

Revenue & Customs Brief 28/11

VAT: Changes to the treatment of certain supplies made by employers under salary sacrifice arrangements following the CJEU Judgment in Case C-40/09

1.1 Background

Astra Zeneca operated a flexible remuneration package scheme under which employees could opt to take part of their remuneration in the form of goods and/or services rather than as salary. The case before the Court of Justice of the European Union (CJEU) concerned the correct VAT treatment of high street shopping vouchers provided to employees as one of the options of the scheme.

The Court found that the provision of vouchers amounted to a supply of services effected for consideration. As a consequence, whilst Astra Zeneca was able to recover VAT incurred on acquiring the vouchers, output tax was due on the consideration received from its employees.

Although this case was concerned with the supply of vouchers to employees, the principles considered by the Court are of general application and will apply to other supplies of goods and services to employees.

1.2 The UK position on the provision of goods and services via salary sacrifice or deductions from salary

Following earlier decisions by the UK courts, HM Revenue & Customs' (HMRC) policy was to make a distinction between the VAT treatment of supplies of goods and services to employees by a deduction from salary, and those provided under a salary sacrifice arrangement.

1.2.1 Deduction from salary

This occurs where an amount is deducted from an employee's pay in return for a supply of goods or services by the employer. Output tax has always been and continues to be due on the amount deducted from salary. Input tax is recoverable in accordance with the normal rules.

1.2.2 Salary sacrifice

For VAT purposes 'salary sacrifice' has a very narrow and specific meaning. It describes an arrangement such as in the Co-operative Insurance Society case [1992] (VTD 109) where an employee opts to receive services and forgoes part of their salary in return. The employee enters into a new employment contract or has their existing contract amended to reflect the new arrangement which they are tied into.

In relation to such schemes HMRC have, to date, accepted that the reduction in the salary did not constitute consideration for the benefits received and output tax was not due. Employers were able to recover the related VAT as input tax, subject to the normal rules.

In cases where the employee has been provided with the use of a good (for example a home computer) and opts to purchase it at the end of the scheme it has always been HMRC's view that VAT is due (where applicable) at that stage.

1.3 The Judgment of the CJEU

The Court considered whether the provision of the vouchers was a supply for a consideration. It found that there was a direct link between the provision of the retail vouchers by the company to its employees and the part of the cash remuneration which the employees gave up.

As far as arrangements involving deductions from salaries are concerned, the judgment supports HMRC's existing policy that these are consideration for a supply for VAT purposes.

However, HMRC considers that the rationale used by the CJEU goes wider than deductions from salary, and as a consequence of this there is no longer a distinction between deductions from salary and a salary sacrifice. Therefore, the amount of salary foregone is consideration for supplies of the benefits whether provided under a salary sacrifice or by a deduction from salary.

It is clear that the principles applied by the CJEU are not confined to vouchers, but are equally applicable to many other situations where employers offer benefits to their staff. Where the benefit is subject to VAT, output tax will be due from, and input VAT recoverable by the employer in accordance with the normal rules.

1.4 Implementation: Revised VAT treatment of salary sacrifice

Businesses providing benefits under arrangements, which qualify as salary sacrifice schemes for VAT purposes, must account for output VAT on these supplies, where they are subject to VAT. In order to allow businesses time to make the necessary adjustments, HMRC will not require output tax to be accounted for on taxable benefits provided under salary sacrifice schemes, until 1 January 2012.

See the annex for details of how this change of practice will apply in particular circumstances.

2. Valuation

In most cases the value of the benefit for VAT purposes will be the same as the amount of salary deducted or the amount foregone under a salary sacrifice arrangement. Where this is less than the true value (for example where employers supply the benefits at below what it cost to buy them in), the value should be based on the cost to the employer.

3. Direct Tax

HMRC considers that the judgement is limited to the application of VAT legislation. The principle derived from the CJEU decision is concerned with whether, in the context of the provision of a benefit by an employer to an employee as part of the remuneration, that constitutes a supply of services affected for consideration. There is no comparable concept within tax law applicable to the taxation of employment income and HMRC will not be amending the existing published guidance relating to employment income issues.

