

Are you sure your businesses are separate?

A recent VAT Tribunal Case *Howard and Jennifer Patrick* highlights the risk of a direction from HMRC that separate businesses be amalgamated if HMRC consider that they have been separated artificially.

East Hook Farm in Pembrokeshire is run as a partnership by Mr Howard Patrick and his wife, Mrs Jennifer Patrick. The business, which is VAT registered, includes the traditional farming activities of beef and sheep production as well as a haulage operation and the provision of self-catering accommodation in an outbuilding that has been converted into a holiday cottage.

In addition to, and quite separate from, the farm partnership, Mrs Patrick operates a Bed and Breakfast (B&B) business as a sole trader. The farmhouse is used to accommodate B&B guests with two additional rooms, in the same building as the self-catering cottage, used for those guests unable to use stairs or requiring disabled access. As its turnover was below the VAT registration threshold this business was not registered for VAT.

HMRC challenged the treatment of the B&B as a separate business and issued a direction that the farm and the B&B should be treated as a single taxable person, registered for VAT. This was upheld by the Tribunal.

The principal factors leading to this decision were that:

- The bank accounts for the farm partnership and B&B are both joint accounts.
- Putting the holiday cottage into the partnership keeps the B&B below the VAT registration limit.
- Although separate records are kept, the same bookkeeper is employed for both businesses.
- Money is sometimes transferred from the B&B bank account to the farm account to ease cash flow and is then transferred back.
- The self-catering cottage and B&B were included on the same website where they are presented as one business.
- Although advertised in separate sections of the Farm Stay website and brochure they appear to a potential customer to be part of the same business.
- The same building (a converted outbuilding) is used for both B&B and self-catering.
- A combined insurance policy in the names of both partners specifically mentions the B&B.
- The farm/haulage business is loss making and would not be viable without the holiday business.
- The properties are all owned jointly by Mr and Mrs Patrick and there are no charges for rent or for the use of fixtures and fittings by Mrs Patrick.
- The purchase of the farm and refurbishment of the farmhouse to make it suitable for B&B was financed by mortgages in the joint names of Mr and Mrs Patrick.
- The same invoice book is used for the B&B and self-catering.

Any businesses operating in similar circumstances should consider whether they operate in a way that might allow HMRC to argue that the businesses are deemed to be acting as one.

For further information please speak to your usual Ensors contact or call your local Ensors office.