# AGRICULTURAL SPOTLIGHT

Whitley Stimpson
CHARTERED ACCOUNTANTS AND BUSINESS ADVISORS

Winter 2014 | Issue 15

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## TAXATION IMPLICATIONS

OF FARM DIVERSIFICATION ACTIVITIES

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# WELCOME

Welcome to the winter edition of Agricultural Spotlight. As the working hours fall with the daylight hours, it is the time when many in the agricultural sector take stock of the past year and make plans for the future. We hope that 2014 has been a good year for you and wish you all the best for Christmas and the New Year.

# TAXATION IMPLICATIONS
## OF FARM DIVERSIFICATION ACTIVITIES

For decades now farmers, faced with squeezed profit margins, have moved away from fully agricultural activities and diversified in the hope of securing a more stable and reliable income. The list of potential business opportunities is vast and has increased in recent years with the ability to generate energy through wind and solar power. In the following article, we consider the taxation implications of such diversifications.

### TRADE OR INVESTMENT?

Central to the debate is whether the new activity constitutes a trade or an investment. As we will see below, this has a significant effect on various taxes.

Often the diversification involves renting out land or buildings, for example in pasturage agreements or leasing land for solar units or wind turbines.

On the face of it, these appear to be changing the use of the land from a trading asset to an investment. However there are factors which may indicate that in fact a trade is being carried on:

**▶ Active vs. Passive**
A trade requires active involvement. This must involve significant time and, potentially, expenditure on the part of the owner. Simply renting out a piece of land or buildings without real involvement would certainly be seen to be a passive activity: you are receiving income without spending time or costs in generating that income.

**▶ Risk**
A trade carries with it a real risk of making a loss. Compare using a field to grow crops to renting that same field out. The rent is much less risky and this will often be a determining factor in cases where the distinction is being argued.

**▶ Duration of activity**
A long term agreement may indicate an investment more than a short term contract, although this is less important than the factors above.



### THE TAXATION IMPLICATIONS

**▶ Income Tax**
Self employed individuals pay the same rate of income tax on both trading and investment income. Losses from trades are available to offset against other income where rental losses are not. However this is a distinction which may not be relevant with the rental of land as this is not likely to yield a loss in itself.

**▶ National Insurance**
Trading receipts are subject to National Insurance on self employed individuals at rates of 9% (and 2% on profits over £41,865). Investment income does not suffer National Insurance.

**▶ Capital Gains Tax**
There are various reliefs available on the disposal of business assets which allow for the gain to either be deferred into a new business asset or passed to the recipient of the asset. These are only available for assets used in a trade and not for investment assets. Also Entrepreneur's Relief (an effective rate of 10%) is available on the gain on the disposal of business assets where there is cessation of trade.

**▶ VAT**
The VAT implications do not change whether it is a business or an investment. It depends on what is being supplied. Often land and buildings are exempt from VAT, but not always so this is something to check with your professional advisor.

**▶ Corporation Tax**
For companies, there is no difference in the tax rate between trading and investment income.

### INHERITANCE TAX

The tax which is most significantly affected by the trading vs. investment distinction is Inheritance Tax. There are two main Inheritance Tax reliefs that farmers and landowners look for.

Business Property Relief (BPR) is available on assets which have been in a farming business for the last two years before death or transfer. This gives 100% relief for those assets owned by the business on the market value at the date of death or transfer, or 50% relief for assets owned personally but used in the business of which the owner controls or is a partner in.

Agricultural Property Relief (APR) is given at 100% of the agricultural value of farmland and buildings used for the purposes of agriculture by the owner in the last two years before death or transfer. Alternatively, where the owner does not farm the land themselves, 100% APR can still be claimed where someone else has used the land and buildings for the purposes of agriculture for the last seven years before death or transfer of the assets.

