

Action plan for the professional adviser

So what are the general considerations for the general practitioner and tax adviser?

First, as racehorse ownership is often (erroneously) considered to be 'outside the scope of tax' or 'tax free', many racehorse owners overlook informing their professional advisers of their interests.

Many trainers organise the sponsorship for the owners and there can be confusion over existing VAT registrations for other business interests.

The renewal of the VAT scheme can be used as a trigger for advisers to review

the complex tax angles of racehorse ownership and to try and unearth what compliance and planning problems clients are possibly failing to highlight, for example:

- ◆ Ownership with sponsorship income that needs declaring on the tax return.
- ◆ Ownership via the very fashionable enterprise investment scheme (EIS).
- ◆ Investment in racing clubs and pinhooking syndicates, again with tax relief via the EIS scheme.
- ◆ Shares in stallions where the nomination income is taxable as 'miscellaneous income' under ITTOIA 2005 (previously Schedule D Case VI).

There are also angles of tax planning

that the adviser should be involved in, eg the detail of the business sponsorship. Should the sponsorship agreement be reviewed before the VAT1/VAT2 or D1/D2 is submitted?

Action point – enter into client discussions before it is too late.

**Julie Butler FCA, Butler & Co,
Bowland House, West Street,
Alresford, Hampshire, SO24 9AT
Tel: 01962 735544**

**Email: j.butler@butler-co.co.uk
Website: www.butler-co.co.uk**

Julie Butler FCA is the author of *Tax Planning for Farm and Land Diversification and Equine Tax Planning*.

VAT attack on the UK shooting industry

In November 2006 the success of the Shoot Project Team at Norwich VAT Office achieved 'front page' status. Not 'News of the World', but ONEhmrC. It was reported that each visit by this team was yielding approximately an extra £19,000 'tax take' and that other areas of rural enterprise would now come under scrutiny.

Game shooting, which is often integrated into farming activities, has become a prosperous and thriving rural industry over the last few years. The sport provides healthy employment in non-urban environments, including very remote outposts of the British Isles.

Many farms and landed estates combine the sport of shooting into their agricultural enterprises, and the 'selling off' of days shooting to the outside world can provide lucrative income. But the activity is currently suffering various areas of 'VAT attack' or further scrutiny.

The VAT implications have been receiving the most attention. Are 'sold' days subject to the correct output VAT? If there is private use (days retained for the family), is the appropriate input VAT disallowed or output VAT charged?

For those VAT advisers who do not

understand the organisation and running of a game shoot, it could be very difficult to ensure that the correct questions are asked. But these queries must be raised. The key must be to warn clients and to look at solutions before the enquiry 'hits' the client. The notes must be on the file and consideration must be given to the points raised. Can the activity show commerciality or will this again be deemed to be private and for there to be a high proportion of private use? (*See Comrs of Customs & Excise v Lord Fisher* [1981] STC 238).

In April 2006 HMRC (the Shoot Project Team at Norwich VAT Office) issued a letter to the shooting authorities to say that they were looking closely at commercial shoots which consider themselves outside the scope of tax. HMRC are trying to bring shoots firmly within the scope of tax and to register them for VAT where appropriate. Clients were told they should receive a visit in the next year. These visits are still ongoing.

The apparent prime objective of HMRC is to improve the extent to which individuals and businesses pay the amount of tax due and receive the credits

and payments to which they are entitled. But what does that really mean to landowners and shoot organisers?

What are HMRC really looking for? The list is considered to be as follows:

◆ Shoots that have previously escaped the HMRC 'net'

Commercial shooting that has been variously misdescribed, in the opinion of HMRC, as private shooting, non-profit making club activity or the supply of zero-rated birds.

◆ The wicked barter

Exchanging supplies of VAT-able shooting for zero-rated or other supplies, by way of barter, with neither transaction recorded in business records.

◆ Not registering

Failure to register for VAT if the turnover of the shoot exceeds £64,000 (2007/08).

◆ Dividing to escape

Artificial separation of business activities to stay below VAT registration limits.

◆ What is everything really worth?

Under-recording of sales values.

◆ Paying VAT and tax on your private enjoyment

VAT and income tax irregularities on claims for private expenditure.

When in April 2006 HMRC wrote to

members of the Country Land & Business Association (CLA) and shooting authorities saying that it would be paying particular attention to gameshooting, it was suggested that those shoots with problems should contact the HMRC National Advice Service, tel (0845) 010 9000. My direction, however, is for clients to seek professional, sensible, damage limitation advice from those experienced in providing positive help, as opposed to adopting the principle of letting HMRC tell clients how to protect their position while making themselves vulnerable.

