



**AGRICULTURAL** Whitley Stimpson  
CHARTERED ACCOUNTANTS AND BUSINESS ADVISORS

# SPOTLIGHT

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## TRADING OR NOT?

HMRC CHALLENGES  
STUD FARM STATUS

**PLUS: INTRODUCTION OF HS2 COMPENSATION PACKAGE**

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# WELCOME

Welcome to the Spring edition of our Agricultural Spotlight and a belated Happy New Year to all of our readers. Since our last edition, we have seen the last Autumn Statement of the current government, a few snow flurries and hopefully your RPA payment for 2014. In this issue, we look at the Autumn Statement in more detail and round up a few relevant tax cases. We hope it provides food for thought!



# AUTUMN STATEMENT

## AGRICULTURAL SECTOR CHANGES

As our last edition was sent out days before the Autumn Statement we are allowed a little time for the dust to settle so we can pick out the announcements which will affect those in the agricultural sector.

### INCOME TAX AND NATIONAL INSURANCE

- ▶ The personal allowance for individuals will increase to £10,600 from 6 April 2015. This means that you will not need to pay tax on the first £10,600 of your income, however if your income exceeds £100,000 this will gradually be reduced to nil.
- ▶ The upper limit for the basic rate band will fall to £31,785 from 6 April 2015. This is the amount of income which will be subject to tax at 20% only.
- ▶ Income between £31,785 and £150,000 will continue to be taxed at 40%.

- ▶ Employer National Insurance contributions up to the upper earnings limit for apprentices aged under 25 will be abolished from April 2016.

### SAVINGS AND PENSIONS

- ▶ The government will legislate to allow an additional ISA allowance for spouses or civil partners when an ISA saver dies, equal to the value of that saver's ISA holdings on their date of death.
- ▶ From 6 April 2015 the annual amount you will be able to invest in an ISA will rise to £15,240.

- ▶ From April 2015, beneficiaries of individuals who die under the age of 75 with remaining uncrystallised or drawdown defined contribution pension funds will be able to receive any future payments from such policies tax free where no payments have been made to the beneficiary before 6 April 2015.

### STAMP DUTY

- ▶ With effect from 4 December 2014, the government changed the calculation of Stamp Duty Land Tax (SDLT) on purchases of residential property so that rates apply to the portion of the purchase price within each band. This is similar to how income tax is currently charged. (Before, SDLT was charged at a specific percentage across the whole value of the residential property).
- ▶ The new rates and thresholds are as follows:
  - The portion up to £125,000 charged at 0%.
  - The portion between £125,001 and £250,000 charged at 2%.
  - The portion between £250,001 and £925,000 charged at 5%.

- The portion between £925,001 and £1,500,000 charged at 5%.
- The portion over £1,500,000 charged at 12%.

- ▶ No changes have been made to the rules governing non-residential or mixed use property, which farms normally qualify under. This remains at 4% for transactions valued over £500,000.

### FUEL DUTY

- ▶ Fuel duty has been frozen until at least the end of the current government in May 2015. The next planned increase is due in September 2015.

Should you want to discuss how these recent announcements will affect your business, please contact us at Whitley Stimpson Limited. The final budget of this government is expected on 18 March 2015 and we will be covering the announcements in our next issue.

# HS2 UPDATE



An extensive package of compensation and assistance for property owners along the London to Birmingham route of High Speed 2 (HS2) has been introduced.

Owner-occupiers of homes and small businesses between generally 60 metres and up to 120 metres from the line in rural areas can submit an application to HS2 Ltd to purchase their property at the full, un-blighted value under the voluntary purchase scheme. This is the value of the property as if there were no plans for HS2.

As an alternative to the voluntary purchase scheme, these eligible property owners will also have the option to accept a cash offer of 10% of that same value and stay in their homes and businesses. This will support people who want to remain in their community.

Those beyond the 120 metre boundary but within 300 metres of the line in rural areas will, following Royal Assent of the Phase One HS2 Hybrid Bill, be able to apply for a homeowner payment ranging from £7,500 to £22,500, which will enable them to share early in the benefits of the railway.

