Welcome to our Lady Day agriculture e-brief.

With Lady Day marking the traditional start of the fiscal year, it seems appropriate to give some space in this edition to tax issues farmers, landowners and estates should be thinking about. There are plenty of points to ponder following last Wednesday's budget and recent upper tribunal cases.

In 'other news' we had a great turnout and plenty of audience participation at our Partnership & Trusts seminar in February. Such was the interest in how the trustees could have made more of the opportunity offered by a vacant farm that we are planning an autumn **follow-up event**. Details to follow; suffice to say for now that low-risk strategies for getting young Jack on the farming ladder will also figure in the Trustees' deliberations (suggestions very welcome!).

Vember Mortlock, Head of Agriculture

In this edition

The Budget: points to ponder for farm businesses

By Paul Hogarth-Blood

Partnerships

The Autumn Statement had a belligerent tone about tax leakages through partnerships. The tone has continued in the Budget and it has been announced that there will be consultation to "*counter the manipulation of profit/loss allocations by partnerships including a company, trust or similar vehicle in order to secure tax advantages*".

Roythornes have been handling farming partnerships with companies and trusts as partners for many years. Farming partnerships have not been targeted specifically, but the reforms are expected to apply to all partnerships. It is impossible to know what the Government will do at this stage so we shall all have to wait for Finance Bill 2014 to be published. This is when the Government is expected to announce more details about what it will classify as avoidance.

As always, it is highly likely that where there is not a common-sense or good business justification for a structure, it will be at greater risk of being labelled as avoidance by HMRC.

Borrowing and Business Property Relief

There is a myth that if business borrowings are secured on an asset that does not normally qualify for Business Property Relief from inheritance tax, for example a block of flats that the business rents out, the block of flats will automatically become eligible for relief. That is not the case! Assuming that an individual owns the block of flats, current practice allows the borrowing to be set against the value of the flats to reduce the amount of an individual's taxable Estate for inheritance tax purposes.

However, the Chancellor proposes to bring an end to this practice and it could be very significant for many borrowers and their tax planning. The Government is expected to make further announcements and they need to be watched carefully.

PAYE and National Insurance

For labour-heavy sectors, there is welcome news that the Chancellor has allocated £2,000 to offset employers' Class 1 secondary National Insurance contributions each year. PAYE Real Time Information will make an automatic adjustment. Some commentators have been quick to seize on the idea of having different businesses, where each has its own PAYE arrangement, to gain multiple adjustments of £2,000. We would encourage caution because such an approach may be caught by anti-avoidance measures and have detrimental effects on broader tax strategy.

Loans to participators

HMR&C published a technical note on Budget day that sets out some scenarios about loan arrangements involving close companies, partnerships and trusts. These structures make regular appearances in agricultural affairs. There are anti-avoidance measures which took effect on 20 March. There needs to be caution about moving money around and HMRC have targeted "bed and breakfast" schemes recommended by some strategists. The message must be that more thought needs to be applied before money is moved around using loans.

Corporation Tax

For businesses with profits of more than £1.5m, the main rate of Corporation Tax will be cut to 20% in 2015. The cut is the third in a row by the Chancellor, with the main rate reducing from 28% to 24% in April and from 24% to 21% in 2014.

Given the recent dire weather, the main rate may not be so much of an issue for farming businesses. But the question of whether it is best to trade in partnership or as a company still needs to be addressed. The choice requires careful analysis and often it is a balancing exercise with the advantageous taxation of capital and flexibility of partnerships on one side and the better taxation of income for companies on the other. Companies may be favoured when the Government makes its intentions for partnerships clearer. Again, it is a case of wait and see.

Roythornes has experienced lawyers who can advise about partnerships, trusts and the taxation of people and businesses. If you have any concerns about how your affairs are structured, do contact one of the team.

Agricultural Wages Board update

After being thrown out at Grand Committee stage in the House of Lords earlier this year, the Government's plans to abolish the Agricultural Wages Board are now back on track.

The abolition is being achieved through an amendment to the Enterprise and Regulatory Reform Bill. This bill is, in parliament-speak, at the 'ping pong' stage, passing back and forth between the Commons and the Lords. The aim is to get it passed into law before the end of this Parliamentary session (as yet unannounced but early May at the latest). This would enable the **new regime to be in place by 1 October 2013**.

