1 Introduction

The services of opticians are exempt under paragraph (iii)(b) of the First Schedule to the VATA 1972 as amended. However, from 1/11/89 opticians became liable to VAT in respect of the supply of corrective spectacles and contact lenses. Opticians are still exempt in respect of their professional fees (i.e. eye testing fee, but not in respect of their dispensing fee or charges for the supply of the spectacles or contact lenses).

Appropriate VAT rates.

- Professional fees - exempt.
- Supply of spectacles & contact lenses, including dispensing fees – standard rate

2 Intra-Community acquisition/import of optometric or other equipment used for eye-testing.

In addition to supplies of spectacles and contact lenses opticians must account for VAT in respect of intra-community acquisitions of such equipment. No VAT deduction is allowable in respect of same or in respect of VAT suffered on import of such equipment as the equipment is for the purpose of the provision of exempt supplies only (professional services of an optical nature e.g. eye testing).

3 Change in the treatment of dispensing opticians

Following a decision by the Appeal Commissioner, the VAT treatment of the dispensing of spectacles and contact lenses by opticians was changed, and repayments became due to many opticians, as set out below:

4 Introduction

With effect from 1 November 1989 Revenue had treated the supply of corrective spectacles, and of contact lenses, by an optician as a single supply of goods. Opticians were required to account for VAT at the standard rate on the full consideration received for the supply.

Following a decision by the Appeal Commissioner, Revenue accepts that the supply by an optician of corrective spectacles and contact lenses constitutes two supplies, namely:

- A taxable supply of goods,
- An exempt supply of professional services of an optical nature referred to as “dispensing services”.

[5.5] Services of Opticians.
This decision gave rise to an entitlement to repayment of VAT to opticians where they had accounted for VAT at the standard rate on the dispensing service element of the price.

Following protracted consultation with representatives of the profession, Revenue has decided that claims to repayment by opticians may be settled on the basis of this instruction. It should be noted that while many of the issues were agreed between the parties, full agreement was not reached.

This Instruction sets out the requirements that an optician needs to comply with in order to obtain repayments of VAT, and how to calculate the amounts of these repayments where:

no dispensing charge was identified (see paragraph 5 below);

a percentage based dispensing charge was identified (see paragraph 6 below); and

a dispensing charge greater than 50 per cent has been identified (see paragraph 7 below).

All claims must be supported by an explanation of the circumstances in which the claim has arisen together with comprehensive computations of the make up of each claim.

Districts must ensure that the claim is valid and in particular that:

The VAT was correctly paid on the basis of Revenue’s policy on the taxation of supplies by opticians at the time the original return was made.

The calculation of the claim is correct.

The claims are within the statutory time limits.

Henceforth either of the two calculation methods identified in paragraphs (6) and (7) below may be used when calculating the VAT liability on the supply of corrective spectacles and contact lenses. However, it is important to note that it is intended that Section 97 of the Finance Act 2006 and new regulations will be commenced with effect from 1 November 2006. This will provide for the replacement of the rules in Section 11(3) of the VAT Act 1972 (as amended) in respect of the VAT treatment of the supply of a package comprising two or more elements which attract VAT at different rates. This will have relevance to the supply of dispensing services when supplied in conjunction with spectacles and contact lenses. In the event that this change in the legislation will have an impact on the aforementioned methods of calculating VAT liability, a supplementary O.I. will be issued.

5. Claims for repayment for prior years.
Districts may have already received a number of claims to repayment for prior periods. Repayment claims for prior periods may arise in the situation where the optician accounted for VAT at the standard rate on the full consideration received in respect of supplies of spectacles and contact lenses together with dispensing services. The general rule provides that entitlement to repayment depends on the optician having filed a valid claim for repayment of VAT in respect of each period within the statutory time limits. Districts shall treat the receipt of a letter from the optician, which notified Revenue of an intention to make a claim in respect of any period(s), as being the receipt of a claim for that period (or claims for those periods) and any subsequent period up to and including the VAT period ending 31 October 2006, subject to full details of the claim(s) now being provided.

