

AGRICULTURAL

Whitley Stimpson
PARTNERS IN YOUR PROGRESS

SPOTLIGHT

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THE AGRICULTURAL WAGES ORDER

ARE YOU UP TO DATE?

PLUS: CAR OR VAN? FEES FOR INTERVENTION – DON'T GET SURPRISED

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**THE HARVESTS ARE HOPEFULLY ALL IN
SUCCESSFULLY, DESPITE THE WEATHER'S
BEST EFFORTS TO DELAY.**

WELCOME

Welcome to our winter 2012 edition of Agricultural Spotlight. What a turbulent last six months! The harvests are hopefully all in successfully, despite the weather's best efforts to delay. Yields and quality have generally been disappointing but prices seem to be holding up. And agricultural show season has been and gone for those who could get the time to go. Thought now turns to making preparations for housing the livestock through the darker months...

We hope that you will be able to get a quiet moment to read this issue and that it proves informative and interesting. As always, our specialist agricultural team are available for consultation and advice on a wide range of business issues, so if anything leaves you with questions please do not hesitate to contact us.

This edition includes articles on recent changes to agricultural wages; new health and safety costs; qualifying activities for Agricultural Property Relief; and the crucial tax differences between cars and vans.



ARE YOU UP TO DATE WITH THE AGRICULTURAL WAGES ORDER?

On 1st October 2012, the Agricultural Wages Order 2012 came into effect. This annual order sets out the legal requirements for all workers employed in agriculture, detailing requirements such as minimum wages, holiday entitlements, allowances and grants. The order applies to any worker employed in agriculture anywhere in England and Wales. This quarter, we set out the new requirements in paying agricultural workers.

Minimum Wages for Agricultural Workers

The Order specifies grades and categories of agricultural worker. Deciding which type a particular worker is depends on their contract of employment, the number of hours they work, when they work these hours, their responsibilities, their qualifications and various other factors. A full breakdown of each grade is available in full at <http://www.defra.gov.uk/>

[publications/files/awo2012-guidance.pdf](#)

The grades and categories along with the new minimum wages (with overtime in brackets) are as follows:

Grade 1 – Initial Grade (below compulsory school age): £3.11 (£4.67)

Grade 1 – Initial Grade (above compulsory school age): £6.21 (£9.32)

Grade 2 – Standard Grade: £6.96 (£10.44)

Grade 3 – Lead Worker: £7.66 (£11.49)

Grade 4 – Craft Grade: £8.21 (£12.32)

Grade 5 – Supervisory Grade: £8.70 (£13.05)

Grade 6 – Farm Management Grade: £9.40 (£14.10)

Apprentice

Year 1 apprentice: £3.57 (£5.36)

Year 2 apprentice – age 16-17: £3.68 (£5.52)

Year 2 apprentice – age 18-20: £4.98 (£7.47)

Year 2 apprentice – age 21+: £6.19 (£9.29)

On Call Allowance

A worker is on-call when they have agreed with their employer that, on a day they are not at work, they will be contactable by an agreed method and able to reach the place where they may be required to work within an agreed time.

A worker who is on-call is entitled to an on-call allowance for that period. It is a sum equivalent to two hours overtime pay at the rate applicable to the worker's grade or category. It is not payable if the worker is actually called in as overtime is paid (minimum 2 hours).

Travelling Time

Agricultural workers are considered to be working when they are travelling for the purpose of carrying out their duties, for example travelling from one field to another and should be paid at the appropriate minimum rate for that time.

Night Work Supplement

Workers undertaking night work are entitled to an additional £1.36 on top of the minimum wage. Night work is any work undertaken between 7pm and 6am, however the first two hours are not counted. Children cannot lawfully be employed to work at night under the Order.

Dog Allowance

If it is necessary for a worker to keep a dog (or dogs) for the purposes of their employment, they should be paid a sum of at least £7.63 per week for each dog.

Agricultural Sick Pay

Under the Agricultural Sick Pay (ASP) scheme a worker who is off sick receives payment of

at least the appropriate agricultural minimum wage for their normal hours worked, including hours of guaranteed overtime (although these are paid at the basic rate). Qualifying workers are those who have been continuously employed by the same employer for 52 weeks immediately prior to the commencement of the period of sickness.

For any period of a worker's sickness absence which lasts for less than 14 days, no agricultural sick pay is payable under this Order for the first three days of that worker's sickness absence. Therefore brief absences from work do not entitle the worker to agricultural sick pay. Payment for absence from work due to sickness is generally made for all normal working days up to the maximum number of ASP days to which the worker is entitled under the Order.

Further information on the levels of sick pay for different classes of workers can be found in the Order itself at: <http://www.defra.gov.uk/publications/files/awo12.pdf>

Record Keeping

Employers are required to keep records in order to prove that their workers have been paid at least the agricultural minimum wage under the Order. In addition, the National Minimum Wage Act 1998 gives workers themselves a right to inspect such records.

Whitley Stimpson LLP has been operating payroll schemes for farmers for many years and is available for queries and assistance with employment law. If the administration of your workers' pay is a hassle you could do without, please do not hesitate to contact us for further information.

CAR OR VAN?



AN IMPORTANT DISTINCTION FOR TAX IS WHETHER A VEHICLE PURCHASED FOR USE IN THE BUSINESS IS A CAR OR A VAN. THE TAX TREATMENT DIFFERS FOR BOTH SO IT IS A CONSIDERATION THAT SHOULD BE MADE WHEN DECIDING WHAT TYPE OF VEHICLE TO PURCHASE.

VAT

If you are VAT registered, VAT can be reclaimed on the purchase of a van but not on a car. Compare a car and van both on sale for £10,000 + VAT, the van will cost you £10,000 and the car will cost you £12,000.

If you go on to sell this car you do not have to charge VAT on the sale and cannot

issue a tax invoice. You should however charge VAT on the subsequent sale of a van.

Business Tax Implications

For income tax and corporation tax (where the business is in a company), a van is considered to be plant and machinery. This means that the cost of the van can be up to 100% deductible against the farm's trading profits where the van falls within the £25,000 Annual Investment Allowance (AIA) given across all plant and machinery expenditure in a year. Otherwise the van will attract an allowance against trading profits of 18% per annum on a reducing balance basis.

A car does not get such favourable treatment. Low emission cars (<110 g/km) do get 100% allowances, but at this level of CO₂ emissions they are unlikely to be used in

any farm business. Cars with CO2 emissions between 110g/km and 160g/km do attract tax relief like vans at 18% per annum on a reducing balance basis, but the 100% AIA is not available. Vehicles which have emissions over 160g/km (most larger cars) only get 8% writing down allowance per annum.

To illustrate the two extremes, take a self employed farmer considering either buying a van for £15,000 or a car with emissions of 200g/km also for £15,000. If he purchased the van and had only made £10,000 of other machinery purchases in the year, then £15,000 would be fully deductible against trading profits. This equates to a potential tax saving in the year of purchase of £3,000 (or £6,000 if he was a higher rate taxpayer).

On purchasing the car instead, he would only be entitled to an 8% deduction, being £1,200. This is despite his level of other asset purchases. This means a potential tax saving in the year of purchase of only £240 (or £480 at higher rates).

Is it a van?

In the majority of cases, there is no argument over the classification of a vehicle. However occasionally it is not altogether clear whether the vehicle is a car or a van.

Car derived vans are based on cars and look similar to cars on the outside. But either the manufacturer or a vehicle converter has altered the inside of the vehicle so that it's sold as a commercial vehicle. For example the rear seats

and seat belts will have been taken out and a new floor panel will have been fitted in the back to make a load area. The rear side windows will have been replaced by opaque panels.

HMRC considers that a car derived van is a commercial vehicle when it meets the following conditions:

- ▶ The alterations that the manufacturer or vehicle converter makes meet the technical requirements above. If you're not sure if the alterations do meet the requirements it's advisable to get written confirmation from your vehicle supplier. You can contact HMRC if you need more information about the guidance.
- ▶ The adaptations give the vehicle the functionality of a commercial vehicle. For example, it's not enough to just take out the back seats.
- ▶ It must be quite clear that the space that remains behind the front row of seats is highly unsuitable for carrying passengers.

HMRC has produced a list of car derived vans which, although not comprehensive, do provide confirmation of the status of certain vehicles. This is a useful place to start if there is any doubt about what type of vehicle you are purchasing. The link to this document can be found at <http://www.hmrc.gov.uk/vat/sectors/motors/what-is-car.htm>

IF YOU ARE VAT REGISTERED, VAT CAN BE RECLAIMED ON THE PURCHASE OF A VAN BUT NOT ON A CAR.

Similarly, HMRC do clarify the status on double cab pickup trucks. These are the pickups which have:

- ▶ a front passenger cab that contains a second row of seats and is capable of seating about 4 passengers, plus the driver
- ▶ four doors capable of being opened independently, whether the rear doors are hinged at the front or the rear (two door versions are normally accepted to be vans) and
- ▶ an uncovered pick-up area behind the passenger cab.

Although single cab pickup trucks are classified as vans as they have a primary function of transport of goods or burden, the addition of more seats raises the question of the business use of the vehicles. HMRC's interpretation of whether they are vans or not is as follows: "a double cab pick-up that has a payload of 1 tonne (1,000kg) or more is accepted as a van... Payload means gross vehicle weight (or design weight) less unoccupied kerb weight (care is needed when looking at manufacturers' brochures as they sometimes define payload differently)".

Although there are many considerations in deciding to purchase a farm vehicle, the tax treatment of the vehicle should not be neglected. If there is any uncertainty, the best course of action is to discuss with HMRC on their **VAT helpline: 0845 010 9000**.

For further information, please do not hesitate to contact one of the agricultural team at Whitley Stimpson LLP.



VAT ON SELF STORAGE

From 1st October, new rules came into force which meant that businesses which supply space for self storage of goods would now have to charge the standard rate of VAT on all invoices. Previously this had been an exempt supply.

This only concerns the provision of space for the storage of goods. The supply of a warehouse or any other building for any other use will not be subject to VAT unless an option to tax has been made.

Farming businesses should be specifically aware of the changes if they rent out shed space for the storage of crops, feeds, fertilisers or farm machinery, to name but a few examples. However the renting out of sheds for storage of livestock does not count as self storage of goods and remains exempt.

For further information on how this might affect your business, please contact a member of the agricultural team.

AGRICULTURAL PROPERTY RELIEF – AGRICULTURAL LAND AND PURPOSES

Last quarter, we took a brief look at the potential problems that can arise on claims for Agricultural Property Relief (APR) on farmhouses. This quarter focuses on the land itself and how certain circumstances can jeopardise such a claim.

Agricultural property is defined as:

- ▶ agricultural land or pasture;
- ▶ woodland ancillary to agricultural land or pasture occupied with it;
- ▶ buildings used in connection with the intensive rearing of livestock or fish, provided such a building is ancillary to agricultural land or pasture occupied with it; and
- ▶ cottages, farm buildings and farmhouses, together with land occupied with them, provided they are of a character appropriate to the property.

Buildings cannot qualify on their own – they have to be connected with land used for agriculture. Therefore the intensive rearing of livestock in buildings does not qualify if there is no land attached.

The land must not only be agricultural property, it needs to be used for agricultural purposes. The following are generally considered to be agricultural purposes:

- ▶ Cultivation to produce food for human consumption - This includes fruit growing. However it is important that the fruit grown and sold is on a commercial basis. A 2001 case held that an orchard planted with damson trees, the surplus fruit of which was sold on an ad hoc basis, did not qualify for APR.
- ▶ Use of land to support livestock kept to produce food for human consumption or other products such as wool.
- ▶ Use of land to support other animals as may be found on an ordinary farm - Land used to graze horses will only qualify if the horses are used in the farm business. If they are kept for leisure only then the land will not qualify.
- ▶ Breeding and grazing of racehorses on a stud farm.
- ▶ Land set aside for permanent or rotational fallow.



