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COMMENTARY ON

Art. 130 FC

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Art. 130 Value added tax

[1] The Confederation may levy value added tax on the supply of goods, on services, including goods and services for personal use, and on imports, at a standard rate of a maximum of 6.5 per cent and at a reduced rate of at least 2.0 per cent.

[2] The law may provide for the taxation of accommodation services at a rate between the reduced rate and the standard rate.

[3] If, due to demographic changes, the funding of the Old-Age, Survivors' and Invalidity Insurance is no longer guaranteed, the standard rate may be increased by federal act by a maximum of 1 percentage point and the reduced rate by a maximum of 0.3 of a percentage point.

[3bis] In order to finance railway infrastructure, the rates shall be increased by 0.1 of a percentage point.

[3ter] In order to safeguard funding for the Old-Age and Survivors' Insurance, the Federal Council shall raise the standard rate by 0.4 of a percentage point, and the reduced rate and special rate for accommodation services each by 0.1 of a percentage point, provided the principle of standardising the reference age for men and women in the Old-Age and Survivors' Insurance is enshrined in law.

[3quater] The entire revenue from the increase in accordance with paragraph 3[ter] shall be allocated to the Compensation Fund for the Old-Age and Survivors' Insurance.

[4] 5 per cent of the non-earmarked revenues shall be used to reduce the health insurance premiums of persons on low incomes, unless an alternative method of assisting such persons is provided for by law.

Chapter 2 Transitional Provisions

Art. 196 Transitional provisions in terms of the Federal Decree of 18 December 1998 on a new Federal Constitution

14. Transitional provision to Art. 130 (Value Added Tax)

[1] The power to levy value added tax is limited until the end of 2035.

[2] In order to guarantee the funding of invalidity insurance, the Federal Council shall raise the value added tax rates from 1 January 2011 until 31 December 2017 as follows: ...

[3] The revenue from the increase in rates in accordance with paragraph 2 will be allocated in full to the Compensation Fund for Invalidity Insurance.

[4] In order to secure the financing of railway infrastructure, the Federal Council shall raise the tax rates under Article 25 of the Value Added Tax Act of 12 June 2009 from 1 January 2018 by 0.1 of a percentage point, in the event of an extension of the time limit under paragraph 1 until 31 December 2030 at the latest.

[5] The entire revenue from the increase under paragraph 4 shall be allocated to the fund under Article 87*a*.

CONTENT

I. INTRODUCTION

1 Alongside direct federal taxes, value added tax is the federal government's **most important source of revenue**. In 2024, around CHF 27 billion, or approximately 30 percent of federal revenue, came from value added tax. Due to its broad tax base, it generates considerable tax revenue despite a relatively low tax burden. For example, an increase in the standard rate of 0.1 percentage points already generates additional annual revenue of over CHF 300 million. Since tax increases are less noticeable in the case of value added tax than with other taxes and therefore tend to meet with less political resistance, it is a **popular source of financing**. For example, it is used for specific purposes to finance social security and the railway infrastructure fund, and is repeatedly discussed as a source of financing for other tasks such as defense, media, etc. An increase in VAT also leads to fewer evasion reactions than other taxes, as VAT is levied in the country of consumption, the so-called country of destination, and not in the country of production, the so-called country of origin, and consumption – apart from shopping tourism – can hardly be shifted compared to production. Against the backdrop that consumption can hardly be shifted, the OECD's efforts in the area of direct taxation should also be seen in the context of taxing the profits of highly profitable multinational companies with very high turnover in the market states where they are generated – instead of in the countries where they are based, as has been the case up to now – even though this principle is foreign to profit tax.

II. HISTORY

2 The predecessor of today's value added tax, the **sales tax**, was introduced by the Federal Council together with other federal taxes on the basis of the **extraordinary powers** of August 30, 1939, "to cover extraordinary defense expenditures and to put the federal finances in order," initially for a limited period until the end of 1945. It was levied for the first time for the fourth quarter of 1941 on the basis of the Federal Council's decision of July 29, 1941, on sales tax (Sales Tax Decision/WUB). As early as November 20, 1942, the Federal Council decided, among other things, to increase sales tax and extend it until the end of 1949. On December 21, 1949, the Federal Assembly had to extend it for another two years because it was unable to agree on a reorganization of the financial system in time. On June 4, 1950, the people and the cantons subsequently rejected a reorganization of the financial system, including sales tax, at the constitutional level. The Federal Council then proposed a transitional arrangement limited to four years, which largely corresponded to the previous law in substance and was finally approved by the people and the cantons on December 3, 1950. Thus, from **1951** onwards, sales tax was regulated in the **Federal Constitution** for the first time, albeit only in the **transitional provisions** due to its limited duration. It was not until **1959** that sales tax was incorporated into the **main part of the Constitution** in Art. 41ter, after the people and the cantons had once again rejected a new draft of the financial regulations in 1953. The **time limit on the authority to levy the tax** has been retained to this day (see N. 28 and N. 86 ff.).

3 As its name suggests, the **sales tax** was levied only **on deliveries**, **but not on services**. Wholesalers were generally liable for tax on their deliveries to retailers (retail deliveries). Any delivery that did not take place between wholesalers was considered a retail delivery. Mere work on an item was also taxed as a delivery. Since services were not taxed, there would otherwise have been an incentive to process the goods only after the taxable sale in order to reduce the tax burden. In contrast to current VAT law, however, the **transfer for use or utilization** was not considered a delivery for practical reasons. It would have been difficult to distinguish between taxable wholesale rentals for subletting and non-taxable retail rentals without subletting; however, in certain cases, particularly in hire purchase agreements, the rental payment was subject to own-use taxation in order to counteract tax evasion.

4 In 1977, 1979, and 1991, the Federal Council and Parliament wanted to replace the goods and services tax with a value-added tax, but this did not find majority support among the people and the cantons and merely led to an extension of the authority to levy the goods and services tax. Due to the failure of the value-added tax in the 1991 referendum and because the authority to levy sales tax was already set to expire at the end of 1994, the Federal Council, in its message of December 18, 1991, wanted to write into the Constitution only the authority to levy a **sales tax** at a maximum rate of 6.2 percent. On this basis, Parliament could have either **introduced VAT** or **extended the goods sales tax**. Until the relevant law came into force, the goods sales tax would have continued to apply on the basis of a transitional provision.

5 Parliament, on the other hand, wanted to **introduce VAT directly**. The decisive factor here was that the federal government's financial situation did not allow it to abolish the sales tax on capital goods and operating resources, which acted as a shadow tax or so-called "taxe occulte," in order to reduce production costs and thus eliminate competitive disadvantages vis-à-vis other countries. With value added tax, on the other hand, the loss of revenue resulting from the abolition of the tax occulte could be compensated for by **taxing services**. A majority of the political parties and the leading associations agreed to the direct introduction of VAT, but the trade union federation only did so after an increase in the VAT rate in favor of the AHV and IV and the use of 5 percent of the revenue for **relief for lower income groups** had been provided for. The people and the cantons followed suit and voted in favor of the **constitutional basis** for the introduction of **value added tax** on November 28, 1993.

6 The time between the rejection of value added tax in 1991 and the expiry of the authority to levy sales tax at the end of 1994 was too short to allow for a proper legislative process. For this reason, the constitutional basis for the introduction of value added tax provided for a transitional provision that regulated the basic principles of value added tax in the Federal Constitution itself and was to remain in force until the federal legislation came into effect. The transitional provision authorized the Federal Council to issue the implementing provisions directly on the basis of the Constitution, which it did with the **law-substituting ordinance** of June 22, 1994, on value added tax (**aMWSTV**). This ordinance came into force at the same time as the constitutional provisions at the beginning of **1995**.

7 Value added tax was regulated alongside other taxes in **Art. 41ter aBV** and in **Art. 8–8ter ÜB aBV**. It was not until the **new FC** that value added tax was granted its own article, **Art. 130 FC**, with effect from the beginning of **2000**. The content of the regulation corresponded to Art. 41ter aBV insofar as it concerned value added tax. Only the tax rate increase for the AHV and IV was to take the form of a federal law instead of a federal decree subject to referendum, as the new Federal Constitution no longer allowed legislative decrees to take the form of federal decrees. The transitional provisions previously contained in Art. 8–8ter Transitional Provisions aBV were transferred to Art. 196(14) FC and remained unchanged in content, apart from a few linguistic and structural adjustments.