Eligible owner-occupiers living any distance from the line of route can now apply to the need to sell (NTS) scheme, which also pays the un-blighted value to people with a compelling reason to sell their property, but who have been unable to do so – other than at a substantially reduced price – due to HS2. The criteria for the NTS scheme is more

relaxed than the exceptional hardship scheme (EHS) it replaces and, unlike the EHS, will consider applications from those who may not need to move immediately.

HS2 Ltd have also launched a residents' charter to help ensure that residents are treated in a fair, clear, competent and reasonable manner. The Residents' Commissioner overseeing the charter has been confirmed as Deborah Fazan. In her new role, she will ensure that HS2 Ltd meets its commitment to the communication standards and personal support set out in the new charter.

Transport Secretary Patrick McLoughlin said: *"This comprehensive package of compensation and assistance is looking after those people who live along the HS2 route while balancing our responsibilities to the taxpayer. People at the heart of this vital new railway will*

*also benefit from HS2 Ltd's new residents' charter and the appointment of the Residents' Commissioner, who will ensure that the commitments in the charter are upheld. Building HS2 will create extra space on our rail network, create jobs and support business and is a vital part of the government's long-term economic plan".*

This new package supplements the express purchase scheme which has been available to those within the safeguarded zone (generally within 60 metres from the proposed line) since April 2014. This existing scheme gives those people a streamlined process for selling their property to the government at the un-blighted value, plus 10% (up to a maximum of £49,000) and reasonable moving costs, including stamp duty and legal fees. As of end of December 2014, 60 properties have already been bought under this scheme at a total cost of £54.2 million.



# TAX CASES ROUNDUP

Very often we come across cases where agricultural businesses have had to go to tribunal to resolve a dispute with HM Revenue and Customs. Not every tax situation is covered in law so there can be differing opinions between HM Revenue and Customs and taxpayers in interpreting tax law. The following cases have been recently heard at tribunal.

**Fleming Agri-Products Ltd** – The company, which is based in the UK and supplies agricultural machinery, sold equipment to a customer in Ireland. When you make sales of goods from the UK to the EU, the sales normally can have VAT charged at 0% provided:

- ▶ the goods are sent out of the UK to another EU country
- ▶ whoever you're sending them to is VAT registered in another EU country
- ▶ you get their VAT registration number, including the 2 letter country code, and show it on your sales invoice
- ▶ you've got 'evidence of removal' showing that the goods have gone out of the UK
- ▶ you dispatch the goods and get evidence of removal within 3 months

If any of these are not met, then the sale must have VAT charged at the appropriate rate depending on what is being supplied, usually 20%.

The sale in question was made on the basis that the goods had left the UK and the customer was VAT registered in Ireland. However the customer had actually deregistered for Irish VAT, unbeknownst to Fleming Agri-Products Ltd.

HM Revenue and Customs claimed that as the customer was no longer registered for Irish VAT, the company should have charged VAT at 20% to the customer. They therefore raised an assessment for the VAT totalling £87,158. The company appealed to the tribunal.

Fortunately for the company, the First Tier Tribunal believed that they had carried out reasonable steps to ensure that the customer was VAT registered. They had traded with the Irish customer many times before, had reviewed the customer's VAT status every two or three years, and there was no good reason for them to believe that the customer had ceased its registration. The company's appeal was allowed.

This case highlights the need for the proper procedures to be in place when selling goods overseas, it being especially important to check that repeat customers remain VAT registered. Fleming Agri-Products Ltd was saved from paying over a significant amount of VAT because it had shown that they did do this.

For further information about VAT and trading overseas, please contact a member of the agricultural team.

**E Blaney** – The taxpayer had sold land used for breeding horses and claimed Business Asset Taper Relief on the gain on disposal. Whilst Business Asset Taper Relief has been abolished in recent years, the principles are still relevant to the availability of other tax reliefs.