Action plan for accountants and VAT advisers

So what action can the farm VAT adviser/accountant take?

- ◆ Obtain the facts. Ask every farming client what the shooting arrangements are on the farm and keep a copy of the answer on the permanent file. Update it regularly.
- ◆ On the farm maps which are held on the permanent file, note areas of woodland that are used for game rearing and also note other areas of woodland and what they are used for.
- ◆ When the annual books and records are received, ask what private shooting there has been and what the impact on the VAT return has been.
- ◆ When the annual accounts and **income tax computation** based thereon are sent to the client, note any private usage for the shooting activity **in writing** and ask the client to confirm not only that this is right, but that it accords with the VAT treatment.

With a promise of further scrutiny of rural activities this should be extended to income from all diversified enterprises.

Rights over land are generally exempt from VAT (unless an option to tax is in force). However, the 'grant of a right to take game or fish' is specifically excluded from exemption and is therefore taxable unless the freehold is sold at the same time.

The right to take game

One of the key areas of the VAT debate and the possible collection of extra VAT is the granting of shooting rights by the landowner. On the assumption that the landowner is VAT-registered,

output VAT at the standard rate of 17.5% will have to be charged on the granting of the right to shoot. This certainly was the stance taken by the British Association of Shooting and Conservation (BASC) website.

Whether or not a profit is achieved, shooting conducted 'in the course or furtherance of a business' is subject to VAT. Some think that being a sport that starts with live birds and results in food products, shooting can be VAT-exempt or zero-rated, but this is not the case—it is the right to shoot and take game that is being supplied and this is taxable at the standard rate. VAT is chargeable on the right to take game by virtue of its exclusion from the general exemption that is provided in respect of transactions in land.

HMRC's current policy on the letting of land with valuable sporting rights is to require an apportionment between the (exempt) land and the (taxable) rights where the latter exceed 10% of the total value. A single day taken by an individual will never be 'leasing or letting', it will always be the right to take game.

The landlord and the twist in the tale

If it is accepted that the landowner must charge VAT on the granting of the rights to the syndicate, then there is a very devilish twist in the tale. If the landowner is a member of the syndicate, HMRC will expect VAT to be accounted for on the open market value of the grant of rights to the syndicate, and also on the supply of the services of a gamekeeper, etc. In practice, these things are bartered and no money changes hands (or a reduced value is calculated). From a VAT point of view, however, a supply can take place even if no money changes hands.

So all those days of shooting reluctantly taken by the landowner in return for the grant of the shooting rights could be subject to VAT. Likewise if the gamekeeper is also employed on the farm and helps the syndicate in return for the landowner's friends having a few days' shooting, then VAT should be charged here too.

Clearly, once a legal entity, like a sole trader, partnership or limited company, is VAT-registered every business activity that

that entity undertakes is VAT-registered also. So, for example, if a VAT-registered sole trader builder or farmer runs a shooting syndicate in his name then he must potentially charge VAT on the shoot income. This can mean that shoot income can be under, say, £30,000 but VAT still has to be charged. Therefore it is essential to keep the shoot separate from the VAT-registered activity if this is the factual position.

Obviously the Shoot Project Team will look at artificial separation of farming, syndicates and other businesses. In order to defend the position there must be evidence of the different genuine separate legal and trading activities.

Can the shoot stay Fisher, not Williams?

Can the family shoot retain private status? Could the landowner just invite family and friends to shoot and receive contributions towards the cost as in the famous *Lord Fisher* case? (*Customs & Excise Comrs v Lord Fisher* [1981] STC 238).

VAT Notice 742 *Land and Property*, issued in March 2002, advises at point 6.3.1 that you are not making supplies in the course of a business, and so must not charge VAT to the 'guns', if you are 'shooting in hand'. The term 'shooting in hand' is used where a landowner keeps control over the shoot, makes all the necessary arrangements to stock the land with game and decides who participates in a shoot.

What is the advice to clients trying to maintain Fisher status?

If contributions towards the cost of maintaining the shoot are accepted from the other 'guns' invited to participate, you are still not making supplies in the course of a business provided all the following conditions are met:

- ◆ Only friends and relatives shoot with you.
- ◆ You do not publicly advertise the shoot.
- ◆ Your shooting accounts show an annual loss at least equal to the usual contribution made by a 'gun' over a year.
- ◆ The loss is not borne by any business but by you personally.