8 With the **message on the new financial system** of December 9, 2002, the **Federal Council** wanted to expressly grant the Confederation in Art. 130 para. 1 of the Federal Constitution the power to levy **a reduced rate** of at least 2.0 percent in addition to the previous standard rate of a maximum of 6.5 percent (see N. 62 ff.): "This means that only *one* reduced rate is possible, which greatly simplifies VAT." The Federal Council also wanted to abolish the **special rate** for accommodation services (cf. N. 73 ff.) not "immediately," but only after a transition period at the end of 2006, and therefore, although reformulated in accordance with Art. 36 para. 2 of the Federal Act of September 2, 1999, on Value Added Tax (aMWSTG), to leave it in the transitional provisions; it also wanted to **completely waive** the **time limit** on the **authority to levy** value added tax.

9 The **parliament**, on the other hand, wanted, on the one hand, to **not allow the constitutional basis for a special rate for accommodation services to expire** and, on the other hand, to **retain** the

time-limited authority to levy value added tax as a whole. As the special rate was no longer limited in time in the Constitution, it was transferred to the main part of the Constitution as Art. 130 para. 2 FC; the earmarking of 5 percent of tax revenue not otherwise earmarked for the reduction of health insurance premiums was also transferred to the main part of the Constitution. It was now possible to deviate from this earmarking by law. The **time limit** on the **special rate** was also newly regulated **in the law**. The new financial regulations came into force at the beginning of 2007. Since its introduction in 1996, the special rate has been **extended six times**, most recently for 10 years until the end of 2027. In the 2025 special session, Parliament referred a motion to the Federal Council calling for the special rate to be continued beyond 2027.

10 From the beginning of 2011 to the end of 2017, the standard rate was increased by 0.4 percentage points, the reduced rate by 0.1 percentage points, and the special rate by 0.2 percentage points for the **temporary additional financing of the IV**. As part of the **additional financing of the AHV and the 2020 pension reform**, the tax rate increases in favor of the AHV and the financing of the railway infrastructure were to be extended. However, as this proposal was rejected at the ballot box on September 24, 2017, there was a **tax rate reduction** at the beginning of 2018 for the first time since the introduction of value added tax (see N. 78).

11 At the beginning of 2016, Art. 130 para. 3bis of the Federal Constitution was added following the adoption of the Federal Council's direct counter-proposal to the popular initiative “For public transport.” The previously temporary increase in value added tax by 0.1 percentage points to **finance railway infrastructure** was converted into a permanent increase, which is why it was moved from the transitional provisions to the main part of the Constitution. At the same time, a temporary increase in value added tax of 0.1 percentage points until the end of 2030 to secure the financing of railway infrastructure was added to Art. 196(14)(4) of the Federal Constitution (see also N. 80).

12 On March 4, 2018, the new financial system was approved by the people and the cantons, and the authority to levy value added tax **was extended until 2035**. On September 25, 2022, the people and the cantons approved the federal decree on **additional financing for the AHV** through an increase in value added tax. Based on the new para. 3ter, the Federal Council raised the standard rate by 0.4 percentage points and the reduced rate and the special rate for accommodation services by 0.1 percentage points each at the beginning of 2024. According to the new para. 3quater, the revenue from the increase will be allocated in full to the compensation fund for old-age and survivors' insurance (see also N. 81). Since the beginning of 2024, a **standard rate** of **8.1 percent**, a **reduced tax rate** of **2.6 percent**, and a **special rate** for accommodation services of **3.8 percent** have therefore applied.

13 To finance the **13th AHV pension**, the Federal Council proposes in its message of October 16, 2024, an increase in value added tax of 0.7 percentage points from the beginning of 2026.

III. CONTEXT

14 Art. 130 of the Federal Constitution is found under Title 3, “The Confederation, the Cantons, and the Municipalities,” in Chapter 3, “Financial System.” As the Federal Council wrote in its message on the reform of the Federal Constitution, "all provisions relating to revenue and expenditure have been grouped together in one chapter, taxes have been classified according to their importance, and outdated provisions have been deleted. Accordingly, the two most important federal taxes, direct federal tax and value added tax, are each regulated in a separate article. [...]. Federal revenues levied for special financing purposes are not included in this chapter, or only partially." These explanations

show that although the provisions on financial regulations in Chapter 3 are part of the financial constitution, the **financial regulations** cannot be **equated with the financial constitution**.

15 According to Art. 127 para. 2 of the Federal Constitution, the principle of **taxation according to economic capacity** must only be observed "insofar as the nature of the tax permits." Economic capacity **measured in terms of income** means that only income exceeding the minimum subsistence level may be taxed. This cannot be achieved within conventional VAT systems, as even people living at or below the minimum subsistence level pay VAT on their consumer spending. Because the proportion of total expenditure accounted for by VAT is higher for low incomes than for higher incomes, VAT has a **regressive** effect when measured in terms of income. However, this must be put into perspective, as a large proportion of expenditure for low incomes is hardly subject to VAT at all due to VAT exemptions for housing rents and insurance services, including health insurance.

16 The regressive effect of VAT should be countered on the one hand by the **progressive** effect of **income tax** and on the other hand by targeted **transfer payments**, as is the case, for example, with the partial earmarking of revenue for health insurance premium reductions (see also N. 83). As an alternative to transfer payments, a study by the International Monetary Fund proposes making VAT and other transaction-based taxes progressive by means of automated real-time refunds to people on lower incomes, which would better reflect the principle of ability to pay based on income.

17 VAT exemptions and reduced tax rates are not particularly suitable for counteracting the regressive effect of VAT (see also N. 68). In terms of income, economically **well-off households benefit disproportionately** from these **tax breaks** due to their higher consumption expenditure in absolute terms. As a result, the state foregoes revenue and thus also reduces its options for transfer payments. Within VAT, therefore, only the principle of universality and uniformity of taxation should be implemented, while the principle of taxation according to economic capacity measured by income should be observed in conjunction with other taxes and transfer payments. From this perspective, **VAT exemptions** and **reduced tax rates** should be **abolished** as far as possible and the resulting additional burden on people with low incomes should be offset by transfer payments, as was essentially envisaged in the Federal Council's message on the simplification of VAT of June 25, 2008.

18 Questions relating to taxation according to economic capacity as measured by income do not arise if taxation is based on economic capacity as measured by consumption. In this case, **consumption expenditure** is used as a measure of **economic capacity**. Those who can consume more are economically more capable in terms of consumption and therefore pay more VAT. Since the VAT burden increases linearly in proportion to VAT-taxed consumer spending, VAT does not have a regressive effect, as is the case when compared to income. Measuring economic capacity based on consumption seems to be a **less than convincing concept**. Since, in contrast to economic performance measured in terms of income, the origin of the funds for consumption is supposed to be irrelevant, consumption expenditure is simply equated with economic performance without further explanation of performance. The limited significance of this concept becomes particularly apparent when consumption expenditure is financed by debt. In this case, too, economic capacity would be measured by consumption expenditure, even though debt-financed consumption hardly allows us to assume that consumers have economic capacity. Overall, it is impossible to avoid the impression that the concept of taxation according to economic capacity measured by consumption is intended to show that VAT is also levied on the basis of the principle of taxation according to economic capacity. For Switzerland, as explained above, this is neither necessary from a fiscal policy perspective nor from a constitutional point of view when considering the tax system and transfer payments as a whole, since Art. 127 para. 2 of the Federal Constitution specifically states that taxation according to **economic capacity** is **not to be applied to all taxes**.

IV. COMMENTARY IN THE NARROW SENSE

A. Art. 130 para. 1 of the Federal Constitution

19 Art. 130 para. 1 of the Federal Constitution refers to value added tax, although it actually concerns **three different taxes**: the tax on services provided for consideration, the tax on own consumption, and the tax on imports. In contrast to **import tax**, the tax on services provided for consideration is referred to below as **domestic tax**, even if it concerns cross-border services provided for consideration. Although **own consumption** is mentioned as a taxable item in the Constitution, since the total revision of the VAT Act in 2009, it has merely been designed as a form of input tax correction, which is why it is treated as a domestic tax (see N. 52). In our opinion, **purchase tax** is not a separate taxable item, but merely a **form of collection of domestic tax**, which is why it is also dealt with under domestic tax (see N. 53).

1. Competence to levy

a. Domestic tax: retroactive derogatory, comprehensive competence

20 According to Art. 130 para. 1 of the Federal Constitution, the federal government may levy value added tax, but is not obliged to do so, as is clear from the use of the word “may.” If the federal government were to refrain from doing so, the competence to levy tax would revert to the cantons in accordance with Art. 3 of the Federal Constitution. However, as soon as the Confederation levies value added tax, the cantons may no longer levy a similar tax in accordance with Art. 134 FC. This means, on the one hand, that the cantons' competence to levy taxes is only superseded when the federal government exercises its competence to levy taxes, which is why it has a **retrospective derogatory** effect, and, on the other hand, that the competence to levy taxes is transferred entirely to the federal government and is therefore a **comprehensive competence**.

b. Prohibition of similar cantonal taxes

21 With the extension of the tax base to services in the context of the introduction of value added tax in 1995, the question arose as to whether existing cantonal and municipal taxes on services, such as ticket and transfer taxes, would also fall within the scope of the prohibition of similar cantonal and municipal taxes (Art. 41ter para. 2 aBV, now Art. 134 FC) would also fall within the scope of the prohibition of similar cantonal and municipal taxes. In the consultation on the draft ordinance on value added tax of October 28, 1993, the film industry in particular raised the question of whether the levying of cantonal and municipal **ticket taxes** was still **constitutional**.

22 In its commentary on the Value Added Tax Ordinance, the **FDF** states that "similar cantonal and municipal taxes may not be levied on transactions that are subject to value added tax or are declared exempt from value added tax, i.e., are genuinely tax-exempt within the meaning of Art. 15. On the other hand, ticket taxes, gambling taxes, and the like may be levied on transactions (such as cultural services) that are exempt from tax under Articles 13 and 14." Accordingly, the tax exemption for turnover from betting, lotteries, and other games of chance was explained by the fact that “such games and gaming equipment are subject to other forms of taxation (in particular, they are subject to a large cantonal levy).” This argument was criticized in **academic circles**, as services exempt from tax also fall within the scope of VAT, which is particularly evident in the fact that exempt services can be taxed voluntarily or that the related input tax may not be deducted. Consequently, there is no room for similar cantonal or municipal taxation. However, the FDF's argument should be seen primarily in the

context of preserving **cantonal sovereignty** and **avoiding resistance** from the cantons to the introduction of VAT.

23 In its ruling on the Geneva poor tax, the **Federal Supreme Court** also rejected the FDF's argument as too literal an interpretation of the concept of tax exemption and argued instead that the Geneva poor tax was **neither a special excise duty** on goods (Art. 41ter para. 2 in conjunction with Art. 41ter para. 1 lit. b aBV), **nor with a general consumption tax** such as value added tax (Art. 41ter para. 2 in conjunction with Art. 41ter para. 1 lit. a aBV). In doing so, it expressly left open the question of whether other special consumption taxes levied by the cantons should also be considered dissimilar. This ruling was also criticized in some **academic circles**. If the final consumption is taxed and not the company, then both taxes are similar. The focus should therefore be on the tax effect intended by the law, i.e., the tax objective.

24 The **burden objective** as a central criterion for similarity also seems **unconvincing**. If the burden objective intended by the law is taken as a basis, cantons and municipalities are free to structure the tax in such a way that it is not end consumption that is taxed, but the taxpayer itself – for example, the company. Focusing on the actual burden (**tax incidence**) is also not a suitable criterion. All excise taxes burden the consumption of the taxed goods, regardless of where they are levied in the value chain and who they are intended to burden.

25 In order to avoid multiple burdens, taxes linked to turnover or another comparable variable such as volume or weight should therefore generally **be considered as similar taxes**, regardless of their target or actual burden. **Incentive taxes** would still not be included. Apart from the fact that incentive taxes do not pursue fiscal purposes and are therefore not considered taxes in the strict sense, they do not represent a definitive burden, but can even lead to relief if the incentive effect takes hold. However, this is conditional on the incentive taxes being **refunded** to the population.

26 What was only explained for the aMWSTV in the commentary by the FDF and with a different justification (see N. 22) was included in Art. 2 aMWSTG as a **fiction**: ticket taxes and transfer taxes are not considered to be of the same type. This verdict by the legislature created legal certainty in practice with regard to these two expressly mentioned taxes, as a judicial review of this provision would have no effect due to the application requirement of Art. 190 of the Federal Constitution. In Art. 2 MWSTG, the repetition of the regulatory content of Art. 134 FC was ultimately dispensed with and only reference was made to the **dissimilarity** of the two taxes. In the explanatory notes, this was justified on the grounds of legal certainty and the continuation of Federal Supreme Court practice.

c. Import tax: exclusive competence?

27 If the federal competence to levy an import tax were based exclusively on Art. 130 of the Federal Constitution, this competence would be retroactively derogatory, as would the competence to levy domestic tax (see N. 20). If, on the other hand, import tax is also understood in a historical context, according to which legislation on taxes on cross-border trade in goods is a matter for the federal government under **Art. 133 of the Federal Constitution**, it would be an exclusive competence. This rather theoretical question seems to have been left open by legal scholars to date.

d. Time limit on the competence to levy taxes

28 The federal government's **competence** to levy value added tax – like its competence to levy direct federal tax – is **limited in time** until the end of 2035 (see N. 86 ff.). After the majority of political parties that commented on the consultation on the New Financial Order 2021 in June 2015 rejected

the Federal Council's proposal to remove the time limit, the Federal Council again submitted only an extension of the competence to Parliament.

2. Tax sovereignty and geographical scope

29 Art. 130 para. 1 of the Federal Constitution does not expressly refer to the geographical scope of value added tax. This is derived from the purpose of value added tax as a tax on domestic consumption. For VAT purposes, services are considered to be consumed domestically if they are provided within Switzerland or imported into Switzerland from abroad. Services provided abroad or exported from Switzerland are considered to be consumed abroad. They should therefore not be subject to Swiss VAT. This is why the **destination principle** is used. Value added tax should not affect the cross-border exchange of goods and services and is therefore referred to as **foreign trade neutral**. Value added tax cannot be **compared to customs duties** because, unlike customs duties, it is levied not only on imports but also, and above all, on domestic deliveries.

30 **Deliveries** are considered to be consumed domestically and are therefore **taxed domestically** if the place of delivery is located domestically or if goods are imported from abroad. The place of delivery is generally where economic control is transferred (e.g., where a kitchen is installed). If, in the case of the supply of movable goods, this place is abroad and the goods are transported or dispatched to Switzerland, import tax applies. Conversely, if the place of supply is in Switzerland and movable goods are transported or dispatched abroad, there is a tax exemption in Switzerland. Tax-exempt services entitle the recipient to deduct the related input tax. Otherwise, exports would be secretly subject to Swiss value added tax, the so-called Taxe occulte, which would make them more expensive and lead to a competitive disadvantage for the Swiss export industry (see N. 5).

31 **Services** are considered to be consumed domestically and therefore **taxed domestically** if the place of service is located domestically. Because the place of actual consumption is often difficult to determine (e.g., in the case of consulting services) or taxation at the place of actual consumption would lead to considerable practical difficulties (e.g., the taxation of electronic services on smartphones at the place where they are actually used), it is generally assumed that consumption takes place where the customer is located (place of receipt). This should only be deviated from if taxation at the **place of actual consumption can be better achieved** through another local connection. This is particularly the case when a service is received and consumed at the same time as it is provided on site, as is the case, for example, with hospitality services or events in front of a physically present audience. Such services are therefore taxed at the place of activity. Other places of taxation may also be used in place of the place of activity, such as taxation at the place of location for services related to real estate, which also includes accommodation services, taxation at the place of transport, or taxation at the place of supply, i.e., where the person providing the service is resident.

32 In the case of **taxation at the place of supply**, i.e., where the person providing the service is resident, the taxable person and the place of supply coincide. The taxable person is always located within the tax-collecting territory, which ensures enforcement, but in cross-border situations this means that VAT is not paid in the territory where consumption takes place. Taxation at the place of supply is therefore also referred to as the **country of origin principle**.

33 Within the **EU**, the **country of origin principle** was originally intended to be introduced for harmonized VAT in order to preserve the financial sovereignty of the member states as far as possible. However, the country of origin principle proved impracticable because harmonization of tax rates was politically unfeasible and the differences in tax rates influenced the choice of location for companies within the EU. The current VAT System Directive therefore now largely follows the **destination principle**. The expansion of the one-stop shop system, requires VAT registration in only one Member

State for all services within the EU, is a key step towards a consistent switch to the destination principle within the EU internal market. This prevents taxation in the country of destination also leading to tax liability in the country of destination, as is normally the case outside the EU internal market.

34 Just as deliveries abroad should not be subject to Swiss VAT (see N. 30), **services abroad** that are exempt from tax should also, in principle, entitle the related input tax to be deducted in order to prevent services provided abroad from becoming more expensive and thus VAT from becoming a locational disadvantage for Swiss companies. It is therefore questionable whether it is compatible with the destination principle and the principle of foreign trade neutrality of VAT that **services** in the **finance, insurance, and gambling sectors** do not entitle the purchaser to deduct input tax even if they were provided abroad. The decisive factor in continuing this rule, which has been in force since the introduction of VAT, even after the total revision of the VAT Act, in which input tax deduction was explicitly declared permissible for most tax-exempt services abroad, was in particular the fear of tax revenue shortfalls, as foreign business managed from Switzerland remained considerable in the 2000s.

