Whiting & Partners Farming Group

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A letter in the Farmers Weekly recently caught my eye. The writer was responding to a previously published piece in which reference had been made to the weather-caused difficulties being experienced with cultivations. The correspondent suggested that the failure of neighbours to complete the harvest was more worthy of complaint. High prices might help compensate for low yields but they will not make up for an empty barn.

The theme for our second newsletter should perhaps be 'uncertainty'. There are articles on Pensions, a subject where the rules have changed with regularity in recent years and will doubtless change further in the future, Renewable Energy, where the Government is attempting to manipulate investment by repeatedly tweaking incentives and horses, where in my limited experience, the only dead cert is that there will be a bill. In addressing Payroll RTI (Real Time Information) we are flagging major changes to the way payroll information is communicated to HMRC, the full effects of which we are yet to see. The Farmhouse and Farm Cottages article does offer firmer foundations in addressing some of the tax rules that apply to these properties.

I hope that amongst the facts and conjecture you will find something of interest.

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WHITING & PARTNERS
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RHI should be Explored

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The renewables landscape has seen a rapid change over the last 12 months, with slashes in tariffs and a reduction in payment years to the extent that we now have to ask – 'are renewables truly the way forward to a profitable future?'

In the last year the Feed in Tariff (FIT) for Solar Photovoltaic systems has twice been cut from 43.3p per kilowatt generating hour (kWh) to 16p/kWh. and the payment period has been reduced from 25 years to 20. A further reduction could be on the way. As a result there has been a massive decrease in uptake of the scheme but even these FIT incentives still offer reasonable returns for smallish scale, field wind turbines.

Also meriting consideration are bio-digestion and anaerobic digestion opportunities. These tend to be medium to large-scale undertakings that are taken up by medium to large enterprises and groups like joint ventures or even co-operatives. The green credentials are strong and the incentives are established, including Renewable Heat Incentives (RHI) for the non-domestic sector, but they have yet to be taken up as widely as wind and solar power. These plants may open up new crops to fit into the farm rotation.

RHI is an encouragement for those who use renewable energy to heat their buildings. Payments will be made over 20 years, based on the amount of renewable energy generated. Unlike the FIT scheme RHI can subsidise other renewable sources like ground and air source pumps, wood pellet and log burners and solar heating panels rather than just solar photovoltaic and wind turbines. These may appeal to businesses with high heating costs like horticultural concerns.

Of course tax reliefs offer limited incentive with initial allowances on expenditure on plant and machinery being limited to the £25,000 annual investment allowance and the recovery of VAT needs to be planned from the outset.

As with any large project planning is the key to success.

Neigh Tax Neigh

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Horses and providing care for them is a very complicated area when it comes to Value Added Tax, Income and Corporation Tax or Inheritance Tax (IHT) and is dependent on which activity is involved, whether it's livery, breeding or a training yard.

Horses themselves are VAT-able at the standard rate. However, the maintenance, stabling and livery services are less straightforward and the VAT treatment depends on the amount of care provided by the owners of the land or stables.

For Income Tax purposes stud farming is treated as farming but recognising the risk, HMRC allows extended years of trading losses. Up to 11 years can be relieved against other income before HMRC will seek to disallow loss relief.

Subject to conditions, racehorse owners will be accepted as a business and can register for VAT which would enable them to reclaim 'input' VAT on the cost of a horse's training and upkeep. The downside, 'output' VAT would be due on the sale or part sale of the horse as well as on any other income received like prize money, sponsorship and appearance fees. Any profits or gains purely from racing are tax free although Capital Gains on premises will be taxable.

Where a stud farmer both breeds and races horses care must be taken to ensure there is a clear division between the activities.

For Inheritance Tax purposes, relief may be available for businesses involved in the breeding and rearing of horses on a stud farm and the grazing of horses in connection with those activities. Any buildings to support that work may be regarded as farm buildings and could therefore obtain relief from IHT. It can be difficult to determine what qualifies as a stud farm and it is essential that horse breeding is carried out in a systematic manner with proper record keeping to substantiate future claims for relief.

Stewardship Changes

Environmental Stewardship changes will take effect from January 1, 2013 subject to EU Commission approval.

Five new ELS choices will be available plus changes to points values in some existing options

The five new options are:

- Supplementary feeding in winter for farmland birds – 630 points per tonne.
- Supplement to add wildflowers to field corners and buffer strips – 63 points per Ha.
- Ryegrass seed-set as winter/spring food for birds – 80 points per Ha.
- Legume and herb-rich swards – 200 points per Ha.
- Small-scale hedgerow restoration, inside and outside SDA – 10 points per metre.

Are you Ready for RTI

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Starting next year, in a major shake-up of the PAYE system, HM Revenue & Customs will require all pay details for each employee to be filed with them electronically before or as a net wage payment is made.

Prior to the introduction of the Real Time Information (RTI) system there will be an 'alignment' exercise to ensure that the data held by HMRC matches that being supplied by the taxpayer. There are limited exclusions relevant to agriculture in respect of payments to employees which are made on the day of work and which vary depending on the work done, where it is impractical to report in real time.

Although HMRC cite crop pickers as an example it is unlikely to apply to many wage payments. Those it does catch will have seven days to report the PAYE details.

Software providers will doubtless be writing programmes to facilitate this process but for those employers using a manual wage system the changes are likely to be more challenging. We anticipate that there will be many employers who will prefer to avoid these challenges and will choose instead to outsource their payroll. We have prepared appropriately for this and I will be pleased to hear from any employers who wish to investigate this option.

Surprising Results in APR Tribunals

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There have been a number of Tribunal decisions over the last couple of years relating to whether farmhouses and farm cottages are eligible for Agricultural Property Relief (APR). Some of these provided good results for the taxpayer but we would still advise a note of caution.

In the recent case of HMRC V Hanson (2012), the taxpayer had given the land to his son to farm but still held an interest in the farmhouse by way of a trust. He had moved out of the farmhouse and his son then moved into it. The farmhouse was therefore in the same occupation as the farm but not in the same ownership.

The First Tier Tribunal decided that the farmhouse qualified for APR as it was in the same occupation even though it was not in the same ownership as the farm.

This is against current HMRC guidance so currently needs to be considered with care but if the decision stands it could provide relief for farmhouses where the ownership of the land is separate to the ownership of the farmhouse, for example where a farming company is involved.

In the 2011 case of HMRC V Golding, the taxpayer farmed a 16 acre smallholding. In later years he had grown vegetables for his own use and sold a few eggs. HMRC did not accept that the three bedroom farmhouse should be eligible for APR due to the limited nature of the farming that took place up to the date of his death. The Tribunal concluded that based on the historic use and the limited farming carried on in later years, the property did qualify for APR.

Whilst some recent tax cases have been decided in favour of the taxpayer, care will still need to be taken when making decisions on the ownership and use of farmhouse and farm cottages. Please ask us for advice before making any changes in the ownership and running of your farm so we can provide you with the most up to date advice based on current case law.

Farmland, a Good Pension Investment

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Despite the economic downturn, direct investment in commercial property via the medium of pension funds is becoming increasingly popular and farmland can be an ideal asset to hold within a pension fund. Typically a SIPP or SSAS will be the pension fund vehicle used. A SSAS is, in essence, no different to a SIPP other than the fact that a SSAS normally runs alongside an existing company and has the ability to make loans to the company.

Investment in residential property is disallowed so farmhouses cannot normally be held within a pension fund.

The attraction of acquiring land through a pension scheme is that tax relief can be obtained on the contributions to the scheme. Effectively the purchase price is contributed to the scheme, the scheme buys the land and tax relief is obtained. Unfortunately restrictions on the level of contribution that can be made in any year limit the value of this although from 2011/12 it is possible to carry forward any unused allowances from the previous three tax years. The contributions in any year however cannot exceed the taxpayer's earnings level in that year. An individual contributing can obtain tax relief at higher rates on his contributions. Alternatively a company can make contributions in the same way on behalf of Employees and obtain full Corporation Tax relief in the accounting period that the payment is made.

The pension scheme is also able to borrow up to 50% of its asset value to assist with land acquisition, non-taxable rental income from the land being used to pay down the borrowings.

If this were the end of the tale then more pension funds would be buying land. Unfortunately there are more tax rules that apply on the death of the taxpayer.

For Inheritance Tax purposes, if a taxpayer dies before age 75 and without taking pension benefits there is usually no IHT payable on the assets distributed to the beneficiaries by way of a lump sum within two years of the date of death. If the deceased had started taking retirement benefits by entering into income drawdown and there is a surviving spouse then they can continue the income drawdown arrangement without a tax charge. However if there is no spouse, or upon the subsequent death of the spouse, a 55% tax charge is likely to be paid. A similar tax charge is levied on the death of a taxpayer who has not commenced taking benefits aged over 75.

If an annuity is required or benefits taken by drawdown, at some stage it is likely that the pension fund will need to sell the land. This may be to another pension fund funded for a later generation, to the pensioner if he is asset rich, to his Company or to a third party. Any gain on the land will be tax-free.

Despite the drawbacks there is much to commend buying land within pension funds. There is the immediate cash flow benefit arising from the tax relief; amounts previously contributed to a pension may be 'unlocked'; the rent paid to the fund will attract tax relief but will be tax free within the fund and the assets are protected for the old age of the taxpayer.

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