In the absence of an Agricultural Wages Order, farm workers – like other workers – will be protected by the National Minimum Wage Act and the Working Time Regulations.

Any farm business taking on employees between now and 1 October should take advice on how to deal with the bridge between the two legislative regimes. Contact Phil Cookson on 01733 898970.

Unblocking Development: new village green registrations restricted

Also in the parliamentary pipeline are useful amendments to the Commons Act 2006, aimed at stemming the flow of applications to register land as a village green where development is on the cards. These applications have been a common tactic of locals wanting to resist the new housing developments, and a source of great frustration to developers.

The Growth and Infrastructure Bill – once enacted – will exclude new town and village green applications for land which has planning permission or a publicised planning application, or is identified for potential development in a local or neighbourhood plan (or draft plan).

Every little helps. We have seen instances of developments being held up for significant periods of time because of applications which are found not to be well-founded after expensive investigation, a public inquiry and, in some cases, litigation.

If you would like advice on commons and village green issues, contact Alan Plummer on 01775 842551 in the first instance.

CAP Reform: countdown to compromise

With the EU Parliament and Farm Ministers having settled their own positions on the reforms in the last couple of weeks (in itself no mean feat), we non-lobbyists now have to sit back and wait for the final deal to be cut. There are still optimistic references to a late June agreement.

Except where purchases of land are concerned and new businesses are being set up, we are not detecting much interest from clients in the technical details of the reforms. It is the political issues around Pillar 1/Pillar 2 transfers and greening that are grabbing the headlines, rightly so given the potential for payment reductions and the likely impact on existing environment schemes.

Nonetheless, new contracting agreements, FBTs or business re-structuring should set '*action needed*' lights flashing. It may simply be a case of adding a clause into an agreement that builds in flexibility to review matters in the light of the new scheme rules and payment levels. In the case of business re-structuring, it may be a case of postponing the killing off of an SPS claimant until further details are clear.

We are still bullish about **existing entitlements being carried through** to the new Basic Payment Scheme in England, particularly after the Secretary of State Owen Patterson's assurance that he wanted "*to keep to the existing system as much as possible and keep things simple for claimants and the RPA*" when asked expressly about entitlement carry-over back in January (see Farmers Guardian article here). Both the Farm Ministers and the EU Parliament envisage entitlements being able to be recycled in this way; it is difficult to see where opposition to the idea will come from.

But, despite that, as lawyers looking after our clients' interests we still need to cater for all eventualities in land sale and letting contracts.

If you would like to discuss potential SPS/CAP implications of business changes or land deals, contact Julie Robinson on 01775 842618 in the first instance.

Never too young to plan ahead

By Paul Hogarth-Blood

Farmers can consider a special type of pension scheme known as the 'Small Self-Administered Scheme' (usually shortened to 'SSAS').

Although a SSAS is only one of many arrangements through which money can be set aside for retirement, its unique features make it so much more than a mere repository for savings. This means that younger generations wanting to grow businesses should seriously consider a SSAS.

The SSAS was conceived as a result of legislation passed in 1973, which made it possible for controlling directors of trading companies to join what were then called 'new code' pension schemes.

As imaginative people who were used to accepting risk, many of those directors did not wish to be restricted to those 'traditional' investments through which retirement benefits were funded. This encouraged the pensions industry to find ways of satisfying directors' appetites for originality, and led to a whole new type of pension scheme: the SSAS.

What many directors found so appealing was the ability (of a SSAS) to invest in, or benefit, the company that sponsored it. This could be found in investment such as:

- A loan from the SSAS to the sponsoring company. This had the dual effect of making funds available to aid business expansion, whilst boosting members' retirement funds by providing for interest payments from the company to the SSAS.

- Purchase of the sponsoring company's business premises or land. This would remove property from the company's balance sheet, whilst again helping to build up members' retirement funds by providing for rental payments from the

company to the SSAS. Alternatively, the SSAS could purchase land or buildings such as grain stores on the open market and rent them back to the company.

