Motorbikes, yachts and horses: private or mixed use?

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20 August 2025

Determining whether assets or property have a personal or business usage can have significant impact on taxation levels.

Key Points

What is the issue?

We examine how HMRC assesses the private versus business use of certain assets, such as motorbikes, yachts and horses, and the tax consequences that follow. Key cases illustrate the importance of evidencing commercial use when claiming tax reliefs.

What does it mean to me?

In *Toye v HMRC*, the director of a locksmith company claimed input VAT on three motorbikes, as they were integral to the company's fast-response locksmith service. In *Holding v HMRC*, the taxpayers purchased a property with extensive equestrian facilities and argued that part of the land should be classified as non-residential for stamp duty land tax purposes.

What can I take away?

Tax advisers must ensure that clients retain robust evidence of business use for assets that HMRC may presume to be private. It underscores the importance of strategic planning, clear documentation, and understanding how HMRC interprets usage at the time of tax submissions or property transactions.

Yachts and horses have often been grouped together as targets for HMRC with regards to private usage. However, in the recent case of *L Toye v HMRC* [2025] UKFTT 301, motorbikes have entered the fold. The case covers many tax areas, from the 'personal liability notice' and post-liquidation of Mr Toye's company to the private usage of motorcycles. The facts that led to the case are set out below.

Toye v HMRC: the use of motorbikes

Black Wolf Ltd traded as a locksmith since 2013 and was registered for VAT. Mr Toye was the sole director and shareholder, although he asserted that his nephew, Mr Chaston, owned 49% of the shares in later years and was the key decision maker. The company ceased to trade in 2022.

Input VAT claim on motorcycles

The concern of HMRC was linked to an input tax claim made by Black Wolf on the purchase of three motorcycles, which HMRC had alleged had been 'fully private vehicles with no apportionment made for private use'. It issued an assessment plus a deliberate behaviour penalty.

The company had ceased to trade, so HMRC issued a personal liability notice to Mr Toye for the penalty, which some might consider a little harsh. The personal liability notice is a timely reminder that if a company is liquidated, there can still be personal liabilities on the directors or shareholders on any errors of submissions.

Mr Toye appealed against the personal liability notice and the case ultimately came before the First-tier Tribunal. His argument was that the motorbikes had a business purpose because they were an important part of the ‘fast reception’ service that had been offered by the company to customers who had locked themselves out of their home and urgently needed a locksmith. The bikes were adjusted to be fitted with specifically designed boxes holding the appropriate tools and equipment.

This case highlights the need to evidence any business usage of questionable assets such as yachts, motorcycles and horses. Mr Toye acknowledged that the third bike was transferred to himself for private purposes when the number of employees was reduced from three to two; and that output tax should have been declared when the transfer to him personally took place.

Misleading emails

HMRC’s view that deliberate behaviour had taken place was largely due to an email from Mr Toye to the officer on 1 August 2022, in which he said that ‘none of the motorcycles should have gone through on the company’s accounts’. There was also an insurance issue that created a problem with the bikes being in the company name, rather than the individual riders’ names. The officer concluded that Mr Toye had been guilty of ‘claiming personal expenses through the company’.

Mr Toye explained that following major surgery in 2017 he had experienced sustained ill health. This had resulted in his nephew Mr Chaston managing the business for most of the years up to 2022 and ‘in his view [his nephew] was the guilty party’. Mr Toye also emphasised his personal difficulties in dealing with paperwork and written communications, telling the tribunal that he ‘never comes across well in emails’. As far as dealing with HMRC was concerned, Mr Toye explained that he had always preferred to sort out ‘matters with them face to face’.

Bikes adapted for business purposes

The First-tier Tribunal decided that Mr Toye was a ‘reliable and credible witness’. The fact that the bikes had been fitted out for business purposes was evidence that an input tax claim was justified. The tribunal found that the company had correctly sought to recover input tax at that stage, stating: ‘There is nothing, therefore, on which either a deliberate penalty assessment against the company, or the personal liability notice can bite.’ This case shows that evidence of such matters

should be retained.

The decision is a timely reminder that a behavioural penalty is always determined by the thinking of the business owner or director at the time when a return is submitted to HMRC – and not a later date when a director might acknowledge that errors were made on the return in question.

