
DIY livery businesses under attack – Part 2

Part 1 of this Article was published in the last issue of Farm Tax Brief.

The importance of pasture management – the muck heap

The 'general maintenance' (eg harrowing, rolling, and fertilising) aspects are all essential badges of trade of the business and should be regarded as services. Together with the growing of grass, one of the features of the trade of

providing DIY livery is pasture management as this is essential in retaining clients and attracting new clients as well as understanding horse welfare. It can be considered that maintaining the 'muck heap' would again fall into the trading category of undertaking a service. If the operation was just the exploitation of land – for example, a lease – then the tenant would be responsible for the muck heap, but in a DIY yard this falls to the owner, especially the function of overall control. Controlling the manure is

beyond the very basic maintenance and repair function of merely exploiting land in return for a fee. There are both health and safety and environmental issues surrounding the control of the manure generated by the horses, which has no comparison to *Pawson, Zetland and Buller*.

Too much emphasis on Pawson – DIY liveries not falling on the investment side

At this point consider paras 44, 45 and 46 of *Pawson* and whether the provision of cleaning heating and hot water were sufficient to 'prevent the business being mainly one of the holding of the property as an investment.' The services we have shown are so away from the investment side that they are the badges of trade. Generally the trade of livery services in operation have been shown and accepted on the trading pages of the tax return for a number of years. Horses are not humans and cannot be compared to tenants.

Zetland and Buller

It is impossible and incorrect to compare an active equine business to 'serviced offices and serviced industrial units'. In *Zetland and Buller* the taxpayer did not grow food for the tenants. All the food for all the horses can be provided by the livery yard owner. There can be no comparison to these cases. There was no risk of the tenants escaping and causing damage under the Animals Act 1971 as already mentioned.

Harrowing, rolling, fertilising fields

HMRC has tried to argue in some cases that this work falls under the heading of maintenance and repair. That is not the case with a DIY yard. There are a large number of tribunal cases that show that fertilising the fields is the act of the active farmer and qualifies as a trading operation. Good pasture is a food source. It is about the growing of a crop. Good pasture is important for the survival of horses not just healthcare. The DIY yard is responsible for growing the crop of grass. The role of a livery yard owner is that of an active, experienced farmer. This DIY trade is a serious undertaking, earnestly pursued with reasonable and recognisable continuity. The DIY operation is a genuine trading business often operated well into the old age of the owner hence the need for the Business Property Relief (BPR) claim.

Pasture management – controlling 'horse-sick' grass

Horses are selective grazers and therefore do not make the most of their pasture. It is possible for the grass to become 'horse-sick' with 'roughs', which are unpalatable. An invasion of weeds and poached ground will contribute towards horse-sick pasture. This is another reason why the case of *McCall* cannot be compared to the trade of a horse livery. Cattle are much more efficient and less fussy grazers than the horse. Horses create bare 'rolling patches' as they enjoy rolling in mud and dirt. Bare patches need to be reseeded. Ragwort has to be pulled out by hand. Weeds and poisonous plants thrive on horse grazing pastures, which have bare patches and latrine areas. Cattle and sheep are not selective grazers which is again why

McCall cannot be compared to the trade operated by a livery yard. By contrast the cattle eat rough patches. BPR should apply to the trade of DIY livery.

The difference between cattle and horses – McCall

At para 21 of *McCall* there is the quote:

"even if the landlord has to engage in activities of maintenance and management which are required by the lease or incidental to the letting."

There is not one main lease or grazing agreement as there was in *McCall* but the sale of livery services. Also the maintenance (pasture management) is much more complex with horse livery than with cattle. The management is more complicated with many owners as opposed to one farmer as explained in Part 1 of this article.

In *McCall* the cattle stayed grazing in one field with all the same need to eat the crop of grass to put on weight. The herd of cattle would have been 'level' and generally all of the same breeding. This is not the same with a livery yard. There would be a mix of horse types including thoroughbreds, Irish draughts, UK native breeds, ex-racehorses, Shetlands, Cobs etc. These all have totally different dietary needs.

