



VAT NEWSLETTER

VAT treatment of the publisher's share – Federal Ministry of Finance's letter of 14 October 2021

35 | 2021

1 Federal Ministry of Finance's letter on VAT treatment of the publisher's share

The concept of the "publisher's share" refers to distributions made by collecting societies to publishers. On the one hand, the collecting societies generate revenue from the exploitation of rights of use under copyright law. In principle, authors contribute this rights to the collecting societies for exploitation on a fiduciary basis. On the other hand, the revenue is derived from statutory remuneration claims such as in accordance with sec. 27 and secs. 54, 54a and 54c of the German Copyright Act. Statutory remuneration claims are payment claims that represent compensation for the permitted use of copyrighted property rights. This includes, e.g., the fees that producers of copiers must pay to the collecting societies.

The collecting societies distribute the revenue generated to their members in accordance with their distribution plan. Members consist of authors and, under certain conditions, publishers. The distributions to the authors are subject to the reduced VAT rate, as these distributions constitute consideration for the transfer of rights by the authors. However, until very recently, it has remained unclear, from a VAT perspective, as to how the publisher's share was to be treated. Above all, it was disputed as to whether supplies of services for consideration existed between publishers and collecting societies. In particular, this question arose against the background that publishers generally do not contribute any rights to collecting societies. Now the Federal Government and the federal states (*Länder*) have agreed on a uniform legal interpretation. Here, a distinction is made between the distribution of revenue from statutory remuneration claims and rights of use under copyright law.



Eveline Beer
Lawyer, Certified Tax Consultant

+49 (0) 211 54 095-335
eveline.beer@kmlz.de

2 Publisher's share of revenue from statutory remuneration claims

Already in 2017, the ECJ ruled, in the *SAWP* case (C-37/16), that authors do not carry out supplies of services to producers and importers of devices and storage media. Rather, the payment of the statutory remuneration is compensatory in nature and is therefore non-taxable. The Federal Ministry of Finance now clarifies: The distribution of the publisher's share from revenues arising from statutory remuneration claims is also not subject to VAT. Thus, there is no supply of services provided between the publisher and the collecting society. This clarification is to be welcomed.

However, the collecting society renders supplies of collection services to publishers and authors by collecting money from the parties liable to pay and distributing this money to both, publishers and authors. These supplies of collection services are taxable at the standard VAT rate.

As a rule, device producers pass on the copyright fees that they must pay to the collecting societies, to their customers, at the time they sell a device. The Federal Ministry of Finance's letter regulates that the copyright fees charged, will increase the taxable amount for the supply of the device. As a result, VAT at the standard VAT rate is due on the copyright fees.

3 Publisher's share of revenue from rights of use under copyright law

If, however, the publishers participate in the revenue generated from rights of use under copyright law, a supply of services for consideration between the collecting society and the publisher may, in principle, exist. In this case, the distribution of the publisher's share is deemed to be the consideration paid for a supply carried out by the publisher to the collecting society. This requires that the publisher provides recognised publishing activities to the collecting society. A catalogue of such recognised activities is listed in the Federal Ministry of Finance's letter. In addition to the classic publishing of the work, these activities include, inter alia, supplies of administration and intermediary services. If the publisher provides at least one of the supplies of services listed in the catalogue, VAT at the rate of 19% is payable on the publisher's share. In principle, the collecting society can then claim input VAT deduction from this.

If, on the other hand, the publisher does not provide any of the supplies of services listed in the Federal Ministry of Finance's letter, there is no supply of goods and services for consideration between the publisher and the collecting society. In this case, the respective regulations in the collecting society's distribution plan and in the publishing agreement are to be taken into account. Depending on the circumstances, the publisher's share may be regarded as consideration from a third party for a supply carried out by the publisher to the author. Or as a payment by the author to the publisher, in an abbreviated payment procedure, for a supply carried out by the publisher. In both cases, the established accounting system of the collecting societies would have to be changed. The collecting societies would no longer be entitled to claim input VAT deduction from the distribution of the publisher's share. Since many authors are categorised as small enterprises, they could be charged with non-deductible input VAT.

4 Recommendation for action

The Federal Ministry of Finance's letter is to be applied in all open cases. A non-objection regulation applies to all remuneration claims arising by the end of 2021. By then, at the latest, the collecting societies will have to adapt their accounting practice to the principles in the Federal Ministry of Finance's letter. Management companies, authors and publishers are therefore well advised to now review their service relationships and adjust them, if necessary. Above all, in the sector of rights of use under copyright law, there is some room for flexibility.