Holding v HMRC: the use of horses

The parallel with horses is that they are always seen as private. It is up to the taxpayer to prove that business usage exists and applies, or the case may be reviewed. The impact of the negative approach by HMRC on horses can be shown in many examples. The number of equine cases coming through the tribunals seemed high in recent years, including *Thorne* [2016] UKUT 349, *Murray* [2014] UKFTT 338 and *Cliff* [2019] UKFTT 564.

Likewise, stamp duty land tax tribunals have seemed non-stop. For example, in the case of *Holding v HMRC* [2024] UKFTT 337, Mr and Mrs Holding had bought a relatively large property comprising a farmhouse, gardens, swimming pool, outbuildings, equestrian facilities, paddocks and fields. At the time of purchase in August 2018, this was the Holdings' second property.

Mr and Mrs Holding had been ordered to pay £603,750 in higher rate stamp duty, as the property was deemed purely residential. However, of the total 41 acres of land acquired, approximately 24 acres of the property were fields. The Holdings argued that these fields were not part of the dwelling's grounds under Finance Act 2003 s 116(1)(b), and should be classified as non-residential ground, attracting a lower rate of stamp duty land tax.

Following an enquiry into the appellant's stamp duty land tax return, HMRC issued a closure notice amending the return to show additional stamp duty land tax was due, as the fields were acquired together with the dwelling as part of the same transaction. The Holdings disputed this, claiming that they only owed £219,500 on the transaction as the fields were non-residential property. However, the First-tier Tribunal found that the entire area was residential property, and therefore did not qualify for non-residential stamp duty land tax.

Evidence of commercial use needed

In the *Holding* case, at the time of the purchase the property had been developed to have extensive equestrian facilities, including stabling for eight horses. The fields provided winter grazing for the horses and were available for riding. The Holdings also had the option to keep animals such as sheep and alpacas. In addition, the fields provided privacy.

There was no evidence as to how the previous owners had used the fields. This would have been very helpful, as mixed usage stamp duty land tax cases are judged by what is happening on the date of completion. Evidence of independent, historic commercial use of the property would have supported the claim for non-residency.

The First-tier Tribunal said it was the existing ‘availability for use’ that was significant. It was found that the fields provided an amenity or benefit to the farmhouse and as such ‘performed a function’ to the farmhouse as a dwelling, irrespective of whether the land was more than Mr and Mrs Holding needed. The commercial use was not confirmed.

Issues for consideration

As mentioned, the First-tier Tribunal was not persuaded that the fields provided no amenity, benefit or function in relation to the farmhouse. However, there are many advantages to houses with large grounds having some commercial use. It is therefore important to look at matters that would or could have changed the decision of the tribunal in this case.

Commercial history of the fields before the property was acquired would have been pertinent. Evidence that the fields would not all be used for the amenity and benefit of the farmhouse would have also helped, such as the letting of some fields to a third party. Not only is this an income stream but it also helps protect future tax reliefs, though many argue that a change of legislation is perhaps needed to give more clarity on the subject.

A commercial business operation distinct from the residence with a history of such use prior to completion will impact stamp duty land tax. These matters should be attended to at the point the brochure for sale is put together. In order to achieve the sale, the vendor should be genuinely trying to help the purchaser with a correct claim for mixed usage stamp duty land tax and have everything prepared, especially in this current difficult property market. Ideally, planning should be in place some

years before the sale with everything looked at in the round with a real strategy and evidence to support the claim.

The Upper Tribunal case in *Suterwalla v HMRC* [2024] UKUT 188 seems to take a more positive view for the taxpayer on the definition of the commercial use of paddocks. The Suterwalla's paddocks were classified as non-residential, as they were not part of the garden and grounds. However, it should be noted that there are some differences from the *Holding* case. The paddock was let out commercially on the same day that the purchase of the property was completed. , which the First-tier Tribunal thought was important and the Upper Tribunal said was useful.Their paddock had a distinct title at the Land Registry, which was separate from the dwelling, gardens and tennis court. It was not visible from the house and was accessed via a small gate.

In conclusion

Any commercial use of horses, yachts and now seemingly motorbikes must be evidenced and retained. Memories and motives can blur, and the taxpayer must be prepared with answers to possible questions, and mindful of the well-worn private use path taken by HMRC!

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