

Horses for courses

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Julie Butler discusses agricultural property relief for grazing horses in light of the recent supermarket burger scandal

What is farming and what is agriculture? Their meanings with regard to various equine activities have caused much debate over the decades. Breeding horses qualifies as agriculture, as set out in section 115 of the Inheritance Tax Act 1984 (IHTA 1984), but is the horse livestock for agricultural purposes?

Wheatley (Wheatley's Executors v CIR (SpC 149) [1998]) is the inheritance tax (IHT) case that considers whether the grazing of horses qualifies for agricultural property relief (APR). It concluded that a meadow used for grazing horses failed to qualify for APR. Although the meadow had been owned by the deceased for seven years prior to his death, subject to a grazing agreement during all that time, and as such constituted "pasture" within section 115(2) IHTA 1984, the meadow was not "occupied for the purposes of agriculture".

On the evidence, the horses that grazed the meadow were not connected with agriculture but were used by their owner for leisure pursuits. The horses were not livestock. The grazing by horses would fall within the provisions of section 117 IHTA 1984 only if the horses were connected with agriculture, which was not the case in this appeal.

Breeding horses

The principal ingredient of the occupation test is that the agricultural property must be occupied for the purposes of agriculture and that agricultural land is the principal form of 'agricultural property'. So, mirroring the definition of farming, someone has to be in occupation of land and the purpose of the occupation has to be for agriculture. Then – and akin to the definition of 'husbandry' for the purposes of 'farming' – 'agriculture' is specifically extended to include breeding and rearing horses (section 115(4) IHTA 1984).

One quirk is that the extension to breeding and rearing horses is included only where those activities take place on a stud farm. HMRC has used this to suggest that this has to be a commercial activity for inheritance tax purposes. It's a point the Revenue seems prepared to argue with determination.

Growing grass

It has been argued that the *Wheatley* decision placed too much emphasis on the nature of the horses that grazed the grass; they were not working farm horses. This outweighed whether the main purpose of land occupation was to grow the grass for grazing (as opposed to, for example, the purposes of recreational activities connected with the horses that grazed). It is clear that activities connected with growing a crop of grass are an agricultural operation; what does not follow automatically is whether the main purpose of occupation is to conduct those agricultural operations.

Wheatley was criticised on the grounds that the act of growing grass, which can properly be regarded as a 'crop', should be treated as an act of husbandry, irrespective of the way in which the crop is exploited or used, provided the land is occupied for the purposes of those husbandry operations and not mainly for another purpose.

Guidance from the *Inheritance Tax Manual* ('Agricultural purposes: Stud farms' IHTM 24068) states: "With any other horses, there will need to be a link with agricultural use, for example, where horses are used as draught animals on a working farm, the grazing of such horses will constitute agricultural use. This will also be the case where the horses being grazed are declared to be part of the food chain under the horse passport scheme introduced at the end of November 2003. The grazing of horses used for leisure pursuits will not constitute occupation for agricultural purposes."

Passport scheme

If it is accepted that every horse has a passport, and the horse passport states the horse can be used in the food chain, then the grazing of horses is agriculture and the meadows they graze on will qualify for APR. It will be very interesting to see what develops following the recent incident of horsemeat found in supermarket burgers.

Does the introduction of passports in 2003, and much-publicised proof that horses are used as meat, mean that the grazing of horses now qualifies as agriculture? Are horses livestock? Many would argue that the *Wheatley* decision should be approached with care.

Horse liveryes

Defining such equine activities, that is a livery business providing grazing for horses that are then used in the food chain, could be very important with regard to an APR claim for the farmhouse and one for the farmland.

It would appear that the commercial grazing of horses for livery should now qualify for APR. There is the combination of growing a crop of grass for the horses to eat together with the majority of horses ultimately being used in the food chain, which presents a very strong argument for grazing liveryes for horses to qualify as agriculture.

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