



## VAT

# Summary of the main consequences: relating to the VAT rate reduction from the 1st July 2020

State: End of July 2020

### 1. Opening general remarks

The federal government passed (in the scope of the recovery package), effective from the 3rd of June 2020, the temporary reduction of the VAT rates from 19% to 16% and from 7% to 5% respectively. The fact that the changes were introduced so quickly puts the entrepreneurs in the situation whereby they need to amend invoices, software systems and contractual agreements within a short period of time.

### 2. General presentation of possible contract or performance contents: impact

Supplies/transactions that need to be assessed could be:

- **Ongoing services** e.g. renting, leasing, maintenance, supervising or financial and payroll accounting, telecommunication services, licensing or service agreements
- **Work contracts:** Work delivery and work performance
- **Supply of goods**
- **Other services**

**Maintenance or renting contracts** are typically concluded for a period of many years or for an unlimited period, whereby the billing period is agreed on a monthly or annual period. E.g. invoices for maintenance services are mostly billed in the scope of annual invoices and in advance, thus invoiced e.g. in January 2020 for the total year 2020 (January to December 2020).



The purpose and content of a **telecommunication contract** could be e.g. a comprehensive package including an internet and a telephone connection. The contract period is normally for 24 months and does not extend automatically, if it isn't cancelled within a certain period. The invoicing of telecommunication services normally takes place every month.

**Service agreements** generally include other services such as software or tax advisory services which are invoiced in certain billing periods.

A **work contract** normally results in a **work delivery (that is, a supply of goods)** or a **work performance (i.e., a supply of services)**. Work contracts may arise in the constructing industry or in the service sector. Therefore, the contractual obligation of the performing entrepreneur is only fulfilled by completing the work. In most cases, the customer confirms the completion of the work through an acceptance protocol.

The **supply of goods** generally includes a transfer of the right of disposal of goods with and without movement of the goods. Thereby the transfer of the right of disposal is normally equivalent with the transfer of ownership under civil law, which still can be considered differently, depending on the agreed incoterms (Term and Conditions applying). In terms of the VAT rate reduction, the beginning of the transport (transport or shipment) is relevant.

**For all types of supplies there are the following billing methods:**

1. One-time billing of the supply of service or supply of goods
2. The contract itself relating to an ongoing service is considered as an invoice and includes all invoice details.
3. There is a permanent invoice in addition to the contract which includes all invoice details and applies for a certain/uncertain period (e.g. renting contracts)
4. In addition to the contract, there may be separate billings dates, and this is due to agreed billing periods (e.g. maintenance or telecommunication contracts)

If the **customer is a private person ("Consumer")**, the contract normally includes a **gross price agreement**. In cases where the customer is a **VAT taxable person ("Business")**, the contract typically includes a **net price agreement**.

In the following statements we assumed that all services are performed within Germany and are therefore VAT taxable in Germany.



### 3. VAT treatment / general definitions

#### a. Ongoing services – definition

Services, which are contracted for a longer period of time are – in terms of VAT – considered as **ongoing services**. For ongoing services, a longer period can be an agreement about a time scope of many months, years or also without an exact termination of the performing time. Generally, ongoing services are considered as carried out, when the agreed service period ends. In the case of a contract with a performance period of 24 months, the ongoing service would therefore be considered as carried out with the end of the 24<sup>th</sup> month.

**Exception: Partial services**, see below

#### b. Work contract, supply of goods/ supply of services – definition

With regard to a **work contract leading to a supply of goods**, the performing entrepreneur has to fulfil a work contract where he delivers the main material relating to the work. Typically, this is considered fulfilled through a work acceptance protocol and without goods being moved but from a VAT point of view, it is **considered as a supply of goods**.

On the other hand, a **work contract leading a supply of services** applies if the entrepreneur adds no main material to the work, so that the services element predominates. From a VAT point of view, this is considered as supply of services with different VAT consequences to a supply of goods.

Please take into consideration that even an advisory service may be agreed to be within the scope of a work contract.

The classification of the performance being a supply of goods or a supply of services is irrelevant regarding the VAT rate reduction, if both types are carried out in Germany, thus then they are therefore VAT taxable. **Relevant** for VAT purposes is always the **date of supply**, which in both cases would be the approval or the completion of the work (acceptance protocol).

Taxable amounts that have been invoiced in advance are interim invoices without a separate (partial) supply of service. The taxation of interim invoices takes place, when collecting the partial amount.

**Exception: Partial services**, see below





### c. Exceptions: Partial services

According to sec. 13.4 German VAT Application Decree, **partial services generally** applies to services that are divisible regarding the economical view and that are not owed and effected as a whole but in parts. A service is provided in parts, when the taxable amount is agreed separately for certain parts (sec. 13 para.1 number 1 lit.a s.3 German VAT Act). This kind of agreement generally can be assumed, when individual service parts are invoiced separately and approved through acceptance protocols.

On the other hand, if an **ongoing service** is not invoiced as a whole for the agreed service period (here e.g. 24 months) but for shorter periods this is also considered as partial services. These partial services are considered as carried out on the day when the relevant invoicing period ends. Therefore, ongoing services that are agreed in a contract for a period of 24 months and are invoiced monthly are considered as monthly partial services.

