



## New scope of discretion for reduced VAT rates and place of supply for supplies made available virtually

17 | 2022

### 1 Background

It is official: the VAT Directive has been amended with regard to reduced VAT rates. The previous concept had remained in place for 30 years. But 5 years ago, a reform was proposed by the European Commission. Since then, there has been much debate. It is a minor miracle that the Member States have now reached this compromise. And the compromise is satisfactory considering that the reduced VAT rates are one of the few margins for manoeuvre that Member States still have when it comes to VAT.

In future, the new rules will allow Member States more flexibility within a given framework. At the same time, equal treatment between the EU Member States will be ensured. This update will bring the VAT rules into line with the EU's major objectives, such as mitigating climate change, promoting digitalisation and protecting public health. In this context, the place of supply rules are also being adapted to new (digital) realities, as events can increasingly be participated in via streaming or virtually.

### 2 Overview of the changes

The changes can be summarised as follows:

- The list of supplies of goods and services (Annex III to the VAT Directive) is updated.
- New additions to the list include supplies that protect public health, are environmentally friendly and promote digital transformation.
- By 2030, the possibility for Member States to apply reduced VAT rates and exemptions to supplies considered harmful to the environment and the EU's climate change objectives will cease to exist.



Prof. Dr. Thomas Küffner  
Lawyer, Certified Tax  
Consultant, Certified Public  
Accountant

+49 (0) 89 217 50 12-30  
thomas.kueffner@kmlz.de

- By contrast, exemptions that cannot be justified as serving the common good will be abolished by 2032.
- Derogations and exemptions for certain supplies, which are currently applied in certain Member States for historical reasons, can, in future, be applied by all countries to ensure equal treatment and to avoid distortions of competition.
- The following supplies of goods and services have been added to the list:
  - digital services, such as internet access and live streaming of cultural and sporting events;
  - items that serve to protect public health, such as personal protective equipment and certain medical equipment, as well as other items that are considered necessary aids for the disabled;
  - certain items, such as bicycles, ecological heating systems and solar panels, which are installed in private households and public buildings and which can have a positive impact on EU climate change priorities;
  - various items and services deemed appropriate and useful by Member States and which generally serve the common good.
- Member States will be entitled to apply two reduced VAT rates of at least 5% to supplies of goods and services in up to 24 categories listed in Annex III to the VAT Directive.
- In addition, Member States can apply a reduced rate of less than 5% and an exemption with input VAT deduction (“zero-rating”) to a maximum of seven categories on the list that are classified as necessary to meet basic needs, such as foodstuffs, medicines, or pharmaceutical products.

In addition to the changes to the VAT rates, there is also an important new regulation regarding the place of supply of services. In the future, the EU legislator wants to ensure that the destination principle applies to all services that can be provided electronically. For this reason, Articles 53 and 54 of the VAT Directive will be adapted with regard to admission rights to taxable persons and event services to non-taxable persons. Supplies that can be made available by streaming or other virtual means will be taxable where the recipient is established. The Member States have to transpose this amendment into national law by 31.12.2024.

### 3 Impact on Germany

Every federal government is permitted to “tweak” something about the reduced VAT rate during its legislative period. In recent years, this has included accommodation services, restaurant services and rail transport services. The traffic light coalition will certainly also make use of the new scope of discretion. This is all the more true as the new requirements from Brussels mean that there is no longer any headwind to be feared from there. According to the coalition agreement, the only thing that has been decided so far is that inclusive businesses will be better off in terms of the reduced VAT rate. The basis for this change has now been created by the new no. 15 of the Annex III.

It will be interesting to see to which sectors Germany will extend the reduced VAT rate. It will also be interesting to see whether Germany will make use of the new possibility and introduce a VAT exemption with the right to input VAT deduction into the German VAT Act. I am prepared to bet that such an exemption will then apply to a supply of services in the Green Deal sector. Despite all of the euphoria for the new opportunities from Brussels, it should not be forgotten that any reduced VAT rate will, in practice, lead to demarcation problems and thus to tax disputes. This should be an important reminder to every politician. However, it is doubtful whether this will go so far as to abolish reduced VAT rates in Germany. This would amount to political suicide.