

Pump Court Tax Chambers – Tax Problem Question Competition

First Prize – £750 and a Mini-pupillage
Runner up prizes of up to £500 at judges' discretion

Students at any stage of their education are invited to submit an answer to this problem question by no later than **Sunday 26th January 2020**. Entries should be 750 – 1000 words and should be emailed to Pupils@pumptax.com with the covering email stating the student's full name, university/college and contact details.



Entrants should read and refer to the case of *Roger Skinner Ltd v HMRC* decided by the First-tier Tribunal and on appeal by the Upper Tribunal (neutral citations: [2012] UKFTT 525 (TC) and [2014] UKUT 0204 (TCC)). Entrants can make references to the quotations from other cases that are contained in those decisions but there is no need to refer to any other cases or undertake any wider research. Note that First-tier Tribunal decisions are not binding on any other Tribunal but are persuasive; Upper Tribunal decisions are binding on the First-tier Tribunal.

Entrants should focus on the application of the principles from the *Roger Skinner* case to the facts set out below to advise the client – there is no need to recite the facts or to quote excessively from the case law. The answer can be structured/presented in any manner preferred and conciseness is encouraged.

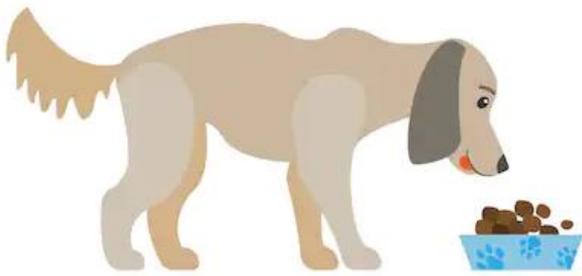
Instructions

VAT is generally charged on the provision of goods or services at a rate of 20% of the consideration for the transaction. However, certain transactions described in Schedule 8 Value Added Tax Act 1994 are entitled to be subject to VAT at 0%, known as 'zero-rated supplies'.

Item 2 of Group 1 of Schedule 8 permits the zero-rating of "*Animal feeding stuffs*". However, zero rating is not permitted if the animal feeding stuffs are one of the specified Excepted Items, which includes "*Pet foods, canned, packaged or prepared... and biscuits and meal for cats and dogs.*"

Facts

Best Pet Food Limited ("**BPF**") is a company that produces and sells food for cats, dogs, rabbits and other domestic animals. BPF products include a "Basic" product which is marketed at dogs that are pets as well as an "Anti-Allergen" product and a "Puppies" dogfood. Last year BPF decided to create a product specifically for assistance dogs, being dogs that are trained to assist their owner with their day-to-day life due to the owner having a disability or medical condition. Examples of assistance dogs include guide dogs, seizure alert dogs and dogs trained to help people with hearing difficulties, epilepsy, diabetes as well as physical mobility problems.



The Helper dogfood looks identical to BPF's other products, with the exception of the Puppies range which comes in smaller pieces. The ingredients are very similar to BPF's Basic product but also include anti-oxidants and Omega-3 which are said to improve a dog's cognitive ability and make them calmer. Aside from the anti-oxidants and Omega-3, the ingredients of Helper are also very similar to other pet foods in the market.

All BPF's products (including Helper) are sold in bright orange plastic packaging in quantities of 1kg, 2kg and 5kg. All products state "Best Pet Food" on the front of their packaging and show the BPF logo (the silhouette of a running dog). All products show identical guidelines for feeding amounts. All BPF dogfood show large photographs of dogs on the front of the packaging – for example the 'Puppy' range shows two puppies – a border collie and a terrier. The Helper range shows an adult Labrador.

The Helper packaging states "VAT free" prominently on the front and back of the packaging. The front of the packaging states "For happy, healthy dogs of any breed. With added ingredients to improve canine cognitive function". On the back of the packaging are the ingredients and written in small letters below is stated "Formulated specially for assistance dogs such as disability dogs". There is no reference to "pet" anywhere on the packaging except in BPF's name.

BPF's website is headed "Best Pet Food – because your pet deserves the Best". Helper is in the Dogfood section of the website; its description includes "Contains added ingredients to improve canine cognitive function" and "Formulated specially for assistance dogs such as disability dogs". The website also states that the product is "VAT free".

BPF sponsors and has partnerships with several charities that train assistance dogs. The company launched Helper at a fundraising event held by one of one of these charities and regularly attends the charities' events to promote this product (but not their other products). Many of the charities produce magazines that are circulated to their members and BPF have placed advertisements for Helper in these magazines, including a voucher for a free 1kg sample bag of Helper. BPF also promote Helper alongside its other products at dog shows such as Crufts and in a few prominent pet magazines.

BPF sells its products via its website, telephone orders and through 10 pet shops that act as distributors of its products. 30% of all BPF product sales are made via their website, 10% are made via telephone orders and 60% are made via the pet shops. However, in the case of Helper, 75% of orders are made via telephone and the vast majority of those orders are bulk orders made by assistance dog training centres and charities; 15% of sales are made via the website and 10% are made through the pet shops. At present Helper accounts for 2% of BPF's



overall sales of dogfood (by turnover) whereas the Basic range accounts for 85% of its dogfood sales.

The content of a number of the reviews for Helper on BPF's website make it clear that the product is being purchased for dogs other than assistance dogs – some of these reviews note that Helper is less expensive than BPF's other products because it is VAT free. BPF do not know the overall proportion of Helper that is purchased specifically to be fed to assistance dogs.

Advice Sought

BPF had assumed that they were entitled to zero-rate their sales of Helper under Group 1 of Schedule 8 Value Added Tax Act 1994 because they intend it to be purchased by assistance dogs and have been advertising the product as 'VAT free'.

However, the company has recently been warned this may be incorrect and is seeking your advice on whether they were entitled to zero-rate their sales of Helper. It is clear that Helper falls within the category of "Animal feeding stuffs", it is packaged and prepared and is not biscuit or meal; accordingly, the only issue is whether Helper is 'pet food'.