Outdoor celebrations

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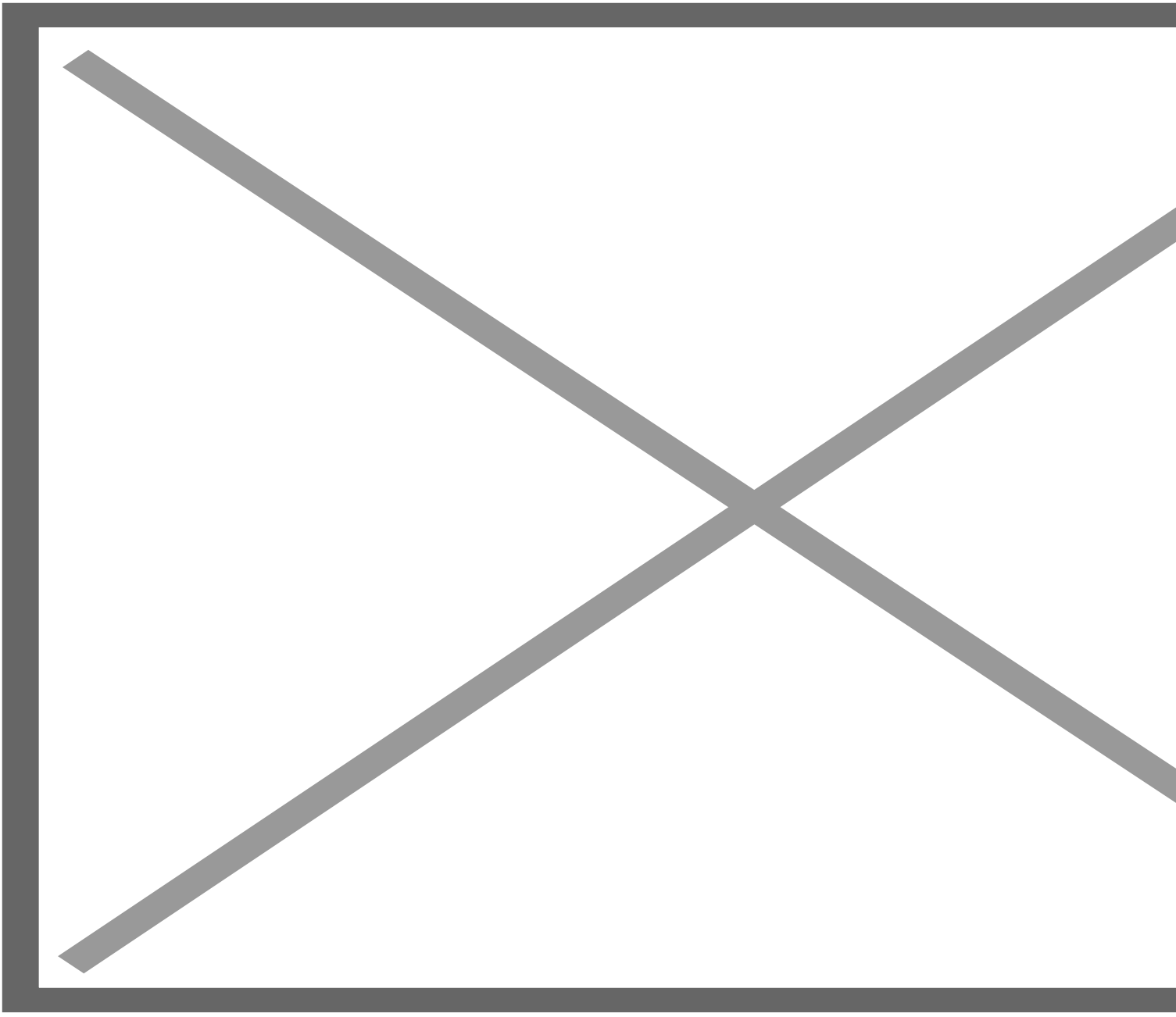

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Julie Butler considers the tax implications of providing ‘glamping’ wedding venues

Key Points

What is the issue?

The complexity of defining whether a diversified rural activity is a trade or income from property.

What does it mean to me?

The need to closely review the facts behind every form of land diversification, particularly new emerging trades like glamping.

What can I take away?

The complexity of the investment line, the fine line between property income and trading income and the different treatment between the different taxes, e.g. VAT, income tax and inheritance tax, and the aggressive approach by HMRC towards defining property income.

