

# Production for human subsistence

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**The discovery of horse meat in the human food chain has received extensive press coverage recently. This article considers the possible tax implications of that discovery.**

The “horse meat debate” is a sensitive, emotive and political subject that causes many people worry and offence. It is understood that enforcement officers in Britain have not conducted random tests for horse meat “contamination” with other meats for at least 10 years.

The big tax question that arises from this is: does the grazing of horses on farmland now qualify as agriculture for the purposes of agricultural property relief (APR) for inheritance tax (IHT)? This point could also be extended to the definition of farming for farmers averaging purposes and also the hobby farming rules for income tax.

## What is agriculture?

Over the decades there has been much debate as to what is actually farming and what is agriculture. Much of this debate has extended to activities involving horses. The breeding of horses qualifies as agriculture as set out in [s115\(4\), IHTA 1984](#), but does the horse qualify as livestock for agricultural purposes?

The IHT case that considers the qualification of the grazing of horses for APR is *Wheatley’s Executors v CIR (SpC 149) [1998]* whereby a meadow used for grazing horses failed to qualify for APR. The meadow had been owned by the deceased for seven years prior to his death.

The facts were that, during all that time, the field was subject to a grazing agreement. It was found that the meadow constituted “pasture” within [s115\(2\), IHTA 1984](#), but the meadow was not “occupied for the purposes of agriculture”. On the evidence presented to the Special Commissioners, the horses were not livestock, as they were not connected with agriculture, but were used by their owner for leisure pursuits, ie they were horse liveryes.

## The cultivation of food for human consumption

Guidance is given in the Inheritance Tax Manual IHTM 24068 (Agricultural purposes: Stud farms) on the tax implications of a horse declared to be part of the food chain. The manual sets out:

“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.”

If it is accepted that every horse grazed on the relevant land, whether the purpose is leisure or otherwise, has a passport, and that many passports state that the horse can be used in the food chain, then the grazing of those horses will qualify as an agricultural operation and the meadows they graze on will qualify for APR.

If the horse is not to be used for human consumption, the passport must be signed to say that the horse is “not intended for slaughter for human consumption”. The horse meat could still be used for other purposes, eg pet food.

Does the introduction of passports in 2003 – and the recent much publicised proof following the supermarket burgers scandal that horses are used in the food chain – mean that the grazing of horses does now qualify as “agriculture”? Many would argue that the Wheatley decision should be overturned.

## **The fate of the horse**

The question of whether the grazing by horses precludes agricultural occupation, ie limiting agricultural operation to production for human subsistence, results in a review of what happens to the horse at the end of its life.

Consider, for example, land used to produce cereal crop or livestock which becomes food stuff for domestic pets still qualifies as agriculture; so why not the horse?

The horse is a large animal; it cannot just be buried in the garden when it has to be “put down”. English winters are harsh and there are few retirement homes.

The cost of having a horse “put down” by the vet is expensive, whereas to sell a horse for slaughter, whether this be for human consumption or for pet food, is now the most common choice of horse owners. The legal slaughter service is thoroughly controlled by vets and the relevant authorities.

## **Horse liveries qualify for APR**

In cases involving horse liveries and land there are very strong arguments for APR to be allowed.

There is also the combination of the growing of a grass crop for the horses to eat, together with the majority of horses ultimately being used in the food chain. This presents very strong evidence that the grazing liveries for horses should qualify as agriculture for the purposes of APR in respect of land on which they graze.

This argument would extend to the farmhouse in which the livery operator/farmer resides. Such considerations can have a very significant impact on the claims for APR moving forward – and also claims currently being debated.

## **The growing of the crop of grass**

It is clear that activities connected with the growing of 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.

The decision in *Wheatley* has been 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 utilised, provided the land is occupied for the purposes of those husbandry operations, and not mainly for another purpose.

Many consider the case was wrong by focusing on the nature of the animals doing the grazing. This point has not been challenged in tribunal but it was always assumed that at some point such a challenge would be made to the Special Commissioner decision. With the further angle of the horse being proved to be in the human food chain there are clear and strong reasons why the land used for horse liveries should qualify for APR.

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### **Farming and Rural Business Group, February 2013**

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