



VAT NEWSLETTER

Overview of the changes in VAT law for 2023

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Status as a taxable person:

- The concept of a “taxable person” has been modified “on the quiet” and at the last minute: Now, status as a taxable person is independent of whether the person has legal capacity under other regulations. This is an attempt to undermine the jurisprudence of the V. Senate of the German Federal Fiscal Court on the status of communities of part owners as non-taxable persons (see KMLZ VAT Newsletter 9 | 2019).
- The transitional regulation for the first-time application of sec. 2b of the German VAT Act (new regulation of the taxation of legal entities under public law) will be extended by another two years. The public sector thus has a full nine years to adjust to the change in the law – an unprecedented event in German tax legislative history. Furthermore, legal entities under public law will be given the option of applying the so-called cash accounting scheme (supplier calculates VAT on the basis of the remuneration received in accordance with sec. 20 of the German VAT Act).

VAT exemption:

- The VAT exemption for choirs and orchestras (sec. 4 No. 20 lit. a of the German VAT Act) is extended to all legal entities under public law (previously only federal, state and local authorities).

Cross-border movement of goods:

- The deadline of one month for amending the EC Sales List (sec. 18a para. 10 of the German VAT Act) is no longer decisive for zero-rating of intra-Community supplies.



Prof. Dr. Thomas Küffner
Lawyer, Certified Tax
Consultant, Certified Public
Accountant

+49 (0) 89 217 50 12-30
thomas.kueffner@kmlz.de

- Taxable persons established abroad are not entitled to input VAT refund if VAT was charged for a (generally zero-rated) pick-up export or an intra-Community supply.

VAT rate:

- Germany introduces the so-called zero VAT rate with full input VAT deduction for supplies of solar modules to the operator of a photovoltaic system. The zero VAT rate also applies to the components essential to the photovoltaic system and to the storage devices used to store the electricity. It is, however, required that the photovoltaic system be installed on or near private dwellings, flats or public and other buildings used for activities in the public interest. This requirement is deemed to be met if the installed gross capacity of the photovoltaic system does not exceed or will not exceed 30 kilowatts (peak), according to the market master data register (*Marktstammdatenregister*) (see KMLZ VAT Newsletter 39 | 2022).
- Until 31.12.2023, the reduced VAT rate of 7% on the supply of restaurant and catering services will remain in place. Drinks will continue to be excluded. The support measures for the catering industry introduced during the coronavirus pandemic should actually have expired at the end of 2022.
- The flat rate for agricultural and forestry operations will be reduced from 9.5% to 9.0% as from 01.01.2023.
- The temporary reduction of the VAT rate on gas supplies via the natural gas network and heat supplies via a heating network has already come into force. The reduction from 19% to 7% applies to supplies as from 01.10.2022 to 31.03.2024.

Reverse charge:

- Sec. 13b para. 2 no. 6 of the German VAT Act is extended to the transfer of emission allowances pursuant to sec. 3 no. 2 of the Fuel Emissions Trading Act (BEHG, Federal Law Gazette I, 2728) to another taxable person.

Input VAT deduction:

- The input VAT flat rate according to general average rates (sec. 23 of the German VAT Act) will be abolished as of 01.01.2023. Secs. 69-70 of the German VAT Implementation Code and the annexes thereto will thus also be repealed.
- The threshold for the application of the input VAT flat rate (average rate) for non-profit corporations (sec. 23a of the German VAT Act) will be increased from EUR 35,000 to EUR 45,000.

Record-keeping obligations:

- Council Directive (EU) 2020/284, introducing certain requirements for payment service providers, will be implemented by a newly amended sec. 22g of the German VAT Act as from 01.01.2024.

What changes are still pending?

The coalition agreement is now more than a year old. The following VAT promises have (still) not been realised:

- Maintaining the VAT exemption for supplies of educational services for the public good in conformity with Union law;
- Further development of import VAT in order to achieve a level playing field in European competition;
- Creation of a definitive VAT system at EU level;
- Electronic reporting system used for the creation, verification and forwarding of invoices to be introduced nationwide as soon as possible.