As well as the prospect of company related investments, a SSAS offers a range of other investment opportunities, among which are: listed and unlisted shares, investment funds, physical gold, and cash deposits.

There is also great value to be gained from the availability of tax relief on contributions into a SSAS whilst retaining use of the resultant fund in a way that helps the business.

In common with other pension schemes, a SSAS can offer the member a tax-free lump sum of up to 25% of his share-of-fund, at any time from his 55th birthday. A SSAS can also pay a pension directly to the member, indefinitely; there is no obligation to buy an annuity. Tax-free lump sum death benefits can also be paid, in certain circumstances, as can dependants' pensions.

Many SSAS arrangements set up in the 1970s and 1980s are still in operation today, with several generations of members. New schemes continue to be established. Nearly forty years on from the legislation that gave rise to the SSAS, this type of pension scheme remains a very popular means of making retirement provision for the business owner-manager.

The availability of a SSAS may be another reason to trade as a private company rather than as a partnership. However, sole traders, partnerships and LLPs may set up Self-invested Personal Pensions known as SIPPs.

Roythornes work closely with several scheme providers and administrators and our tax advisers will be able to advise you about possible planning opportunities for you and your business. Please contact one of the team.

Chancel Repair Liability: Q&A

There's nothing like a 10-year deadline to ensure a last minute rush to beat it. Sure enough, letters are arriving on doormats that signal an intention to put notices on the register to protect 'overriding interests' that lose their automatic protection after 12 October this year. Among these interests is chancel repair liability.

What is chancel repair liability?

Some landowners have a duty to pay for repairs to the chancel of their parish church. The duty generally dates from not long after the dissolution of the monasteries under Henry VIII, when swathes of land were transferred into lay ownership. The liability to repair attaches to the land and it falls to the owner of the land to pay when repairs or maintenance work is needed. The parochial church council (PCC) is responsible for enforcing the liability.

Why all the interest now?

Until now the liability for chancel repairs has been an 'overriding interest' i.e. legally binding even where there is no caution lodged against the land or note against the registered title that mentions it.

Just over ten years ago the Land Registration Act 2002 was passed. As part of a general drive to reduce the number of binding interests not on the register, a deadline of midnight on 12 October 2013 was imposed for some of those interests. People or bodies with the benefit of long-standing (and archaic) rights like manorial rights and the benefit of a chancel repair liability have until then to get their interest noted against registered titles or to lodge a caution against unregistered land. Unless they do, their 'overriding interests' lose their automatic protection. So, for example, when registered land is sold on to another person, that other person will take free from the interest in question.

In a nutshell, if a chancel repair liability is registered *before* 13 October all future owners of the affected land will be liable for chancel repair costs. We know that PCCs are now taking action to protect their interests.

Is there anything I can do to protect my position?

(a) **Insurance.** If you have not received any notification that your land is subject to chancel repair liability, and a review of your deeds does not reveal mention of it, you should be able to take out insurance against that eventuality. We are securing insurance quotes for clients and finding that the sums involved are not prohibitive. Cover is highly *unlikely* to be available once there has been a formal notification about your liability.

(b) **Voluntary First Registration.** From recent exchanges with the Land Registry we understand that if your land is unregistered and you register it after 12 October 2013 you will hold it free from any un-noted or unregistered liability for chancel repairs which exists in relation to the property.

Can I challenge the Church if they try to 'register' a liability notice against my land?

In some circumstances it may be worth challenging the registration of a notice (particularly if it is unilateral), or applying to have a caution removed. It depends on the circumstances. Please get in touch with us for advice.

If I have a liability can the Church make me pay the whole amount due even though others also have liability?

The liability to pay is several (although sometimes the PCC will have done an apportionment among different areas or blocks of land). So, yes, you could be approached to pay for all of the repairs for which you and others are liable. You would then have to seek a contribution from the others.

If you have received correspondence from the land registry, contact a member of the agricultural property team.

Mineral leases: the big headlines and the small print

The recent news that York Potash Ltd has submitted a planning application for its proposed potash mine in North Yorkshire – the first potash mine in the UK for 40 years – makes it a good moment to review what issues farmers should think about if they are approached by minerals operators.

