

BUDGET 2020



Response to the Consultation Paper on

Options for the Future VAT Treatment of Food Supplements

Executive summary

This submission sets out why the decades old practice and policy of applying the zero VAT rate to food supplements should continue. It demonstrates that there has been no credible case put forward for applying the standard or a reduced VAT rate to food supplements from a legal, health or business impact perspective.

It recommends that the Finance Act 2019 should confirm the zero rating of food supplements to provide political and policy clarity to retailers and consumers and certainty for the Revenue Commissioners.

This response to the Consultation Paper specifically accepts the invitation (at Paragraph 2) to provide alternative approaches, address issues not covered in the paper and comment on the direction we believe tax policy should take.

Highlights of this submission are:

- Long standing **policy, practice and precedent** has been that food supplements have been zero VAT rated. To suggest that this policy has no legal basis is to state that Revenue has misapplied the VAT law in Ireland for decades – a statement which would have profound effects on the credibility and integrity of the Revenue.
- **Food supplements are literally and legally food.** In line with European law, they are regulated in Ireland by the Food Safety Authority of Ireland based on the European Food Safety Authority (EFSA) definition.
- For many Irish citizens and especially for many **vulnerable groups, food supplements contribute to maintaining and improving their health.** For example, supplements are used extensively to address diet deficiencies and to reduce the risk factors of diseases, such as heart disease and macular degeneration. In this way, they are consistent with, and supportive of, the Government's *Healthy Ireland* initiative which is aimed at improving the health and wellbeing of everyone living in Ireland.
- The Government introduced a sugar sweetened drinks tax in order to change behaviour and improve health outcomes. It would be a **perversion of that policy** for Government to now increase the cost of food supplements which contribute to improving health.
- Applying VAT to food supplements will have a significant **impact on sales** in health stores and pharmacies across Ireland. The impact will be hardest felt on the 200 independent Health Stores found in **small towns** across the length and breadth of rural Ireland. Higher prices will also drive consumers to purchasing **products online** from outside the state and contribute to a further **decline in retail choice and diversity in rural towns.**

Background

- 1) Health Stores Ireland represents more than 200 Health Stores across Ireland, many of which are small, family run businesses. We welcome the opportunity to contribute to the consultation process regarding the future VAT treatment of food supplements.

Current VAT Treatment and the Scope of the Consultation

- 2) We are deeply disappointed by the narrow scope of the consultation paper, which essentially assumes that VAT is going to be applied to food supplements and the only decision to be made is whether it is the standard or reduced rate. The consultation paper suffers from three fundamental problems:
 - i) A complete mis-statement of the current VAT practice and policy with regard to food supplements;
 - ii) A misrepresentation of Food Supplements as something other than "food";
 - iii) An incorrect assumption that there is no legal provision that would allow a zero rate to be applied to food supplements.

This response will deal with these issues before considering the implications of particular VAT rates.

- 3) The consultation paper is based on the premise that all food supplements have always been liable to the standard rate of VAT apart from a limited range of vitamins, minerals and fish oils which were allowed the zero rate by "concession". The picture painted would not be recognised by anyone who currently works or has worked in food supplements retail at any time in the past forty years.
- 4) In reality, no such concession ever existed, or was even claimed to exist by Revenue until relatively recently. All food supplement products were allowed the zero VAT rate from the time that rate was introduced in September 1973, on the sole basis that they were formulated from recognised food ingredients. This policy continued until November 2011 when Revenue published guidance to apply the standard VAT rate to certain Sports Nutrition and Slimming products. Importantly, the November 2011 guidance did not remove the zero VAT rate from any other type of food supplement products that had been zero rated since 1973.
- 5) The fact that the application of the zero rate is very much wider than Revenue will now admit is evidenced by numerous determinations by Revenue on particular products, a number of VAT audits on retailers and wholesalers and by entries on Revenue's own web site (now conveniently deleted) zero rating products as diverse as Ginseng and Royal Jelly.
- 6) It is therefore not correct to suggest that Revenue have been operating a "concession", even in the unlikely event of a such a provision being in accordance with EU law. Practice followed by a Government agency for more than forty years is in effect policy. To pretend that such a long standing policy either did not exist or can be changed by Revenue at a whim in the absence of legislative change, new case law or any democratic oversight is both erroneous and dangerous. Furthermore, Revenue's rewriting of history effectively retrospectively criminalises every retailer and wholesaler of food supplements in the state.

