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By PwC Deutschland | 03 March 2011

Reduced rate VAT on sale of horses to be restricted to animals intended for food or feed

The ECJ has held that the reduced rate of VAT on the sale of horses may only be applied to the sales of those intended for human consumption or for feeding to other animals.

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Various VAT Acts within the EU - for example the Dutch and German - tax the sale of horses at the reduced rate. Others restrict the reduced rate to the sale of animals, including horses, normally intended for human consumption or animal feed. The clash appears to arise from wording differences between the various language versions of the VAT Directive (and previously the Sixth Directive) some of which privilege the sale of live animals separately from the sale of ingredients normally intended for the manufacture of foodstuffs, whilst other versions - in the view of the court - make both privileges conditional on the intention of use in the manufacture of foodstuffs. The Commission sought judicial clarity by filing a case against the Netherlands with the ECJ.

The ECJ has now decided in favour of the Commission. Horses were not normally intended for human consumption or for the production of human or animal foodstuffs. The intention of the privilege was to keep the tax burden on the sale of food low, rather than to encourage the sale of horses generally. The privilege was a departure from the normal standard rate taxation and therefore to be interpreted strictly. The circumstances of breeding and rearing normally made it possible to identify the primary use to which a horse should be put, sport, recreation, beast of burden or as food. Accordingly the Netherlands had overextended the intended privilege in applying the reduced rate of VAT to the sale of all horses as opposed to only to those intended for the food chain.

The ECJ case reference is C-41/09 *Commission v. the Netherlands* judgment of March 3, 2011.

Keywords

VAT on horses, reduced rate VAT