

# Quarterly indirect tax update

January 2020

## 1 VAT exemption on certain medical diagnostic services

In *Wolf-Henning Peters (Peters)* (C-700/17), the Court of Justice of the EU (CJEU) concluded that certain medical diagnostic services provided by a doctor to a laboratory could qualify for VAT exemption.

It is generally accepted that most medical services supplied by qualified medical and healthcare professionals are exempt from VAT where they are carried out for the principal purpose of protecting, maintaining and restoring a patient's health. Otherwise, it would be subject to VAT.

In the facts of this case, Peters was a doctor established in Germany specialising in clinical chemistry laboratory diagnostics. Peters provided medical care services to a company that performs laboratory work for independent doctors, rehabilitation clinics, medical services and hospitals.

Peters considered that his services were exempt from VAT, and the German tax authorities sought to argue that the VAT exemption does not apply and that these services should be treated as taxable as Peters did not provide his services under a relationship of trust between the doctor and the patient.

In this case, the CJEU ruled that the services provided by Peters could qualify for VAT exemption on the basis that the services were the provision of medical care in the exercise of a medical profession and that it is not a requirement for such a confidential relationship to be in place.

This case is currently very topical given the increase in arrangements where self-employed doctors are providing services via companies.

## 2 VAT repayment offset changes with effect from 25 November 2019

With effect from 25 November 2019, VAT registered traders now have an option to automatically offset any VAT repayment claims to another tax head and period on Revenue's Online Service (ROS). We understand that a similar offset function for corporation tax will be available in March.

In the ROS offset screen, it is now possible to instruct that the VAT repayment is offset to another and indicate so by ticking the box provided on screen. It is important to note that if there are outstanding taxes prior to the periods identified in the offset instruction, these periods will be paid by the VAT Claim first, to ensure that older available debt is satisfied before current or future debt is considered in accordance with the instruction.

The trader will be informed as to how their VAT3 Claim was offset, whether that is exactly in accordance with the instructions given or not, through the generation and issue of a Statement of Account outlining to where their VAT3 Credit was offset.

The development to automate VAT Repayment offsets, where a trader selects and provides a specific offset instruction, should speed up the processing of VAT Repayments and is a welcome development.





## Changes to VAT rate on food supplements with effect from 1 January 2020

Finance Bill 2019 introduced the application of the 13.5% reduced rate of VAT on food supplements. Given the scope of the term “food supplements”, it is important to draw a distinction between the products which will be affected by this and those that will not.

As published in a VAT Strategy Group paper published in July 2019, the zero rating concession allowed by Revenue became “... 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 and which should apply at the standard rate.”

Section 55 of the Finance Bill 2019 clarified that “the supply of food supplements of a kind used for human oral consumption” is subject to the 13.5% rate of VAT from 1 January 2020.

The below table sets out, in Revenue’s opinion, the types of products affected by this application, the physical form of such products and the labelling characteristics of same.

Types of product	Form of product	Labelling elements
<p><b>Sports nutrition supplements described as being for (but not limited to):</b></p> <ul style="list-style-type: none"><li>• increasing recovery;</li><li>• improving exercise;</li><li>• improving fitness levels;</li><li>• improving performance;</li><li>• improved preparation for exercise;</li><li>• achieving a performance goal more quickly;</li><li>• greater tolerance of heavier training schedules;</li><li>• greater tolerance of endurance events;</li><li>• improving recovery times before next training/exercise event;</li><li>• reducing risk of injury;</li><li>• maintaining health during intense training;</li><li>• aiding sleep and/or wellness, helping the participant perform optimally;</li><li>• aiding psychological processes that motivate the participant to perform optimally (Nootropics); and</li><li>• achieving a competitive edge.</li></ul> <p><b>Slimming aids described as being for (but not limited to):</b></p> <ul style="list-style-type: none"><li>• weight loss;</li><li>• energy augmentation;</li><li>• providing a metabolic advantage for weight loss;</li><li>• stimulating the metabolism;</li><li>• facilitating weight loss;</li><li>• weight management;</li><li>• ergogenic and aesthetic purposes; and</li><li>• aiding with appetite reduction.</li></ul>	<p><b>In Revenue’s view these types of products will typically be presented as;</b></p> <ul style="list-style-type: none"><li>• tablets;</li><li>• pills;</li><li>• gels;</li><li>• liquids;</li><li>• lozenges;</li><li>• capsules;</li><li>• powders;</li><li>• products for the preparation of beverages; or</li><li>• other similar products.</li></ul>	<p><b>These types of supplements will typically, in Revenue’s view, have the following elements on their labelling;</b></p> <ul style="list-style-type: none"><li>• details of the nutrients or substances (i.e. the ingredients);</li><li>• have usage or dosage instructions;</li><li>• a warning not to exceed the stated recommended daily dose;</li><li>• a statement to the effect that food supplements should not be used as a substitute for a varied diet; or</li><li>• a statement to the effect that the products should be stored out of the reach of young children.</li></ul>

