

Nursing the Damaged Foot

Julie Butler shows you how to counter the VAT attack on game shoots

Following my article *Don't be Shot in the Foot!*, published in the July edition of **Small Business Tax & Finance**, questions have been asked about what action landowners who organise game shoots can take to avoid VAT problems. As reported in July, the Shoot Project Team from Norwich VAT Office are on the road and carrying out their 'programme of visits to shoots across the UK', as promised in their April 2006 circular. To quote this document:

'You may get a visit in the coming year and some of these visits may be made without an appointment.'

One of the key areas of the tax debate and the possible collection of extra VAT is the granting of shooting rights by the landowner. On the assumption that the landowner is VAT-registered, output VAT at the standard rate of 17.5% will have to be charged on the granting of the right to shoot. This certainly was the stance taken by the British Association of Shooting and Conservation (BASC) website.

The right to take game

Whether or not a profit is achieved, shooting conducted 'in the course or furtherance of a business' is subject to VAT. Some think that being a sport that starts with live birds and results in food products, shooting can be VAT-exempt or zero-rated, but this is not the case – it is the right to shoot and take game that is being supplied and this is taxable at the standard rate. VAT is chargeable on the right to take game by virtue of its exclusion from the general exemption that is provided in respect of transactions in land.

Community law exempts the 'leasing or letting of immovable property' and recent case law of the European Court of Justice (ECJ) has further defined the meaning of that term. The letting of an entire 'cross country course', for example, could be the letting of land, but allowing someone onto the course to jump a round is not. For those not clear about this terminology, just think 'only fools on horses'. Provided that the characteristics of 'leasing or letting' (as defined by the ECJ) are present, therefore, there is no reason why the letting of a shoot cannot also be exempt (unless an option to tax is in force). HMRC's current policy on the letting of land with valuable sporting rights is to require an apportionment between the (exempt) land and the (taxable) rights where the latter exceed 10% of the total value. A single day taken by an individual will never be 'leasing or letting', it will always be the right to take game.

The landlord and the twist in the tale

If it is accepted that the landowner must charge VAT on the granting of the rights to the syndicate, then there is a very devilish twist in the tale. If the landowner is a member of the syndicate, HMRC will expect VAT to be accounted for on the open market value of the grant of rights to the syndicate, and also on the supply of the services of a gamekeeper, etc. In practice, these things are bartered and no money changes hands (or a reduced value is calculated). From a VAT point of view, however, a supply can take place even if no money

changes hands (for a more general discussion of this topic, see my article *The Barter System*, published on pages 100 and 101 of the February 2006 edition).

So all those days' shooting reluctantly taken by the landowner in return for the grant of the shooting rights could be subject to VAT. Likewise if the gamekeeper is also employed on the farm and helps the syndicate in return for the landowner's friends having a few days' shooting, then VAT should be charged here too.

Rights over land are generally exempt from VAT (unless an option to tax is in force). However, the 'grant of a right to take game or fish' is specifically excluded from exemption and is therefore taxable unless the freehold is sold at the same time.

Can the shoot stay 'Fisher', not 'Williams'?

Can the family shoot retain private status? Could the landowner just invite family and friends to shoot and receive contributions towards the cost as in the famous Lord Fisher case? (*Customs & Excise Commissioners v Lord Fisher* [1981] STC 238.)

VAT Notice 742 *Land and Property*, issued in March 2002, advises at point 6.3.1 that you are not making supplies in the course of a business, and so must not charge VAT to the 'guns', if you are 'shooting in hand'. The term 'shooting in hand' is used where a landowner keeps control over the shoot, makes all the necessary arrangements to stock the land with game and decides who participates in a shoot.

If contributions are accepted towards the cost of maintaining the shoot from the other 'guns' invited to the shoot, you are still not making supplies in the course of a business provided all the following conditions are met:

Only friends and relatives shoot with you

You do not publicly advertise the shooting

Your shooting accounts show an annual loss at least equal to the usual contribution made by a 'gun' over a year

The loss is not borne by any business but by you personally

If only a few days are sold then this means that the family shoot becomes a parallel shoot. Care needs to be taken, however, if private shooting and 'commercial' shooting are run concurrently, as this could mean that all of the activity is taxable (as in *J O Williams*: VAT Tribunal Decision 14240).

If the freehold is used for a private family shoot then the current advantages of Business Asset Taper Relief (BATR) for capital gains tax, together with Agricultural Property Relief (APR) and Business Property Relief (BPR) for Inheritance Tax (IHT) will be lost. It could be argued what are a few extra VAT bills compared to the protection offered by the CGT and IHT reliefs? The overall tax status would have to be looked at in the round giving consideration to all tax reliefs.

So is the answer a Members' Club?

The supply of sporting facilities (including shooting) by a non-profit making club to its members is exempt from VAT (although it is still a business). This is relatively new VAT law and there are a number of 'schemes' around that seek to exploit it in the context of shooting. However, the Members' Club must be properly constituted and transparently artificial arrangements to extract VAT-exempt profits are likely to invite challenge. There would also be a loss of control by the shoot organiser or landowner.

Let the nurse apply a plaster?

Some shoots have attempted to reduce their VAT burden by selling the game birds separately to the guns and applying the VAT zero-rate which applies to foodstuffs. This has been tested before the Tribunal in the recent case of *N C D Carter* (not yet reported), where the birds were sold at £5 each (at a time when they were fetching about 80p in the shops). The Tribunal, perhaps bearing in mind the basic principle of capitalism, which is that nothing has an intrinsic value and everything is worth as much or as little as you can get for it, decided that £5 was an acceptable value.

Conclusion

This is proving to be a very, very successful campaign by HMRC. Most shoots visited are having to pay some extra VAT and/or other taxes.

The concluding advice is for all shoot advisors, organisers and landowners to follow through the action plan set out in the July edition and focus on the VAT issues. It is likely that some actual or potential VAT irregularities will be identified, so now is the time to look at historic damage limitation and commercial restructuring to minimise the VAT cost for the future.

Julie Butler FCA is Managing Partner of Butler & Co, Bowland House, West Street, Alresford, Hampshire SO24 9AT (telephone 01962 735544, e-mail j.butler@butler-co.co.uk). She is also the author of 'Tax Planning for Farm and Land Diversification' ISBN 0754517691 (1st edition) and ISBN 0754522180 (2nd edition) and 'Equine Tax Planning' ISBN 0406966540. To order a copy call Tottel Publishing on 01444 416119.

