

# AGRICULTURAL SPOTLIGHT

Whitley Stimpson  
PARTNERS IN YOUR PROGRESS

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## FINANCE ACT 2013 WHAT DOES IT MEAN FOR FARMERS?



**PLUS: INHERITANCE TAX – PAWSON DECISION REVERSED**

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# WELCOME

Welcome to the Summer 2013 edition of Agricultural Spotlight. Many hoped 2013 would be an improvement on 2012, but such hopes have been dashed by one of the coldest springs on record. So our fingers are crossed for a quick turnaround in fortunes for all in the sector.

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.

# FINANCE ACT 2013 – WHAT DOES IT MEAN FOR FARMERS?

**G**eorge Osborne's 2013 Budget has been given considerable press over recent months. Multiple commentators and news agencies have all had a good chance to air their views and vitriol. You could therefore be forgiven for not being able to pick out the points relevant to your business. We will address the main points that you should be aware of and assess the impact of each of these on rural businesses.



### **3p per litre fuel duty rise scrapped**

This had been due to be implemented in September and represents over two years of fuel duty freezes by the coalition government, the last increase being in January 2011. George Osborne claims that as a result of this policy, fuel is 13p per litre cheaper than it would have been had the rises been implemented in full. Such news may prove of little comfort to many businesses who continue to suffer from increasing oil prices.

### **Personal allowance to rise to £10,000 from April 2014**

A year earlier than planned, the total amount that individuals can earn without having to pay income tax will rise to £10,000 in the 2014-15 tax year. The personal allowance for the 2013-14 tax year is £9,440 for those under 65 at 6th April 2013.

The increase is the culmination of the coalition government's plan to take the lowest earners out of tax altogether and has seen an increase in the personal allowance of £3,525 since 2010-11. It is anticipated that future personal allowance increases will now be limited to inflationary adjustments.

In all the political spin that comes with the budget, Osborne neglected to mention that although the personal allowance will cover any obligation to pay income tax, many employees and self-employed individuals will still have to pay National Insurance. For example, the self employed individual is still required to begin paying 9% Class 4 NIC on profits over £7,755 for 2013-14, well below the current £9,440 personal allowance. There

will be no significant increase to this limit. Individuals should therefore be aware that if they earn less than £10,000, they are not necessary "taken out of tax altogether".

### **Employment allowance**

Of significant interest to many small employers is the Employment Allowance due to come in with effect from April 2014. Essentially, employers will no longer have to pay the first £2,000 of Employer's National Insurance in each tax year. For some businesses, this means that they will no longer be taxed on having employees. For others with Employer's NIC bills over £2,000, their pre-tax profit will improve by £2,000 per annum.

It is expected that this allowance will simply take the form of a credit against the Employer's National Insurance obligations as they arise throughout the payroll year. It is hoped that such a measure will remove one of the barriers to individuals setting up a business and employing people.

### **Main rate of Corporation Tax**

The main rate of Corporation Tax will be reduced to 21% from 1st April 2014 and to 20% from 1st April 2015 to match the small companies' rate. This will mean that the UK will have a flat 20% Corporation Tax rate across all sizes of company.



### Tax simplification for smaller businesses

Legislation will be introduced to allow for smaller unincorporated businesses to use a simpler form accounting when calculating profits for tax. It is anticipated that this will take the form of a "cash in, cash out" basis, with minor accounting adjustments. The smaller businesses permitted to use this are likely to be the ones who fall below the VAT threshold, being those with annual receipts of £79,000 or less.

The proposals however have received a critical mauling from accountants and business advisors who suggest that the proposed scheme will end up being more complicated than simplified.

### Simplification of Class 2 NIC

The government will consult on plans to collect Class 2 NIC from self-employed individuals through Self Assessment alongside income tax and Class 4 NIC. Currently, those individuals liable for Class 2 NIC have to pay direct to HM Revenue and Customs throughout the year.

### Annual tax on dwellings held by non-natural persons

In response to Stamp Duty Land Tax avoidance schemes whereby wealthy individuals place residential property in excess of £2m into corporate structures, legislation will be brought in with effect from 1st April 2013 to levy an annual charge on the property owners.

