

VAT, the supply of sporting facilities, land and horses – The nightmare

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The recent case, *Polo Farm Sports Club* (20105) has highlighted the fact that the whole area of VAT on sports facilities and indeed a lot of horse activities could benefit from clarification by HMRC.

I. Access to recreational and sports facilities

The letting of land is an exempt supply for VAT purposes. The letting of sports facilities and sporting rights are automatically standard-rated for VAT purposes. There are special rules for the use of sports facilities where there are lets in excess of 24 hours or for the hire of facilities to the same user for a regular series of events (both then become eligible for exemption but can be opted).

Within the definition of sports facilities for VAT purposes, HMRC include swimming pools, tennis courts and croquet lawns and areas of land that have been specifically designed or adapted for sporting activities. However, if the sporting facilities are let for non-sporting purposes then the exemption will apply. An example of this will be the letting of a swimming pool for a fashion shoot which is an exempt supply.

Allowing access to recreational and sports activities is usually standard-rated, but there is provision that exempts the supply in respect of a series of lettings, subject to tight criteria. One of these conditions is that each particular letting must not be less than one day apart.

It suited the *Polo Farm Sports Club* (20105) to make standard-rated supplies. This was on the basis that input VAT could then be claimed. It had not opted to tax the land in question. A dispute therefore arose with HM Revenue and Customs, which said it was making a series of lettings which should therefore be exempt. In this case the lettings were daily for several hours each day and there was never a whole day between each letting. HMRC argued that this was nonetheless sufficient to fulfill the exemption criteria, since there was still “a day” between each letting. But the tribunal preferred the appellant’s view, which was that there had to be at least a clear day, or 24 hour period, in order for the rule to apply. The Polo Club was therefore making standard-rated supplies.

Most providers of sports facilities would prefer the supply to be exempt. Consequently, the decision creates difficulties where series of lettings arise, with less than a whole day in between, where it has been assumed they were exempt as long as there was no more than one letting per day. Are they now deemed to be standard-rated?

It is considered that HMRC should clarify this position and this could be incorporated into the clarification question on the subject of the VAT on livery yards.

II. Livery yards

On the subject of horses (yes the night “mare” in the title was a pun on female horses) it is also considered that HMRC should review some of the possible contradiction that exists with the VAT position on horse livery and the question of when the exemption applies.

Livery yards obtained a potential boost through VAT as the supply charged to clients with minimum service (Business Brief 21/2001) was deemed to be exempt. However, it comes with the downside of the “exempt” supply – not being able to claim back input VAT and possible complexities of partial exemption.

Problems can arise in deciding whether schooling and breaking in are provided. If the yard is mainly a specialist breaking yard, then any supply relating to breaking in will be standard-rated and the provision of livery services will be ancillary to this and therefore standard-rated. On the other hand if the main purpose of the yard is livery with schooling or breaking as an add on, then the entire supply will be exempt.

Where a horse is sent to a yard for the specific purpose of being broken or schooled rather than as somewhere to keep the horse, then the supply will be standard-rated.

III. Supply of somewhere for the horse to live

Under the interpretation of the Business Brief, where there is a grant of a right or a supply over land, then the supply of livery will be exempt regardless of whether it is full livery or DIY livery as the supply is somewhere for the horse to live.

This brief seems a contradiction to the basic principle of the grant of right over land or the supply of land is exempt as the “full” livery by definition means that the service is not ancillary to the supply of land. Full means a horse being “fully” looked after. The result is that there is a variance in the interpretation of “full”. In many establishments DIY and part livery are treated as exempt but full livery are charged standard-rated VAT as it is considered that by definition, the volume of the services provided do not fulfill the basic principle of exemption criteria.

IV. So how is the service provided? What is part livery?

Part livery is where the horse owner for example rides the horse five days a week, but the livery provider rides and looks after it the other two days. It is likely that the livery provider will be responsible for mucking out and looking after the horse generally. Provision of hay and turnout may also be provided.

Part livery will generally be a trade.

The livery provider will be fully responsible for maintaining the premises and the grass.

The livery provider will be responsible for feeding.

However, full livery is where the livery provider is responsible for the complete care of the horse. The owner will come and go and the livery provider should act in accordance with the owner's wishes, but will be fully responsible for the full care of the horse. Full livery will be a trade.

V. The potential loss of valuable CGT and IHT reliefs

Finding out that their DIY livery operation is not trading income can be a shock for many land owners and farmers. If it is not trading income, then on the sale of the underlying property it will be very difficult to claim business asset taper relief (or its successor, Entrepreneurs' Relief) under capital gains tax (CGT) legislation, or on death or a gift, business property relief for the purposes of inheritance tax (IHT). Holdover relief from CGT on gifts may also be restricted.

The VAT complexities on the supply of land are a clear example of how all tax planning surrounding farms and lands has to be comprehensive and looked at in the round.

VI. Animal rescue charities

HMRC Brief 14/08, March 4, 2008 has confirmed that animal rescue charities should zero-rate their supplies. This is a positive victory following the *Gables Dogs and Cats Home* case.

VII. The Animal Welfare Act 2006 – Will livery yards be licensed?

The Animal Welfare Act 2006 came into force from April 6, 2007 and this did not include licensing livery yards. There had been much debate on the licensing of livery yards, however the review is apparently delayed until October 2008 when the government starts to consider secondary legislation.

Both livery yards and riding schools have been subject to some high profile attempts at negligence claims. The relatively recent rejection of a claim on the basis that jumping is known to be dangerous and falling off "happens" has given hope to an industry that looked like it might have to seriously consider its future viability to meet insurance cost/contributions.

VIII. Poly tunnel and the supply of land

The wet summer of 2007 has given cause for much use of the poly tunnel.

Whilst looking at VAT decisions on letting of land, what of that interesting agricultural feature, the poly tunnel? There has been a recent Tribunal which helps to achieve clarity.

The VAT Tribunal has held that rentals paid under a lease of poly tunnels are compulsorily subject to VAT at the standard rate. According to the Tribunal, the lease was a lease or letting of land for VAT purposes, but was excluded from VAT exemption because the poly tunnels amounted to "permanently installed equipment and machinery". The lease of a poly tunnel is therefore a standard-rated supply. *Argents Nurseries Limited v HMRC*, VAT Tribunal March 2007.

It would appear that currently with any supply of land with some ancillary trading situation, service or facility (e.g. shooting rights, days for polo, full livery, part livery, DIY livery, poly tunnels, barns for storage, redundant building for let) great care must be taken to establish the VAT charging status, the impact on partial exemption and moreover the underlying protection of IHT and CGT reliefs.

Another clear example that tax planning and land diversification can never be looked at in isolation.

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