



Annual Tax Act 2022 (draft): Zero VAT rate on photovoltaic systems

1 Government draft of the Annual Tax Act 2022

The government draft of the Annual Tax Act 2022 (BR-Drucks. (*Bundesrat Printed Matter*) 457/22 of 16 September 2022) contains a new paragraph 3 in sec. 12 of the German VAT Act. It provides, inter alia, for a zero VAT rate which applies to the supply and installation of solar modules if the gross output of the photovoltaic system (PV system) does not exceed 30 kilowatts (peak). A zero VAT rate means that the supplier/installer is not liable for VAT (VAT rate 0%), but can, nevertheless, deduct input VAT for his procured goods and services. The new regulation shall come into force on 1 January 2023 if the German Bundestag and Bundesrat agree.

2 Up to now, operators of private PV systems have been forced into VAT liability

As a rule, anyone who has a PV system installed on their house is only entitled to have the VAT of 19% refunded as input VAT by the tax office if they waive participation in the special scheme for small taxable persons (sec. 19 of the German VAT Act, the so-called option for standard taxation). If the system operator opts for standard taxation, he is bound to this VAT treatment for at least five years. During this period, he is required to file VAT returns - just like any other taxable person. This deters many operators of PV systems from seeking a refund.

3 Zero VAT rate – a liberating novelty

The planned zero VAT rate is a novelty in German VAT law. The supply and installation of smaller PV systems will be taxed at a VAT rate of 0% as from the turn of the year, i.e. no VAT will be due.



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Nevertheless, the supplier/installer will be entitled to deduct input VAT for his procured goods and services (e.g. from the purchase of the solar modules). To date, the German legislator has achieved this objective through genuine VAT exemptions. Here, the exclusion of input VAT deduction provided for in sec. 15 para. 2 sentence 1 no. 1 of the German VAT Act is abolished by means of the reverse exemption in sec. 15 para. 3 no. 1 of the German VAT Act. Against this background of tried and tested regulation of genuine VAT exemptions (with input VAT deduction), the question arises as to what prompted the German legislator to adopt this new approach in applying the zero VAT rate.

Apart from this specific approach in the legislative regulation technique, the new regulation is to be welcomed: the zero VAT rate will lead to a tax relief for private operators of PV systems. Both the supply and the installation of the PV system will not result in any VAT burden for the operator, so that he will no longer be required to waive the special scheme for small taxable persons. An input VAT deduction will no longer be required, as the PV system will not be subject to 19% VAT. This will also eliminate the need to submit VAT returns for the following five years.

4 Amendment of the VAT Directive

The planned zero VAT rate for PV systems has only become possible through an amendment made to the VAT Directive in April 2022. According to Art. 98 para. 2 of the VAT Directive, in addition to two reduced VAT rates, a VAT exemption, with a right to input VAT deduction (zero-rating), can also be granted. However, this only applies to supplies of goods and services listed in Annex III to the VAT Directive. No. 10c of Annex III deals with the “supply and installation of solar panels on and near private dwellings, flats and public and other buildings used for activities in the public interest”.

5 Implementation in sec. 12 para. 3 of the German VAT Act (draft)

The planned zero VAT rate shall initially apply to supplies of solar modules (including electricity storage) to operators if the PV system is installed on or near private dwellings, as well as public and other buildings used for activities in the public interest. In doing so, the German legislator takes up the wording in Annex III to the VAT Directive. Furthermore, the draft considers these conditions to be fulfilled if the installed gross capacity of the PV system does not exceed or will not exceed 30 kilowatts (peak), according to the market master data register (*Marktstammdatenregister*). In a large number of cases, this regulation will remove any obligation on the part of the supplier to obtain information from the operator of the PV system about the type of use of the building. In addition to the supply, the installation of PV systems and storage systems should also benefit from the new regulation. And not only supplies within Germany will be covered by the zero VAT rate. The importation and intra-Community acquisition of solar modules and electricity storage systems will also benefit. The zero VAT rate can also apply to PV systems over 30 kilowatts (peak) if the system is installed near dwellings etc.

6 Order in 2022, supply/installation in 2023

Anyone ordering a PV system today will probably not have it supplied/installed until 2023. When ordering, private operators of a PV system should, in any case, ensure that the supplying taxable person also passes on the benefit of zero taxation. This is because, according to the legal regulation of sec. 29 of the German VAT Act, he is only obliged to do so if there are at least four months between the conclusion of the contract and the entry into force of the law. If the PV system was ordered prior to 1 September 2022, there is no need to act. However, anyone ordering between 1 September and 31 December 2022 should ensure, by means of a contractual provision, that the agreed gross price be reduced by the soon to be revoked 19% VAT in the case of supply/installation after 31 December 2022.