

**CONSULTATION ON THE VAT TREATMENT OF FOOD SUPPLEMENTS**  
**SUBMISSION ON BEHALF OF THE IRISH HEALTH TRADE ASSOCIATION**  
**("IHTA")<sup>1</sup>**

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- i. The IHTA is an association of producers, importers and suppliers of health products, including food supplements. We and our associates have over 40 years and more been supplying hundreds of different food supplements to millions of Irish consumers through health stores, pharmacies and grocery outlets nationwide. Throughout this time we ourselves and other businesses in Ireland have consistently supplied all food supplements at the Zero rate of VAT with the exception of certain body building, slimming and sports nutrition products that since 2012 have been sold at the Standard Rate of 23%. This submission reflects the experience of the industry over the past 40 years and in particular the experience of the IHTA in the past 6 years while addressing with Revenue the difficulties caused to the VAT treatment of food supplements by Revenue e-Brief 70/11 of 2011. Further information on the IHTA, its Membership and activities can be found at [www.ihta.org](http://www.ihta.org)

## A. Introduction

1. An enlightened tax system should favour foodstuffs that are beneficial to health and treat less favourably those that do not. The present Government approach attempts to do this by allowing that all foods should be entitled to avail of the Zero rate of VAT unless specifically excluded from doing so by legislation, and by excluding in the legislation foods, unlike food supplements, whose health benefits are compromised for being consumed for pleasure (e.g. take away burgers at 13.5%, confectionary at 23%).
2. However, this approach suffers from systemic problems in how we in Ireland apply the EU VAT legislation and in the case of food supplements by persistent difficulties arising from how the Revenue Commissioners ("Revenue") have addressed the challenges they present. These deficiencies are reflected in the Government Consultation Paper:
  - Contrary to a key assumption of the Consultation Paper, zero-rating food supplements for VAT is not only possible, but requires no legislative change.
  - The market place practice is not acknowledged;
  - Food Supplements are not defined;
  - The social benefit reason for favourably VAT rating foods is not explained.
3. The notion that zero-rating is not an option for food supplements is of central importance and has most likely emerged from the Revenue's current position on these matters, which is set out in its Decision of 27 December 2018 entitled "*VAT treatment of food supplements and certain other substances for human consumption*". This Decision is the subject of High Court proceedings, under record no. 2019/170 JR, at the suit of the IHTA, and is dealt with first in the present submission in Part B and in Appendix 5. We then constructively review in Parts C, D, E and F the other deficiencies identified.
4. Parts G, H, and I address what the IHTA considers to be the key issue in establishing the correct VAT rate that should be applied to food supplements – the social, health and economic benefits of individual food supplements and food supplementation in general:
  - Part G explains the modern understanding of food and its effects on health;
  - Part H identifies a variety of recognised health benefits provided by a number of foodstuffs commonly used in food supplements;
  - Part I identifies the health benefits of food supplementation in general;
  - Part J reviews the Economic Implications.

5. We conclude with our views in Part K on the Options for VAT rating food supplements that have been identified, and with our recommendations for policy in Part L
6. The IHTA welcomed the commitment of the Minister to an independent consultation and we welcome the consultation that is now launched so that all persons involved may bring the relevant facts to the attention of the Minister. In light of the fact that the Revenue is the body which administers VAT, we expect that the Revenue will be one of the respondents to the Consultation Paper. However, we are concerned by the indication at page 3 of the Consultation Paper that "*The Department of Finance and the Revenue Commissioners may also invite key stakeholders to meet with them*". The Revenue's entrenched (and we believe incorrect) views on the law as it applies to food supplements and VAT and its determinedly incorrect account of the basis upon which food supplements are currently zero-rated for VAT, namely an alleged 'concession', mean that it is entirely unsuitable for the Revenue to be involved in running the consultation or weighing or assessing the submissions made. We should therefore be grateful for your confirmation that this is indeed an independent consultation run by the Department, in which all views, including those of the Revenue, can be considered in an even-handed way and with a view to framing the policy that is the most beneficial to the people of the country and that can be effectively administered.
7. As regards the consultation period, while the Consultation Paper asks for evidence-based submissions in so far as possible, the short deadline imposed for response is inconsistent with that requirement.
8. These factors, taken together with the fact that the Consultation Paper currently takes as its premise a restricted and, respectfully, incorrect view of the options available (which issues are now the subject of proceedings coming back before the High Court four days after the currently-scheduled deadlines for submissions, it would seem appropriate to re-launch the consultation, providing the additional clarifications identified, removing the incorrectly-stated limitations on the options available and giving adequate time for considered, evidence-based response.
9. The IHTA makes this submission without prejudice to the issues raised in this introduction and so as to contribute as positively as it can even within the current strictures.

