

Tax, Tenancies and Transfers

IN THIS ISSUE



James Cater

01553 774745

jamescater@whitingandpartners.co.uk

As we notch up our eighth year and sixteenth newsletter I must admit to some surprise that the topics for inclusion keep presenting themselves; the overlap between agriculture and accountancy may not be huge but agriculture is a major component of our practice and our involvement makes my task in bringing each issue together, much easier.

Tax is of course significant and whilst sounding a caveat to those who would like to see Inheritance Tax abolished I write within about one opportunity to enhance the relief available on death.

Tax relief on expenditure is always welcome and we address opportunities to make tax savings in respect of construction expenditure on business premises.

A less weighty topic is the taxation of Wayleaves and in a more specific article we tackle the conditions for and consequences of the transfer of a going concern, examining the rules surrounding the transfer of land which has been subject to an 'option to tax'.

Publication of Defra's Consultation on Agricultural Tenancies was due at the end of September. There was no news at the time of writing so we look at the Consultation itself. This makes interesting reading as it may lead to changes in the rules for Agricultural Holdings Act tenancies and have implications both for landlords and tenants.

And so another edition is filled. I suspect that the next six months may generate plenty of topics for Issue 17 with our new government following the snap general election.

I predict we will be 'OUT', but if not we are sure to be 'IN'. If the pound is not stronger, then it will be weaker, unless of course exchange rates remain the same. It may rain or it may be dry. If speculation could be harnessed would we need grain driers? There would be plenty of hot air.

I do predict however that our Newsletter will remain focussed on what is known.

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Business Advisers

Wayleaves and Property Allowance



Richard Alecock

01638 712267

richardalecock@whitingandpartners.co.uk

Farmers and landowners are familiar with Wayleaves. They are defined as an easement, servitude or right in or over land which is enjoyed in connection with:

- an electric, telegraph or telephone wire or cable,
- a pipe for the conveyance of anything,
- or any apparatus used in connection with such a pipe.

Returns received from Wayleaves may be

assessable as property income or trading income. Treatment will vary from farm to farm.

If carrying on a trade on land to which a Wayleave relates, and rent is receivable or expenses are incurred, the farmer will be liable to tax in respect of the net rent for the Wayleave. Rather than treat this as rent he may include in his trading accounts the rent receivable and the expenses incurred in order to calculate the profits of the trade.

Payments for disturbance and payments for re-instatement of land are not rents receivable for Wayleaves and are taxed as part of the trade. Where a lump sum payment is regarded as capital and so excluded from taxable profits, any corresponding expenditure should also be excluded from the computation of trading profit or property income.

However, it should be remembered that the Property Allowance (PA) may be available to offset against rental income. This can amount

to a maximum of £1000 but replaces any claim for rental expenses. Individuals can decide on a year-by-year basis which approach to take but it should be noted that PA cannot be claimed in respect of partnership property income.

The tax treatment of Wayleaves can be variable and if there is material amounts received a review can be beneficial. Our Farming Group can help so why not contact your local W&P office.



Complexities of TOGC



Ben Kilby

01553 774745

benkilby@whitingandpartners.co.uk

For a VAT registered business, the majority of sales are subject to VAT at the appropriate rate. However, when it comes to the transfer of a business as a going concern (TOGC) including its assets the sale is not subject to VAT, as long as certain conditions are met.

In the case of land and buildings subject to an 'option to tax', there are extra rules around the

sale even though transactions involving land are usually exempt. An 'option to tax' has the effect of dragging the property and any rent charged into the VAT net. For TOGC provisions to apply on a transfer the purchaser must be VAT registered prior to the point of sale. If the seller has opted to tax the land or buildings, the purchaser is also required to have opted to tax them or it will fall outside TOGC rules. The 'option to tax' the land by the purchaser must have been given in writing to HM Revenue & Customs no later than the time of supply.