APR is useful where the assets are not used by the owner themselves. Often this covers the farmhouse which rarely receives BPR. This is a general outline only – APR is subject to many differing interpretations such as what agricultural activities are or whether the house is a genuine farmhouse for example. APR is also given on the agricultural value only, often being lower than the market value. Farmers are advised to consultant their accountants regularly to ensure that they protect this very valuable relief.

Therefore it is clear that a move away from agricultural activities may jeopardise the availability of both BPR and APR on the assets at death. We therefore present the following examples to illustrate this:

**Rental of land for agriculture**
With little input from the farmer, this is considered to be an investment activity. This means that BPR would not be available as the land is no longer considered to be a business asset. Of course, if the land were to be used in the future by the farmer for agriculture, then BPR is available after two years as above. The claim to APR should not be affected as long as the land continues to be used for agricultural purposes.

**Grazing rights**
Selling grazing rights is certainly a borderline case and one where the more activity that can be put in by the farmer, the more likely it would be seen as a trading receipt. The sowing, fertilising and weeding of the land by the landowner gives weight to this argument, as does the length of time of the agreement – e.g. renting the land only for a season.

**Share farming**
If the farmer is receiving a fixed price per acre then this would be considered to be rental income, however if there is an active involvement that can be demonstrated where all income and costs are identified then HMRC should allow this as a trading activity. This would preserve BPR as the land is a business asset, not an investment. As above, the claim to APR should not be affected.

**Photovoltaic electricity generating units and wind turbines**
If land is rented to a third party who installs these on the land, not only is BPR denied as the land is now an investment, but the land stops being used for the purposes of agriculture so APR would not be available either. However a potential solution to keep the land treated as used for agriculture is the grazing of livestock around the units.

If the farmer owns the assets themselves and uses the energy generated in the farming business or sells the energy as a separate trade then BPR may be available.

**GLIMMER OF HOPE...**

There is a light at the end of the tunnel for farmers who may be concerned that some of their activities can be seen as investment activities. Where investment assets are owned by businesses they may still get 100% BPR if they can be shown to be part of an overall business and not a significant investment itself. This is known as the 'in the round' test and looks at five factors:

1. The overall context of the business
2. Asset value
3. Turnover
4. Net profit
5. Owner and employee time spent.

So a field rented out on a large farm may still qualify for BPR, unlike a situation where most of the farm is rented out making up most of the owner's income.



**TAKE ADVICE & TAKE ACTION**

As you can see, the decision of how to use your business assets can have significant taxation implications in the future. Always discuss the big decisions with your accountant so you are not caught out. We at Whitley Stimpson Ltd have the expertise to ensure that your decision is the right one – **please contact a member of the agricultural team for more information**.


# SELF ASSESSMENT DEADLINE LOOMS

All individual and partnership Self Assessment tax returns for the year ended 5th April 2014 need to be submitted online and any tax due paid by 31st January 2015.

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.

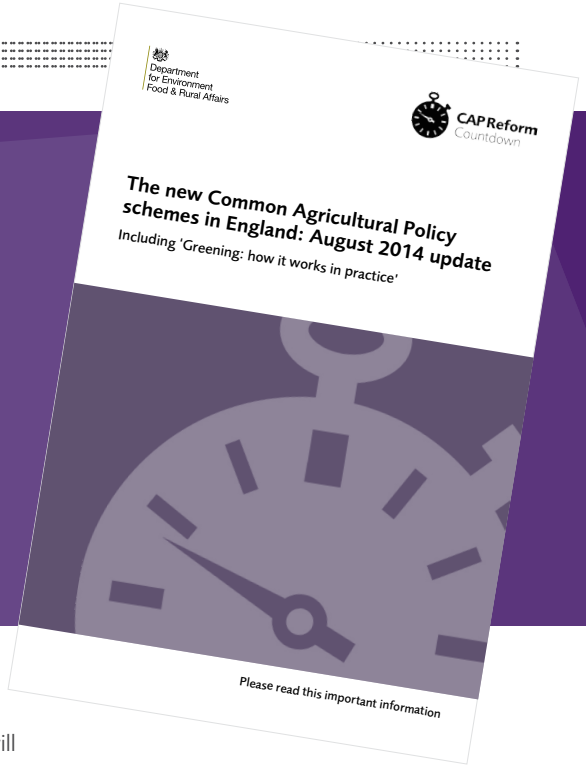
The tax due is the balancing payment for the year ended 5th April 2014, plus the first payment on account for the year ended 5th April 2015, if required.