**B: Zero is the proper default Rate for Food Supplements.**

10. Contrary to a key assumption of the Consultation Paper, a policy of zero-rating food supplements for VAT is not only possible, but requires no legislative change since foodstuffs, in which food supplements are comprised, are zero-rated for VAT under section 46(1)(b) and paragraph 8(1) of Schedule 2 to the Value-Added Tax Consolidation Act, 2010 (the "2010 Act"). Zero-rating for food (including food supplements) is also the most administratively simple solution in terms of the administration of VAT by Revenue.
11. The notion that zero-rating is not an option for food supplements has most likely emerged from the Revenue's current position on these matters which is set out in its Decision of 27 December 2018 entitled "*VAT treatment of food supplements and certain other substances for human consumption*".
12. In that Decision, the Revenue indicated that the standard rate of VAT (i.e., 23%) applied to food supplements on the basis that they were not 'conventional food' and went on to say that it was a "*Revenue concession*" which had "*allowed the zero rate to be applied to certain types of vitamins, minerals and fish oils*" thus far, but that that concession was to come to an end as of 1 March 2019. This deadline was extended to 1 November 2019 after the Minister's indication that a consultation would be held.
13. Respectfully, the Revenue's position is not correct. As is explained in Appendix 5 of this submission, for the first forty years of the VAT regime in Ireland the Revenue itself, properly, treated food supplements as food under the relevant legislation. There was no suggestion that food supplements were not covered by the zero-rating provisions for food or that any 'concession' was needed to allow supplies of food supplements to be made VAT-free. Nor do we believe that the provisions of the 1972 Act and then the 2010 Act could anyway simply have been disapplied by way of a 'concession' for an entire sector of the economy for nearly half a century at the discretion of the Revenue – and for no stated reason.
14. It appears that the Revenue may have taken the view that food supplements should be denied the zero-rating for food in order to simplify its current administration of the VAT

rules. Respectfully however and as we shall explain in Appendix 5 of this submission, any such complication as has arisen in the application of VAT rules to food supplements has arisen because of extra-statutory rules that the Revenue itself introduced as recently as 2011 to bring certain food supplements within the VAT net and subsequent changes in Revenue's administrative approach to the implementation of those new rules.

15. Those changes were not required, or indicated, by national or EU law and, in the IHTA's view, were not in fact lawful. They resulted in a practice with respect to VAT and health foods and food supplements that did not comply with statute and that, for that reason, resisted uniform implementation. The IHTA believes that the cure for this is not to change the law to remove the lawful zero-rating for food supplements, but rather to confirm the policy that led to the zero rating of foods including food supplements in the first place and to simplify the administration of the tax accordingly.
16. As we have stated, the Revenue's Decision of 27 December 2018 is the subject of High Court proceedings, under record no. 2019/170 JR, at the suit of the IHTA. In those proceedings the IHTA seeks an order quashing the Revenue's Decision of 27 December 2018 and declarations that food supplements are food and therefore entitled to a zero rate of VAT under the 2010 Act. The return date for those proceedings, and for the Revenue's response to them, is 28 May 2019 (4 days after the closing date for submissions in this consultation).
17. IHTA's submission is that food supplements are currently, and properly under EU law, zero-rated for VAT under the 2010 Act, that no change is required in the law in that regard and that the Government can therefore at its discretion retain the Zero rate of VAT on food supplements as it did with herbal teas in 2014.

**C. Market Place Practice needs to be correctly acknowledged.**

19. The debate on food supplements to-date has been characterised by persistent misinformation, with the Taoiseach referring to food supplements in the Dail as 'snake oil', with Revenue and the Government asserting that Zero VAT has only ever been allowed on vitamins, minerals and fish oils and publicly expressing serious concerns about non-compliance and unfair practices in the industry, and with it being asserted that food supplements are supplied to replace the nutrition in normal food. None of this bears any resemblance to the products on the market or the practices of the thousands of businesses in the industry. These statements are also profoundly disrespectful to the people who work in the industry and to the tens of thousands of Irish citizens who regularly use food supplements to help them live longer, better quality lives.
20. The description of the historic practice of Revenue in the Consultation Paper is more accurate and balanced, but is nevertheless misleading in that it retrospectively applies a policy first stated by Revenue in 2018 without deference to the actual practice of Revenue and the industry over the 46 years since VAT was first introduced. This is an extremely serious issue in the context of the consultation process in so far as it is difficult to see how any decision maker can form a proper judgement on the appropriate VAT rate to be applied to food supplements in circumstances where they have been misled as to the way food supplements have been VAT rated to date and the reasons for doing so.
21. The assertion that Revenue has been operating a long-standing concession allowing vitamins, minerals and fish oils to be sold at the Zero rate of VAT directly conflicts with the experience of the industry, which is that from 1973 until 2011 Revenue officials consistently rated all food supplements at the Zero VAT on the basis that the ingredients were foodstuffs. All food supplements were supplied during this time at the Zero rate as a result. While since 2011, when the guidance that instigated the current problems was issued, the only change in the VAT charged was that body building and slimming products and the like were supplied at the Standard Rate of 23%.
22. We ask that Government ascertains from Revenue how much VAT has historically been collected on food supplements since VAT was first introduced in 1972; and that you use this to verify that all food supplements have historically been supplied at Zero VAT and that you publish this as part of the consultation process.

#### D: What are Food Supplements?

23. Failure to identify exactly what food supplements are is another significant flaw in the consultation process. It was a real problem in the industry's dealings with Revenue that they refused to recognise what food supplements are legally and practically required to be in Ireland and the EU. We cannot see how any meaningful conclusions can be reached from this consultation process unless the participants individually and as a group share a common understanding of what food supplements properly are.
24. The legal and practical status of food supplements is established in Irish and EU Law by the Food Supplement Directive (2002/46/EC). This defines food supplements by reference to the fact that their ingredients must be foodstuffs<sup>2</sup> and establishes that by virtue of this they are considered to be a type of food and must as a result be produced, presented and supplied in accordance with food law and under food regulation.
25. In order to facilitate a fuller understanding of food supplements, we attach in Appendix 1 a simplified and updated version of the Schema that was produced in 2013 by the IHTA to assist Revenue in understanding and assessing the food supplement market.
26. The assertion in Option 1, Option 2 and Option 3 of the Consultation Paper that 'the Department of Health does not generally recommend the consumption of food supplements as a replacement for the nutrition contained in normal food' is completely alien to the industry. Food Supplements are definitively food supplements, not food replacements; they add to the diet foodstuffs that are considered to have additional health benefits to those already being provided; in some cases this may include ensuring that certain nutrients are not deficient, but food supplements are not now, nor have they ever been intended as a replacement for 'normal food'. This is evinced by the fact that every legitimate food supplement contains on its label a statement that it should not be consumed as a replacement for a normal healthy diet.

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<sup>2</sup> "food supplements' means foodstuffs the purpose of which is to supplement the normal diet and which are concentrated sources of nutrients or other substances with a nutritional or physiological effect, alone or in combination, marketed in dose form, namely forms such as capsules, pastilles, tablets, pills and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles and other similar forms of liquids and powders designed to be taken in measured small unit quantities."

## **E: Observations on the Operation of the EU VAT System.**

27. We note that in Option 1 on page 7 it is observed that the application of the standard rate of VAT to food supplements would 'coincide with how food supplement products are treated for VAT purposes in the UK and many other EU Member States'. This statement is misleading. Based on an industry survey commissioned in 2017 and submitted to Revenue – a copy of which is provided as Appendix 2, most Member States apply a reduced rate of VAT to some or all food supplements, only 4 Member States choose to apply the Standard Rate to all food supplements (though 6 more apply this rate because it is the only VAT rate they apply to food); all other Member States recognise the role and importance of some or all food supplements as health-promoting foodstuffs in taxation policies. This being the case, we do not think it is appropriate for the Government to represent the Standard Rate option in the way it has.
28. We also carried out an analysis of the way that Member States apply VAT by reference to the publication of the European Commission on this matter dated 1<sup>st</sup> of January 2019 (Appendix 3). This shows that most Member States (20) manage their VAT through 1, 2 or 3 VAT rates, which is the prescribed approach; 4 Member States have 4 rates including 0; Ireland is exceptional in having 6 rates on its Statute Book. We also noted from this analysis that most Member States (15) use what we – the industry – would consider to be a low rate of VAT (i.e. 7% or less) as part of their VAT strategy.
29. Our key observation from the above analysis is that we in Ireland have by far the most complex and anomalous VAT strategy in the EU. We have 6 VAT rates, two of which are official Reduced Rates, both of which we would consider middle of the range VAT rates, but we only use the higher of the two at (13.5%); we use 0%, 4.8% and 5.4% as low rates, but because these are derogations their application is subject to extra ordinary restrictions, making it difficult to recognise the health value of products like food supplements in the way that other Member States do, other than by applying the 0% rate.



