good to know what parts of annex III are of importance. In short, annex III says that reduced rates are only allowed on foodstuffs for human and animal consumption; live animals, seeds, plants, and ingredients normally used to supplement foodstuffs or as a substitute for foodstuffs.

In this case, the Dutch government placed horses under live animals, resulting in a 6% VAT rate. The reasoning is as follows: according to the Dutch, "a horse is an animal generally destined for culling". As a matter of fact, in national law horses are part of the animals generally destined to produce nourishment or beverages, as are cattle, sheep, and pigs (Art. 9 Wet OB lid 1a, referring to table 1 a.4). The fact that a fair share of horses are never sold with the intention to be culled, does not change this VAT reduction, for the usage of the horse can change during the animal's life.

HORSES: FRIENDS NOT FOOD

Now, the European Commission decided this VAT advantage must come to an end. Horses, as explained by the Commission, are in principle not destined for the preparation of nourishments or beverages, at least not in the way that cattle, sheep, and pigs are, for example. Although horses are used for consumption, only the horses intended for that purpose can be subject to the reduced VAT rate. Further, the Commission clarifies the meaning of the word 'live animals' as used in the directive mentioned above. The Commission states that "living animals are not edible and the intention of the EU legislator was to consider live animals as a component to produce nourishments or beverages. Without this definition the distribution of animals would be taxed with the regular percentage, therefore the animals would be more expensive".

The Dutch government also pointed out, that VAT reduction is also applied on agricultural goods and services: "supply of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings", therefore classifying horses as agricultural goods. But are they? Agricultural production means producing goods that can be used as nourishment or beverages, for example maize and milk, and although there are horses used for these purposes, the average sporthorse can not be called a production horse, at least not in the way described. Although it is a rather creative statement from the Dutch government, it is obvious it can't hold up in court. The common thought of a horse is that of a sport, breeding or recreation horse, even a pet, and therefore mostly considered as leisure of which some have made their profession.

END OF ADVANTAGE

As a conclusion, one can only agree with the arguments the European Commission put to advance, for no one in their right mind would consider a 100, 000 euro + 6% VAT horse to be sold for culling or any other production of foodstuffs. Through this decision, the Dutch, German, and French authorities need to alter their VAT regulations as soon as possible. We will keep you informed.

Mr. Luc Schelstaete

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