall disregard the invoices issued for work on the property and shall return these to the applicant via the foreign representation.
- The Main Division of VAT reserves the right to refuse a request for VAT reimbursement if the submitted invoices do not comply with current rules (for example, when multiple invoices from the same supplier are enclosed, even though the applicant could have sought VAT exemption at source, or when the goods or services acquired are plainly not intended for personal use).
- Requests which do not comply with the prescribed procedure (duly completed VAT form "D" and inclusion of a maximum of 50 invoices equal to or in excess of CHF 100, respectively, from the first Swiss franc of IT, telecommunications, gas, water and electricity bills, in accordance with the summary order given in VAT form "D", and a copy of the land register entry, where applicable) will be disregarded by the Main Division of VAT and returned to the applicants via the foreign representation. It falls to the foreign representation to check that the exceptional requests for reimbursement comply with the current rules before signing VAT form "D" and stamping the document with its official seal.

The Department requests that the diplomatic missions in Switzerland inform their subordinated posts and the members of staff with diplomatic status or career consular officers of the content of this note, and to ask them to comply with the current rules.

The Federal Department of Foreign Affairs avails itself of this opportunity to convey to the diplomatic missions in Switzerland the assurances of its highest consideration. *LN*



Annex: circular verbal note dated 27 January 2004 (official visits to Switzerland)

Berne, 28 April 2014



DÉPARTEMENT FÉDÉRAL DES AFFAIRES ÉTRANGÈRES

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Le Département fédéral des affaires étrangères présente ses compliments aux Missions diplomatiques en Suisse et a l'honneur de les informer de ce qui suit.

Certaines difficultés d'interprétation sont survenues dans le cadre des modalités d'application de l'exemption de la taxe sur la valeur ajoutée (TVA) en faveur des représentations étrangères en Suisse, en particulier en ce qui concerne la notion de prestations de services à l'usage officiel. Le Département souhaiterait dès lors rappeler les principes applicables en la matière.

Conformément à la législation suisse, les missions diplomatiques et les postes consulaires (représentations étrangères) ont droit au dégrèvement de la TVA à la source pour les livraisons de biens et les prestations de services qui leur sont faites sur le territoire suisse, à condition qu'elles soient destinées **exclusivement à leur usage officiel**. Pour que l'on puisse considérer que la livraison de biens ou la prestation de services est effectuée à l'usage officiel de la représentation étrangère, il ne suffit pas que ces livraisons et prestations soient facturées à son nom. Il faut également que les livraisons de biens et les prestations de services répondent à un besoin entrant dans le cadre de ses fonctions officielles telles qu'elles sont définies par le droit international public, en particulier par la Convention de Vienne du 18 avril 1961 sur les relations diplomatiques et la Convention de Vienne du 24 avril 1963 sur les relations consulaires.

S'agissant de la livraison de biens, la détermination de l'usage officiel est aisée, celle-ci étant établie par l'utilisation même des biens. La question a en revanche été soulevée en ce qui concerne l'établissement de formules de dégrèvement de la TVA pour des factures liées, d'une part, à la présence en Suisse **à des fins privées** de membres du gouvernement ou de familles souveraines, et, d'autre part, à des séjours de ressortissants de l'Etat accréditant / Etat d'envoi dont la présence en Suisse était justifiée par des **soins médicaux**. Or, de telles prestations de services n'entrent pas dans le cadre de l'usage officiel des représentations étrangères, même si ces dernières sont chargées par leur gouvernement, pour des raisons pratiques, d'assurer le paiement des dites factures.

Il est par contre admis que les représentations étrangères remettent des formules de dégrèvement de la TVA pour des factures établies à leur nom relatives à des prestations de services (en particulier factures d'hôtels) effectuées en faveur de délégués du gouvernement en voyage officiel en Suisse. Sont concernés les membres des délégations officielles se rendant auprès du gouvernement suisse ou ceux qui participent

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en tant que représentants de leur gouvernement à une conférence internationale qui se tient en Suisse. Dans des cas justifiés, peuvent également être prises en compte les prestations de services effectuées en faveur de représentants du gouvernement qui doivent se rendre en Suisse pour des entretiens officiels au sein de la représentation étrangère. Afin de prévenir d'éventuelles difficultés ultérieures, les représentations étrangères sont invitées à mentionner sur la formule de dégrèvement de la TVA les raisons de la présence en Suisse de la délégation concernée qui permettent de conclure qu'il s'agit d'un voyage officiel.

Lorsque les autorités suisses compétentes constatent qu'un commerçant a accepté à tort une formule de dégrèvement de la TVA dans des cas ne relevant pas de l'usage officiel de la représentation étrangère, ce commerçant est appelé à reverser à l'administration les montants de TVA correspondants. Ce faisant, le commerçant est légitimé à demander à la représentation étrangère le remboursement des montants qu'il a dû ainsi verser aux autorités suisses compétentes, conformément à l'engagement pris par la représentation lors de la remise de la formule de dégrèvement, tel qu'il figure sur ladite formule.

Le Département saurait gré aux Ambassades de bien vouloir se conformer à la législation suisse applicable et veiller à n'établir des formules de dégrèvement de la TVA que pour des livraisons de biens ou des prestations de services exclusivement destinées à leur usage officiel. En cas de doute sur l'opportunité d'établir une formule de dégrèvement de la TVA dans un cas particulier, les représentations étrangères peuvent s'adresser au Protocole du Département afin de déterminer s'il s'agit en l'espèce d'une livraison de biens ou d'une prestation de services faite exclusivement à l'usage officiel de la représentation.

Le Département saisit cette occasion pour renouveler aux Missions diplomatiques en Suisse l'assurance de sa haute considération.

Berne, le 27 janvier 2004

