

Deutsche Bahn AG

Leaflet Retention money

Retention money for suppliers of construction services and planning and monitoring services to DB companies

Retention money is booked based on the contractual regulations between the client and the contractor (supplier). They serve to ensure the contractual performance of the service and warranty.

If the client is to have the authority to make a lower payment, this always requires an explicit agreement in the contract or must result from the agreed contractual conditions.

Two forms of Retention money are particularly common in the construction industry:

- Retention money for contract fulfilment/final invoice (retention from the progress invoice, due date of retention money with final invoice)
- Retention money for security for warranty/final invoice (retention from the final invoice, due date of the retention money after expiry of the warranty period according to VOB/B 4 years or according to BGB 5 years)

Both for the contract for work and services according to the German Civil Code (BGB) and for the VOB construction contract, there is no entitlement of the client to the provision of security. This always requires a clear and unambiguous agreement between the contracting parties.

The agreement must state the amount (in % or agreed sum) and the term of the retention or due date. In addition, agreements on retention money for work not included in the original contract must be concluded.

If the replacement of the retention money by a surety bond has been agreed, this information must also be included in the contract. It must be ensured that the surety bond also covers the retention money on supplements or that the surety bond is increased accordingly.

The DB companies are obliged to replace the contracts with SAP purchase orders and to store contract components in these. The specification of the purchase order numbers on the invoices is a prerequisite for correct and timely processing in the accounting department.

The client (service recipient) must withhold the security deposit from the payment amount (gross amount) of the respective invoice, i.e. from the amount owed by the client to the contractor (supplier). Therefore, when invoicing by the contractor, the retention money must always be deducted from the invoice amount (gross). A deduction from the net amount would be tantamount to a reduction of the invoice. This applies to invoices that are not subject to the tax liability of the service recipient according to § 13b of the VAT Act.

For cumulative invoices, a clear presentation of the increase in performance and the amounts paid from partial or interim invoices (deductions without consideration of retention money or deductions with separate presentation of retention money) rather than net payments is required.

The contractor is allowed to adjust the VAT on the warranty security deposit if he can clearly prove that he applied for specific surety bonds for each contract concluded, but that these have been rejected. (See attachment: Change of basis for calculation due to temporary irrecoverability due to a security deposit BFH ruling of 24 October 2013).

Please see our examples on page 3 and 4.

Sample 3

Retention money for contract performance of a **planning service**:

| | Example with security retention 10%: (calculation agreed on net value) | Example with security retention 8%: (calculation agreed on gross amount) |
|--|---|---|
| 1st interim invoice: | | |
| Net total of services | 90.000,00 € | 90.000,00 € |
| Plus 19 % value added tax | 17.100,00 € | 17.100,00 € |
| Total gross (accumulated) | 107.100,00 € | 107.100,00 € |
| Invoice amount | 107.100,00 € | 107.100,00 € |
| retention money | -9.000,00 € | -8.568,00 € |
| Payment amount | 98.100,00 € | 98.532,00 € |
| 2nd interim invoice (service increase € 47,500.00): | | |
| Total net performance (cumulative) | 137.500,00 € | 137.500,00 € |
| Plus 19 % value added tax (cumulative) | 26.125,00 € | 26.125,00 € |
| Total gross (accumulated) | 163.625,00 € | 163.625,00 € |
| Less 1st interim invoice net | 90.000,00 € | 90.000,00 € |
| Plus 19 % value added tax | 17.100,00 € | 17.100,00 € |
| Less 1st interim invoice gross | 107.100,00 € | 107.100,00 € |
| Open invoice amount net | 47.500,00€ | 47.500,00 € |
| Plus 19 % value added tax | 9.025,00 € | 9.025,00 € |
| Gross open invoice amount | 56.525,00 € | 56.525,00 € |
| retention money | -4.750,00 € | -4.522,00 € |
| Payment amount | 51.775,00 € | 52.003,00 € |
| | for 10% on net total | for 8% on gross sum |
| The total amount of retention money for the above example is therefore as follows: | 13.750,00 € | 13.090,00 € |

Sample 4

Retention money for contract performance of **construction work with reversal of tax liability**:

| | Retention money 10% : (determination on net value agreed) |
|--|--|
| 1st interim invoice: | |
| Net total of services | 90.000,00 € |
| value added tax | 0,00 € |
| Total gross | 90.000,00 € |
| Invoice amount | 90.000,00 € |
| retention money | -9.000,00 € |
| Payment amount | 81.000,00 € |
| 2nd interim invoice (service increase € 47,500.00): | |
| Total net performance (cumulative) | 137.500,00 € |
| value added tax | 0,00 € |
| Total gross (accumulated) | 137.500,00 € |
| Less 1st interim invoice gross: | 90.000,00 € |
| Open invoice amount | 47.500,00 € |
| retention money | -4.750,00 € |
| Payment amount | 42.750,00 € |
| The total amount of retention money for the above example is therefore: | 13.750,00 € |