



Corona: reduction of VAT rates and postponement of payment of import VAT (Update)

21 | 2020

1 Developments

The Federal Ministry of Finance sent a draft bill to the federal ministries on 6 June asking for comments by 8 June. The cabinet will then deal with the draft bill on 12 June and the parliamentary group will examine it on 16 June. The readings in the Bundestag are scheduled for 17-19 June and the approval of the Bundesrat is planned for 26 June. An accompanying letter from the Federal Ministry of Finance, which is to be based closely on the letter of 11.08.2006 on the last VAT rate change (from 16% to 19%), is already being prepared.

2 Cost / Benefit

The budget is expected to be burdened with EUR 20 billion from the VAT rate reduction and EUR 5 billion from the postponement of the import VAT due date. However, there is uncertainty as to the extent to which prices will be adjusted and consumers will benefit. The statement in the explanatory memorandum to the law that the temporary reduction in VAT rates will lead to considerable additional expenditure for the economy makes it clear why the amendment of the German VAT Act (UStG) is being discussed, in some cases in a very emotional way.

3 VAT rate reduction

The reduction and subsequent increase of VAT rates is to be regulated in sec. 28 UStG. A temporary version of the provisions stipulating the VAT rates is to be included there for the period from 1 July to 31 December 2020.

As previously stated in the KMLZ Newsletter 18 | 2020, the application of the VAT rates will depend on when the supplies are provided. Services are deemed to have been rendered at the time of their completion, i.e. on the last day (sec. 13.1



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para. 3 of the Administrative VAT Guidelines - UStAE). Supplies of goods including installation are deemed to have been made when the takeover/acceptance takes place (sec. 13.2 para. 1 UStAE). For pure supplies of goods, it generally depends on the transfer of the right of disposal. This is particularly important in special cases such as tooling, which are often invoiced at a much later date. In the case of supplies of goods including transport, the starting date of the transport is deemed to be the date of supply (sec. 13.2 para. 2 UStAE), irrespective of Incoterms or deviating local GAAP or IFRS regulations. If this date falls in the "low-tax phase", the turnover will be taxed at the lowered VAT rate. This also applies to partial supplies, if these have been agreed upfront (sec. 13.4 UStAE). By agreeing on partial supplies, turnover can therefore be partly shifted into the "low tax phase".

Since errors seem to almost be pre-programmed in this respect, there is currently a discussion going on about whether a non-complaint rule for the B2B sector would be conceivable. The application of an incorrect (too high) VAT rate may be classified as irrelevant and the deduction of input VAT may not be objected to if the supplier has paid the VAT.

There will probably be a simplification rule for down payments again, both now for the reduction and later for the increase. The taxation of down payments can then be corrected in the final invoice to the VAT rate to be applied at the time the supply is rendered. A correction of the down payment invoice would then not be necessary. If it is already clear beforehand that the supply will be rendered at a time when a different VAT rate will apply, the down payment invoice can, however, already be issued with the different VAT rate.

There have been statements regarding single-purpose vouchers, according to which such vouchers can no longer be issued because the VAT rate would no longer be fixed. This is contrary to the wording of sec. 3 para. 14 UStG, according to which the VAT owed must be fixed at the time the voucher is issued (issue = turnover), which would still be the case. This is a question that affected companies must deal with.

Simplification rules will presumably be introduced again for deposit amounts, annual bonuses, telecommunications services, electricity/gas/heat supplies etc., at least if the Federal Ministry of Finance follows its letter of 11 August 2006 on the last VAT rate increase.

Benefits in kind, such as the provision of vehicles to staff or staff catering etc., will also be affected by the change and should not be forgotten. The relevant departments, such as payroll accounting, must be informed accordingly.

4 Due date for import VAT

A paragraph 3a is to be inserted in sec. 21 UStG: "Import VAT for which a deferment of payment has been granted in accordance with Art. 110(b) or (c) ... (Union Customs Code) shall, by way of derogation from customs legislation, be due on the 26th day of the second calendar month following the month in question". An extension of about 6 weeks will therefore be granted. According to Art. 110 UCC, to which reference is made via sec. 21 para. 2 UStG, only a deferral of payment with a maximum of 31 days' notice can be granted. However, Art. 211 of the EU VAT Directive gives the Member States a free hand with regard to import VAT. Against this background, different due dates will apply to customs duties and import VAT in future. However, it is currently not possible to predict when the regulation will come into force. Since the customs administration must first create the IT technical prerequisites for this, the date of application should be flexible and the following paragraph 31 should be added to sec. 27 UStG: "The date from which sec. 21 para. 3a ... is to be applied for the first time will be announced in a letter from the Federal Ministry of Finance."