

A tax adventure called E-Business

We build the groundwork for your successful future



Tax and legal issues in E-Business: essentials in brief

E-Business equals challenge, also in tax matters.

We'll show you why.

E-Business presents opportunities you wouldn't have dreamed of for both your business-to-business contacts and your business-to-consumer relations. However, the new way of doing business also gives rise to new tax issues. For your benefit, we would like to address some of them below. For further information including approaches to solutions, we refer to our comprehensive brochure. Please use the order form provided.

Do you run a server in Berlin?

In order to serve the German market, a Swiss company installs a server or acquires user's rights by leasing one. Is the profit generated through this server taxable in Germany? According to the double-taxation agreement between Germany and Switzerland, a Swiss supplier's profit can be subject to taxation in Germany only if the supplier's activities are carried out in a permanent establishment in Germany. In certain circumstances, a server owned or leased by the Swiss supplier may be considered a permanent establishment.

Do you deal with software in the U.S.?

Many countries – but not Switzerland – collect tax at source on licences. In addition, licence income is subject to income tax in the recipient's country. This may result in double taxation, which can be avoided, or at least reduced, only if there is a double-

taxation agreement. However, for double taxation to be avoided the two states involved would have to be in agreement on the tax status, i.e. licence or service. For this reason, it is very important that both parties are aware of the qualification rules applicable in the U.S. and the OECD states.

Is data sharing on your mind?

What's the price one member of a corporate group has to pay another one for obtaining information and data via Internet? Who is the owner of the product, and what compensation is due, when several group companies carry out joint product research online? In most countries, the tax administrations have introduced rules specifying that fair market prices must be applied even for transactions within a group of companies. But how are these to be determined in E-Business, and how can taxes be optimized in the process?

Are you a telecom operator?

Telecommunication services rendered to somebody living abroad are exempt from VAT. However, the letting of equipment to somebody living abroad is considered a delivery that is performed where the equipment is installed. If this is in Switzerland, the person living abroad will usually have to pay Swiss VAT although this person never stays in Switzerland. But an enlightened consumer will challenge the VAT charge on his or her invoice. In certain circumstances, it is possible to save tax for consumers by designing the perfect offer and thus to enhance the telecom operator's competitiveness.

Do you purchase services through Internet?

The term «direct e-commerce» is used to refer to an order that is placed on Internet and processed in digitalised form. If the supplier's base is located abroad, the question of qua-

lification for VAT arises. Since there is no physical crossing of the border, the customs authority is unable to levy import tax. Therefore, the recipient in Switzerland will have to declare the services imported. However, this applies only if the recipient is subject to VAT or purchases such services for an amount exceeding CHF 10 000 a year. But what if you use a data-communication line to obtain a separate piece of software in connection with a hardware delivery? That software is considered a delivery that is subject to customs duty along with the hardware. These are only two out of many aspects which you need to take into account when purchasing services through Internet.

What is the current state of E-Business taxation?

E-Business taxation is the subject of current political debates in Switzerland, the EU, the U.S. and the OECD bodies. To a large extent, there is general agreement on the principle of primarily applying the current standards of taxation. However, if you prefer to avoid unpleasant surprises once your E-Business projects have been implemented, you'd better keep up-to-date with the current state of the debates at all times.

How do you protect your business secrets?

Transferring the business relations between two or more partners onto an Internet platform opens up a wealth of opportunities, which we are currently unable to assess in its entirety. Unfortunately, these very opportunities also present themselves to malicious competitors. Depending on how your system is set up, your competitors may be able to see at any time whether you are ready to deliver and at what price. The risks of data abuse do not primarily lie with the accessibility of your



server, which you can after all encode. Rather, those risks lie with the availability of your data to third parties: How do you make sure your customers won't sell your confidential information to competitors of yours? The solution can only be a combination of high-tech protection and written agreements.

Who owns your website?

You intend to modify your website, but your current designer refuses to surrender the data you require. That designer may even enjoy copyright protection. This is an imponderable situation that can be avoided – with clear written agreements correctly drafted at the outset.

How about the validity of contracts concluded on Internet?

Contracts concluded on Internet are valid in most cases. But just how binding and enforceable are they? In the case of electronic mail, a hand-written signature has to be replaced by a digital one that is equally unmistakable. Since electronic data can be altered without leaving any traces, an electronic-signature procedure was developed that prevents document forgery and clearly identifies authors. Trusted third parties, so-called certification-service providers, take care of

this procedure. They issue electronic identities to network users.

What's the tax situation for virtual companies?

In Switzerland, virtual companies are not considered to be tax subjects in their own right. Direct taxes may be levied with the partners to the virtual companies only. However, a virtual company may be subject to VAT if the partners appear in the market as a joint company offering joint services. In addition, quite «normal» taxation questions may also arise in the virtual world.

Are you allowed to send paperless invoices?

«Electronic invoices and VAT» is a complex issue. Both general tax law and the penal code as well as the Swiss code of obligations consider electronic invoices as equivalent to paper documents. Nevertheless, the Swiss VAT system requires paper documents for the recovery of input taxes. Currently, the Swiss tax administration is carrying out a pilot test on purely electronic transmission of invoices. It will certainly be interesting to see what will come of it.

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PricewaterhouseCoopers is publishing an extensive guide on the tax and legal aspects of E-Business. The German version entitled «Neuland E-Business: Wir lösen Ihre Steuer- und Rechtsprobleme» will come off the press at the end of June 1999. The English version will be available soon thereafter. Please use this fax form to order your complimentary copy now.

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E-Business.

A dream

when talking sales.

A nightmare

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