



Zero VAT rate on photovoltaic systems - The Ministry of Finance's letter comes with changes

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1 Statements in the BMF letter on individual requirements

The German Federal Ministry of Finance (BMF) issued its circular letter regarding the zero VAT rate on photovoltaic systems on 27.02.2023. The zero VAT rate has been adopted in an even greater scope of application than provided for in the draft of the circular letter earlier this year (KMLZ VAT Newsletter 05 | 2023). According to the BMF's opinion, the preconditions for the application of the zero VAT rate are to be interpreted as follows:

- **The supply...:** Supplies that are to be qualified as a supply of goods are eligible. The supply is to be assessed as a single supply. The BMF letter gives examples of ancillary services which as such share the VAT treatment of the principal element, provided they are rendered by the same taxable person. Both the supply of goods (e.g., inverters) and other services (e.g., extension of the electric cabinet, provision of software, registration in the market master data register (MMDR)) can be included. The leasing of PV systems is subject to the regular VAT rate. Leasing or hire-purchase agreements are only eligible if they qualify as a supply of goods.
- **...of solar modules...:** grid-connected, stand-alone and rooftop PV systems supplied by a building contractor.
- **...as well as battery storage and essential components...:** items intended for the operation of PV systems or required by regulation. Some examples of delimitation can be found in the letter.
- **...to the operator of a PV-system...:** Only supplies to the operator (person in the MMDR) are eligible. Supplies beforehand (e.g., to intermediaries, lessors, rental sellers) are subject to the standard VAT rate.
- **...on or in the vicinity of a beneficiary building:** In addition to statements in the draft letter, also containers used as interim solution in schools should constitute a tax-privileged building, provided they are used for sovereign purposes.



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- **Installation work:** Installation of a PV system and the associated activities (e.g., electrical installation) are if they are provided to the PV system operator as an independent service.

The supplier must prove that the conditions for the application of the zero VAT rate are fulfilled. It is sufficient if the purchaser declares this, e.g., contractually (also possible through general terms and conditions).

2 Simplification rules

To facilitate practice, the BMF has flanked the new regulation with simplification rules. However, these always apply to the individual requirements and may not be mixed up when examining the zero VAT rate:

- Beneficiary building I: The location requirements are always deemed to be met if the output of the PV system does not exceed 30 kW (peak) and this has been entered in the MMDR.
- Beneficiary building II: Where the building is used for harmful and non-harmful purposes, it is considered to be a beneficiary if the area used for non-harmful purposes is more than 10% (the draft letter contained a 50/50 rule).
- Operator: This is the one who is subject to registration in the MMDR, even if no registration takes place.
- PV system I: Solar modules with an output >300W (in the draft letter >500W) are deemed eligible goods.
- PV system II: If the PV-system's output is less than 600W, the supplier is not required to provide proof. Then, the operator status of the customer is assumed (does not apply to supplies by manufacturers and wholesale supplies).

3 Special case "old systems"

The BMF letter maintains the statements contained in the draft (KMLZ VAT Newsletter 05 | 2023) on cases in which the operator of a PV-system completed before 01.01.2023 has waived participation in the special scheme for small taxable persons. This also includes the condition (probably without a legal basis) that a removal of a PV system from the taxable person's business is only possible if the taxable person uses more than 90% of the generated electricity for non-business purposes. Instead of changing this critically viewed requirement (e.g. through partial untaxed removal), the BMF has provided for a simplification rule: if the PV system is equipped with a battery storage, the conditions are deemed to be fulfilled and an untaxed removal is possible.

4 Consequences for the practice

The BMF letter is to be welcomed. The BMF has accommodated practice in many areas and has added clarifications and simplification regulations. The various simplification regulations will relieve certain sectors. For example, online trade in particular will benefit from the elimination of verification requirements for systems with output of less than 600W. In this sector, the otherwise required customer confirmation is difficult to obtain due to the lack of direct contact. Nevertheless, the question remains as to when an online trader qualifies as a wholesaler. It also remains that not all players can apply the new regulation without further ado. Providers of leasing and hire-purchase models in particular need to take action if they want to benefit from the regulation. They have to turn two crucial screws and adapt their contracts with customers. Firstly, the service must be a supply of goods (and not supply of services) for VAT purposes. Secondly, the customer must also become the operator of the PV system. Another point of criticism is the requirement for the removal of an old system from the taxable person's business, which is not entirely comprehensible from a legal point of view. Now this is to be linked to the presence of a battery storage. This will lead to the retrofitting of battery storages in order to favorably remove a PV system. However, from an ecological and economic point of view, battery storages do not make sense for every PV system. The BMF also fails to make a clear statement as to what a "battery storage" should be. After all, somebody might point out that the electricity generated can also be stored in a car.