**F: The Social Benefit Reason for favourably VAT rating Foods needs to be clarified.**

30. It is a condition of retaining the Zero VAT rate on foods under the 2006 EU VAT legislation<sup>3</sup> that this 'must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer'. However, the Irish State did not clarify its reason in 1973, nor has it done so since. Nevertheless foods must have been Zero rated for some social benefit and it is logical to assume that this social benefit is also reflected in the reason why certain foods have been and are excluded from availing of the Zero rate in the legislation.
31. It is generally recognised that the social benefit reason relates to sustenance in some way (e.g. 'the provision of sustenance', or 'sustaining health'). However, failure to confirm this or to clearly identify what is meant by the concept is an on-going problem for industry and regulators alike. This caused considerable difficulty in the discussions between the IHTA and Revenue between 2011 and 2018 in that Revenue had adopted a highly restrictive interpretation of sustenance that did not make sense to the industry in the context of the modern understanding of how food functions to sustain health and what food supplements are legally required to be.
32. As part of the consultation process clarity needs to be provided on what in general terms at least are the social benefit considerations that need to be taken into account when assessing the VAT rate applicable to foods, including food supplements, as it is clear that any decisions made must be consistent with historic practice and it would be impossible to establish consistent decisions unless a consensus is clearly established on the matter.
33. It may be that sustenance will not be precisely defined as part of the current process, but we do request that clarity be established as far as is practically possible. We also ask that the understanding outlined in the following parts of this submission would feed into any consideration of the matter.

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3: Article 110 of 2006/112/EC

## **G: The Nature of Food and how it functions to sustain Health**

34. From a modern scientific perspective food is comprised of any of a wide range of substances, typically bonded together biologically at a molecular level into more or less complex matrices, which, when ingested by living organisms, function to sustain life and growth. Food may also be in the form of, or include, simpler purified or non-biological components such as sugar, salt, additives or synthetic vitamins. From a broad scientific perspective the key factor in ascertaining whether something is food is whether it is safe for human consumption by an average healthy person as part of their regular diet – that is to say, whether the ‘foodstuff’ is assimilated, utilised and excreted as part of the normal physiological processes of the body without exerting an abnormal effect and causing harm.
35. Within this broader context Nutrition is the branch of science that deals with food as providing substances (nutrients) that are used for energy and to develop and maintain body fluids and tissue. However, whether by an extension of the concept of nutrition or in the broader field of physiology, there is scientific recognition that the value of food does not just lie in the basic building blocks it provides (vitamins, minerals, proteins, carbohydrates, sugars, fats). There are many other ways in which foods and the substances it contains function to sustain health (e.g. bitter substances trigger the release of digestive enzymes, certain foodstuffs that have a soothing or emollient action, some substances support immune activity, others reduce risk factors associated with disease, such as cholesterol or free radical proliferation).
36. In the EU the changing understanding of food and its role in health is best reflected in the work of its primary authority in this area, the European Food Safety Authority (EFSA). Table 1 below is a list of health claims approved by EFSA for vitamins and minerals, showing the detail and complexity of what is currently being learned about the nature of food and its effects on health. Table 2 provides further examples of this complex functionality, but also the variety of foodstuffs with which this functionality is being associated. All the foodstuffs cited are commonly used in food supplements for their nutritional and physiological effects.

**Table 1: Some authorised Health Benefits of Vitamins and Minerals**

- Essential fatty acids are needed for normal growth and development of children.
- Iron contributes to normal cognitive development of children
- Biotin contributes to the maintenance of normal mucous membranes
- Calcium contributes to normal muscle function
- Calcium contributes to the normal function of digestive enzymes
- Choline contributes to the maintenance of normal liver function
- Chromium contributes to the maintenance of normal blood glucose levels
- Copper contributes to the normal function of the immune system
- Folate contributes to normal psychological function
- Folate contributes to the reduction of tiredness and fatigue
- Iodine contributes to normal thyroid function
- Magnesium contributes to normal functioning of the nervous system
- Molybdenum contributes to normal sulphur amino acid metabolism
- Niacin contributes to normal functioning of the nervous system
- Pantothenic acid contributes to normal energy-yielding metabolism
- Potassium contributes to the maintenance of normal blood pressure
- Riboflavin contributes to the maintenance of normal vision
- Riboflavin contributes to the protection of cells from oxidative stress
- Selenium contributes to normal spermatogenesis
- Selenium contributes to the maintenance of normal hair and nails
- Thiamine contributes to the normal function of the heart
- Vitamin B12 contributes to normal homocysteine metabolism
- Vitamin B6 contributes to the regulation of hormonal activity
- Vitamin C contributes to normal collagen formation for normal cartilage function
- Vitamin K contributes to normal blood clotting
- Zinc contributes to normal DNA synthesis
- Zinc has a role in the process of cell division

