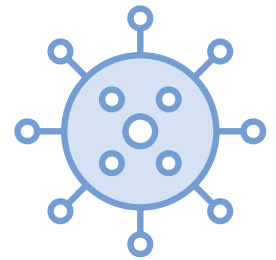
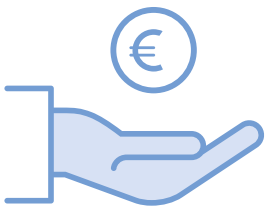


VAT OPTIONS FOR ENSURING LIQUIDITY IN THE CASE OF VALUE ADDED TAX

17 April 2020

www.mazars.de

"PHASED" ACCRUAL TAXATION THROUGH DIRECT APPLICATION OF ART. 64 OF THE EU VAT DIRECTIVE OR TRANSITION TO THE CASH ACCOUNTING METHOD THROUGH INTERPRETATION OF SEC. 17 GERMAN VAT ACT/ART. 90 OF THE EU VAT DIRECTIVE



WHAT VAT MEASURES CAN I TAKE IMMEDIATELY AS AN ENTREPRENEUR?

As a result of the Corona crisis, many suppliers and service providers are faced with the dilemma of having to continue to fulfil their contracts, but in the first place not being paid due to their customers' lack of liquidity.

Some companies are forced to accept instalments, but many also want to support their (often long-term) customers in the current situation.

According to the principle of taxation on the basis of agreed remuneration, Sec. 13 (1) sentence 1 no. 1 letter a of the German VAT Act ("**UStG**"), VAT accrues at the time of performance of the service, i.e. in principle independently of receipt of the agreed consideration (fee, remuneration). This means that the entrepreneur must pre-finance the VAT over a longer period of time if, for example, he grants his customers longer payment terms, the consideration is linked to conditions and/or time limits or, as in the current crisis, simply is not paid.

In addition to the possibilities opened up by the tax authorities for deferral, extension of deadlines and reimbursement/reduction/non-payment of the special advance VAT payment, there is already the possibility of applying the case law of the ECJ and the German Federal Court of Finance with regard to the so-called "Phased accrual taxation" in accordance with Art. 64 EU VAT Directive ("**VAT Directive**") or the legal institution of "temporary" irrecoverability for outstanding fees and charges.

"PHASED" ACCRUAL TAXATION

With the direct application of Art. 64 of the VAT Directive, there is the possibility of taxation by instalments, provided this is agreed between the parties. This converts the accrual taxation principle into a "phased" accrual taxation principle and only the agreed monthly instalments are taxable. Since Art. 64 VAT Directive has not yet been incorporated into the German VAT Act, the German Federal Court of Finance has pointed out in its subsequent decisions that Art. 64 VAT Directive can be applied directly by the taxpayer and that the taxpayer must refer to it in the tax proceeding before the tax office.

"TEMPORARY" IRRECOVERABILITY

In addition, there is also the possibility of referring to the German Federal Court of Finance case law on "temporary" irrecoverability.

According to the German Federal Court of Finance' understanding, agreements according to which payments are only made at a later point in time or the non-payment of agreed fees could regularly be regarded as irrecoverable from the outset, so that the VAT must be corrected immediately in accordance with Sec. 17 UStG / Art. 90 VAT Directive.

A fee is irrecoverable if, on objective consideration, it can be expected that the entrepreneur providing the service will not be able to enforce the fee claim against his customer (in whole or in part) in law or in fact for the foreseeable future.

There is currently no uniform rule as to the period of time which can be considered as late payment or non-payment which entitles to apply the legal institution of "temporary" irrecoverability. The German Federal Court of Finance has decided that a period of more than 2 years definitely constitutes irrecoverability. The lower Fiscal Court of Berlin-Brandenburg has determined in several decisions that irrecoverability already exists if the payment period has exceeded by two to three times the payment period (at least by more than 6 months). Irrecoverability can also be assumed in the case of a subsequent agreement on a current account relationship or a deferment of payment if this waiver of claim by the creditor/ entrepreneur makes the claim (temporarily) unenforceable.

PRACTICE NOTICE

The application of the above-mentioned legal institutions of "phased accrual taxation" and "temporary irrecoverability" must be disclosed to the tax office on the occasion of filing the VAT returns or annual VAT returns. This information can be added to the tax form as "additional information regarding the facts" (see field 23 of the preliminary VAT return and field 123 of the annual VAT return).



Furthermore, it should be noted that the "phased accrual taxation" in connection with the "new" agreed instalment payment between the parties justifies the payment of VAT in the month in which the payment is due, regardless of whether the payment is then also made. In this respect, the legal institution of temporary irrecoverability can be used if necessary as a result of the non-payment of the instalment payment.

CONTACTS



Birgit Jürgensmann

Rechtsanwältin, Steuerberaterin,
Fachanwältin für Steuerrecht
Partner

Tel: +49 211 83 99-300
birgit.juergensmann@mazars.de



Dr. Anja Wischermann

Rechtsanwältin, Steuerberaterin
Senior Manager

Tel: +49 69 967 65-1622
anja.wischermann@mazars.de



Nadia Schulte

Rechtsanwältin, Steuerberaterin
Senior Manager

Tel: +49 211 83 99-330
nadia.schulte@mazars.de



Thomas Pelzer

Rechtsanwalt,
Fachanwalt für Steuerrecht
Senior Manager

Tel: +49 30 208 88-1040
thomas.pelzer@mazars.de