

Value Added Tax - changes in billing

Bild-Kunst earns copyright royalties for its members in Germany and abroad as well as for beneficiaries of its sister societies. Since business is international, numerous tax law requirements must be considered as a result. In a recent decision on value added tax, the European Court of Justice has now ensured that Bild-Kunst must adapt its billing system in many areas. We would like to inform you on this process and to what extent you as a member of Bild-Kunst are affected by changes.

What is the issue?

So far, licensees and payment debtors of Bild-Kunst had to pay their gross remuneration, i.e. in addition to the payable value added tax. For the copyright remuneration the reduced rate of 7% applies instead of the normal rate of 19%. In its decision of 18 January 2017 (case C-37/16), the European Court of Justice has now ruled that the private copying remuneration is to be categorised as compensation for damages. No value added tax needs to be paid on compensation for damages. Bild-Kunst now receives the net private copying remuneration from the equipment industry or the upstream collection agencies ZPÜ and VG Wort respectively.

German legislation has amended the relevant tax law with effect from 1 January 2019. In addition to the private copying remuneration, the public lending right is also affected by the new classification as compensation for damages. Whether other statutory remuneration claims are affected is currently still being examined by the Federal Ministry of Finance. Exclusive rights (broadcasting, online and reproduction rights, but also cable retransmission rights) are not affected.

How does this relate to me?

In principle, it is irrelevant for members of Bild-Kunst whether the gross or net remuneration is paid out. Members entitled to value added tax are liable to pay value added tax but could get a refund during the input tax assessment. Members not entitled to value added tax received a net distribution from Bild-Kunst anyway.

Dealing with the administrative services of Bild-Kunst is proving to be a problem. So far, it had also been possible to invoice the services of Bild-Kunst at the reduced VAT rate of 7%. With regard to the distribution of private copying remuneration and public lending right, this will no longer be possible in future. As the service is no longer related to a taxable main service, it will now be subject to the normal VAT rate of 19%.

The administrative costs of Bild-Kunst will therefore increase for members if they are not entitled to VAT. The increase in VAT from 7% to 19% means an 11.2% increase in administrative costs for members, which will benefit the state. On the other hand, members entitled to VAT can obtain a refund of the increased VAT rate via the input tax assessment.

What was the process so far?

The distributions of Bild-Kunst are made via a credit note. The credit note, which is sent to members in the event of a distribution, represents the invoice document. Until now, administrative costs were deducted from the distribution amounts via a fiscal cost allocation. The recipient was paid out the difference.

What will be the process in future?

In future, Bild-Kunst will adopt a two-pronged approach: Proceeds for exclusive copyright rights (mainly professional group I) and cable retransmission (all professional groups) will be distributed according to the old scheme, while proceeds for the private copying remuneration and public lending right will be distributed according to the new scheme. For this new scheme, two invoice documents instead of one need to be issued:

1. Credit note on the distribution (not taxable - compensation for damages)
2. Invoice of the administrative costs (taxable service at 19%)

Since a cost allocation is no longer possible, the processes must be separated, which means that, for VAT purposes, the credit note and invoice must be treated separately.

When does this new process apply?

The new scheme will be applied for the billing of the 2019 usage year, which is scheduled for autumn 2020. In addition, Bild-Kunst has also received approx. 1/3 of the affected proceeds sources without VAT for the usage year 2018. The distribution for 2018 must therefore be made in two instalments, as this is the transition year.

Are there any other negative impacts?

Bild-Kunst currently lags behind its distribution plan in terms of the collective distribution. Unfortunately, the necessary adaptation of the schemes is leading to further delays, as the accounting systems, bookkeeping and balance sheets have to be adapted to the new tax conditions. This work is running in parallel to the current project to renew the entire IT infrastructure. What can I do? Members of Bild-Kunst and authors whose tax country is within the EU, should inform Bild-Kunst immediately of their VAT ID number. Authors whose tax country is outside the EU, should submit a company certificate to us. If these documents have been provided, Bild-Kunst can issue the invoice for its administrative services without VAT, where applicable.

Will there be further information?

Yes. As soon as the new processes are in place, we will provide more detailed information on our website. We will communicate this in upcoming newsletters.