3. Domestic tax

a. Taxation and collection concept

35 Art. 130 para. 1 of the Federal Constitution gives the Confederation the authority to levy value added tax. According to its **taxation concept**, value added tax is a general consumption tax which, according to its **collection concept**, is levied at every stage of the value chain on the basis of the respective value added. Value added tax differs from the former goods turnover tax levied at the wholesale level (see N. 3) and from the special consumption taxes levied once during manufacture or import, primarily in terms of its collection concept. Since all three types of tax ultimately burden final consumption, they do not differ in terms of their tax burden concept. Although, according to the VAT collection concept, **tax collection at every stage of the value chain** is a key feature, there are also exceptions to this within VAT. Examples include the reporting procedure, where tax collection is replaced by reporting, or the domestic purchase tax procedure for emission rights and similar items, which serves to combat fraud and under which the sale of emission rights remains tax-free, but taxable customers must account for VAT as purchase tax. In both cases, no tax is levied at the stage of the value chain in question for such transactions, which is a departure from the concept of VAT collection.

36 This raises the question of the extent to which the constitutional concept of VAT, based on its collection concept, also covers the collection of tax independently of the creation of added value or value added. In my opinion, this question does not arise if the tax is **exceptionally directly levied** within the value-added chain **on the company** that purchases the service, as is the case, for example, with **purchase tax** or **import tax**. If such services are purchased by taxable persons and the tax is settled directly with the Federal Office for Customs and Border Security (BAZG) or the ESTV, these are usually input services for their own services, on the value added of which VAT is in turn payable.

37 The question arises, however, when VAT is **exceptionally levied directly on the end consumer**. This is particularly the case when persons who do not operate a business, such as **private individuals**, owe **purchase tax** because they purchase services subject to purchase tax for more than CHF 10,000 per year. Taxation of end consumers takes into account the concept of VAT as a burden, but does not correspond to the concept of collection, according to which VAT should be levied indirectly at the value-added stage and not directly at the consumption stage. In my opinion, the objective of **universality and uniformity of taxation** set out in Art. 127 para. 2, which requires the

most comprehensive taxation of consumption possible for value added tax, justifies deviating from the collection concept in specific cases and **levying the tax directly in exceptional cases**. In addition, the purchase tax for non-taxable persons has become even less significant since the partial revision of the Value Added Tax Act came into force at the beginning of 2018, as companies are now liable for tax from a global turnover of CHF 100,000 and not just from a domestic turnover of CHF 100,000, which is why the direct collection of VAT from end consumers has been further reduced.

38 If **tax collection** were to be waived not only in exceptional cases but **generally** on **services between taxable persons**, as proposed for discussion in the Caroni interpellation 21.4353, the question arises as to whether this would be compatible with the concept of VAT collection. This is supported by the fact that tax can still be levied at a stage of the value chain prior to final consumption, for example when a taxable person purchases a service subject to tax. At the same time, it is clear that although taxation can still occur prior to final consumption, it can hardly be said that tax is levied at all stages of the value chain. This characteristic element of the **collection concept** of value added tax serves primarily to secure tax revenue. Tax collection at each stage of the value chain, known as **fractional tax collection**, ensures that if a taxpayer in the value chain defaults, only the value added tax on their value added is lost. If tax collection at all stages of the value chain were largely dispensed with and the tax were levied predominantly at the final stage, the risk of tax losses would increase considerably. Against this background, the **collection concept** of tax collection at every stage of the value chain is to be understood as a **central element of the concept of value added tax**. If this collection concept were largely abandoned, it would no longer be a true value-added tax, but rather a **single-phase tax**, which the constitutional framers deliberately rejected in 1995 when introducing value-added tax. It would be questionable whether Art. 130 of the Federal Constitution would be sufficient as a constitutional basis for such taxation.

b. Taxable entity for domestic tax

39 Art. 130 of the Federal Constitution does not expressly refer to the **taxable entity**. The only way to deduce who is subject to tax is from the concept of value added tax. According to the concept of value added tax collection, the tax is payable on the added value created by entrepreneurs at each stage of the value chain (see N. 35). This means that, in principle, persons who operate a **business** are subject to value added tax.

40 When VAT was introduced at the beginning of 1995, the Federal Council had already introduced a **minimum turnover threshold** of CHF 75,000 for tax liability, even though Art. 8 of the transitional provisions of the aBV, on which the first VAT Ordinance was directly based, did not contain a minimum turnover threshold. In the course of the total revision of the VAT Act, which came into force at the beginning of 2010, the turnover limit for tax liability was increased to CHF 100,000 in order to relieve even more companies of their VAT obligations. Minimum turnover limits for tax liability are justified on the grounds of cost-effectiveness in terms of payment and collection: The low VAT amounts incurred on relatively low turnover are disproportionate to the effort required by companies to pay them and by the administration to collect them. This argument is based on the constitutional principle of **proportionality** of state action (Art. 5 para. 2 of the Federal Constitution). Depending on its level, however, the minimum turnover for tax liability is more or less at odds with the constitutional principles of **equality before the law** (Art. 8 FC) and, more specifically, the **universality and uniformity of taxation** (Art. 127 para. 2 FC). Particularly in light of technical developments in digital accounting for companies and online VAT accounting, I believe it is questionable whether the current turnover limit of CHF 100,000 for exemption from tax liability is still proportionate. Particularly in the case of services with low input tax, such as in the cosmetics or transport industries, sole proprietorships in particular are not liable for tax, which leads to VAT-related disadvantages for

companies with employees. In addition, the high turnover limit may increase the incentive for bogus self-employment under social security law if VAT liability is also waived.

c. Tax object of the domestic tax

i. The service

41 Art. 130 para. 1 of the Federal Constitution cites the supply of goods and the provision of services as the objective basis for the domestic tax. The two terms “supply” and ‘services’ are complementary: what is not a supply is a service. Supplies and services are therefore also summarized under the term “**service**.” Since both supplies and services are subject to VAT if certain additional conditions are met, the distinction between supply and service is only relevant in cross-border situations, where double taxation or non-taxation may occur in individual cases, particularly due to different places of performance.

42 The Constitution does not define either supply or service. This raises the question of what constitutional requirements should be imposed on the two terms. Based on everyday language usage, it can be said that a delivery without an object is difficult to imagine, whereas services can certainly also include objects. Many foreign VAT systems also follow this logic, although this raises difficult **distinction issues**. Particularly in the case of repairs, the question arises as to when the addition of new parts transforms the repair service into a supply of goods.

43 In order to avoid such demarcation difficulties, Swiss VAT law has deviated from everyday language since its introduction in 1995: If a service is related to an item, it is referred to as a **delivery**. Thus, not only mere **work** on an item, such as cleaning an office, but also the mere **transfer for use**, such as the rental of office space, constitutes a delivery of buildings for the purposes of Swiss VAT. Only when a service is independent of an item is it considered a **service** under Swiss VAT law. Since animals, unlike humans, are considered objects, medical treatments for humans are classified as services, while those for animals are classified as supplies. Even if these classifications may seem strange from the perspective of everyday language usage, they have the advantage of **simpler distinction** and thus contribute to legal certainty and take into account the principles of **Art. 5 FC**. For example, repairs are always supplies under Swiss VAT, regardless of whether it is simply an exhaust emission test on a car or a complete rebuild of a collector's vehicle.

ii. Remuneration

44 Art. 130 para. 1 of the Federal Constitution does not address the issue of remuneration. However, it is clear from the concept of value added tax that supplies and services are only subject to tax if they are provided in return for **consideration**. Otherwise, there would be no added value to which value added tax could be linked in accordance with its collection concept (see N. 35). The consideration may be paid by the **person receiving the service** or, in whole or in part, by a **third party**.

45 Difficult questions of demarcation arise in particular in connection with **subsidies**, which under certain conditions can be understood as a) consideration for a service to the paying community, b) consideration for a service to third parties, or c) non-consideration, with which no service is compensated at all. If the payments create added value and thus make services cheaper or even possible in the first place, the view expressed here is that extensive taxation of subsidies as (partial) remuneration for the subsidized service would be in line with the constitutional concept of value added tax (see N. 71). In order to simplify the distinction between remuneration and subsidies and thus create greater legal certainty, Parliament has chosen a different approach: since the beginning of 2025, anything designated as a subsidy by the paying public authority is generally considered a subsidy (Art.

