

VAT: Hot food and premises

VAT Information Sheet 12/12

August 2012

1. Introduction

1.1 Who should read this Information Sheet?

Businesses that sell hot takeaway food and food for consumption on their premises. Businesses that already charge VAT on such sales should continue to do so and are unaffected by these changes.

This guidance should be read in conjunction with [Notice 709/1 Catering and Takeaway Food](#), which it updates and supplements as appropriate.

1.2 What is this Information Sheet about?

Following changes announced at Budget 2012, this Information Sheet provides guidance on how to establish the correct VAT liability of hot takeaway food and food for consumption on premises. It does not cover the liability of other types of catering, which are covered in Notice 709/1.

1.3 When do the changes take effect?

The changes affect supplies of hot takeaway food and food for consumption on premises that are made on or after 1 October 2012.

1.4 Why have these changes been introduced?

Hot takeaway food

As a result of litigation over a number of years, the rules for charging VAT on hot takeaway food have become increasingly prone to legal challenge which has led to anomalies where similar products are taxed differently. These changes introduce a number of objective tests to address these anomalies to ensure that hot takeaway food is taxed consistently at the standard rate of VAT.

Premises

The rules for charging VAT on food sold for consumption on premises have also been the subject of litigation. Most recently, disputes have arisen in relation to whether food courts (which can be shared with other retailers) and areas with tables and chairs outside a café form part of a retailer's premises. These changes confirm existing policy to the effect that "premises" include all areas that are set aside for the consumption of food, even if those areas are shared by a number of retailers.

2. VAT liability of hot takeaway food - overview

This section explains how to establish the liability of hot takeaway food. It does not cover the sale of hot food on premises e.g. in restaurants and cafes, which is already standard-rated. The definition of premises is considered in section 3.

Note

For VAT purposes "food" includes "drink".

2.1 What are the current rules (prior to 1 October 2012)?

Under current rules, the sale of food which (or any part of which) has been heated for the purposes of enabling it to be consumed hot, and is hot at the time that it is provided to the customer is standard-rated.

2.2 What are the new rules (from 1 October 2012)?

A number of objective tests have been added to the existing test in 2.1 to help ensure that hot takeaway food is taxed consistently. Under the new rules, the sale of food is standard-rated if:

- the food (or any part of it) is hot at the time that it is provided to the customer ("the precondition") **and**
- **one or more** of the following 5 tests is satisfied

Test 1: It has been heated for the purposes of enabling it to be consumed hot (ie the current test).

Test 2: It has been heated to order.

Test 3: It has been kept hot after being heated.

Test 4: It is provided to a customer in packaging that retains heat (whether or not the packaging was primarily designed for that purpose) or in any other packaging that is specifically designed for hot food.

Test 5: It is advertised or marketed in a way that indicates that it is supplied hot.

More guidance on how to approach these tests is set out below.

3. The precondition: the food (or any part of it) is hot at the time that it is provided to the customer

This ensures that, under the new rules (as under the current rules), only food that is hot at the time that it is provided to the customer is standard rated.

3.1 What is meant by “hot”?

Something is hot if it is at a temperature above the “ambient air temperature”. This definition forms part of the current rules which suppliers of hot food should be familiar with. Generally speaking, businesses do not need to specifically check whether the precondition is satisfied as it is clear whether or not the food is hot at the time they provide it to the customer. In some cases, it may be necessary to check but this is the case under the current rules.

3.2 Why refer to “any part of it [a food product]” being hot?

This reflects the current rules. In some cases, only part of a product will be hot and the current and new rules ensure that such products are standard-rated provided the conditions in para 2.2 are met.

Example 1: A business sells bacon rolls. The bacon is hot but the roll is cold. As part of the product is hot (the bacon), the legislation ensures that the whole product (the bacon roll) is standard-rated.

3.3 What is meant by “at the time it is provided to the customer”?

This wording is contained in the current legislation and is the time that the product is handed over to the customer.

Example 2: A customer picks up a hot chicken from the deli counter in a supermarket, which has cooled down to ambient air temperature by the time he or she comes to pay for it at the checkout. In this case, the time at which the chicken is provided to the customer is the time that it is handed over to the customer at the deli counter (ie when it is hot), not the time when the customer pays for the chicken at the checkout.

Example 3: A customer orders and makes payment for a pizza over the telephone before it has been cooked. He or she collects the pizza 20 minutes later when it has been cooked and is hot. In this case, the time at which the pizza is provided to the customer is the time that the pizza is handed to the customer on collection (ie when it is hot), not the time when the customer orders the pizza over the telephone.

4. The 5 tests

The tests supplement the precondition to ensure that hot takeaway food is taxed consistently at the standard rate. In practice, it is likely that the sale of the food will satisfy more than one of these tests. In all cases references to “heated” include “cooked” and “reheated”.

