

**Cold sandwiches and catering**  
*Made to Order Ltd - V20959*

Made to Order (MO) appealed against a ruling by HMRC confirming that cold food sold by MO should be standard rated. The supplies in question are the made to order cold sandwiches from Subway Kiosks in three different food courts. MO argued that the seating areas next to the Subway kiosks were not premises from which the food was supplied because the kiosks shared the seating area with other food outlets in the food court and had no control over the area.

MO argued that the supplies of cold food were not supplied 'for consumption on the premises on which they were supplied' and that therefore as the supplies were not otherwise 'in the course of catering' and are clearly supplies of food for human consumption; they are zero rated.

The Tribunal held that "the facts of this case indicate perfectly clearly that the kiosks are not in any common sense terms the same premises as the places where the food is consumed. No food could be consumed in the kiosks and in respect of none of the three outlets does the lease even purport to give any rights of occupation or even use over the seated areas to the appellant."

The appeal was therefore allowed and supplies of cold food from the three kiosks are correctly to be zero rated because they do not fall under the term catering.

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