Beware, though, the point of sale may not be the exchange date if you have paid a deposit earlier. HMRC won at first-tier tribunal in a case where the defendant, the vendor, applied TOGC rules and so did not charge VAT. Unfortunately, he had received a deposit on account of two properties being sold, before

the purchaser had opted to tax the properties. It was held that in this instance, TOGC rules had not been satisfied and VAT was chargeable on the sale price.

TOGC rules are complex in nature, but by misapplying them you can cause further issues in cash flow, potential penalties and interest payable to HMRC and the possibility of overpayment of Stamp Duty Land Tax.

When considering buying a business or land and buildings where there is an 'option to tax', always consider if the TOGC rules apply. Remember, if VAT is also paid by mistake on purchase, HMRC won't refund it. Similarly, if VAT is not charged when it should be the vendor will still be liable to account for the tax to HM Revenue & Customs.

Revised SBA Implications



Matilda Mawson

01284 752313

matildamawson@whitingandpartners.co.uk

The outcome of a tax case earlier in the year set a precedent for grain stores to qualify for capital allowances. Another positive for farmers has been the recent introduction of legislation giving tax breaks through the new structures and buildings allowance (SBA).

SBA is a relief allowing a flat-rate deduction from profits of 2% over 50 years on the

cost of building, converting or refurbishing commercial buildings and structures. The allowance does not however extend to the initial cost of purchasing the land or gaining planning permission for the building. To qualify, contracts must be entered into on or after October 29, 2018 and the first use of the building should be non-residential.

When looking to claim the allowance, it is necessary to ensure the administrative conditions are met through an 'Allowance Statement' listing the following details:

- The date of the earliest written contract for the construction
- The amount of any qualifying expenditure incurred
- The date the building was first brought into non-residential use

The document should then be passed to each new owner on any subsequent sale of a qualifying building or structure.

Although the allowance is only 2% per year, on an investment of £100,000, this could still result in tax savings of £800 per year or more for a sole trade higher rate tax payer or £380 for limited companies, at current rates.

The new legislation came into effect in July this year so undoubtedly questions will arise when businesses begin to put the allowance into practice and we therefore look forward to HM Revenue & Customs releasing their guidance notes in due course.

Agricultural Tenancy Consultation



Stephen Malkin

01553 774745

stephenmalkin@whitingandpartners.co.uk

Around a third of agricultural land in England is let under various tenancy terms and therefore any changes to tenancy legislation will impact many businesses within the rural sector. In April, this year, Defra launched a 12-week consultation on agricultural tenancies.

The department's aim is to remove barriers around productivity improvements and help bring about structural change, improving the

overall competitiveness and sustainability of the tenant farming sector.

The headline proposals were:

- A single assignment of interest in an Agricultural Holdings Act (AHA) tenancy.
- Removal of a minimum age for submission of a succession or retirement application.
- Scrapping of succession rights for tenants who reach 5-years past the state pension age.
- The commercial unit test should be taken out and the suitability test should be replaced with a business competence test.
- Modernising the list of relations eligible for succession by including cohabiting partners and children. Close relatives should include nieces, nephews and possibly grandchildren.
- Reviewing restrictive clauses written into AHA tenancy agreements 20-30 years ago.

- Landlord investment should be unlocked by allowing immediate return on investment through a Rent Review.
- Introduction of shorter 'notices to quit' for farm business tenancies of ten years or more.

The consultation has also asked for evidence on the impact of mortgage restrictions over let land and the need of the landlord to gain permission from the lender before letting the land. It also sought suggestions relating to repossession of agricultural land and whether additional protection would give farmers more opportunity to meet repayment requirements

Originally Defra planned to publish the results of the consultation by the end of September but at the time of writing there was no news.

Farming - A Privilege



James Cater

01553 774745

jamescater@whitingandpartners.co.uk

You may not see it that way but agriculture is a privileged industry. Not only do the beneficiaries of the estates of deceased farmers benefit from Business Property Relief (BPR) but in Agricultural Property Relief (APR) there are additional relieving measures unique to the owners of agricultural property.

