

AGRICULTURAL

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SPOTLIGHT

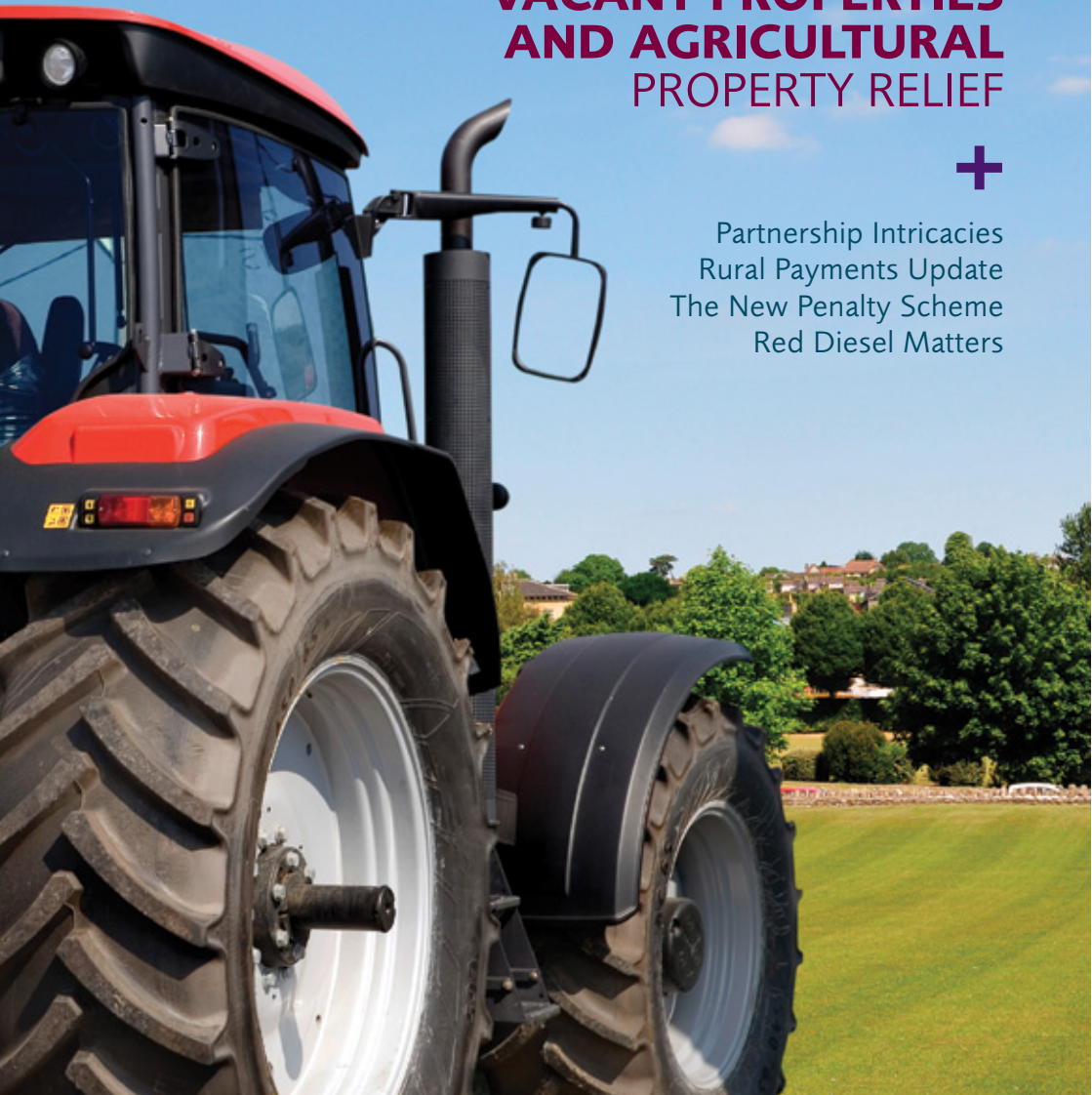
Spring 2012 \ Issue 04

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VACANT PROPERTIES AND AGRICULTURAL PROPERTY RELIEF



Partnership Intricacies
Rural Payments Update
The New Penalty Scheme
Red Diesel Matters