This case centred on whether the land was a business asset. If it was, then the relief would be available. If not, then the gain would be taxable in full. In making their decision, the judge referred to a series of characteristics that are common to trading entities – the badges of trade. These characteristics are used often in cases to identify those genuinely trading from those not.

The Badges of Trade are:

- ▶ **Profit seeking motive** – is whatever you are acquiring being purchased mainly to realise a profit? If so, this points to a trading activity.
- ▶ **Number of transactions** – are you trading regularly or infrequently? Those with infrequent sporadic transactions appear less likely to be trading than those who make regular sales.

▶ **Nature of the asset** – what is being bought and sold? For example, compare building materials to classic cars. Building materials are normally bought and sold by those trading; classic cars are more often bought and sold by those not in business.

▶ **Existence of similar trading transactions or interests** – if what is being sold is in line with the other activities of the business then it is likely to be a trade.

▶ **Changes to the asset** – if supplementary work is undertaken to make an asset more marketable then it is more likely to be a trade. Compare developing a property, which is likely to be a trade, with simply holding a property and selling it on without any additional work.

▶ **The way the sale was carried out** – actively seeking a purchaser rather than receiving an unsolicited offer will lend more to trading.

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- **Source of finance** – if the financing of an asset is to be repaid on the subsequent sale of that asset, then this would indicate a trading motive.
- **Interval of time between purchase and sale** – if something is bought and then immediately resold, then it is more likely that this is a trading transaction.
- **Method of acquisition** – if you acquire assets by inheritance or gift for example, then you sell the assets, this is not likely to be a trade.

All these should be looked at together as no one badge on its own will indicate trading. However they are often used in cases and did apply in the case above as follows:

- **Profit seeking motive** – Mr Blarney was judged to have acquired the horses primarily with the motive of enjoying the challenge of breeding a successful racehorse, rather than to make a profit.
- **Nature of the asset** – whilst many do successfully trade as racehorse breeders, most people have horses as a hobby and this weighed against Mr Blarney's assertions that he was trading.
- **Changes to the asset** – the court suggested that to improve (and therefore increase the value of) the racehorses they should have been entered in races. No such activity was undertaken in this instance.

- **Existence of similar trading transactions or interests** – Mr Blarney was a builder so there were no other similar transactions to support his trading case.
- **Number of transactions** – there were no sales in seven years of the alleged trade.

Mr Blarney's appeal was dismissed on the basis of the above. This is not an unusual decision as HM Revenue and Customs are often keen on challenging the trading status of horse breeders.

Tax treatments differ significantly depending on trading status. Often, such as in Mr Blarney's case, you want to show a trade as this results in favourable tax rates on the disposal of assets or on their inheritance. It is also possible to use losses from that trade against other types of income.

On the other hand, you may not wish to show a trade as this leaves you exposed to higher rates of tax and National Insurance when you do make a profit, or the requirement to register for VAT.

If you are concerned whether your business may fail the trading test or that you might be caught out as trading when you are not, contact our specialist agricultural department who will be happy to make the situation clearer for you.

## RPA EXCEEDS PAYMENTS EXPECTATION

The Rural Payments Agency (RPA) has exceeded its Single Payment Scheme (SPS) 2014 target for the end of March, more than two months ahead of schedule.

By 28 January the Agency had paid a total of nearly £1.46 billion to nearly 100,000 farmers in England. This equates to 98.4% of farmers eligible to claim and 97.3% of the total estimated fund value.

In its 2014-2015 Business Plan, the RPA had set targets for 97% of customers and 97% of total estimated fund value to be paid out by 31 March this year.

Farming Minister George Eustice said:

*"Our farming industry is at the heart of the government's long-term economic plan, so I am pleased that the RPA has ensured that almost all farmers have already received their CAP payments, almost two months ahead of schedule."*

*"I am determined that the RPA's good progress is maintained as we move to the new Basic Payment Scheme, and we are working to ensure the claim process is as simple as possible for farmers on the new digital service called Rural Payments".*





## 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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