

# VAT Newsflash

Issue 4, August 2020

## Germany: temporary decrease of VAT rates in the second half of 2020

The German economy has been severely affected by the coronavirus crisis. In order to boost the economy, the German Federal Government has taken the unprecedented step of decreasing both VAT rates from 19% to 16% and from 7% to 5%. The decreases will apply from 1 July 2020 to 31 December 2020. On 30 June 2020, the Federal Ministry of Finance (Bundesministerium der Finanzen, or BMF) issued a comprehensive statement dealing with this matter. In this newsflash, we would like to summarise the most important regulations relating to the VAT rate decrease. However, as the statement is quite extensive, it remains essential to read it carefully and seek expert advice if necessary.

### General matters

The German VAT Act (Umsatzsteuergesetz, or UStG) stipulates that amendments to the VAT Act (including but not limited to changes of VAT rates) are generally applicable to supplies of goods, services (including partial services) and intra-Community acquisitions of goods performed on or after the date on which the relevant amendment comes into force. In this context, it does not matter when the invoice is issued, when the contractual agreement was concluded or when the payment is received.

Subject to general conditions, invoices must therefore show the relevant new VAT rates, even if the contracts for these supplies were concluded before the change in VAT rates on 1 July 2020 and the parties assumed the VAT rates of 19% or 7% previously in force were to be applied. It is primarily a question of civil law as to whether the prices are to be reduced or increased, or whether the taxable person providing the supplies may retain the lower amount or claim the higher amount, as the case may be. In certain cases, Section 29(2) of the German VAT Act can be applied, which assigns a compensation claim to one or the other contracting party under certain conditions. The BMF statement also makes some comments on this subject, including what to do if the supplier demands compensation under the above provision and subsequently invoices the additional amount of VAT when the VAT rate is increased again on 1 January 2021.

The VAT rates of 16% and 5% are also applicable to import VAT on imports made after 30 June 2020 and before 1 January 2021.

The statement also provides detailed information about how the transactions and intra-Community acquisitions concerned must be reported in preliminary VAT returns and annual VAT returns. For VAT return forms for the 2020 calendar year, 19% or 7% transactions should generally be reported as usual, while transactions subject to 16% or 5% VAT must be reported cumulatively (but separated into supplies of goods and services, intra-Community acquisitions, and – in annual VAT returns – supplies to the final

customer in triangular transactions) under “*Umsätze zu anderen Steuersätzen*” (transactions subject to other VAT rates). An update to the instruction leaflet for preliminary VAT returns and annual VAT returns has been made available.

Recipients of supplies should ensure that their purchase invoices show the correct VAT rate. For services carried out in the supply chain during July 2020, a deduction of input VAT at 19% or 7% is permitted if the corresponding invoice is issued at 19% or 7% and the VAT is accounted for accordingly by the supplier. After the end of July, input VAT deductions will not be granted for overstated VAT amounts.

## Down payments and advance payments

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### Decrease of VAT rates on 1 July 2020

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The principle that the time at which each supply is performed determines the (old or new) VAT rate to be used also applies to cases in which the VAT on down payments or prepayments becomes due when payment is received. This is also applicable to down payments or advance payments received before 1 July 2020 if the supply or partial supply to which they relate is not performed until after 30 June 2020. Following this principle, down payments or advance payments received at a VAT rate of 19% or 7% must subsequently be subjected to a VAT rate of 16% or 5% at the time the supply or partial supply is performed.

If, in such cases, a taxable person issues invoices showing VAT for payments or partial payments received prior to 1 July 2020, the BMF initially requires this person to report VAT at the old VAT rates of 19% or 7% for the period in which the down payment etc. was collected. The recipient of the supply is generally entitled to deduct the VAT shown in the respective invoice as input VAT upon receipt of the invoice, provided that the required payment has been made. Advance payments already taxed at the old rates must be switched to the new rate in the preliminary VAT return for the return period in which the supply is performed. To do this, the supplier reports a negative taxable amount at 19% or 7% equal to the advance payment received (in addition to the overall remuneration at 16% or 5%), while the recipient of the supply decreases their input VAT by the difference between the amount of VAT shown in the final invoice and the amount of input VAT already claimed (or, if necessary, reports a negative amount of input VAT). A sample scenario can be found in the instructions for filling in preliminary VAT returns and annual VAT returns (BMF statements from 1 July 2020).

The BMF does not require any correction of the down payment invoices in such cases if VAT for the entire supply or partial supply is shown at 16% or 5% in the final invoice. The BMF alternatively allows VAT to be shown in the down payment invoices at the new rates from the outset; here, too, the recipient can generally deduct input VAT from the invoices for down payments.

Special conditions apply in the case of advance invoices. The BMF defines these as invoices issued before 1 July 2020 covering full remuneration for supplies or partial supply performed after 30 June 2020. If the remuneration or partial remuneration is received before 1 July 2020, VAT still becomes due at the rate of 19% or 7% applicable at the time of receipt. However, the new VAT rates must then be applied at the time the supply or partial supply is performed. The input VAT deduction must also be corrected at this point (i.e. not retroactively), irrespective of whether a corrected invoice has been received. Since no final invoices are to follow in the case of advance invoices, it appears that a correction of the VAT shown can only be avoided in such cases if the new VAT rates of 16% or 5% are invoiced from the start.