**Table 2: Complex Food Substances with Physiological Actions (already authorised claims in bold)**

<i>Foodstuff</i>	<i>Active Substance</i>	<i>Health Function</i>
<b>Beet</b>	<b>Betaine</b>	<b>Normal homocysteine metabolism</b>
Flaxseed	Lignans	Oestrogen modulation
Ginger	Volatile oils	Digestive health
<b>Grain</b>	<b>Fibre</b>	<b>Peristalsis of the Bowel</b>
Green vegetables	Lutein and zeaxanthin	Eye health (Antioxidant)
Hawthorn	Proanthocyanidins	Maintain cardiovascular integrity
<b>Konjac</b>	<b>Glucomannon</b>	<b>Maintenance of normal blood cholesterol</b>
<b>Lean meat</b>	<b>Creatine</b>	<b>Increased physical performance</b>
Milk Thistle/Artichoke	Silymarin	Liver protection
<b>Oats</b>	<b>Beta Glucans</b>	<b>Normal cholesterol levels</b>
<b>Oily fish</b>	<b>DHA</b>	<b>Normal brain function</b>
<b>Olive oil</b>	<b>Polyphenols</b>	<b>Protect blood lipids from oxidative stress</b>
<b>Plant Oils</b>	<b>Plant Stanol Esters</b>	<b>Lower/reduce blood cholesterol</b>
<b>Red Yeast Rice</b>	<b>Monocolin</b>	<b>Maintenance of Healthy Cholesterol levels</b>
<b>Shellfish</b>	<b>Chitosan</b>	<b>Normal blood cholesterol</b>
Soya	Daidzein/Genistein	Maintenance of normal oestrogen levels
<b>Tomato</b>	<b>Water soluble Conc,</b>	<b>Normal platelet aggregation;</b>
Turmeric	Curcumin	Joint Health
<b>Wheat endosperm</b>	<b>arabinoxylan</b>	<b>Modulation of glucose levels</b>
<b>Yoghurt</b>	<b>Live bacteria</b>	<b>Improve lactose digestion</b>

## H. The Health Benefits of Foodstuffs used in Food Supplements

37. Food supplements are concentrated foodstuffs with nutritional and physiological effects, any foodstuff can be supplied as a food supplement and all food supplements must consist of recognised foodstuffs. The health benefits of food supplements are therefore assessed in the same way as any other food or foodstuffs with the key difference that in the case of food supplements the foodstuffs are in measured form, which improves the delivery of the health benefit and facilitates its measurement and evaluation.
38. We have identified some 47 different health benefits associated with 42 different foodstuffs commonly used in food supplements. In the case of 39 of these, EFSA has stated that there is scientific consensus that a cause/effect relationship has been established between the foodstuff and health. We consider this to be sufficient evidence that the ingredients in food supplements can and do have significant health benefits.
39. The circumstances in which the European Union recognises that food has a health benefit and allows this to be communicated to consumers are the maintenance or improvement of health and the reduction in the risk factors associated with disease. These health benefits are of value to different people in different circumstances and at different stages of their lives. For instance:
- Some people like to take an individual or multi nutrient as a security measure;
  - Many elderly people include lutein in their diets in order to reduce the risk of age-related macular degeneration (AMD), as recommended by the registered charities Fighting Blindness and National Council for the Blind Ireland;
  - Some people include probiotics in the diet because of concerns with gut health or because they have been treated with an antibiotic or are recovering from illness;
  - Many elderly people consume glucosamine sulphate or anti-inflammatory foodstuffs to help maintain joint health and mobility – so do elite athletes;
  - Many people like to provide their children with fish oils to ensure their healthy growth and development even though they may not be particularly concerned about the quality of their diets.
40. The health benefits now being scientifically associated with the foods we eat are endless and so are the circumstances in which these health benefits can be effectively used by well-informed individuals at different stages of their lives.

## I. The Social Value of Food Supplementation

41. Interest in supplementation has been heightened in the 21<sup>st</sup> century by the global health and nutrition crisis. In most countries today, energy intake is too high and micronutrient consumption is too low. As a result, overweight and obesity is now widespread and non-communicable diseases (NCDs) are responsible for a majority of deaths globally. The situation is of such concern that scientists have warned that the steady rise in life expectancy in the US could be reversed and the youth of today might live less healthy and shorter lives than their parents<sup>4</sup>. There is now general acceptance that this need not be the case. For example, the World Health Organization says that up to 80% of deaths from heart disease, stroke and type 2 diabetes are preventable<sup>5</sup>. The United Nations, meanwhile, declared 2016 to 2025 to be a 'Decade of Action on Nutrition'<sup>6</sup>.
42. At the same time, there has been a radical change in the way scientists think about micronutrient status. In the past, the discussion was largely around deficiency (e.g. Vitamin D and rickets). The conversation has moved on today and scientists broadly agree that it is now more relevant to consider insufficiency. In the case of Vitamin D, for example, it is recognized that insufficient intake can lead to osteoporosis. The challenge, therefore, becomes how to achieve optimal intake. To increase understanding of this, researchers have built a scale for an individual's vitamin D status, ranging from deficient to desirable, using 25(OH)D serum levels as a biomarker<sup>7</sup>. Equally strong cases can be made for other nutrients, including Omega 3 for cardiovascular health, and lutein + zeaxanthin for eye health. In both cases, reviews demonstrate that intake globally of these substances is broadly sub-optimal. The health benefits to be achieved by proactively using such consistent developments in science in the context of concentrated foodstuffs being selectively added to the diet by people who are intelligently choosing to take personal responsibility for their health is increasingly clear, as is the potential economic benefit (see Part J).

