



VAT NEWSLETTER

## Ministry of Finance publishes new controversial form for 2021 VAT returns

62 | 2020

### 1 Significant Changes for 2021

In its letter dated 22 December 2020, the Federal Ministry of Finance (BMF) published the forms for VAT returns in 2021. In addition to the usual editorial amendments, the BMF is essentially changing the form in two places.

Firstly, the future form provides for a separate reporting field for supplies of services subject to the reverse charge mechanism pursuant to Sec. 13b para 2 No. 12 of the German VAT Act (services in the field of telecommunications). In future, taxable persons must declare corresponding services received in line 42 (box 84/85). Supplies consistent with Sec. 13b para 2 No. 12 of the German VAT Act must be declared together with other services rendered subject to the reverse charge procedure in line 49 (box 60). The legislature has only recently inserted Sec. 13b para 2 No. 12 of the German VAT Act into the law by virtue of the Annual Tax Act 2020 of 21 December 2020.

Secondly, the new form stipulates that, in future, taxable persons will have to separately declare subsequent changes to the taxable amount in their VAT returns when a claim becomes uncollectible. In the new form, the BMF provides line 73 (box 50) for the sales side and line 74 (box 37) for the purchases.

### 2 History

Until recently, trade associations had tried to convince the BMF to drop the planned separate declaration of the changes in the taxable amount. The associations had stated, among other things, that the draft forms were published quite late.



Dr. Christian Salder  
Lawyer, Certified Tax  
Consultant

+49 (0) 89 217 50 12-85  
christian.salder@kmlz.de

Significant implementation difficulties are to be expected for taxable persons, especially since the new requirement will necessitate extensive adjustments to taxable persons' IT systems.

The implementation difficulties will be made more extreme by the fact that the changes are not sufficiently clear. The form requests "Additional information on reductions according to Sec. 17 para 1 sentences 1 and 2 in conjunction with para 2 No. 1 sentence 1 of the German VAT Act". From this wording it is not clear what the taxpayer must fill out and in what circumstances. For instance, will it be necessary to fill out the two new boxes with each subsequent change in the taxable amount within the meaning of Sec. 17 para 1 sentence 1 of the German VAT Act? Or, will the boxes need filling out only if the changes are due to the fact that a claim has become uncollectible within the meaning of Sec. 17 para 2 No. 1 of the German VAT Act? Or will the new boxes require filling out in both instances?

Finally, it is doubtful whether the separate declaration of the change in the taxable amount when a claim has become uncollectible offers any added value in terms of securing tax revenue. In practice, there is some controversy as to how taxable persons and tax offices each separately reach the conclusion that a claim has become uncollectible. A congruent declaration by both taxable persons and their respective tax offices is not guaranteed.

The BMF has not responded to this fundamental criticism. Rather, it has just made it clear that only changes in the taxable amount need to be declared separately when a claim becomes uncollectible. All other cases of change in the taxable amount under Sec. 17 para 1 and 2 of the German VAT Act are not to be declared in the new reporting fields. Also, in relation to the criticism that the draft forms have been published far too late, the only reaction from the BMF has been to point out that the drafts were made available to IT developers (!) early on.

### 3 Challenges for taxable persons

The BMF's letter of 22 December 2020 appears to be the final word on this matter. Taxable persons must adapt to the requirements of the amended forms at short notice. The IT implementation of the requirements has obviously not progressed as far as would be desirable at this point in time. Even large IT providers have not yet finished their solutions. This is certainly not without reason: in order to be able to meet the new requirements, it is not enough to simply introduce a new tax code. Rather, a separate booking is required on every company's own accounts, which many companies have not yet implemented. If the accounting software does not offer a solution, the taxable persons concerned must create a manual solution for separate bookings. Regardless of the type of technical implementation, taxable persons should also ensure the necessary booking at the relevant time. In particular, it must be ensured that accounting staff is familiar with the various types of uncollectible debt (i.e. debtor's insolvency, statute of limitations restrictions, debtor substantially challenges the claim, bad debts).

For these reasons, in many cases the accounting department may need to undergo new training and the organization may need to be adapted. Given that the year is almost at an end, this situation will pose an enormous challenge for most companies, in addition to the challenges that are already pending due to the current crisis.