

# 'On the hook' – The overall tax treatment of the activity of fishing

The whole area of the overall tax treatment of sporting rights over land is complex. Let us consider the VAT treatment – in general terms, VAT is chargeable at the standard rate on the letting of fishing rights and the sale of fishing permits. Fish sold for food, however, are zero-rated. The supply of fish to stock fishing waters is standard-rated, not zero-rated as food. Input VAT is fully claimable on this expenditure by the trader operating the fishing activity, if the operator is registered for VAT, as a farmer usually will be.

As mentioned, the sale of fish for human consumption is zero-rated. A recent First-Tier Tribunal (FTT) case, *Stocks Fly Fishery* (TC4994), looks at the VAT treatment of the interaction of the letting of fishing rights and the sale of fish with regard to standard- and zero-rated supplies and helps give some guidance of the tax treatment.

## Facts of the Stocks Fly Fishery case

The facts of the case were that Stocks Fly Fishery argued it was making two supplies. One supply was the sale of fishing permits or tickets and another supply was, in the opinion of Stocks Fly Fishery, the sale of zero-rated supplies. Anglers who wished to fish at Stocks Fly Fishery had to buy a ticket in advance. It could be a sporting (catch and return) ticket for £17.50 or a take (take the fish home) ticket for £24 which gave them the right to keep up to five fish they caught. Stocks Fly Fishery argued that the difference between the two prices should therefore be zero-rated because it related to the sale of fish. HMRC disagreed, saying there was a single standard-rated supply of the right to fish in the reservoir. The FTT held the original HMRC view that Stocks Fly Fishery were not making two transactions but one, the principal supply of fishing which is standard-rated. Obviously, as most customers are not VAT-registered the decision represents a disadvantage to the farming community.

## One transaction of fishing

The FTT in the *Stocks Fly Fishery* case reported that in their view the essential feature of the transaction was fishing. Such a consideration was the main motive of anglers going to the fishery. The judge said: "*When it comes to anglers with take tickets, this is not, in our view, at the time of supply, a sale of fish (even contingently). This is because there is no guarantee (or, put another way, any contractually enforceable promise) that any fish will be caught much less any such guarantee or promise that an angler will catch the authorised bag. Ultimately, the bag depends not only on the skill and determination of the fisherman but, also, good old-fashioned luck.*"

It was considered by the FTT that taking away fish was ancillary to the principal supply of the fishing activity. The decision can be understood to reflect the facts that no part of the fee relates to the sale of fish; there is a chance no fish would be caught. However, the decision does not reflect the commercial necessity many would consider. The *Stock Fly Fishery* case shows it is possible for a single supply of fishing outcome even where separate elements are being sold. This is really negative for the sport of fishing. VAT planning around 'members clubs' etc can be considered but this must be considered whilst reviewing all the other taxes.

## The activity of fishing and income tax

With this negative result some fishing enterprises might consider operating as a separate trade that is below the VAT limit. The disadvantage of this direction is the concern over artificial separation and the risk of losing Inheritance Tax (IHT) reliefs (see below).

Income from the letting of sporting rights over land will generally be treated as income from land. Sporting rights include the right to fish and/or take the catch. If the income is small relative to other trading income, it may be included as part of the trade. There might seem a contradiction with regard to VAT and income tax in that the granting of sporting rights is standard-rated, but income from land is normally an exempt supply. It may therefore be argued that standard-rated supply reflects trading and serviced activity.

If the fishing rights are exploited commercially, ie run as a trade by the owners rather than simply let, then the activity would be treated as a trade. To qualify as a trade, the landowner would have to operate the fishing as a business; issuing permits and licences, maintaining the fishing waters and incurring bailiff/keeping expenses where appropriate. Merely granting the rights to a fishing club, for example, while retaining the maintenance and keeping of the fishing waters may not be sufficient to qualify the activity as a trade as it would be argued these are just the actions of a landlord.

With the current 'attack' by HMRC on the distinction between income from land and trading activity on so many areas of farm diversification – for example, holiday lets and DIY livery – this decision highlights the need to be careful with sporting rights disclosure at so many tax levels.

With regard to the year-end calculation of the stock of fish for income tax they are 'ferae naturae', which means you cannot own them so they have no value for tax purposes.

## Inheritance Tax

In order to qualify for IHT Business Property Relief (BPR) the activity under review must be deemed to be a business or a trade. The importance of trading and not just letting sporting rights will be key to protecting business tax reliefs. Where the letting of sporting rights is part of an overall trade or estate with a lot of trading activity, BPR can be achieved.

The principle of the *Earl of Balfour (Brander (Representative of Fourth Earl of Balfour) v HMRC Comms* [2009] UK FTT 101) will help with the IHT relief as the land and property income can be part of the overall trading activity providing the trading income exceeds the property income. A full and detailed fact find must be undertaken of the whole operation to ensure that the VAT and tax compliance is correct and also to be able to move forward with overall tax planning.

## Capital Gains Tax

In order to achieve more favourable business Capital Gains Tax reliefs, for example entrepreneurs' relief which results in a 10% rate of tax, and rollover relief to shelter the gain, it is essential that there is a trading activity on the land.

## Action plan

In the light of the new VAT case of *Stocks Fly Fishery* it is essential that the overall tax treatment of commercial (and non-commercial) fishing operations is considered in the round. With the apparent much increased interest in the UK holiday location and operation post Brexit, fishing can play a large part in the holiday potential. Fishing operations represent healthy diversification for landowners and it is essential that the overall tax position including VAT is understood by their advisers.

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