

# Global VAT Specialist Group

## Reduction of German VAT from 1 July 2020

The reduction of the value added tax (sales tax) from 19% to 16% and from 7% to 5% sounds simple - but it is not. The VAT conversion means considerable extra work for both you and us! This paper provides you with important information and explanations. Unfortunately, some aspects are still unclear or have been eased in the discussion, so that we can only give you the current status here.

### 1. Reduction of VAT from 1.7.2020

The reduction in value added tax (VAT) from 19 % to 16 % and 7 % to 5 % respectively will come into force from 1 July 2020. The reduced VAT rates currently apply until 31.12.2020.

It is demanded that there should be facilitations or a non-complaint regulation for the B2B sector. The aim would be to allow full deduction of input tax by the recipient in the case of invoices issued incorrectly with excessive VAT due to the change in tax rates. Whether or not such relief will be achieved has not yet been decided (17 June 2020).

### 2. Execution of the sales decisive

The reduced rates of VAT apply to all transactions carried out from 1 July 2020. It is not important when the payment for these sales is received. The only decisive factor is the time of performance.

For example:

- the procurement of the power of disposal (delivery of goods)
- in the case of deliveries of work (construction work), acceptance by the purchaser
- in the case of services (consulting, transport), the end of the service
- in the case of continuous services (rentals, leasing, maintenance contracts), the day on which the service period ends

Not decisive:

- Date of conclusion of the contract
- Incoming orders
- Date of the invoice
- Settlement date

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### 3. Taxation on cash flow basis

Generally, the principle of taxation on balance sheet basis applies to the declaration of value added tax = performance of service.

In the case of many small and medium-sized enterprises, however, taxation will be based on the remuneration received.

This means that the VAT is only to be declared for the advance return period in which the payment was collected.

In these cases, the following must be observed:

- Receivables incurred until 30.6.2020
- receipt of payment in the period from 1.7.2020
- therefore the old tax rates of 19 % and 7 % apply.

This means that, in the case of taxation on the basis of remuneration received, the new tax rates will only apply to transactions carried out between 1 July and 31 December 2020.

### 4. Down payments, advance payments

#### Advance invoices or down payments at 19%

If an advance or partial invoice with a 19% VAT rate is issued before 1.7.2020 and the down payment is received, while the corresponding services are not provided until after 30.6.2020, the difference between the old and new tax rates leads to an overpayment of tax when the services are provided. The down payment of 19 % is to be deducted openly from the VAT 16 % in the final invoice.

#### Example

E acquires a passenger car from the company Z under a contract dated 28.5.2020 for a purchase price of 20,000 Euros + statutory VAT. A gross down payment of €5,950 was due when the contract was signed. The remainder is payable on delivery in September 2020.

Solution:

The procurement of the power of disposal will take place in September 2020, by which time the delivery will have been completed. The new VAT rate of 16 % therefore applies.

The tax rate is determined by the time of performance. The final invoice can be as follows:

Purchase price car net		20.000 €
16 % sales tax		3.200 €
Gross purchase price		23.200 €
Down payment	5.000 €	
19 % sales tax	950 €	- 5.950 €
Final payment		17.250 €

### **Advance invoices or down payments at 16%**

If invoices for down payments are now issued in June 2020, then an open statement of VAT should be dispensed towards the private customers. This is because if the payment is received in June, the VAT will be 19 %. If the payment is received in July 2020, the VAT will be 16 %.

In the case of invoices for down payments to customers entitled to deduct input tax, it should be clarified whether the customer will still pay in June or not until July 2020. The tax rate should be 19 % and 16 % respectively.

## **5. Continuous contracts (continuous services)**

### **General information**

Continuous services may regularly include other services (e.g. rentals, leasing, maintenance, monitoring, ongoing financial and payroll accounting, etc.).

Different periods of time (e.g. 1 month, ½ year, 1 year, 1 calendar year, 5 years) or no time limit are agreed for continuous services.

### **Continuous services**

In the case of services, continuous services are performed on the day on which the agreed service period ends.

