

Private use and liveries – pay the market rate and save IHT

By [Julie Butler](#)

Posted [September 13, 2019](#)

In [Tax](#)

Disclaimer: LawSkills provides training for the legal industry and does not provide legal advice to members of the public. For help or guidance please seek the services of a qualified practitioner.



Many farmers and equine businesses own private horses and it is often a matter of debate as to how the private use is treated in the Accounts and tax computation. As always there are tax planning issues as well as compliance and fair assessment of drawing for partners.

On the assumption the trade is a partnership there should be the verbal or written partnership agreement that establishes the basis for the taxable market value for premises or services supplied to partners for any private use. Where the private horses use the same stabling and consume grass from the fields along with “livery horses”, it can be assumed that the grass and stable usage would be capable of being sold to livery customers.

Sharkey v Wernher

There are arguments to support that what such a customer pays is the market value and is what the partner in the business should pay since the private use adjustment must reflect the market value. Of course, there may be different livery rates for different types of livery and/or different durations of livery but that can be factored into the calculation of the private use adjustment and this can be set out in the partnership agreement or minutes. ITTOIA 2005, s 172 enacts the *Sharkey v Wernher* ((1955) 36 TC 275) market value rule to 'trading stock', ie private items should be taken at market value. HMRC in its *Business Income Manual* at BIM 33630 makes it clear that services rendered to the trader personally, or to their household, should have only the costs disallowed. The practical and fair way of dealing with the private element is through the Accounts as a debit to drawings and a credit to income. The provision of livery 'services' on its own would not be taxed, although if staff or other costs are incurred, they should be posted to drawings and thus disallowed in the body of the Accounts.

Where there is a farm with no liveries but private horses the value of grass being eaten by private horses in the fields will have a grazing market value per acre. Again, the basis of calculating the market value of the grass should be sufficient to pass HMRC scrutiny and the allocation between partners be agreed in the partnership minutes.

Inheritance tax

The inheritance tax implications of the impact on the equine business/farm must be considered. The premises occupied by fully serviced livery may qualify for business property relief (BPR) following *Personal Representatives of the Estate of Vigne (Deceased)* (TC6068) if the level of services are sufficient and evidenced. Failing this, BPR may be gained currently following the principles in the *Farmer* ([1999] SSCD 321) and *Balfour* ([2010] STC 2666) cases provided the income from the private livery is carried on at full market value and the income included in the Accounts. By not providing for full market value there could be an inheritance tax disadvantage for excepted assets, s 112 IHTA 1984. The income

at market rate shown in the Accounts should have advantages under *Balfour* in that the land generating the income is part of the business.

Where specific fields and stables are used for private horses, consideration must be given for excepted assets for IHT. The function of s 112 is to prevent taxpayers from achieving BPR for private assets. IHTM 25341 states “Business relief does not apply to assets that at the time of the transfer were not used in the business”.

There is a protection for IHT relief if full market rent is charged so that they are “used in the business” under s 110 IHTA 1984 and the income is recorded per *Balfour*. The probate valuation of assets with private use together with the description of use will be significant for the claim for BPR. Honesty and transparency of information supplied to the valuer is key. The RICS qualification for the probate valuation should ensure that the correct analysis of private assets will be ascertained on a fair and reasonable basis. Where the assets are used for private purposes but full market rate is paid this should be shown on the valuation for transparency.



[Julie Butler](#)

Julie Butler F.C.A. - Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH - Tel: 01962-735544 Email: j.butler@butler-co.co.uk | Website: www.butler-co.co.uk

Julie Butler F.C.A. qualified as a Chartered Accountant in 1980 and started Butler & Co in 1986. Julie is a farm and equine tax expert and is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis).