

RWT



# Decrease of German VAT rate as of July 1, 2020

June 18, 2020

According to the decision of the German governing coalition, the value-added tax rate is to be reduced from 19 % to 16 % and from 7 % to 5 % for the period from July 1, 2020 to December 31, 2020. Unfortunately, despite the Federal Government's draft bill for the Second Corona Tax Assistance Act of June 12, 2020 and the draft letter from the Federal Ministry of Finance of June 15, 2020, many aspects still remain unclear. However, as July 1, 2020 is approaching fast, we would like to inform you about the most important issues in advance.

This means, for example

- Prices need to be recalculated, invoices must be adjusted,
- Lists and catalogues must be updated and
- ERP systems or computer programs must be reprogrammed.

It is therefore important to know in advance for which services and supplies the new VAT rates will apply. We have compiled an overview of the cases, taking into account the current legal situation as well as the draft bill and the draft letter from the Federal Ministry of Finance. It is possible that the new version of the law may still result in changes.

## 1. Origin of VAT

The question of which tax rate applies generally depends on when the tax is incurred.

### a) Basic cases (target taxation - Sollbesteuerung)

In case of target taxation, the VAT is incurred with the expiration of the advance return period in which the services and supplies were performed. The **moment of supply** - including work supplies - is usually identical with the moment of the procurement of the power of disposal. In case of a supply within the meaning of Section 3 para. 6 of the German Value Added Tax Act (UStG), the invoice shall state the date of commencement

of transport or dispatch of the goods as the date of supply. This day is also decisive for when the tax is incurred.

**Services** - including work services - are generally deemed to have been performed at the moment of their completion.

Neither the date of invoicing nor the date of payment shall be relevant for the incurrence of the tax in cases of target taxation.

### b) Reverse Charge according to Section 13b UStG

The VAT for services performed by a foreign EU entrepreneur, which are taxable in Germany according to the basic rule for B2B cases, is already incurred in the month in which the service is performed. For the other services covered by section 13b UStG (e.g. work supplies, construction work), VAT is incurred when the invoice is issued, latest by the end of the month following the execution of the service.

If, according to these principles, the moment at which the VAT is incurred falls in the period from July 1, 2020 to December 31, 2020, the recipient of the service as the tax debtor must apply the reduced tax rates. Correspondingly, input tax can only be deducted in the amount of the reduced tax rates.

### c) Partial services

A partial service is a part of an economically divisible service for which a separate remuneration is agreed. In case of target taxation, the VAT for a partial service is incurred with the expiration of the advance return period in which the partial service was performed.

## d) Permanent services

Permanent services are services intended to be provided for a certain or uncertain period of time. These include, among other things, services based on contracts for rentals, maintenance and leasing. Even for permanent services, VAT is generally incurred at the end of the service period. In case of permanent services, installment or monthly payments are often agreed. The agreed payment dates (e.g. monthly rental payments) allow partial services to be accepted.

## e) Down payments

Down payments are paid for a service or partial service that has not yet been performed. In deviation from the principles described above, the VAT in these cases is incurred by the end of the advance return period in which the advance payment was received. The VAT consequences that arise when finally performing the service or partial service on which a down payment is made remain unaffected. This means that the tax is incurred at the tax rate applicable at the moment the service or partial service is finally provided, even if a down payment has already been made. However, the final payment amount is reduced by the VAT on the down payment. Consequently, an advance payment made at a time before the tax rate reduction does not lead to an increase in VAT for a service or partial service performed after the time of the tax rate reduction, but rather to a refund. In overlapping periods advance and final invoices must therefore be prepared with the utmost care.

## f) Origin of VAT for actual taxation (Istbesteuerung)

For entrepreneurs who, in accordance with the application, calculate their tax on the basis of payments received, the VAT is incurred at the end of the advance return period in which the payment was received. The moment of supply or service is therefore not relevant. Nevertheless, the currently valid VAT Act as well as the draft letter of the Federal Ministry of Finance stipulates

that tax rate reductions are also applied to the actual taxation for transactions carried out after the relevant amendment has come into force, i.e. the moment of supply or service is also taken into account.

## 2. Input VAT deduction

With regard to input VAT, the invoice recipient must know whether and when he can claim the input tax in the advance return procedure. The input tax can be deducted in the advance return period in which the properly issued invoice is received by the recipient. If the VAT has been determined by a supplier in the correct amount, it is binding for the input tax deduction of the invoice recipient. If, however, an invoice has been issued which incorrectly shows the old higher VAT rates although the date of performance is later than July 1 2020, the recipient can only deduct the reduced, correct VAT rate as input tax because the difference is not owed according to law.

## 3. Transition

Since the reduction of the VAT rate will come in the very short term, it is not yet clear whether there will be a transition phase and, if so, in which form.

***Your RWT contact will be pleased to answer any further questions.***

## Author



**Yvonne Auer**

Tax Advisor (Germany) · Specialist  
Consultant for International Tax Law  
+49 7121 489-445  
yvonne.auer@rwt-gruppe.de