



## VAT on farm diversification

There have been two recent VAT cases on farm diversification.

### Case one: Metal storage containers

Many farmers have diversified into the trading activity of affixing metal storage containers to their land and letting out the space. There is a debate as to whether this is a trading activity or an investment activity for income tax and corporation tax purposes. A recent VAT tribunal has questioned the VAT treatment of such storage. For farmers the exempt supply treatment of this income means that there are partial exemption questions but where these storage containers are for private persons the VAT exemption can have advantages in marketing and profitability terms.

The renting of storage space within a warehouse complex is often treated as an exempt right over land rather than a taxable supply for VAT purposes.

HMRC took a case against VAT exemption applying where the storage was provided in large metal containers. In the case of David Finnermore trading as DA Hanbridge Storage Services (TC 01081) the business model employed by this company was to place large metal containers on bare land, and then hire these out to the general public wanting to use them for storage.

HMRC's argument was largely based on the distinction between a metal container that is capable of being winched into a different location or being used to transport contents, and infrastructure that is affixed to the land. HMRC focused on the VAT Directive's reference to an exemption applying to 'the leasing or letting of immovable property'. The metal containers were 'movable'.

Specific hirers were allocated specific containers, and hirers had general access to those containers as in a warehouse building. The only difference with the warehouse building concept is that the metal container is not, necessarily, a building.

The tribunal acknowledged that metal containers are more portable than buildings but suggested that this was an irrelevant distinction, since the VAT Directive was distinguishing between items that were readily portable (such as a chair) from items that were not. In the context of this case, the metal containers were not movable items; they were, by virtue of their own weight, affixed to land.

The container could not be readily moved, and the lease agreement did not allow them to be moved. On the basis of 'fiscal neutrality' the tribunal decided that it would be wrong to draw a distinction between a building infrastructure and such metal containers, and therefore the supply was decided to be exempt as a right over land.

### Case two: Bed and breakfast

Another VAT case involved bed and breakfast (B & B) carried on from a farmhouse by Mrs Forster. The farmhouse at Parsonage Farm was part of a farming partnership of which Mrs Forster was a partner. HMRC tried to argue artificial separation between the B & B and the farming business. However, the B & B had been trading since 1970, had separate books and records and none of the other partners were involved. The Tribunal found in favour of the appellants and deemed the B & B trade to be separate from the farm (AD and J Forster TC 01319).

All farmers should review all their diversified activities as the supply of land compared to the supply of service or movable object together with the status of most diversified activities currently seems important to HMRC.

Indeed whilst there is so much concern in income tax and inheritance tax terms regarding the difference between investment and trading activity, so should there be concerning the supply of storage for VAT purposes.

It is certainly important to the farmer/ landowner who has to consider business definition, commerciality and partial exemption status as part of this review.

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