- 7) Food supplements are literally and legally food. They are regulated in Ireland by the FSAI, which is to be expected given the European Food Safety Authority (EFSA) definition <https://www.efsa.europa.eu/en/topics/topic/food-supplements>

"Food supplements are concentrated sources of nutrients (i.e. mineral and vitamins) or other substances with a nutritional or physiological effect that are marketed in "dose" form (e.g. pills, tablets, capsules, liquids in measured doses). A wide range of nutrients and other ingredients might be present in food supplements, including, but not limited to, vitamins, minerals, amino acids, essential fatty acids, fibre and various plants and herbal extracts. Food supplements are intended to correct nutritional deficiencies, maintain an adequate intake of certain nutrients, or to support specific physiological functions. They are not medicinal products and as such cannot exert a pharmacological, immunological or metabolic action. Therefore, their use is not intended to treat or prevent diseases in humans or to modify physiological functions. In the EU, food supplements are regulated as foods. Harmonised legislation regulates the vitamins and minerals, and the substances used as their sources, which can be used in the manufacturing of food supplements. For ingredients other than vitamins and minerals, the European Commission has established harmonised rules to protect consumers against potential health risks and maintains a list of substances which are known or suspected to have adverse effects on health and the use of which is therefore controlled".

- 8) Even Revenue's own commissioned expert guidance confirms that supplements are food, albeit a particular type of food :

"In conclusion, this report provides an evidence based approach to defining characteristics of food and food supplements based on a review of scientific and academic literature, relevant definitions and a survey of internationally acclaimed academic food experts. Using an iterative approach, it has defined characteristics of food and food supplements and tested those against existing food products. It concludes that food supplements are a type or category of food (akin to food regulatory descriptions) but that they are not food in a conventional form as understood by the consumer. On this basis it was possible to define distinct characteristics of both food types."

- 9) The consultation paper states that there is no legal provision that would allow the zero rate to continue to be applied to food supplement products. EU law restricts the application of the zero VAT rate to products that were already zero rated before January 1991. Given that we have already demonstrated that all food supplements were zero rated from 1973, we can see no legal impediment to the confirmation of zero rate for food supplements in the upcoming Finance Act.

The Future VAT Treatment of Food Supplements

- 10) On December 27th 2018, Revenue proposed the application of the standard VAT rate for all food supplements, including vitamins, minerals, probiotics and fish oils on the basis that they no longer consider them to be foods for VAT purposes. The 23% rate was to come into effect on 1st March 2019, bringing thousands of products into the standard VAT category for the first time in over 40 years.

- 11) Following a massive public outcry and the delivery of a 70,000 strong public petition, the Minister of Finance asked Revenue to reconsider. It is now vital that the forthcoming Finance Act gives clarity to the treatment of food supplements for VAT purposes.
- 12) We have three areas of concern about the introduction of VAT for Food Supplements; the impact on public health, the impact on business, and ease of implementation.

Social Responsibility and Impact on Public Health

- 13) According to an iReach survey commissioned by the IHTA, 71% of Irish people buy vitamins and minerals all year round, with 73% of those regular consumers doing so to maintain and improve ongoing adult health.
- 14) The introduction of VAT to food supplements would seriously undermine the health of people who rely on them to maintain their health. This includes:
 - a) People who rely on food supplements, such as iron and vitamin B12, to address malabsorption and diet deficiencies;
 - b) People who take food supplements to reduce the risk factors of diseases, such as heart disease and macular degeneration;
 - c) People who take food supplements to enable their body to function at a normal level and maintain a good standard of health.
- 15) One of the areas of consumer feedback arising from Revenues December 2018 VAT proposals was the likelihood of price sensitive consumers being unable to afford food supplements if VAT was applied. These people will be forced to fall back on the already overstretched health service if they are priced out of the ability to help manage their own health.
- 16) Applying VAT to any health sustaining foodstuff is not acceptable, given that both current rates are reserved for luxury foods with a tendency to be consumed in excess and to damage health. For example, take away burgers are taxed at 13.5% and sweets and fizzy drinks at 23%. Frozen pizzas, chips and ready meals are zero rated.
- 17) Food supplements are heavily regulated. They are safe and beneficial to the health of a wide range of consumers. To tax products that have a positive impact on people's health makes no sense and goes against the Government's own Healthy Ireland initiative. A Government that taxes food supplements has a disregard for public health.
- 18) Any decision to treat products differently for VAT purposes depending on whether or not they are licensed by the HPRA as medicines would have unintended consequences. For example, only two of the large number of Folic Acid products currently on the market are registered as medicines. Consumers would be understandably confused and outraged if essentially the same vitamin with the same formulation and strength would be available with VAT and without VAT depending upon whether the product had undergone the costly HPRA registration process.

