

VAT: temporary reduced rate for hospitality, holiday accommodation and attractions ATT questions for JVCC

The ATT have asked a number of questions on the scope and operation of the temporary reduced rate of VAT for certain supplies of hospitality, holiday accommodation and admission to the attractions announced by the Chancellor on 8 July 2020. Hopefully the below response will provide clarity.

Scope and practical application of the reduced rate

Hospitality

Overall, we feel that more practical guidance is needed on the VAT treatment of food and drink items, as this appears to be a specific cause of confusion.

HMRC's response: We appreciate your feedback on the guidance, which we are keeping under review.

For example, it is unclear how mixed alcoholic and non-alcoholic drinks should be treated - do these qualify for the reduced rate? For example, the sale of a gin and tonic could be regarded as a single supply of an alcoholic drink and thus chargeable to standard rate VAT. On the other hand, as the volume of tonic exceeds that of the gin, it could be argued that the tonic is the predominant element of the supply, which should therefore be regarded as a single supply of a non-alcoholic drink. Similarly, at what point does a drink such as a weak shandy become an alcoholic drink? Can HMRC confirm which principles should be applied here?

HMRC's response: The sale of a gin and tonic, or any alcohol served with a mixer is considered to be an alcoholic beverage and remains standard rated for VAT purposes. Shandy and other low alcohol beverages qualify for the reduced rate if there is no excise duty charged on them as they would be considered a soft drink.

Similarly, we have noticed that some hospitality businesses are making offers in the nature of "Buy a burger and get a free pint". Such businesses may wish to treat the total sale price as subject to the 5% rate, on the basis that the customer is only paying for the burger. Could HMRC issue further guidance make the correct treatment clear?

HMRC's response: Where a business makes a promotional offer of the kind described, the economic and commercial reality is that it is making a supply of a burger and a supply of a pint of beer – therefore, the consideration received will need to be apportioned to ensure that the correct amount of VAT is accounted for on the supply of each item (please refer to Marks & Spencer v HMRC [2019] STC 1450).

We also understand from reading the legislation introducing the temporary reduced rate ([SI 2020/728](#)) that supplies of excepted items within Group 1 of Schedule 8 VATA 1994 (confectionary/crisps etc.) benefit from the reduced rate when consumed on the premises if there is a sufficient level of service for the supplies to be considered to be made 'in the course of catering'. We note that this appears odd given the Government's current anti-obesity focus. If it is intended, then it might be helpful if the guidance notes specifically made reference to this

HMRC's response: The temporary reduced rate of VAT applies to supplies of food and non-alcoholic drinks for consumption on the premises on which they are supplied, and to supplies of hot takeaway food and hot takeaway non-alcoholic beverages. There is no specific reference in legislation to the level of service. I can confirm that there is no policy bias in favour of supplies of catering that might

be regarded as healthy or unhealthy. The temporary reduced rate of VAT has been brought in as an urgent response to the coronavirus pandemic to support businesses severely affected by forced closures and social distancing measures.

Finally, we believe more clarity is needed on the meaning of food or drink being consumed 'on the premises on which it is supplied' when it comes to supplies of catering. If, for example, a catering business goes to their customer's site to cater, such that the food is being supplied, prepared and consumed entirely on the customer's site, presumably this would qualify for the reduced rate? Extending this example, does there have to be a certain degree of 'preparation' at the venue at which the food is supplied? Would simply delivering the food and uncovering it, or delivering it and serving it be sufficient for the reduced rate to apply? What if the venue serves the food?

HMRC's response: As mentioned above, the temporary reduced rate of VAT in this context applies only to supplies of food and non-alcoholic drinks for consumption on the premises on which they are supplied - the meaning of "premises" in this context is explained in section 3 of Catering, takeaway food (VAT Notice 709/1) along with examples. "Premises" include the food retailer's own premises (or 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 e.g. eating areas within a food court). Off-premises catering (that is, catering not provided on the catering supplier's own premises) is not included within the reduced rate and remains standard rated.

