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By PwC Deutschland | 26 March 2013

Meals – sale of foodstuffs or a restaurant service?

The finance ministry has set out the principles to be followed in distinguishing between the sale of foodstuffs and the provision of services when supplying meals in a ready-to-eat condition.

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2011 saw a series of ECJ and Supreme Tax Court cases on the VAT distinction between the reduced-rate sale of foodstuffs and the standard rate provision of restaurant services when supplying meals in a ready-to-eat condition. The finance ministry has now summarised this new case law in an update to its VAT Implementation Decree. In general terms, the distinction depends on whether the service element or the delivery element of the supply predominates. However, the position is complicated by the fact that the sale of a hot meal in a holder to keep it warm is a delivery of food, the efforts to cook it being part of the production process, rather than a service to the consumer. Also, services may be available to the customers of a snack bar but supplied to them in a different capacity, cinema seating and cloakrooms being cases in point. The ministry emphasises that each case must be judged on its own merits, taking due account of all the circumstances, although it illustrates its decree with 16 specific examples. However, it starts with the more general point that services necessary to market the goods – display, preparation, the provision of cutlery, serviettes and condiments, litter bins, a bar where items can be consumed standing, a description of the wares on offer and a cash collection service for school meals – are not restaurant services rendering the transaction taxable at the full rate. Restaurant services, by contrast, are the provision of seating and tables in a room, serving the meals and drinks and washing up afterwards, hiring cutlery, crockery and furniture, individual advice in choosing meals and drinks and menu consultancy to customers wishing to arrange a function at home. However, the mere existence of a restaurant service in the total package does not mean that that service necessarily predominates. This depends on the overall nature of the transaction. That view is not dependent on the complexity of the meal or on the quality of the service provided – a beer tent with fold-away tables and benches is a service in the same way that a restaurant is.

The ministry’s examples of borderline cases are:

- A stand selling hot sausages and chips (French fries) on plates, offering customers condiments and a bar to lean on while eating, supplies food at reduced rate VAT. However any seating facilities change the supply to a service.
- School caterers who clear up afterwards provide a service. However they sell food bulk to, say, a parents’ club that serves the meals to the children they sell food. The club provides a service, but may be entitled to reduced-rate VAT if it qualifies as a non-profit organisation working for the public good.
- If the same school caterer delivers the meals frozen and loans the fridge and the re-heater so that the meals can be served hot when needed, it sells food. Keeping it cool and then warming it up is an ancillary service.
- Hospital caterers that cook the food in the hospital for distribution by the hospital staff to the patients sell food. If a third party does the washing up, the caterer still sells food, unless the third party is his sub-contractor.
- A butcher delivers a hot and cold buffet on plates and in warm hold-alls. He collected the plates and hold-alls the next day. The transaction is the sale of food, since the plates and hold-alls were mere

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containers. Loan of crockery and/or cutlery with the food changes the supply to a service. It is also a service if the supplier sets up the buffet after delivery in the customer's home or if he is required to clear up litter after the event. However, if the customer does the clearing up, the delivery is a sale of food.

- A "meals on wheels" service delivering hot meals on dishes under warm covers which it then collects for washing and re-use sells food. This also applies if the customer's carer does the washing
- A series of shops joined in a "food court" with a communally used space with tables and chairs where customers can sit and enjoy their purchases sells items sold for local consumption as a service. Take away sales are the supply of food.

Keywords

food, restaurant, sale of foodstuffs