



Zero VAT rate for the supply of photovoltaic systems: Ministry of Finance publishes further circular letter

49 | 2023

1 Zero VAT rate for supply of photovoltaic systems

With effect from 1 January 2023, a VAT rate of 0% (zero VAT rate) was introduced in sec. 12 para 3 of the German VAT Act for the supply, import, intra-Community acquisition and installation of photovoltaic systems (PV systems) and their essential components (KMLZ VAT Newsletter 39 | 2022). The main aim of the legislator was to reduce bureaucracy in favour of "private" PV system operators. However, due to the short-term implementation of the standard and the diversity of business models in the industry, most taxable persons experienced practical problems as a result of the unresolved scope for interpretation of the new regulation. In a circular letter dated 27 February 2023, the German Ministry of Finance (BMF) commented on the zero VAT rate and introduced several simplification regulations (KMLZ VAT Newsletter 14 | 2023). The BMF is now updating this with a further circular letter (BMF letter dated 30 November 2023).

2 Statements in the current BMF letter

The current BMF letter is primarily of a technical nature and is intended to clarify the previously published BMF guidance:

- **Supply as a coherent transaction:** The supply of a PV system with an electricity storage system constitutes a single supply and is to be regarded as a coherent transaction.
- **Beneficiary PV systems:** Solar carports and solar patio roofs are independent beneficiary PV systems. The necessary mounts are also taxable as essential goods at the zero VAT rate. However, the primary substructure of the systems is not VAT-rate-privileged.
- **Beneficiary electricity storage systems:** For reasons of simplification, electricity storage systems, with a usable capacity of at least 5 kWh, are assumed to be eligible goods. It is also clarified that, energy storage systems that store the electricity produced in hydrogen, are favoured. However, the hydrogen must only be used to convert energy



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back into electricity for consumption. The inevitable generation of usable heat is irrelevant at this point.

- **Other beneficiary services:** The extension of the electric cupboard is favoured, provided it is due to the acquisition of the PV system. This also applies if it is provided as an independent supply of service.
- **Non-beneficiary goods and services:** Electricity consumer machines that are operated with the PV system (e.g., heating appliances or heat pumps) are excluded. Any roof and ground services purchased in connection with the purchase of the PV system are also not favoured if they are provided as a separate service.

3 Special case "old systems"

Many PV system operators of PV systems, that were accepted ready for operation before 31 December 2022, have waived participation in the special scheme for small taxable persons in order to be relieved via input VAT deduction. However, the self-used electricity is then taxed at the standard VAT rate and burdens the operator. To compensate for this disadvantage, the BMF allows the PV system to be withdrawn at zero VAT rate if more than 90% is used for private purposes. This can be assumed, for example, if there is an electricity storage system. According to the current BMF letter, the withdrawal can still be made until 11 January 2024, with retroactive effect from 1 January 2023. For this, the taxable person must submit a declaration to the responsible tax office. However, the supply of electricity remains taxable until the binding effect of the option for standard VAT taxation (five years in total) expires.

4 Consequences for the practice

The "supplementary" BMF letter is to be welcomed. It provides clarity on questions that have, until its publication, remained unanswered. The exceptionally permissible retroactive withdrawal of the PV system enables operators to avoid VAT liability from 1 January 2023, provided their declarations are made on time. For the sake of practicality, the legal determination of how an asset, the private use of which exceeds 90%, could have been entered in the taxable person's business in the first place is not open to question at this stage.

The BMF letter specifies the time of supply of a PV system, including an electricity storage unit. Contrary to isolated opinions, the items cannot be assessed separately for VAT purposes if they were ordered together. The supply is deemed to have been carried out only after all items have been physically assembled and is ready for operation. Suppliers who invoiced a PV system in 2022, for which the electricity storage system was only subsequently supplied in 2023, must apply the zero VAT rate, overall. VAT already invoiced would generally have to be refunded to the customer. The question of whether, for the purposes of this regulation, an e-car should be regarded as an electricity consumer, or rather as an electricity storage system, which can, in future, be ordered together with the PV system at the zero VAT rate, is one that can, at least, be asked with a smile. When calculating the 90% threshold for "old systems", the e-car is likely to be taken into account as an electricity storage device.

The simplification regulation for electricity storage systems is also to be welcomed. In particular, the clarification that certain hydrogen electricity storage systems benefit from the zero VAT rate creates legal certainty. However, the regulation could have been more generous. Electricity storage systems with a significantly lower output are offered on the market at the zero VAT rate, even when it is technically obvious that these storage systems are not stationary and therefore are no beneficiary goods. Honest taxable persons who supply the goods at the standard VAT rate are penalized. They suffer a competitive disadvantage of 19%. Furthermore, other items that are absolutely necessary for the specific system, including DC-PV heaters, could also have been categorised as "essential", especially when the particular PV system is not able to produce electricity without them.