If only a few days are sold then this means that the family shoot becomes a parallel shoot. Care needs to be taken,

Partial exemption

Special method approval

Further guidance has been provided on preparing and submitting the new declaration that is required for all partial exemption special method applications that are approved on or after 1 April 2007. From that date, HMRC will only approve a special method if the business has declared it to be fair and reasonable.

The declaration can be made by completing the template in Annex A 'Special Method Declaration' which can be downloaded at—
www.hmrc.gov.uk/briefs/vat/annexa.pdf. It should clearly identify the business, the method to which it relates, and the signatory. In most cases, the declaration should accompany the special method proposal inviting HMRC to give approval, see HMRC Brief 23/07.

Hire purchase agreements

HMRC Brief 31/07 explains HMRC's policy on attributing VAT on overhead costs to supplies made under hire purchase (HP) agreements. It affects businesses that make supplies under HP agreements to consumers, but does not apply to those who arrange such supplies and receive a commission. HMRC is aware that policy is not being applied consistently, so the article confirms the policy to be applied from 1 April 2007. ■

Mobile phones and computer chips – proposed reverse charge

On 19 March 2007 the Government announced the implementation of the reverse charge for mobile phones and computer chips with effect from 1 June 2007. HMRC Brief 24/07 provides:

- ◆ confirmation of the timing of the introduction of the reverse charge, and of the goods to which it will apply;
- ◆ guidance on the application of reverse charge accounting to mobile phone contracts;

- ◆ guidance, to both retailers and wholesalers, on the operation of the de minimis rules;
- ◆ clarification of the proposed anti-disaggregation provisions;
- ◆ guidance to certain customers, such as charities and local authorities, purchasing goods for business and non-business purposes;
- ◆ guidance on the impact of reverse charge accounting on payments on

account;

- ◆ outline details of reverse charge sales lists, including notifying HMRC when the first supplies under the reverse charge are made; and
- ◆ other details of how the new rules will operate in practice (completion of the VAT return; invoicing; the impact on the cash accounting scheme, the flat rate scheme and the second-hand margin scheme; and 'light touch' on penalties). ■

however, if private shooting and 'commercial' shooting are run concurrently, as this could mean that all of the activity is taxable (as in *J O Williams: VTD 14240*).

Is the answer a members' club?

The supply of sporting facilities (including shooting) by a non-profit making club to its members is exempt from VAT (although it is still a business). This is relatively new VAT law and there are a number of schemes that seek to exploit it in the context of shooting. However, the members' club must be properly constituted, and transparently artificial arrangements to extract VAT-exempt profits are likely to invite challenge. There would also be a loss of control by the shoot organiser or landowner.

Cost sharing syndicate

The BASC (British Association of Shooting and Conservation) website promotes the 'cost sharing syndicate' as an effective method of 'VAT free' shooting. This is a situation where a group of friends etc form a syndicate to share in the costs of running the shoot

and no days are sold, this should fall outside the scope of VAT. The problems can be that not only can no input VAT be claimed but if some days are sold it could be deemed to be a commercial shoot. Care will have to be taken with the administration to ensure it is a genuine cost sharing activity.

Some shoots have attempted to reduce their VAT burden by selling the game birds separately to the guns and applying the VAT zero-rate which applies to foodstuffs. This has been tested before the Tribunal in the recent case of *NCD Carter* (not yet reported), where the birds were sold at £5 each (at a time when they were fetching about 80p in the shops). The Tribunal, perhaps bearing in mind the basic principle of capitalism, which is that nothing has an intrinsic value and everything is worth as much or as little as you can get for it, decided that £5 was an acceptable value.

Absorbing the VAT change

The effectiveness of "absorption" will depend first on the VAT sensitivity of the shoot – if, for example, the shoot is selling shooting and accommodation

packages to wealthy overseas visitors, the addition of VAT may make little difference to the marketability of the shoot. In such circumstances, it may be better for clients to retain taxable turnover and recover related input VAT. VAT planning must be tailored to the individual circumstances, hence the need for a total review.

The only way forward is to undertake rural diversification and shoot VAT audits on behalf of clients.

The advice for clients who are shoot advisers, organisers and landowners is to follow through the action plan set out earlier and focus on the VAT issues. It is likely that some actual or potential VAT irregularities will be identified, so now is the time to look at historic damage limitation and genuine commercial restructuring to minimise the VAT cost for the future.

Julie Butler FCA Butler & Co,
Bowland House, West Street,
Alresford, Hampshire, SO24 9AT
Tel: 01962 735544
Email: j.butler@butler-co.co.uk
Website: www.butler-co.co.uk