Some might ask ‘what is glamping?’ It might come as a surprise to learn that the answer is the quite unusual mix of glamour and camping taking place on a farm. The next question that might be asked is ‘how could any form of camping, especially on a farm, be glamorous?’ Well, high quality camping is apparently very glamorous in this decade.

Logic aside, glamping is a prosperous and popular form of farm diversification which raises a whole range of tax concerns over the tax efficiency of the treatment of equipment used etc. The first question must be as to what form of glamping, or other type of diversified farm activity, is under consideration and this will help direct the tax treatment associated with the operation. In this article we look at all areas of tax not just income tax but also inheritance tax (IHT), capital gains tax (CGT) and value added tax (VAT) associated with such property diversification.

Camping with services

Many would argue that the very title of ‘glamorous’ indicates a good quality of service, although it could also indicate a glamorous location or combination thereof. Glamping can involve yurts, tipis, pods, bell tents, shepherds huts, gypsy caravans, tree houses and a number of other alternatives. Glamping is considered to be camping with amenities and in some cases ‘resort style’ services. The idea is to provide the luxuries of hotel accommodation but also combining escapism and the rough outdoors. Glamping is about sustainable, quasi-outdoor lodging that offers a comfortable experience on the farm.

Where such glamping activity involves purely the letting out of holiday accommodation rather than operating a trade, the furnished holiday accommodation tax questions arise. It is reasonable therefore that the tax treatment must be assessed on a case-by-case basis with guidance from recent tribunals on general principles of service and what services are provided. In many situations glamping involves extensive food service and regular fresh bed linen. Such activities have generally been considered to be the badges of a trade.

Statistics produced by the Tourism Alliance (whose members include the British Hospitality Association ABTA) show that Brexit has resulted in increased income for UK ‘staycations’. With a positive hot summer in the UK and a fall in the value of the pound since the Brexit vote making holidays more expensive for Britons travelling abroad, the growth in UK tourism is something that diversified farms should take advantage of.

Bed & Breakfast trade v FHL

The new business may amount to a bed-and-breakfast trade but, if it does not, it would be considered to be the letting of furnished holiday accommodation. Such activity is deemed to be a trade by TCGA 1992, s 241 (for UK furnished holiday lettings (FHL)) for the purposes of rollover relief for CGT, and achieves a number of other CGT reliefs.

Some landowners might have sold paddocks or development land and be looking to rollover the gain into the glamping accommodation to help reduce their CGT liability. There is no reason why the cost of purchasing the caravans/structures described cannot qualify for relief if they are advertised for letting as soon as they are acquired and made ready for use, and the minimum periods of availability and occupation are met in the first 12 months and each tax year thereafter, once the letting has commenced. The averaging provisions at s 326 and 326A may assist where those minimum periods are not met in some years but not every one.

VAT on the provision of wedding facilities and other events

There has been a recent case looking at the VAT positon of provision of wedding functions. In *Blue Chip Hotels Limited* TC5078 there was a VAT victory for HMRC which could increase the price charged for weddings. The provision of wedding and glamping facilities are linked by the fact that these are now classic farm diversification activities.

The facts of the case were that the Directors of the hotel rented out the 'Tamarisk Room' for civil wedding ceremonies. The hotel treated the income from the room hire as exempt from VAT as a land supply (VATA 1998, Sch 9 Group 1). Other services linked to the wedding were provided in different rooms of the hotel. These were treated as standard-rated catering services. HMRC argued that a single supply of a standard-rated wedding package was provided by the hotel when the hirers received more than just the use of the Tamarisk Room. The First-tier Tribunal (FTT) agreed with this HMRC decision. The use of the Tamarisk Room was the supply of land, however HMRC accepted that when customers opted to hold only the wedding ceremony in the hotel, and not take advantage of the other services then the supply was exempt.

However, HMRC deemed that if customers chose to use the hotel for other wedding services, the room hire was a single standard-rated supply of providing a wedding package (group 1 item 1(d)). The reasoning was that customers buying a wedding package that included the Tamarisk Room would consider that they were receiving a single supply of a wedding package.

Participating in an event

The Judge commented that:

> 'What is being paid for here is the right to participate in a particular event (the wedding ceremony), only part of which entails the provision of the physical space in which that event occurs.'

The Tribunal reported that the high price of the room hire indicated that more than a 'passive activity' of renting out land was taking place. The action point is that the facts underlying the operation must be carefully looked at including the marketing, terms of the sale and the bookkeeping of the invoices and of course the evidence surrounding the facts for advisers and businesses when considering the VAT status of weddings and other events.