### **Effect on tax rate**

The general tax rate of 19 % applicable until 30 June 2020 shall be applied to continuous services which are subsequently provided before 1 July 2020 and which are subject to VAT at the general rate. Continuous services performed in the period from 1.7. to 31.12.2020 are subject to taxation at the new general rate of 16%.

### **Adjustment of contracts**

Contracts for continuous services which are to be regarded as invoices or as part of an invoice must be adjusted to the tax rates applicable from 1.7.2020. A contract amended as a result of the reduction in tax rates must contain all the compulsory information required under the VAT Act for the purposes of the recipient's right to deduct input tax.

### **Execution and billing of partial services**

If a continuous service is not invoiced in total for the agreed contractual period, but for shorter periods (e.g. quarter, calendar month), this shall constitute partial services within the meaning of § 13 of the German Value Added Tax Act. This also applies to continuous services of unlimited duration, insofar as these are invoiced for specific periods of time.

### Example

Leasing of shop premises. Duration of the contract from 1.1.2018 - 31.12.2022.  
Monthly rent agreed net 3.000 € + VAT

### **Solution**

June 2020 VAT 19 % of 3.000 € = 570 €  
July 2020 VAT 16 % of 3.000 € = 480 €  
Jan. 2021 VAT 19 % of 3.000 € = 570 €

## 6. Consequences of incorrect invoicing

### VAT rate too low

If invoicing for services provided up to 30.6.2020 is only carried out from 1.7.2020, the tax rates valid up to 30.6.2020 must be invoiced.

If instead the new tax rates of 16% or 5% are reported, then

- the tax rates of 19 % and 7 % apply nevertheless
- the supplier is liable for the higher amount of tax
- the recipient can only deduct the lower VAT actually openly reported as input tax.

#### Example

Performance on 28.6.2020, invoice of 7.7.2020  
Invoice: net 10,000 € + 1,600 € VAT = 11,600 €

The supplier is liable for VAT at the previous rate. Thus  $19/119$  of 11,600 € = 1,852.10 € (instead of the re-reported 1,600 €).

### VAT rate too high

For services provided in the period from 1.7. - 31.12.2020 the new tax rates must be charged.

If instead the previous tax rates of 19% or 7% are reported, then

- the tax rates of 16 % and 5 % apply nevertheless
- the supplier owes the unjustified amount of tax
- the recipient can only deduct the applicable VAT as input tax.

#### Example

Performance on 2.7.2020, invoice of 2.7.2020  
Invoice: net 10,000 € + 1,900 € VAT = 11.900 €

The supplier is liable for VAT at the new rate of 16 %. Thus 16% of 10,000 € = 1,600 €.

The difference of 300 € in the VAT is owed by the service provider as incorrectly reported VAT.

Nevertheless, the recipient of the service can only deduct €1,600 as input tax.

It can be assumed that the change in the tax rate on 1 July 2020 will not succeed in ensuring that all invoices, permanent invoices and contracts are issued correctly. It is to be hoped that the tax authorities will create non-objection regulations for this. Whether this will happen, however, is still open.

## 7. Withdrawals

Withdrawals from the company are treated the same as deliveries or other services for sales tax purposes. The date of withdrawal is decisive for the applicable tax rate. Withdrawals made in the period 1.7. - 31.12.2020 are subject to the tax rates of 5 % and 16 %.

## 8. Vouchers

Vouchers were regulated by law from 1.1.2019 onwards. Here it must be examined in detail in each individual case whether a so-called single-purpose voucher or multi-purpose voucher is given.

So-called discount vouchers have no relevance.

At the moment, it is still unclear whether single-purpose vouchers may be changed in terms of their VAT effect if they are not redeemed, for example. A letter from the BMF is still pending. The same question now arises when the tax rate is reduced.

It is therefore not yet legally certain whether the reduction in tax rates will allow the conditions for a single-purpose voucher to be met at all, as the tax rate is not yet fixed when the voucher is issued!

There is a considerable need for advice on vouchers. The tax effects can only be assessed in the specific individual case. At present, an attempt should be made to issue unproblematic multi-purpose vouchers (e.g. by offering a mixed assortment).

