



Federal Ministry of Finance: flat rate for splitting up total sales prices in the catering and hotel sector

28 | 2020

1 Background

According to the Corona Tax Aid Act, the reduced VAT rate applies to the consumption of food for immediate consumption on the premises for the period 1 July 2020 to 30 June 2021 (see KMLZ VAT Newsletter 16 | 2020). In addition, on 29 June 2020 the Federal Council (*Bundesrat*) approved the Second Corona Tax Aid Act, according to which the standard VAT rate has been cut from 19% to 16% and the reduced VAT rate has been cut from 7% to 5%. The reduced VAT rates will apply for the period 1 July 2020 to 31 December 2020 (see KMLZ VAT Newsletter 18 | 2020, 21 | 2020 and 23 | 2020).

For the catering industry, the question has subsequently arisen as to how the consideration, in the case of total sales prices for food and beverages (so-called combined offers), is to be split up with regard to the current VAT rates (e.g. buffet incl. beverages, multi-course menu incl. accompanying wine). Similar practical problems arise concerning accommodation providers, which are required to split up the flat rate price for overnight stays (reduced VAT rate) and breakfasts (standard VAT rate) according to the VAT rates.

2 Application of a flat rate as regards the total sales price in the catering industry

In principle, the total sales price is to be split according to the individual sales prices, in cases where the taxable person also sells the food and beverages separately. However, if no retail prices exist, the apportionment according to the retail prices will not produce the correct results. This problem arises, for example, in the case of free refill offers for drinks as part of a buffet, for which no retail prices exist.



Dr. Matthias Oldiges
Lawyer

+49 (0) 211 54 095-366
matthias.oldiges@kmlz.de

According to the Federal Ministry of Finance's letter of 2 July 2020, the tax authorities will not object, during the temporary application of the reduced VAT rate to the consumption of food for immediate consumption on the premises, if a catering provider calculates the portion of consideration attributable to the beverages by applying 30% of the total sales price for the combined offer.

3 Adjustment of the existing flat rate for the supply of accommodation services

The supply of short-term accommodation services, such as hotel accommodation, is subject to the reduced VAT rate in accordance with sec. 12 para. 2 no. 11 sentence 1 of the German VAT Act. The reduced VAT rate does not apply to the supply of ancillary services that do not directly serve the purpose of accommodation (sec. 12 para. 2 no. 11 sentence 2 German VAT Act). The tax authorities have listed examples of those supplies, which are not deemed to be directly related to accommodation. According to this list, the supply of breakfast, in particular, is subject to the obligation of being split from the price of the accommodation (see 12.16 para. 8 sentence 4 indent 1 of the German VAT Circular). In the past, the tax authorities allowed a flat rate for the allocation of the consideration in the case of a total sales price for the supply of accommodation services and supplies not directly serving the purpose of accommodation (e.g. breakfast) (sec. 12.16 para. 12 sentence 1 of the German VAT Circular). According to this, the accommodation provider can calculate the portion of the consideration payable for supplies not directly serving the accommodation by applying 20% of the flat rate (sec. 12.16 para. 12 sentence 2 of the German VAT Circular).

As a result of the reduced VAT rates applicable from 1 July 2020 to 30 June 2021, the tax authorities will not object if an accommodation provider calculates the portion of consideration payable for supplies which are subject to the regular VAT rate and not directly related to accommodation (e.g. minibar, parking, telephone and internet) by applying 15% (instead of formerly 20%) of the total sales price. The reason is that the supply of breakfast (with the exception of beverages) during the period 1 July 2020 to 30 June 2021 is now, just like the supply of accommodation services, subject to the reduced VAT rate.

4 Practical consequences

Against this background of actual apportionment difficulties and the limited period of application of the VAT rate reduction, the flat rate is appropriate for use by the catering industry. However, in many cases the flat rate taxation is likely to lead to incorrect results. This will be the case if the actual portion of the consideration payable for the supply of beverages differs significantly from the equivalent of 30% of the total sales price. Affected companies should therefore check whether the portion of consideration payable for the supply of beverages is approximately 30% of the total sales price. If this portion is much lower, it is advisable to split up the consideration according to the retail prices or, if not available, e.g. according to the cost of goods.

In principle, the adjustment of the flat rate for supplies not directly serving the accommodation is also a simplification for accommodation providers. However, if a provider only offers breakfast and no further services such as parking, minibar, Internet etc, in addition to overnight accommodation, the application of 15% of the total sales price for supplies which are subject to the regular VAT rate and not directly related to accommodation might, in many cases, lead to incorrect results. In these cases, the accommodation providers should come to an agreement with the competent tax office on the appropriate allocation of the total sales price. Moreover, it is already doubtful whether the obligation to split the total sales price in accordance with sec. 12 para. 2 no. 11 sentence 2 of the German VAT Act is compatible with EU law (see KMLZ VAT Newsletter 04 | 2018).