- ▶ Cultivation of short rotation coppice - Short rotation coppice is a perennial crop of tree species planted at high density, the stems of which are harvested above ground levels at intervals of less than ten years. The cuttings are used as fuel for biomass-fed power stations. Buildings used in the cultivation of short rotation coppice are included as agricultural property.
- ▶ The growth of seeds for flowers and food crops.
- ▶ Tree nurseries.
- ▶ Growing grass for turf.

The following are not agricultural purposes:

- ▶ Keeping of livestock other than to produce food for human consumption. For example, keeping deer as pets or rearing of game birds.
- ▶ Reeds used in thatching - This is a good example of the lack of cultivation deciding the status of agriculture. Decided in a case in 1982, APR was denied as all the taxpayers had to do was cut down the reeds. The absence of any tillage of the soil meant that the reed beds could not be agricultural.
- ▶ Land kept for fishing and sporting rights.

Bio-energy crops for biomass or biofuels are now being more widely grown and may constitute qualifying uses of land. There has been no challenge as of yet to claims for relief on land used in this respect.

Where land fails to qualify for APR, the owner must consider the exposure to Business Property Relief which can provide up to 100% relief on the value of the assets.



REMINDER SELF ASSESSMENT FILING DATE 31ST JANUARY 2013

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All individual and partnership self assessment tax returns need to be submitted online and any tax due paid by 31st January 2013.

If you haven't yet submitted your return, please be aware that you may incur penalties if you leave it until after the deadline. These begin with an automatic £100 charge per return and increase after 30 days and 6 months. If the business is in a partnership, each partner has to pay a penalty if the partnership return is late. This can mean that partners will be subject to two sets of penalties if their own self assessment returns are also outstanding.

Overdue tax also carries interest, chargeable from the first day the tax is late. Balancing payments can also have additional 5% surcharges if still unpaid after 30 days and 6 months.

**For more information, please
contact a member of the
agricultural team.**

FEES FOR INTERVENTION – DON'T GET SURPRISED

On 1st October 2012, the Health and Safety Executive (HSE) introduced a cost recovery scheme known as Fee for Intervention.

Under The Health and Safety (Fees) Regulations 2012, those who break health and safety laws are now liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action. An hourly rate of £124 will be charged to those businesses who have committed a "material breach" of their health and safety obligations.

The HSE define a material breach as one where you have broken a health and safety law and the inspector judges this is serious enough for them to notify you in writing. This will either be a notification of contravention, an improvement or prohibition notice, or a prosecution. HSE gives examples such as not providing guards or effective safety devices to prevent access to dangerous parts of machinery; or keeping materials containing asbestos in a poor or damaged condition resulting in the potential to release asbestos fibres.

THE HSE DEFINE A MATERIAL BREACH AS ONE WHERE YOU HAVE BROKEN A HEALTH AND SAFETY LAW AND THE INSPECTOR JUDGES THIS IS SERIOUS ENOUGH FOR THEM TO NOTIFY YOU IN WRITING.

The time charged at £124 per hour will include:

- ▶ carrying out visits (including all the time on site during which the material breach was identified);
- ▶ writing notifications of contravention, improvement or prohibition notices, and reports;
- ▶ taking statements; and
- ▶ getting specialist support for complex issues.

The total time will be invoiced and payment required within 30 days.

The HSE insist that those businesses which comply with their legal obligations will continue to pay nothing. However this is an added pressure to businesses such as farms where there is considerable need for monitoring health and safety and the changes to legislation.

For further information, visit the HSE website at: <http://www.hse.gov.uk/>

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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