

## Tax & Legal Weekly Alert

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#### **VAT Rate of 5% for restaurant and catering services: Instructions to clarify the application**

The instructions of uniform application try to clarify the main difference – from the perspective of a VAT rate applied (9% or 5%) – between **restaurant and catering services** and supply of goods operations. Even if the instructions provide some examples, it is necessary to perform a **qualitative analysis of the entire operation** for the proper fit of the operations, because some uncertainties will also remain, as will be explained in this Tax Alert.

#### **The minimum gross base wage per country shall increase and will vary depending on the study levels, starting with January 1<sup>st</sup>, 2019**

The minimum gross base wage per country shall increase and will vary depending on the study levels, starting with January 1<sup>st</sup>, 2019, pursuant to Government Decision no. 937/2018, published in the Official Gazette no. 1045 of 10.12.2018.



## VAT Rate of 5% for restaurant and catering services: Instructions to clarify the application

The reduced VAT rate of 5% for the supply of restaurant or catering services, with the exception of alcoholic beverages other than drought beer, is applied from 1 November 2018.

In the absence of clear norms at the time of implementation, the business environment raised questions about the "boundary" between the reduced VAT rate of 9% (applicable to food supplies) and the reduced VAT rate of 5% (applicable to restaurant and catering services).

Therefore, these instructions have been approved in order to provide some examples to clarify the difference between **supply of goods** and **restaurant or catering services** as follows:

- Supply of food and / or beverages in mall restaurants, pizzerias, hypermarkets that are accompanied by **sufficient related services** such as: serving area with tables and chairs, debarking and cleaning services will be considered as **supply of services**, with a VAT reduced rate of 5%.
- Supply of food and / or beverages at fairs, festivals, delivery of lunch or in a school **without any other related service** will be considered as **supply of goods**, with a VAT reduced rate of 9%.

Thus, for the purpose of VAT classification of a transaction as a supply of goods or a supply of restaurant or catering services, a qualitative analysis of the whole operation must be carried out to indicate whether the elements of the service which precede and accompany the supply of the food are or are not preponderant.

However, although these instructions give examples to make a clear distinction between restaurant or catering services and supply of goods, in practice this change in the VAT rate from 9% to 5% can create some problems.

Thus, we recommend for those who activate in this field to implement certain measures to ensure that they use the correct VAT rate, such as the implementation of internal procedures.

In the cases where the examples in the instructions are not edifying, we recommend an analysis of the reported operation and the applicable European jurisprudence, as well as obtaining a formal confirmation of the applicable VAT rate in the specific case.

For further questions regarding the aspects mentioned in this alert, please contact us.



**Vlad Boeriu**  
Partner  
+40 21 2075 341  
[vboeriu@deloittece.com](mailto:vboeriu@deloittece.com)

**Starting with January 1st, 2019, the minimum gross base wage per country shall increase and will vary depending on the study levels**

**Main provisions regulated under Government Decision no. 937/2018:**

- The minimum gross base wage per country is set in cash, at the amount of 2,080 lei monthly. The minimum gross base wage per country cannot include increments or other benefits and corresponds to an average working schedule of 167,33 hours per month, representing 12,43 lei/hour.  
Thus, it was clarified that, starting with the entry into force of GD no. 973/2018, the minimum gross base wage per country cannot be comprised of other increments/benefits, which would need to be granted by the employer on top and separately from the minimum gross base wage per country.
- For the personnel who occupies positions for which bachelor's degree is required and has a length of service of at least one year in the specialization acquired in the higher education system, the minimum gross base wage per country, which shall not include increments or other benefits, is of 2,350 lei, for an average working schedule of 167,33 hours per month, representing 14,044 lei/hour.

The above-cited regulation creates ambiguity in relation to the situations in which it is mandatory to grant an increased gross minimum wage in consideration of the employees' level of studies. Thus, it is not sufficiently clear that employers are under the obligation to pay a higher minimum gross base wage only in cases where the law imposes for employees to have a bachelor's degree in order to occupy certain positions.

For further questions regarding the aspects mentioned in this alert, please contact us.



**Gabriela Ilie**  
Managing Associate  
+40 744 474 622  
[aillie@reff-associates.ro](mailto:aillie@reff-associates.ro)



**Ana-Maria Vlăsceanu**  
Senior Associate  
+40 726 215 083  
[avlasceanu@reff-associates.ro](mailto:avlasceanu@reff-associates.ro)

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