

Natural Medicine Company

May 23rd 2019

Department of Finance
Email: foodsuppl@finance.gov.ie

Re: Consultation on the VAT Treatment of Food Supplement Products.

The Natural Medicine Company (NMC) is an importer and wholesale distributor of health products, including food supplements.

Issues not covered in the Consultation Paper

Under Irish and EU Law NMC and our suppliers are obliged to produce and supply food supplements as food products as defined under the Food Supplement Directive; we are obliged to notify all food supplements to the Food Safety Authority (FSAI) prior to placing them on the market; NMC is obliged to be registered as a Food Business Operator with our local HSE office; and we are regularly inspected by the HSE to ensure compliance with food legislation in general and food supplement legislation in particular (see https://www.fsai.ie/legislation/food_legislation.html). This requires us amongst other things to ensure all the ingredients in food supplements are properly foodstuffs, that we manage our food operations under a HACCP based quality system and that we ensure that all our food products are presented in strict conformance with current food labelling regulations. **On this basis we reject any contention that the Irish State should at any stage or in any way treat food supplements as not being a type of food and tax them accordingly.**

We have at all times over the past 33 years supplied all food supplements at the Zero rate of VAT with the exception of certain body building, slimming, cosmetic and sports nutrition products, which have been supplied at the Standard Rate since 2012. We can also confirm from our regular commercial monitoring of the practices of competitors and clients over this period that this has been the practice of the whole industry. We apply VAT in this way on the understanding that food supplements are foods with beneficial effects on health and that this is the basis under which the Zero VAT rate is applied to all foods in Ireland. We confirmed this application of VAT to be correct by reference to the common practice of the industry, by published rulings on the Revenue database and by direct contact with Revenue in which it was confirmed to us that certain food supplements were entitled to avail of the Zero rate because the ingredient (e.g. lecithin) was a recognised foodstuff. **We assert that this Zero rating of food supplement has been and continues to be the marketplace practice and we say that the contention of the Revenue Commissioners that they operated a limited concession as no practical basis in reality.**

It is our view that **the legal status of food supplements for VAT purposes is that they are food of a kind for human consumption entitled to avail of the Zero rate of VAT because they are not excluded from doing so by an entry in the Schedule in the Irish legislation.** We assert this by reference to the precedent that was set over 40 years, because the EU and Irish State legally and practically requires food supplements to be food, and because it is a matter of common sense that, if something is comprised of recognised foodstuffs, it is a food.

Opinions on the Options Presented

While we recognise the concerns that have been expressed as to whether food supplements are the kind of food that should be entitled to avail of the Zero rate of VAT, we firmly contend that based on what food supplements actually are and based on the way in which we in Ireland apply the VAT legislation on food, **the Zero rate of VAT is the only logically consistent VAT rate applicable:**

- All foods are entitled to avail of the Zero rate of VAT and the only foods excluded are those that are consumed for pleasure, and which therefore tend to be consumed in excess to the detriment of the health of individuals and society as a whole;
- The reason why foods are entitled to avail of the Zero rate of VAT is because they are beneficial to health and food supplements are definitively foodstuffs with health benefits;
- There is no low, alternative VAT rate available, which would appropriately reflect the health benefits of food supplements (13.5% is a relatively high reduced rate);
- There are many foods with dubious health profiles that are still Zero rated (e.g. sugar, salt).

We completely reject Option 1 – apply the Standard Rate of VAT to all food supplements, firstly because all of the reasons given for doing so are wrong*, secondly because such an approach is totally inconsistent with what food supplements actually are, and thirdly because this approach is profoundly disrespectful of the legitimate aspirations of the industry and its consumers

If it were the case that an appropriately low VAT rate was available for food supplements, as is the case in other Member States (e.g. 5% or 6%) and we in Ireland used this rate to distinguish between foodstuffs that are beneficial to health and those that are not, we would see the merit in this approach. However, in so far as such a low VAT rate is not available and we continue to allow many foodstuffs with dubious health values to be sold at the Zero rate, **we reject the application of the existing Reduced Rates of VAT to food supplements (Option 2).**

We reject Option 3 – apply a Reduced Rate of only to those food supplements recommended by the Department of Health. As identified in the IHTA submission, the DoH's clearly do not have a proper understanding of what food supplements actually are and their medical approach to diet and health is not consistent with modern science and experience. If such an approach were to be adopted, it should be in the context of objectively verifiable EFSA authorised health claims. However, **based on recent experience, we reject Option 3 in general, as we do not consider it wise to complicate the VAT classification of food supplements in this way.**

There is merit in subjecting food products supplied for non-health promoting purposes to a higher rate of VAT (Option 4) (e.g. body building, slimming products). However, as stated in the IHTA submission, any such approach would need to be done with care and in consultation with industry in order to ensure that products legitimately presented for their health benefits were not misclassified.

* *The expressed views of the DoH do not reflect what food supplements are;
Most Member States, who take a view on the matter, favourably VAT rate food supplements in some way;
It does not provide clarity to the industry and consumers to tax food supplements inappropriately;
In fact, retaining the Zero rate on food supplements is the only approach not needing legislative change.*

Comments on the Direction in which we would like to see Tax Policy in this Area go.

We believe that the Government **should simplify the VAT system as a whole in line with the way it has been designed by the EU.** We should introduce a genuine low VAT rate of 5% or 6% for products and services that the State really does consider have an important social value and we should migrate products from the 0% area into this low VAT category, as appropriate. The tax take might not be significant, but it would mean that we would not have to subsidise the 0% rate by paying the EU dues on these products and services out of other tax revenue. More importantly, it would make the whole system simpler, easier to understand and easier to apply – a crucial factor for business.

In the context of food the above change could take the form of **staple foods being left at Zero and other foods being moved to the new low rate, the middle range rate or 23% based on their health benefits.** The default rate on food supplements would be the low reduced rate.

Whatever way that the Government decides to deal with food supplements, **it is absolutely essential that it be on the basis that they are legally and practically recognised as foods.** You simply cannot have a situation where the State recognises a class of product as being a food under its primary legislation and impose all the costs and restrictions required on that class of products, and then decides under VAT legislation that the products should be taxed for not being what they are legally and practically required to be.