Despite the bonus of APR, for planning purposes there are good grounds for aspiring for one's assets to qualify for BPR. One major advantage of BPR is that it applies to the entire value of a property whereas APR is restricted to agricultural value.

For farmland owned by a partner but used by a partnership the relevant rate of BPR is 50%. If farmland is owned within a partnership the rate of BPR doubles to 100%. This is a considerable incentive for landowning partners to introduce their farmland to their partnership. This can be achieved without significantly losing the benefits of ownership by reserving future profits or losses on any disposal of the land through the terms of the partnership agreement.

As always when considering tax care must be taken. A charge to Stamp Duty Land Tax can be unintentionally triggered in circumstances where this appears unjust. The introduction of the land is unlikely to cause a problem but subsequent issues can arise if the land is withdrawn from the partnership or, bizarrely, on a change in the proportions that revenue profits are shared. There are relieving provisions where all partners are connected but this is less straightforward than might be assumed. For these purposes, the taxpayer is connected to his parents, children, siblings and the spouses of all of these but is not connected to nephews or nieces. Care must also be taken if introducing property to a partnership to ensure that the terms of any Will which has been or is being written reflects the new legal realities of asset ownership. If the land is a partnership asset then it is no longer owned by an individual partner but instead has been replaced by partnership capital. Inconsistencies in will drafting can result in specific legacies failing.

As ever, such matters deserve serious consideration and close liaison between tax advisers and lawyers is essential. Despite the up-front costs the potential savings in Inheritance Tax can be considerable.

For those averse to planning but instead relying on the abolition of Inheritance Tax I recommend immortality. Whilst there may be ideological attractions for some politicians in striking out this tax, for others the converse applies. Were the existing regime abolished my fear would be of its successor; far better avoid the issue than lurch into an unknown tax-scape.



Offices throughout East Anglia

Bury St Edmunds Office

Greenwood House, Skyliner Way,
Bury St. Edmunds, Suffolk. IP32 7GY
Telephone: 01284 752313
bury@whitingandpartners.co.uk

Ely Office

George Court, Bartholomew's Walk,
Ely, Cambs. CB7 4JW
Telephone: 01353 662595
ely@whitingandpartners.co.uk

Kings Lynn Office

Norfolk House, Hamlin Way,
Hardwick Narrows, Kings Lynn,
Norfolk. PE30 4NG
Telephone: 01553 774745
kingslynn@whitingandpartners.co.uk

March Office

The Old School House, Dartford Road,
March, Cambs. PE15 8AE
Telephone: 01354 652304
march@whitingandpartners.co.uk

Mildenhall Office

Willow House, 46 St. Andrews Street,
Mildenhall, Suffolk. IP28 7HB
Telephone: 01638 712267
mildenhall@whitingandpartners.co.uk

Peterborough Office

Eco Innovation Centre, Peters Court,
City Rd, Peterborough, Cambs. PE1 1SA
Telephone: 01733 564082
peterborough@whitingandpartners.co.uk

Ramsey Office

108 High Street, Ramsey,
Huntingdon, Cambs. PE26 1BS
Telephone: 01487 812441
ramsey@whitingandpartners.co.uk

St Ives Office

Raleigh House,
14C Compass Point Business Park,
Stocks Bridge Way,
St Ives, Cambs. PE27 5JL
Telephone: 01480 468931
stives@whitingandpartners.co.uk

St Neots Office

First Floor, Phoenix House,
2 Phoenix Park, Eaton Socon,
St Neots, Cambs. PE19 8EP
Telephone: 01480 470755
stneots@whitingandpartners.co.uk

Wisbech Office

12 & 13 The Crescent, Wisbech,
Cambs. PE13 1EH
Telephone: 01945 584113
wisbech@whitingandpartners.co.uk