



The supply of food for immediate consumption from snack stalls or in cinema foyers is normally a supply of goods

In that case the food prepared for immediate consumption is 'foodstuffs' subject to a reduced rate of VAT

The Sixth VAT Directive ¹ distinguishes between the 'supply of goods' and the 'supply of services' and subjects them in principle to the standard rate of VAT fixed by each Member State. However, the directive authorises the Member States to apply a reduced rate of VAT to certain categories of supplies of goods and supplies of services. Applying that exception, German law provides for a reduced rate of VAT on supplies of goods which take the form of sales of 'foodstuffs'.

Mr Bog sold drinks and food prepared for consumption – in particular, sausages and chips – from three identical mobile snack bars at weekly markets. The mobile snack bars had a covered area in which the food could be consumed on the spot (Case C-497/09). CinemaxX operates cinemas in various locations in Germany. Cinema-goers can buy, besides sweets and drinks, portions of popcorn and tortilla chips (nachos) in various sizes, to consume in the foyers or auditoria (Case C-499/09). Mr Lohmeyer operated several snack stalls and a grill from 1996 to 1999, with facilities specially provided for the consumption of food on the spot. There he sold food ready for consumption: fried sausages, sausages in curry sauce, hot dogs, chips, steaks, pork belly, skewered meat and spare ribs (Case C-501/09). Fleischerei Nier is a partnership which operates a butcher's shop and a party catering service. Food ordered by customers is supplied by the catering service hot in closed containers, while crockery, cutlery, tables for standing at and staff can also be provided, according to the customers' wishes (Case C-502/09).

In these four cases, the persons concerned declared the sales of food and meals in their VAT declarations as subject to the reduced rate of VAT. The German tax authorities contested those declarations, taking the view that the transactions involving consumption of food on the spot should be subject to the standard rate of VAT. In this connection, the Bundesfinanzhof (Federal Finance Court, Germany), which has to decide the cases, asks the Court of Justice whether these various supplies of food or meals prepared for immediate consumption are 'supplies of goods' or 'supplies of services'. If they are supplies of goods, the German court wishes to know whether they can be classified as sales of 'foodstuffs'.

In today's judgment the Court of Justice first points out that the Sixth Directive establishes a common system of VAT based inter alia on a uniform definition of taxable transactions. To determine whether a single complex supply should be classified as a 'supply of goods' or a 'supply of services', all the circumstances in which the transaction takes place must be taken into account in order to ascertain its characteristic elements and to identify its predominant elements.

With respect to the activities concerned in Cases C-497/09, C-499/09 and C-501/09, namely the sale from mobile snack bars or snack stalls of sausages, chips and other hot food for immediate consumption, the Court observes that the predominant element is that of a supply of goods,

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 92/111/EEC of 14 December 1992 (OJ 1992 L 384, p. 47).

because the activity consists in the supply of food or meals for immediate consumption, and the summary and standard preparation of the food is intrinsically linked to the food. Moreover, the provision of facilities enabling a limited number of customers to consume the food on the spot is of a merely ancillary and subordinate nature. Consequently, the Court finds that the supply of food or meals freshly prepared for immediate consumption from snack stalls or mobile snack bars or in cinema foyers is a supply of goods if a qualitative examination of the entire transaction shows that the elements of supplies of services preceding and accompanying the supply of the food are not predominant.

By contrast, with respect to the party catering service activities concerned in Case C-502/09, the Court notes that they are not the result of mere standardised preparation but rather contain a distinctly greater aspect of the supply of services, in that they require more work and greater skill, such as creativity and presentation of the food. They may also include elements to enable consumption, and elements that require a certain human intervention (provision of crockery, cutlery and furniture, and washing and cleaning them). In those circumstances, the Court finds that, except in cases in which the caterer does no more than deliver standard meals without any additional service elements, or where, in other special circumstances, the supply of the food represents the predominant element of the transaction, the activities of a party catering service are supplies of services.

Finally, as regards the concept of 'foodstuffs', the Court finds it covers food and meals which have been prepared for immediate consumption by boiling, grilling, roasting, baking or other means, since they serve as food for consumers.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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