

Guidelines on the VAT Treatment of Ice-cream in “Family Packs”

Date: 21st January 2025

Purpose and Background

Ice creams are classified under heading 2105 of Chapter 21 of the Combined Nomenclature (CN) outlined in Annex I of Council Regulation (EEC) No 2658/87 of 23 July 1987, which governs the tariff and statistical nomenclature and the Common Customs Tariff. Consequently, ice creams do not fall within the definition of “food” as specified in Item 1 of Part Five of the Fifth Schedule to the Value Added Tax Act. Regardless of whether they are supplied in family packs or otherwise, ice creams are not eligible for the exemption provided under Part One, Item 9 of the Fifth Schedule of the Value Added Tax Act and thus, VAT should be charged using the applicable VAT rates.

By default, ice-creams are therefore subject to the standard VAT rate of 18%, however a reduced rate of VAT of 5% applies to the supply of ice-cream in “family packs” in accordance with item 3(f) of the Eighth Schedule to the Value Added Tax Act.

In light of the aforementioned, the purpose of this document is for the Commissioner for Tax and Customs (‘CfTC’) to provide guidance, in conformity with article 75(2) of the VAT Act, on the application of the reduced VAT rate of 5% on the supply of ice-cream in “Family Packs”.

Interpretation

Item 3(f) of the Eight Schedule to the VAT Act provides for a reduced rate of 5% on the supply of “family packs as defined in item 2(b) of Part Five of the Fifth Schedule to the Act falling under CN codes 2105.00.10; 2105.00.91 and 2105.00.99”.

Item 2(2)(b) of Part Five of the Fifth Schedule to the VAT Act defines a “family pack” as meaning “ice creams consisting of one component of not less than 350 grams in weight”.

The CfTC wishes to bring to the attention of taxable persons who supply or sell ice cream in packs containing multiple individually wrapped portions of ice-cream to this provision. Insofar as the individually wrapped portions do not exceed 350 grams, such packs do not meet the definition of “family packs,” and therefore, an 18% VAT rate applies, regardless of whether the combined total weight of the pack is less than or exceeds 350 grams.

Disclaimers

These guidelines shall not prejudice in any way any of the powers of the CfTC in terms of the VAT Act.

These guidelines shall replace and supersede any previously applicable guidelines on the same matter. Notwithstanding, this shall not prejudice the application of any previous guidelines prior to the date of publication of these guidelines.

The CfTC reserves the right to substitute, alter or withdraw these guidelines as necessary at any time.

These guidelines shall apply only in respect of assessing the VAT treatment of supplies from a Maltese VAT Perspective which take place in Malta.