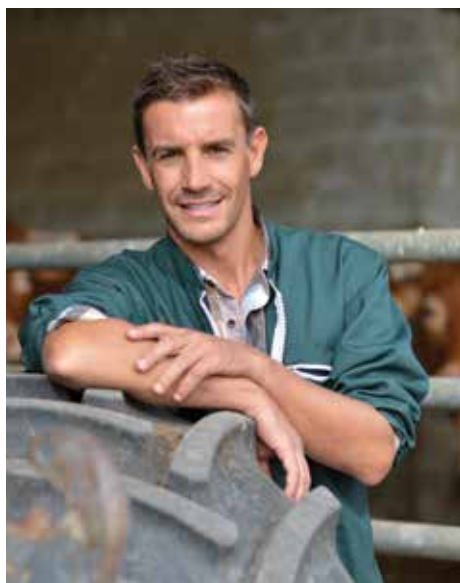
Broadly, these "non-natural persons" include companies, partnerships where there is at least one corporate member, and collective investment schemes.

Genuine commercial businesses will not be affected and special reliefs will be available to properties such as working farmhouses or residential properties which are open to the public for at least 28 days a year.

### Pension Annual Allowance

The budget confirmed that the Annual Allowance for pension contributions will fall to £40,000 from 1st April 2013. Now, individuals will only get tax relief for gross pension contributions up to this amount, however any unused allowances do still get carried forward three years.

**If you are likely to be affected by any of the matters above and wish to discuss them further, please contact a member of the agricultural team.**



## HARSHER PENALTIES INTRODUCED FOR THE SINGLE PAYMENT SCHEME

The Rural Payments Agency has announced that it will be introducing tougher penalties for farmers who have overclaimed on their Single Payment Scheme declarations.

These penalties will be imposed on those who have made "intentional" over-declarations resulting in an entitlement which is 0.5% in excess of what should

have been claimed. Intentional over-declaration is broadly where farmers have deliberately claimed for ineligible payments or where they should have foreseen that their application was incorrect.

The normal penalty structure remains in place for those errors, which the RPA adjudge not to be intentional.

## HMRC RELEASE E-LEARNING FACILITY

HM Revenue and Customs have produced an online course to help those wanting to start their own business. This course has been written specifically for those starting out in agriculture and provides information and guidance on the taxation side. It also proves very useful for those already in business to brush up on various tax matters! The course is located at: [www.hmrc.gov.uk/courses/syob2/farm](http://www.hmrc.gov.uk/courses/syob2/farm)



# INHERITANCE TAX

## – PAWSON DECISION REVERSED

In our September 2012 edition of Agricultural Spotlight, we ran an article on the success of the taxpayer in a First-Tier Tribunal case known as Pawson (Deceased) v HMRC.

Mrs. Pawson owned 25% of a cottage in Suffolk, with the remainder owned by her children. The family occupied the property themselves for three weeks during the holiday season, however they also let it as a holiday cottage. Turnover was not particularly high and small profits were made in the last few years. When Mrs. Pawson died, a claim for Business Property Relief was made.

Business Property Relief (BPR) is given at 100% for an interest in a business owned by a sole trader or a partner, but the rules on what constitutes a business are complex. Property held as an investment, such as a property available for long term letting is specifically excluded from BPR.

HMRC had challenged the claim in the First Tier Tribunal, arguing that the income was derived from holding land and not from activities common to running a business. Their claim was dismissed on the basis that the partnership provided additional services and facilities which would not ordinarily be required, over and above the general upkeep of the property. For example, the Pawsons' property was let fully furnished; was cleaned between every stay; new bed linen was provided; television and telephone services

were available for guests; and the garden was tended to ensure a pleasant situation. Mrs. Pawson and the other partners were also constantly looking to rent the property out.

This decision was referred to the Upper Tribunal on appeal, which has subsequently reversed it. Lord Justice Henderson ruled that the activity was more akin to the holding and maintaining of an investment rather than the running of a business and sought to demonstrate that "the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity".

Furthermore the services which had been provided "were all of a relatively standard nature" and therefore not more significant than the use of the land. Normal property letting businesses are considered to be investments for the purposes of Inheritance Tax and Lord Justice Henderson drew no distinction between these and furnished holiday lets.

It is understood that the executors will be taking their decision to the Court of Appeal. Nevertheless the above decision will strike a blow to all those who rent out furnished holiday homes.

**If you are concerned about the passing down of your assets, please do not hesitate to contact Whitley Stimpson LLP for advice on Inheritance Tax planning.**



## NIC AND SLEEPING PARTNERS

**H**MRC has recently announced that all partners in a business would be required to pay National Insurance Contributions (NICs) with effect from 6th April 2013.

