

BUSINESS TAXES



253. ARE REWILDING AND PUBLIC PRODUCTS AGRICULTURE?

“Rewilding” is essentially reconnecting animals and plants back to their original habitat or to a habitat similar to their natural one. In the UK research shows this is more likely to be plants than animals. However, the dictionary definition of “rewilding” is the practice of returning areas of land to a wild state including the reintroduction of animal species that are no longer naturally found there.

Where herds of ancient breed farm animals are reintroduced into the wild and are then sold for meat that is deemed to be farming for tax. However, simply reintroducing plants without the ‘tillage’ of the soil has concerns over qualifying for farming for tax purposes.

With concerns over whether “rewilding” and the “public products” of the Agriculture Bill qualify as farming for taxes requires review of the relevant case law.

The result of not being classified as farming would be that any previous entitlement to agricultural property relief (APR) on the farmhouse could be lost. Tax reliefs must therefore be protected, and all accountants must check how any income from “rewilding” projects is disclosed in the trading accounts. The accounts will be used as evidence in an HMRC enquiry into eligibility for APR.

Currently the only inheritance tax (IHT) relief available to tenanted land is APR and therefore allowing a tenant to “rewild” will need serious consideration. HMRC’s IHT manuals have expanded the definition of farming to include the production of fruit used to make wine and cider so this would qualify for APR.

Such consideration returns to the question as to the definition of ‘farming and rewilding’ for income tax purposes. Under s996, Income Tax Act 2007, ‘farming’ means “...the occupation of land wholly or mainly for the purposes of husbandry...” but does not include market gardening. Thus, to be a farmer a person must satisfy two tests: the person must be in occupation of land (other than market garden land) and the purpose of the occupation must be at least mainly for husbandry. To prove a trade there is a need to prove the

badges of trade. In this regard business plans will be essential.

How then will the “rewilding” activities qualify for capital gains tax (CGT) relief and for IHT, (ie, business property relief (BPR))? HMRC has been very active in the tribunals wanting to prove that the activity under review qualifies as holding investments and that BPR is not available (s105(3), Inheritance Tax Act 1984).

The rewilded plants and grasses consumed by the animals used for human consumption will be positive. But what of pure eco-projects solely reliant on subsidies under the Agriculture Bill? Will these qualify as agriculture and/or a trade?

The strong tax planning point that cannot be ignored is that farm values are kept high and vibrant by the availability of IHT, CGT, VAT and income tax reliefs. Should some of these reliefs be lost or reduced (eg, APR), or more restricted trading status be introduced (eg, rollover), then farm values will drop.

Contributed by Julie Butler FCA, Joint Managing Partner, Butler & Co