## 9. Services from 1.7. - 31.12.2020, payments in 2021

If payments or partial payments are received after December 31, 2020 for services or partial services which the entrepreneur performed before January 1, 2021 at a tax rate of 16%, the sales tax due on these amounts is to be calculated according to the tax rate of 16% applicable in the second half of 2020.

## 10. Provision of company cars to employees

The pecuniary advantage in the case of the provision of company cars to employees, also for their private use, is determined for VAT purposes either with

- 1 % of the domestic gross list price at the time of first registration  
or
- the costs calculated based on a logbook.

This means that the 1% rule in particular reduces the VAT burden for the employer. This is because the turnover tax is then 16/116 of the gross value in the period from 1.7. - 31.12.2020.

## 11. Small value invoices and tickets

In the case of invoices within the meaning of §§ 33 and 34 UStDV (invoices for small amounts, tickets and vouchers in baggage transport), the VAT or input tax can be calculated from the gross amount as follows if the tax rate is indicated

19 % = 15,966 % from gross value (19/119)  
16 % = 13,793 % from gross value (16/116)  
7 % = 6,542 % from gross value (7/107)  
5 % = 4,762 % from gross value (5/105)

## 12. Return and exchange

When an item is returned and exchanged, the original delivery is cancelled. A new delivery takes its place. If an item delivered before 1.7.2020 is exchanged in the period from 1.7. to 31.12.2020, the new tax rate applicable from 1.7.2020 is to be applied to the new delivery.

### Example

A acquires a Super-X screen from manufacturer X on 20.6.2020 for a gross price of 1,190 €. On 3.7.2020 the screen is exchanged for another screen from manufacturer Y. This screen also costs 1,190 € gross on 3.7.2020.

Effect - Reduction in remuneration 19 %	
100/119 from 1,190 =	- 1.000,00 €
Reduction of VAT 19 %	- 190,00 €
Increase in remuneration 16 %	
100/116 from 1,190 =	+ 1,025.86 €
Increase VAT 16 %	+ 164.14 €

## 13. Construction industry and partial services

### Requirement

Partial services are economically delimitable parts of uniform services (e.g. work deliveries and work services), for which the remuneration is agreed separately and which are therefore owed instead of the uniform overall service.

### Decrease and effect

Deliveries of work or parts of a delivery of work shall be deemed to have been executed when the completed (partial) work has been accepted by the purchaser. This means that the 19 % tax rate can only be applied as long as the (partial) work is actually accepted before 1.7.2020. If the (partial) work is accepted in the period from 30.6.2020 - 31.12.2020, the 16 % tax rate applies.

### Example

The company A is building a turnkey detached house and the outdoor facilities for B. The contract stipulates immediate acceptance after completion of the house (expected November 2020). The outdoor facilities will be accepted after their completion in spring (probably May 2021).

The fee for the single-family house is 500,000 € plus VAT. For the outdoor facilities 30.000 € plus VAT are agreed.

### Solution:

With the acceptance of the single-family house in November 2020, the partial performance "single-family house" is deemed to have been rendered. The VAT is therefore 16 % of 500,000 (= € 80,000). The partial service "outdoor facilities" will not be completed until May 2021, when it is accepted. The tax rate of 19 % is therefore to be applied to this partial performance; tax burden thus 19 % of 30,000 € = 5,700 €.

### Special Information sheet from tax authorities

Further information on partial services is contained in the information sheet on turnover taxation in the construction industry, status October 2009 (BMF letter of 12.10.2009).

## 14. Driving Schools

Driving schools conclude contracts with their learner drivers for the practical and theoretical training required to obtain a driving licence and show separately in the contracts (written or oral) the basic fee, the price per driving lesson and the fee for presentation to the test. Settlements are to be made accordingly.

The individual driving hours and the presentation for the test are to be treated as partial services because the remuneration for these parts has been agreed separately. In the absence of a separately agreed fee, the training services compensated by the basic fee cannot be split into further partial services.

