

Surviving a visit from the tax man is more complicated than you might expect, but use these tips from Julie Butler to prepare and you may find a winning formula

In a recent HM Revenue & Customs' (HMRC) letter to the shooting organisations, it states: *HMRC continues to carry out a programme of visits to shoots across the UK. You may get a visit in the coming year and some of these visits may be made without an appointment.*

Further to my recent *ST* article on tax (*Tax attacks*, 1 June), I have produced some solutions to the problems being raised by these visits.

## Shoot tax audit

So how should the shooting world prepare for the visit or even for correspondence on the subject? The suggested course of action is that every shoot undertakes a "shoot tax audit". Now I know it might be tempting, but don't let such a dull word as "audit" put you off.

The question raised is how such tedious terminology can be linked to something as passionate and enjoyable as shooting. There is a joke in the accountancy industry: *Why did the auditor cross the road? Obviously, the only answer can be, Because he did last year!*

Ironically, the best way to tackle your shoot tax audits is not to do everything exactly the same as last year, but to look afresh at the problems. Take the time to identify your tax weaknesses and replace them with tax strengths.

The review should, to quote HMRC, *encompass all areas of income tax, PAYE, Corporation Tax, National Insurance and VAT. It will also include such matters as the National Minimum Wage.*

## The shoot report

### "Dramatis personae"

There is potential for the shoot organiser to cover such issues as health and safety, gun licences and insurances in the review. The first stage of the audit is to produce a cast of characters for the shoot (see panel above right). All items should be cross-referenced and tracked within the report internally and externally (check the Internet to see what information the outside world holds).

## Barter — swapping of days

There is one area of landowner or syndicate organiser barter that has not been the focus of reporting but that is certainly commanding respect by HMRC, which is *swapped days with friends*.

In a lot of cases the landowner and/or organiser might only take, for example, two

## TAX AUDIT CHECK LIST

### THIS AUDIT SHOULD INCLUDE:

- ownership structure
- history of the shoot
- details of the owners and/or organisers
- outline of responsible officials, staff and their duties
- a map of the shoot, showing coverts, pens drives and so on
- previous copies of accounts, records, VAT returns and registrations and so on
- outline of accounting systems and records
- understanding of fiscal responsibilities and evidence of compliance
- business plan incorporating the shoot's intentions
- copy of health and safety risk assessment
- details of insurances and licences
- details of legal review, shooting rights and so on
- previous inspections, PAYE, VAT, tax and so on
- website
- Internet research
- brochures and/or marketing material

days on their own shoot, but might invite a large number of guest Guns. In a form of the unwritten rules of friendship, they would then receive an equal number of days' shooting on their friends' shoots. These should, strictly speaking, be recorded as bartered transactions.

## VAT and the shooting rights

In UK law, rights over land are generally exempt from VAT (unless the land is subject to *opt to tax*). However, the *grant of a right to take game or fish* is specifically excluded from exemption and is therefore taxable unless you are selling the freehold at the same time. Shooting rights are sporting rights as far as VAT is concerned.

The basic problem is that a *right to take game* is, in UK law, a severable interest in land, otherwise it would not be necessary to tax it by exclusion from the land exemption. UK law makes no distinction between a casual sale of a day's shooting to an individual and, for example, the grant of all such rights over an area of land in perpetuity.

European 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 on to the land to jump round the course is not. Provided that the characteristics of *leasing or letting* as defined by the ECJ are present, there is no reason why the letting of a shoot cannot also be exempt, subject to an option to tax. The shooting world will have to look carefully at this ECJ ruling to see what benefit can be obtained. HMRC's 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 exceeds 10 per cent of the total value.

The *option* is the right to *opt to tax* property. The shoot audit should consider what the Norwich Shoot Project Team (which has been tasked with the job of investigating gameshoots) will be looking for and this has already been well documented.

The concept of the auditor being dull has arisen from the idea that, unlike the tax advisor or accountant, they do not have to use their imagination, they just check, tick and cross reference. How wrong that concept is. The shoot audit now has an opportunity to shine, to review, to suggest and protect the shoot from the dangers of the outside world...

The first step of preparing your audit is to make a list of the "dramatis personae"





# SHOOTING

Shoot tax

The services of a gamekeeper must be accounted for to HMRC



## THE DANGER AREAS

### Landowner's bartered benefits

Swapped guest days are a form of barter that HMRC might not be able to completely understand, and in fact even an auditor might come a little unstuck appreciating the finer details. The key ingredients to this tradition are friendship, loyalty, pride and even generosity.

If the landowner is a member of a 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 and so on. These things are often 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.

Surely, though, if no cash changes hands, how can this be the case? Simple tax law and accounting standards state that all barter transactions must be recorded in the books and records as if cheques had been exchanged and that paperwork had been provided accordingly. The fact is that paperwork should be provided, for example, the election to charge VAT on property including rents is known as *opt to tax*. All rents are subject to output VAT and input can be claimed if this formal election is made with HMRC as bartered transactions.