Regarding a **work contract**, partial services are carried out, when an overall supply (of goods or of services) is approved and invoiced in the scope of economically divisible partial services (s. above). Should it be the case that the invoicing takes place, then depending on the achievement (progress) of a certain service level of the work contract and that separate approvals are required, it can be assumed that these are partial services that are considered as carried out on the day of the approval (acceptance protocol). Please note for cases of work contracts: The invoicing of “partial amounts” without approvals are normally so-called interim invoices that are credited in a final invoice that is issued after completing the work. Interim invoices are no partial services!

	<b>Ongoing services</b>	<b>Work contracts</b>
Service is carried out	End of the <u>service</u> period (contract term)	Work completed + finalized (work performance) or approved (work delivery)
Exceptions regarding partial services	End of the <u>invoicing</u> period	Partial approvals with separate invoicing

### d. Supply of goods and other services

According to the financial administration, a **supply of goods** is considered as carried out when the transport or shipping begins. For the purpose of the VAT rate change, the supply of goods is carried out at the beginning of delivery or shipping. Therefore, the Incoterms are not the significant feature. Apart from that, all **services** are always deemed as performed when they are finalized.



- The applying of the respective VAT rate always depends on the date on which the service or partial service is considered as carried out. Neither the payment date nor the invoice date are therefore relevant.

#### 4. Invoicing of these services

##### a. **Contracts which are considered as invoice for VAT purposes and permanent invoices**

Contracts regarding ongoing services which are considered as an invoice and for which after termination of the contract no separate invoice is issued as well (a so called permanent invoice) must be amended to reflect the new VAT rate. The latest letter of the German Federal Ministry of Finance regarding the VAT rate reduction points out the regulation of sec. 31 para. 5 UStDV (VAT implementation regulation), which means that these contracts or ongoing invoices can technically be amended in the scope of a so called complementary letters to a contract or an invoice. It would be sufficient to issue such a contract or invoice complementary which temporarily amends the contents regarding fee, tax rate and gross fee:

Contractual party /	
Invoice recipient (customer)	
- Name and address –	
Tax number: .... / .....	
To amend the contract dated .... / the permanent invoice of the contract dated .... The already agreed monthly fee/amount will be changed for the time from July 1, 2020 until December 31, 2020 to	
Net	100.00 €
VAT 16%	16.00 €
Gross	116.00 €
From January 1, 2021 the fee applies again, which was agreed until 30. Jun 2020.	
Net	100.00 €
VAT 19%	19.00 €
Gross	119.00 €
Place, Date, Signature (Contract: both parties)	



## b. Advanced invoices regarding ongoing services

In the event that there is a long term advanced invoice e.g. within a (maintenance) contract agreed to a service period of five years (or unlimited) the period of invoicing would be one year, therefore giving rise to a partial service would be considered as carried out by the end of this year. If the invoicing of those services would be issued in advance, so-called advanced invoices, the following points should be noted:

1. (Advanced) invoice for the period September 1, 2019 until **August 31, 2020**:

This partial service is considered as carried out on August 31, 2020 and the VAT rate of **16%** would be applicable.

→ **This applies accordingly for every invoicing, whose end of invoicing period is between July and December 2020.**

2. (Advanced) invoice for the period March 1, 2020 until **February 28, 2021**:

This partial service is considered as carried out on February 28, 2021 and the VAT rate of **19%** would be applicable.

If you have already issued an advanced invoice, which includes the wrong VAT rate – due to the changed VAT law – this should be corrected and this could be done by issuing a complementary letter according to sec. 31 para.5 UStDV (s. above).

Regarding advanced invoices within the entrepreneurial chain (to VAT taxable persons with the right to deduct input tax), the Federal Chamber of Tax Consultants suggested that the scope of the legislative procedure should be adapted to reflect the simplification regarding the necessary correction of advanced invoices, insofar as an invoice correction can be omitted if the input tax deduction on the receiver side is fully allowed.

Although the simplification rule is now included in the final letter of the German Federal Ministry of Finance dated June 30, 2020, this rule is limited to services that are carried out in July 2020. Therefore, this regulation does not simplify the many cases of advanced invoices for maintenances in the year 2020, which have been issued e.g. in January 2020 with invoicing ending dates August to December 2020.

**However, this is no matter of urgency!** A correction through a letter of complementary of the invoice could also be done in August or September 2020 (or even later).





### c. Invoicing possibilities regarding work contracts

Work contracts may be invoiced as follows:

1. A total invoice issued after the completion of the work
2. Invoicing of partial services
3. Interim invoices („partial fees“) and issuing a subsequent final invoice

Should only one **total invoice** be issued after completion of the work, the application of the VAT rate depends on the date on which the work contract is considered as being fulfilled. Therefore, the VAT rate of 16% would apply if the work is completed or approved between July 1, 2020 and December 31, 2020.

