Downloaded from Blogs on 09.11.2026 20:45

By PwC Deutschland | 15 March 2011

Snack bar food sales at reduced rate of VAT

The ECJ has held that the sale of prepared hot and cold snacks from stalls and stands for immediate consumption is taxable at the reduced rate as the sale of foodstuffs. Party service deliveries, by contrast, are services taxable at the standard rate.

Downloaded from Blogs on 09.11.2026 20:45

The Supreme Tax Court laid four cases on the sale of ready-to-eat hot and cold snacks and meals before the ECJ. In all four cases it saw the supply as a single transaction, but was uncertain whether the service or the sale of goods element predominated. If the latter, the follow up question was whether the supply of ready-to-eat hot food in a form suitable for immediate consumption still ranked as the sale of "foodstuffs". If it did not, the sale of goods would be subject to the same standard rate of VAT as the sale of services. The cases at issue were a mobile sausage and chip stand at weekly markets, a fast food stall in the open, a snack counter in a cinema and a party catering service run by a butcher.

The ECJ has held that in the first three cases the sale of goods element predominated. The stand and stall did not offer and seating or other facilities and did not cook, or warm up, the food to order. Rather, each item was presented to the customer from the precooked or re-heated stock on an "as is" basis. The cinema sales counter offered no specific facilities to customers, the presumption being that they would take their snacks into the auditorium or eat them in the foyer whilst waiting for admission. Because the reduced rate annex to the Sixth (and now the VAT) Directive does not define the term foodstuffs further, the sale of food continues to rank for reduced rate VAT even if intended for immediate consumption at or beside the point of sale. On the other hand, the court held the service element to predominate in the case of the party service. Not only was the food cooked to order, it was selected according to specific wishes of the customer and delivered at the precise time set by him. The delivery was also accompanied by the loan of cutlery, crockery and furniture as agreed. The supply thus included elements of advice and individual tailoring foreign to the standardised approach of the other three sales outlets.

The ECJ case references are C-497/09 *Bog* (sausage stand), C-499/09 *CinemaxX* (cinema), C-501/09 *Lohmeyer* (fastfood stall) and C-502/09 *Nier* (party service) joint judgment of March 10, 2011.

Keywords

fastfood, foodstuffs, reduced rate VAT, snack bar