### Land rights v rights to take game

As mentioned, there is much contradiction and debate about what is being supplied by the landowner. Is it the rights over land which are generally exempt from VAT or the right to take game which is taxable?

Each case should be looked at on its particular merits. What are the rights that are being sold — land or sporting? In simple terms, the legal documents must be checked by a lawyer and consideration given to new licences.

Many shoots have actually taken over the rent of the land and the shooting rights. In the rent of, for example, golf courses or cross-country courses it is not possible to grow crops on the 18th hole or at the water jump. With

shooting, however, there is a combined use of the land and the efficiency of the farm is not necessarily being disturbed. An arable or dairy farm can exist alongside the shoot. This is a wonderful example of farming and shooting working together.

So, if the landowner leases the land to the shoot, can the shooting rights be below the magical 10 per cent (the apportionment of exempt land and taxable rights)?

### Long-term strategy

So what are some long-term strategies available to the shoot that does not own its own land — should it buy the land?

Does this sound on par with Victor Kiam's famous statement that he liked the razor so much he bought the company? Maybe, but if the owner of the shoot is not VAT registered, then it will not have to charge itself VAT. So will the shoot be able to stay non-commercial? Will the shoot be able to keep below the VAT registration limit of £61,000? Remember, supplies of shooting by syndicates to their members are not normally regarded as amounting to a business activity, so no VAT is due.

Where a landowner invites family or friends to shoot and receives contributions towards the costs, the activity is not taxable following the well-known tax case of Lord Fisher (in which the "private shoot" was defined). 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 the tribunal case of J. O. Williams).

So, in simple terms, *Fisher* is the tax case that defines the private shoot and *Williams* is the VAT case that established the ruling that makes the whole shoot subject to VAT if there is some element of commerciality.

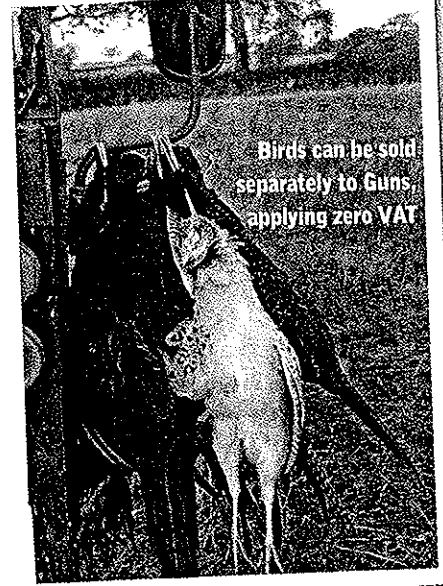
### Members' club

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. This is relatively new VAT law. There are a number of schemes around that seek to maximise the benefit of the case in the context of shooting. However, the members' club must be properly constituted, which can imply a loss of control by the landowner and artificial arrangements to ensure VAT exempt profits are likely to be attacked. If you are considering this route, professional advice must be taken.

### The sale of birds

Some shoots have attempted to reduce their VAT bill by selling the game separately to the



Birds can be sold separately to Guns applying zero VAT

Guns and applying the VAT zero-rate relevant to foodstuffs. This has been tested before the tribunal in the recent case of NCD Carter, where birds were sold at £5 each at a time, when they were fetching about 80p with the game dealers. The tribunal perhaps decided that £5 was an acceptable value. While it worked on this occasion, there is a limit to the number of birds that can be sold at £5 each...

### Absorbing the VAT change

The solution will depend first on the VAT sensitivity of the shoot — if, for example, the shoot is selling shooting and accommodation packages to wealthy overseas visitors, the addition of VAT may make little difference to the marketability of the shoot. In such circumstances it may be better to retain your taxable turnover, with its consequent partial exemption benefits to the business elsewhere and recover related input VAT. VAT planning must be tailored to the individual circumstances hence the need for a business plan.

The tax audit should look at how important certain parts of the tax legislation are to the commercial viability of the shoot.

Perhaps now there is no alternative but VAT registration unless the shoot is certain that it comes completely under the *Fisher* concept of being wholly private, without barter, or the commercial structure can keep below the VAT registration limit. Embracing the tax change is the only way forward. Sadly, a few sold days can move a private shoot into the parallel *William* case and then the whole is treated as a business. Can the whole of the activity, after calculating the benefit of the family days, keep below the £61,000 registration limit?

I am afraid the only way forward would be to undertake the shoot tax audit. ■

For more information, contact Julie Butler, F. C. A. Butler & Co, tel (01962) 735544 or email [j.butler@butler-co.co.uk](mailto:j.butler@butler-co.co.uk)