



BUSINESS TAX

175. Farms and active husbandry

'Active' has become the important word in order for farming enterprises to succeed in a claim for inheritance tax (IHT) business property relief. The IHT cases of *Balfour* and *McCall* show how important it is for the deceased person to have been both involved in the business and active in the farming enterprise (*Balfour (Earl of) v HMRC* [2010] UK UT 300 and *PN McCall & BJA Keenan (PRs of Mrs E McClean) v HMRC* [2009] STC 990).

The IHT farmhouse case of *Arnander (Arnander v HMRC* [2007] RVR 208) shows the importance of being an active farmer in order to qualify for agricultural property relief. In this case the contract farming agreement was considered weak and the deceased's farming involvement was not mentioned in the obituary.

For those landowners who have other sources of income and who spend their time on activities in addition to farming, there is an immediate and ongoing need to document active involvement in the farming business. The deceased cannot present arguments themselves to HMRC once they die and therefore it is important to keep photographic evidence, minutes of meetings and, where necessary, diaries of hours worked.

There are points in the IHT cases which have a parallel in decisions that are currently being made about qualification for payments under the Single Payment Scheme (SPS), commonly known as the Single Farm Payment. Under SPS, entitlements are used as the basis for farming subsidy payments, and entitlement gives the farmer the right to a payment provided it is supported by at least a hectare of eligible land. By 2012 the value of all entitlements will be based on a flat rate. As the change takes place the flat rate element will gradually rise and the historic element will fall. The flat rate is €320 a hectare before modulation. There is much debate about whether new rules to qualify for the SPS will include provisions for farmers to prove that they are actively involved in the farming business. The cynics suggest that the delays in formally announcing active farmer provisions in the UK are because of problems both with the wording and possibly with 'public relations'.

Contract farming agreements should be reviewed and there is no time like the present (or after harvest) to tackle the question of documented activity and make sure that clear proof of activity is available.

176. *Forbes* case – sideways loss relief and leasing trade

The case of Mr Forbes (*GB Forbes v HMRC* TC01278) considered the availability of capital allowances for income tax trade relief against general income (formerly s 380, ICTA 1988, now s 64, ITA 2007), as restricted in certain circumstances where the allowances are given against plant or machinery used in a leasing trade (s 384, ICTA 1988, now s 75, ITA 2007).

Section 384, ICTA 1988 and s 75, ITA 2007 indicate that sideways loss relief is not available in the case of losses derived from what are now trade leasing allowances, unless the individual meets the 'time commitment test'. This requires that for any year of sideways loss relief claim, the individual carries on the trade for a continuous period of at least six months and substantially the whole of the individual's time must be given to carrying on that trade.

Mr Forbes set up a power boat chartering business in 2001, which was initially in the UK but then moved to Spain in 2002 due to difficult trading conditions in the UK. Charters were organised both by Mr Forbes himself and an agent acting for him in Spain. Some of the charters were 'bare boat' charters (where no crew or skipper was provided, subject to the hirer having appropriate qualifications), whereas others included the services of a skipper.

Mr Forbes contended that the charters were always intended to include the services of an operator or skipper, but if the client did not wish to have these services, the hire would be accepted in order to aid the profitability of the business. He accepted that he did not work full time in the boat chartering business, but contended that an apportionment of allowances should be made (the dispute concerned returns for the years ended 5 April 2003 and 5 April 2006) to reflect the percentage of charters which included skippering services. He also contended that HMRC's discovery assessments for the years ended 5 April 2003 to 5 April 2005 were out of time.

HMRC considered the majority of the charters were bare boat charters, using selective contract terms agreed between Mr Forbes and the Spanish chartering agent. On this basis the losses were only available for offset against future profits of the same trade.