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AstraZeneca case – salary sacrifice schemes – retail vouchers

A case relating to the VAT treatment of a salary sacrifice scheme offered by AstraZeneca (“AZ”) to its employees has recently been referred to the European Court of Justice (“ECJ”).

Background

AZ offers a salary sacrifice scheme to its employees, under which the employees may sacrifice part of their salary in return for retail vouchers (e.g. high street or internet retailers such as Marks & Spencer or Amazon) of an agreed face value.

AZ purchases the vouchers and incurs a VAT cost.

The issue at stake is whether AZ is entitled to reclaim the VAT on the purchase of the vouchers and if so does it have to account for output tax on the value of the vouchers provided to its employees.

HMRC’s view is either that VAT recovery is blocked, or if it is allowed, output VAT must be declared. The VAT Tribunal referred the matter to the ECJ.

ECJ procedure

There is normally a two stage process at the ECJ:

- The Advocate General issues his Opinion.
- The ECJ issues its judgement some months later – this is the final decision.

Whilst the ECJ decision usually follows that of the Opinion, this is not always the case.

Advocate General’s Opinion

The AG’s Opinion is that AZ is entitled to reclaim the VAT on the purchase of the vouchers but must then pay output tax on the value given to the employee.

Implications

Until the final ruling is given the VAT treatment cannot be confirmed. However, if you do offer a salary sacrifice scheme to your employees the likely implications are as follows:

- If you do not currently offer vouchers which include a VAT charge as part of a salary sacrifice scheme, this issue will not affect you.
- If you offer such vouchers but have not been reclaiming the VAT, again this should not cause a problem.
- If you offer vouchers and have been reclaiming VAT on the purchase but have not been paying output VAT, you may be liable to a VAT bill if the Opinion is upheld.

Conclusion

If you have any concerns about the VAT treatment of salary sacrifice schemes which you operate, please contact your usual Liaison adviser or our helpline on 0800 700 652.

Every effort has been made to ensure the accuracy of this information. However, it may not be comprehensive for your particular situation and recipients should not act upon it without first seeking professional advice.