AGRICULTURAL TAX TIPS
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FARMING LOSS RESTRICTION – A SUCCESS FOR THE TAXPAYER

Many readers will be familiar with the restriction on sideways loss relief for farmers who have suffered five successive years of losses. The provisions prevent relief for losses being claimed in the sixth year.

In the case of French v HMRC [2014] UKFTT 940, H M Revenue and Customs (HMRC) challenged the appellants' claim to set farming losses against other income in the tax year 2010/11, and raised discovery assessments to deny a similar offset of losses in the tax years 2008/09 and 2009/10. The appellants appealed.

The First-tier Tribunal (FTT) allowed the appeal of Mr and Mrs French. During the case the Tribunal had to consider two issues:

1. Whether the farmers had ceased farming for a period of time whilst they let the land to a tenant, and;
2. on the basis there were more than five successive years of losses, whether the let-out at s.68 ITA 2007 applied.

The farmers were classed as ceasing one farming trade (dairy), then for three years letting the land and then recommencing a trade as an arable farmer. This re-set the five year clock.

S.68 ITA 2007 allows the five year period to be extended if the taxpayer satisfies two conditions, applying tests by reference to profit expectations of a 'notional competent farmer' carrying out the same activities.

The tribunal considered that the objective of ITA2007 s.68(3) was to preclude a farmer from enjoying sideways loss relief in excess of five years continuous losses if the actual farmer has been slower in achieving profit than a 'notional competent farmer', denying relief to an 'incompetent farmer'

From the evidence provided HMRC and the Tribunal accepted that Mr French was a competent farmer and allowed the appeal.

The case suggests that for the active working farmer, if he is a competent farmer, the actual period of losses suffered may be an indication of what the 'notional competent

farmer' would anticipate. However, a true 'hobby farming' activity will continue to be met with resistance from HMRC.

THE POUND – UP AND DOWN AT THE SAME TIME!

The strength of the pound against the euro is probably the largest single influence on UK farming profits and the strength of the pound against the dollar also has a direct impact on the cost of two of the major inputs in feed and fuel as well as an indirect impact on many other costs.

So what has happened to the pound over the last 12 months is very bad news for UK farming – it has strengthened against the euro by 15% and it has weakened against the dollar by 11%.

Most already recognise the impact exchange rates have on single (basic) farm payments because the exchange rate is "announced" to the industry once a year – but that impact is very small compared to the wider market impact.

Based on today's exchange rates any produce from a UK farm that is exported, or is competing against a Eurozone country's product in this country (e.g. all processed dairy products, all meats, eggs, cereals, potatoes and oilseed rape) has to be 15% cheaper than it would have been - if the exchange rate had not altered - in order to stay as competitive in the market as it was a year ago. In day to day terms that means £500/tonne of cheddar or 5p/litre of milk, £25/tonne of wheat and 55p/kg of beef.

Similarly (but opposite), soya price will be £50/tonne higher now than it would have been if the pound had not weakened against the dollar.

Of course supply and demand is also a major factor in any market but when you review the market for your produce or a major input and perhaps make forward dated sales or purchases, it is helpful to understand how much of any price movement is due to currency, which way the currency is predicted to move in the future and how much is due to conventional supply and demand.

It could be argued that from a UK farming perspective the value of the pound is exceptionally strong against the euro and it should equally have been argued two years ago that the value of the pound was unrealistically weak. It is a mug's game trying to predict exchange rates, but understanding their impact on the market at any one time is a very valuable management tool.

ARE YOU AHEAD OF ATED?

The Annual Tax on Enveloped Dwellings (ATED) charge was implemented from 1 April 2013. ATED is a charge on residential property owned by 'non-natural persons' i.e. a company, a partnership with a corporate partner, or a collective investment scheme.

Previously the charge has only applied to properties valued at over £2 million but from 1 April 2015 the lower limit has been reduced to £1 million. The lower limit will be reduced further to apply to properties valued at more than £500,000 from 1 April 2016 and so more and more properties are likely to be caught by this.