Minerals can be a something of a legal minefield. It is important to distinguish between the big headlines in the press and the small print of any operator's offer.

In most cases the approach will be made by an agent retained by the operator. Draft or summary heads of terms will be provided and the aim of the exercise is typically for the farmer/landowner to grant the minerals operator an option to enter into a lease. There may well be a preliminary letter of intent by which the landowner confirms that he/she is happy to progress matters.

Are they yours to give?

Fundamental to the whole exercise is whether you actually own the minerals.

The answer is not always straightforward. It is not uncommon to find that one person owns the title to the surface land and another owns the mines and minerals beneath the surface. In fact, it is easier to establish that someone does not own minerals than that they do. Establishing that you are in a position to grant a lease is vital.

At the same time, watch for any overage agreements that might be triggered by your granting an option or lease and for any consents that are needed before you can 'deal' with your land (e.g. from your bank). Check that there are no restrictive covenants that limit what can be done with the land.

Tenants receiving an approach will generally be required under the terms of their tenancy to notify their landlords, in whose favour minerals are usually reserved. Trustees will need to check their trust instruments for any relevant restrictions on their powers.

All this legalese may sound discouraging. It is not meant to be. While granting a minerals lease is unlikely to create overnight multi-millionaires, it could offer the chance of a long-term income stream that should not be dismissed lightly.

Given this will be non-agricultural income, it is worth thinking about how to structure things tax-efficiently. The availability of long-term non-agricultural income could also provide a chance to be creative around succession issues; such income may, for example, go some way to ensuring that next generation non-farming siblings are catered for.

Mineral rights: checklist for farmers

- Know your title: do you own the minerals? What rights incidental to the working of them do you have? It may be difficult to confirm what rights you have without some initial investigation.
- Do not sign anything without taking legal advice.
- Involve an independent land agent/valuer who has specialist minerals experience. He/she will be able to advise on the option fee, certain rent and royalty (and the balance between them) and whether, say, RPI is the best index to use on review.
- Mines and minerals are complex. Make sure the operator's contribution to your costs is sufficient to cover the work involved. You should not end up out of pocket on costs.
- Take advice on what the terms of the option commit you to do and following what triggers. Important also is what is does and does not commit the operator to; is it a balanced agreement? Are you restricting your own rights to carry out development (e.g. putting up new buildings on the farm)?

- Check what the definition of 'royalty' covers - all income (actual or deemed) that derives from the minerals or something less than that?
- Do not be put off from trying to negotiate a better deal by a statement that terms are 'non-negotiable'. These agreements have to work for both parties.
- Do not be rushed into rash decisions by very tight deadlines. Mineral leases could well be in force for more than two generations; it is worth getting them right.

If you would like advice about any aspect of mineral leases, contact Edd Johnson in the first instance.

Business Property Relief: What hope for holiday cottages after *Pawson*?

By Neil Irvine

When Mrs Pawson died in 2006 she owned a 25% share in a property called Fairhaven. Fairhaven was a large bungalow overlooking the sea on the Suffolk coast near Aldeburgh. Her share in Fairhaven formed part of her estate for Inheritance Tax ("IHT") purposes. Her Executors were successful at the First-Tier Tribunal in arguing that the letting of the cottage qualified as a relevant business property for IHT and so benefited from Business Property Relief ("BPR"), which meant that no IHT was payable on her share in the property.

Not surprisingly, HMRC appealed to the Upper Tribunal, which took a different view. The Upper Tribunal allowed HMRC's appeal on the basis that the business consisted mainly of holding Fairhaven as an investment and, as such, did not qualify for BPR.

What are the implications for the owners of holiday cottages? The difficulty is that it leaves holiday cottage owners uncertain as to the availability of BPR at all. HMRC were never keen on BPR in these circumstances and the case of *Pawson* reinforces HMRC's approach. The main difficulty is that a business which consists mainly of the letting of property is typically viewed by HMRC as an investment activity. If it is an investment, BPR will be denied. In *Pawson* the services provided included (a) a cleaner/caretaker (b) heating, hot water, and telephone services (c) someone on call to deal with queries and emergencies and (d) providing a welcome pack; but the provision of these services failed to prevent the business from being one of mainly property investment.