**N.B.** While at present no repayments should be made other than on foot of a valid repayment claim, representatives on behalf of the opticians have argued that in certain circumstances the requirement for a valid written claim should be waived. This matter remains under consideration, and instructions will be issued in the event of any developments.

6. **Time limits.**

It should be noted that any claims to repayment of VAT arising from the Appeal Commissioner’s decision are restricted to claims (including letters – see Section 2 above) received within the statutory time limits, which provide that repayment claims must be made within a specified period of years from the end of the taxable period to which the claim relates. The statutory time limits are as follows:

In the case of **claims relating to taxable periods ending before 1 May 1998** - 10 years where the claim is made before 1 May 1999 and 6 years where the claim is made in the period from 1 May 1999 to 31 December 2004. Claims made on or after 1 January 2005 in respect of such taxable periods are statute barred.

In the case of **claims relating to taxable periods ending on or after 1 May 1998 and before 1 May 2003** – 6 years where the claim is made before 1 January 2005 and 4 years where the claim is made on or after 1 January 2005.

In the case of **claims relating to taxable periods ending on or after 1 May 2003** – 4 years.

7. **Requirement to produce records to substantiate claims.**
Districts may now have to deal with claims already lodged in respect of periods dating back as far as 1989. In respect of periods outside the record keeping time limits set out in Section 16(3) of the VAT Act 1972 (as amended), and for which full records may not be available, Districts may accept claims on the understanding, subject to demonstration, that the opticians have acted with due diligence in attempting to produce records to substantiate such claims.

In respect of any other periods, full records should be available in accordance with Section 16 of the Act. In addition, in respect of any period, where an optician seeks to calculate an exempt dispensing amount of greater than 50 per cent, full records should be available (see paragraph 7 below).

8. Calculating the repayable amount where the charge for dispensing services was not identified.

Where opticians have not kept separate records of the amount charged for the exempt dispensing service, Districts may accept claims to repayment of VAT, arising out of the incorrect treatment of the exempt “dispensing services”, which are computed using the methodology set out hereunder:

Step 1

Identify the amount of output VAT charged in the relevant period. This is the T1 figure on the VAT returns.

Step 2

Reduce the T1 figure on the VAT 3 submitted for the period by the aggregate of the following:

- VAT accounted for on intra-Community acquisitions, received Fourth Schedule services, VAT-free imported parcels and other VAT self-accounted for in accordance with VAT law.
- VAT accounted for on Department of Social and Family Affairs and the General Medical Services Payments Board receipts.
- VAT accounted for on supplies of goods, other than prescription spectacles and contact lenses, e.g. accessories such as cases and chains for spectacles, cleansing solutions, non-prescription glasses (ready readers), sunglasses, etc.
- VAT accounted for on repairs to spectacles.
- VAT on repeat/replacement contact lenses where no “dispensing service” was provided.
Step 3

Opticians may treat 50% of the T1 figure, as reduced in accordance with step 2 above, as representing tax incorrectly paid on the exempt dispensing service.

Districts may treat this 50% figure as taking full account of any restriction of input credit or any additional income tax or corporation tax liabilities that might otherwise arise as a result of the repayment of VAT.

Example: Period January to December 2002

<table>
<thead>
<tr>
<th>Output VAT (T1)</th>
<th>€50,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Less</strong></td>
<td></td>
</tr>
<tr>
<td>VAT on ICA etc,</td>
<td>€5,000</td>
</tr>
<tr>
<td>VAT on DSFA and GMSPB receipts</td>
<td>€10,500</td>
</tr>
<tr>
<td>VAT on supplies of other goods,</td>
<td>€1,500</td>
</tr>
<tr>
<td>VAT on repairs.</td>
<td>€1,000</td>
</tr>
<tr>
<td>VAT on repeat/replacement contact lenses</td>
<td>€500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>€18,500</td>
</tr>
<tr>
<td><strong>Difference</strong></td>
<td>€31,500</td>
</tr>
<tr>
<td>VAT overpaid – 50% of difference</td>
<td>€15,750</td>
</tr>
</tbody>
</table>

