



Zero VAT rate on photovoltaic systems: Federal Ministry of Finance published draft of guidance

05 | 2023

1 Change in the tax rate for certain photovoltaic systems and their essential components

With effect from 01.01.2023, a VAT rate of 0% was introduced in sec. 12 para. 3 German VAT Act for the supply, import, intra-Community acquisition and installation of photovoltaic systems (PV systems) and their essential components. However, the application is subject to conditions (KMLZ VAT Newsletter 39 | 2022). "Private" operators of PV systems should, in particular, benefit, as they are no longer required to waive participation in the special scheme for small taxable persons. Since then, a number of questions regarding the interpretation of the regulation are have arisen in practice. It was feared that the associated bureaucratic burden would now rather steadily increase than decrease.

2 Statements in the draft guidance on individual requirements

In the draft guidance, the Federal Ministry of Finance (BMF) comments on the requirements of sec. 12 para. 3 VAT Act:

- Supply of PV systems: The 0% VAT rate applies to the supply of grid-connected PV systems and stand-alone systems. The rental of PV systems is subject to the regular VAT rate. In the case of leasing or hire purchase agreements, a distinction must be made as to whether this is a supply of goods or a supply of services.
- The operator of a PV system is the person who is subject to registration as an operator in the Market Master Data Register (MMDR) at the time of supply. If there is no obligation to register, it is to be assumed that the purchaser is an operator (simplification 1). The preceding supplies are subject to the standard VAT rate.
- Characteristics of the building and location of the PV system:
 - Dwelling/private dwelling is any enclosed space that can be used for living or sleeping (including, for example, gazebos or even caravans/ships if they are not moved or only moved sporadically).



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- Activities serving the public good/sovereign purposes: Buildings used for certain activities according to sec. 4 German VAT Act, VAT-exempt activities or activities subject to the reduced VAT rate for charitable, benevolent or ecclesiastical purposes pursuant to sec. 12 para. 2 no. 8 VAT Act, fall within the scope of the regulation.
- If buildings are used for both harmless and harmful (e.g., for commercial purposes) activities, it is sufficient if the harmless services predominate (50% rule).
- Proof: It is sufficient if the acquirer declares that the requirements of sec. 12 para. 3 German VAT Act are met.
- Eligible items: "Essential components" include, among other things, the inverter, roof mount, energy management system, solar cable, Wieland socket and backup box. In contrast, electricity consumers (e.g., charging infrastructure, heat pump, hydrogen storage) are not eligible.
- Eligible activities: The electrical installation directly related to the supply of a PV system is also eligible. In contrast, work that also benefits other persons (e.g., ground and roof work), in addition to repair and maintenance of PV systems, is not eligible.
- Supply of goods without consideration (e.g., electricity used for private purposes) is not taxable for new PV systems.
- Simplification 2: The 0% VAT rate is to be applied to all installations up to 30 kw (peak) registered in the MMDR. This also applies if the requirements are demonstrably not met.
- Simplification 3: For solar modules with an output of 500 watts or more, it is to be assumed that they are used for grid-connected PV systems or stand-alone systems. If they are not registered in the MMDR (then simplification 2), only the characteristics of the facility must be proven (see simplification 1 regarding the purchaser). The confirmation of the customer is sufficient for this.

3 Special case "old systems"

Many operators of a PV system completed before 01.01.2023 have waived participation in the special scheme for small taxable persons so that they are relieved of VAT via the input VAT deduction. These persons must consider the following:

- Change of operator: The sale or free gift of a PV system by a regular taxable person is considered a non-taxable transfer of a going concern. If the purchaser is a small taxable person, the change leads to an adjustment of the input VAT deduction for the purchaser of the PV system. He may have to pay VAT back to the tax authorities.
- Removal of a PV system from the taxable person's business: A removal of the PV system from the taxable person's business is only possible if the taxable person uses at least 90% of the generated electricity for non-business purposes. The supply of goods without consideration is then to be taxed at the 0% VAT rate.

4 Consequences for the practice

The draft guidance is, overall, to be welcomed. It confirms the hoped-for widest possible application of the 0% VAT rate for the supply of PV systems. The simplification regulations make it easy to apply the 0% VAT rate for modules with an output of between 500 watts and 30 kW (peak) only with few checks. For larger systems, it is sufficient for the customer to confirm that the conditions for the 0% VAT rate are met. This takes a lot of pressure off the practice, as the supplier need not fear a later assessment of 19% VAT, e.g., due to insufficient proof. The lack of taxation of a supply of goods without consideration for new PV systems is also to be welcomed. However, a disadvantage for the operators of old systems should not go unmentioned. This is because they must continue to pay the VAT on the supply of goods without consideration for as long as their PV system remains in operation. Rising electricity prices create an immense cost risk here. The tax authorities should consider accommodating these operators and, e.g., provide a more generous regulation for untaxed removal, at least of the privately used part of the old PV system.