The conclusion is that unless there is a very high degree of personal management and involvement by the holiday letting owner, then BPR will be denied and the value of the holiday let will be subject to IHT. The problem is likely to be more acute in the *Pawson* tax situation (there was simply one property) but the holiday let on the family farm might well still benefit from BPR, particularly if the services provided are substantial. It is difficult to evaluate what substantial means, as HMRC look at each matter on a case by case basis. It might well be possible to tip the balance by, for example, being on hand to meet and greet, being on call to deal with problems, providing additional services such as breakfast, doing the shopping for the holidaymakers. The owners of holiday lets need to revisit the level of their activity and involvement to see whether they can benefit from BPR.

For advice on tax planning for businesses, contact any of our private client team.

Choose from the menu carefully for VAT purposes

By Paul Hogarth-Blood

Darragh House Limited v The Commissioners for HMRC was decided last year. Whilst the facts are amusing in some respects, the issues matter and merit a mention. The case involved a surveyor and a VAT inspection about amounts reclaimed for various items, some of which stood the test of an appeal and others which did not.

Invoices not addressed correctly

The decision was very simple: on every item, the taxpayer applicant must be the person with the proper right to reclaim and there must be documentary evidence in the form of an invoice.

Maintenance of Redcare for an intruder alarm

The surveyor's business insurance policy required him to have a Redcare alarm system for his office. However, the office alarm was linked with the alarm for the rest of the building which was the surveyor's home. There was an annual maintenance charge and it was on this that VAT was queried. HMRC argued that there should be a 50% discount on the VAT because of the mixed personal and business use.

The Tribunal found for the taxpayer because without the Redcare system he could not insure his business premises. The Tribunal said something interesting: "*the installation of the Redcare system was used for the purpose of the appellant's business and <u>not used for any other purpose and in particular not for a private purpose</u>*". Clearly it was, and the Tribunal went on to recognise that the taxpayer had an "*incidental benefit…[of an alarm for his house]…but this was not the purpose for which it was used"*. This logic might be worth considering for all manner of farming scenarios, for example where the farm office is also the kitchen!

Subsistence expenses

The taxpayer argued that this category comprised two sub-categories: "*(1) sandwiches at motorway service stations and meals at Little Chefs when he was travelling on business and (2) meals on a Friday night in a local restaurant when the taxpayer and his company secretary (his wife) ate out and, he said, discussed the business*".

The Tribunal said that the taxpayer's dinners with his wife could not count and his evidence about meals at motorway service stations allegedly comprising sandwiches only was not convincing because his receipts appeared to be mostly from restaurants and pubs!

In another part of the judgment, the Tribunal said: "*it is certainly not the law that a taxpayer is entitled to recover VAT on all subsistence expenses for its employees*". Put another way, the taxpayer can recover VAT incurred when feeding its employees but only when the expenditure is incurred for a business purpose.

Many farms provide meals at harvest time and VAT should be recoverable, but please consider two scenarios:-

A. Supper is served at the end of the day when work has stopped and the machines will not be switched on again until dawn breaks.

B. Supper is served at 8pm so that work can continue into the night.

On the facts of *Darragh House Limited,* it may be arguable that scenario A does not allow VAT to be reclaimed because the meals are not for a business purpose because the only thing the team will do after dinner is go to their beds or the pub (especially after the Chancellor knocked 4p off a pint!). Scenario B seems much safer because the team are eating so they can carry on working.

We doubt HMRC will take the point on a regular basis, but it does go to show that you need to consider them in everything you do; their inspectors might not be too happy if you have your dinner at the wrong time!

Roythornes has experienced lawyers who can advise about VAT in the context of farming businesses, listed buildings and property transactions. Contact Paul Hogarth-Blood on 01775 842515 in the first instance.

Get in Touch

This Roythornes Agriculture e-brief has been prepared by Vember Mortlock, Julie Robinson and Paul Hogarth-Blood.

If you would like to comment on any of the items or to ask us to cover anything in particular in a future edition, please let Paul know PaulHogarth-Blood@roythornes.co.uk, or call him on 01775 842 515.

We have a Roythornes Agriblog too. Check in to see the latest news and comment from our agriculture team.

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