The management of horse pasture is therefore much more complex as the goals of the growth of grass as a crop for horses are so different from a herd of cattle, whose aim would be to increase body weight and grow. There is no comparison to *McCall* where most herds of cattle are 'youngsters' – they will be sold essentially to supply meat to the food chain. Succulent, young, tasty (not tough) meat to the food chain. More money will be achieved at market for the farmer if they have more young body weight. Obviously they are grazing in the field to produce more kilos of meat.

More horses at livery have a variety of complex needs – some will be needing a 'starvation paddock' and some will need to put on condition for competition. Cattle need to eat as much grass as possible – horses cannot or else they fall to laminitis. Looking after horses is complex, the livery yard business has to orchestrate the needs of many owners and many horses.

Selling a product and a service not collecting a rent

Para 21 of *Pawson* (with reference to *McCall*) cannot be compared to a DIY livery yard which is not a business of holding an investment. Helping horse owners, looking at horses who are too fat, too thin, losing condition, controlling the worming, giving advice to novice owners, sorting out disputes between owners etc cannot be compared to *McCall* and does not 'fall on the investment side of the line' but on the 'business side of the line'. This is not 'incidental maintenance work'.

In para 43 of *Pawson* there is reference to 'carrying out maintenance and repairs and maintenance of the grounds.' In *Pawson* there was no supply of a considerable part of the food needs of the holidaymakers. DIY livery yards are responsible for providing the majority of the food needs of the horses as grass and hay. The good supply of grass

is achieved through the correct maintenance of pasture. Such demands are not 'incidental'.

There is a fundamental supply of a product as part of the sale of the livery. The livery yard is selling the product of grass and a secure field with the accommodation in a secure stable as required. The livery yard is not 'collecting the rent' as there is no rent from just one farmer, indeed the charge was not even a rent, but sales to a multitude of clients for a multitude of needs. It is the supply of a product – grass, 'tailor made' to the needs of each horse with services of worming and advice included. The livery agreement is a contract not a lease.

Agricultural Property Relief

In addition to BPR, there has to be consideration given for the DIY livery yard to qualify for APR. There is a focus on pasture management. The livery yard often carries out the 'harrowing, rolling and fertilising of fields', which is to grow a crop of grass. It is well known that the special commissioner's decision in *Wheatley's executors v CIR* [1998] SSCD 60 should be approached with care and indeed the case is considered flawed. It is clear that the activities connected with the growing of a crop of grass are an agricultural operation, irrespective of which animal species eats the grass. There is no doubt that the livery yard is in occupation of the land (s117) which is used in the business of livery proprietor. The land can arguably qualify as agricultural property within s115 (2) Inheritance Tax Act (IHTA) 1984.

Summary of services

The following services can be regarded as services provided by the DIY livery yard that can achieve BPR:

1. 'Poo-picking' the fields (removal of manure);
2. Provision of water;
3. Being on call for problems;
4. Administering the worming programme on a specific and general basis;
5. Provision of hay in the winter;
6. Daily health and fitness check of the horses – the careful eye;

7. Fertilising the fields – the growth of a crop of grass;
8. Risk management as a keeper of animals – s2(2) Animals Act 1971;
9. Pasture management – controlling horse-sick grass; and
10. *Ad hoc* and substantial advice from the yard owner and their team.

Such services might appear a contradiction with the name 'DIY livery'. The owners would still, for example, ride and train their horses and produce them for shows, events etc. Horses take a lot of looking after and the DIY business still has a lot of involvement in the horse care on a 24-hour basis.

There are many indications that a DIY livery case would succeed at tribunal in both the claim for BPR and APR in respect of the land used in the trade.

Whilst a livery yard might sound very specialist, there are a large number in the country and a large part of the UK is covered in them. In addition, some of the land that is used for DIY horse livery has development potential, ie 'hope value'. This is the difference between market value (s160 IHTA 1984) and agricultural value (s115(3) IHTA 1984).

Proactive advice

All livery yards must consider the need to achieve BPR in the future and what extra services can be provided to ensure this valuable relief is preserved. It is also important that the VAT implications of the extra services are considered. The supply of simply a stable can be exempt for VAT purposes. Likewise the supply of grass can be zero-rated for VAT purposes.

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).
