

Temporary reduction of German VAT: Simplifications due to the accompanying letter of the Federal Ministry of Finance

July 6 2020

Due to the Second Corona Tax Aid Act, the German VAT rates have been lowered for the time span from July 1 to December 31, 2020 effective from July 1, 2020: The standard VAT rate has been lowered from 19 % to 16 % and the reduced VAT rate from 7 % to 5 %. In addition to the legislative amendment, the Federal Ministry of Finance (BMF) has published an accompanying letter with numerous clarifications, non-objection rules and simplifications.

The most important simplifications are described henceforth:

1. Temporary application of the "old" rates

On the account of a non-objection regulation in the B2B sector, which has been included in the accompanying letter of the BMF (point no. 46 of the accompanying letter), it will not be objected if the old VAT rates of 19% and 7% respectively will be applied for services rendered until July 31, 2020.

However, the condition is that:

- the VAT of 19% respectively 7% has to be paid to the tax office, and
- the recipient of the service is classified business according to § 2 (1) German VAT Act (B2B).

The recipient is entitled to deduct the stated VAT of 19% or 7% as input VAT.

2. Taxation of down payments and advance payments

In the case of down payments and advance payments, the VAT arises at the time of receipt of the payment.

The VAT rate at the time of receipt of the payment is decisive for the taxation of the advance or down payment for now. However, when services are finally provided the tax rate has to be adjusted to the effective VAT rate at that time.

Case study:

Advance invoice of fees for a software program

- Performance period March 1 – August 31, 2020
- Receipt of payment of 11,900 € on March 3, 2020

Answer:

Taxation of the advance payment upon receipt of the payment (preliminary VAT return for March 2020) at the (then) applicable tax rate of 19%. In the case of performance execution (August 31, 2020 = end of the performance period) the effective tax rate of 16% is to be applied.

Declaration of the adjustment to the tax office:

a) No refund to the customer - increase in net remuneration for supplier

Adjustment in preliminary VAT return for August:

line 28: (taxable sales at other tax rates): 10,258 € (11,900 / 1.16)

line 26: (taxable sales at 19%): - 10,000 €

b) Refund to the customer - net payment remains unchanged

Adjustment in preliminary VAT return for August:

line 28: (taxable sales at other tax rates): 10,000 €

line 26: (taxable sales at 19%): - 10,000 €

Advance payments received in the period from July 1 to December 31, 2020 for services that will not be provided until 2021 may already be taxed at the rates applicable from January 1, 2021 (i.e. 19% and 7%) (points no. 9 and 51 of the accompanying letter), in order to simplify matters. The recipient can claim the reported VAT as input tax if he pays it to the entrepreneur. It is then not necessary to correct invoices and preliminary VAT returns.

In order to avoid misunderstandings and complaints from customers we advise to point out in the down payments and advance payments that taxation will be at the rates of 19% and 7% respectively, as the service will be rendered after January 1, 2021.

3. Permanent relations

a) Partial services (for the purposes of the VAT Act)

The condition of partially fulfilled services in the VAT sense are met, whether a remuneration for specific parts of that economically divisible service were agreed upon and invoiced separately. This is often the case for permanent resp. recurrent services such as rental or leasing. Due to the agreement on separate invoicing periods partial services regulations apply and hence these must be assessed individually with regards to the applicable tax rate.

As far as invoices are issued before July 1, 2020 and no separate invoices have been issued, for the BMF it holds sufficient to accept partial VAT payments, if the separate invoicing periods are stated explicitly in the invoices (e.g. statement of the monthly price for annual contracts).

Case study:

Billing of an annual user fee:

Performance period 01.01. - 31.12.2020

Monthly fee January to December:	each	150 €
Annual fee (12 x 150 €)		1.800 €

b) Permanent invoices

If permanent invoices are issued for permanent services (e.g. permanent rental invoices), the BMF points out that these must also be adjusted for the transition period.

However, if rental contracts act as invoices (possibly together with other documents), no adjustment of the rental contracts is necessary. The adjustment to the new VAT rates can also be made by other documents, for example a separate permanent rental invoice limited to the period from July 1 to December 31, 2020.

4. Annual bonuses and other annual remuneration

The payment of annual bonuses, fidelity rebates or other annual remuneration to customers entails a reduction in the assessment basis accordingly to § 17 of the German VAT Act. For the year 2020, the reduction would have to be divided accordingly between the respective performance period and applicable VAT rate.

To simplify matters, the BMF allows dividing those annual remunerations 50/50. This means, lump sum consists of 50% of the annual refund taken at the tax rates of 19% resp. 7% and 50% taken at the tax rates of 16% resp. 5%.

Furthermore, it is not objected if an entrepreneur refrains from dividing the reductions in remuneration and applies the general tax rate of 19% for 2020 without exception (point no. 33 the accompanying letter). The recipient can claim input tax according to the method chosen by the service provider.

5. Further simplifications

A further non-objection rule has been added regarding the services of electricity, gas, water, cooling, heat and waste water. According to the BMF it is not objectionable if advance payments due in the period from June to December 2020 continue to be taxed at 19% resp. 7% and the VAT is only correctly accounted for in the final invoice.

Furthermore, for equitable reasons, it is not objected if customers claim the stated VAT of 19% resp. 7% from the partial invoices for now and the input VAT deduction is only amended to the correct value on the basis of the final invoice.

Other simplifications include the refund of deposits, the redemption of discount and price refund vouchers, the taxation of telecommunications services, the taxation of the revenue of commercial brokers and the taxation of revenue in the hotel and restaurant industry on transition to the reduced rates.

6. Deduction of input VAT

Please note that the "new" VAT rates also apply to input VAT deduction.

The input VAT deduction can only be claimed for the legally owed sales tax (§ 15 (1) no. 1 sentence 1 VAT Act). On receipt of invoices at 19% resp. 7% for services that are indeed taxable at 16% resp. 5%, the input tax deduction can only be claimed at 16% resp. 5%. This applies regardless of whether 19% resp. 7% or only 16% resp. 5% are paid to the service provider. It is advised, that "incorrect" invoices should therefore be objected to.

Kindly note the non-obligation period until the end of July 2020 at this point!

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