Overdue tax 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 again after 6 months.

**For help completing your 2014 return please contact us and we will be happy to advise.**

# MORE DETAILS RELEASED ON CAP REFORM IN ENGLAND

More details have been unveiled about how the new CAP will be implemented in England, with the publication of the latest CAP Reform leaflet. Defra, working with the Rural Payments Agency (RPA), Natural England, Forestry Commission and the Rural Development Team has published more information on how the new schemes will work, as part of a drive to ensure people know what they need to do to claim and when.


Department for Environment Food & Rural Affairs

CAP Reform Countdown

The new Common Agricultural Policy schemes in England: August 2014 update

Including 'Greening: how it works in practice'

Please read this important information

The latest leaflet, which has been posted to farmers in November, includes vital information for new and young farmers. It explains how they could be eligible for new Basic Payment Scheme (BPS) entitlements from the 'national reserve', and young farmers can also find out whether they are eligible to claim a top-up payment worth up to 25% of the average value of their entitlements.

Farming Minister George Eustice said: *"This latest leaflet contains key information for new and young farmers about new support they will be able to access at the point their career needs it the most. If we are to see this industry continue to thrive, it's vital that we encourage the brightest and best new talent into farming"*.

RPA External Relations Director Arik Dondi: *"We have promised to make information available at each step of the countdown to the new CAP to help people understand how it will affect them and this leaflet includes vital information which farmers need to know now. It is part of our commitment to keep customers informed as and when more detail is known"*.

Up to three per cent of the total Basic Payment Scheme (BPS) budget, part of England's budget under the Common Agricultural Policy, has been earmarked to create entitlements for new farmers and young farmers, if they currently have more land than entitlements.

The new entitlements for young farmers will be generated from the National Reserve. The RPA will allocate these entitlements according to the amount of eligible land farmers declare on their 2015 Basic Payment Scheme application and how many entitlements they already have.

A further two per cent of the BPS budget will be used to give extra money to young farmers if they have taken control of their farm in the last five years.

Most existing Single Payment Scheme (SPS) customers will qualify for BPS, but some operating certain non-agricultural businesses will not be eligible. The leaflet provides further detail around the 'active farmer' requirements of the scheme and definitions of those who may not be eligible.

The leaflet also includes more information about hedges and how they can be counted as Ecological Focus Areas. Rules around the width, length, height and location of hedges are all covered.

At each step of the countdown to the new CAP, information will be made available to help people understand how it will affect them, and what they need to do and by when to move as smoothly as possible to the new schemes and IT service.

Anyone interested in reading more about CAP Reform and the discussions that are taking place should go to the CAP Reform homepage at: **gov.uk/government/collections/common-agricultural-policy-reform**.

# RPA OPENS BIDS FOR 'ENJOY, IT'S FROM EUROPE' CASH

The Rural Payments Agency (RPA) has announced a new opportunity for trade organisations to apply for funding towards promotion and information programmes for EU agricultural products.

Producers of a wide range of products, including fruit and vegetables, meat and eggs, can apply for up to half the cost of marketing their goods abroad in a scheme designed to raise awareness and increase sales of EU food products.

The maximum rises to 60% for the promotion of fruit and vegetables intended specifically for EU schools, and for information on responsible drinking patterns and harm linked to hazardous alcohol consumption.

The application process for the two schemes, one for internal markets (EU countries) and another for external markets (rest of the world), is combined.

