

Update: the temporary reduction of German VAT rates to 16 % and 5 % – status 30th July 2020

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On 3rd June 2020 the German Government caused surprise with the decision to reduce (German) value-added tax (VAT) rate as of 1st July 2020 from 19 % to 16 % (regular rate) and from 7 % to 5 % (reduced rate). The VAT rate reduction is meant, in particular, to boost consumption. It has yet to be proven whether the law, which has now become effective by publication in the Federal Gazette on 30th June 2020, will succeed in doing this.

The VAT rate reduction is applicable from 1st July 2020 to 31st December 2020 (**tax reduction period**). Fortunately, the tax authorities published their application letter for the VAT rate reduction at the same time on 30th June 2020. In the following we set out the individual non-objection rules of the Ministry of Finance (BMF) letter dated 30th June 2020.

The reduction of the lower VAT rate from 5%/7% in the period from 1st July 2020 to 30th June 2021 for restaurant and catering services with the exception of serving drinks had already been passed.

Which extensive conversions will companies have to make?

The short-term reduction of the VAT rates is complex and holds some pitfalls for companies in the legal implementation alone. Cash register systems, lease agreements, production systems, the accounting system and often also interfaces will have to be adapted. This entails a risk of creating faulty processes. Companies are urgently advised to carry out an IT check after any conversions in order to avoid incorrect processes.

When does the reduced VAT rate apply?

The criterion is the **time of the supply of the service**. According the BMF, this is

- the day of delivery or
- the last day on which a service was provided.

To this extent, the reduced VAT rate is always applicable during the tax reduction period. The time of ordering or paying does not count.

What do companies have to watch out regarding down-payment invoices for services provided after 30th June 2020?

The arrangements for down payment (advance) invoices are complex. In principle, the VAT rate at the time of issuing the invoice applies. An invoice dated 10th May 2020 must have a VAT rate of 19 %/7 %. If services are provided in the second half of 2020, the invoice has to be corrected. However, a down payment (advance) invoice dated, for example 26th June 2020 should already be issued with 16 %/5 % (non-objection rules) if it is already clear at the time of invoicing that the supply will be provided within the second half of 2020.

The taxation of on-going services (long term supplies) is based on the last day of the agreed term of the contract. A maintenance agreement, a subscription, a rent etc. with limited term (e.g. 6 months) and one payment has been rendered, in principle, on the last day of the service. If a half-year maintenance agreement ends, for example on 31st August 2020, the reduced VAT rate shall apply, and an invoice issued at the start of the term of the contract with 19 % VAT must be corrected.

In the case of part-payments, the section (period) in which the payment is due is the tax point (e.g. monthly payment for an annual maintenance agreement).

What do companies have to consider in the case of down (advance) payments?

If **down (advance) payments** have been made, the VAT was due at the time of the payment (because the tax point is when the payment is received). In the case of down (advance) payments, however, the – final – determination of the VAT rates depends on when the supply is provided. Therefore, once the supplies are provided during the period of VAT rate reduction, a correction must be made within the respective (monthly) VAT return.

If it is already clear beforehand that the supply will be provided at a time when the reduced VAT rate will apply, the down payment invoice can already be issued with the reduced VAT rate (non-objection rules).

Does the tax rate reduction have to be passed on to customers?

The passing on of the reduction in the VAT rates is a business decision. In the individual case, it has to be examined whether a net or gross price agreement was reached in contracts, or whether a binding price excludes the passing on of the VAT rate reduction. In principle, Section 29 of the Value-Added Tax Act calls for an equalization claim under civil law.

In the case of a net price agreement between companies, there is no financial advantage insofar as the purchaser has the right to deduct the input VAT in full.

It must be ensured, however, that the recipient of the supply receives an invoice which contains the correct VAT amount, because the VAT can only be deducted as input VAT in the legal amount, and companies are only relieved to this extent.

If it is a matter of consumer goods or goods purchased by companies who are not entitled to deduct input VAT, there will be an expectation that the reduced VAT rate is passed on to the customers.

What are the invoice requirements?

In accordance with the applicable legal situation, in the tax reduction period the reduced VAT rate must always be invoiced. The company owes the tax office the – higher – VAT stated in its invoice. The recipient of the supply may only deduct the legally owed VAT as input VAT.

According to the BMF, for reason of simplification, there will be no objections if **invoices for supplies performed in July 2020** in the B2B sector show the too high VAT rates of 19 %/7 %. Then, an invoice correction must be not required and the recipient can deduct the invoiced input VAT in full. However, due to the BMF, the non-objection to input VAT deduction only apply if the supplier (service provider) has also paid the VAT in full. **This could make the conversion of the systems somewhat easier.**

What is the procedure for vouchers?

For vouchers, the general VAT rules effective since 2019 shall apply. In the case of a single-purpose voucher for which the supply and its VAT consequences are clear when the voucher is issued, the VAT rate at the time of issue of the voucher applies. Multi-purpose vouchers are merely a means of payment, not subject to VAT at the moment when the multi-purpose voucher is issued. Rather the multi-purpose voucher is taxable at the VAT rate applicable at the time the voucher is redeemed.

Which tax rate applies for payment reductions?

Payment or price reductions include, for example, rebates, deferred discounts, annual bonuses etc. Such price reductions lead to a subsequent change of the taxable net amount. The applicable VAT rate depends on when the (underlying) supply is provided. It is of no consequence when the payment reduction is made. In the case of annual bonuses for 2020, the amount has to be divided over the various service provision periods. According to the BMF letter dated 30th June 2020, simplification methods are in place for this.

Special arrangements for certain revenues

In addition to this, the BMF letter dated 30th June 2020 contains a wide range of special regulations, e.g. for telecommunications services, power, water, gas, air conditioning and

heating supplies as well as the disposal of waste water, passenger transport, revenues from commercial agents, commercial brokers and in the hospitality industry as well as the exchange of goods.

Import value-added tax

The tax rates of 16 % and 5 % shall also be applied in the calculation of the import VAT. This is limited to imports made after 30.06.2020 and before 01.01.2021. In addition to this, import VAT are now only due in the case of approved deferment of payment pursuant to Art. 110 lit. b or c of the Union Customs Code on the 26th of the second month after import.

Agriculture and forestry

The applicable VAT rate of 19 % will be also reduced to 16 % for supplies of certain sawmill products and of drinks and alcoholic liquids subject to the average VAT rate for agriculture and forestry pursuant to Section 24 of the Value-Added Tax Act.

How do you make the declaration?

The existing forms regarding monthly and annual VAT returns will not be adjusted by the German tax authorities. Rather, the supplies subject to a VAT rate of 16 % or 5 % are to be declared as such supplies at other VAT rates.

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