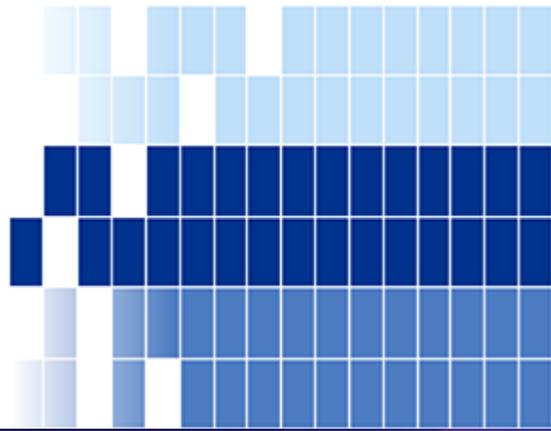




## Tax News

KPMG in Bulgaria



# Working in times of COVID-19

## Ruling of the NRA on the application of the reduced VAT rate of 9% for certain goods and services

July 2020

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*KPMG Tax News presents the main points of a recent NRA ruling on the application of the reduced 9% VAT rate for certain goods and services*

The current issue of Tax News for 2020 presents a summary of some of the clarifications provided by the revenue authorities in their ruling published on the official website of the NRA on 29 June 2020 (the "Ruling"), with regards to the application of the reduced 9% VAT rate for certain goods and services, effective from 1 July 2020 to 31 December 2021.

### Restaurant and catering services

In the Ruling the revenue authorities analyse the new legislative texts and definitions for restaurant and catering services. Further, they provide practical explanations on the factors which should be analyzed to determine whether or not a supply falls within the scope of the reduced VAT rate and also give examples of business cases inside and outside the scope of restaurant and catering services. To this end, the authorities make an overview of the applicable case law of the Court of Justice of the European Union<sup>1</sup>.

#### *Essential factors for analysis*

The revenue authorities note that, in order to determine whether the reduced VAT rate is applicable for a particular delivery, a distinction should be made between (i) restaurant/ catering services (9%) and (ii) supply of goods – food for consumption (20%). For the first hypothesis to be in place, the supply of the food must be accompanied by a sufficient level of ancillary

services allowing its immediate consumption on site and playing a dominant role (from the point of view of the average consumer). The revenue authorities provide a number of examples of such ancillary services.

The type and categorization of the eating place are not decisive. Among others, the revenue authorities explicitly mention inhouse canteens as possible places where restaurant services subject to the reduced 9%VAT rate may be provided.

#### *Specific examples*

The term "restaurant and catering services" may include:

- The ordinary restaurant service consisting in the provision of food for consumption at the supplier's premises and/or in dedicated areas with appropriate equipment and waiters' servicing included;
- Self-service restaurants;
- Buffet food;
- 'Food court' – sale of food to customers in designated areas in shopping centers.

The term "restaurant and catering services" generally does not include:

- Delivery of prepared/ unprepared food and/or beverages without ancillary services;
- Sale of food from vending machines, mini bars and shops, including cooked food from a warm display cases, as well as sale of food on trains or buses;
- Sale of food from food trailers, cinema lobbies, pavilions/ booths, etc., when the ancillary services do not dominate the food element in the composite supply;
- Sale of food for consumption outside the restaurant, including from "drive in"/ "walk through" counters;
- Catering without ancillary services.

In view of the above, a restaurant can happen to perform both supplies subject to the reduced 9% rate and such subject to the standard 20% rate (often for one and the same item). This leads to new requirements towards the software systems and the personnel of the restaurants, who should be trained to distinguish the situations where one and the same item may need different VAT treatment.



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## **Books and textbooks**

Regarding the taxation of books and textbooks at the reduced rate, the most important points made in the Ruling are as follows:

- The reduced rate applies to:
  - Hard copy books (books on paper, cassettes, discs, CDs, DVDs, USB memory, etc.);
  - E-books, if their content is not mainly video or audio-musical one;
  - Books with no text, such as coloring books, books with illustrations, editions with musical notes and audio books whose content is other than a musical one;
  - Textbooks, reference books and study sets, when the supply does not fall within the exemption provided for in Art. 41(3) of the VATA.
- The reduced rate does not apply to:
  - Publications wholly or mainly made for advertising purposes;
  - Publications wholly or mainly composed of video or audio-musical content;
  - Periodicals, newspapers and magazines.



## Delivery of food and hygiene products suitable for babies or young children

The reduced VAT rate covers also supplies of baby food, diapers and similar hygiene products. The Ruling specifies the following criteria which must be met in order for the 9% VAT to apply:

- The goods must correspond to the description of Annex № 4 of the VATA;
- The goods should fall within the EU CN code specified in Annex № 4 of the VATA;
- Certain quantitative requirements need to be met (with regards to food items only).



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### Other matters

The Ruling also addresses issues such as place of supply of the affected transactions, rules for determining the status of the recipient of the supply (where relevant), rules for determining the taxable amount and the taxable event, document requirements and transitional regime. Important notes with this regards are as follows:

- Preparing a single invoice for two or more supplies subject to different tax rates is permissible but the taxable amount and the VAT due per each tax rate should be indicated on a separate line.
- For products which might be sold as both a reduced-rate supply and as a standard-rate supply, it is advisable that two separate items be created in the systems and in the fiscal devices (e.g. 'Pizza 9%' and 'Take away pizza 20%').



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### How may we help you?

The KPMG team remains at your disposal where you have questions or need assistance in the interpretation and application of the new rules for applying the reduced 9% VAT rate.



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### For information

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<sup>1</sup> ECJ Judgements in Case C-231/94, Faaborg-Gelting Linien, and Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09.





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