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### VAT rate increase on 1 January 2021

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The arrangements above will apply similarly when the VAT rates rise again on 1 January 2021. Thus, when correcting the VAT in preliminary VAT returns, additional VAT must be declared instead of a negative tax base. The BMF statement provides a way of avoiding correction of advance payment invoices, either by stating VAT at 19% or 7% in the final invoice for the entire supply, or by additionally showing the extra VAT in the final invoice for partial payments received before 1 January 2021. VAT can also be shown at 19% or 7% from the outset in invoices for partial payments received before 1 January 2021 for supplies or partial supplies that will be performed after 31 December 2020.

However, in the case of advance invoices for supplies performed after 31 December 2020, the statement only includes information on what to do if no payment is collected before the end of 2020. It is unclear what rules apply in case payment is already collected before this point in time. It is disputed whether the lack of guidance from the BMF for these circumstances outweighs the fact that the statement makes a general reference to the provisions on decreasing the VAT rate: as outlined above, these provisions allow an invoice to be issued prior to the cut-off date, under the tax rates applicable after that date. Applying the

general reference would be in line with the practice used in 2007, when the standard VAT rate was last increased in Germany.

Another regulation specifically in place for increasing VAT rates appears to have some relevance if the VAT correction is made in the down payment invoice itself, instead of making the correction in the final invoice or showing VAT rates of 19% or 7% from the outset. In this case, the corrections to the VAT due for the partial payments and the deduction of input VAT (if applicable) must be reported for the relevant preliminary VAT return period in which the taxable person corrects the prepayment invoice.

## Changes to the tax base

The principle mentioned above that the (old or new) VAT rate to be applied is determined solely by the time at which the supply is performed is also consistently applied in the event of a change in the tax base: if there is a change in the tax base after 30 June 2020 for a transaction carried out before 1 July 2020, the VAT rate of 19% or 7% applicable until 30 June 2020 will still be applied. The same applies to the correction of input VAT deduction, and to supplies performed before 1 January 2021 for which the tax base changes after 31 December 2020.

The BMF has granted a simplification rule for subsequent changes in the tax base of transactions performed before 1 July 2020, which are subject to different VAT rates. The statement also provides further explanation on the VAT treatment of price discount and price refund vouchers, on refunding deposits, and on granting annual bonuses, annual refunds and similar. In connection with the VAT increase on 1 January 2021, the BMF has also made special arrangements for price discount and price refund vouchers, as well as for refunding of deposits.

In the case of single-purpose vouchers under Sections 3(13) and 3(14) of the German VAT Act, the BMF has stated that the applicable VAT rate must be determined based on when the voucher is issued to the customer. Consequently, the circumstances at the time the voucher is issued are key. Any subsequent change in circumstances is irrelevant. Things are different, however, in the case of additional payments when a single-purpose voucher is redeemed.

## Further regulations

The BMF has issued many explanations of individual issues and granted a number of simplification rules. These cover invoices for small amounts, tickets, baggage receipts, exchange of supplied goods, supply with installation, work services, permanent services, performance and invoicing of partial supplies, and individual questions concerning certain industries. Particular note should be taken of the taxation of electricity, gas, water, refrigeration and heat supplies, telecommunication services, sewage disposal, passenger transport, and sales by commercial agents and commercial brokers.

A special arrangement has been made for the transition to the decreased VAT rates for transactions in the hotel and restaurant sector. Nonetheless, the BMF statement does not specifically address the application of the reduced rate to catering and restaurant services (with the exception of beverages) from 1 July 2020 to 30 June 2021, which was enacted (in the first Coronavirus Tax Assistance Act) separately from the decrease of VAT rates. However, the BMF has already advised in a separate statement on 2 July 2020 that the portion of the price of so-called 'combined offers' (offers including both food and beverages, e. g. buffets, all inclusive offers) attributable to the beverages may be set at 30% of the package price. With respect to the existing simplification rule for 'business packages' and similar in the accommodation sector, the BMF statement also temporarily changes the portion of the package price made up of standard VAT-rated services.

## References

Corona-Steuerhilfegesetz (Coronavirus Tax Assistance Act) of 19 June 2020 (reduced tax rate for restaurant and catering services), [Federal Law Gazette I 2020, 1385](#) (in German only)

Zweites Corona-Steuerhilfegesetz (Second Coronavirus Tax Assistance Act) of 29 June 2020 (temporary reduction of VAT rates), [Federal Law Gazette I 2020, 1512](#) (in German only)

[BMF-Schreiben zur befristeten Absenkung des allgemeinen und ermäßigten Umsatzsteuersatzes zum 1. Juli 2020](#) (BMF statement on the temporary reduction of the general and reduced VAT rates as of 1 July 2020) (final version) of 30 June 2020 (in German only)

BMF-Schreiben zur Neuausgabe der Anleitung zur Umsatzsteuer-Voranmeldung 2020 und zur Umsatzsteuer-Jahreserklärung 2020 (BMF statement on the new edition of the instructions for advance VAT returns and annual VAT returns for 2020) of 1 July 2020 (in German only)

BMF-Schreiben zur befristeten Anwendung des ermäßigten Umsatzsteuersatzes für Restaurations- und Verpflegungsdienstleistungen vom 1. Juli 2020 (BMF statement on the temporary application of the reduced VAT rate to restaurant and catering services as of 1 July 2020) of 2 July 2020 (in German only)

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