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4 Olshansley, SJ et al. *Potential decline in Life Expectancy in US in 21st Century* NEJM 2005.

5 [www.who.int/gho/ncd/en/index.html](http://www.who.int/gho/ncd/en/index.html).

6 <http://www.fao.org/3/a-i6130e.pdf>.

7 IOM 1997.

43. In an industry specific context, there are many examples of the social, health and economic benefits that have arisen from the work of the health products industry, including the food supplement sector, over the past 40 years, taking into account that the real value is the support given to people who want to take personal responsibility for their health:

- In the 1970s and 80s, whole food diets were promoted together with foodstuffs that could be put back into the diet to replace what was being taken out by the food processing e.g. bran, wheat germ, brewer's yeast, vitamins, minerals, kelp, cod liver oil; the value in this was threefold, firstly people who want to eat a wholefood diet had somewhere to go to get the foods, secondly people who were concerned about the deterioration in their diets had some corrective actions to take, and thirdly a healthy eating culture was nurtured. As a result by the turn of the millennium – before the Government had fully recognised its importance in the context of food-related diseases – tens of thousands of people in Ireland were already intentionally including whole food in their diets; and when the Government did start to promote such eating, there was already an industry sector in place capable of meeting the new demands. The diseases warned about by the industry and its consumers and against which an element of protection was provided include diabetes, cardiovascular disease and obesity.
- Folic acid and vitamin D were supplied at the level now recommended by the Government for decades before the health risks and benefits were recognised.
- Industry recognised since the 80s that not all fats are bad and that some fatty acids are important for health (e.g. evening primrose, fish and other plant oils);
- A wide range of foodstuffs with beneficial effects on cholesterol management have been available since the 1980's
- The important role of microorganisms in establishing a healthy gut flora has been actively promoted since the 1980s (e.g. with the introduction of the first biologically active 'Acidophilus strains');
- Lutein and later xanthin/zexanthin were promoted for eye health since the 90s.

44. Finally, when considering the Social Implications of taxing food supplements consideration should be given to future developments in food:

- The incidence of ethic-based dietary limitations, such as vegetarianism and veganism, comes with an increased need to understand the dietary implications and the value of consuming certain foods in increased or concentrated amounts;
- The quality and availability of food is already being challenged by climate change, agricultural practices and environmental degradation, so we cannot necessarily rely on so called 'normal' food to deliver the nutritional quality we require (Appendix 4).
- Already the demands of modern life put people under pressure to eat on the go and to increasingly rely on concentrated food sources to ensure they satisfy their dietary needs. When carried out intelligently as part of an awareness of overall needs, this can be very beneficial to the maintenance of a long-term healthy diet.
- The work of EFSA in the context of the Nutrition and Health Claims Regulation is already seeing more and more authorised health claims being attributed to foods; because of the value of this to all stakeholders, this is set to be a prominent feature of food into the future.

## J. Economic Considerations

45. The size of the food supplement market in Ireland is unknown due to a lack of detailed & substantive analysis. Revenue themselves have acknowledged that it is not possible to estimate the size of the market. Notwithstanding this, our Industry estimates the domestic sales value at €60 million per annum. The introduction of any VAT on these sales would return an insignificant amount to central exchequer receipts. If a reduced rate of 13.5% was introduced to all food supplements the gross receipts would amount to only €8.1 million, this is before consideration is taken on the overall impact that any price increase would have on consumption levels.

46. In the event that VAT was introduced to food supplements even at the reduced rate of 13.5% our industry analysis estimates that at least 30% of all health stores would become unviable and forced to close. Given that there are 310 health stores in the country, the resulting 93 store closures would result in a loss of receipts of €3.6 million under the following tax headers:

- Corporation tax                      -€1,463,000
- PAYE/PRSI                              -€1,680,000
- Commercial rates                      -€ 465,000

47. This loss of revenue only accounts for the decline in exchequer receipts from health stores and it is fair to assume an even larger reduction in direct taxes from retail pharmacies which number over 1,800 in total. The above analysis demonstrates that there is no logical economic argument that supports the introduction of a new VAT rate to food supplements.

