

ECJ Decides on Application of Different VAT Reduced Rates Based on Subjective Requirements: *YD* (Case C-146/22) (VAT)

5 October 2023

Report from IBFD Knowledge Centre

On 5 October 2023, the Court of Justice of the European Union (ECJ) gave its decision in *YD v. Dyrektor Krajowej informacji Skarbowej* ([Case C-146/22](#)) based on a number of grounds.

"On those grounds, the Court (Eighth Chamber) hereby rules:

Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/1713 of 6 November 2018, read in conjunction with points 1 and 12a of Annex III thereto, Article 6 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, and the principle of fiscal neutrality,

must be interpreted as not precluding national legislation which provides that foodstuffs consisting of the same main ingredient and meeting the same need on the part of the average consumer are subject to two different reduced value added tax (VAT) rates, depending on whether they are sold at retail level in shops or are prepared and served hot to a customer at his or her request, with a view to their immediate consumption, provided that those foodstuffs do not have similar properties despite having a main ingredient in common or that the differences between those foodstuffs, including as regards the support services accompanying their supply, have a significant influence on the decision of the average consumer to purchase one or the other of those foodstuffs."

For a previous TNS regarding the case, see [European Union-2, News 25 July 2022](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.