

The Trade of DIY Livery

The recent Pawson case has focused on the question of services and the difference between an investment business and the trading business for Business Property Relief (BPR) purposes.

Pawson

The Pawson case, *Mrs N V Pawson's Personal Representatives v HMRC* (2012) UK FTT 51, gives guidance on the fact that the trade of providing the service of "do it yourself" (DIY) qualifies as a trade and not as an investment activity.

Perhaps it is the name 'do it yourself' that is somewhat misleading as to what is actually involved.

John Window

Another misleading point might be the VAT treatment of DIY livery.

Following the John Window Tribunal it was confirmed that the supply of livery, where the main sup-

ply was the stabling, was a single exempt supply and that the additional services provided were ancillary to the provision of stabling.

The main point of "John Window" was that the customers did not have the facility to look after the horse at home and therefore the stable must be the main element of the supply.

Ancillary services

An ancillary service is defined as something that does not constitute for customers a main supply in itself, but is merely a means for better enjoying the principal service supply.

A supply of livery services which 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.

For VAT purposes these ancillary services follow the liability of the supply of stabling, i.e. it is the supply of stabling which is the principal supply and can still be an exempt supply – the other services just follow the main supply.

Public notice 701/15 states the VAT liability of the care of animals is:

- standard rated where there is a "special purpose" yard;
- zero rated where it is a supply of grazing; or
- exempt from VAT where it is a supply of stabling, unless there is an option to tax in place, because this is considered a license to occupy land.

The VAT treatment is very complicated.

Business Property Relief

It is possible to get the best of both worlds, and to have a livery operation that is regarded as a trade for Business

Property Relief from Inheritance Tax, but is still exempt DIY livery services for VAT purposes.

There are still a lot of services which would make the trade essentially a 'hotel for horses' and yet the principal supply is still the stable.

In *McCall* (*P N McCall and B J Keenan Personal Representatives of Mrs E J Mclean 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 trade and a business for Business Property Relief purposes, and 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.

Livery or grazing agreement?

The clear difference between a livery business and a grazing agreement is that in livery every horse is owned by a different person whereas in a grazing agreement there is generally a single knowledgeable, experienced farmer normally using the grazing for his 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.

Earnestly pursued

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.

In order 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.

A Serious Business

It has been said that "where there is livestock there will eventually be deadstock" and that is true of any livery yard and this involves a serious business earnestly pursued.

Even if a DIY yard is only offering the most basic level of supply, e.g. a license to occupy a stable or field, it is actually providing much more services by definition.

The majority of customers have full-time employment and they can only look after their horses early mornings, late evenings and at weekends, and horses have an ability to "self harm". Horses are a herd animal, they normally have a leader of the herd and the horses belonging to new customers arriving and old customers leaving can change that structure and hierarchy of the herd and cause a lot of potential damage if not carefully observed and checked upon regularly.

The Risks

It is fair to say that:

- 1) Horses have lumps of metal at the end of their feet to kick each other with;
- 2) 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;
- 3) Horses spook and can become quite terrified from the likes of thunder, hot air balloons, sundry flying objects etc, and damage limitation takes management.

The DIY customers also have a reputation for not paying bills and fight-

ing amongst themselves and there is a large element of risk characteristic with the carrying out of trade. Guidance will be found in the legal agreement between the DIY yard proprietor and the customers.

The overall task of being responsible for a collection of DIY livery clients, with all those risks to manage, therefore clearly constitutes carrying on a trade.

Intelligent Businessman

An "intelligent businessman" (a quote from *Pawson*) would never see the undertaking as an investment business; it is a trading business.

It is quite likely that an intelligent businessman might try and 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 to that of farming and created reliable income streams to farmers.

DIY liveries are normally one trade which forms part of a much larger trade of farming. When the activity is carried out in isolation of other activities the badges of trade are normally present in the operation. □

Julie Butler F.C.A.

Julie Butler F.C.A. 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)

Butler & Co, Bennett House, The Dean, Alresford, Hampshire SO24 9BH.

01962 735544.

j.butler@butler-co.co.uk

www.butler-co.co.uk