- 19) We could not support the restriction of zero or reduced rate of VAT to only those products that are recommended by the Department of Health. Many GP's, Hospital Consultants and other health care practitioners regularly recommend specific supplements to assist in the management of health and ongoing medical conditions. Ireland is at the cutting edge of international research in areas such as probiotics and macular degeneration and new products are being developed at an impressive rate. There would be a constant consumer and practitioner demand for the Department of Health to broaden its list.

Impact on Business and High Street Diversity

- 20) There are approximately 200 independent Health Stores. Many of them are to be found in small towns across the length and breadth of rural Ireland. In many instances they are one of the few truly independent retailers left on the High Street. ISME and Retail Excellence Ireland recognise both the importance of these businesses to the retail environment and the highly damaging impact on these small businesses of the introduction of VAT on Food Supplements.
- 21) A decision to introduce VAT on Food Supplements would have a huge impact on sales for Health Stores and Pharmacies across the country. For the past 40 years, there has been a zero % VAT rate on food supplements. An increase to 23% is unprecedented and could put dozens of Health Stores out of business and cause hundreds of jobs to be lost. Even 13.5% would be extremely damaging. We are not aware of any precedent for such a huge increase in the VAT burden in a single move. The food and hospitality trade have recently fought a high-profile public campaign highlighting the dire consequences of moving from 9% to 13.5% VAT. A move from 0% to 23% in any other business area would be unimaginable.
- 22) For Health Stores, food supplements can account for up to 80% of annual turnover. The application of VAT will have a disproportionate effect on small businesses. A January 2019 retailer survey identified eleven shops actively considering closure as the result of the proposed new VAT regime. Over 40% of the respondents said they would be forced to lay off staff.
- 23) Imposition of VAT will also drive people online to purchase products from outside the State where VAT rates are much lower, leading to a loss of revenue to the exchequer. Offshore online retailers offer no value to the economy through employment, rent, rates, VAT, or other taxes. Revenue's application of 23% VAT on sports supplements led to the absolute collapse of that market from a High Street retail perspective. Maintaining retail diversity is vital to the future of a healthy High Street.
- 24) Brexit is still a very live issue, and both Government and Revenue are advising business to be *Brexit Ready*. In common with other small businesses, Health Stores face a myriad of Brexit related uncertainties including volatile exchange rates, potential tariffs, additional administrative burdens and even availability of products. Adding domestic VAT to Brexit induced tariffs would be likely to lead to a collapse in the market for food supplements and consequently the demise of many small retailers.

- 25) We note that neither Revenue nor the Department of Finance has carried out an impact study of the effect of a sudden introduction of either the standard 23% or reduced 13.5% VAT rate on literally thousands of food supplement products.

Ease of Implementation

- 26) VAT is a self assessment tax with very heavy penalties for businesses that get it wrong. It is therefore encumbant on Revenue to ensure that taxpayers clearly understand their obligations. Most Health Stores are small family run micro businesses. More than 80% of Health stores Ireland members have an annual turnover less than €300,000. They cannot afford to employ VAT consultants, accountants and lawyers to intrepret day to day application of VAT. They need any VAT regime to be simple, straighforward and clear.
- 27) Any solution that applies a different VAT rate to different types of Food Supplements will be fraught with difficulties unless it is absolutely clear. Our experience to date suggests that this clarity may not be forthcoming. For example:
- a) There is currently no centralised database for retailers to check the VAT status of a particular product;
 - b) It is not unknown for different tax districts to offer differing VAT rulings on the same product;
 - c) Revenue have seemingly changed the VAT status of products without reference to or even informing the industry.

The Way Forward

- 28) Doing nothing is not an option. The legally dubious Revenue guidance implementing the Standard 23% VAT rate for all food supplements will be applied from 1st November 2019 unless it is counteracted by the Finance Act which implements Budget 2020. It is therefore vital that Budegt 2020 clearly and unequivocally sets out the VAT position with regard to food supplements.
- 29) Referring the matter to the Government for a legislative solution is the right option. We are aware that Revenue attempted to do this in Budget 2019, but without success. We hope that this further opportunity will not be missed in the Budget 2020 process.
- 30) Health Stores Ireland strongly advocates a single VAT rate for food supplements to ensure claity and ease of implementation. For the reasons already set out in this paper, we belive that the VAT rate applicable to all food supplements should continue to be zero as it has been for the last 42 years.

