



Cathaoirleach
Chairman



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Mr Paschal Donohoe T.D.
Minister for Finance and Public Expenditure and Reform,
Government Buildings,
Upper Merrion Street,
Dublin 2.

26 February 2019

Dear Minister,

I am writing in response to your letter dated 25 February regarding the VAT treatment of food supplement products.

The background to this issue is that Revenue's efforts to maintain a relatively narrow concessionary zero rating for a range of vitamin, mineral and fish oil products grew increasingly problematic over recent years in the face of a huge increase in the range and type of food supplement products on the market. This gave rise to a great deal of disagreement between Revenue and some traders concerning the VAT treatment of these products as they sought to extend the zero rate to such products as a food supplement to promote tanning and one to cure hangovers.

The industry's representative body, the Irish Health Trade Association (IHTA), raised concerns with Revenue about the difficulties in distinguishing between food supplement products which could be zero rated and those which should be standard rated. In addition, the number of cases where Revenue's rulings were being contested was increasing and it was evident that some agents were very active in encouraging traders to apply the zero rate to products that should be liable at the standard rate. In light of all this we concluded that there was likely to be a material and growing level of non-compliance in the sector, unfair competition between compliant and non-compliant businesses, and that a comprehensive review of the legislation and guidance on food supplements was required.

Revenue informed the IHTA of its intention to carry out the review, including its intention to engage an expert to advise on the definition of food for the purposes of the VAT Consolidation Act, and invited them to make a submission. From 2016, when we announced our intention to carry out the review, Revenue corresponded extensively with the IHTA, met with them on six occasions and briefed them on the issues emerging from the review and the EU legal constraints relating to the taxation of food and food supplements.

Based on the expert advice and its own legal analysis, Revenue concluded that in the absence of a change in the legislation, and in the context of a constantly expanding range of products, the status quo was no longer sustainable and made proposals to your Department in the context of Finance Bill 2018 to address the problems in the sector.



In the absence of any legislative change in Finance Act 2018, Revenue issued new guidance in December on the VAT treatment of food supplements, applicable from 01 March 2019. The new guidance withdraws the concessionary treatment that had been applied to certain food supplement products. It did not change the VAT rating of products that did not fall within the concessionary treatment and were already liable at the standard rate. Human oral medicines and other health products, including folic acid and vitamin products, that are licensed by the Health Products Regulatory Agency (HPRA), would continue to be liable at the zero rate.

Revenue understands that the IHTA engaged with the Department of Finance concerning the legislative options for addressing problems with the VAT treatment of health supplement products prior to the publication of Finance Bill 2018 and engaged with the Department again in recent weeks with a view to pursuing legislative changes in the next Finance Bill.

In light of your letter setting out your plans to examine the policy and legislative options for the taxation of food supplement products in the context of Finance Bill 2019, Revenue will delay implementation of its new guidance until 01 November 2019. This will allow time for the enactment of any legislative changes in the context of Budget 2020. If new legislative provisions are not introduced later in the year in the context of Budget 2020, the guidance published in December 2018 will come into effect on 01 November 2019.

The concessionary treatment by Revenue of vitamin, mineral and fish oil products, and any other similar products that Revenue have specifically ruled as zero rated, will therefore continue until 01 November.

Yours sincerely,



Niall Cody,
Chairman.