ALBERT GOODMAN
CHARTERED ACCOUNTANTS

AGRICULTURAL TAX TIPS - SEPTEMBER/OCTOBER 2014

VAT AND THE SHOOT

If a shoot is operated on a commercial basis by an individual who is VAT registered, or a group of individuals who collectively have a VAT registration (i.e. partnership), then all income from sold days is subject to VAT at 20%. Some think that because shooting is a sport which starts with live birds and results in food products the shooting can be VAT exempt or zero rated but this is not the case. It is the right to shoot and take game that is being supplied and this is taxable at the standard rate.

Therefore if a VAT registered farming business sells even one day's shooting then VAT should be charged. As a consequence it is not unusual to find the shoot business in a separate company or partnership to keep the turnover below the VAT registration threshold. HMRC do impose provisions to prevent the artificial separation of a business in an attempt to avoid paying VAT. There must be a genuine reason to separate the shoot from the main business and it may be necessary to demonstrate this to the HMRC to satisfy them that the separate entity has not been created with a view to avoiding VAT.

Private shoots run for recreational purposes are not businesses for VAT purposes even though contributions may be received by family or friends. This prevents any VAT being recovered on costs incurred in the running of a private shoot.

If a farmer accepts a day for themselves in lieu of rent then if the shoot is treated as a business the benefit of their day is taxable. The tax is calculated as a benefit in kind and VAT is also payable on the self-supply.

Syndicates

A syndicate whose subscriptions are less than the VAT registration threshold are able to sell a day without charging VAT, so long as the additional income does not take the total taxable turnover above £81,000. HMRC will normally

accept the syndicate as a non-profit making organisation if they sell up to 25%-30% of the days in order to defray expenses.

These rules do not apply if the syndicate income is above the VAT registration threshold but it is of course possible to have two separate syndicates of differing members shooting over the same land.

Where a landowner receives a gun in the syndicate in lieu of a shooting rent on his land then technically he is receiving value for the supply of that land and this value is taxable. In the case of "non-business" syndicates HMRC do not normally take this point.

Should perhaps two syndicates containing different members (although some members may be involved in both syndicates) shoot perhaps ten days a year each, of which, two/three days are sold and the total income for each syndicate from subscriptions and sold days is below the VAT threshold then, other than complying with PAYE regulations, taxation should not apply.

EXTENSION OF PERMITTED DEVELOPMENT RIGHTS FOR ROOFTOP SOLAR PV

Last month the government released a consultation proposing to introduce a new permitted development right that would remove the requirement for a planning application to the local authority for rooftop solar photovoltaic (PV) installations of up to one megawatt in capacity. The consultation has been issued as a result of the 'Solar PV Strategy Part 2: Delivering a brighter Future' (Solar Strategy), released in April 2014, in which the government's Department of Energy and Climate Change (DECC) identified planning constraints as one of the key barriers to the development of rooftop solar PV for the mid-size commercial market.

Whilst permitted development rights for the installation of solar PV on non-domestic buildings have existed since 2012 for projects of up to 50kW, installations above this size still require a full planning application. The new permitted development rights would apply to rooftop installations on all non-domestic buildings subject to some exclusions, for example listed buildings, and requiring prior approval in consideration of design and siting.

Changes to planning permission is one of the steps identified by the Solar Strategy to push solar PV in this sector. Other initiatives include simplification of the registration process for tariffs under the ROOFiT scheme and the development of guidance by Royal Institute of Chartered Surveyors to ensure their members are able to inform property buyers and sellers of the value associated with income from the feed in tariff and the electricity saved from properties which incorporate solar PV.

The focus on mid-size, non-domestic buildings further opens up the opportunities for the use of solar PV on agricultural buildings for instance dairies and poultry farms. The advantages of these installations include the ability to use the power generated on site; reduced pressure on the grid; reduced energy bills; economies of scale and lower impact on landscape and visual amenity. Developers are actively looking for suitable rooftops; providing rooftop owners with the option

of owning the solar PV installation themselves or leasing it to a third party with the possibility of entering into a power purchase agreement to receive electricity at a reduced price.

The consultation response is expected in late September.

CLASS 2 NIC TO BE COLLECTED VIA SELF ASSESSMENT

The government has now published the National Insurance Contributions Bill 2014. One of the provisions of the bill is for the collection of Class 2 NIC through self-assessment, alongside income tax and Class 4 NIC.

With the number of self-employed individuals on the increase, and with more people having multiple jobs and moving in and out of self-employment, having two separate methods of collection for Class 2 and Class 4 NIC causes confusion and extra work for both the taxpayer and HMRC. The aim is to modernise and simplify the way Class 2 NIC is assessed and collected.

Currently, Class 2 NIC is payable at a flat rate of £2.75 per week. The measures in the bill also change the structure of Class 2 NIC so that only those with profits above a certain threshold will be liable for the contributions. Those without profits, or with profits below this threshold, will be able to pay Class 2 NIC voluntarily.

It is intended the measures will have effect from April 2015. The current six monthly billing system will cease from April 2015 and Class 2 NIC will be collected through self-assessment for the 2015-16 tax year onwards. It is intended that there will still be a facility to make regular payments through the year for those who wish to spread the cost of their Class 2 NIC.

TO INCORPORATE OR NOT TO INCORPORATE, THAT IS THE QUESTION?

Most businesses start out life as a partnership but may later become limited companies, usually because the business has grown significantly. Fully incorporating the business, by transferring it to a limited company offers substantial annual tax savings. Company corporation tax rates are 20% compared to personal income tax rates of up to 47%. Therefore, for a two partner business making profits of say £300k a year the annual tax saving could be in the region of £60k.

However, whilst the annual income tax savings seem very attractive there are many other aspects which need to be considered.

Any money drawn out of the company for personal expenditure needs to be taken as salary, dividends, rent or against a loan account. Therefore, those that draw substantially from the business are still likely to have an income tax bill.

The ownership of property going forwards will need to be considered as there is potential capital gains tax and stamp duty land tax charges on transfers to a company. The farmhouse would no longer qualify for principal private residence relief, on a future sale, if it is transferred into the company. In most cases it is likely to be more beneficial to retain the assets outside the company.

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Where the partnership has existing borrowing it will be important to involve your bank manager in discussions early on. Whether these are transferred to the new company will depend on whether this might cause a re-negotiation of the existing agreements with the bank. If borrowings are kept outside the company, financing the capital and interest payments may reduce the annual tax savings first envisaged.

There are also some inheritance tax disadvantages when running the farming business through a limited company and these will need to be considered and other tax planning action may be required. In addition there will be benefit in kind charges on motor vehicle and household expenses that have historically been paid by the farming partnership with a proportion of the VAT reclaimed.

The decision to change the business structures is not an easy one and careful consideration of all the factors will be required before finding the right structure for your particular business. Full incorporation is one of the options and for profitable farms which invest heavily back in the business it is likely to be one of the best, despite some of the hurdles.

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