

## European Union: ECJ clarifies VAT treatment of staff vouchers

The European Court of Justice (ECJ) issued an important decision on 29 July 2010 on the VAT treatment of retail vouchers and “salary sacrifice” arrangements (*Astra Zeneca UK Limited v. Her Majesty’s Commissioners of Revenue and Customs*). Salary sacrifice arrangements involve the granting of discounted retail vouchers by an employer to its employees in exchange for the employee relinquishing part of his/her salary. The result of this decision is that many businesses could face significant VAT assessments if they have recovered VAT on retail vouchers they provide to staff as part of a salary sacrifice scheme, but have not accounted for VAT on their supply.

Astra Zeneca UK Limited granted its employees the option to receive a portion of their remuneration in the form of retail vouchers (rather than cash). These vouchers could be redeemed for goods or services at specific retailers. The retailer issued vouchers with a particular face value and sold them at a discounted price to an intermediary company, which then sold the vouchers to Astra Zeneca for less than their face value. This lower value was reflected on the employees’ pay slips. Astra Zeneca completed its VAT returns on the basis that it was not required to charge output VAT on the provision of the vouchers to its employees and that it was not entitled to deduct as input tax the VAT it had paid on the purchase of the vouchers. However, the company subsequently claimed that it should be able to reclaim the input VAT incurred on the acquisition of the vouchers because this was a business overhead, but that it did not have to charge output VAT on the provision of the vouchers to its employees because the vouchers were not provided for consideration. The U.K. tax authorities disagreed.

U.K. legislation requires intermediaries that procure discount retail vouchers for large employers to charge VAT. Businesses often will recover the VAT they are charged, but may not account for any output tax when they pass the vouchers on to staff.

In issuing its decision, the ECJ followed the 22 April 2010 opinion of Advocate General Mengozzi. The Court ruled that an employer may recover VAT when it is charged to it on retail vouchers but the employer must account for VAT when it provides retail vouchers to its staff as part of a salary sacrifice scheme. The granting of vouchers is a “supply of services” for VAT purposes, with the employee’s salary sacrifice being the VAT-inclusive consideration. This should result in a nil VAT burden for employers, where they simply pass on to staff the cost of the vouchers, including VAT.

This is a significant case involving the complex tax treatment of vouchers and salary sacrifice schemes. The case may cause HMRC to assess under-claimed VAT by U.K. entities over the last four years, meaning that many businesses could face significant VAT assessments if they have recovered VAT on retail vouchers they provided to their employees as part of a salary sacrifice scheme, but have not accounted for VAT on their supply. Such employers may now have to revisit how they deal with the VAT accounting on these vouchers. The ECJ decision also may cast doubt on the U.K. treatment of vouchers for VAT purposes.

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