



Arbitration Newsletter Switzerland

Arbitration and VAT in Switzerland

On August 28, 2009, the Federal Supreme Court has made available on its website an interesting decision on VAT and Arbitration in Switzerland (2C_807/2008).

In a VAT inspection the Federal Tax Authority charged the law firm of Schellenberg Wittmer, Zurich, which was providing services for the Claims Resolution Tribunal for Dormant Accounts ("CRT") in Zurich, an amount of CHF 274'840.00 for VAT on services provided by the law firm as secretariat to the above tribunal. Upon appeal by Schellenberg Wittmer, the Federal Administrative Court confirmed this decision and an appeal was then filed at the Federal Supreme Court.

In its well reasoned decision the Federal Supreme Court first recalls the principle that according to Article 23 of the Federal Law on VAT services provided as a sovereign act are not subject to VAT and reconfirms that, as stated in Article 17 (4)(3) of the VAT Decree, services provided by an Arbitral Tribunal rendered in Switzerland do qualify as a sovereign act and, hence, are not to be subject to VAT.

The question the Federal Supreme Court had to resolve was, whether the services of the secretariat were to be considered as an ancillary service to the CRT, or whether those services were to be qualified as separate services subject to VAT. The Federal Supreme Court gave special consideration to Article 7 of the Internal Rules of the CRT which states that "The Secretariat [...] shall provide an adequate number of lawyers to be assigned to the proceedings as legal secretaries" and concluded that those secretaries had a similar function as a clerk in a state court, supporting the judge, but not being involved in the decision making of the judge.

Therefore, the Federal Supreme Court concluded that the services provided by the secretariat of the CRT were clearly of a supporting nature only and were not to be qualified as independent services. Consequently, the Federal Supreme Court overturned the

decision of the Federal Administrative Court and ruled that no VAT could be levied on the fees charged for the secretarial services provided by Schellenberg Wittmer to the CRT. The court fees were charged to the Federal Tax Authority and a compensation was awarded to Schellenberg Wittmer.

This arbitration-friendly outcome is to be welcomed and does confirm that arbitration in Switzerland has, apart from the well established rules under Chapter 12 of the Federal Private Law Act on Arbitration (and in particular the very limited possibilities to ask for an annulment of an arbitral award rendered in Switzerland) also the advantage that no VAT is charged on the services provided by the Arbitral Tribunal – including the services of a secretary of the Arbitral Tribunal.

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