

Welcome to our Autumn 2014 Farming Group Newsletter



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Approaching the festive season we may not rival Hans Christian Andersen but Cinderella gets a mention. We have pigs - though not specifically three little ones. The relaxation of planning laws through the permitted development rules seems itself somewhat of a fairy story.

Unfortunately the magic of the Genie's lamp fails me at that point because I can't find any link between fairy stories and the recovery of input VAT relating to exempt supplies, accounting software or the perennial chestnut, whether to adopt a corporate structure or not.

Despite no article starting 'Once upon a time' nor any promise that everyone lived happily ever after, I hope you'll find something interesting and, possibly, even entertaining in the following pages.

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Avoid HMRC challenges!

Agricultural Property Relief claims on farmhouses are regularly challenged by HMRC.

Where the farmer lived at the time of demise is among prejudicial issues. It might have been in hospital with a planned return home. This will not normally negate a claim.

However, residence in a care home following hospital treatment is more problematic. If the level of care represented an extension of medical treatment and a return home was anticipated, a claim may succeed.

Avoid these arguments by early planning to avoid an HMRC challenge!

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Panto time – beware Cinderella!



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All too often the spotlights fall on revenue taxes, inheritance tax, capital gains tax and occasionally VAT when considering the mitigation of tax. That Cinderella, Stamp Duty Land Tax, seldom attracts consideration until the shoe has been tried on.

From its genesis as Stamp Duty, a fixed charge levied on written documents, it is now levied at rates that can peak up to 15% and therefore can be a significant driver in business decisions.

Stamp Duty can easily be overlooked, although we are all used to the buyer having to meet the tax on the purchase of property.

For example, when planning succession within businesses it can be appropriate for land to be handed down the generations. Sometimes this land may still be subject to borrowing and the liability for that borrowing may pass with the land itself. In these circumstances, the beneficiary will be charged SDLT on the liability at the appropriate rate.

Where a partnership includes freehold property amongst its assets and there is a change in the allocation of capital profits, there is a disposal for SDLT purposes. This will often be within the nil rate band but if there are extensive property holdings or the change in profit shares is large the tax consequence can be material.

Indeed SDLT can even be applied to what appear to be 'revenue transactions'. The creation of a tenancy can give rise to a charge based on the net present value of the rent payable under the tenancy.



It's a Cinderella tax that, if the shoe size has not been considered, can cause bunions.

Tenant Farmers – Company v Sole Trader & Partnership



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Historically the disadvantages of incorporation have steered over 90% of farmers away from a corporate structure. Among them; the trapping of tax losses, the complexity of securing IHT reliefs on company-farmed land and the tax cost of extracting development gains.

The Tenant farmer has faced additional barriers. More than a third of UK land is farmed under some form of tenancy. A Lifetime Tenancy under the 1986 Agricultural Holdings Act prevents full incorporation, as the tenancy must be maintained in the name of the specific tenant and, generally, is not transferable. Some AHA tenancies allow for two successions and this right deserves protection.

If the terms of the tenancy are broken, for example by parting with possession to a limited company, then the occupancy can be forfeit. There may be a rare opportunity to 'do a deal' with the landlord where his IHT status can be enhanced on transfer to a company.

Even under a Farm Business Tenancy, landlords may refuse the assignment or grant of a new tenancy to a company as they would lose the ability to control who their tenant is, given the easy transfer of company shares.

As an alternative to full incorporation, a company can be formed to carry out diversified activities like farm contracting. This can be particularly useful where an AHA tenancy is held and non-farming income can prevent succession to the tenancy. The tenant can draw his income from the company whilst the successor is paid via the farming partnership.

If an AHA tenant is entitled to share for example through a partnership but not part with possession to a company, an alternative may be a Mixed Partnership with a company. Benefits can accrue although the 2014 Finance Act small print must not be overlooked. This allows HMRC to re-allocate the Corporate Partner's profit share to other Partners if that profit share is unreasonable.

In conclusion: Options for tenant farmers to access corporate tax rates are restricted but opportunities still exist and all angles should be carefully considered.

Pig of an opportunity



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One of the largest meat processors in the country, BQP, is looking for farmers to take on both breeding and growing management contracts as it expands to meet the demands of its retail customer, the rapidly expanding Waitrose chain.

All BQP pork is produced by a dedicated group of farmers based predominately in

East Anglia and Southern England. Part of Dalehead Foods, it is offering contributions to the cost of a new-build to encourage increased pig spaces.

Interested farmers need to provide the on-farm facilities like land, equipment, buildings, labour, straw and water. BQP underpins the offer with the livestock, feed, vets, medicines and associated field-staff support.

Tried and tested over three decades, these arrangements have had the long-term support of several farmers in this region often spanning two and three generations.