48. Health stores were the pioneers of sourcing & supplying food supplements within the Irish market from the 1970's but over time the industry has grown into mainstream pharmacies & grocery. Over the last 4 decades the industry has widened in scope to include companies operating in research & development, manufacturing, distribution & retail. If there is any degradation in the number of viable health stores this will undoubtedly have a wider economic impairment in operations in non-retail companies and this in turn will compound the economic impact well beyond the retail high street.



49. Applying behavioural economics to understand consumer decision making it is likely that any VAT related price increases will have an impact in two main areas. Consumption will fall, and purchases will migrate to the lowest available option which is online. Online sales in this category will be lost to companies outside of the state which brings regulatory issues into focus but the indigenous industry will also suffer. Retailers & distributors have witnessed this first hand in 2011 when VAT was introduced to sports nutrition, this category is now dominated by online sales from outside the state; this needs to be considered in conjunction with a marked increase in seizures of illegal drugs into the state amounting to some €33 million in 2018.
50. From a broader social perspective the Exchequer income recedes to insignificance when compared to the saving to the €16.05 billion health budget that accrues from people intelligently taking personal responsibility for their health by actively engaging with the health products industry and Government in developing and implementing healthy lifestyle regimes – which as we have argued absolutely should include the addition of concentrated foodstuffs with beneficial effects to the diet.
51. To visualize the full picture, it can be helpful to look at how the cost of a single medical event can mount up. In a European analysis<sup>8</sup> it was estimated that in the EU the average cost of a cardiovascular health-related medical event is as much as €34,637 per event. Considering that every year in the EU, as elsewhere in the world, there are millions of cardiovascular events that require medical attention, it is easy to see how preventing at least some of these from ever taking place by dietary changes that would importantly include the addition of valuable concentrated foods to the diet, could generate considerable savings.

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<sup>8</sup> *(Healthcare Cost Savings of Omega 3 Food Supplements in the European Union Europe: Economic Implication of Managing CVD through Targeted Enhanced Nutrition (2016) Food Supplements Europe and Frost & Sullivan)*

52. Research from around the world has highlighted the nutritional vulnerability of older people and the major, lasting impact that poor nutritional status has on their

health, wellbeing and life expectancy. The numbers of elderly people are increasing dramatically, and the ageing of whole populations and societies will impact significantly on the economies and healthcare systems of all countries. One of the UK's leading scientists in this field (Professor David Richardson) observed in 2007 in a study commissioned by the industry federation IADSA<sup>9</sup>:

*Much more attention must be paid to the overall nutrient density of the diets of the elderly. Although it is possible to achieve a balanced diet by eating a variety of foods, it is evident that an enormous gap lies between the ideal and the reality of what many people actually can or choose to eat. For individuals at all stages of life, and particularly older people, whose frailty or circumstances may compromise optimal nutrition, food supplements can serve as an effective way of meeting their needs for micronutrients and other substances with physiologically beneficial effects.*

*Increases in healthcare expenditure will outpace economic growth in many countries, so health professionals and policy makers will need to give greater priority to maximising the quality of life of older people, and to ensuring the most cost-efficient methods of nutritional support. Healthcare strategies, including the wider use of food supplements, could favourably modulate the age-related decline in most organ functions and the development and progression of many chronic diseases.*

53. It concluding our economic comments, the IHTA wishes to observe that we consider it fiscally unacceptable to subject food supplements to the considerable costs and restrictions imposed on them under Food Law, which costs and restrictions directly impact on consumers, and to then impose tax under VAT legislation on the basis that food supplements are not food.

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9 IADSA Nutrition, Healthy Aging and Public Policy 2007

#### **K. Comments on Options Proposed**

54. We will address the Options identified in the following context:

#### **Standard Rate VAT**

- Option 1 All Food Supplements supplied at the Standard Rate
- Option 3 Apply the standard rate except if recommended by DoH

#### **Reduced Rate VAT**

- Option 2 All Food Supplements supplied at a Reduced Rate
- Option 4 Apply a reduced rate, but exclude certain categories.