The charge is based on a banding system. Assuming the property was owned by the

company on 1 April 2012, it is the value of the property at that date which is used for the banding purposes. The property will then need to be re-valued every 5 years to check which band it falls in to.

The bandings and associated tax charge for the current year (YE 31 March 2016) are as follows:

Value of property	Annual tax charge
£1 million – £2 million	£7,000
£2 million – £5 million	£23,350
£5 million – £10 million	£54,450
£10 million – £20 million	£109,050
More than £20 million	£218,200

A return and payment of the ATED charge is due by 30 April at the start of each year. Therefore, those caught for the year ended 31 March 2016 must make a return by 30 April 2015. If property is acquired part way through the year and ATED applies to that property, the return and payment must be made within 30 days of the acquisition of the property.

There are some reliefs which can apply to reduce the tax payable to nil; however a return must still be filed to claim the relief. The most common reliefs are where the property is let to an unconnected third party or where it is used by an employee with no interest in the company. Certain farmhouses are also granted relief from the charge.

CHANGES TO ENTREPRENEURS' RELIEF

Entrepreneurs' Relief (ER) is a valuable relief from capital gains tax (CGT) and reduces the rate of CGT on "qualifying business disposals" from 28% to 10%.

A recent report criticised HMRC in its policing of the relief. Therefore pressure is on HMRC to more closely scrutinise claims for ER. In the recent Budget the Chancellor announced two changes to the legislation, saying that he had taken steps to ensure relief was "only available to those selling genuine stakes in businesses".

The changes include:

- Restrictions for joint venture companies or those which are members of partnerships and have no trade of its own. For example, this will affect corporate partners in a farming partnership, unless significant trading activities are carried out within the corporate partner.
- A requirement for those accruing gains on personal assets used in a business to dispose of at least a 5% share in the business.

Whilst the above changes are not revolutionary they mark a change in the tide for the relief. For now, those intending to sell property and claim ER, should expect increased scrutiny from HMRC. Therefore early planning well in advance of the property sale is crucial. Recording evidence of genuine commercial business activities will be required as well as ensuring the timing of the asset sale and "qualifying business disposal" is right.

WHY CHEAPEST ISN'T ALWAYS BEST

Have you received a quote for a biomass boiler or solar panels recently and thought that it looks too good to be true? With biomass boilers for a farmhouse frequently costing in the region of £40,000 or more it is not an investment decision to be taken lightly.

In providing a quote, installers usually provide some indication of the expected income to be generated from the Feed in Tariff or Renewable Heat Incentive, electricity and heat savings along with predicted payback periods and returns. These financials can vary significantly between quotations depending on the assumptions that they have used in their calculations, for example indexing electricity costs at 9% compared to another using 5% thus inflating projected savings. Likewise the cost of installation can be dramatically different but may depend upon the quality of the technology in use and what elements are included or excluded from the quotation such as trenching pipes from a biomass boiler to the property.

With this in mind we would always recommend you take the following action when considering an investment in solar or biomass:

1. Obtaining three or more quotes to compare
2. Reading between the lines to understand what is or isn't included
3. Understanding the key assumptions used and how they impact on the returns and payback being advertised
4. Meeting the installer yourself and getting a feel for whether you want to deal with them
5. Requesting references and speaking to previous clients to understand whether they are happy with their investment
6. Identifying the financial backing of the installation company to gain comfort over their longevity should anything go wrong.

Remember that this is an investment for technology which needs to operate for the next 20 years; you want to ensure that you have the best quality installation at the best price as poor quality technology or installation can lead to costly ongoing repairs and maintenance and reduced returns. The cheapest isn't always the best!

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Sam is a Partner within our agricultural team. A chartered certified accountant and chartered tax advisor, Sam specialises in tax planning for agricultural businesses particularly business structures and capital taxes including capital gains and inheritance tax. She also advises high net worth individuals and investors on land and property transactions.

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