

INFORMATION - Germany

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Germany there is a use and enjoyment rule applicable to the provision of:

1. Telecommunications services and
2. Broadcasting services

for supplies by a non- EU resident to non-VAT taxable persons who are not resident in Germany. These services are taxable in Germany when they are used or enjoyed in Germany. The rule is not applicable for electronic services. Reference to the above may be found in Section 3a para 6 N° 3 and para 5 N° 1 and N° 2 German VAT Act.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Germany, the VAT on telecommunications, broadcasting and electronic services provided to non-VAT taxable persons, where reported under the MOSS, arises at the end of the relevant MOSS reporting period in which the supply takes place (i.e. at the end of the calendar quarter).

No Cash-accounting scheme is available for services reported under the MOSS.

Reference to the above may be found in the German VAT Act Section 13 para 1 N° 1 lit. e in connection with section 16 para 1b.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In Germany, continuous supplies of services are taxable in accordance with the general principles laid down in Directive 2006/112/EC.

Reference to the above may be found in the German VAT Act Section 13 para 1 N° 1 lit. a. and Section 13b para 3.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

Germany has not implemented Art 80. VAT Directive 2006/112/EC. Instead, in Germany, based on a derogation according to Art 394 VAT Directive 2006/112/EC, the taxable amount of a supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may be deemed to be the cost price where the supply is made by a corporation or association of individuals to their shareholders, members or persons closely connected to these parties or by an individual enterprise to persons closely connected or by a taxable person to its employees or relatives of its employees and the cost price is higher than the agreed consideration.

Revaluation does not apply if the agreed consideration corresponds at least to the usual market value of the supply. In such a case, the agreed consideration would represent the taxable basis of the supply. In the event, however, that the market value exceeds the agreed consideration and the cost price exceeds the consideration as well, the market value would represent the taxable basis of the supply. The taxable basis of the supply cannot exceed the usual market value.

Reference to the above may be found in the German VAT Act Section 10 para 5.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief is available in Germany. In case of total or partial non-payment, the taxable amount can be adjusted where:

- the parties agree on a price adjustment
- the supply will be withdrawn
- the claim will become uncollectible (bad debts) - generally, if according to an objective assessment of the situation it is more likely than not that the customer will not pay or if the customer denies the claim.

Reference to the above may be found in Section 17 para 1 and para 2 No. 1 to 3 of the German VAT Act.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Germany, no reduced VAT rates apply with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Germany the standard VAT rate is 19%.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Germany has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of the VAT where the amount due is insignificant. However according to guidance published by the tax authorities amounts under EUR 1 will neither be collected nor refunded. Reference to the above may be found in BMF circular dated March, 22, 2001 (BMF IV A 4-S 0512-2/01).

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

There is no obligation under the German VAT act to issue an invoice with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Reference to the above may be found in section 14 para 2 N° 2 sent 1 of the German VAT Act.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

Germany has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

There are no provisions which are applicable under a Stand-still Scheme in the German VAT legislation or subject to common practice in Germany that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

VAT Treatment of vouchers

There are no specific rules for vouchers in Germany.

In case the voucher clearly specifies the product that can be purchased (i.e. single purpose voucher), the provision of the voucher is treated as an advance payment. In case the use of the voucher is not clearly specified (multi-purpose voucher), the provision of the voucher is outside the scope of VAT.

Following the CJEU case Lebara Ltd. (C-520/10), the German Ministry of Finance has issued the Decree dated September 24, 2012 regarding the supply of prepaid telephone cards: If the cards include all required information in order to use the telecommunication service and cannot be used for any other supplies, the provision of the card qualifies as a supply of telecommunication services. The supply is taxable at the time of supply of the card to the customer. In cases where the use is not clearly specified or a telecommunication credit card can also be used for other supplies of services than telecommunications services, the VAT becomes chargeable at the time of the actual supply. The actual supplier (e.g. telecommunication company) will be liable for the VAT. The taxable base is determined on the value of the services rendered.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

The services by private schools or other institutions for general education or vocational training that are directly related to school and educational purposes, if the institution is certified according to the German constitutional law or if the responsible German state authority certified the institution, are exempt.

Furthermore, the services made by non-employed (i.e. independent) teachers that are directly related to school and educational purposes rendered at universities or other public schools for general education or vocational training or at private schools and other institutions for general education or vocational training if the institution is certified by German constitutional law or the responsible German state authority, are also exempt.