Regarding the **invoicing of partial services (partial invoices)** it depends on the date on which the partial services are considered as being carried out: In the case of acceptance protocols, the partial service is considered as carried out on the day of the approval by the customer. If this takes place between July 1, 2020 and December 31, 2020, the VAT rate of 16% would be applicable.

In case of **interim invoices**, the relevant VAT rate depends on the earning of the amount of these interim invoices. With interim invoices around June 30, 2020 according to the Federal Ministry of Finance, it is accepted that if they have already been issued with a VAT rate of 16%, then you need to ensure that the service is carried out between July 1, 2020 and December 31, 2020. An agreement relating to the terms of paying the amounts – e.g. through %-statements of fixed prices when reaching a certain performance level – without partial approvals should not be considered as a partial service.

If you sent interim invoices around June 30, 2020 / July 1, 2020 including the VAT rate of 19% with payments in July 2020, we suggest that you have the invoice checked regarding the underlying performance, the consideration of the interim invoice in a final invoice and concerning the aforementioned simplification rule in the BMF-letter. These invoices cannot finally be determined at the moment and we suggest to have those invoices checked together with the related final invoice.



A **final invoice** could be as follows (see part 14.8 UStAE):

					Completion	
					July 1 - Dec. 31, 2020	After Dec. 31, 2020
Building costs net					300,000	300,000
VAT 16%					48,000	
VAT 19%						57,000
<b>Total fee</b>					<b>348,000</b>	<b>357,000</b>
	Date	No.	Net	VAT		
Advance payment with 19%	May 31, 20	20	100,000	19,000	-119,000	-119,000
with 16%	July 31, 20	62	100,000	16,000	-116,000	-116,000
with 16%	Nov. 31, 20	95	95,000	15,200	-110,200	-110,200
<b>Final payment</b>					<b>2,800</b>	<b>11,800</b>

The advanced payments (but not the invoices itself!) which have been invoiced with 19% VAT shall be corrected to the right tax amount in the relevant reporting period of the final invoice, so that they are included in the preliminary VAT return in **line 26 or 27** – “tax rate 19%/7%”- with a negative amount. The final invoice with 16% should arise in **line 28** “other tax rates”.

## 5. Special VAT issues – brief overview

### a. Vouchers

Regarding vouchers there is a difference between multipurpose and single purpose vouchers:

For a **single purpose voucher** (the place of supply of goods or supply of services and the amount of the VAT amount liable are fixed at the time of the issuance of the voucher), the date of the issuance is relevant for the VAT rate. Therefore if you have issued a single purpose voucher before July 1, 2020, the VAT rate of 19% applies. The later redemption of the voucher does not change anything.

If it is not clear which VAT rate is applicable regarding the redeemable service when the voucher is sold, then the voucher has to be considered as being a **multipurpose voucher**. In this case, the date of the redemption is relevant for the VAT rate.





## b. Refund of deposit amounts

For the refunds of deposit amounts the VAT rate shall apply as follows:

**19% until September 30, 2020 and**

**16% after September 30, 2020**

## c. Granting of annual bonuses and annual repayments

Annual repayments are taxable for VAT purposes depending on the respective revenues.

A repayment in the year 2021 for revenues of the year 2020 has to be split. For simplification purposes the tax authorities allow that

- the entrepreneur determines the ratio based on the taxable revenues of the pro rata annual period:

	VAT rate	Revenues	Distribution bonuses
Jan.1 – Jun.30, 2020	19%	100,000 €	50%
July 1 – Dec.31, 2020	16%	100,000 €	50%
<b>Total</b>		<b>200,000 €</b>	<b>100%</b>

- the entrepreneur determines the ratio regarding revenues with differing VAT rates additionally in relation to the relevant VAT rates:

	VAT rate	Revenues	VAT rate	Revenues	Distribution Bonuses	
Jan.1 – Jun.30, 2020	19%	100,000 €	7%	120,000 €	25%	30%
July 1 – Dec.31, 2020	16%	100,000 €	5%	80,000 €	25%	20%
<b>Total</b>		<b>200,000 €</b>		<b>200,000 €</b>	<b>50%</b>	<b>50%</b>



#### d. Taxation of electricity, gas, water, cold and heat deliveries, and sewage disposal

The delivery or other services of **electricity, gas, water, sewage disposal etc. by utilities** is invoiced according to the reporting/reading periods. Should the reading period be between July 1, 2020 and December 31, 2020 the reduced VAT rates of 16% / 5% are applicable. Invoices of advanced payments including a VAT rate of 7% / 19% do not have to be corrected, when applying the correct VAT rate in the corresponding final invoice. The input VAT deduction for these (interims) invoices is accepted by the German Federal tax authorities. Utilities are not going to request or make separate readings, but – as also in the past – split the data in a simplifying process. Possibly, it is recommended that you read the meter yourself.

Additionally, we would like to point out that for prepayments of ancillary costs, such as ancillary services of a taxable rent the VAT rate of the main service is applicable. With a monthly rental invoicing for July until December 2020, the advanced payment for ancillary costs would be – as the rent itself would be too – taxable with a VAT rate of 16%.

If you have any questions, your tax advisor is looking forward to hearing from you.

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