

Making hay...

...while the sun shines is always good advice. **JULIE BUTLER** suggests that farmers involved in such activity should look carefully at the inheritance tax implications. Make sure that valuable tax reliefs are not lost.



It might be thought that the treatment of hay for tax purposes is of minimal importance. However, we should bear in mind environmental secretary, Michael Gove's encouragement of subsidies that 'enhance the natural environment', which could include cultivating wildflower meadows. Fields used for hay cover a substantial part of the UK landscape and HMRC could use to its advantage a change from production to environmental concerns. This might be the case, for instance, on the death of a farmer who has perhaps diversified from traditional farming in later years to haymaking with other letting activities.

Increasingly, the department is taking a negative approach to 'horse haymaking', arguing that such activity does not qualify for agricultural property relief. This has worrying consequences for the farming community on the claiming of future tax reliefs.

Hay and inheritance tax

So what about the growing of hay and entitlement to agricultural property relief?

KEY POINTS

- Talk of a green Brexit and wildflower meadows might encourage some farmers to begin or increase the cultivation of hay.
- Haymaking for horses might lead to an attack by HMRC as to inheritance tax relief.
- HMRC may argue that the sale is not an agricultural activity under IHTA 1984, s 115.
- Loss of relief may also have an adverse impact on relief for land and farmhouses.
- The influence of VAT treatment.
- Careful documentation of activities may be essential in preserving tax reliefs.

The consensus has always been that a 'farmer who makes hay is a farmer' and, whether they are growing a crop to be consumed by livestock or horses, this does not affect 'death duty benefits'. The potentially negative response to such an assumption might now arrive as a shock to many beneficiaries of estates that include 'haymaking for horses' and whose inheritances are under attack from HMRC.

If the hay is sold for consumption by horses, HMRC may incorrectly argue that the sale is *not* an agricultural activity under IHTA 1984, s 115. The department contends that, unless the hay is sold under s 115(4) for 'the breeding and rearing of horses', it does not qualify for agricultural property relief. Likewise, HMRC allows hay sold for working horses or horses used in the food chain to qualify for the relief. Many farm advisers and family members who are denied the relief due to the sale of horse hay would certainly argue that such an approach is wrong.

'Agricultural purposes'

To qualify for agricultural property relief, property must be occupied for 'agricultural purposes'. Agriculture is not defined in IHTA 1984, but HMRC's *Inheritance Tax Manual* provides some useful guidance on land uses that would fall within this category. For example, the fact that energy crops qualify as agriculture is promoted by many influential sources in the tax and farming worlds. Indeed, it is supported by the guidance at IHTM24062 (tinyurl.com/y852ohkb). HMRC also agreed that the relief would be given for growing and selling turf in *Assessor for Lothian Region v Rolawn Ltd* [1990] SLT 433.

Notably, *Assessor for Tayside Region v Reedways Ltd* (1982, unreported) illustrates the basic requirement of cultivation. In this instance, the absence of tilling, sowing and cultivating precluded reed beds from being agricultural. Therefore, in light of the above, hay that is grown and harvested for consumption by horses used for pleasure should attract the relief. If HMRC attacks horse haymaking, the problem for those in need of inheritance tax reliefs is twofold:

- the possible loss of agricultural property relief on the farmhouse; and
- the possible reduction of this relief to 50% on land if it is used in a partnership but is not partnership property.

Vigne and the hay crop

Although in *The Estate of Maureen W Vigne (Deceased) v HMRC* [2017] UKFTT 632 (TC) the focus was mainly on business property relief and livery customers, the tribunal also decided that an agricultural property relief claim under IHTA 1984, s 115 and s 116 for the hay field would have failed. This was because no hay crop had been taken by the business in the two years before Maureen Vigne died. This apparent 'failure' is increasingly raised by HMRC, which quotes the tribunal's reasoning that 'equine activities are not usually characterised as agricultural'. Certainly, the hay was used to provide the livery horses with feed during the winter, yet it is arguably a misconception that the ultimate consumer of the hay was the reason for denying the relief.

The tribunal stated:

'It fails because the evidence given by Mr Vigne was that, although from time to time a hay crop is taken from the "hayfield", that had not happened in the two years prior to the deceased's death.'

However, this should not affect the position if there is substantial and continuous haymaking. This must qualify under the normal definition of agriculture, which is the cultivation of the soil to grow crops. For the *Vigne* business, there were only 30 acres and an occasional hay crop. If haymaking is substantial, advisers must continue to argue that this is agriculture.

The VAT treatment

This aspect of hay production can also be interesting. Food and livestock sold for human consumption is generally zero-rated. *VAT Notice 701/15: animals and animal food* at paragraph 2.2 gives examples of zero-rated animals as:

- meat animals;
- dairy animals; and
- poultry (except ornamental breeds).

At paragraph 2.3, the guidance states that an example of standard-rated supplies is food for horses. But what of the sale

of hay and food for horses? The sale of hay for consumption by livestock is zero-rated, but some animals that may normally be considered livestock could be kept as pets. At paragraph 6.3, examples include horses, ponies and sheep. For these animals, their food can be zero-rated unless it is packaged or held out for sale in a way that shows it is intended for a pet. Thus, if hay is sold and marketed for consumption by livestock it can be purchased for consumption by horses and still be zero-rated. There are similarities with the inheritance tax interpretation of 'haymaking for horses' as an agricultural activity.

VAT Notice 701/15 demonstrates that, if the hay sold was grown for generic consumption and could be purchased by livestock farmers or horse owners, it is fundamentally an agricultural product. Again, this shows that all diversifying farmers *must* check and evidence the impact of various moves away from traditional farming by their business. For the elderly farmer, such provision of evidence needs the help of family and advisers alike.

“Diversifying farmers must check and evidence the impact of various moves away from traditional farming by their business.”

The modern farmer

It is a common occurrence in the farming industry for a 'traditional' agricultural farmer to move to letting agricultural buildings, livery and supplying hay as they grow older and become less physically able to undertake other farming activities. Unfortunately, this carries the risk of losing inheritance tax reliefs from all directions. With the *Vigne* case being appealed against, business property relief on livery operations and agricultural property relief on haymaking are clearly under attack. It seems that animals used in the food chain can provide and protect excellent tax reliefs, yet moves away from pure husbandry to horses could be punishing in tax terms for the farming and rural community.

When undertaking inheritance tax planning in advance of death, the question of to whom the hay is sold must be forensically analysed. Likewise, when completing form IHT400 after death, the raising and growing of animals, grass and hay must also be understood. Further, HMRC is likely to give the matter serious consideration. With greater emphasis on the 'cultivation of wildflower meadows' under Mr Gove's promotion of a green Brexit and the priority of stewardship, the tax position must be reviewed. If HMRC is being unduly aggressive about haymaking for horses, strong, solid arguments must be presented and defended. ■

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