

**VAT liability of business catering**  
***Danfoss A/S & AstraZeneca A/S (C-371/07)***

**Summary**

The ECJ has ruled that there is no 'deemed supply' on which VAT is due where meals are provided free of charge to business contacts in the course of meetings, nor is there an input VAT block, provided such catering is strictly for the purposes of the business. Furthermore, although a deemed supply charge could, in principle, arise in respect of the provision of meals by a company to its staff, this would not occur where the needs of the company dictated that meals were provided, e.g. to ensure that work meetings run smoothly and without interruption. Opportunities exist for UK businesses which have suffered a VAT cost on meals provided to business contacts or employees to submit claims.

**Background**

The case concerns a 'standstill' provision in place in Denmark under art 17(6) EC Sixth VAT Directive (now art 176 Principal VAT Directive (2006/112/EC)) which restricted recovery of input VAT in respect of meals provided to staff and business contacts during business meetings. However, in practice, the Danish tax authorities relaxed that provision and instead allowed taxpayers to account for output VAT, based on the cost price of the meals provided, under the art 6(2) deemed supply provisions. When the taxpayers then sought to recover this output VAT (on the basis that the meals had not been deemed art 6(2) supplies) the Danish tax authorities sought to invoke the art 17(6) 'standstill' provisions and refused repayment on the basis that input VAT had been overclaimed.

The Advocate-General's opinion was that the provision of meals free of charge to business contacts and staff in a company's canteen, in connection with meetings, could be seen as "capable of serving principally the purposes of the business" and should not be treated as deemed supplies on which VAT was due. In respect of the art 17(6) standstill issue, the Advocate General suggested that a Member State may not 'retain' an exclusion from deduction with respect to expenditure for which a right to deduct was allowed in practice on the date when the Directive came into force, even if the exclusion was, in theory, provided for under national legislation. Nor may a Member State, having once allowed deduction of VAT on certain expenditure after the Directive came into force, subsequently revert to excluding the same expenditure from the right to deduct, even if such an exclusion had been provided for when the Directive came into force.

**Held**

The ECJ's judgment is broadly in line with the Advocate-General's opinion, and in essence means that:

- a Member State may not 'retain' an exclusion from deduction with respect to expenditure for which a right to deduct was recognised by administrative practice on the date when the Directive came into force, even if the exclusion was provided for in theory under national legislation;
- the deemed supply provision in art 6(2) does not cover the provision, free of charge, of meals in company canteens to business contacts in the course of meetings held on company premises where those meals are provided for strictly business-related purposes;
- it is for the national court to decide whether objective evidence indicates that the meals are provided for strictly business-related purposes; and
- art 6(2) does apply in principle to the provision of meals by a company to its staff on its premises, unless the needs of the company require the employer to ensure that meals are provided (such as the need to ensure that work meetings are run smoothly and without interruptions).

The ECJ's ruling that no VAT charge should arise on meals provided to business contacts for "strictly business-related purposes", appears to be more restrictive than the position taken by the Advocate General, who suggested that the test was "serving principally the purposes of the business", and is more in line with the views expressed by the European Commission when the case was heard, where the Commission suggested that the meals provided would have to be "necessary for the purpose of the business".

The judgment is available on the ECJ website via this [LINK](#).

### **Implications**

In addition to businesses having operations in Denmark, the ECJ's ruling gives rise to an opportunity for UK businesses to make claims if they have suffered a VAT cost on meals provided to business contacts or employees, either in circumstances where output VAT was accounted for on what was considered to be a 'deemed supply', or where input VAT was treated as irrecoverable on the basis that what was being supplied was 'business entertainment'.