In this case, the 'appropriate percentage' is, of course, 100% (s116 (2) (c) IHT Act 1984). The conundrum is, how much of the £300,000 value transferred is attributable to the £300,000 agricultural value of Blackacre? The simple, even common sense, answer is to follow the approach in IHTM 14316, Example 1 noted above, in which 75% (in this case) of the value transferred would qualify for the 100% relief thereby reducing the chargeable transfer to £75,000. But do the terms of the legislation require this approach to be taken? It is easy to see how an attribution under s116 (1) IHT Act 1964 should be made if part of Blackacre itself did not qualify as 'agricultural property'. Likewise, it is easy to see how the apportionment would be made if Blackacre had been transferred by means of a simple gift, rather than a sale. It is not, however, clear why the payment made by the transferee should be allocated in one way rather than another, as between elements of the value of an asset which is being transferred.

Blaney – The problems of land held for personal enjoyment

A recent Tribunal case has re-reinforced HMRC's stance on qualifying under the 'badges of trade' in order to be able to claim business tax reliefs, particularly with regard to equine activities. It is a very easy trap for taxpayers to fall into with general farmland and potential development land to involve horses that have an element of 'personal enjoyment' and are not a robust trading arrangement.

In the recent case of *E Blaney* (TC4103) (2014) UK FTT 1001, the taxpayer was denied business asset taper relief (BATR) for CGT on the sale of land in County Down. In order to claim this CGT relief – from which Entrepreneurs' Relief has evolved – there was a need to show that the land was an asset used in a commercial business. A lot of farmers enjoy the land from every angle but the operation also makes a profit. This case was followed swiftly by tightening of the ER conditions in the Budget. ER replaced business asset taper relief.

Whether the horse breeding business was a trade

The question that had to be considered by the First Tier Tribunal (FTT) was the question of whether Mr Blaney's horse breeding business amounted to a trade. Whilst the breeding of horses is a trade in the correct circumstances, in Mr Blaney's case the FTT deemed that the operation was carried out for 'personal enjoyment' and was too small to constitute a trade. The judge considered that the 'principal motivation was his love of horses and horse racing'. Whilst the breeding of horses could amount to a trade in the correct circumstances, in the taxpayer's case it was small scale and the FTT considered that it was carried out for personal enjoyment rather than a trade.

The judge referred to the badges of trade in *Marson v Morton* [1986] STC 463. It is interesting to note that *Marson v Morton* was again quoted in the FTT case of *Mc Morris v* Revenue & Customs [2014] UKFTT 1116 (TC) (29 December 2014). *McMorris* was again a question of claiming tax reliefs (in this case income tax loss relief) on an equine activity. The *Blaney* case is a reminder that HMRC's current attacks on the question of commerciality are not restricted to sideways income tax loss claims.

Owning a racehorse

In the case of Mr McMorris, the owning of a racehorse was deemed ***not*** to be a trade. It was considered the deal that was being reviewed was a one-off transaction. In addition, it was noted that the taxpayer had not borrowed any money for the venture. In this case there was no long-term plan and Mr McMorris 'clearly derived pleasure' from the project, all of which pointed away from qualification under the badges of trade. Overall, the Tribunal had no hesitation in deciding Mr McMorris' activities did not amount to a trade. In *McMorris* it was also decided, given the informality of the arrangements between the co-owners, that ITA 2007 s66 was not satisfied, because the activities were not carried out on a commercial basis. Whilst the courts continue to acknowledge that horse racing is not a taxable activity, in the 1942 case *Benson v Counsell* 24 TC 178 it was held that sending a horse to a trainer to be raced and sold was a taxable business. *Sharkey v Wernher* [1955] 36 TC 275 takes the view that the ownership of racehorses is not taxable. Mr McMorris' appeal was dismissed and the trading losses were not allowed to be offset.

A Tribunal pattern

The decision on Mr McMorris' lack of badges of trade to support his loss claims follows closely upon another Tribunal case which examined the question of commerciality and losses associated with horses, *R Murray* (TC3474), with a focus on stud farming and racing. With the continued enthusiasm shown by HMRC to scrutinise equine activities, especially loss claims, it is not surprising that the eligibility of tax relief on a trading loss claim has again been taken all the way to the FTT. This was again shown in the case of *Thorne v Revenue & Customs* [2014] UKFTT 730 (TC), where Ms Thorne included a self-employment income page in her 2008–09 tax return for her trade as an 'equestrian breeder and farmer', showing a substantial loss.

HMRC did not dispute the existence of Ms Thorne's trade, but argued that during 2008–09 the enterprise had not been carried out on a commercial basis with a view to the realisation of profits. Reference was made to the case

of *Wannell v Rothwell* [1996] 68TC719. HMRC submitted that with regard to the equestrian side of the trade, HMRC considered Thorne was not seriously interested in profit but was 'just an amateur', participating in what could be considered a hobby and such an operation was therefore beyond the scope of the UK taxation system and the tax losses were not allowable. These loss claim cases help give guidance when trying to claim Entrepreneurs' Relief in the event of a future disposal and demonstrate that there is a need to ensure that the assets are used in a real trade not just an enjoyment, but that they are of commercial design.

A timely warning

The recent Tribunal decisions prove a timely warning to all those involved in equine trades, and those in land ownership that might at some time be developed for housing, to ensure that there is a real business that passes the badges of trade test. The tax reliefs that need protecting through positive badges of trade are:

- Sideways income tax loss relief;
- Entrepreneurs' Relief for CGT; and
- Inheritance tax (IHT) relief – Agricultural Property Relief (APR) and Business Property Relief (BPR)

With farmland increasing in value and housing development potential returning at a very strong pace there is a lot of potential tax relief to protect. The HMRC approach of trying to deny BPR on 'do-it-yourself' (DIY) liveries on the basis there is not a trading activity have been documented.

Commerciality needed at every level

The *Blaney* case shows the importance of protecting the CGT relief, ie if land that is used in a trade is sold achieving 10% rate of CGT not 28% through Entrepreneurs' Relief.

There is also the need to consider IHT reliefs. When the deceased owns a parcel of land it will be key to try and achieve APR or BPR. However, sometimes the IHT relief is not obtained. Firstly, there can be a lack of awareness of the tax reliefs available on small parcels of land by executors and probate lawyers. Secondly, there can be a lack of action in the years before death to ensure that the criteria that need to be met are actioned in order to achieve the relief. There can be a general lack of understanding of what is needed to achieve the IHT reliefs. For APR the land simply has to be used for agriculture. In contrast to BPR, the legislation contains no requirement for the agriculture to be profitable.. This could be farmed by the owner of the land for the last two years or by a third party for the last seven years. The stronger choice is obviously a trade that qualifies, if appropriate, for loss relief, Entrepreneurs' Relief and BPR. However, as shown by *Blaney* it is not enough for the land just to be used for 'personal enjoyment' – there must be evidence of a trade with a view to a profit.

There are discussions as to whether or not land grazed by horses qualifies for APR and in this regard consideration must be given to the 'horsemeat scandal' and the case of *Wheatley's Executors v CIR* (SpC 149) [1998].

Action plan to protect tax reliefs

- Review redundant and underused areas of land to consider how they can achieve reliefs as required;
- Ensure there is a business with the correct badges of trade;
- Always have a business plan to show that a profit can be achieved;
- Ensure that the correct IHT reliefs are claimed during the probate process;
- Consider future requirements from land with regard to tax relief; and
- Ensure that where there is a business there is also a trade that would survive HMRC scrutiny for commerciality.

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