Holiday accommodation

It is not immediately clear from the published guidance whether, if VAT has been accounted for on the deposit for a hotel room/campsite pitch at 20% but the balance will now be payable at 5%, the VAT on the deposit can be amended? It would be helpful if the position could be made clear in the guidance relating to the temporary reduction. Conversely, will there be anti-forestalling legislation for deposits taken before 12 January 2021, but where the holiday accommodation is to be used after that date?

HMRC's response: The basic tax point for services is when the service is performed. If a deposit has been taken on account before a reduction in the VAT rate for a supply of accommodation, the business may choose to apply the rate applicable at the basic tax point to the deposit as well as the balancing payment. Currently, there are no plans for anti-forestalling legislation to be implemented.

Admission to attractions

The new legislation and guidance confirms that reduced rate relief will apply to admission to specific attractions which do not already qualify for cultural exemption. However, it would be helpful if more clarity could be provided on what is deemed to be 'admission' and what is a separate charge for something other than admission.

For example:

- The visitor pays an admission fee to enter a theme park, which benefits from the temporary reduced rate. However, once inside, they can choose to make an additional payment for premium rides (such as simulators, Virtual Reality experiences or high wire experiences). Are these a separate supply and if so, would they qualify as an admission to that specific activity?

- A visitor attends a travelling fair where there is no entry fee and each ride is subject to an individual charge, on a pay as you ride basis. Is each individual ride subject to its own admission fee qualifying for reduced rate?
- No admission fee is charged to enter the amusement park, but you can purchase wristbands that allow you to go on any ride in the park. There are various wristbands depending on height. Will these fall within the reduced rate exemption as admission?
- Where a qualifying venue provides season tickets for entry together with other ancillary benefits, can the season ticket price be apportioned to account for the reduced rate for the qualifying period where the admission is the predominant supply?

HMRC's response: An admission charge to enter an amusement park/fair ground or similar facility is eligible for the reduced rate. Where there are charges for individual rides, in order to be considered an attraction that is eligible for the reduced rate, the ride must be similar to that of an amusement park or fairground in its own right. In order to determine this, the individual features of the rides in question and the charging structure in place will need to be assessed before a final ruling can be given on this issue.

Where a ticket [season or otherwise] is for a bundle of supplies, some of which are eligible for the reduced rate and some that are not, then the consideration will need to be apportioned. Supplies that are incidental to the main supply can be ignored; what the main supply is will be a matter of fact. Notice 700, Section 8 provides further details. The temporary reduced rate will apply to season tickets purchased and paid for from 15 July 2020 to 12 January 2021.

Interaction with rules on vouchers

It would be helpful to clarify the how the temporary reduced rate interacts with the rules on the VAT treatment of face value vouchers.

For example, where it is not possible to determine whether or not a face value voucher for a restaurant will be used in the reduced rate period (e.g. because it has an expiry date after 12 January 2021), does this make it a multi-purpose value such that VAT has to be accounted for when the voucher is redeemed, rather than when it is issued?

HMRC's response: There is no change to the treatment of multi-purpose vouchers; the VAT liability for these is determined on redemption. Whether a voucher is a Single Purpose Voucher is determined at the time of first issue and VAT is accounted for at the appropriate rate at that time. There is no scope to revisit the status of either voucher as SPV or MPV after it has been issued.

Interaction with the flat rate scheme

We understand from the published guidance and from [VAT Notice 709/1](#) that “off premises” catering is not subject to the reduced rate, and therefore an off-premises caterer will still charge VAT at the standard rate. However, an off-premises caterer who uses the flat-rate scheme can presumably take advantage of the new flat-rate percentage of 4.5%, as this applies to “Catering services including restaurants and takeaways” with no apparent qualification. This appears to be something of an anomaly.

HMRC's response: An average flat rate is established across the relevant sectors. This means that if there are different rates in play across the sector businesses would have an amount due under the flat rate scheme that may be higher or lower than the amount they would have paid if they were under standard accounting. When we introduced the new temporary rates, they were based on an

estimate of the reduction of VAT declared across the sectors. This will work in some businesses favour and others will not get as much benefit from the reduced rate as they would under standard accounting. This is a feature of the scheme and could not be changed whilst still maintaining the simplification benefits the scheme provides.

