

SMC NEWSLETTER

– REMINDER –

SUSPENSE OF THE TEMPORARY REDUCTION OF VALUE ADDED TAX RATES

as of 1 January 2021

Dear Sir or Madam,

The end of 2020 is approaching - and with it the end of the six-month reduction in Values Added Tax (VAT) rates as a result of the "Second Corona Tax Relief Act".

Please note that, as things stand today, the tax rates that have been reduced to 16 per cent and 5 per cent since 1 July 2020 will now be **increased** back to their previous levels of **19 per cent and 7 per cent respectively on 1 January 2021.**

Following on from our first newsletter on this matter, we set out the general **principles** once again below:

- The **time of performance** continues to be decisive for the application of the tax rate; not the time of conclusion of the contract, invoicing or payment (exception: advance invoices).
- **Deliveries** are considered to be carried out at the time the power of disposal is obtained.
 - Start of transport/dispatch or acceptance
- **Other services** are deemed to be rendered at the time of completion of the service.
 - Ongoing services: End of the agreed service period (e.g. annual licence fees, etc.).
 - Partial services: Completion of the partial service (e.g. separately agreed trades and instalments for the construction of a building, etc.).);
 - Billing of architect/engineer services according to HOAI - no partial service.

Regarding the "**return**" on 1 January 2021, the application letters of the Federal Ministry of Finance (BMF) dated 30 June 2020 and, in particular, 4 November 2020 provide corresponding information, which we present in excerpts below:

- **Advance invoices** for services provided between 1 July - 31 December 2020, but invoiced before 30 June 2020 at 19 per cent or 7 per cent:

The service is taxable at 16 per cent/5 per cent on the part of the service provider. The recipient of the service may be obliged to correct the input tax deduction at the time the service is completed.

- **Advance invoices** for services rendered in 2021 can already be issued by the service provider before 31 December 2020 at 19 per cent or 7 per cent.

The input tax deduction is in general possible for the service recipient in the amount stated on the invoice.

- **Advance or down payment invoices** issued before 1 January 2021 showing 16 per cent/ 5 per cent, for which the supplier receives payment after 31 December 2020, are taxable at a rate of 19 per cent or 7 per cent at the time of service completion, even if the invoice shows a lower tax rate.

The input tax deduction for the recipient of the service is still possible only in the amount stated on the invoice.

- **Annual bonuses / Reduction in remuneration**

- 1st variation: Determination of the ratio of turnover before/after 30 June 2020; corresponding allocation of the reduction in remuneration;
- 2nd variation: Equal distribution of the reduction in remuneration over both half-years;
- 3rd variation: Waiver of apportionment and taxation of the full reduction in remuneration at 19 per cent or 7 per cent.

The service recipient considers this procedure accordingly within the scope of the input tax deduction.

- **Service charge settlement**

- Ancillary service to letting (e.g. electricity, water, heat, etc.): exact allocation to months mostly not possible; proper estimate applicable - estimate possible; probably 6/12;
- Additional remuneration for letting (e.g. maintenance, etc): allocation to the respective month; all months in 2020; entire rental period? - Implementation in practice still unclear; probably 6/12;
- Independent service (e.g. heating gas, heating oil): Time of service: depends on meter reading period.

- **Electricity, gas, water, cooling and heat deliveries** are generally made at the end of the meter reading period:
 - End of the meter reading period after 30 June 2020 and before 1 January 2021 -> Billing for the entire meter reading period is at 16 per cent and 5 per cent respectively;
 - End of the meter reading period after 31 December 2020 -> billing is carried out at a total of 19 percent or 7 percent; if necessary, agree on interim reading/billing;
 - For simplification, breakdowns by time period are possible in both cases.
- **Long-term contracts or contracts for permanent services** may have to be adjusted to the tax rates applicable from 1 January 2021; the same applies, for example, to rental invoices.
- **Attention:** the **taxation of restaurant services** (consumption on the spot) in support of the catering industry at the reduced rate, applicable under the "Corona Tax Assistance Act" from 1 July 2020 to 30 June 2021, will continue to apply (until 31 December 2020 at 5% / until 30 June 2021 at 7%).

If you have any questions regarding the necessary adjustments we will be happy to continue to assist you.

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