18 para. 3 MWSTG). This tends to lead to an expansion rather than a restriction of the scope of application of subsidies. The requirements of public accounting are intended to counteract excessive use of this standard. In particular, what would be remuneration among private individuals cannot be designated as a subsidy.

iii. Remuneration and service expectation instead of economic link

46 Art. 130 para. 1 of the Federal Constitution does not specify the relationship that must exist between the service and the remuneration in order for it to be considered a service relationship subject to VAT. In legal literature, the relationship between service and remuneration is described as an internal **economic link**, which, in addition to service and remuneration, is also a constituent element of the tax object. A distinction is made between a final and a causal link. In the case of a **final link**, the remuneration is paid in order to receive the service; in the case of a **causal link**, there is a cause-and-effect relationship between the remuneration and the service, i.e., it is not merely a coincidental exchange. Neither of these two theories can conclusively describe the service relationships subject to VAT. For this reason, a different approach to the interaction between service and remuneration is proposed below.

47 According to the VAT Act, a **service** is defined as the granting of a consumable economic value in expectation of remuneration (Art. 3 lit. c VAT Act). The service consists of an **objective criterion** – the granting of a consumable, economic value – and a **subjective criterion** – the expectation of remuneration. Accordingly, if no remuneration is expected, as is the case with a **gift** or a **favor**, this does not constitute a service within the meaning of the VAT Act. If there is no **expectation of remuneration**, voluntary compensation should not lead to an unintended service relationship. If remuneration is expected, this constitutes a service within the meaning of the MWSTG, even if the service can also be obtained without paying the remuneration.

48 **Consideration** is defined as an asset that the recipient or a third party acting on their behalf spends in order to receive a service (Art. 3 lit. f. MWSTG). Remuneration within the meaning of the VAT Act thus also consists of an **objective element** – the expenditure of assets – and a **subjective element** – the **expectation of a service**. A **donation**, for example, is an expenditure of assets without any expectation of a service.

49 In addition to the two objective criteria of **performance** and **financial expenditure**, **expectation of remuneration and performance** must also always be present as subjective criteria in order for a **service relationship to be considered a taxable object**. If, in addition to the objective element of performance, the subjective element of expectation of remuneration is also present, it is irrelevant whether a service is also available free of charge. As soon as an asset is expended to obtain the service, the subjective element of expectation of remuneration is fulfilled in addition to the objective element of expenditure of assets, and a service relationship exists as a taxable object of value added tax. This applies, on the one hand, to the well-known cases of **street music**, **toilet coins**, and probably also to the remuneration of service through **tips**, but on the other hand also to the economically more significant circumstances in which online applications or content are made available free of charge, combined with a request for “donations,” or to the so-called “donations” to influencers. This is to be distinguished from **fundraising**, where, for example, postcards, a calendar, or a book are enclosed. The aim is not to receive voluntary payment for the goods sent, but to collect donations for the idealistic purpose pursued. The goods are merely a form of advance collective acknowledgment of the potential donation. In the absence of an expectation of payment, one of the elements of the service relationship is missing, which is why taxation does not come into

consideration even if someone wants to use their assets to pay for the service instead of making a donation.

50 If the taxable object "service relationship" is understood as a service in return for remuneration with the respective objective and subjective requirements, the constituent element of the **economic link** between service and remuneration can be **waived**. At the same time, this eliminates the controversy surrounding the nature of this link, namely whether the consideration is paid with the aim of receiving the service (finality) or whether it is sufficient that the consideration was paid because the service was received (causality) (see N. 46). If finality is required, there is no economic link between service and remuneration and thus no taxable object, particularly in all those areas where a service can also be obtained free of charge, even if – as explained above in N 49 – a service was provided in expectation of remuneration, which is particularly disruptive in view of new online business models. If, on the other hand, only causality were required, taxation would occur in cases where there is no expectation of remuneration, for example in the case of fundraising, which is also mentioned in N. 49. This also renders moot the question of whether the economic link should be assessed from the perspective of the person providing the service or the person receiving it. For a **service relationship** to be subject to VAT, it must be **desired by both parties**. As is always the case with subjective elements of an offense, their existence must be inferred from externally observable actions. For reasons of generality and neutrality of the tax, no excessive evidentiary requirements should be imposed on the existence of the subjective expectation of remuneration on the part of the person providing the service.

51 A distinction must be made between the taxable service and **other conditions for the taxability** of a service, such as the **place of performance in Germany**, the **tax liability** of the person providing the service, or the **absence of a tax exemption**. As the term "object" suggests, this refers to the material basis of the tax, which is independent of the subjective characteristics of the persons involved or the local connection. The object of taxation is a necessary but not sufficient condition for taxation. Only when the service relationship as the object of VAT is subjectively realized by a taxable person in the country and no tax exemption applies does taxation generally occur.

iv. Own consumption

52 The Constitution expressly mentions own consumption because it was originally designed as a separate tax object. Since the total revision of 2009, a correction of the input tax deduction has been referred to as own consumption. Originally, own consumption was to be removed from the Constitution. However, as Parliament did not adopt the flat tax bill in 2013, the Constitution was ultimately not amended, which is why own consumption is still mentioned as a taxable item. This raises the question of whether the waiver of own consumption as a separate taxable item is constitutional. Primarily for reasons of simplification, Parliament waived **own consumption of manufactured and processed goods** as a separate taxable item as part of the 2009 total revision. In terms of tax systematics, it would still be justified. If a person withdraws a self-manufactured item from their sole proprietorship, they can only claim the related input tax. However, if a person withdraws the same item from their corporation, of which they are the sole shareholder, they must pay the third-party price for it. If own consumption is no longer a taxable item but merely an input tax adjustment, the own value added remains untaxed in the first case, whereas in the second case it is taxable. This means that the current law is not legally neutral, which is why, regardless of the mention of own consumption as a taxable object in Art. 130 of the Federal Constitution, questions arise as to the constitutionality of current own consumption in light of the **principle of equality** and the principles of **Art. 127 para. 2 of the Federal Constitution**.

v. Withholding tax

53 The constitutional provision does not mention **withholding tax**. Since withholding tax, like domestic tax, is based on the service relationship as the tax object, it does **not constitute a separate tax object**. It differs from domestic tax primarily in that, in the case of withholding tax, VAT is not payable by the person providing the service, but by the person receiving the service. German sales tax law also refers to this as a change or transfer of tax liability. Swiss legislation, on the other hand, opted for the term "purchase tax" because, when the VAT Act was completely revised in 2009, purchase tax applied exclusively to the **purchase of services from abroad**. It is only with the partial revision of the MWSTG, which came into force at the beginning of 2025, that the purchase tax is also being applied for the first time to the transfer of **emission rights** and similar rights within Switzerland in order to combat abuse.

d. Assessment basis

54 Just as with consideration, the Constitution does not comment on the assessment basis. Like consideration, the assessment basis can only be derived from the concept of value added tax (see N. 44). Questions of the **(minimum) basis of assessment** arise above all when services are provided below their value. Although value added tax is referred to as a general consumption tax, the objective of taxation is not consumption itself, but the use of funds for consumption. For this reason, value added tax is not assessed on the objective value of a service, but in principle on the consideration actually received for the service. The actual consideration received as the basis of assessment should only be deviated from where its amount was influenced by reasons other than business reasons. Thus, services to **closely related persons** are generally assessed at the value that would also have been agreed between independent third parties (Art. 24 para. 2 MWSTG). As with own consumption in a single-party relationship, where the input tax deduction must be reversed, this ensures that there is no undertaxed end consumption in a multi-party relationship (see N. 52).

e. Assessment

55 Art. 130 FC does not specify the procedure for levying value added tax. In my opinion, no conclusions can be drawn from the concept of value added tax regarding a specific assessment procedure. Since the administration is not involved in the assessment of value added tax, value added tax is referred to as a **self-assessment tax**, in contrast to the mixed assessment of direct taxes, where the administration finally determines the tax claim. However, this should not lead to the conclusion that the taxpayer **finally determines** the tax claim instead of the administration. Although the taxpayer determines the tax claim, as long as the five-year **statute of limitations** has not expired, the tax claim can be adjusted both by the FTA as part of an audit and by the taxpayer. A tax claim therefore only becomes final once the limitation period for assessment has expired. If an **audit** is carried out by the FTA, a switch to the **mixed assessment procedure** takes place, as the FTA determines the tax claim in its assessment notice and this becomes legally binding and thus final either through unconditional payment or written acknowledgment by the taxpayer. These measures are intended to increase legal certainty for taxpayers as part of the total revision of the Value Added Tax Act. This also includes the separation of **tax assessment and collection procedures**, which is why it is also referred to as a **modified self-assessment**. This also addressed the isolated demands for a change to a **mixed assessment** of value added tax, which, in our opinion, would be **constitutionally permissible**, as the constitution does not contain any references to the assessment procedure.