Comments on guidance

Hospitality

We believe that [VAT Notice 709/1](#) may benefit from a more detailed review in the light of the temporary rate reduction. In particular, paragraph 2.2 of that notice states clearly that *"any supply as part of a contract for catering is standard-rated"*. However, it's not immediately clear what exactly constitutes a 'contract for catering'. For example, if food is delivered via a delivery service, does ringing up to place an order constitute a verbal contract?

[SI 2020/728](#), makes no reference to contracted supplies in the course of catering being standard rated. Instead, new group 14 (inserted into Sch 7A VATA 1994 by para 4 of SI 2020/728) merely states that *"supplies in the course of catering of any hot food or drink for consumption off those premises"* are eligible for the reduced rate. Presumably this means that, when a cold meal is delivered (with sufficient service that it is definitely catering) the rate is 20% but a delivered hot meal is only 5%?)

If that is the case, then the statement in Notice 709/1 that *"any supply as part of a contract for catering is standard rated"* is potentially misleading.

HMRC response: The question whether there is a verbal contract in place is not expected to be a key factor in determining whether or not a particular supply of food will benefit from the reduced rate. The question is whether it is eaten on-premises or is hot takeaway food etc. Cold takeaway food is zero-rated, provided that it is not of a type that is always standard rated such as ice cream, potato crisps, sweets, some beverages and bottled water.

In terms of the VAT Notice, we have sought to explain how the temporary reduced rate fits in with the normal rules. In general, a contract for catering services will be standard rated although where it falls to be a supply of food or non-alcoholic drink for consumption on the caterer's own premises, it will benefit from the temporary reduced rate.

Holiday accommodation etc.

[VAT Notice 709/3](#) has been updated to state:

"4.4 Wedding packages

If you supply a package of wedding services (including, for example, use of rooms for a ceremony, wedding breakfast and evening party), this is a single standard-rated supply, regardless of whether the catering is supplied by you or someone else.

Between the 15 July 2020 and 12 January 2021, if the catering is provided in house as a separate supply, it may benefit from the temporary reduced rate subject to the rules on single and multiple supplies. Check the relevant guidance on [single and multiple supplies](#)."

We find it difficult to reconcile the statement in the first paragraph that the supply of a wedding venue and ancillary supplies remains a single standard rated supply, with the indication in the second paragraph that the catering element can be 'carved out' and qualify for the reduced rate if it is a separate supply.

The wording of the second paragraph appears to be quite a departure from HMRC's previous treatment of wedding packages as a single supply. If it is intended that catering can be carved out in this way, then more guidance would be helpful to explain in which circumstances this treatment may be appropriate. For example, if you had the option of engaging third party caterers for the wedding but chose to use the in-house catering could this be reduced rated?

Further, if a supply of catering can be carved out in this way, does this also mean accommodation (particularly in respect of the bride and groom) provided as part of a wedding package can also be carved out and treated as reduced rated?

HMRC's response: Thank you for pointing out that this section of Notice 709/3 is causing some confusion. To clarify, a supply of a package of wedding services (which may include for example, use of rooms for a ceremony, a wedding breakfast and evening party), is a single standard-rated supply, regardless of whether the catering is supplied by you or someone else. However, between the 15 July 2020 and 12 January 2021, if you simply provide catering on your own premises (for example a wedding breakfast) and are not providing this as part of a wedding package, it may benefit from the temporary reduced rate.

Admission to attractions

The guidance [VAT on admission charges to attractions](#) published on 9 July 2020 indicates that the reduced rate for admission charges does not apply to "sporting events". A link from the words "sporting events" takes you to the list of sports contained in [Notice 701/45](#). This list includes, by way of example, lawn tennis. Where a business operates the tennis courts in a local park, presumably they still have to charge 20% VAT on charges for use of the courts. However, paying to book a tennis court would not normally be considered as paying for "admission to a sporting event". Should the guidance actually say that "admission to sporting events and facilities" is excluded from the reduced rate?

HMRC's response: Thank you for bringing this to our attention, we believe that the attractions guidance is clear but will review this and if necessary, update this paragraph. I can confirm that the temporary rate does not apply to admission to sporting events and facilities.