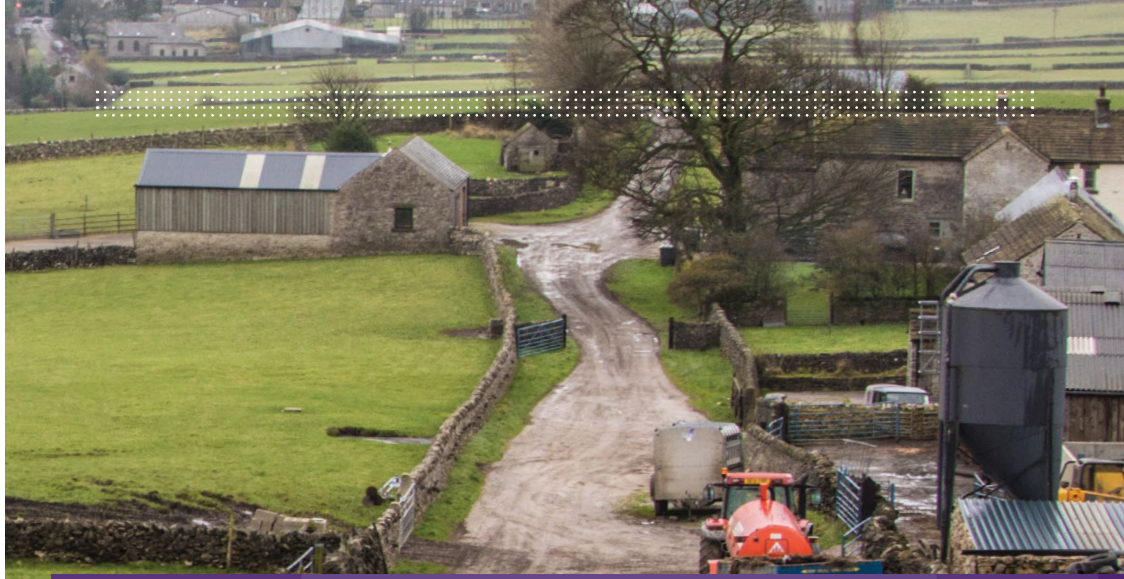
Applicants may apply under either or both promotions schemes but cannot submit a combined application covering both schemes. Preparation of an application may start at any time of the year provided that the deadlines are respected and the next deadline is 28th February 2015. It is also essential to take into account any regulatory and other changes which may be introduced.

This will be the only opportunity to apply for EU co-financing of information and promotion programmes in 2015.

Applicants are expected to fund at least a 20% of the total cost of the programme and can choose either to pay the remaining balance themselves or to finance it by industry levy.

Applicants must use the European Commission's standard application form, which can be obtained from the Rural Payments Agency pages of the (www.gov.uk) website. The full link is **gov.uk/promotion-schemes-for-agricultural-products**. The link also provides specific guidance on your eligibility to use the scheme.





# INTESTACY LAW CHANGES

There has recently been a change in the law concerning the distribution of a deceased individual's estate when they die without a will (intestate).

Previously when an individual died intestate leaving a spouse but no children, then the spouse would receive up to £450,000 as a statutory legacy. Any amount over this limit was then divided equally between the spouse and the parents of the deceased (or siblings if both parents were themselves deceased). Also, where the deceased left both a spouse and children, the statutory legacy to the spouse would be £250,000 and the remainder would be divided in half. Half would go to the children absolutely when they attain the age of 18, the other half would provide an income for the spouse with the capital going to the children on his/her death.

New rules have come into force which remove the concept of a statutory legacy for a married deceased without children. Now, the spouse receives all the estate and no one else has rights to the estate or income from it. In the case of a deceased with a spouse and children, the spouse will now receive one half of the remaining estate over £250,000 but have no right to income from the other half. The children will receive this absolutely at age 18.

Estate planning is essential for those individuals such as farmers who may have significant assets.

**To find out how we could help you and your family avoid unnecessary strife in the future, please contact a member of the agricultural team.**

## 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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