## 15. Gastronomy

### New regulation from 1.7.2020

For restaurant and catering services, the reduced tax rate applies from 1.7.2020 - 30.6.2021. The sale of beverages is still subject to the full tax rate.

### Classification of tax rates for food

Until 30.06.2020	19 %
01.07.2020 – 31.12.2020	5 %
01.01.2021 – 30.06.2021	7 %
From 01.07.2021	19 %

### Classification of tax rates for beverages

Until 30.06.2020	19 %
01.07.2020 – 31.12.2020	16 %
01.01.2021 – 30.06.2021	19 %
From 01.07.2021	19 %

## 16. Commercial agents

The performance of the commercial agent is subject to the general tax rate of 16%, if the remuneration agreement is based on §§ 87 ff HGB (German Commercial Code), if the represented entrepreneur (principal) carries out the delivery or other service to the customer in the period from 1.7. - 31.12.2020.

## 17. Supply or purchase of gas, electricity, heat, refrigeration and water

There are special arrangements for the supply of gas, electricity, heat, cold and water. These deliveries are only considered to have been carried out at the end of the respective meter reading period.

Advance payments made during the meter reading period do not represent partial payments. They merely represent down payments which are subject to VAT at the time of collection.

### Example of electricity supply

Meter reading period e.g. 15.6.2020 - 14.6.2021

The delivery shall be deemed to have been executed upon expiry of 14.6.2021. The tax rate of 19 % applies on 14.6.2021. Consequently, the entire supply (irrespective of the amount of the advance payments) will be subject to the 19 % tax rate applicable in June 2021.

Meter reading period e.g. 15.12.2019 - 14.12.2020

The delivery shall be deemed to have been executed at the end of 14.12.2020. The tax rate of 16 % will apply on 14.12.2020. This means that the complete delivery (irrespective of the amount of the advance payments) is subject to the 16 % tax rate applicable in December 2020.

## 18. Distance selling

In the case of a purchase on trial by mail order, the purchase contract does not yet come into effect with the delivery of the goods, but only after expiry of the approval period granted by the seller or by transfer of the purchase price. Only at this point in time is the delivery executed for VAT purposes.

However, this is different for a purchase with a right of return. In this case, the contract of sale is already concluded and the delivery carried out with the sending of the goods.

## 19. Civil compensation claims

### Regulation in § 29 UStG

§ 29 of the German Value Added Tax Act (UStG) provides for the compensation of VAT-related additional or reduced charges resulting from changes in the law for deliveries and other services, including partial services, under certain conditions.

After the turnover tax is reduced to 16 % or 5 %, the recipient of the service is granted a civil law compensation claim against the supplying entrepreneur.

### Therefore it is important to:

- review the contracts
- to search for favourable solution possibilities
- to adapt the contracts if necessary

### In the event of a dispute between the Parties

In the event of a dispute between the contracting parties about the eligibility and amount of compensation claims under § 29 UStG, the ordinary courts shall decide. See also § 287 (1) ZPO.

### Amount of the compensation claim

In principle, the full compensation of the additional or reduced VAT burden is to be regarded as appropriate within the meaning of § 29 (1) sentence 1 UStG.

### Exclusion of the right to compensation

A claim for compensation is not possible if the contracting parties have agreed otherwise. The exclusion of a claim for compensation can be expressly agreed.

For example, the following agreement is used in practice:

"Future changes, including taxes, duties, fees, do not give rise to a claim for contract adjustment."

## Entitlement to compensation regularly in the case of benefits without the right to deduct input tax

The question of compensation may arise in particular where the recipient of the supply does not have a right of deduction for the supply received. Thus purchase of the service/delivery:

- to the private sector
- by entrepreneurs with turnover excluded from input tax deduction
- by small entrepreneurs

## 20. Need for organisational action

Before 1.7.2020 it must be ensured that programmes, master data, contracts, etc. comply with the new VAT rates of 16% and 5% respectively.

For example, adjustments or updates are required:

- Price lists, catalogues, flyers
- Order software
- Online distribution - price quotations
- Billing programs
- Electronic cash register systems
- Accounting software

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