

# If I were a rich man...

Julie Butler considers the status of stud farms



#### ABOUT THE AUTHOR

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**M**any owners of equine businesses question whether or not Inheritance Tax (IHT) Relief will apply to the stud farm. HMRC have at last produced greater guidance on the stud farm and the qualification thereof for Agricultural Property Relief (APR) for Inheritance Tax (IHT). Chapter 24 of the HMRC IHT Manual (IHTM) sets out the taxman's understanding of the stud for agriculture. I take the liberty of reproducing part of the text intact.

#### The definition of the stud farm

'IHTA84/S115(4) provides that, for the purposes of agricultural relief, agriculture may be taken to include the breeding and rearing of horses on a stud farm and the grazing of horses in connection with those activities, and any buildings used in connection with those activities may be regarded as farm buildings.'

#### Advice to the HMRC officers

The manual continues: 'You should usually decide whether a stud farm qualifies for agricultural relief by reference to

- The information on the file,
- Supplemented as necessary from other HMRC sources, such as the tax papers for the business or SAV (Livestock).'

One difficulty is that there is no definition in the Act of what constitutes a stud

farm. There has to be an element of horse breeding. Since stud activity is only deemed to constitute agriculture, it seems that the normal requirements for commerciality will apply, so that relief will not be available for a rich man's hobby, which is not carried on for gain.

In arriving at your decision you should be looking at aspects such as:

- the age of the deceased both at death and at the acquisition of the farm,
- the length of the period of ownership,
- the number of horses held at the date of death and the breeding record in recent years,
- details of advertising and publicity for the stud, plus full particulars of sales, and

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- accounts of the enterprise, and details of the precise nature of the trading activity, including purchases and sales of horses.

#### The importance of agricultural use

The manual continues: 'With any other horses, there will need to be a link with agricultural use, for example, where horses are used as draught animals on a working farm, the grazing of such horses will constitute agricultural use. This will also be the case where the horses being grazed are declared to be part of the food chain under the horse passport scheme introduced at the end of November 2003. The grazing of horses used for leisure pursuits will not constitute occupation for agricultural purposes; *Hemens v Whitsbury Farm and Stud Ltd* [1988] 2 WLR 72 and *Wheatley's Executors v CIR* (SpC 149) [1998] STI 559.

Where horses are grazed in connection with, for example, a livery business run by the deceased/transferor, business relief may apply in the alternative.'

It is noted with interest that HMRC accept that the 'stud farm' is defined in the Act and guess what 'relief will not be available for a rich man's hobby which is not carried on for gain.' Perhaps commerciality is the starting point; there must be proof of gain. An important explanation is the 'details of advertising and publicity for the stud, plus full particular of sales.' Perhaps, in fact, that is the first 'badge of trade' – there must be sales and advertising. It is difficult to establish a business with no sales...

Clearly there must be:

- proof of profit potential,
- sales, and
- advertising.





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### Precise nature of the trading activity

The claim for APR will come under scrutiny and HMRC will try and establish the ‘precise’ nature of the business. HMRC can access the racing and equine websites for stock performance, ‘google earth’ for location and ‘google’ for the name of the

owner, stud and image. It is possible to obtain a very clear picture within a few minutes. It must be remembered that there is huge availability of independent information available to HMRC. Quotes by well meaning owners to *Horse & Hound* correspondents of ‘we breed for fun’ or ‘we turned down ‘GBPX million because it cannot all be about profit’ might reappear and result in GBPmillions of IHT relief possibly being disallowed.

### Even the obituary

HMRC have access to vast data. It must be remembered that in *Arnander* the obituary for Mr McKenna was recorded with no reference to being a farmer. Yes, even the

obituary must be efficient, so perhaps the recording of the following in the obituary should not be:

‘Mr Taxpayer hated horses but was such a devoted family man he allowed daughter Poppy to fill ‘Millionaire Acres’ with adorable ponies of limited potential, let alone sales potential.’

Commerciality and ‘purpose of gain’ are essential for inheritance tax reliefs to be achieved. There are vast sums of potential IHT to be saved and so the running of the operation should be commercial, businesslike and capable of surviving HMRC scrutiny. The stakes are high and there is a lot to be gained by checking that all the correct criteria and safeguards are in place. ■