Glamping and trading income

It is considered that a well-run glamping operation where the focus is on services together with badges of trade being evidenced will be a trade for income tax purposes, however some clarity as to what is actually happening with the operation needs to be established and evidenced. The recent case of *J Nott* TC4897 considered the question of whether letting from holiday cottages was property or trading income. Such a case encompasses a lot of current HMRC focus on the status of property income and their aggressive approach to try and classify such income as being derived from property and not a trading activity.

The facts were that Mr Nott's 2009/10 Tax Return showed income from holiday accommodation, music and farming. The Return was enquired into by HMRC and they concluded that the income from the holiday cottage was property income as opposed to income from a trade. Mr Nott appealed on the basis that his holiday accommodation operation was a trading activity and the losses should be offset sideways.

HMRC had confirmed that farming losses could be set against other income for class 4 NIC purposes but the losses from the holiday cottage complex could not be offset against other income. This view was upheld by the Tribunal. The question has to be asked what was the activity giving rise to the income stream. The questions to be asked were, what were the customers paying for? The use of the land or a package of services forming part of a trade? Emphasis was placed by the FTT on the level of any services offered by Mr Nott as a key deciding factor for income tax purpose. Based on recent tribunals it appears that the IHT position must be looked at in the same context. Likewise, glamping must be looked at in terms of IHT eligibility.

Many would argue that HMRC are trying to reclassify trading businesses as an investment business in order to collect more inheritance tax (IHT) as shown in recent tax tribunal cases, for example, *Pawson [2013] UKUT 050 (TCC), McCall [2009] NICA 12* and *Zetland TC* 02690, where in each case the taxpayer lost due to lack of services. The HMRC approach appears to have been to consider a business in the context of the 'investment line' with regard to land-based businesses as opposed to looking at a business in the context of the 'badges of trade' and 'the thoughts of an intelligent businessman'. HMRC, where appropriate, tries to contest claims for BPR on the grounds that activities do not amount to a trading business, and/or even if such activities amount to a business, that the business consists wholly or mainly of making or holding investments.

There is no doubt that the owner of a property-based business will need a portfolio of evidence to show what side of the investment line the business falls on and how to beat HMRC in its aggressive and fairly unpleasant attack on genuine businesses trading and operating well into the old age (of the proprietor and taxpayer for IHT reliefs).

It can clearly be seen that there are apparent discrepancies between the treatment of the various taxes.

It is key to analyse what the glamping customers are paying for

What the customer is paying for is the question that has to be asked to ascertain the correct treatment of the glamping operation. Any farm that has diversified into glamping will have to ensure that the services are similar to a hotel if the income tax loss relief and the IHT relief are to be achieved. The inclusion of breakfast not as an option but as an all-inclusive provision is a serious consideration to help with tax efficiency.

The conclusion in para 85 of the Nott case the decision states: 'Having considered the additional services provided by Mr Nott, we consider that, while extensive, they are not such as to 'change the whole picture' in the words of Lord Greene in Sywell Aerodrome. They are in large part consistent with the services normally

provided by a landlord of furnished holiday accommodation. We agree with HMRC that the recreational facilities offered are in substance features intended to increase the attractiveness of the Units for letting, rather than additional services. The breakfasts and daily cleaning which are offered for an additional fee are insufficient to change the profit derivation from the exploitation of property to a package of services comprising a trade.'

Exploitation of property or trade

The tax treatment of the whole glamping, holiday or wedding operation must be considered 'in the round'. It must be established if the premises/mobile accommodation qualifies for capital allowances or if they qualify as assets which can be used for rollover relief. The question of the nature of the trade versus accommodation must be considered for how the profit is shown on the tax return and whether losses can be offset sideways. Emphasis will be on whether the additional services to make the camping glamorous are due to location and setting, e.g., swimming pool, or are due to services, e.g., daily cleaning, breakfast and other meals, a fully stocked fridge etc. The glamping brochures should evidence the special services over and above that of accommodation to qualify as a trade where appropriate.

Against the background of negative tax tribunal decisions for holiday accommodation, it is key for tax advisers to establish the exact nature of the operation and evidence the eligibility for tax relief.

Many would argue that with the growth in the UK tourist industry, being such an important part of the UK economy, greater clarity, guidelines and incentives could be given to the holiday industry.