

# **VAT: sports nutrition drinks**

VAT Information Sheet 15/12

August 2012

## **1. Introduction**

### **1.1 Who should read this Information Sheet?**

Manufacturers and retailers of ready to drink sports nutrition drinks and syrups, concentrates, essences, powders, crystals or other products that are used to make sports nutrition drinks.

### **1.2 What is this Information Sheet about?**

It provides guidance on how to establish the correct VAT liability of sales of sports nutrition drinks following the changes announced at Budget 2012.

### **1.3 When do the changes take effect?**

The changes affect sales of sports nutrition drinks made on or after 1 October 2012.

### **1.4 Why have these changes been introduced?**

Beverages are liable to VAT as an excepted item (item 4) to the VAT food zero rate. Many sports drinks are beverages for VAT purposes and are therefore standard-rated but the courts have found that some sports drinks are not beverages because of their nutritional content and are therefore zero-rated. These changes ensure that all sports drinks are taxed in a similar way ensuring that there is consistent treatment of sports drinks whether consumed for rehydration or nutritional purposes.

## **2. VAT liability of sports nutrition drinks**

### **2.1 What are the current rules (prior to 1 October 2012)**

Most sports drinks are beverages (designed to rehydrate, quench thirst or give pleasure), which means that they are standard-rated for VAT under excepted item 4 to the VAT zero rate. However, some sports drinks are zero-

rated because the Courts found that they were not beverages due to their high nutritional content. These are known as sports nutrition drinks.

## **2.2 What are the new rules (from 1 October 2012)?**

The new rules tax sports nutrition drinks at the standard rate of VAT to ensure consistency with other sports drinks. The new legislation introduces a new excepted item 4A which taxes at the standard rate 'sports drinks that are advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks, including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.'

The products affected are those supplied:

- pre-mixed in liquid form or as
- syrups, concentrates, essences, powders, crystals or other products that can be made up into a liquid by the consumer

They are generally marketed as supplying energy to enhance performance, accelerating recovery after exercise, providing energy, or building bulk and often contain creatine.

## **3. The 'advertised or marketed' test**

### **3.1 To which products will this test apply?**

The test applies to all sports nutrition drinks including syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks. It is designed to distinguish between products that contain similar ingredients but which are used for different purposes and are therefore advertised or marketed in different ways. Standard-rating is restricted to those products which satisfy the 'advertised or marketed' test, and other similar drinks (see 4.1).

### **3.2 What is the 'advertised or marketed' test?**

This means how the product is advertised or held out for sale. No single test is more important than any other, and businesses will need to consider the

product marketing and advertising strategy as a whole to determine the correct VAT treatment of a particular product. To determine whether a product meets the test businesses need to consider a number of factors.

### **Target market and design of product**

When the product was conceived and developed, its intended use, what informed the balance of its ingredients and what was identified as its target market are relevant to determining whether it meets this test.

For example, a product designed to build bulk and marketed at gym users is standard-rated under the new rules. A product designed to be used as part of a controlled weight loss programme and marketed at slimmers is zero-rated, (although, low sugar and calorie type drinks will remain standard-rated as beverages).

### **Packaging**

Many sports nutrition drinks products are targeted at a particular market, such as young male gym users, and this is reflected how the product is packaged (including its labelling). Typically, the packaging will indicate that the product is designed to enhance physical performance, accelerate recovery after exercise or build bulk.

Any written description on the packaging that explains the benefits of the product, how it is to be used and what it is designed to do will be a key indicator as to whether or not it is a product that is 'designed to enhance physical performance, accelerate recovery after exercise or build bulk'. Also relevant will be any images used on the packaging, for example images of athletes or sports activities.

### **Retail outlets**

Where a product is sold or designed to be sold is also an indicator of whether it meets the test. For example, if products are sold in sports equipment shops, gyms or advertised on body building websites this is another possible

indicator that they are the type of products that are standard-rated under the new rules.

Standard-rating does not apply to weight loss products that are specifically packaged as slimming aids and advertised on slimming websites. Similar weight loss products (excluding beverages) sold in gyms, (for example, packaged as an aid to lose weight) will also remain zero-rated because such products are not 'advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk'.

## **Advertising**

The product development strategy should explain the purpose of the product, but how and where it is advertised is also relevant to determining the VAT position. This includes factors such as:

- where the product is advertised (for example in gyms or on body-building websites)
- the content of the advertisement (for example, the pictures or wording used may promote a certain benefit such as building bulk or losing weight)
- how the product is promoted (for example, it may be promoted by a sportsperson who emphasises its recovery benefits or by a non-sportsperson who emphasises a different benefit)

## **4 Other issues**

### **4.1 What is meant by 'other similar drinks'?**

The new rules identify sports nutrition drinks by the way that they are advertised or marketed and the consultation confirmed that this was the most effective test for the vast majority of such products. However, there were concerns that some similar products might inadvertently benefit from zero rating - for example, some suppliers of sports nutrition drinks might change their advertising or marketing campaigns to gain an unfair tax advantage. To address this concern, the new rules standard rate drinks that are similar to sports drinks that are advertised or marketed as products designed to

enhance physical performance, accelerate recovery after exercise or build bulk. In considering whether a drink falls into this category, HM Revenue & Customs will consider all relevant facts and circumstances to ensure that all sports drinks are taxed consistently at the standard rate.

#### **4.2 Will milk be taxed?**

No, the treatment of milk is unaffected by this change. Although milk is a beverage, excepted item 4 to the food zero-rate, which standard-rates beverages, is itself subject to an overriding item which specifically zero-rates the sale of milk and of preparations and extracts of milk. There are no changes to this existing treatment and milk will remain zero-rated even if promoted as benefitting consumers taking part in sports activity.

#### **4.3 What about milk-based sport nutrition drinks?**

Certain sports nutrition drinks contain milk or milk extracts such as whey. However these are not beverages and therefore have a different tax treatment to milk. From 1 October 2012 these products will be taxed under a new excepted item (item 4A) to the food zero rate. This new excepted item does not benefit from the overriding item which zero-rates milk. These products are therefore standard-rated under the new rules.

#### **4.4 Will meal replacement drinks for slimmers or invalids be affected?**

No. Meal replacement drinks for slimmers and invalids will remain zero-rated as they are not advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build muscle bulk and do not fall within the 'similar drinks' category.

#### **4.5 Will sports gels be affected?**

The measure applies to sports nutrition drinks and to syrups, concentrates, essences, powders, crystals etc. where they are used for the preparation of sports nutrition drinks. Sports energy gels not designed to be made into drinks are not caught by this measure and will be zero-rated unless they fall within one of the other exceptions in Group 1 of Schedule 8 to the Value Added Tax Act 1994.

**5. Who can I contact for further information?**

If you have a query for which you have been unable to find the answer within this VAT Information Sheet please contact the VAT Helpline on Tel 0845 010 9000.

The Helpline is available from 8.00 am to 6.00 pm, Monday to Friday.

If you have hearing difficulties, please ring the Textphone service on 0845 000 0200.