9. Calculating the repayable amount where a percentage based dispensing fee was identified.

Following the decision by the Appeal Commissioner some opticians have been treating a percentage (usually 50%) of the receipts from the sale and dispensing of corrective spectacles and contact lenses as being appropriate to the exempt “dispensing service” without disclosing the amount charged for the “dispensing services” to the customer at point of sale. Where this has occurred, Revenue is prepared to agree the VAT liability of opticians
including claims to repayment which were or are computed on the following basis:

10. **Eye testing fees are exempt and should be separately identified.**

   Amounts charged for ancillary items such as cases and chains for spectacles, coloured lenses, cleansing solutions, etc, and for supplies of non-prescription sunglasses, should be accounted for at the appropriate VAT rate and separately identified. Similarly, amounts charged for repeat/replacement contact lenses, and for repairs to spectacles, where no “dispensing service” is provided should be accounted for at the appropriate VAT rate and separately identified.

   Where the purchase of spectacles or contact lenses was or is entirely funded by payments from the Department of Social and Family Affairs (DSFA), or covered for medical-card holders by the General Medical Services Payments Board (GMSPB), only the dispensing fee agreed between these bodies and the opticians’ professional bodies should be treated as exempt from VAT. The balance of the payment made is liable at the **standard rate** (however, see (e) below).

   (d) The aggregate of income within (a) to (c) above should be deducted from the gross income from sales in the VAT period. The balance may then be split on a 50% / 50% basis as representing the exempt dispensing service and the taxable supply of goods, and VAT should to be accounted for accordingly.

   Where an individual customer supplements the DSFA or GMSPB allowance/benefit, as the case may be, the 50% split referred to in (d) above may be applied only in relation to the amount paid by that customer that is in excess of the DSFA or GMSPB allowance/benefit, as the case may be. The portion of the price represented by the DSFA or GMSPB allowance/benefit must be accounted for as set out in (c) above.

   Opticians may recover VAT incurred on expenses only insofar as they are used for their taxable supplies. However, there is no entitlement to recover VAT incurred directly in connection with exempt dispensing services. In addition, there must be a commensurate reduction in the amount of credits due to opticians in respect of ‘dual-use inputs’, i.e. VAT incurred in the provision of both taxable and exempt supplies.

11. **Calculating the exempt amount where a dispensing fee greater than 50 per cent was claimed.**

   Optician may choose to calculate the exempt amount in respect of “dispensing services” other than by using the methods set out at paragraphs 5 and 6 above. The optician will in this case be required to prove, by reference to accounts kept, pricing of spectacles and contact lenses, receipts issued and similar
documentation, the amount charged in respect of any dispensing fee for each sale.

Any optician who does not choose to use the method set out in paragraphs 5 and 6 above may not rely on any of the calculations contained therein as the basis for claiming a higher percentage for the exempt part of any apportionment. Any optician who has lodged claims based on a calculation of an exempt dispensing fee of greater than 50 per cent, and who now wishes to base the claim on a calculation as at paragraphs 5 or 6 above, should revise the claims accordingly.

12. **Interest.**

Interest is payable by Revenue in relation to repayment claims in accordance with section 21A of the Value-Added Tax Act 1972 (as amended).

13. **Reporting of settled claims for prior years.**

It is important to quantify the total amount of repayments, including interest, in this sector. Therefore, each District should record details of all repayments made to opticians in respect of the revised treatment of dispensing fees.

A monthly report setting out the following details should be supplied, via the Regional Head Office, to Paul Kennedy, VAT Interpretation (Appeals and Communications) Branch, 3rd Floor, Stamping Building, Dublin Castle:

Name and VAT Number of the Taxpayer

Amount of Tax and, where appropriate, interest repaid.

The periods covered by the claim.