For the first time, this includes sleeping partners. These are partners who take no active part in running the business yet share in the profits. They are defined in partnership loss legislation as partners who spend less than 10 hours a week on the partnership's business activities.

HMRC's view is now that sleeping partners are self-employed and therefore must pay Class 2 and Class 4 NICs. The consequence of this is that the inactive

partners must advise HMRC of their self-employed status and arrange to pay Class 2 NICs. They will also be required to account for Class 4 NICs on their 2013/14 Self Assessment return and all future returns in circumstances where active partners would normally be assessed to NIC.

HMRC have confirmed that they will not be requiring sleeping partners to pay Class 2 or Class 4 NIC for periods before 6th April 2013.

**If you believe that this affects you or partners in your business, please contact a member of our agricultural team.**



## VAT – BUSINESS OR NON-BUSINESS?

A recent VAT case has shown the potential risks in trying to reclaim VAT on an activity, which could qualify as a hobby rather than a business.

The case, decided by the First Tier Tribunal, concerned a company called Goodman Equine Limited. The company purchased a horse to start its business of "show jumping and trading in horses". It attempted to claim the £73,167 VAT on the horse and was blocked by HMRC.

The Tribunal decided the case on whether or not the company was actually pursuing a business activity, applying the following six tests set commonly used in such cases:

- ▶ whether the activity is a serious undertaking earnestly pursued;  
*Does it look like a business? Are reasonable efforts being made to make profits supported by proper documentation?*
- ▶ whether the activity is an occupation or function actively pursued with reasonable or recognisable continuity;  
*The business cannot be simply picked up and put down when convenient. It must consume the time of the proprietor on a regular basis. Income should not be totally unpredictable and should be able to be reasonably forecast.*
- ▶ whether the activity has a certain measure of substance as measured by quarterly or annual value of taxable supplies made;  
*The business must achieve significant results. It would not be enough to have one or two sales every now and then, there must be a notable quantity of transactions to show that a business is being conducted.*
- ▶ whether the activity is conducted in a regular manner on sound and recognised business principles;  
*There must be evidence that profit-making sales are regularly sought with every cost recorded and monitored. Good offers should be accepted if there is no reasonable expectation of better offers. Your supplies should be marketed or at least offered to potential customers.*
- ▶ whether the activity is predominantly concerned with the making of taxable supplies to consumers for a consideration;



The main concern of the business is to make sales. It should not be secondary to anything else, for example, selling excess fruit and vegetables which have been grown on a hobby farm.

- ▶ and whether the taxable supplies are of a kind which, subject to differences of detail, are commonly made by those who seek to profit by them.

Are the activities usually undertaken by businesses? For example, do people who sell horses usually do it as part of their business or are they simply transactions which happen in the course of their recreational activities?

The Tribunal decided that Goodman Equine Limited failed on most of these points. The company did not have a regular source of income, only receiving infrequent stud fees and sponsorship receipts and in fact, even turned down a good offer for the horse. Indeed, it concluded that the company's activity was "more closely connected to the pleasure and social enjoyment of equestrian activities by Mrs Goodman than it is to a business".

Those in the agricultural sector should be aware that if there is any doubt about the status of their business then it will jeopardise their ability to claim input VAT and also the availability of 100% Business Property Relief against future Inheritance Tax liabilities.

**Whitley Stimpson LLP has considerable experience in ensuring that your business is treated as such, so you don't miss out on the tax reliefs available to you. For more information please contact a member of the agricultural team.**

## PAYROLL MATTERS

### Increase in Minimum Wage

It has been announced recently that the national minimum wage is to rise by 12p an hour to £6.31 for adults and by 5p to £5.03 to 18-20 year olds from 1st October 2013.

This is all the more relevant for those in the agricultural sector given the demise of the Agricultural Wages Board, meaning the special rates for those employed in agriculture will no longer be applicable from October.

### Real Time Information

HMRC has recently announced a relaxation in the filing deadlines of payroll information for employers with fewer than 50 employees under the new Real Time Information (RTI) scheme.

The general rule is that payroll information must be sent electronically on or before the time the employee is paid. However, the relaxation permits employers to send the information to HMRC on the date of their regular payroll run instead, as long as this is not any later than the end of the tax month (i.e. the 5th). This is currently in force until 5th October 2013.

This will be a brief respite from the increased administrative burden that many small businesses will face and is a result of pressure from small businesses and accountancy firms.

We ran an article on RTI in last quarter's Spotlight. If you would like to receive a copy or have queries on RTI, please contact us.

## 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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