



VAT: Addressing Borderline Anomalies
Response of the Association of Convenience Stores

1. ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation. ACS represents 33,500 local shops, many of which sell hot food.
2. This consultation seeks to remove anomalies from current VAT rules, including proposals to charge VAT on all hot takeaway food, except freshly baked bread. While ACS recognises and supports the intention to create a level playing field, we are concerned that the proposed changes could create further anomalies and could have a detrimental impact on stores at the current time.
3. In the current economic climate, small businesses are coming under increasing pressures, ACS believes that taking action which will be inflationary could unnecessarily add to these and harm both businesses and their customers. ACS is calling on the Government to look at alternative measures, including introducing VAT at the lower rate for all hot foods, or deferring implementation for all small businesses to enable them to plan to deal with the impact of these changes.
4. The consultation seeks views on a number of questions. This submission responds to Q1 and Q4 relating to VAT on hot food.

Q1. Does the proposed legislation meet its objective of ensuring that all hot takeaway food is taxed consistently at the standard rate of VAT? If not, why not and what changes are needed?

5. As the Government is aware, the VAT liability of hot food is a contentious area and has, to some extent, been open to interpretation. Legal challenges have meant that the law has become particularly complex, meaning it is often those with greater resources and access to expensive tax or legal advice who are able to negotiate the zero rate of VAT for their hot food products, while smaller businesses pay VAT at 20%.
6. Convenience stores have been expanding in recent years to provide additional services to the communities they serve. This includes the provision of hot takeaway food. Information from our members shows that the majority of convenience stores do charge VAT on hot foods, however, given the complexity in the law this is not universal, and not all hot food products are included.
7. Despite the potential benefits of a more simplified approach, ACS has concerns that the measures as proposed could harm small businesses and may also fail to achieve the

Government's aim. In particular, concerns have been raised over the definition of 'above ambient air temperature when provided to the customer', and whether this could lead to legal challenges over the definition of ambient temperature. As British weather varies in temperature throughout the year and in different parts of the country, legal challenges to this definition could result in further complexities being added to regulations and the 'simplified' approach being undermined.

8. Determinations would also have to be made as to what percentage of food sold is classed as 'hot' food. This is likely to differ between individual stores, and would therefore need an individual assessment of the business and products they sell in order to be able to calculate an accurate and fair tax bill for each premises selling hot food. This could incur significant administrative costs which have not been taken into account.

Q4. We have considered the impact on businesses and customers of the changes to catering and these are set out in the Table of Impact in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.

9. The potential costs of these measures are significant to retailers, and could be particularly onerous for small businesses. In addition to the inflationary nature of the proposals, which could see hot food products in stores which do not currently charge VAT rising in price by 20%, and loss of custom due to price rises, all stores could be faced with costs for additional food storage equipment. If premises sell both hot and cold food, they may need to spend extra money on new cabinets to keep separately hot items, which are VAT liable and the same cold product, which is not.
10. The Table of Impacts in Annex B of the consultation suggests that 2-3000 retailers would be affected, and costs to them would be of familiarisation with the new rules and of book keeping, which would cost £50 per store. However, this does not factor in any costs as outlined above, or the potential impact the proposal could have on business plans to recoup their initial outlay for baking equipment or hot storage facility.
11. For those premises not charging VAT, the investment they have made in their stores could be undermined by this latest unforeseen charge. Investment in equipment for the provision of hot food is a much greater cost as a percentage of turnover for small businesses who have chosen to offer this service. Given the difficult economic circumstances, and the many pressures faced by small businesses, these proposals could place further strain on businesses, not just in terms of direct costs, but also the negative impact on their business model.
12. Given these concerns, several retailers are suggesting it would not be worth continuing serving hot food in their premises. While this is subjective, and circumstances of each store differ based on location, clientele and service offering, it is likely that some stores will pull out of the hot food market.

13. ACS recognises the potential benefits from tax simplification, but questions whether the current proposals at this time would place a significant burden on some retailers and could cause greater harm than intended. ACS therefore opposes the introduction of these measures in their current form, and calls on the Government to look to alternative measures which would remove the potential negative impact on small retailers and actually deliver a simpler, less onerous system.
14. Possible alternatives include exemptions for all foods not kept warm after baking, or the introduction of VAT on all hot food at the lower rate of 5%.
15. Exemptions for food which is not kept warm would be a clear legal distinction which could eliminate tax confusion and uncertainty, while significantly reducing the potential burden of the current proposals. Alternatively, introducing VAT at the lower rate of 5% would reduce the problem of price increases and the related concerns for both retailers and their customers.
16. ACS recognises it is not possible to remove VAT from any category under EU law. However, the UK already operates a lower rate of VAT at 5%, and annex III of the 2006 EU Directive¹ would permit foodstuffs (excluding alcoholic beverages) and catering services to be included in this category.
17. If the Government does decide to continue with the current proposals as they stand, ACS believes serious consideration should be given to a delay in implementation for all small stores², in order to allow them to plan for the change, the associated costs, and adapt their business model to take account of these changes. Due to more limited resources, it is harder for smaller, independent stores to adapt to regulatory changes and absorb costs in the same timeframe as larger multiples. Due to this, ACS believes smaller stores should be given enough time before implementation to ensure that these proposals do not have an unduly negative or burdensome effect on their business.

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¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20110101:EN:PDF>

² Small stores being those with fewer than 3000 sq ft, as defined in Sunday Trading legislation.