



7% VAT on gas and district heating

1 Federal Council approves reduction of VAT rate for gas and district heating

One week after the German Bundestag, the German Bundesrat has now also voted, in today's session (7 October 2022), on the temporary VAT reduction on supplies of gas and district heating. As from 1 October 2022 to 31 March 2024, a VAT rate of 7%, instead of the usual 19%, will be applied. Gas and heat suppliers are called upon to pass on the full reduction to consumers in order to relieve them of the current high energy costs. As soon as the German Federal President has officially approved the law and it has been published in the Federal Law Gazette, the VAT reduction will come into force with retroactive effect as from 1 October 2022.

2 Discussion about the gas levy and its VAT liability

When it became clear in Berlin this summer that the gas levy would be subject to VAT as part of the gas price, the Federal Ministry of Finance submitted an application for VAT exemption to the EU Commission. After a brief examination, the Commission rejected this application. In fact, the VAT Directive does not provide for any exemption for this type of levy. As a result, the reduction of the VAT from 19% to 7% for the supply of gas via the natural gas system was initiated by legislation in order to compensate for the price increase by means of the VAT payable on the gas levy. Although the initially planned gas levy was withdrawn on 30 September 2022, the VAT reduction for the supply of gas via the natural gas system was retained (sec. 28 para. 5 of the German VAT Act – new version).

In the course of the legislative process, the reduction of the VAT rate was extended to the supply of heat via a heating network (sec. 28 para. 6 of the German VAT Act – new version). This is due to the fact that district heating is often generated



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using natural gas. The reduction of the VAT rate for natural gas and district heating only became possible through an amendment to the VAT Directive in April 2022. According to Art. 98 para. 1 of the VAT Directive, EU Member States have, since April 2022 been permitted to apply the reduced VAT rate to the supply of district heating and natural gas. In the case of the supply of natural gas, however, this is only possible until 1 January 2030 (Annex III, No. 22, VAT Directive).

3 Short-term reduction of the VAT rate / retroactive effect / Federal Ministry of Finance's draft letter

The very short-term reduction of the VAT rate from 19% to 7%, which also retroactively applies as from 1 October 2022, will lead to major problems for those gas and heat suppliers affected by it. Thus, on 22 September 2022, the Federal Ministry of Finance published a draft letter on its website. The draft contains a number of simplification and non-objection regulations, focused on supplies of natural gas. Since the VAT rate reduction was only extended to the supply of heat via a heating network later in the legislative process, the draft Federal Ministry of Finance's letter does not yet contain any regulations on this. An update is expected shortly.

3.1 General application rule and special features for gas supplies

According to the general application rule pursuant to sec. 27 para. 1 of the German VAT Act, the VAT rate change is applicable to supplies made on or after 1 October 2022 (sentence 1). According to sentence 2, this also applies insofar as the VAT for this – e.g. in the case of payments on account – has accrued prior to this date. In these cases, the VAT calculation is only to be amended in the filing period in which the supply is carried out (sentence 3).

Regarding the special features of supplies of gas: these are only to be treated as being executed at the end of the respective meter reading period. The payments on account made during the meter reading period therefore result in the VAT liability in the filing period in which they are received. The general application rule, pursuant to sec. 27 para. 1 of the German VAT Act, will therefore result in a customer's entire gas consumption being subject to the VAT rate applicable at the end of the meter reading period, even if a different VAT rate applied at the beginning of this meter reading period. In order to ensure the intended broad impact of the VAT rate reduction, the following regulations will apply: if a meter reading period ends between 1 October 2022 and 31 March 2024, the supplies of the entire meter reading period will be subject to the reduced VAT rate of 7%. If a meter reading period ends after 31 March 2024, the supplies of the entire meter reading period will be subject to the VAT rate of 19%. This scenario can be avoided if the gas supplier invoices separately by 31 March 2024. The Federal Ministry of Finance's draft letter provides for pragmatic simplifications with regard to the question of how separate invoicing is to be carried out.

3.2 Incorrect (too high) VAT rate in the B2B sector

If the supplying taxable person has shown a VAT rate of 19% in his invoice for the period between 1 and 31 October 2022 and has also paid this VAT amount to the tax office, it will, according to the Federal Ministry of Finance's draft letter, not be objected to if the taxable person does not correct the VAT shown in the invoices. A recipient entitled to input VAT deduction may deduct 19% VAT as input VAT for reasons of practicability.

3.3 Further regulations in the Federal Ministry of Finance's draft letter

The Federal Ministry of Finance's draft letter contains further regulations, e.g. on the scope (e.g. biogas via natural gas system, installation of a gas house connection) and on the start of application (invoicing on the basis of the so-called gas day, commencing at 6.00 a.m.).