

## **Health Stores Ireland OPENING STATEMENT – OIREACHTAS FINANCE COMMITTEE – 3rd OCTOBER 2019**

Firstly, I'd like to introduce myself. I am Matt Ronan, Spokesperson for Health Stores Ireland and I am joined by my colleagues, Erica Murray, Dr Dilis Clare and Alan McGrath, also from Health Stores Ireland. Kevin Hurley is a tax agent from CKH Fiscal Services, and he has been advising our organisation on the VAT treatment of food supplements for the past few years.

Secondly, Chairman, I wish to thank you and the other members of the Committee for inviting us here this morning to address you about the most serious threat ever to face the health food industry in Ireland – the imposition of VAT on food supplements. Food Supplements are legally recognised and regulated as food under EU and Irish law and they have been Zero-rated in Ireland for 45 years - since the time when the Zero rate for food was first introduced in 1973.

There are now health food stores in every town in Ireland. They are mostly small independent family run businesses which are an integral part of their local communities - and the imposition of this unwarranted tax will undoubtedly lead to the closure of many of these businesses and the loss of 100's – if not 1000's - of jobs.

The imposition of VAT on these products would also penalise hard-pressed consumers – especially children and the elderly – who, along with most adults, often use food supplements to maintain good health and to address many dietary deficiencies associated with the reality of modern diet and lifestyle.

From the very beginning of the VAT system, it has been the universal practice right across the country – in health food stores, pharmacies and grocery - that food supplements have been supplied at the Zero VAT rate – and that has never changed. Millions of consumers have purchased thousands of different food supplements since 1973 and there was never any VAT applied. Revenue's historic practice has allowed Zero VAT for any food supplement that provided sustenance and the only exceptions were sports nutrition and slimming products. This practice was even confirmed by the former Minister, Michael Noonan in 2014 - when he said in response to a Dáil question that food supplements which provide sustenance - benefit from the Zero VAT rate.

The present difficulties started in that same year – 2014 - when Revenue decentralised the responsibility for deciding VAT rates from a central policy unit in Dublin Castle to the local Tax District offices all around the country. Different Tax Districts had different ideas of what sustenance meant and soon contradictory Zero and 23% VAT rate decisions were being issued for the same types of products. There was no clear guidance and no centralised database of the decisions that were being made by the Tax Districts. This would have caused potential chaos in the industry, with huge distortions in retail prices, depending on which Tax District looked after your VAT affairs.

Revenue's response to this was to allege last year that they never allowed Zero VAT for food supplements and that these products were always legally liable to the Standard rate of VAT since 1973. The Standard rate was 19.5% in 1973 and it is 23% now - but these rates had never been applied by industry or sought by Revenue, until very recently. Revenue further alleged that they had only ever allowed a small number of basic vitamins, minerals and fish oils to be supplied at the Zero VAT rate on a concessionary basis.

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You may recall that the Chairman of Revenue appeared before this Committee on 24th January 2019 and said that *'concessional treatment was given to have certain, basic food supplements as zero rated'*. A concession means that there was never any legal right to the Zero VAT rate and that it was only applied at the discretion and benevolence of Revenue.

The existence of any such concession was emphatically rejected by the entire industry and we had never heard of this so-called concession until it was first mentioned by Minister Donohoe in response to a Dáil question in October last year.

Acting on advice from his Department, the Minister referred the issue to the Tax Strategy Group for recommendations on new legislation - but the option of preserving the Zero VAT rate in any future legislation was ruled out by his Department on the grounds that the EU VAT Directive does not allow Zero rate to apply, unless that Zero rate was already in place on and after 1<sup>st</sup> January 1991.

Significantly, the EU VAT Directive does not allow members states to apply Zero VAT non-statutory concessions. So, we now have the extraordinary situation where Revenue has claimed that they breached the VAT Directive by applying an alleged concession to food supplements, with the effect that those products could no longer qualify for the Zero VAT rate in any new domestic legislation, because of the 1<sup>st</sup> January 1991 cut-off date.

However, under Freedom of Information, we obtained evidence in August this year to show that there was never any concessionary treatment and that Revenue had published instructions for their own staff in 2006 which confirmed that food supplements were always legally eligible for the Zero VAT rate as food, in accordance with Revenue's own interpretation of the VAT law.

Therefore, the exclusion of the Zero rate legislative option in the July report of the Tax Strategy Group was based on a false premise and the recently discovered 2006 Revenue staff instructions show there was never any impediment in preserving the Zero VAT rate in the forthcoming Budget, since the products were actually - and legally - eligible for the Zero VAT rate on and after 1<sup>st</sup> January 1991.

An even more potentially damaging effect of this fabricated Revenue VAT concession is that some Tax Districts have already started to raise VAT assessments on past sales of food supplements - going back 4 years - on the basis that these products were always liable to VAT - and if this is allowed to continue, most independent health food stores will be put of business.

Finally, it is very difficult for our industry to understand how Revenue and Finance have approached the food supplements VAT issue in this way when - just 5 years ago in 2014 - an identical situation arose regarding VAT on herbal teas and the former Minister, Michael Noonan, had no difficulty in introducing new Zero VAT legislation for those products in that year's Budget. Therefore, we would expect the same treatment - especially since our products were always legally entitled to the Zero VAT rate.

Thank you for your interest in this issue which has grave implications for our livelihoods and also for hundreds of thousands of Irish consumers.

**ENDS**