It should be noted that the following foods will remain at the zero rate of VAT;

- human oral medicines that are licensed by the Health Products Regulatory Authority (HPRA);
- vitamins and minerals such as folic acid, that are licensed by the HPRA;
- infant and follow on milk formulate;
- infant foods;
- foods for special medical purposes;
- formulated foods for infants and specific groups; and
- specially formulated foods which, when used as instructed by the manufacturer, replace the total daily diet.



## EU's VAT system further equipped to tackle fraud in e-commerce and to help small businesses grow

The below contains extracts from the EU press release dated 8 November 2019.

The EU member states have agreed upon new rules to tackle fraud in the e-commerce sector. The agreement will, for the first time, make relevant data on online purchases available to anti-fraud authorities. The agreement comes as member states bid to reduce VAT fraud which equates to approximately €5 billion a year across the EU.

The EU Finance Minister has also taken steps, to reduce red tape for SMEs and simplify VAT and excise duty rules for EU member state armed forces.

### E-Commerce

The rules will ensure that anti-fraud experts in Member States will have access to VAT-relevant data held by payment intermediaries such as credit card and direct debit providers that facilitate over 90% of online purchases in the EU. Practically, payment service providers will be obliged to provide Member State authorities with certain payment data from cross-border sales, which anti-fraud specialists (the 'Eurofisc' network) can then access and analyse. The effect of this will be that both EU and non-EU online sellers will be identifiable when they do not comply with VAT obligations. The new rules will need to be confirmed by the European Parliament before coming into effect in January 2024.

### Simpler VAT rules for SMEs

EU Finance Ministers have reached an agreement to update already-existing special VAT rules for EU SMEs, giving more opportunity for cross-border activities. The new agreement should see a reduction in red tape and administrative burdens for small companies thus creating a level playing field for businesses regardless of location within the EU.

Under the new rules, a uniform domestic turnover threshold of €85,000 for companies only operating within their own State and an EU-wide €100,000 threshold in turnover for SMEs doing business cross-border will be eligible for exemption in another member state. There will also be simplifications for SMEs in dealing with VAT registration and reporting. The new scheme will come into force in January 2025.



## Finance Bill 2019 Further indirect tax updates

### Revenue powers

Widening of the Revenue's powers relating to the inspection and removal of records to include mutual assistance requests from the tax authorities in other EU member states for the purpose of combating VAT fraud.

### Business cars

Subject to meeting certain conditions, businesses can reclaim 20% of the VAT incurred on the purchase or leasing of passenger cars used for business purposes. As part of the climate and environmental measures introduced in the Budget, the CO2 emissions limit for reclaiming VAT will be reduced from 156g/km to 140g/km for cars first registered on or after 1 January 2021.

### Vehicle Registration Tax (VRT)

The VRT relief for hybrid electric vehicles and plug-in hybrid electric vehicles has been extended until 31 December 2020. However hybrid electric vehicles with CO2 emissions greater than 80g/km and PHEVs with CO2 emissions greater than 65g/km will no longer qualify for VRT relief with effect from 1 January 2020.

### Diesel Rebate Scheme

As the price of diesel has increased due to the increase in Carbon Tax, the formula used to calculate the rebate available to road hauliers and passenger transport operators under the Diesel Rebate Scheme has been amended to compensate for the increase in the price (still subject to a maximum repayment of €75 per 1,000 litres).

## Contact

Should you have any queries in relation to the contents of this article or would like to discuss any indirect tax issue, please feel free to contact us.



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