

NHS VAT REPORT - CRS VAT CONSULTING - SEPTEMBER 2010

Potential changes to VAT treatment of salary sacrifice schemes

The ECJ has recently given its judgement on questions from the UK VAT Tribunal in the case of *Astra Zeneca*, which provided employees with retail vouchers as part of their remuneration.

Astra Zeneca argued that input tax on the purchase of these vouchers should be recoverable as a business overhead but that no VAT was due on the supply of the vouchers as there was no consideration for the supply.

The ECJ found that provision of the vouchers is an economic activity and is a supply of services. They also concluded that the consideration for this supply is the part of the cash remuneration given up by the employee in return for the voucher and that output tax is due on that consideration.

This judgement is likely to lead to a change to the current VAT treatment of benefits provided by employers to employees under salary sacrifice arrangements, whereby output tax will become due on the supply of various types of salary sacrifice benefits which would otherwise be taxable supplies for VAT purposes. The decision could affect types of benefit provided under such schemes as:

- Workplace car-parking
- Cycle schemes
- Lease cars
- Mobile phones

The supply of benefits which would normally be exempt from VAT, such as childcare vouchers, should remain unaffected by the ECJ's judgement. 'Bus' schemes will not be affected because they are zero rated for VAT purposes. Workplace nurseries are also unlikely to be affected since activities undertaken within them are typically exempt for VAT purposes.

Potential effect on the NHS

Where salary sacrifice schemes such as cycle to work schemes or car-parking have been entered into by NHS bodies, VAT may now become due. However, if any NHS Trusts have historically disallowed input tax on associated purchases of salary sacrifice benefits, this VAT would subsequently become recoverable as business input tax.

This change in VAT treatment may not therefore have any material effect in circumstances where benefits have been charged on 'at cost' including the VAT cost, as the revised treatment of declaring output tax and recovering input tax would effectively be cost neutral. This change may however have an adverse effect on benefits where there is little if any input tax to recover, such as staff car-parking.

We will provide more detailed guidance when HMRC confirm how the Astra Zeneca decision should be applied. In the meantime, NHS bodies should review their existing salary sacrifice schemes and flexible benefit schemes to see if the benefits provided are subject to VAT. They should also:

- ensure that any proposed schemes are planned to take account of the potential additional VAT costs
- consider if they will bear the full burden of the additional VAT cost or ask employees to bear all or some of the cost
- note that any increased salary deductions may require changes to employment contracts and will have tax consequences
- consider changing the range of benefits available to mitigate the VAT cost

If you have any questions concerning the above, please do not hesitate to contact us.

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