Test 1: The food has been heated for the purposes of enabling it to be consumed hot (ie the current test)

4.1 How does this test work?

This is the current test for establishing whether hot takeaway food is standard-rated and ensures that all hot takeaway food that is currently standard-rated continues to be so. Case law has established that, taking account of all

relevant facts and circumstances, it is the intention or purpose of the supplier (and not the customer) in heating the food that is the determining factor. This means that the sale of products that have been cooked specifically for consumption whilst still hot (as a result of being freshly prepared, baked, cooked, reheated or kept warm) are standard-rated. This is in contrast to products that are not intended to be eaten while hot and are sold warm simply because they happen to be freshly baked and are in the process of cooling down, which are not affected by this test.

4.2 What are examples of hot food under this test?

Examples of products that are standard-rated under this test include:

- chips, fish and chips, and similar items
- Chinese, Indian takeaway meals, pizzas, kebabs etc
- baked potatoes with a hot or cold filling
- hot dogs and hamburgers
- pies, rolls, sausage rolls, pasties and similar items (see para 4.11 for instances when these products will remain zero-rated)
- tea, coffee, chocolate and other hot drinks
- hot soup

The remaining tests are designed to address any inconsistencies that have arisen as a result of case law by minimising the need to consider the supplier's purpose in heating the food.

Test 2: The food has been heated to order

4.3 How does this test work?

This test confirms that the sale of food that has been heated to the customer's order is standard rated.

4.4 What are examples of hot food under this test?

Common examples of food that may be heated to order and are therefore standard-rated include:

- toasted bread, sandwiches, paninis, teacakes and similar items

- garlic bread
- pizzas
- hamburgers
- kebabs

Test 3: The food has been kept hot after being heated

4.5 How does this test work?

This test confirms that food that is kept hot after being cooked, heated or reheated is standard-rated. This includes instances where a supplier of hot takeaway food stores the food in an environment which provides, applies or retains heat, or takes other steps to ensure that it remains hot or to slow down the natural cooling process after it has been heated. In practice, this will mainly affect products that are kept warm in heated cabinets (for example under heat lamps), on spits, in hot water or on hot shelves or trays. It will also include any products kept warm in cooling down ovens or other appliances that slow down the rate of cooling.

4.6 What are examples of hot food under this test?

Examples of products that are standard rated under this test include:

- freshly baked croissants, pretzels and similar items that are kept hot in a heated cabinet
- hot dogs kept hot in water or on a tray
- hamburgers kept hot on a hot shelf
- doner kebabs kept hot on a spit
- cooked chickens kept in a heated cabinet or on a hot tray
- meat pies kept in cabinets during a controlled cooling process

Test 4: The food is provided to a customer in heat retentive packaging

4.7 How does this test work?

This test confirms that food that is provided to a customer in packaging that retains heat (whether or not the packaging was primarily designed for that purpose) **or** in any other packaging that is specifically designed for hot food is standard-rated.

In practice, this will mainly affect products that are sold in specialised packaging such as foil lined bags and insulated containers including specially designed cardboard boxes. It will not affect products that are sold in ordinary paper bags or similar packaging.

4.8 What are examples of hot food under this test?

Examples of products that are standard-rated under this test include:

- naan bread and garlic bread sold in a foil lined bag
- Chinese and Indian takeaway meals sold in foil lined containers
- pizza sold in specially designed cardboard boxes
- cooked chickens that are sold in heat retentive packaging or packaging designed to prevent leakage of fluids or grease

Test 5: The food is advertised or marketed in a way that indicates that it is supplied hot

4.9 How does this test work?

This test confirms that takeaway food that is advertised or marketed in a way that indicates that it is supplied hot is standard-rated. This will be established by examining the nature of the advertising or marketing campaign and whether this indicates that the takeaway food in question is sold hot. This could include pictures of the products showing steam rising from them. “Advertised or marketed in a way that indicates that it is supplied hot” does not include advertised or marketed as “freshly baked”.

4.10 What are examples of hot food under this test?

Examples of products that are standard rated under this test include:

Rotisserie chickens, roasted chestnuts or soup which, in each case, are advertised or marketed as “hot”.

4.11 What types of hot food are not caught by these tests and remain zero rated?

The new tests ensure that the vast majority of hot takeaway food is standard-rated. The exception is food that is either not hot at the time it is provided to

the customer or which is hot at the time it is provided to the customer but does not satisfy any of the above tests. For example, freshly baked bread or bakery products that are incidentally hot at the time that they are sold but which are frequently eaten cold (i.e. when they have cooled down to ambient air temperature).

Businesses selling food that is hot at the time it is provided to the customer will need to work through each test to confirm that none apply before zero-rating their products. This is illustrated in the following examples.

Example 4: A retailer sells a Cornish pasty that has been baked off and then left to cool naturally but is still hot at the time that it is provided to a customer (and so the precondition is satisfied). However, the retailer does not intend that the pasty will be consumed hot by the customer (Test 1 is not met); it has not been cooked to order (Test 2 is not met); it has not been kept hot after being cooked (Test 3 is not met); it has been provided to the customer in a standard paper bag (Test 4 is not met) and it is advertised as “freshly baked” (Test 5 is not met). As none of the tests are satisfied, the sale of the pasties is zero-rated.