4. Import tax

56 Conceptually, import tax is the **counterpart to tax exemption on the export** of goods. It is intended to ensure that expenditure on domestic consumption is subject to VAT in accordance with the **destination principle**, regardless of whether the goods are of domestic or foreign origin. This is intended to ensure that domestic companies are not at a competitive disadvantage compared to foreign companies due to VAT (see N. 5).

57 According to Art. 130 para. 1 of the Federal Constitution, the import of goods is subject to VAT. According to the law, any movement of goods across the customs border is considered an import (see Art. 52 para. 1 lit. a MWSTG in conjunction with Art. 7 Customs Act, ZG, SR 631.0). It is irrelevant whether this movement of goods is based on a legal transaction, as in the case of a **service relationship**, or merely a real act, as in the case of the **transport** of goods into the country. Given that import tax is conceptually the counterpart to tax exemption on exports in order to ensure taxation in the country of destination, the question arises as to whether bringing one's own goods into the country should also be subject to import tax in all cases. This is undoubtedly correct if **newly purchased goods** are collected abroad instead of being sent by mail. Shopping tourism is also included. Apart from de minimis regulations abroad, such newly purchased items can generally be exempted from VAT, which is why Swiss VAT must be levied on importation in accordance with the destination principle. However, it is questionable whether the levying of import tax is also conceptually correct when goods are imported that were subject to foreign VAT but can no longer be exempted from tax, e.g. due to the **long period of ownership**. This results in multiple taxation, which is contrary to the destination principle. It is questionable whether the levying of import tax in this case is covered by Art. 130 of the Federal Constitution. The reason for levying import tax on all imports is probably to be found in the fact that, for reasons of practicability, import tax was closely aligned with customs law. Conceptually, this could only be countered by a fictitious tax exemption in the country of origin, which would be modeled on the fictitious input tax deduction. Conversely, however, a fictitious tax exemption would also have to be granted in Switzerland if import tax is payable in the country of destination.

58 Art. 130 para. 1 of the Federal Constitution does not specify who is liable for import tax and thus who is a **tax subject**. For practical reasons, the law links this to the **customs debtor** (Art. 51 para. 1 MWSTG). This means that practically anyone involved in bringing goods into the customs territory is eligible. From a VAT perspective, the taxable person is also broadly defined here and is closely linked to customs law and its focus on the collectability of claims (see N. 57).

59 Art. 130 FC does not provide any information on the **procedure for import tax**. Since the object of taxation is the importation of goods, it is logical that the tax is levied by the Federal Office for Customs and Border Security (FOCBS). In contrast to domestic tax, import tax is finally assessed by the FOCBS in a **mixed assessment procedure** and is not determined in a self-assessment procedure and settled with the FTA (see N. 55). An exception is the **transfer procedure**, in which the import tax is not first paid to the FOCBS and then reclaimed from the FTA as input tax, but can be declared in the tax return to the FTA and claimed as input tax at the same time. Demands that this procedure, which was originally intended only for the import *and* export of high-value items such as jewelry for exhibitions and auctions, should apply to all imports by taxable persons fail to recognize that this would result in VAT-related **competitive disadvantages for domestic companies**. VAT would only have to be paid on purchases from domestic companies and could later be reclaimed as input tax. When purchasing from foreign companies through imports, on the other hand, VAT could be deducted as input tax in the same statement in which it is declared. This would result in a **liquidity**

advantage on imports, if not a tax advantage, which should not be underestimated, especially in times of rising interest rates.

5. Tax rates

60 In Art. 130 para. 1 of the Federal Constitution, the Constitution only stipulates that the Confederation may levy a value added tax at a standard rate of no more than 6.5 percent (see N. 61) and a reduced rate of at least 2.0 percent (see N. 62). Apart from accommodation services (see N. 73 ff.), the Constitution does not specify which services are subject to the standard rate and which to the reduced rate.

a. Standard rate

61 The standard rate of 8.1 percent, which has been in effect since the beginning of 2024, is based on a combination of the provisions in Art. 130 para. 1, 3, 3bis, and 3ter of the Federal Constitution and the transitional provision in Art. 196 no. 14 para. 4 of the Federal Constitution (see N. 78 ff.). This relativizes the clear wording of Art. 130 para. 1 of the Federal Constitution, according to which the standard rate **may not exceed** 6.5 percent. To enable the applicable VAT rates to be taken from the Federal Constitution without having to calculate them, they are listed in the official publication in the footnotes to paragraphs 2 and 3.

b. Reduced rate

62 Like the standard rate, the reduced rate of 2.6 percent is also derived from a combination of the provisions in paragraphs 1, 3, and 3bis and the transitional provision in Art. 196(14)(4) of the Federal Constitution (see N. 78 ff.). In contrast to the standard rate, Art. 130 para. 1 of the Federal Constitution provides for a **minimum rate** of 2 percent for the reduced rate, which is why increases in the reduced tax rate, unlike increases in the standard rate, are easily compatible with the wording of the Constitution. However, it would no longer be compatible with the wording of the Constitution to align the reduced rate with the standard rate and thus effectively merge the two rates without amending the Constitution, as the Constitution expressly mentions a reduced rate. The legislature must therefore provide for a reduced rate in accordance with the Constitution. A uniform VAT rate would therefore require a constitutional amendment subject to a mandatory referendum, as the Federal Council had also envisaged in its 2008 single rate bill.

63 Although Art. 130 of the Federal Constitution expressly provides for a reduced rate, it does not specify to which services it should apply. The best indication of this can be found in the history of the reduced tax rate. When the goods and services tax was introduced in 1941, certain foodstuffs were exempted from taxation in order to relieve the burden on households in modest economic circumstances. In several steps, the tax exemption was extended to all foodstuffs and non-alcoholic beverages. This is why there is often talk of **everyday necessities** or essential goods being taxed at the reduced rate, but on closer inspection this is only very partially the case. For example, hygiene products, clothing, energy, and mobility are undoubtedly everyday necessities, but are taxed at the standard rate. Instead, Swiss VAT distinguishes between **four groups** of services subject to reduced taxation: **food** and services related to primary production, **medicines**, **media**, and voluntarily taxed services in the areas of **sports and culture**. The reduced taxation of these services pursues various non-fiscal objectives.

64 **Social policy objectives** are pursued primarily through the reduced taxation of **food**. Since the share of food taxed at the reduced rate in total household expenditure has fallen from around 35% in 1941 to less than 10% today, the reduced tax rates on food are providing less and less relief to

households in modest economic circumstances. Agriculture and other primary producers also benefit from reduced taxation, either through lower hidden taxes in the absence of tax liability or through lower taxes on sales in the case of tax liability. The level of hidden taxation in agriculture was also a decisive factor in setting the reduced rate, which is why the reduced rate corresponds to the flat-rate input tax deduction for agricultural products (Art. 28 para. 2 MWSTG) and not vice versa. Social policy concerns are also at the forefront of the reduced taxation of **medicines**. However, it would be necessary to examine whether, in such a heavily regulated market, the reduced tax rate is passed on to end consumers or whether it results in a higher margin for the manufacture and trade of medicines, thereby failing to achieve the objective of reducing the burden on consumers.

65 The reduced taxation of **media** was originally intended to promote **media** as a steering objective. In order to ensure equal treatment under VAT law between the predominantly public audiovisual media of the time and the private print media, the Council of States requested that, when VAT was introduced, the non-commercial services of radio and television companies also be taxed at a reduced rate instead of being exempt from VAT. In doing so, the legislature created a taxable object by law and thus levied VAT on the "Billag fees" in particular. Whether there was a taxable object in the sense of a service relationship between the licensed radio and television companies and the persons paying the radio and television license fee was irrelevant. It was politically desirable for the radio and television license fee to be taxed at a reduced rate for reasons of equal treatment. However, it is questionable whether this legally created taxable object is covered by Art. 130 of the Federal Constitution, as the concept of value added tax always presupposes a service relationship as the taxable object. On the other hand, given the history of the reduced taxation of radio and television license fees, the Federal Supreme Court should not have examined in its ruling of April 13, 2015 whether there is a service relationship between the persons liable to pay the fees, the federal government, and the radio and television companies, since in this particular case, taxability was politically desired regardless of the existence of a taxable object in the form of a service relationship. By examining this and denying the existence of a service relationship, the Federal Supreme Court indirectly disregarded the requirement to apply federal laws in accordance with Art. 190 FC.

66 Finally, the reduced taxation of voluntarily taxed services in the areas of **sports and culture** promotes these activities: where the tax on input at the standard rate is higher than the tax at the reduced rate on turnover, the taxable persons receive money from the tax administration. In addition to avoiding a hidden tax on services between taxable persons, this is an important reason why someone becomes voluntarily taxable.

