

Hold your horses!

Don't take tax reliefs for granted.

Julie Butler explains the importance of the diversified farm probate valuation for inheritance tax.

Recent tax case law has put more pressure on the probate valuer. Most qualified farm probate valuers have been trained in depth in all farming matters and probably enjoyed a dedicated learning time at agricultural college. However, they might not have gained much experience on the diversified activities of farms. It is therefore very difficult to arrive at the correct valuation for those alternative use activities such as storage, livery and other commercial occupations. Experience and understanding are particularly important if there is the complication of horse livery and this can have a large impact on taxation.

“Many agricultural landowners are unaware of the distinction between ‘agricultural use’ of land and ‘equestrian use’.”

Livery and inheritance tax qualification

When considering the livery position, a starting point is whether it will qualify for inheritance tax relief? This will depend on:

- the level of services carried out by the deceased;
- who carried out those services for business property relief (BPR); and
- what the integrated agricultural activity is for agricultural property relief (APR).

Key points

- Probate valuers may have limited experience of diversified farming activities.
- Has planning permission been obtained for all activities?
- The equestrian uses that qualify as farming activities are limited.
- The *Vigne* case has emphasised the need for ‘enhanced services’.
- The *Palliser* case illustrates the importance of hope value.
- The judgment in *Grace Joyce Graham (Deceased)* draws attention to the need for enhanced services for entitlement to inheritance tax reliefs.
- Summarising the complete farm history can assist in understanding the business.



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Another early question will be whether the owners obtained planning permission. The threat of local authority enforcement action against unlawful equestrian use of agricultural land should be understood by landowners while they are operating the trade and probate valuers need to be aware of this for IHTA 1984, s 160 (‘Market value’). This states: ‘Except as otherwise provided by this Act, the value at any time of any property shall for the purposes of this Act be the price which the property might reasonably be expected to fetch if sold in the open market at that time; but that price shall not be assumed to be reduced on the ground that the whole property is to be placed on the market at one and the same time.’

Many agricultural landowners are unaware of the distinction between ‘agricultural use’ of land and ‘equestrian use’ of land for tax purposes.

‘Agriculture’ is defined for these purposes as ‘horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes’. The only equestrian ‘use’ that falls within the agricultural definition is producing horses for slaughter, working horses on the land (say ploughing with horses – a rare sight today), and grazing for breeding horses only. The context is important for the eligibility for inheritance tax APR and BPR.

In the Special Commissioners’ case of *Wheatley (Wheatley’s Executors v CIR [1998] SSCD 60 (SpC 149)* it was found that the grazing of horses did not qualify for APR. Many consider this decision flawed. The more recent case of *Personal Representatives of the Estate of Vigne (Deceased) v*

HMRC (TC6068) has now emphasised the need for ‘enhanced services’. Liveries could therefore be at risk of achieving neither APR nor BPR and the information contained within the valuation, together with the *evidence* of the equestrian planning permission for use of horses on the land, will be vital. However, if farming partners manipulate such details due to a fear of losing both reliefs, such supply of information is fraud.

More than just horse grazing

The most common form of ‘agricultural equine’ use for local planning permission purposes is grazing horses on the land. However, as soon as more is being done to the horses than merely grazing – for example, additional feeding on the land, rugging the horses or riding them on the land – the activity falls within ‘equestrian use’. In such cases, the landowner must then apply to their local planning department for a change of use from agriculture to equestrian. This is when the complexity of the services comes in as part of integrated tax planning. To qualify for BPR under ‘enhanced livery’, as in *Vigne*, or for part or full livery, there must be planning permission.

On local authority planning and the interaction of inheritance tax reporting, the correct planning permission and the valuation could conflict. It is interesting to look at *Palliser v CRC* [2018] UKUT 71 in the context of farm valuations. This recent Upper Tribunal (Lands Chamber) decision has brought the issues of probate valuation and ‘hope value’ into the limelight. Here, the valuer did not consider hope value and thus the probate value (IHTA 1984,

s 160) in August 2012 was much lower when compared with the sale price for the shared property in March 2014. The reasons the valuer gave for not incorporating hope value were that the property had some negatives and had been developed previously. The tribunal did not agree with the taxpayer’s valuer that there was ‘no hope value’, especially given the property was marketed as having ‘great potential’ and needed modernising. The tribunal calculated Mr Palliser’s share of ‘hope value’.

Providing the valuer with information

There are many ways that a farm probate valuation can be presented depending on who provides the valuer with the information under s 160. Some farming family members have different views and interpretation on the facts surrounding the farm and some might prefer the business to be presented in a way that would have improved long-term tax advantages. For example, it could be that some members of the farming family are trying to protect the inheritance tax relief and their share of the inheritance by providing overstated details on services and the like.