The new build scheme requires a 500-pig space shed of 50x100ft with BQP offering support through four vets and seven field staff. Little previous experience is required and newcomers can enter with a five-year new-build contract, which sees BQP contribute 15% of

the cost of a new-build shed paid out over the first five years.

Farmers are paid every four weeks based on the number of pigs on the farm.

Land currently owned by farming clients can provide the security that Banks look favourably towards and gifting of farm land as part of family succession may also help the next generation take a step on the farming ladder. Regardless of security, business plans and cash-flow reports are a necessity.



VAT's hidden secrets



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Value Added Tax and property income presents an interesting area with many esoteric rules that can preclude recovery of the tax on expenditure.

Residential property lettings are generally exempt from VAT and no input VAT can be recovered. Partial exemption rules may provide relief if in any year ending March 31 the exempt input VAT is less than £7,500 and half the total input VAT.

Think about timing of the expenditure. Spread the VAT between two VAT years if undertaking a large refurbishment project.

Normally, letting land is exempt. A contract

farming arrangement instead could help protect the VAT position by introducing recoverable input tax to counterbalance exempt VAT.

Non-residential property lets are exempt from VAT. However, it is possible to opt to tax these so that the standard rate applies, allowing input VAT recovery as normal. This choice to tax remains in place for a minimum of 20 years. Should the property be sold, output VAT is generally chargeable on the sale.

For a typical working farmhouse, with the business a full time activity and where expenditure is in the nature of repairs or maintenance, then usually up to 70% input VAT is recoverable. Where major works like extensions are undertaken, this may be restricted

For houses occupied rent-free by farmworkers input VAT incurred is generally recoverable. If a rent is charged to bring the tenancy within the assured short-hold tenancy rules the partial exemption rules will come into play.

The rules are complicated but provide opportunity that, with careful planning, can enhance VAT recovery.

Overtime changes

Overtime has traditionally boosted many farm workers' wage packets. On top of the extra cost of the Auto Enrolment pension rules a further additional cost is threatened as a result of a recent Employment Appeal Tribunal decision that overtime should be included in the calculation of holiday pay.

Employers now need to decide whether to adopt a new basis of calculation of holiday pay or if to await the outcome of any appeal.

The Government has set up a task force to consider how to limit the impact of this decision but if it's allowed to stand then failure to follow it may give rise to later claims.

This change may only need to be applied to the first four weeks of holiday for each worker.

Planning eased?



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Regulations around the conversion of agricultural buildings to residential use have been relaxed by easing the full planning process. These 'permitted development' rules might appear to be a welcome measure but there are pitfalls. For many the full planning process retains advantages.

Planning authorities have varied in their reactions to the changes. For example, there is a limit on the area to 450 sq. metres. However, there is uncertainty around whether this applies to the floor space or the entire plot. There are other restrictions: A maximum of three dwellings only can be provided. A site must only have

been used for agriculture. In conservation areas as well as areas of outstanding natural beauty and sites of specific scientific interest, planning permission is still required.

In converting a business property to residential, the reduced 5% rate of VAT applies where a builder supplies and fits. However an owner looking to do much of the work himself may hope to recover VAT on the cost of materials under the relevant Self Build Scheme. This would be unsuccessful because planning permission is required to meet HMRC's criteria. Add to that, the issues around an inability to supply proof of planning permission to a prospective purchaser, which might bar the securing of a mortgage and would, as a result, reduce sale potential.

If the property is retained and rented then the VAT on the conversion costs would not be recoverable unless let as 'furnished holiday accommodation'. If occupied without charge by a full-time worker, the VAT could be recovered. However, current custom and practice of charging a nominal rent to bring the tenancy within the Assured Shorthold Tenancy legislation restricts VAT recovery.

SPUDS or CHIPS



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In a year when customer demand is woefully down even mighty McCain Foods cannot absorb the surplus of potatoes. The glow from the other chip, the microchip, that powers our computers and lights up our screens may be what is needed to light the way forward.

Management information is imperative for every business especially when cash-flow is challenging. Bankers require confidence and

we build that for them with accurate data. Where does that come from? 'Back-of-a-fag-packer' financial planning has been superseded by accounting software packages. These can provide not only fine detail for annual financial accounts. They are sufficiently flexible to provide harvest year reports. Field costings can be obtained. Costs of production can be computed. The power is available; harnessing it will give benefit.

It doesn't matter whether your software is Landmark or Farmplan, Sage or Xero, Muddy Boots or Gatekeeper. Each package has its strengths but in general only a fraction of the power of the programme is used.

Consider what your system gives to you and compare that to its full potential. If its full benefit is not being extracted from it, seek help. When the overdraft facility comes up for discussion ensure that you can demonstrate to your banker that you control not just your farm but your business as a whole.

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