

Farmed land

Will losses prevent relief claim?

Since the late 1970s my client has farmed land (rearing and selling sheep). They registered for VAT and maintained a business bank account. The farming was initially lucrative but, with time, they would only manage a profit every five years or so. The profits and losses have always been reported to HMRC.

In 2018, my client was diagnosed with a serious illness and they sold all the farming equipment and their trading stock. Since 2018 they have let the land for the grazing of horses. The client remains responsible for the upkeep of the land, maintenance of the fencing and day to day husbandry.

The profit from grazing has continued to be reported as income from farming and a white space disclosure made on the self-assessment tax return along the lines that the grazing is a continuation of the farming activity, in line with BIM55065.

The grazing agreements were always only verbal. The client has now sold the farmland along with the farmhouse and outbuildings.

Will the lack of formal grazing agreements and the fact that my client incurred consecutive losses in the last seven years, prior to the grazing, prejudice a claim for business asset disposal relief on the sale of the land?

Query 20,400

- Scared Crow.

To defend BADR claim, you need to prove commerciality.

With full respect to Scared Crow, there are a number of problems that should have been addressed prior to the sale of the farmland and are a guide on 'what not to do':

- 1) The grazing agreement should have been in writing.
- 2) The diagnosis of the client's serious illness should not have been a trigger to reduce trading. The guide here is the First-tier Tribunal wedding barn case of *Butler (Eva Mary Butler and others)* (TC8949). Family members perhaps should have stepped in.
- 3) There is no mention of business plans.

- a) The continued responsibility for the day-to-day husbandry.
- b) There has been open disclosure.
- c) The grazing agreement success case of *Gill* (TC7425).

While *Gill* was an APR and BPR case for inheritance tax purposes, it does show how there are grazing arrangements which still require substantial input from the farmer and do not slip into being a mere passive investment.

If there is sufficient evidence of the husbandry tasks and active land management undertaken a claim may be worthwhile but should be approached with caution. - *Butler & Co.*

In order to defend a BADR claim, it will be necessary to show commerciality and the existence of a trade. Basic land management is not enough, there needs to be significant activity and involvement with evidence of this, ideally with business plans, explanations for the losses and documentation of any decisions made such as rotation of livestock, fertilisers spread and how the soil was monitored and maintained to maximise productivity. There is, therefore, a high chance that HMRC will attack this claim due to lack of trade, however there are some potential positives that may work in their favour: