

AGRICULTURAL SPOTLIGHT

Whitley Stimpson
PARTNERS IN YOUR PROGRESS

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TAX DEVELOPMENTS

HOW WILL YOUR BUSINESS BE AFFECTED?



PLUS: THE FARMER AND CAPITAL GAINS TAX + CAP REFORM UPDATE

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WELCOME

Welcome to the Autumn 2013 edition of Agricultural Spotlight. At the time of writing, the UK is sweltering under temperatures not seen for a good many years. Farmers up and down the country are literally making hay while the sun shines! So when you get a moment, please take a look at the articles in this issue – they just might provide the springboard for your next business decision.

We at Whitley Stimpson wish a successful harvest to you all.

This quarter focuses on new developments in taxation, including recent cases which may affect many rural businesses. We hope it provides food for thought whilst you are providing food for all.



PAYING HARVEST CASUALS AND CASUAL BEATERS

With the introduction of Real Time Information (RTI) – the new obligatory scheme for reporting payments to employees – questions have been raised over how this would apply to harvest casual workers and casual beaters. HM Revenue and Customs have now provided guidance.

Under RTI, employers and pension providers have to tell HMRC about Income Tax, National Insurance Contributions (NICs) and other deductions when or before the payments are made, instead of waiting until after the end of the tax year.

Despite this, HMRC has confirmed the long-standing arrangement between HMRC and the NFU (for harvest casuals) and the CLA (for casual beaters) remains unchanged. In most cases, this means that although the payments to the casuals are taxable, the employer is not required to deduct tax and National Insurance.

These casuals are those who:

- ▶ are taken on for up to two weeks, and
- ▶ have not worked for the employer since the previous 6th April, and
- ▶ are paid off at the end of that period, and
- ▶ have no contract for further employment.

The arrangements do not cover part-time or casual employees that are taken on for non-harvest work. They also exclude members of the employer's family. There are no special agreements if an employee is taken on for more than two weeks, and the usual process for operating PAYE must be followed.

What has changed is the reporting of the payments to harvest and beating casuals. Prior to 6th April 2013, employers simply had to file a form P38A annually for each casual which stated their name, address and pay. Now, the situation is different for employers:

What to Report

The employee's full name, date of birth, gender, National Insurance number, address, and the amount paid to them.

When to Report

Under RTI, this would mean reporting daily, but HMRC has conceded that where certain conditions are fulfilled, payments can be reported up to seven days after payment is made. This allows for weekly payrolls to be run. The conditions are broadly that the employer pays the casual in cash on the same day the work is done and there was no way of calculating the amount of pay before the employee does the work.

With employers who have fewer than 50 employees, there is still the relaxation of

the reporting rules which we discussed in last quarter's Agricultural Spotlight whereby returns can be made when the payroll is run or by the tax month end at the latest.

How to Report

As the RTI system is not designed to accommodate such employees. HMRC advise two ways to report these payments:

- ▶ Create a new employment for each casual for each day that they work for you. The employment would begin and end on the same day. This appears to put a large burden on whoever is processing the payroll. For example, if you employ five harvest casuals for five days, you will have 25 different employments.
- ▶ Or you could treat each payment as a one-off payment to an employee in continuing employment. However care must be taken with each payment not to include any previous payments in the 'taxable pay to date'. For example, you pay £50 to a harvest casual on Monday when you have already paid them £100 on Sunday. When you report the £50, the taxable pay to date is £50, not £150.

As the above suggests, RTI is still in its infancy and there are still complex issues that need addressing. It would not be unreasonable to expect further changes and if there are, we will discuss them in future Agricultural Spotlights.

If you have any queries Whitley Stimpson LLP has a dedicated payroll department with considerable experience in agricultural sector payroll processing.

INHERITANCE TAX UPDATE

THE HANSON CASE

Last year we reported on an important victory for the taxpayer in an Agricultural Property Relief (APR) case which was brought to the First Tier Tribunal.

This case centred on Mr. J. C. Hanson, who owned, by way of trust, a farmhouse and a minimal amount of surrounding farmland. The farm once comprised over 800 acres, however various transfers of the land left only a few remaining acres actually owned by Mr. Hanson. 128 acres of the original land, despite being transferred, were still farmed from the farmhouse. On the death of Mr. Hanson, 100% relief was claimed on the farmhouse under APR. HMRC disputed the validity of the claim and the case went to the First Tier Tribunal.

Both parties agreed at the time that without the 128 acres, the land would be insufficient for a claim for APR as the farmhouse would not be character appropriate to the small amount of land actually owned. The case then centred on the 128 acres, HMRC arguing that Mr. Hanson did not own the land and therefore his estate could not claim that the farmhouse was used for the purposes of an agricultural business.

The First Tier Tribunal decided that it was irrelevant whether the owner of the farmhouse actually owned the adjoining land. It was simply enough that they occupied the land. Although the land was not part of the late Mr. Hanson's legal estate, the agricultural reality was that there was a farm of over 128 acres

being farmed from the farmhouse.

HMRC appealed the case to the Upper Tier Tribunal, which again found in favour of the taxpayer, agreeing with the First Tier Tribunal. Common occupation, not ownership, was the critical factor.

In our Autumn 2012 edition, we provided a guide to ensuring you have a good chance of receiving APR on your farmhouse. For a copy, please contact us.



RPA NEWS

ONLINE SPS CLAIMS SURPASS PAPER

More than half of all farmers claiming SPS in England submitted their applications to the Rural Payments Agency electronically this year. By the final 10th June deadline more than 104,000 applications had been made, with 55,800 submitted electronically – over half of all applications.

The number of farmers using RPA's own SPS Online service increased from 38,500 in 2012 to just under 51,600 – a rise of 34%. A further 4,200 applications were made using farm software.

More than a quarter of electronic applications came from farmers and agents who were using the online service for the first time.

The RPA has expressed pleasure at the news, Customer Director Justin Chamberlain saying: *"It is really encouraging to see that increasing numbers of our customers are appreciating the benefits of making their SPS*

applications electronically and that so many chose to use the RPA's SPS Online service.

"The figures show the word is clearly spreading that SPS Online is quick and easy to use and that it provides customers with other useful benefits, such as instant receipts and checks for common errors.

"Those who have not already used SPS Online should register for the service now as the benefits do not stop at application time. They will be able to check the progress of their claim and help ensure they are paid accurately and quickly by seeing if we are waiting on any additional information.

"They can also view and print claim and entitlements statements for previous years, as far back as 2009, even if those original applications were made on paper."



CAP REFORM

KEY AREAS OUTLINED

Since our last Agricultural Spotlight, political agreement on the future of the Common Agricultural Policy has been reached in Europe. Although a lot of the finer detail remains to be negotiated, we at least have an outline of how the new structure is to work. Some key facts are as follows:

The system will be based on a Basic Payment Scheme (BPS) which will replace the current Single Payment Scheme (SPS). The first claim year will be 2015, however the new entitlements will be based on 2014 as a reference year and farmers must have claimed SPS in 2011 to qualify.

Greening

In order for claimants to qualify for 30% of their annual direct payment, they must meet the greening requirements. There will be some choice as to how member states run this aspect of the reform. Certified organic farms will automatically meet the greening requirements. The requirements are as follows:

- ▶ **Crop rotation** – those with arable areas of 10-30ha must grow two crops. Above 30ha, three crops must be grown, with no crop covering more than 75% of the whole farm and the two main crops accounting for a maximum of 95%.
- ▶ **Permanent pasture** – claimants must maintain the area of permanent grassland on the holding at 95% of the level declared in 2014. It is still to be decided whether five or seven years in grass qualifies as permanent pasture.
- ▶ **Ecological focus areas (EFAs)** – initially set at 5% of a farm's eligible arable area, this may rise to 7% after 2017. Possible qualifying features include landscape features (hedges and trees), buffer strips, fallow land, protein-fixing crops, agro-forestry and short-rotation coppice.

Active Farmer

A further requirement is that all applicants must prove that they are an active farmer. This means they will have to show that:

- ▶ Payments from CAP are more than 5% of total income from all non-agricultural activities in the most recent financial year.
- ▶ They carry about a minimum level of agricultural activity on their land. Member states will have some discretion about how this decided.

Young Farmers

All member states will be required to 'top-up' the entitlements due to farmers younger than 40 for up to five years. This will be set at 25% but qualifying areas will be limited to the average regional farm size.

Capping

Member states will have to introduce a gradual cap on entitlements. This is anticipated to cut a percentage of the proportion of entitlements which exceeds €150,000. The relevant percentage will increase depending on the amount of entitlement that falls over this limit. The original proposal of no further payments over a €300,000 limit has been removed.

Farmers and landowners are recommended to keep up to date with developments in this area and should consult their land agent if they are considering any changes to the business structure or farming activities.

THE FARMER AND CAPITAL GAINS TAX

Capital Gains Tax (CGT) planning is essential for farmers as they often have considerable chargeable assets. We provide a brief guide to the types of reliefs available to self employed farmers, whether sole traders or in partnership, to ensure you are aware that tax savings are there.

What Do I Pay Capital Gains Tax On?

The most valuable assets of the business will inevitably attract CGT on disposal. This will include land and buildings, but also milk quotas, SPS entitlements, and FBT agreements. CGT is also chargeable on plant and machinery but often these don't realise a profit. Don't forget that insurance proceeds received on the

loss of an asset are also chargeable.

Those gains which fall outside of an individual's annual exemption (currently £10,900 pa) will be chargeable at 18% or 28% if the individual pays income tax at higher rates. As you will see below, lower rates are available or the gains can be deferred. The tax is then due by 31st January following the end of the tax year in which the disposal occurred.

Entrepreneur's Relief

The holy grail of CGT planning is Entrepreneur's Relief (ER). If you can get this, you will pay a rate of 10% CGT on qualifying gains.

Broadly, this relief is available for individuals who dispose of the whole or part



of a business. To qualify as a 'part disposal' the part of the business has to be capable of separable operation.

So if a farming partnership sells the whole farm, any gain is likely to attract 10% tax. However if the same partnership sells a parcel of land from the farm, they have to show that the land had been run separately from the rest of the business. Several cases have been won by HMRC denying ER in situations where part of the land has been sold because it was successfully argued that there was a part disposal of an asset and not a business.

However with sufficient planning from your accountant you can show that a specific part of land is a business in itself, crucially saving up to 18% tax on a gain that may be in the millions.

You may also be able to get ER on the disposal of a single asset if you used it in a business which is ceasing or ceased within the last three years.

Roll Over Relief

If you make a disposal of a business asset which realises a gain, there are opportunities to defer paying any CGT if you reinvest the proceeds. You have to purchase the new asset within three years of the disposal of the old asset, or have already purchased it up to one year before. If you do this, you may be able to defer the gain until you dispose of the new asset.

For example, you sell land for £500,000 and realise a gain of £200,000. If you then reinvest £500,000 in some buildings for use in the farm business, you will not pay any tax on the £200,000 gain until you sell those buildings.

Qualifying assets for this relief are generally land and buildings, fixed plant and machinery,

but also include milk and potato quotas.

There are many potential pitfalls which may deny this relief so it is important that you consult your accountant before making any significant decisions.

Principal Private Residence Relief

Although selling the farmhouse to move to a new property on the premises may not attract ER, do not forget that you can get full relief on the gain on the sale if the house was your only or main residence at any point.

Of course there are certain restrictions to the 100% such as when you have let out part of the house so it is important to know the implications of any decisions you are likely to make when it comes to the occupation of the farmhouse.

Hold Over Relief

Assets used in the business can be gifted to individuals without the transferor realising the gain. Should parties both agree, the gain is then passed to the recipient and is only realised on the future disposal of the asset. Such a relief could be used to pass business assets down to the next generation. However remember that on death there is a tax free uplift to probate value which should be taken into consideration when planning the succession of the farming business.

This is not a comprehensive list - there are many other reliefs available. It is therefore crucial that you keep your accountant up to date with your various plans to ensure the maximum tax savings are obtained. We at Whitley Stimpson have had considerable success in mitigating Capital Gains Tax for our agricultural clients and would welcome the opportunity to work with your business.

Talk to someone who understands the real issues

Accounting for agriculture, farming and rural business is a specialist area that requires expertise and an understanding of the industry. Our dedicated team come from farming backgrounds and offer a clear understanding of the issues facing farmers.

We provide professional knowledge and hands-on experience in the agricultural sector. We have worked with agricultural businesses for over 80 years, providing the expert advice that is required to help you enhance the potential of your farming business.

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