Animal husbandry – The right to occupy land

There has been much debate about the VAT treatment of horse liveries. It is therefore interesting to see a recent case on the subject of 'cattle livery' – *David Owen and Ann Owen* (TC 4469) and the VAT treatment of these animals.

After a VAT inspection of the Owen farming partnership, HMRC decided that the supplies provided by this operation were in fact 'animal husbandry' and therefore should be standard-rated in the light of the services provided, including for example, water, feed and general care. The farming partnership appealed against the decision and the case went to the First-Tier Tribunal (FTT).

Exempt or Standard-Rated Supplies

The FTT took the view that the farmers were making an exempt supply of land and that any additional services were part of the single exempt supply rather than care, which should be standard-rated. The Owen partnership, it was argued, were responsible for ensuring the cattle were fed and watered, but they did not provide all other needs. The owners of the cattle were paying for the assurance that their animals were kept in a safe and secure environment rather than have them fully looked after.

The court agreed with the taxpayer that barns being rented out to local farmers to store their cows did not represent a standard-rated supply of 'care' services because, although the partners checked on the well-being of the cows and ensured they had enough food and water, the owner of the cows was only paying for the knowledge and comfort that their cows were being kept in a safe and secure environment rather than for additional services. In simple terms, the barns were the

key benefit of the arrangement and not the care service, and so the partnership was making a land supply of the barn to the owners of the cattle which was therefore exempt for VAT.

The Tribunal contrasted the facts of the present case with the case where pets were boarded during their owners' absence and the owner would require a complete and high level of care to be provided. In this case the owners of the animals were farmers and cared for the animals themselves for the most part.

Checking similar arrangements for tax treatment

The key approach in situations where there is doubt about the nature of a land supply is to consider the contract between the tenant and landlord and decide what the key benefit(s) are that the tenant is paying for – whether it is land or something else, ie services.

Many farm tax advisers might find this an unusual case. Firstly, when thinking forward to Inheritance Tax (IHT) planning, will the sheds qualify for Agricultural Property Relief (APR)? There would be a concern over qualification for Business Property Relief (BPR) with the lack of further service carried out by the Owen farming partnership. There is a comparison here to *McCall* [2009] NICA 12. In the *McCall* case the grazing of cattle with little services carried out by the landowner did not qualify as a trade for BPR and therefore there could a substantial risk of losing a potentially key IHT relief.

The position with regards to APR, in a case like *Alexander*, would not be straightforward. The Tribunal discussion centred on the arrangements made for accommodating the cattle in buildings. Farm buildings can, of course, qualify for APR, but it has to be remembered that as explained in *Starke v IRC* [1995] STC 689, 'Agricultural Property' qualifying for APR, is primarily defined in terms of land, and buildings per se are not automatically included.

To qualify for APR, the building would have to be 'of a character appropriate to the property', and would also have to be 'occupied for the purposes of agriculture'. The Upper Tribunal decision *Hanson v HMRC* [2013] UKUT 224 (TCC) confirms the close connection between the 'character appropriate' requirement and the occupation requirement confirming that the test for 'character appropriate' would be the amount owned was successfully argued by the Revenue in *Starke*. The questions, in a case like *Alexander* where accommodation in buildings is being provided for livestock will be: 'Who is occupying the building?' and 'Is there any land in the same occupation'. Since, for APR, the occupation has to be 'for the purposes of agriculture', it is suggested that in so far as anyone is occupying the building, it would be the owners of the livestock, who were farmers, rather than the building owner.

Secondly, from the VAT viewpoint, as most of the farmers using the barns for their cattle are likely to be VAT registered, it would not have been such a problem as with horse liveries. In the latter case, where most horses are generally owned privately, most owners are unable to claim back the VAT charged and there can be a commercial disadvantage on registered entities. It could be argued that this case does not make the position any more clearer. However, what is clear is the need to identify services provided with the supply of land in order to decide both the VAT and IHT position. When looking at any farming situation the short, medium and long-term consideration always needs review. On the basis that a large number of farmers are elderly and farm land values are high, many would consider that the IHT protection is of far greater importance than the immediate VAT considerations.

Supplied by ***Julie Butler*** *F.C.A. Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH. Tel: 01962 735544. Email: j.butler@butler-co.co.uk. Website: www.butler-co.co.uk*

Julie Butler *F.C.A. is the author of* Tax Planning for Farm and Land Diversification *(Bloomsbury Professional),* Equine Tax Planning *ISBN: 0406966540, and* Stanley: Taxation of Farmers and Landowners *(LexisNexis).*