

Retail vouchers – Salary sacrifice
[Astra Zeneca UK \(C-40/09\)](#)

The ECJ has released its Judgment in the Astra Zeneca UK (AZ) case. The Judgment has gone against the taxpayer, concluding that the payment of part of a salary in retail vouchers constitutes a transaction that is subject to VAT.

Background

This case concerns the situation where an employee is entitled, under the terms of their contract of employment, to opt to receive part of their remuneration in the form of retail vouchers. AZ purchases the vouchers at below face value from an intermediary company and then uses the vouchers as part payment to employees who have opted into the scheme.

AZ argued that it is not required to charge output VAT on the provision of vouchers to the employee as there is no consideration. However, AZ argued at the same time that it is entitled to recover the input VAT on the purchase of the vouchers as a business overhead. HMRC challenged this treatment, arguing that the supply of vouchers was subject to VAT either because there is payment or because the vouchers were provided for no consideration and put to private use. Alternatively if VAT is not due on the provision of the vouchers then HMRC argued that there was no entitlement to recover the corresponding input VAT. The UK VAT Tribunal referred a number of questions to the ECJ seeking to confirm the VAT treatment of the arrangement.

Held

The scope of economic activities is very wide and when AZ provides vouchers to its employees in exchange for a sacrifice in salary it is carrying out an economic activity. The employees receive vouchers which confer a future right to goods and services. Anything which is not a supply of goods is a supply of services and therefore there is a supply of services by Astra Zeneca.

Consideration for the supply - there was a direct link between the provision of the vouchers and the part of the cash remuneration which the employees gave up in return for the vouchers. The Court therefore concluded that there was a supply of services by Astra Zeneca for consideration on which output tax is due. The ECJ added that this resulted in the burden of VAT being borne by the final consumer of the goods, the employees of Astra Zeneca. Given the answer to the first question the Court found there was no need to answer subsequent questions on private use and input VAT recovery.

Comment

AZ's proposed analysis and historic treatment resulted in input tax recovery with no corresponding output tax in respect of vouchers provided to staff. Where employers currently block input tax recovery in relation to goods or services used in salary sacrifice schemes, the decision is likely to have a minimal net effect on their VAT liability. However the impact of the Judgment is potentially wider. Clearly where business' are recovering VAT on retail vouchers without paying VAT on their provision to the employee, HMRC will, if they have not already done so, seek to recover the VAT. The extent of the risk more generally will depend on whether

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VAT is currently being incurred and recovered by an employer on the purchase of the benefit. There could also be implications where employers provide other benefits under salary sacrifice schemes which are not 'bought in', such as increased staff discounts.

UK law in relation to salary sacrifice schemes is complex and it remains to be seen how HMRC will respond. At a minimum, taxpayers are likely to face procedural changes to the way they account for VAT on salary sacrifice schemes. Given the potential implications of this decision it is recommended that businesses review the VAT treatments being applied under current salary sacrifice schemes in order to establish the full extent of the risk and to put in place measures to mitigate any cost.