#### **Zero Rate VAT Options**

- Option 5 Retain the Zero Rate on some or all food supplements

55. We reject the **Standard Rate Options** outright as anathema to the industry and its consumers. There is no legal, scientific or social justification for charging 23% VAT on foodstuffs with beneficial effects on health in circumstances where all foods are entitled to avail of the Zero rate of VAT and where the only foods/foodstuffs that are excluded are those which are consumed for pleasure and which as a result have a tendency to be consumed in excess to the detriment of consumers and society. The option also totally disrespects the industry that produces food supplements and the consumers who use them.
56. The suggestion that the Department of Health should be the arbiter of what VAT rate should be applied to food supplements is also anathema in circumstances where EFSA is the recognised scientific authority on food in the EU, and where the Department are articulating a medical view of food supplementation that is associated with clinical deficiencies and where they are judging food supplements on the functionality that food supplements transparently are not intended to have.
57. We reject the **Reduced Rate Options** in circumstances where the reduced rates available 9% and 13.5% are middle of the range VAT rates that are not appropriate for foodstuffs with the health benefits of food supplements, where food in general is entitled to avail of the Zero rate of VAT, and where there are many foodstuffs still being sold at the Zero rate that pose a risk rather than a benefit to health e.g. sugar, salt, sauces, frozen chips.
58. The idea that certain products might be charged at the Standard Rate of VAT by reference to the use to which they are put does merit attention, but only in the

context of being applied to all foods/foodstuffs – not just to concentrated foodstuffs in the form food supplements. If this concept was to be applied, it would need to be after extended consultation with the industry because of the legal and practical problems of adopting this approach that have already been addressed in some detail by the IHTA in previous submissions to Revenue and is reviewed in the introduction to the Schema in Appendix 1.

59. It is the view of the IHTA that the only legitimate way to deal with food supplements is by retaining the **Zero** rate because:

- Contrary to what is contended in the Consultation Paper, the Zero rate is the established legitimate rate that has been in place for over 40 years and as such can be legitimately retained;
- Zero rating is the simplest Option because all other Options properly require a legislative intervention;
- It is the only logical, legitimate and scientifically justifiable option in circumstances where Zero is the only low rate option available to the Government for application to foodstuffs with beneficial effects on health.

**L: Recommendations for Direction of VAT Policy in this Area**

60. The reputation of the food supplement sector has been damaged and consumer confidence undermined by misleading public statements made by Revenue, and by statements by Government Ministers in the Dail<sup>10</sup>. Irrespective of how food supplements are treated for VAT purposes, this situation needs to be remedied by appropriately clarifying that food supplements are recognised as a legitimate type of food by the State and that the food supplement industry is recognised as a legitimate industry sector and regulated as such.
61. Notwithstanding the above, food supplements should be recognised as foods for VAT purposes, consistent with their past VAT and their established legal, practical and commercial status.
62. The social benefit reason for favourably VAT rating food should be clarified by the Government so that in future all stakeholders will understand the basis under which VAT should be and is applied to foods. Industry should be consulted on this.
63. In circumstances where a wide range of foods with questionable health benefits continue to be sold at the Zero rate and no alternative low VAT rate is available, the Zero rate of VAT should be retained as the default rate on food supplements; any exclusions from this rate require industry consultation before being introduced;
64. The Government should review its policy on overseeing the administrative activities of Revenue and ensure any administrative deficiencies exposed in the current process are recognised and corrective and preventative action put in place e.g.:
  - The approach taken to the adoption and application of new tax;
  - The management of administrative changes that directly affect stakeholders;
  - The lack of an adequate database for administering rulings;
  - The administration of complaints and appeals;
  - Control of information issued to Government and the Public Domain;
  - The management of consultation processes.

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10. E.g. that food supplements are 'snake oil'; that there are serious concerns about non-compliance and unfair practices in the industry.

## EXECUTIVE SUMMARY

This submission sets out why the decades old practice and policy of applying Zero VAT rate to food supplements, as foodstuffs, should continue. It demonstrates that no credible case has been 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 in the public interest and to provide political and policy clarity to industry 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:

- **Food supplements are legally and practically food.** Irish and EU Law defines food supplements as being foodstuffs, establishes that as such they are a type of food and requires that they be produced, presented and supplied under food regulation, which regulation is carried out in Ireland by the FSAI and HSE.
- Long standing **VAT policy, practice and precedent** has been that food supplements have been zero VAT rated in literal and purposive interpretation of the legislation. 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.
- Many Irish citizens **include food supplements in their diet to help maintain and improve their health.** For example, many **vulnerable groups** use food supplements extensively to address diet deficiencies and to reduce the risk factors of diseases, such as heart disease and macular degeneration. The submission shows how such activity reflects modern scientific understanding of food and as such is 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, while still allowing sugar, salt, and sauces to be sold at Zero VAT.
- Recent experience is that any VAT related price increase will reduce consumption and cause business to migrate outside the State on line. This will **seriously damage the industry** and threaten the viability of up to 30% of specialist retailers, many of whom are an integral part of the high street in rural towns.

