



VAT NEWSLETTER

Reduced VAT Rate for e-Books – Optional or Mandatory for Member States?

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1 Background

Directive 2018/1713 entered into force on 4 December 2018. It permits Member States to apply the reduced VAT rate to electronic publications of books, newspapers and periodicals (hereinafter “e-books”). Previously, the regular VAT rate had to be applied. The German Federal Ministry of Finance has promised a quick implementation.

Until 2014, e-book sales to private consumers were, within the EU, subject to the country-of-origin principle. Thus, granting reading licenses was taxable in the country in which the supplier was established. If the reduced rate had been permitted at that time, this would have led to distortions of competition. It would have been advantageous for e-book suppliers to have their registered seat in the Member State with the lowest reduced VAT rate. These suppliers would then have had a significant advantage over small, local suppliers of e-books and over paper books with higher taxation in the Member State of destination. The supplier's state of residence would have welcomed the tax revenue. As is often the case, not everyone follows the rules. France applied a reduced VAT rate of 5.5% to e-books, while Luxembourg subsequently applied a rate of just 3.0%. Unsurprisingly, the largest suppliers were based in Luxembourg.

As of 1 January 2015, the provisions changed. Since then, the country-of-destination principle applies to e-book sales to private consumers. The VAT treatment is determined according to the recipient's residence. This principle has been applied to B2B supplies since 01.01.2010. E.g., German customers have been paying 19% VAT since then – 12 percentage points more than they would have paid for the printed version of the book.



Dr. Anja-Maria Schreiber
Certified Tax Consultant,
Dipl.-Kaufrau

+49 (0) 89 217 50 12-37
anja-maria.scharrer@kmlz.de

2 Reduced taxation at the discretion of the Member States?

However, the reduced VAT rate does not apply automatically. The national legislators have to implement it. Several Member States already introduced the reduced VAT rate with effect from 1 January 2019. As regards the remaining Member States, there are strong arguments to the effect that they should also be obliged to implement this legislation. The reason being that the different taxation of books and e-books is an unequal taxation of two comparable items. This was previously expressly stated by the ECJ (see judgment of 07.03.2017 – C-390/15 – RPO). Such an unequal treatment is permissible only if there is sufficient justification. The ECJ saw this justification in the simple and legally secure taxation of electronically supplied services. Taxing all electronically supplied services at the same VAT rate is easier than applying several VAT rates.

Irrespective of whether the justification provided by the ECJ was convincing, it is no longer of relevance. With the decision to permit reduced VAT rates for e-books, electronically supplied services can be subject to different VAT rates. Obviously, the European legislator is now convinced that taxable persons, as well as their respective tax authorities are capable of dealing with various VAT rates for electronically supplied services. Thus, since 4 December 2018 there has been unequal treatment of books and e-books, which, in our opinion, lacks justification.

Therefore, national legislators are now being called upon to immediately adapt the national VAT law (perhaps even retroactively as from 4 December 2018?). This is required by the principle of equality, codified in Art. 20 of the Charter of Fundamental Rights of the European Union and, with regard to Germany, in Art. 3 para. 1 of the German constitution.

3 Consequences for the practice

In practice, the changed legal situation may be both advantageous and disadvantageous. E-book suppliers benefit, in particular, if they have agreed upon gross prices with their customers. The reduced VAT rate increases their margin. Also, the VAT treatment of so-called “bundles” can be simplified e. g. in the case of a combined magazine subscription of print and online editions. The latter are now subject to the reduced VAT rate. In the future, the previously required apportionment of the remuneration may, in many cases, be omitted. On the other hand, previously unproblematic bundles could pose new VAT challenges. This applies, for example, if a bundle contains music and videos, in addition to e-books. The VAT reduction does not apply to such contents. Databases, in particular, could be affected.

Not only will the final consumer and e-book suppliers benefit from the application of the reduced VAT rate, but also universities, research institutions, libraries, government agencies and municipalities. When purchasing electronic publications from suppliers abroad, these institutions have had, so far, to pay the regular VAT to the tax office (reverse charge scheme). As a rule, they are not entitled to deduct input VAT at all or only on a pro rata basis. Applying the reduced VAT rate could therefore lead to effective financial relief.

Both companies and public institutions should check how they could benefit from the changed legal situation. One thing needs to be made clear. If a national legislator fails to implement the new regulation or delays implementation, taxable persons will have to enforce their rights in court. The tax authorities will be unlikely to grant the reduced VAT rate in the absence of the appropriate national legislation. In addition, e-book suppliers should check their invoicing. If they continue to display the regular VAT rate, legal enforcement could become more difficult.