6. Tax exemptions

67 Although Art. 130 of the Federal Constitution refers to the number and level of tax rates, it does not mention anything about tax exemptions. Only from the concept of value added tax, which, unlike the special consumption taxes under Art. 131 of the Federal Constitution, is a general consumption tax, can it be inferred that the tax base should be as broad as possible. This raises the question of whether tax exemptions pursue **non-fiscal objectives** that themselves have constitutional status. This would justify deviating from the constitutional requirement of equal treatment in general and from the requirement of general and uniform taxation under Art. 127 para. 2 of the Federal Constitution in particular (see N. 68).

7. Pursuit of non-fiscal objectives

68 Reduced tax rates and tax exemptions, known as tax breaks, are only of limited use in pursuing non-fiscal objectives such as social, cultural or media policy concerns. Tax breaks do provide relief for

households in modest economic circumstances. But that's not all: households in good economic circumstances receive even greater relief in absolute terms because they consume significantly more. This results in a loss of tax revenue that is needed, for example, to provide targeted support to households in modest economic circumstances through transfer payments. This shows that tax breaks can at least partially achieve the non-fiscal goals pursued, but in an inefficient way, as **tax breaks** are **not sufficiently targeted**. For this reason, **reduced tax rates** mentioned in the Constitution and **tax exemptions** not mentioned in the Constitution should only be used **with restraint** at the legislative level.

69 Tax breaks are inefficient, but they do mitigate the additional burden associated with tax rate increases. In particular, tax exemptions for insurance premiums and housing rents, one of the largest budget items for households in modest economic circumstances, mean that such households are less affected by **tax rate increases** than households for which these expenses account for a smaller proportion of the budget. Increases in VAT rates therefore perform better in terms of **distribution policy** than is often claimed.

8. Sovereign activities

70 Article 130 of the Federal Constitution does not comment on the VAT treatment of sovereign activities, as VAT does not apply to sovereign activities or, more generally, to government services, unless a public authority exceptionally engages in economic or entrepreneurial activities. This is supported by the fact that these are state tasks and not voluntary consumption, and that public services should **not be marketable** and therefore should not be in direct competition with services provided by the private sector, which is why there should be no distortion of competition. Since government services are not normally subject to payment by the persons who use them or by third parties, VAT would not apply to government services due to the lack of a taxable object in the form of a service relationship. Another consequence of the fact that government services do not fall within the scope of VAT is that they are subject to hidden taxation, as VAT on services used to provide government services cannot be deducted as input tax.

71 However, the question arises as to how the non-taxation of government services relates to the constitutional requirement of **equal treatment** in general and the requirement of **general and uniform taxation** under Art. 127 para. 2 of the Federal Constitution in particular. Which services should be offered by the state is primarily a political question. However, as soon as the state offers tax-financed services, these services are in principle already excluded from the scope of VAT due to the lack of remuneration and thus the lack of a taxable object, and can therefore be offered at a lower price than if this were done in return for taxable remuneration. In Switzerland, for example, VAT is also payable on public transport tickets. However, as soon as this is offered free of charge to users, as is partly the case in the city of Geneva, for example, VAT is no longer applicable. VAT thus creates a financial incentive to offer services financed by tax revenue even if they could be financed in whole or in part according to the polluter pays principle. VAT therefore influences the decision as to whether services should be financed by general tax revenue or by the persons using the service, which affects the constitutional requirement of equal treatment and the requirement of general and uniform taxation under Art. 127 para. 2 of the Federal Constitution.

72 This effect does not apply in the area of **tax exemptions**, as both tax-financed and non-taxable services are only subject to the hidden tax. Against this background, tax exemptions in the areas of **health** and **education** in particular lead to **equal treatment for VAT purposes**, regardless of how they are financed. If, on the other hand, the public authorities were able to eliminate their hidden tax through an input tax deduction or tax-free procurement of services, as is occasionally demanded, so

that the federal government no longer imposes VAT on the cantons and municipalities, this would also result in VAT privileges for the public sector. The price of equal VAT treatment of public and private service providers in the area of tax exemptions is the burden placed on the cantons and municipalities by the federal government in the form of the hidden tax.

B. Art. 130 para. 2 FC

73 **Accommodation services** were initially regarded as part of hospitality services. Since the goods and services tax did not tax services and catering was considered a tax-exempt supply of food and beverages on the one hand, while alcoholic beverages were taxed at the preliminary stage on the other, hospitality businesses, which also included all **accommodation businesses**, were **subjectively not taxable**. Although the **expert commission** in 1974 and the Federal Council in the first failed bill to introduce value added tax in 1977 wanted to tax the hospitality and accommodation industry at the **standard rate**, the **Federal Assembly** provided for a **special rate** because of fears of competitive disadvantages vis-à-vis other countries and the risk of the bill failing politically. In the equally unsuccessful proposals of 1979 and 1991, the **Federal Council** had already provided for the **special rate** in its message. When drafting the 1993 proposal, the Federal Assembly refrained from including a special rate in the Constitution, but provided for the authority to introduce a **special rate at the legislative level** in the **transitional provisions** (Art. 8ter aBV) .

74 According to Art. 8ter aBV, the federal government could set a lower sales tax rate for certain **tourism services** provided domestically by means of **legislation**, provided that these services were consumed to a significant extent by persons from abroad and that competitiveness required it. In its message of August 16, 1995, the Federal Council considered these conditions to be fulfilled. On the one hand, the number of overnight stays had been stagnating since the early 1980s and reached a negative record in 1995, which was interpreted as a sign of a lack of competitiveness. On the other hand, in contrast to hospitality and transport services, for example, accommodation services were predominantly in demand by foreign guests. “A reduced rate for accommodation services, more than half of which are statistically requested by foreigners, is therefore certainly constitutional.” The **special rate for accommodation services** was first introduced on October 1, 1996, for a limited period of five years and has since been extended six times, most recently for 10 years until the end of 2027. In the 2025 special session, Parliament referred a motion to the Federal Council calling for the special rate to be continued beyond 2027.

75 In its message, the Federal Council merely states that the **setting of the special rate** at 3 percent takes into account the fact that a significant proportion of overnight stays are accounted for by foreign guests. Since, according to the Federal Council, the constitutional provision does not seek to privilege the tourism industry but rather to recognize its export-like character, it is conceivable that accommodation services demanded by foreign guests should be tax-exempt and only those demanded by domestic guests should be taxed. However, in order to save the industry administrative effort, the Federal Council deliberately refrained from distinguishing between domestic and foreign guests. As it further explained, around two-thirds of overnight stays were requested by foreign guests. If these services were to be exempted without distinguishing between domestic and foreign guests, this would result in a special rate that was two-thirds lower than the standard rate of 6.5 percent applicable at the time, i.e., around 2.2 percent. This rate would have been practically equivalent to the reduced rate of 2 percent applicable at the time. It is therefore questionable whether such considerations were decisive.

1. Accommodation services

76 Art. 130 para. 2 of the Federal Constitution refers to accommodation services without describing them in more detail. Since, historically, accommodation services were considered part of hospitality services (see N. 73), the legal definition of accommodation services as the provision of **lodging**, including the provision of **breakfast**, even if this is charged separately (Art. 25 para. 4 MWSTG), does not appear to be constitutionally problematic. Somewhat more difficult to reconcile with the concept of accommodation is the fact that, under Swiss VAT law, long-term rentals are also considered accommodation services. According to the practice of the FTA, tax-exempt **rentals** only apply if a weekly stay or residence or registered office or permanent establishment is established. As with the distinction between supplies and services (see N. 42), the focus here is on a simpler and more legally secure distinction between taxable accommodation services and tax-exempt rentals, which is why the everyday understanding of the term "accommodation service" has been deviated from. From a tax system perspective, however, it would be better to make the distinction with regard to the **service component**, as this is what distinguishes accommodation services from mere rental (supply). This is partially implemented in the practice of the FTA, in that **hotels** always provide accommodation services, even if a guest takes up residence there. Consequently, this would also have to apply to **serviced apartments**.

2. Special rate

77 According to Art. 130 para. 2 of the Federal Constitution, the law may set a rate between the reduced and normal rates for the taxation of accommodation services. The word "may" in this provision has two meanings: Since Art. 130 of the Federal Constitution as a whole is a subsequently derogatory federal competence (see N. 20), on the one hand, para. 2, like para. 1, must also be formulated as a discretionary provision. On the other hand, Art. 130 para. 2 of the Federal Constitution gives the legislature the freedom to make use of this competence or not. If the legislature makes use of this power, the only special rate that can be applied to accommodation services is a rate between the **reduced rate** and the **standard rate**, as is currently the case with the special rate of 3.8 percent. However, based on the history of the provision, the legislature could not tax accommodation services at the reduced rate (see N. 73 ff.). If the legislature did not make use of this constitutional power or allowed the current time limit to expire at the end of 2027, accommodation services would be taxable at the standard rate.

