

IHT and a livery stable business

(Lecture P1054 – 18.17 minutes)

A recent First-Tier Tribunal decision, which considered the availability of IHT business relief for a livery stable, could have important implications for landholders operating in other areas as well. In *Vigne v HMRC* (2017), the tax authorities, following the death of the owner, sought to disallow relief on a livery stable business that needed 30 acres of land in order to be viable.

In HMRC's view, the facts of the *Vigne* case suggested that the landowner was letting the land for the use of others, that there was insufficient activity and expenditure of a business nature and that, because the business was only modestly profitable, this could not indicate anything other than an investment in land.

However, as the First-Tier Tribunal pointed out, the statute simply requires that a business exists and that the business must not consist wholly or mainly of the making or holding of investments. It was clear in this instance that a business was being carried on and that valuable services were being provided to users of the livery that prevented that business from being one of holding investments.

In order to appreciate the impact of this case, it should be mentioned that, in the equestrian world, there are commonly four levels of livery:

1. grass livery, ie. where a horse has a right to reside in a field but is not provided with a stable;
2. DIY livery, ie. where the horse, in addition to having the right to reside in a field, is provided with a stable where its day-to-day care is undertaken by the owner of the horse;
3. part livery, ie. where day-to-day care for the horse is shared between the livery operator and the horse owner; and
4. full livery, ie. where the horse's day-to-day care, and any associated needs, are supplied by the livery operator.

In this case, the livery business did not appear to fit neatly into any of the four categories described, the reason being that, following a reorganisation in 2008, a decision was made to try and give the business a competitive advantage over other livery businesses by introducing services in addition to those which would normally be included in a grass livery or a DIY livery. The Tribunal accepted that this package included:

- the provision of worming products, including administering them to the horses when and where necessary;
- giving the horses a hay feed during the winter months when there would not be enough grass (a hay crop was grown on part of the land);
- removing manure from the fields in which the horses spent most of their time; and
- undertaking a daily check on the health of each horse.

The upshot was that the First-Tier Tribunal rejected HMRC's arguments, saying that no properly informed observer could have concluded that the business was that of holding investments. The two judges described the view of HMRC as an 'artificial' analysis.

It should be remembered that, in other cases where land has been involved, HMRC have been very keen on the following passage from the Upper Tribunal's decision in *HMRC v Pawson* (2013):

'The critical question, however, is whether these services were of such a nature and extent that they prevented the business from being mainly one of holding (the holiday property) as an investment.'

In *Vigne*, the First-Tier Tribunal asserted that this was the wrong test. It begins with the preordained idea that the business is wholly or mainly one of making or holding investments and then asks whether there are factors that point to the contrary. The proper starting point, the judges explained, is to make no assumption one way or the other but to establish the facts and then to determine whether the business is wholly or mainly one of making or holding investments.

So the taxpayer ultimately won on the grounds of common sense.

The decision recognises that business relief may now be available on activities where previously this would have been challenged, for example game shooting businesses operated by many landed estates. As long as it can be demonstrated that valuable services are provided, these businesses should benefit from this major IHT relief. *Vigne v HMRC* (2017) may well prove to be an unexpectedly significant case.

Contributed by Robert Jamieson