

## VAT Agenda

### Could the VAT benefit of salary sacrifice arrangements soon be lost?

#### Background

'Salary sacrifice' arrangements are an effective way of employers and employees reducing tax and National Insurance (NI) costs because the amount of salary sacrificed is subtracted from pre taxed income. Under the schemes, the employee agrees to forgo a proportion of their salary for a non-cash benefit. This benefit could be a contribution to pension, help with childcare or used to cover the cost of anything from a bike to a car, or a bus pass to retail vouchers.

In addition to the tax and NI benefits, HM Revenue & Customs (HMRC) position has been that, if structured correctly, many salary sacrifice arrangements also have a VAT benefit. However, this could change soon, should the European Court of Justice (ECJ) follow the opinion of the Advocate General (AG) in the AstraZeneca (AZ) case.

#### Astra Zeneca Case

AZ provides retail vouchers to its employees as part of their remuneration package. Currently it recovers VAT on the purchase of the vouchers but does not account for VAT on the provision to the employees. The AG considers VAT should be paid to HMRC by AZ on vouchers given to its employees. According to the AG, the salary sacrificed by employees is payment for the vouchers.

#### The Wider Implications

If the ECJ follows the opinion of the AG, it will be a departure from HMRC's current position whereby salary sacrifice arrangements are not treated as 'consideration' for VAT purposes. The AG has accepted that AZ would be entitled to recover VAT it has paid on the purchase of the vouchers but only insofar as it accounts for VAT on the provision of those vouchers to staff. If such VAT is not accounted for, the AG considers that AZ is not entitled to recover the VAT on the voucher purchase.

If the ECJ follows the AG's opinion, this will result in many employers who have introduced similar voucher and salary sacrifice arrangements being hit with a substantial additional VAT liability. It will also cause confusion as the salary sacrificed is not treated as a payment for direct tax and NI purposes. The decision could cost UK employers around £0.5 billion over the past four years in unpaid VAT; and over £100 million per year going forward.

The AG's opinion also contains details of the European Commission's submissions that the UK's method of calculating VAT on vouchers is incompatible with EU law.

Furthermore, there is a school of thought that should the ECJ agree with the AG's opinion, the implications may go further than vouchers, capturing other salary sacrifice arrangements, for example, cycles for work.

Should you wish to discuss this matter, please do not hesitate to contact us.

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