Further advice

Where you are in any doubt about the correct VAT treatment please contact the VAT Helpline on Tel 0845 010 9000.

Annex

4. Effect of the CJEU judgment in particular circumstances

4.1 Cycle to Work Scheme

Under the Cycle to Work Scheme employers purchase bicycles and safety equipment and provide them to employees. Where this has been done under a salary sacrifice arrangement, the effect of the judgment is that employers must account for output tax based on the value of the salary foregone by the employee in exchange for the hire or loan of a bicycle.

Affected businesses should apply this treatment from 1 January 2012. Employers can continue to recover VAT on the purchase of the bicycle and associated equipment.

Employers who have provided bicycles under deduction from salary arrangements are unaffected by the judgment as payments received from employees have always been subject to VAT and will continue to be so.

VAT remains due when a bicycle is disposed of and its value should normally be based on the price of an identical or similar item, taking into account the age and condition etc.

We are aware that valuing bicycles has caused difficulties for Scheme operators and therefore, to reduce administration burdens, the [table used to value bicycles for direct tax purposes](#) may be used. This table provides valuations for bicycles based on the age and original price. Any bicycles that fall outside of the table (such as antique or specialist bicycles) should be valued using the normal VAT valuation rules. If businesses choose to use lower values, they may be challenged in which case evidence will be required to support the valuation.

4.2 Face Value Vouchers

HMRC's published policy in relation to the provision of face value vouchers by employers to employees aligns with the judgment of the CJEU. In the case of supplies made under a deduction from salary arrangement input tax is recoverable but output tax must be declared. Where such vouchers have previously been provided under a salary sacrifice arrangement (as defined above) then input tax was claimable, subject to the normal rules, but output tax was due to the extent of the input tax claimed.

4.3 Childcare vouchers

Childcare vouchers are not directly affected by the judgment as they are not subject to VAT.

However, employers that incur administrative fees from their voucher provider have, to date, been permitted to recover VAT on those fees as a general business overhead. However, because the fees are directly attributable to the exempt supply of vouchers the normal partial exemption rules must be applied with the result that the VAT incurred may no longer be fully recoverable.

Affected businesses should apply this treatment from 1 January 2012.

4.4 Food and catering provided by employers

Employers may provide their staff with free or subsidised meals, snacks or drinks. Where employees pay for the meal etc, the normal VAT liability will apply.

If employees make no payment, VAT is not due (provided the benefit is available to all staff).

The judgment does not affect the VAT treatment where employees pay for their meals etc by a deduction from salary as VAT remains due.

However, from 1 January 2012 where employees pay for meals etc under a salary sacrifice arrangement, employers must account for VAT on the value of the supplies unless they are zero-rated. Subject to the normal rules, the employer can continue to recover the VAT incurred on related purchases.

HMRC are aware, that historically some employers have set up what they purport to be salary sacrifice arrangements to avoid VAT that is due on the consideration provided by employees for their meals, for example using electronic payments cards which record the value of consideration that is available to purchase meals. HMRC will continue to challenge such arrangements.

4.5 Benefits provided to all employees for no deduction or reduction from salary

The judgment only applies where an employee provides consideration in exchange for benefits. Where an employer provides, for example, a workplace gym which all employees may use for no deduction or reduction from their salary that will not fall within the scope of the judgment. Businesses may continue to recover VAT incurred on providing such facilities as a business overhead subject to the normal rules.

Separate charges to use facilities etc remain within the scope of VAT.

4.6 Motor cars

Most businesses are prevented from recovering VAT in full on the purchase and leasing of company motor cars. The input tax block on cars (100 per cent on purchases and 50 per cent on leasing) means that employers do not account for output tax when cars are made available to employees. Where VAT recovery is restricted and output VAT is not due the judgment has no direct impact.

Where an employer suffers no input tax restriction, output tax remains due.

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