If the farm is to be sold, the next key point will be to ensure how its marketing is taken into account. If equestrian planning permission has not been obtained – for example, there might be consent for a few stables but not agreed change of use from agricultural use to equestrian – the buyer will have to consider a strategy for dealing with any lack of permission.

The buyer might ask the seller to sign statutory declarations that the land has been used for ‘X’ number of years. Such a document is prepared with a view that, once

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it has been sworn, it becomes a document of evidence as to the facts recited in it. Statutory declarations must be factual evidence. It is key to look at the elements of the declaration included on the IHT400. Elements of the declaration that can help to emphasise the importance of the probate valuation in the context of the inheritance tax return include:

‘To the best of my/our knowledge and belief, the information I/we have given and the statements I/we have made in this account and the schedules attached (together called “this account”) are correct and complete.

‘I/we understand that I/we may be liable to prosecution if I/we deliberately conceal any information that affects the liability to inheritance tax arising on the deceased’s death, or if I/we deliberately include information in this account which I/we know to be false.’

The inheritance tax return

It is imperative that the information included on the probate valuation is to a high quality. For example, it must:

- be factually correct;
- correlate with the inheritance tax return (IHT400), which is submitted with the probate oath; and
- tie into any statutory declarations.

The timeline of activity might confuse matters given that events after death can differ from those before with regard to refurbishment and trading operation. The information provided to the valuer must be accurate, especially because it is being submitted with the sworn oath for probate purposes.

Holiday letting arrangements

In terms of other common diversified activities on the farm, the recent release of the judgment in *Grace Joyce Graham (Deceased)* [2018] UKFTT 306 (TC) again draws attention to the need for enhanced services, albeit for holiday lets rather than horse liveryes, to achieve those favourable inheritance tax reliefs.

The conclusion at paragraph 93 of the judgment concisely demonstrates this:

‘Overall we conclude that Carnwethers [the property in question] was an exceptional case which does, just, fall on the non-mainly-investment side of the line. The pool, the sauna, the bikes, and in particular the personal care lavished upon guests by Louise Graham distinguished it from other “normal” actively managed holiday letting businesses; and the services provided in the package more than balanced the mere provision of a place to stay. An intelligent businessman would in our view regard it as more like a family-run hotel than a second home let out in the holidays.’

Planning point

Liveryes could risk losing agricultural and business property relief. Evidence of equestrian planning permission for use of horses on the land and the activities undertaken will be vital.

But how would a valuer treat this ‘exceptional case’? When cases only just fall into the eligibility for BPR, the slightest misunderstanding could result in an incorrect notation on the diversified activities in the valuation and the IHT400, with huge sums of tax at stake. A broad understanding of valuations and diversified activities is therefore required.

Forensic understanding of detailed information

The revised National Planning Policy Framework (NPPF – [tinyurl.com/GOV-7309](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68211/20180727_nppf.pdf)) was released on 24 July and indicates increased planning opportunities for the farming industry. The guidelines will increase the need for valuers, in the months ahead, to consider the potential for development in the light of the revised framework, the *Palliser* case, and a detailed review of the farm and any planning reports that have recently been prepared.

It will be essential for valuers tasked with arriving at the s 160 value for farm residences, buildings and land to understand the guidelines in the context of the property under review. Examples of policy are greater opportunities for planning permission for houses for agricultural workers and ‘those taking majority control of the farm business’. The NPPF supports the conversion of agricultural buildings to residential use and for residences to be sub-divided. This will be subject to conditions and these will need to be fully understood.

As the *Palliser* case makes clear, it is important, if possible, to look to future sales details and the price hoped to be achieved. Everyone realises that sales prices achieved for farms are volatile at present and valuations have a large range that must be considered individually. However, there should be no volatility in the information supplied to the valuer and contained within the valuation. Such detail, no matter how unusual due to beneficial ownerships, trading status and history, should be extremely well researched. There is an oath being signed on the details of the valuation and the district valuer can be very critical of attempts to manipulate the value and descriptions.

Many farmers have turned to diversified activities with an emphasis on more ‘investment’ late in life. Although BPR applies to the two years before death, it is always balanced in these cases to report the whole history of the farm trade so that the business matrix can be understood. If the executors and their advisers push to emphasise an area of understanding of the farm this must be accurate. It is more difficult for valuers to see obvious inconsistencies if they have less experience.

With the multitude of diversifications on offer ‘down on the farm’, the valuation just became a whole lot more complex and there is a lot of inheritance tax at stake. ●

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