



Stable investment

JULIE BUTLER ON IHT RELIEF AND THE TRADE OF DIY LIVERY IN ENGLAND AND WALES

The stud farm is the breeding of horses with land, and is farming for the purposes of agricultural property relief (APR) for inheritance tax (IHT). Other equestrian businesses need the support of business property relief (BPR) for IHT relief purposes. Many farmers have diversified into some form of livery operation and the IHT relief has to be considered.

Pawson

The recent case of *Pawson's Personal Representatives v HMRC* [2012] UKFTT 51 focused on the question of the level of services provided by a business and the difference between an investment business and a trading business for BPR purposes. The case gives guidance on the fact that providing the service of 'do it yourself' (DIY) liveries qualifies as a trade and not as an investment activity. Perhaps it is the name 'do it yourself' that is somewhat

misleading about what is actually involved in the trade.

John Window

Another misleading point, when considering eligibility for IHT purposes, might be the VAT treatment of DIY liveries. Following the VAT tribunal case of *John Window v Commissioners for Customs & Excise* (No 17186), it was confirmed that the supply of livery where the main supply was the stabling was a single exempt supply, and that the additional services provided were ancillary to the provision of stabling. A key point of John Window was that the customers did not have the facility to look after the horse at home, so the stable must be the main element of the supply. An ancillary service is defined as something that does not constitute, for customers, a main supply in itself, but is a way to better enjoy the principal service supply. A supply of livery services that goes beyond the right to occupy a stable may include feeding, turning the animal out to graze, mucking out, worming and

clipping, grooming and plaiting, and taking on any responsibilities for the welfare of the animal, including arranging for veterinary treatment, that follow the liability of the supply of stabling – i.e. the supply of stabling is the principal supply and can still be an exempt supply; the other services just follow the main supply. For VAT purposes, public notice 701/15 states that the liability of the care of animals is standard-rated where there is a ‘special purpose’ yard. The supply of grazing is zero-rated. The supply of stabling is considered a licence to occupy land and is therefore exempt from VAT unless there is an option to tax. The VAT treatment is complicated.

The level of services provided

For BPR purposes there can be a DIY livery trade and still be exempt DIY livery services for VAT purposes. There are still a lot of services

A serious business earnestly pursued

It has been said that ‘where there is livestock there will eventually be deadstock’, and that is true of any livery yard. This involves a serious business, earnestly pursued. If a DIY yard is offering the most basic level of supply, e.g. licence to occupy a stable or field, it is actually providing many more services, by definition. Most customers have full-time employment and can only look after their horses early mornings, late evenings and at weekends, and horses have an ability to harm themselves. Horses are herd animals; they normally have a leader of the herd, and horses belonging to new customers arriving and old customers leaving can change the structure and hierarchy of the herd, and potentially cause a lot of damage if not carefully observed and checked on regularly.

“For BPR purposes **there can be a DIY livery trade** and still be exempt DIY livery services for VAT purposes”

that would make the trade essentially a ‘hotel for horses’, yet the principal supply is still the stable. In *McCall (McCall and Keenan, Personal Representatives of McClean v HMRC [2009] STC 990)*, the argument for a trading business was that what was being provided was effectively a ‘hotel for cattle’. The profession of providing livery services does fall under the category of a trade and a business. It is not mainly that of holding property for letting and thus for investment, as in the case of *McCall*, where the activity being undertaken was that of an investment business or landlord.

Grazing agreement comparisons

The clear difference between a livery business and a grazing agreement is that every horse is owned by a different person, whereas in a grazing agreement there is generally a knowledgeable, experienced farmer using the grazing for a herd of cattle, and the customer is just one person. In any livery trade there are a multitude of owners who require a large amount of management. Looking to the points raised in *Pawson*, a livery business has to be, as it is looking after livestock, a serious undertaking earnestly pursued. There is a lot of competition for such customers and serious marketing has to be undertaken to win new customers. There is continuity of operation; the provision of ‘overview’ is all day, every day, all year; and there is substance to the operation. For there to be a profit, a livery trade has to be run on sound business principles, making supplies to a large number of consumers, and it is a supply that is made by those seeking to make a profit.

The risks of the trade

It is fair to say that:

- horses have lumps of metal at the end of their feet that they can kick each other with
- the grass is always greener on the other side of whatever field horses are turned out in, and escaping to that field can be very attractive and needs management; and
- horses spook and can become terrified by the likes of thunder, hot air balloons, flying objects, etc, and damage limitation takes management.

The overall task of being responsible for a collection of DIY livery clients is carrying on a trade. The DIY customers have a reputation for not paying bills and fighting among themselves, and there is a large element of risk in carrying out the trade. Guidance will be found in the legal agreement between the DIY yard proprietor and the customers.

Intelligent businessman

An ‘intelligent businessman’ (a quote from *Pawson*) would never see the undertaking of a DIY livery trade as an investment business; it is a trading business. It is likely that an intelligent businessman might try to persuade that trader to choose other businesses, but at times when farming has been difficult the trade of providing livery for horses has created an alternative trade and offered reliable income streams to farmers. DIY liveries are normally one trade that forms part of a much larger trade of farming. When the activity of DIY livery is carried out in isolation from other activities, the badges of trade are normally present in the operation. ■



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