



Annual Tax Act 2019 – Reduced VAT Rate for E-books & Co.

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1 Introduction

On 29.11.2019, the German Federal Council approved the Annual Tax Act 2019 passed by the German parliament on 7.11.2019. In addition to numerous other amendments to the German VAT Act, the legislator is introducing the new regulation of sec 12 para 2 no. 14 of the German VAT Act. This provides a reduced VAT rate of 7% for e-books and comparable electronic products.

The new regulation will already enter into force with the publication and promulgation of the Annual Tax Act 2019 in the Federal Law Gazette. This is to be expected before the end of this year.

2 Reduces VAT rate

With the new regulation of sec 12 para 2 no 14 of the German VAT Act, the German legislator implements the Council Directive (EU) 2018/1713, which allows Member States to apply reduced VAT rates on e-books and e-papers. The purpose of the VAT reduction is to treat physical and electronic products equally. Therefore, the provision of books, newspapers and magazines in electronic form will in future be subject to the reduced VAT rate.

In particular, e-books, digital newspapers and magazines as well as comparable digital publications are subject to the conditions laid down in sec 12 para 2 No 14 of the German VAT Act. The amendment is meant to be the counterpart to



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the reduced VAT rate applicable to physically printed products such as books, newspapers and magazines in accordance with sec 12 para 2 no 1 of the German VAT Act in conjunction with no 49 of Annex 2 to the German VAT Act. Electronically provided audio books will also benefit from this new regulation.

In future, the provision of access to databases containing a large number of electronic books, newspapers or magazines will also be subject to the reduced VAT rate. In the initial draft of the Annual Tax Act 2019, a reduced VAT rate for databases was not foreseen.

3 Exceptions

However, the reduced VAT rate will not apply to any publications which are used entirely or essentially for advertising purposes. The same applies to publications which consist entirely or essentially of video content or audible music. According to the legislator, these contents are neither by their very nature nor by their function equivalent to a book or magazine.

4 Practical consequences

The producers of digital publications will be looking forward to the reduced VAT rate. Against the background of digitisation, the new regulation is a logical step. It guarantees equal treatment for printed and digital publications.

The previous problems with the allocation of the VAT rates for so-called bundles (e.g. newspapers with access to e-paper) are likely to be largely a thing of the past. This is because both components of a classic bundle, newspaper and access to an e-paper, are now subject to the reduced VAT rate.

On the other hand, in practice, it might become difficult to define whether publications that partly contain video content or music elements are still subject to the reduced VAT rate. The distinction is based on whether the video content or music elements are "essential". The law and the grounds of the law do not comment on the question as to when an "essentiality" can be assumed. In future, the tax authorities as well as the tax courts in specific cases will have to deal with this question.

Difficulties in drawing distinctions will also arise in the case of subscriptions or memberships which entitle the user to access various digital publications. Neither the law nor the grounds of the law provide any information as to whether and under what conditions these forms of making digital publications available will also benefit from the reduced VAT rate. As regards the legally compliant application, the practice will thus also depend on the clarification by the tax authorities and the tax courts.