



An Roinn Airgeadais
Department of Finance

Consultation on the VAT Treatment of Food Supplement Products

18 April 2019

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1 Consultation Period

The consultation period will run from 18 April 2019 to 24 May 2019. Any submissions received after this date may not be considered.

How to Respond

The preferred means of response is by email to: foodsuppl@finance.gov.ie

Alternatively, you may respond by post to:

VAT on Food Supplement Products – Public Consultation,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583

Please include contact details if you are responding by post.

When responding, please indicate whether you are contributing to the consultation process as a professional health body, medical or nutritional expert, medical or nutritional academic, representative body, tax professional, business, other interested groups or individual.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance.

Meetings with key stakeholders

The Department of Finance and the Revenue Commissioners may also invite key stakeholders to meet with them.

After the Consultation

This public consultation forms part of the Tax Strategy Group process and will inform the Minister for Finance's considerations in reviewing the value-added tax (VAT) treatment of food supplement products ahead of Budget 2020.

2 The Consultation Questions

In responding to this consultation you are invited to:

- Give your views on the specific questions set out below. You don't have to answer every question – you can choose to answer any or all of the questions.
- Provide details of any alternative approaches or options you feel might be beneficial in dealing with the issues being addressed; including details of similar approaches adopted elsewhere.
- Provide details of relevant issues not covered in this paper.
- Where appropriate, provide some analysis of the Exchequer cost/yield of your preferred option.
- Comment generally on the direction you would like to see tax policy in this area to develop.
- Where appropriate, provide scientific evidence to support the basis for your proposal.

Your views are important as they may help influence the tax treatment and policy to be applied in the future.

3 Introduction

EU law on VAT rating

Standard and Reduced VAT rates

VAT rating is subject to the EU VAT Directive with which Irish VAT law must comply. The VAT Directive provides that Member States must apply a standard VAT rate of at least 15% and have the option of applying up to two reduced VAT rates of over 5%.

Ireland currently operates a standard VAT rate of 23% (the average EU rate is 21.5%) and two reduced rates of 9% and 13.5%. These two reduced rates can apply to a limited range of goods and services provided for under Annex III of the EU VAT Directive. In addition, many goods and services applying at the 13.5% VAT rate derive from an historical derogation under Article 118 of the VAT Directive.

Under normal VAT rules it is possible to apply the standard or a reduced VAT rate to food supplement products.

Zero Rate

Ireland also maintains a derogation from EU law that allows the application of a zero rate to certain supplies. This derogation is provided for under Article 110 of the VAT Directive and it only applies to goods or services that were zero rated in Ireland on and since 1 January 1991 among other conditions. It is not possible to apply the zero rate to goods or services that did not apply at the zero rate from this date. Most foods and oral medicines apply at the zero rate under this Article 110 derogation.

VAT rate on Food Supplement Products

VAT legislation does not specifically apply the zero rate of VAT to food supplement products but shortly after the introduction of VAT in 1972, the Revenue Commissioners applied a concessionary zero rating to certain vitamin, mineral and fish oil food supplement products. As the market developed over the years this treatment resulted in the zero rating by Revenue of further similar products.

However, the operation of this concession has become increasingly difficult to maintain an effective distinction between food supplement products that can benefit from the zero rate and those that are standard rated, resulting in diverging views over which food supplement products should apply at the zero rate versus the standard rate.

The issue was raised during the Finance Bill 2018 debates where the Minister agreed that he would ask his officials to address the matter in the context of the 2019 Tax Strategy Group and also stated that he would not interfere in any decision made by Revenue on the matter in the interim.

Revenue published new guidance on 27 December 2018 concerning the rate of VAT that applies to food supplement products, based on expert advice and its own legal analysis. Prior to this Revenue had been contacted by industry who outlined an extensive list of their problems regarding the VAT treatment of food supplement products, highlighting that there were difficulties in identifying which products were eligible for the zero rate and which were standard rated. In response, Revenue undertook a comprehensive review of the VAT treatment of food supplement products and engaged an expert to advise on the definition of food for the purposes of the VAT Consolidation Act 2010. Revenue concluded that the status quo was no longer sustainable and announced their intention to apply the 23% VAT rate to most food supplement products with effect from 1 March 2019.

However, this date has been extended to 1 November 2019 to support the Minister's plans to examine the policy and legislative options for the taxation of food supplement products ahead of Budget 2020.

Purposes of this consultation

This public consultation is designed to seek engagement from all parties on the future VAT treatment of food supplement products. This arises from the Minister's commitment during Finance Bill 2018 to ask his officials to address the issue as part of the 2019 Tax Strategy Group, and takes account of the opinions expressed by all parties on the VAT treatment of food supplement products in recent months. The Minister will also separately consult with his colleague the Minister for Health on the use of food supplement products. This consultation will inform the review undertaken by the Department in the Tax Strategy Group process.

