LEGAL AND BUSINESS JOURNAL

The co-ownership **VAT conundrum** (part II)

Introduction

In this part II concerning the co-ownership (of a horse) VAT conundrum, the co-ownership of a horse is discussed for VAT-purposes. But, first a quick recap of part I of this contribution. Part I revolved around the not yet resolved question if the delivery of a part-ownership in a horse qualifies as a delivery of goods for VAT purposes. If it does not – and there are good arguments for that – then the sale and (legal) delivery of an ownership-share in a horse is not a VAT taxable fact and would thus merely be considered a financial transaction: one could say that it is the investment in a partnership or contractual cooperation. Hereafter the contractual cooperation is discussed and it's VAT implications.

Co-ownership an entity?

VAT legislation in EU member states is harmonized within the EU for purposes of creating a level playing field for 'anyone' who performs economic activities. Based on the VAT-directive, within the EU the word 'anyone' must be interpreted as broad as possible; 'anyone' is not just a company or an independent business(wo)man. 'Anyone' can be any incorpora¬ted body, an individual, a foundation, a union or any cooperation between (legal) persons, which cooperation itself does not have to be a legal entity. A VAT-taxable person – or entity – requires (only) that it acts independently in the market. The combination of co-owners must therefore be acting 'as one' both in their external (market) relations and in their internal relations. When two or three people share ownership in a horse, and one of them deals with the

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grooming, training and bringing into competition, to the outside world this 'managing' co-owner (a definition, hereby invented..) is the one that external parties have dealings with. Internally, this 'managing' co-owner discusses all relevant matters with his or her co-owners. Perhaps this 'managing' co-owner also takes care of the financial matters of the shared ownership – or perhaps someone else takes care of that. Key here is that in their internal relations, the co-owners also work together in exploiting the horse.

Comparison with a 'regular' partnership

When the comparison is made with for instance accountants who jointly run an accountants-firm as a partnership, it readily becomes clear that not the individual accountants are the VAT-taxable persons but their partnership is, which presents itself to the outer world and deals with its clients and suppliers. The individual accountants that are partner in the firm, are not individually considered VAT-taxable persons: the firm is. Believe you me when I say that an accountants-firm is organized in the shape of a contractual cooperation.. The accountants-firm qualifies therefore as an 'entity' for VAT purposes. As a consequence, the accountants-firm has to register with the tax-authorities as a VAT-taxable person and must pay their output-VAT, under deduction of the input-VAT that is attributable to their VAT-activities. For this reason, the partners in the firm do not ask refund of their input-VAT for their share in the partnership; the firm itself does that. In this respect, the co-ownership in a horse essentially does not differ from the accountants-firm as pictured above. Co-owners in a horse between them usually have an agreement (however minimal) in place to arrange their internal relation and also usually one of the owners is responsible for the day to day caring for the horse and bringing it into compe-tition.

Silent partners

As we all know, some companies, firms or partnerships have silent partners. Similarly, some co-owners of a horse are sometimes also not known to the outside world. It does however not take away the fact that the horse itself and its exploitation still may be qualified as an economic activity, to the results of which the silent partner is also entitled. It is in such situations that there is no doubt who represents the 'partnership'. If the silent partner also has expenditures or costs with regard to the horse or the 'partnership' that carry VAT, this input-VAT will have to be included in the VAT tax-returns that the partnership will have to make. It would require that the partnership is registered with the tax-authorities as a VAT-taxable person.

Registering the partnership

Okay, this is where some of you may feel that things get a little tricky. Imagine that you are a private investor and you have agreed to invest in a share of a horse. This is not uncommon. As a private investor in a horse, you presumably aim for a return on investment in the form of a share in prizemoney or stud fees. Also, it could be that you speculate on a capital gain when the horse is sold. Anyhow, the co-ownership in the horse to you does not qualify as a business – it merely is an investment, that may be treated more favorably for purposes of income tax. You may therefor feel that it is 'tricky' to be included in the registration of a partnership or co-ownership of a horse that as such is considered an 'economic activity'. As explained above – the contractual cooperation may be considered an 'entity' for VAT-purposes, but that certainly does not imply that one's share in the horse qualifies as anything but an investment. For instance, as a private investor one can perfectly own industrial property and rent that out 'opting-in' for VAT purposes and become a VAT-taxable person, whilst still not being qualified as an entrepreneur for purposes of income tax. As for income tax purposes it can make a big difference how one's co-ownership of a horse is qualified, it is good to know that VAT legislation depends rather on communal definitions and qualifications, whereas definitions and qualifications for purposes of income tax, solely depend on national legislation, policies and caselaw.

And if not a partnership?

Usually, most co-ownerships of horses is between professionals in the equine industry. Most of them qualify as VAT entrepreneur or VAT-taxable person. Due to this fact, most invoicing and sharing of costs is never really an issue (at least, not in the audits that we have experienced), because there is no VAT-leakage. If a private investor participates in the co-ownership of a horse and for VAT-purposes, the co-ownership may not qualify as an 'entity' as described above, there still is a possibility to make arrangements for VAT-purposes. If the co-owners agree up front on a split in costs and revenues, the subsequent execution of such arrangement may prevent services by one co-owner to the other to be considered taxable facts, as it could merely be construed as the sharing of costs.

Summary. When parties share ownership in a horse, they usually organize their internal relationship by a contract or agreement. When the owners jointly act in the economic arena, this contractual cooperation may be considered an 'entity' for purposes of VAT. The 'entity' as such would then be considered a VAT-taxable person that has to register as such with the tax-authorities. Being partner or co-owner in such contractual partnership implies that you are part of an economic activity, but that nevertheless does not imply that this also qualifies as en entrepreneurial activity, rather than a – basically – investment, that may be treated differently for purposes of income tax. The contractual cooperation or -partnership that qualifies as a VAT-taxable person may offer tax planning possibilities. Given everyday practice however, most tax-authorities do not yet have much experience with this concept and it is strongly recommended to seek professional advice in such situations. ■

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