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# **The tax complexity of farm diversifications, caravans and motorhomes**

**Much has been written about the inheritance tax (IHT) of caravan parks and the need for there to be services in order to protect the claim for IHT. Julie Butler explores further.**

Rents charged from holiday accommodation in a cottage, flat or caravan are standard-rated for VAT (VATA 1994 Sch 9 Group 1 Item 1(e)). Holiday accommodation includes any accommodation advertised or held out as such (ibid Note (13)). Holiday accommodation in caravans includes those drawn by motor cars, or those which remain static on a particular emplacement. Tents similarly include those pitched by the user and those provided by the site owner. As part of farm diversification there can be storage of motor homes and also the hiring out of motor homes as part of the operation.

## ***Motorhomes and VAT – Oak Tree Motor Homes Ltd First-tier Tribunal***

It is fair to say that motorhomes have a long-standing relationship with tax and VAT tribunals and a recent Upper Tribunal decision on the VAT treatment of 'motorhomes' has been considered. The facts were that Oak Tree Motor Homes Ltd sold campervans. Between March 2007 and May 2011 it accounted for VAT on the supplies. The company then claimed a repayment on the basis that the vehicles were caravans for the purpose of VATA 1994, Sch 8 Gp 9 item 1 and should have been treated as zero rated. HMRC refused the claim. The First-tier Tribunal decided the vehicles were not caravans and dismissed the taxpayer's appeal that they were zero rated.

## ***Basic VAT position of caravans***

This case should be considered in the context of the basic VAT position on caravans. Since 6 April 2013, holiday caravans that are not designed and constructed for continuous (year-round) or residential occupation no longer qualify for zero rating. Instead, VAT on holiday caravans is now standard, reduced or zero-rated depending on the size, specification and occupancy of the caravan (VAT Information Sheet 04/13, April 2014). A change specifically to caravan verandas in 2015 was recognised by Revenue and Customs Brief 12/15, following the case of Colaingrove Ltd v Revenue and Customs Comrs [2015] UKUT 80 (TCC), [2015] STC 1725. HMRC originally considered that where the zero or reduced rating applied to the caravan in question, a veranda or decking structure supplied at the same time constituted a separate supply, and hence should be treated as standard rated. The First-tier Tribunal supported this view, however the Upper Tribunal reversed this decision ruling that the sale of a static caravan with a veranda was a single supply for VAT purposes. HMRC now accepts the reduced or zero rated output tax position, and therefore no additional VAT will be chargeable on verandas supplied with static caravans going forward. Against the background it is interesting to see the progress of the Oak Tree Motor Home case to the Upper Tribunal.

## ***Oak Tree Motor Homes Ltd – Upper Tribunal***

The Oak Tree case was taken to the Upper Tribunal. Oak Tree Motor Homes Ltd v CRC, Upper Tribunal (Tax and Chancery Chamber). From a legal stance, although caravans were not defined in VATA 1994, the purpose of Gp 9 item 1 was to provide relief for caravans that performed 'the same function as houses or similar accommodation'. There was nothing in the legislation that suggested the term was intended to apply to motor vehicles.

The question of whether a motor home was considered zero rated was considered by the Upper Tribunal who agreed with the First-tier Tribunal that they were right to conclude that, as a question of fact, vehicles did not include caravans. They considered that, unlike a vehicle, a caravan had no motor but had to be towed from place to place. On the taxpayer's assertion that it was appropriate to consider the definition in the Caravan Sites and Control of Development Act 1960 because HMRC had referred to it in Notice 701/20: caravans and houseboats, the judge said this was irrelevant. It had no force of law. Further, had it been intended that the 1960 Act's definition of a caravan should apply to VATA 1994, the draughtsman could have included it. It was decided that the standard rate applied to the taxpayer's supplies of vehicles and the appeal by Oak Tree Motor Homes was dismissed. They were not zero rated.

## ***The importance of the engine***

The Upper Tribunal's view might be considered by some a harsh decision but the key consideration was the engine. The fact the motorhome could not be towed from place to place meant it was not a caravan. With regard to caravans the VAT treatment of services supplied to caravans by pitch owners depends on the actual use. Broadly speaking, the VAT chargeable for services to caravans varies

depending on the duration of occupancy of the caravan, for example residency or holiday, and the ability to measure individual pitch consumption of services provided (see VAT Notice 701/20 for exact details).

## ***Rollover into a holiday trade***

Some landowners might have sold paddocks or development land and be looking to rollover the gain into the glamping accommodation to help reduce the capital gains tax liability. There is no reason why the cost of purchasing the caravans or structures described cannot qualify for relief if they are advertised for letting as soon as they are acquired and made ready for use, and the minimum periods of availability and occupation are met in the first 12 months and each tax year thereafter once the letting has started. Rollover into a motorhome will not qualify.

## ***Glamping***

Part of the diversification can include glamping which can involve staying in yurts, tipis, pods, bell tents, shepherds' huts, Gypsy caravans and tree houses. It is considered to be camping with amenities and, in some cases, 'resort style' services that provide the luxuries of hotel accommodation with escapism and the outdoors.

Where such glamping activity involves letting out holiday accommodation rather than operating a trade, the furnished holiday accommodation tax questions arise. It is reasonable, therefore, that the tax treatment must be assessed case-by-case. And this should take account of guidance from recent tribunals on general principles of service and the structures provided. In many situations, glamping involves extensive food service and regular fresh bed linen.

## ***Exploitation of property or trade***

The tax treatment of the whole holiday operation must be considered 'in the round'. It must be established whether the premises or mobile accommodation qualifies for Capital Allowances or whether they qualify as assets that can be used for rollover relief. The question of the nature of trade versus accommodation must be considered to determine how the profit is shown on the tax return and whether losses can be offset sideways where there is hiring out of the motorhomes which can also be used as part of glamping.

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