Take-away food and VAT – book-keeping crime when restaurants apply the wrong tax rate?

[Translation of the article *Hämtmat och moms – bokföringsbrott när restauranger tillämpar fel skattesats?* by Björn Forssén, published in original in Tidningen Balans fördjupning (The Periodical Balans: Advanced articles) on 1 July, 2026. Translation into English by the author of this article, Björn Forssén.]

The enterprises' external auditors should be on the alert about wrong lines of action concerning the tax rate for take-away food. Björn Forssén is writing this in an advanced article for Balans.

As from 1 April this year to the end of next year the VAT on foodstuffs shall be 6 per cent instead of 12. In an interview in the TV4 News with the tax authority's legal expert, Kerstin Alvesson, it was stated that restaurants and similar enterprises which continue to apply the higher tax rate of 12 per cent for serving of good also on take-away food, despite they have the right during the mentioned period of time to apply the VAT for foodstuffs of 6 per cent, they are still liable to pay it.

Setting out from the statement by the tax authority's representative one might consider it to split hairs to problemize that the restaurants apply a too high tax rate on take-away food during the temporary reduction of the VAT on foodstuffs of the period of 1 April, 2026 to 31 December, 2027, since the fault is to their own disadvantage.

On the TV4 News an article was published on 1 June, 2026, "*Restauranger tar ut för hög moms*: *'Kände mig lurad'*" ('Restaurants are charging a too high VAT: I felt cheated'), by Caroline Lindroth (see www.TV4.se), where the interview with the tax authority'. For example, the interview has also been mentioned on 1 June, 2026 in an article in Omni by Marcus Lindén, "*Många restauranger tar för hög moms på hämtmat*" ('many restaurants charge a too high VAT on take-away food (see www.omni.se). It is of a special interest that the tax authority's representative considers that although restaurants in many cases continue to charge the VAT of 12 per cent on take-away food, despite the temporary reduction of the VAT on foodstuffs, this creates few winners. This, because the customer must pay more at the same time as the restaurants still have to pay the whole VAT amount to the State, i.e. 6 plus 6 per cent, instead of only 6 per cent. Thereby, I deem that the tax authority is lulling the customers into a false sense of security meaning that the accounting of a falsely charged VAT does not matter due to it only causing that the State gets too much VAT.

However, what the tax authority's legal expert did not mention is that the restaurant owner accounting for and paying the higher VAT rate may still suffer unexpected consequences according to what I have mentioned in my article in *Balans fördjupning* (The Periodical Balans Annex with advanced articles) of 2024-05-06, *Aktuell utredning löser inte problemet med momsbedrägerier* (Current official report does not solve the problem with VAT frauds).

In that article, I mentioned another example of falsely charged VAT, namely that VAT is erroneously denoted in a fictitious invoice, i.e. an enterprise issues a fraudulent invoice with a charge of VAT. If the enterprise does not issue a credit invoice it is liable for payment of the amount falsely denoted as value-added tax (VAT). On page 7 of the article, I state that if such a credit note is not issued before the date of the year-end that liability should be mentioned as

a contingent liability in a note of the enterprise's annual report. This, due to the activity's balance cannot be mainly judged if falsely charged VAT during the financial year is extensive.

Under the circumstances mentioned, a natural person who carries out activity under sole proprietorship or as a representative for a limited company may be deemed incurring responsibility for book-keeping crime if it is not following by the annual report that falsely charged VAT exists in the book-keeping.

Since enterprises in the restaurant business first have private persons as customers and normally do not issue credit notes in the present situation, it is important that the auditors regard that an enterprise in that line of business can be deemed committing book-keeping crime due to an erroneous tax rate being applied on take-away food during the temporary reduction of the VAT. Thus, it is not enough that the restaurant owner account for and pays the falsely charged VAT for him or her to minimize the risk of criminal responsibility in this respect. The argument 'I thought it was OK as long as I paid the VAT' will probably stand in court.

Then, my all over reflection is that an adjustment should be made for control reasons in the rule on accounting of falsely charged VAT, i.e. in Ch. 26 sec. 7 of skatteförfarandelagen (2011:1244), the Taxation Procedure Act. There, it is stated that such an amount shall be accounted for in a special tax return by 'anyone who is liable for payment *bara* (only) due to falsely charged VAT'. For example, this means that a restaurant enterprise which is registered for VAT shall account the falsely charged VAT in the ordinary VAT return. By removing the word *bara* from the rule in question would accounting of falsely charged VAT be due in a special tax return regardless of whether an enterprise is making taxable transactions and file ordinary VAT returns or makes transactions exempted from VAT and only (*bara*) is liable for falsely charged VAT.

The rules on a special liability for payment of falsely charged VAT were introduced in the Swedish VAT act on 1 January, 2008 in accordance with article 203 of the EU's VAT Directive (2006/112/EC). Of the preparatory works it follows that there are many examples of falsely charged VAT, for instance that VAT is denoted in a fictitious invoice or that VAT is charged with an erroneous tax rate (see prop. 2007/08:25 p. 91). By removing the word *bara* from the mentioned rule in the Taxation Procedure Act would all examples of falsely charged VAT be accounted for in a special tax return instead of in an ordinary VAT return, regardless of what activity otherwise occurs in the enterprise in question.

With my suggestion it will be easier for the accountants to review the VAT accounting in the enterprises and at the same time it will improve the tax authority's control of the VAT accounting in an enterprise. By removing the word *bara* from the rule in question and making the liability to file a special tax return general is not only the risk of the entrepreneur being accused of book-keeping crime decreasing but also the risk of he or she being deemed making tax control more difficult for the tax authority.

By the suggested law alteration de lege ferenda – i.e. my suggestion of how the rule should be written – I am aiming for the legislator to make the rule logically functional for control reasons for all cases of falsely charged VAT. Thus, in my opinion it is only by removing the word *bara* from Ch. 26 sec. 7 first para first sen. of the Taxation Procedure Act that the

legislator will accomplish a for control reasons necessary general contrast effect of special tax returns compared with ordinary VAT returns.

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