14. **Position with effect from the commencement of Section 97 Finance Act 2006 (replacement for ‘Package Rule’).**

It is anticipated that section 97 of the Finance Act 2006, which amends section 11(3) of the VAT Act, will be commenced with effect from 1 November 2006. Under the new legislation the two supplies identified by the Appeal Commissioner (referred to in paragraph 1) will come within the definition of a composite supply in which the principal supply will be the supply of spectacles or contact lenses and the ancillary supply will be the dispensing service. Therefore, in accordance with section 11(3) of the VAT Act, the rate of VAT on the full consideration for that composite supply will be the standard rate. Corrective spectacles and contact lenses qualify as the principal supply because they can be and are often are supplied with no or minimal “dispensing services”. On the other hand “dispensing services” are an ancillary supply as they cannot realistically be supplied on their own. Further instructions will issue when the new law is commenced.
Appendix – Rates of VAT for supplies by opticians.

Exempt supplies

Eye testing.

Professional services of an optical nature consisting of dispensing corrective spectacles and contact lenses (until the commencement of section 97 Finance Act 2006 – see paragraph 9 above).

**Standard rated supplies**

Supplies of corrective spectacles and contact lenses.

Supplies of non-prescription spectacles, sunglasses, cases, chains, spare parts, contact lenses fluids, lenses cleaners and other accessories.

Supplies of any other taxable goods.

**Reduced rate supplies (13.5%)**

Repairs to customer’s own frames.

New frame fitted to customer’s own lenses due to damage to existing frame.

New lenses fitted to customer’s own frame due to damage to existing lenses.

15. **Multiple supplies by opticians**

Following the Finance Act 2006, Revenue sought to show that the supply of goods and dispensing services by opticians was a multiple supply, taxable in accordance with the amended Section 11(3). This was resolved as set out below:

As a consequence of the commencement of section 97 of the Finance Act 2006, (which amended section 11(3) of the VAT Act), Revenue had contended that the supply of corrective spectacles and contact lenses and the associated dispensing services was a “composite supply” taxable at the standard rate with effect from 1 November 2006. (Please see paragraph 10 of “Operational Instruction No.97, titled “Opticians and VAT” dated 2 October 2006 and paragraph 16 of Information Leaflet “VAT Treatment of Goods and Services Sold Together” dated November 2006.). However, following settlement of an application for a judicial review by an optician of Revenue’s interpretation of the new section 11(3), Revenue now accepts that where a dispensing service is supplied with spectacles or contact lenses that supply by an optician constitutes two supplies forming a “multiple supply” consisting of:
A taxable supply of goods,

An exempt supply of professional services of an optical nature referred to as “dispensing services”.

_This decision may result in an entitlement to repayments of VAT to opticians where opticians had accounted for VAT at the standard rate on the dispensing service element of the price from 1 November 2006 on the basis of Revenue’s instructions._

**Claims for repayment for periods November December 2006 and subsequent periods**

Revenue has decided that claims to repayment by opticians for the periods November December 2006 to July August 2007 may now be settled on the basis of the instruction set out in OI No.97 of 2006, titled “Opticians and VAT” dated October 2006.

All claims must be supported by comprehensive computations of the make up of each claim.

Districts must ensure that the claim is valid and in particular that:

The VAT was correctly paid on the basis of Revenue’s policy on the taxation of such supplies by opticians with effect from 1 November 2006.

The calculation of the claim is correct.

16. **Interest.**

Interest is payable by Revenue in relation to repayment claims in accordance with section 21A of the Value-Added Tax Act 1972 (as amended).

17. **Reporting of settled claims.**

A monthly report setting out the following details should be supplied, via the Regional Office, to Paul Kennedy, VAT Interpretation (Appeals and Communications) Branch, 3rd Floor, Stamping Building, Dublin Castle:

Name and VAT Number of the Taxpayer

Amount of Tax and, where appropriate, interest repaid.

The periods covered by the claim.

18. **Position going forward.**
With effect from 1 September 2007 opticians should apportion the total consideration received for the supply of corrective spectacles and contact lenses between the exempt supply of “professional services of an optical nature” and the taxable supply of “goods” in accordance with the guidance for apportionment of “multiple supplies” set out in Information Leaflet “Goods and Services Sold Together” Officers should note that Revenue are prepared to accept an apportionment of the total consideration which shows up to 50% of the price charged as being appropriate to the exempt service. Any claims for a higher percentage should be examined to ensure that the optician can justify the percentage claimed.