

Food for working dogs is exempt for VAT

The basic principles of VAT include the fact that the sale of food is zero-rated, whilst the supply of pet food is, in contrast, standard-rated. That is a serious difference for the purposes of commerciality for both the supplier – in terms of profitability – and the consumer – in terms of cost.

A recent Upper Tribunal decision (Roger Skinner Limited) confirmed the decision of the First Tier Tribunal (FTT) that in the case in question ‘animal feeding stuffs’ were being supplied and they were therefore zero-rated. There are similarities to the ‘jaffa cake’ debate on whether this was ‘food or a treat’.

The facts

Roger Skinner Limited sold dog food that had been formulated for working dogs but was, ultimately, also suitable for pets. The company claimed that the products should be zero-rated for VAT on the basis that they qualified under VATA 1994, Sch 8 group 1 as ‘animal feeding stuffs’. Under s30 of the VATA, a supply of goods or services is zero-rated for VAT purposes if the goods or services are of a description specified in Sch 8 to the

Act. However, Group 1 contains a list of ‘excepted items’ which are standard rated unless also found in a list of ‘items overriding the exceptions’. The ‘excepted items’ include these, at point six:

“6. Pet foods, canned, packaged or prepared: packaged foods (not being pet foods) for birds other than poultry or game; and biscuits and meals for cats and dogs” (emphasis added in each case).”

In the past, HMRC maintained that all canned or packaged food for dogs was standard rated for VAT purposes. Therefore, HMRC disputed the claim by Roger Skinner Limited for zero-rating of its products, instead stating the goods were pet food and therefore fell within the exception at item number 6, and thus should be standard rated. The company thus took the case to the First Tier Tribunal.

The FTT allowed the taxpayer’s appeal, so, in turn, HMRC appealed to the Upper Tribunal. The basis of the argument put before the original tribunal was that the fact that while the food was also suitable for pet dogs, the products were not necessarily specifically pet

food. The Upper Tribunal noted that this position also depended on marketing and the customer base. In light of the evidence, the Upper Tribunal found that the FTT had been entitled to rule that the goods were aimed at working dogs and therefore Zero-Rated correctly and in line with tax regulations.

Working dogs and strategy

On the particular point that the food was 'meal' for working dogs – as mentioned in the exception of the VATA 1994 at item number 6 – the judge of the Upper Tribunal agreed with the FTT that the food in this instance was used as a mixer and was not a complete meal in itself. The question on which this case turns is therefore whether the foods were either 'pet foods' or a separate part of a 'meal' for dogs within the meaning of the schedule.

HMRC's appeal was thus dismissed and the dog food produced by Roger Skinner Limited was deemed zero-rated – *CRC v R Skinner*, Upper Tribunal (Tax and Chancery Division), 15 May 2014. It is important to note that the food was first a mixer for working dogs and secondly actively marketed towards working dogs, separating this product from generic 'pet food', and this difference could clearly be demonstrated by the taxpayer. Mr Skinner's strategy was to advertise his company's products by visiting gun dog breeders and trainers; as well as exhibiting at field trials and country shows, targeting and focusing on this particular

market sector. The company was represented at some 12–15 events a year, and Crufts, which was not attended very often, was the only one of the events to include sections for pets. Skinner also advertised specifically in working dog magazines. The company deliberately did not place advertisements in magazines concerned with show dogs or in general pet dog magazines. Sales representatives were told to hold the food out as suitable for all dogs, but also primarily to stress the products' suitability for gun dogs.

There is no doubt the dog food industry, especially the working dog sector, will promote the zero-rated factor where possible, in light of the result in this recent case. For all those involved in the industry it is essential to ensure that the correct rate of VAT is being applied for commercial reasons, but interested parties must remember to clearly establish direct evidence to support any claims to zero-rate taxable supplies for VAT.

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