C. Art. 130 para. 3 FC: Earmarking for the financing of the AHV

78 When VAT was introduced in 1995, Art. 41ter para. 3bis aBV already provided that the sales tax rate could be increased by a maximum of one percentage point by means of a federal decree subject to an optional referendum in order to ensure the financing of old-age, survivors' and disability benefits if this could no longer be guaranteed due to the development of the age structure. At the beginning of 1999, Parliament made use of this provision and raised the standard rate by one percentage point, the reduced rate by 0.3 percentage points, and the special rate by 0.5 percentage points. Until the end of 2019, the Federal Council also had the option of using a maximum of 10 percent of the total revenue from the increase to finance disability insurance. This delegation provision was deleted as part of the Federal Act on Tax Reform and AHV Financing (STAF) initiated by Parliament following the rejection of Corporate Tax Reform III. Since then, the **entire amount** from the increase in VAT rates has gone **to the AHV**. A **further increase** in VAT rates in favor of the AHV and IV is provided for **from the beginning of 2024** in Art. 130 para. 3ter of the Federal Constitution (see N. 81), the proceeds of which, according to Art. 130 para. 3quater of the Federal Constitution, will also be allocated in full to the AHV compensation fund (see N. 82).

79 In contrast to the financing of the AHV through wage percentages, the additional financing of the AHV through value added tax also involves the households of pensioners contributing to the financing. This takes account of **demographic change**, whereby fewer people in employment have to pay for a growing amount of pensions due to the baby boom and longer life expectancy.

D. Art. 130 para. 3bis of the Federal Constitution: Earmarking for the financing of railway infrastructure and transitional provision Art. 196 no. 14 para. 4 and 5 of the Federal Constitution

80 At the beginning of 2001, the Federal Council was given the authority to raise VAT rates by 0.1 percentage points across the board in order to finance major railway projects. As this was a temporary increase, it was included in the **transitional provisions** of the Federal Constitution, but not in Art. 130 FC, but **in Art. 87 FC** concerning railways and other modes of transport. At the beginning of 2016, the Federal Council's direct counterproposal to the popular initiative "For public transport," which was approved by the people and the cantons on November 28, 2014, converted the previously temporary increase of 0.1 percentage points **into a permanent increase**, which is why the regulation was moved from the transitional provisions in Art. 130 para. 3bis of the Federal Constitution. On the other hand, Art. 196 no. 14 para. 4 of the Federal Constitution once again **raised** the VAT rates linearly by a further **0.1 percentage points** until the **end of 2030** in order to finance the additional expansion of the railway infrastructure.

E. Art. 130 para. 3bis of the Federal Constitution: Earmarking for additional financing of the AHV

81 In the referendum of September 25, 2022, the federal resolution of December 17, 2021, on additional financing for the AHV through an increase in value added tax was accepted by the people and the cantons. This was intended to secure the financing of AHV pensions in the medium term with the aim of maintaining the level of old-age pension benefits and ensuring the financial equilibrium of the AHV. Art. 130 para. 3ter expressly links the Federal Council's authority to increase value added tax to the principle of **standardizing the reference age** for women and men in old-age and survivors' insurance at the legislative level. With the simultaneous adoption of the amendment of December 17, 2021, to the Federal Act on Old Age and Survivors' Insurance (**AHV 21**), against which a referendum was launched by left-wing circles, this condition was fulfilled and, at the beginning of 2024, the standard rate was raised proportionally by 0.4 percentage points to **8.1 percent**, the reduced tax rate by 0.1 percentage points to **2.6 percent**, and the special rate for accommodation services also by 0.1 percentage points to **3.8 percent**.

F. Art. 130 para. 3quater FC: Allocation to the AHV compensation fund

82 Para. 3quater, which was inserted at the same time as para. 3ter, clarifies that the **entire proceeds** from the increase in tax rates under para. 3ter are allocated to the AHV compensation fund. This provision should be seen in the context that, until 2019, only 83 percent of the revenue from the tax rate increase under para. 3 was earmarked directly for financing the AHV, while 17 percent went to the federal government to finance the demographically-driven increase in the federal contribution to the AHV (see N. 78).

G. Art. 130 para. 4 of the Federal Constitution: Earmarking for premium reductions in health insurance

83 When value added tax was introduced in 1995, it was already stipulated in the Constitution that **five percent** of the tax revenue from value added tax should be used for measures to relieve the lower income groups (Art. 41ter para. 3 aBV), namely for premium reductions in health insurance during the first five years after the introduction of value added tax. After that, the Federal Assembly could decide how this earmarked portion should be used (Art. 8 para. 4 Transitional Provisions aBV). The aim was to alleviate the **higher burden of VAT** (see N. 68) on households in more modest economic circumstances in relation to their income, in order to win over the trade union federation to the introduction of VAT (see N. 5).

84 Both provisions were incorporated into the main part and the transitional provisions of the new Federal Constitution in 1999 without any substantive changes (Art. 130 para. 2 FC, Art. 196 no. 14 para. 3 FC). As the five-year period had expired when the new Federal Constitution came into force at the beginning of 2000, the newly competent Federal Assembly decided in December 1999 to **extend** the earmarking of funds for **health insurance premium reductions** by ordinance until the end of 2003. In June 2004, a further extension was granted retroactively from the beginning of 2004 and limited until the new financial regulations came into force, but no later than the end of 2006.

85 With its message on the new financial system of December 9, 2002, the Federal Council wanted to continue these regulations. However, the Federal Assembly rejected this and decided to regulate the earmarking of funds for health insurance premium reductions directly **in the main part of the Constitution**, unless another use for the relief of lower income groups is specified by law. The earmarking of funds for the benefit of lower income groups was also to be determined by the Federal Assembly **by means of a law subject to referendum** and not merely by means of an ordinance, as had been the case until then. The earmarking of funds has been maintained unchanged for health insurance premium reductions.

H. Art. 196 para. 14(1) FC

86 The federal government's authority to levy value added tax is limited until 2035, as is its authority to levy direct federal tax (Art. 128 FC). The **time limits** that apply today can be explained primarily by their historical origins. The sales tax, the precursor to value added tax, was introduced for a limited period during the Second World War and was subsequently extended for the first time by the Federal Council until 1949 and then by the Federal Assembly until the end of 1951. In December 1950, a transitional provision in the Constitution, limited until the end of 1954, was approved by a majority of the people and the cantons. In 1953, the people and the cantons rejected a proposal for a new draft of a financial regulation, which would have regulated the goods and services tax in the main part of the Constitution and would have been limited to twelve years. In 1954, however, the continuation of the existing regulation for a further four years until 1958 was approved by a majority. It was not until the financial regulations that came into force in 1959 that the sales tax was included in the main part of the Constitution for the first time as Art. 41ter (see N. 2), but only for a limited period of six years until 1964 and not for 12 years, as the Federal Council had requested. Three further extensions followed until the end of 1974, the end of 1982, and the end of 1994, after which the sales tax was replaced by the value-added tax at the beginning of 1995, which in turn was limited until the end of 2006. The authority to levy value-added tax was then extended until the end of 2020 and again until the end of 2035. In both cases, the **waiver of the time limit was discussed** but ultimately rejected. In 1977, 1979, and 1991, the waiver of the time limit was rejected by the people and the cantons together with the introduction of value added tax.

87 Although the FDF comprehensively explained in its explanatory report on the consultation draft for the 2021 financial regulations why a **time limit** on the two most important sources of federal revenue was **not expedient**, the consultation process showed that waiving the time limit would fail in Parliament, which is why the Federal Council ultimately decided against waiving the time limit. The **arguments in favor of the time limit** were very general: for example, it was argued that it was an expression of respect for the sovereign to ask them from time to time whether taxes should still be levied, or that it was an opportunity to fundamentally reflect on the tax system. Federal Councilor Ueli Maurer probably expressed most clearly what the time limit is all about, saying that waiving it would be "a break with our tradition and perhaps also a slight break with our understanding of the relationship between the state and its citizens." All of this leads to the conclusion that the time limit on the power to levy taxes is primarily a **ritual** rooted in a long **tradition**. From a political perspective, there is also a desire to avoid accusations of undermining the rights of the people. **Objectively**, however, the time limit is **difficult to justify**, as the Federal Council explained in its explanatory report on the consultation draft of the 2021 financial regulations.

About the author

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