4 Underlying Principles and Position Going Forward

Legal parameters of the consultation

As there is no legal provision that would allow a zero rate to continue to be applied to food supplement products, the options below are concerned with whether food supplement products should apply at the standard rate or reduced rate, and whether only certain categories of food supplement products should apply at a reduced VAT rate.

Scope of the consultation

The VAT treatment of food supplement products is a complex area given the diversity and range of products on the market. For the purposes of this consultation, it is important to clarify that certain products are not part of the consultation (e.g. foods for specific groups, folic acid and other vitamins and minerals classified as medicines, and fortified foods).

Foods for specific groups

There are certain categories of foods for specific groups. These are well established and defined categories of food that are essential for vulnerable groups of the population. These products include infant formula, baby food, food for special medical purposes and total diet replacement for weight control. These products are zero rated for VAT purposes and are not part of the consultation process.

Further information on these products can be found on the Food Safety Authority of Ireland website www.fsai.ie.

Products licensed by the Health Products Regulatory Authority (HPRA)

Human oral medicines that are licensed or authorised by the HPRA are zero rated. These products are listed on the HPRA website www.hpra.ie.

Certain folic acid and other vitamin and mineral products for oral use are licensed/authorised by the HPRA as medicines and are zero rated as a result. The VAT treatment of these products is not part of the consultation.

Fortified foods

Fortified foods are foods that are enriched with vitamins and/or minerals. Examples include fortified cereals or yoghurts. These products are zero rated and are not part of the consultation.

5 Options for the Future VAT Treatment of Food Supplement Products

The following is a series of options for the future VAT treatment of food supplement products:

Option 1: Apply the standard rate of VAT on all food supplement products

As the Department of Health does not generally recommend the consumption of food supplements as a replacement for nutrition contained in normal foods, the first option would be to apply the standard VAT rate to all food supplement products. This would coincide with how food supplement products are treated for VAT purposes in the UK and many other EU Member States.

An advantage of this option would be that all food supplement products would be treated the same which would lead to clarity for the industry.

As food supplement products are not specifically referenced in Irish VAT law, no legal change would be required to effect this option.

Question 1: Do you agree that the standard rate should apply all food supplement products? If yes, please state reasons.

Option 2: Apply a reduced VAT rate to all food supplement products

It is possible under EU VAT law to introduce a reduced VAT rate for food supplement products. There is popular opinion that specialised VAT treatment should apply to food supplement products because of the nutritional, health and other benefits they accrue. While the intake of food supplement products is not generally recommended as a replacement for nutrition contained in normal foods by the Department of Health, many food supplement products are recommended in specific circumstances by health professionals for health purposes. Under this option a reduced VAT rate would be applied to all food supplement products.

An advantage of this option would be that all food supplement products would be treated the same which would lead to clarity for the industry.

An amendment to the VAT Consolidation Act 2010 would be required to effect this change.

Question 2: Do you agree that a reduced rate should applied to all types of food supplement products? If yes, please state reasons.

Option 3: Apply a reduced VAT rate only to those food supplement products that are recommended for intake by the Department of Health

The Department of Health does not generally recommend the consumption of food supplement products as a replacement for nutrition contained in normal foods. An option

would be to apply a reduced VAT rate only to those food supplement products that are recommended by the Department of Health to be consumed in addition to a normal diet.

Current policy on the part of the Department of Health and the Health Service Executive is the recommendation for the consumption of folic acid for all women who could become pregnant¹ and of vitamin D for infants². Under this scenario all food supplement products would apply at the standard VAT rate with the exception of folic acid and vitamin D supplement products, which would apply at a reduced VAT rate.

An amendment to the VAT Consolidation Act 2010 would be required to effect this change.

Question 3: Do you agree that a reduced VAT rate should only apply to food supplement products that are recommended for intake by the Department of Health? If yes, please state reasons.

Option 4: Apply a reduced VAT rate to food supplement products but exclude certain categories such as sports supplements, slimming aids, cosmetic supplements and other similar products

While there is an argument that specialised VAT treatment should apply to supplement products on the grounds of nutrition and health, there are a range of sub-categories of food supplement products that are not designed for these purposes. These include products marketed for purposes such as sport, slimming, tanning, hangovers, male fertility, hair growth and stress reduction. Under this option, a reduced VAT rate would apply to food supplement products excluding particular sub-categories not designed for health or nutrition purposes, as outlined. These excluded products would apply at the standard rate of VAT.

An amendment to the VAT Consolidation Act 2010 would be required to effect this change.

Question 4: Do you agree that a reduced VAT rate should apply to food supplement products but that certain categories should be excluded? If yes, please state reasons.

Any other Issues?

Are there any other issues which you believe should be considered as part of the review of the VAT treatment of food supplement products?

Department of Finance
18 April 2019

¹ <https://www.hse.ie/eng/about/who/healthwellbeing/our-priority-programmes/heal/folic-acid/>

² <https://www.hse.ie/eng/health/child/vitamind/supplementation.html>