Example 5: The retailer in example 4 decides to keep its pasties under heat lamps to slow the cooling process. In this example, Test 3 is met as the pasties are being kept hot after they have been cooked and the sale of the pasties is standard-rated.

Example 6: The retailer in example 4 decides to advertise its pasties as “hot” rather than “freshly baked”. In this example, Test 5 is met and so the sale of the pasties is standard-rated.

Example 7: A retailer bakes batches of fruit pies, tarts, cakes, buns and bread for sale throughout the day. None of these products is baked with the intention of being eaten hot, baked to order, kept hot after being baked (they have been allowed to cool naturally), provided in heat retentive packaging or advertised as “hot”. The sale of all these products is zero-rated as, even

where they are hot at the time they are provided to the customer, none of the 5 additional tests is satisfied.

Example 8: A retailer sells hot freshly cooked chickens that have not been heated for the purposes of enabling them to be consumed hot, have not been cooked to order, have not been kept hot after cooking (they have been allowed to cool naturally), are provided to customers in specially designed (foil lined) bags designed to prevent the leakage of fluids and grease from the chicken, and are not advertised as “hot”. The sale of these hot chickens is standard rated as Test 4 is met as the chicken is provided to customers in packaging that is specially designed for hot chickens.

Example 9: A retailer sells joints of beef that are kept hot in a cabinet after roasting. The sale of these joints is therefore standard-rated as Test 3 is met. At the end of the day, the retailer removes the joints that have not been sold from the heated cabinet. These are sold cold next day or are used to make cold takeaway beef sandwiches. As they are not hot at the time that they are provided to the customer the “precondition” is not met and so their sale is zero-rated for VAT purposes.

5. Premises

This section covers the definition of premises from where food is supplied (“premises”). This definition is important as all food that is sold for consumption on premises is standard-rated irrespective of whether it is hot or cold.

5.1 What are the current rules (prior to 1 October 2012)?

The current legislation does not define “premises” but under existing policy, premises includes:

- areas occupied by a food retailer (ie units from which sales are made) and
- areas that have been specifically provided for the consumption of food

5.2 What are the new rules (from 1 October 2012)?

The new rules clarify existing policy by confirming that the premises from where food is supplied include any area set aside for the consumption of food by the food retailer's customers, whether or not the area may also be used by the customers of other food retailers.

5.3 What is meant by “any area set aside for the consumption of food”?

This ensures that the area is specifically provided for the consumption of food by a food retailer's customers (or by them and the customers of other food retailers). These are typically areas with tables and chairs, and which are regularly cleaned and cleared (see paragraph 5.5 for examples). Areas where anyone can sit down and rest, or waiting areas in airports and railway stations are not included (see paragraph 5.6 for examples). Such areas are not specifically provided for the consumption of food supplied by one or more retailers and do not therefore fall into the new definition of premises.

5.4 What is the significance of “the area may also be used by the customers of other suppliers”?

It has become increasingly common for food retailers to share their eating areas with other food retailers. The main example is food courts which are often found in shopping centres, airports and motorway service stations. This wording ensures that food sold by retailers for consumption in these shared eating areas is standard-rated irrespective of whether the area is owned by one or more of the food retailers or their landlord.

5.5 What are examples of areas that are defined as premises?

Examples include:

A restaurant (or similar café, canteen type business)

- the whole restaurant area and
- areas with tables and chairs on the pavement, concourse or similar areas adjacent to (i.e. near to or next to) the main premises

A retail outlet in a shopping centre

- the outlet itself
- areas with tables and chairs in designated areas belonging to that outlet or provided for the exclusive use of that outlet and
- areas with tables and chairs in food courts shared with other food retailers

A retail outlet in the high street

- the outlet itself and
- areas with tables and chairs outside the establishment provided for the use of customers

A supermarket

- any seating areas within the shop and
- areas with tables and chairs outside the shop for the use of customers

A stall in a sports stadium, amusement park, exhibition, gallery or similar pay-entry venue

- the stall itself, and
- facilities provided adjacent to the stall for the use of customers;

A retail outlet within an office building

- the outlet itself
- facilities provided adjacent to the outlet for the use of customers

5.6 What are examples of areas that do not fall within the definition of premises?

The definition of premises does not include areas with tables and chairs available for general use by members of the public who are not customers of one or more food retailers. Examples include:

- benches in shopping centres designed as general seating for customers to rest or wait

- tables and chairs in a public picnic area – for example, picnic benches by a motorway service station where people can eat sandwiches that they have prepared themselves (as well as ones that they have been purchased from the service station), and where the area is not regularly cleaned and cleared by the retailer or landlord and
- seating areas in airport lounges and railway stations where customers wait for their planes and trains

6. Who can I contact for further information?

If you have a query for which you have been unable to find the answer within this VAT Information Sheet please contact the VAT helpline on 0845 010 9000.

The Helpline is available from 8.00am to 6.00pm, Monday to Friday.

If you have hearing difficulties, please ring the Textphone service on 0845 000 0200.