Additionally, the VAT exemption is provided for educational and scientific lectures and courses by public institutions, academies, adult education centers or other non-profit institutions or professional associations.

Reference to the above may be found in section 4 N° 21 and N° 22 of the German VAT Act.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

In Germany, activities that are subject to the German Race Betting and Lottery Act (in particular horse racing, lotteries and sport bets) are VAT exempt. The VAT exemption also applies where the lottery or bets are arranged online.

Reference to the above may be found in section 4 number 9 of the German VAT Act. However, gambling / betting is strictly regulated in Germany and the right to provide such services under the Race Betting and Lottery Act is granted on a case by case basis.

In case the VAT exemption does not apply, the VAT is due on the full amount paid by the gambler.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

There are no further exemptions in the German VAT legislation which might be applicable to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Registration Process

The MOSS registration must be filed electronically and the MOSS return must be filed via the platform

<https://www.elsteronline.de/bportal/Oeffentlich.tax>.

Specific information has been published by the German Federal Tax Office on its homepage:

(http://www.bzst.de/DE/Steuern_International/Mini_One_Stop_Shop/FAQ/faq_M1SS_node.html#faq524212).

Access to web-portal and contact details of the local VAT Authorities

The competent tax authority is the German Federal Tax Office (Bundeszentralamt für Steuern):

Bundeszentralamt für Steuern

Ludwig-Karl-Balzer-Allee 2

66740 Saarlouis

Phone: +49 228 406-1200

Further details have been made available by the German Federal Tax Office (Bundeszentralamt für Steuern) on its homepage: https://www.bzst.de/SharedDocs/Kontaktformular/DE/Steuern_International/Mini-One-Stop-Shop/M1SS_Kontakt_node.html (DE)

https://www.bzst.de/SharedDocs/Kontaktformular/EN/ServiceBox/Allgemein/bzst_allgemein_kontakt_node.html (ENG)

Appointment of a VAT Agent

The appointment of a VAT agent who is empowered to take all actions related to administrative compliance such as filing MOSS returns on behalf of taxable person is possible in Germany. However, the appointment of a fiscal representative who is granted separate duties and rights under the German VAT Act is neither required nor possible.

Penalties for non-compliance (Failure to register and late registration)

There are no penalties or sanctions for not registering an entity or for a delayed registration as the MOSS is optional for entrepreneurs. However, the entrepreneur would have to register in all Member States of consumption.

Penalties for non-compliance (Non-payment and late payment of VAT)

Only applicable in cases where Germany is the Member State of consumption:

Late-payment penalties are 1% per month of the outstanding amount.

Reference to the above may be found in section 240 of the German Fiscal Code.

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Only applicable in cases where Germany is the Member State of consumption:

The tax authorities can apply enforcement measures, if the taxpayer does not comply with its obligations.

In cases of non-submission of a VAT return a coercive fine which can amount up to EUR 25,000 can be charged after previous warning.

Late or non-filing penalties are maximum 10% of the assessed VAT amount or EUR 25,000 (at the discretion of the tax authorities).

Reference to the above may be found in section 152 (late filing penalty) and 328/329 (coercive fine) of the German Fiscal Code.

Furthermore, late or non-filing can result in interest payable (0.5% per month on the "arising" VAT).

Reference to the above may be found in section 233a, 235, 238 (interest) of the German Fiscal Code. Premeditated late or non-filing can result in criminal proceedings (tax evasion). Reference to the above may be found in section 369, 370, 371 and 398a (criminal proceedings) of the German Fiscal Code.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

Only applicable in cases where Germany is the Member State of consumption:

Incomplete or incorrect tax returns can cause interest (0.5% per month on the "arising" VAT).

Reference to the above may be found in section 233a, 235, 238 (interest) of the German Fiscal Code. Premeditated incomplete or non-filing result in criminal proceedings (tax evasion). Reference to the above may be found in section 369, 370, 371 and 398a (criminal proceedings) of the German Fiscal Code.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

Only applicable in cases where Germany is the Member State of consumption:

If the taxpayer issues an invoice which shows a higher VAT amount than actually arises, the taxpayer is liable to pay the respective VAT to the Tax Authorities. Furthermore, the recipient of an incorrect invoice is not entitled to claim the respective input VAT from the incorrect invoice as far as it exceeds the correct VAT.

The tax authorities can take enforcement measures, if the taxpayer does not comply with its accounting obligations.

Monetary fine of up to EUR 5.000 arise in case of non-compliance with archiving requirements.

Reference to the above may be found in Section 14c and 26a of the German VAT Act.