



VAT NEWSLETTER

## Update on temporary VAT rate reduction: Federal Ministry of Finance letter on the return to the “normal tax phase”

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### 1 Background

In addition to practical difficulties in implementation, the temporary VAT rate reduction has resulted in a variety of questions of substantive law being raised. The Federal Ministry of Finance already made reference to this issue in its letter of 30 June 2020 (see KMLZ VAT Newsletter 23 | 2020). This said letter has now been supplemented by the newly published letter, which focuses primarily on the issues associated with the return to the "normal tax phase" on 1 January 2021.

### 2 Advance and down payment invoices

The VAT rates of 16% and 5% are to be applied to down payments and advance payments received in the "low-tax phase". However, if it is certain that the supply in question will not be carried out until after 31 December 2020, no objection will be raised if the applicable VAT rate at the time of 19% or 7% is applied and invoiced. The recipient of such an invoice is entitled to input VAT deduction. The Federal Ministry of Finance is thus primarily clarifying the legal uncertainty that has existed to date as regards down payment invoices in such circumstances.

It is recommended that use be made of this non-objection regulation. The Federal Ministry of Finance has clarified that with respect to down payments and advance payments, which will be invoiced prior to 1 January 2021 and received after 31 December 2020, a VAT rate of 19% or 7% will apply, even if the invoice shows a lower VAT rate. The recipient is only entitled to deduct input VAT, in compliance with other applicable requirements, up to the amount of the VAT shown on the invoice. This situation must be avoided.



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### 3 Issuance of a voucher for a bindingly ordered object

Taxable persons, who find themselves in the “low-tax phase”, can issue single-purpose vouchers, thereby also making use of the VAT rates in the “low-tax phase for supplies”, which will be rendered in the “normal tax phase” upon the expiry of 31 December 2020. In these cases, the distinction between single-purpose and multipurpose vouchers must be observed. Against this background, the Federal Ministry of Finance has dealt with the question of vouchers for the supply of restaurant services. Here, using the tool “voucher” is particularly interesting. This is due to the fact that the temporary application of the reduced VAT rate for the supply of restaurant and catering services until 30 June 2021, in combination with the “low-tax phase”, leads to possible advantages of up to 14% VAT (5% until 31 December 2020 and 19% as from 1 July 2021). Therefore, a single-purpose voucher only exists in the case of supplies of restaurant services if the vouchers are explicitly limited to the purchase of food or beverages.

### 4 Issuance of restaurant vouchers

In addition, the Federal Ministry of Finance has specified delimiting characteristics with regard to mere down payments or advance payments. In the case of single-purpose vouchers, the place of supply and the VAT due for these supplies are already determined at the time the voucher is issued. However, the voucher is not linked to an individual supply in such a way that there is a specific object for which the voucher must be redeemed. Once the individual, specific subject of the supply has been determined, the payment is no longer a payment for a voucher but a down or advance payment within the meaning of sec. 13 para. 1 no. 1 lit. a, sentence 4 of the German VAT Act.

### 5 Special circumstances

In addition, the Federal Ministry of Finance letter contains simplifications and clarifications on the following issues:

- refunding of deposit amounts
- granting of annual bonuses
- discount for pharmaceutical products
- taxation of electricity, gas, water, cooling and heating supplies and sewage disposal  
(simplification provisions of the Federal Ministry of Finance letter of 30 June 2020 also apply to EEG feed-in and grid usage. It is irrelevant whether the recipient is an end consumer or a utility company).
- taxation of passenger transport by rail, regular service vehicles and trolleybus services
- special and compensatory payments for rental or leasing contracts
- VAT rate applicable in accordance with sec. 25 para. 3 sentence 3 of the German VAT Act (old version)
- margin scheme in accordance with sec. 25a para. 4 of the German VAT Act
- subscriptions to newspapers and magazines
- time of supply for supplies rendered by an insolvency administrator
- services of the scaffolding trade
- recurring supplies
- taxation of supplies in the hotel and catering sector