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**ALTHOUGH THE UK STILL
APPEARS TO BE RELUCTANT TO
EMERGE FROM WINTER, THE
EYES OF THE AGRICULTURAL
WORLD ARE SET FIRMLY ON
THE FUTURE**

WELCOME

Welcome to the Spring 2012 edition of Agricultural Spotlight, our quarterly newsletter. Although the UK still appears to be reluctant to emerge from winter, the eyes of the agricultural world are set firmly on the future. We hope therefore that this issue will provide an informative glance at several developments currently affecting many in the sector and highlight certain matters you may have to consider in the upcoming months.

This quarter's edition covers a range of topics including HMRC's stricter tax penalty regime; guidance on the use of red diesel; and the latest revelations from the Rural Payments Agency.

But firstly, we concentrate on issues relevant to partnership ownership of agricultural property and the potential pitfalls in this area which farmers must avoid to ensure maximising tax savings.





VACANT PROPERTIES AND AGRICULTURAL PROPERTY RELIEF

The question of the use of property on farmland has once again hit the tax headlines when HM Revenue and Customs won a recent appeal, *HMRC v Atkinson* [2011] UTUK; a case centred on the claim for Agricultural Property Relief.

The case concerns a Mr. Atkinson, the senior partner in a farming partnership known as *W.M. Atkinson & Son*. Mr. Atkinson occupied a bungalow on the farm which had been let under an agricultural tenancy to the partnership. In the later years of his life, Mr. Atkinson had to go into residential care, leaving the bungalow unoccupied but still maintaining his role as partner by contributing to business discussions.

The First Tier Tribunal upheld the claimant's assertion that the property was

indeed used for an agricultural purpose, accommodating the senior partner who was still active in the running of the business.

However, the Upper Tribunal overturned this decision. Whilst agreeing that the partnership was the occupant of the property, it disagreed that the partnership's occupation was connected with the farm's agricultural activities once Mr. Atkinson had left for residential care. It was not likely that Mr. Atkinson would return to re-occupy the property and therefore from the date he went into care the property ceased to be used in the running of the business.

It was acknowledged that a temporary period of non-occupation would not necessarily lead to the loss of Agricultural Property Relief, although this would depend on the specific circumstances of each case. It does however highlight for all potential claimants that special care should be taken in any circumstances whereby the occupation of property on farmland may be seen as not supportive of agricultural activities.

Claimants are reminded that Agricultural Property Relief is an "all or nothing" claim. 100% relief is given only if all the conditions are met – there is no proportionate relief. A property could have qualified for 50 years, but ceased to qualify in the very last year before transfer and the claim would fail. Therefore, the importance of informed and timely professional advice in making an APR claim cannot be underestimated.



PARTNERSHIP INTRICACIES

One of the most prevalent misconceptions about partnerships concerns who actually owns business assets. Partners do not have a proportionate share of specific assets, but instead they hold an interest in partnership capital.

Take the example of a farming partnership which is made up of a husband, wife and their eldest child. The parents introduce an asset into the partnership and intend to leave it shared equally amongst their three children. Unfortunately this legacy in their wills would not be valid – the asset would be tied up within the parents' interests' in the partnership and would be distributed accordingly.

Needless to say, such misunderstandings about the true ownership of land, buildings and other assets can result in unexpected charges to Inheritance Tax, Capital Gains Tax, Stamp Duty Land Tax and VAT.

Matters of partnership ownership of property are subject to the Partnership Act 1890. A basic guide to the provisions is as follows and will help illustrate why this can be a grey area:

- ▶ Property originally brought into the partnership, or acquired on account of the firm, are to be held as partnership assets. The same applies to property bought with partnership cash.
- ▶ Assets shown in the partnership balance sheet will almost certainly be a partnership asset.
- ▶ In addition the absence of an asset from the balance sheet does not mean that it is not partnership property. Certain assets do not have an initial cost, such as entitlements to subsidies and therefore will not appear in the farm's accounts. However the partnership will be deemed to own the entitlement, rather than the individual partners.
- ▶ If a partnership lets land, it cannot own the freehold. However the tenancy will be the property of the partnership.
- ▶ Title of ownership is not definitive evidence of ownership status. An asset purchased using partnership funds in the name of one of the partners is still partnership property.
- ▶ Trust law can help define partnership property. If a partner takes a lease on behalf of the partnership, then amendments of the lease made to the tenant will also accrue to the partnership. Equally, if partners who are also trustees of a settlement use the trust fund, against the trust rules, to buy property for the partnership, that property will be held by the partnership on trust for the settlement and not as partnership property.
- ▶ Assets may be held on trust for the partnership, but on the partnership's termination the asset will revert to the original owner. These assets are not considered to be the property of the partnership. The benefits of having a decisive and up to date partnership deed are evident here.

OWNERSHIP OF PARTNERSHIP PROPERTY SHOULD BE TAKEN INTO CONSIDERATION IN ALL CIRCUMSTANCES WHEREBY TITLE MAY PASS, SUCH AS OUTRIGHT DISPOSALS TO WILL LEGACIES.

► A declaration of trust is a simple and valuable way of evidencing that an asset always has been held as partnership property or of converting the personal assets of the partners, or some of them, to be held as partnership property. This can take the form of minutes from a partnership meeting detailing the other partners' agreement. Nevertheless there are Capital Gains Tax and Stamp Duty Land Tax implications of transferring personal property into a partnership and professional advice should be sought.

Ownership of partnership property should be taken into consideration in all circumstances whereby title may pass, such as outright disposals to will legacies. Landowners must ensure that they have all information on ownership pitfalls before embarking on transfers of land.





RURAL PAYMENTS UPDATE

At the time of writing, some farmers are still waiting on their Single Payment Scheme (SPS) subsidies. However, with DEFRA making increasingly timely payments, we take a look at what the Rural Payments Agency (RPA) is currently saying and whether this will be of comfort to farmers still without their annual payment.

Agricultural Minister Jim Paice updated Parliament early in 2012 on the situation saying: "One of the performance indicators I set the Rural Payments Agency for the 2011 Single Payment Scheme was to pay 78% of the total estimated fund value to a minimum of 86% of eligible claimants by the end of December 2011. I can now confirm to the House that those figures were reached and exceeded.

By the end of 31st December 2011, RPA had made payments totalling some £1.427 billion (82.5%) to 92,066 English farmers (87.8%). These figures represent the highest ever proportion of SPS payments made by the Agency in the opening month of the payment window. As such, it is a good example of the progress being made at RPA as it strives to deliver an improved level of service for English farmers in its administration of the scheme.



HOWEVER, THE UNSETTLING NEWS FOR EXPECTANT FARMERS IS THAT SUDDEN AND GREAT IMPROVEMENTS ARE NOT EXPECTED.

The focus now is on validating the remaining claims and making the related payments as soon as possible. Expect further progress with a view to ensuring that the second SPS 2011 performance indicator (to have paid a minimum of 95% of both the eligible claimants and the total estimated value by the end of March 2012) is also met.

The reasons for improvements on last year are given as more complex claims are being addressed at an earlier stage, and in some cases, being dealt with manually. This comes as little comfort for up to 14,000 farmers who are fed few details about the reasons for the delay to their own payments. For many the lack of the single largest cash injection into business is causing many to reassess their business plans for 2012.

However, the unsettling news for expectant farmers is that sudden and great improvements are not expected. RPA chief executive Mark Grimshaw addressed the NFU council in late January, outlining several worrying fundamental problems with the RPA including incomplete and inaccurate information relating to past, present and future scheme claims; poor technology and computer systems; inadequate organisational structure, as well as unsuitable customer service systems. Mr. Grimshaw did intimate that these problems would not be fully rectified at least until 2014.

DEFRA has published the following tips to ensure claimant's awareness of their future claims. Crucially, the last tip is the most important. If possible, get your claim in early to be one of those whom RPA deal with first.

DEFRA's tips

Register now to see the online services on offer (businesslink.gov.uk/sps-claim). More and more farmers are using the electronic service - over 31,000 applied online in 2011. Benefits include:

- ▶ on-screen checks to reduce errors
- ▶ instant proof of receipt
- ▶ no postage costs or delays claim tracking
- ▶ view and print claim statements and entitlement statements.

Look out for your new 2012 guide to cross compliance. All farmers in England will get a copy early in the New Year. The booklet (also available on the RPA website at rpa.defra.gov.uk/crosscompliance) includes key things farmers need to know and a useful reminder of the important diary dates. It also contains the new standard Good Agricultural and Environmental Condition (GAEC) 19 (see more below).

The other key new rules being introduced from 1st January 2012 are under the Statutory Management Requirement covering Nitrate Vulnerable Zones (SMR 4). These cover storage capacity for slurry produced on the holding and spreading slurry with low-trajectory equipment or other technique such as band-spreading or injection.

Check and update your Soil Protection Review for 2011 and 2012. Remember that from next month (1st January 2012) RPA takes over from the Environment Agency for cross compliance inspections on the following Statutory Management Requirements (SMRs):



- ▶ SMR 2 – Groundwater
- ▶ SMR 3 – Sewage Sludge
- ▶ SMR 4 – Nitrate Vulnerable Zones
Good Agricultural and Environmental
Condition (GAEC)
- ▶ GAEC 18 – Water Abstraction.
- ▶ A new GAEC 19 (No Spread Zones)
will also come into effect on the same
day which will help protect water from
pollution by fertilisers and manures.

Make sure anything you send to RPA is easily identifiable and tracked. Order more SBI barcode labels by calling RPA on 0845 603 7777. These should be firmly attached to any correspondence, forms without barcodes and maps you send by post or by hand.

Check your maps. If you've made any changes to your land that are not included on your maps you should fill in a Rural Land and Entitlements (RLE1) form and send it to the RPA with maps marked up to show the changes clearly. If you tell the RPA now, the agency will be able to send new maps back to you and include the updated areas in your SPS 2012 application which will make it easier for you.

Make entitlements transfers early. Send the RPA an RLE1 before 2nd April 2012 if the new holder of the entitlements wants to claim payment in 2012. You can print an RLE1 form from the RPA website at rpa.defra.gov.uk/rle1 or you can request one by calling 0845 603 7777.

THE NEW PENALTY SCHEME

Is your tax return still late? HMRC's new penalty regime means it is now more important than ever to meet your tax return deadlines.

Any individuals who have yet to submit their 2011 Self Assessment Tax Return will have been levied with a £100 penalty. Unlike previous years, this is now not refundable should the individual have no tax liability.

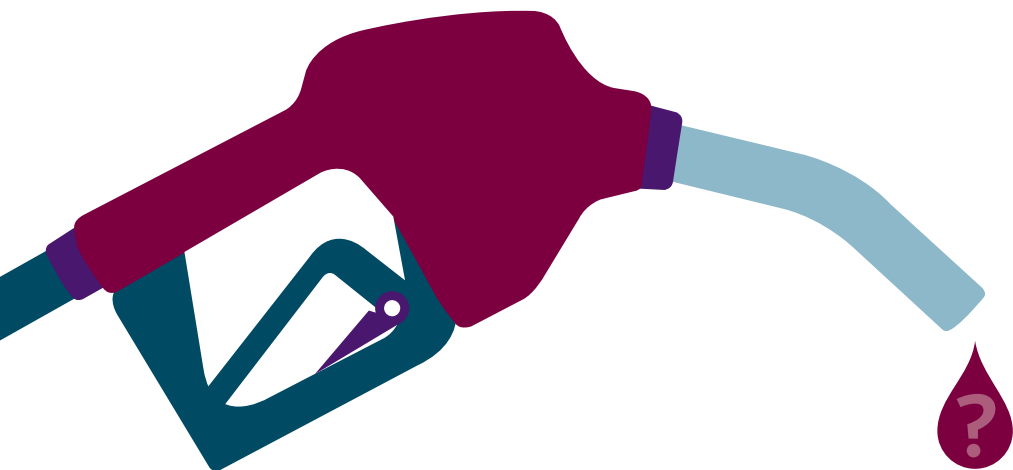
Once the return is three months late, HM Revenue and Customs may charge daily penalties of £10 per day for up to 90 days. By the end of July the total fixed penalties will have reached £1,000 and additional tax geared penalties will then apply.

These are:

- ▶ If not received by the end of July, the higher of £300 or 5% of the total tax due.
- ▶ If not received by the end of January 2013, an additional £300 or 5% of total tax due, whichever is higher.

As a reminder for partnerships, the penalties will be payable by each partner, as before. This may mean that partners are liable for two sets of penalties if both partnership and individual returns are outstanding.

It is therefore crucial that farmers and other businesses get in touch with a professional accountant or tax advisor who can ensure that their returns are kept up to date to avoid substantial penalties which could damage cash flow in many businesses.



RED DIESEL MATTERS

HM Revenue and Customs has been keen to make the distinction between the use of red diesel and when you must use duty paid fuel, i.e. road fuels. They recently conducted a review which considered whether there was scope for the extension of red diesel entitlement to vehicles undertaking certain community/charity activities.

In January, they posted a brief outlining their findings. The use of tractors to perform grass cutting of rural communal land and recreation areas for no payment was considered. The review concluded that there should be no change to the current rules but that guidance should be published to help those concerned to understand when it is permitted to use red diesel in vehicles that are being used to cut grass.

Vehicles which meet the requirements of one of the following categories can use red diesel for cutting grass:

- ▶ unlicensed vehicles not used on public roads
- ▶ tractors
- ▶ mowing machines

**TO QUALIFY IN THE
'TRACTORS' EXCEPTED
VEHICLE CATEGORY
THE VEHICLE MUST
BE AN AGRICULTURAL
TRACTOR**

The rules for qualification in each of these categories are explained in the following paragraphs from HMRC's guidance:

Unlicensed vehicles not used on public roads

A vehicle that is not used on the public road and has no licence under the Vehicle Excise and Registration Act 1994 is an excepted vehicle. If a vehicle has become untaxed since 31st January 1998 it requires a Statutory Off-Road Notification (SORN). A vehicle for which a SORN has been made is eligible to use red diesel. Unlicensed vehicles that do not require a SORN may also use red diesel so long as they are kept off-road. Consequently, a tractor, mower or utility vehicle used for grass cutting which never goes on the public road can be fuelled on red diesel.

Tractors

"To qualify in the 'Tractors' excepted vehicle category the vehicle must be an agricultural tractor which the legislation defines as one that:

- (a) is designed and constructed primarily for use otherwise than on roads, and
- (b) is used on public roads solely for:
 - (i) purposes relating to agriculture, horticulture or forestry;
 - (ii) cutting verges bordering public roads; or
 - (iii) cutting hedges or trees bordering public roads or bordering verges which border public roads."

In the view of HMRC, landscaping and the maintenance of recreational facilities are not agriculture, horticulture or forestry. As a result, a tractor cannot use red diesel when travelling on the public road to or from a job involving

grass cutting/maintenance work at golf courses, playing fields, parks, cemeteries or other grassed areas of a similar sort. However, a tractor can use red diesel to cut grass if the grass is being cultivated for harvesting as fodder or if it is growing on the verge of a public road.

Mowing machines

In HMRC's opinion 'mowing machine' means either a purpose-built mowing machine, or a vehicle which has been permanently adapted for the sole purpose of mowing. A tractor with mowing equipment attached to it is not a mowing machine, nor is a utility vehicle to which mowing machinery can be temporarily attached. However, a vehicle consisting, for example, of a Land Rover chassis with permanently fixed grass cutters, designed and constructed for cutting grass and suitable solely for that purpose, would qualify in the mowing machine category.

Summary

To summarise, red diesel can only be used to perform grass cutting where the vehicle is unlicensed and never uses the public road;

OR the vehicle is designed and constructed primarily for use other than on roads and the grass being cut is being cultivated as animal fodder or grows on the verge of a public road;

OR the vehicle is either a purpose-built mowing machine, or a vehicle which has been permanently adapted for the sole purpose of mowing.

A vehicle not included in the above descriptions is not eligible to use red diesel for cutting grass.

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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