

## Tax planning and the 'battery barn'

Farm diversification is a much needed requirement for the farming industry in these uncertain times. All landowners and farmers must spread their activities as it is considered greater protection lies with income streams from a variety of sources.

One such diversification is the 'battery barn' where a farmer/landowner has a barn available for 'battery storage' as part of on-farm renewable energy projects. Battery storage barns work by charging batteries during the off peak low demand hours and release it back to the grid in high demand periods. Suitable sites need to be near electricity lines with spare capacity and adjoining or within existing farmyard for planning reasons. Such storage takes place in an agricultural barn which is usually a steel-framed building with a concrete foundation used to house rows of batteries. The batteries store electricity which is fed back to the grid as and when required. Battery storage developers will usually approach the landowners of potential sites which they think are commercially viable which is very similar to property development approaches. The financial incentives proposed by the developers are often very attractive. However, a landowner still needs to move with caution and should always ensure they obtain full professional advice before signing any documents including tax protection of all taxes in the round.

### Inheritance Tax

In general terms, the income from battery storage will be rental income similar to other diversification, eg rentals from solar panel arrangements or let workshops. There will be a potential risk that the farm enterprise will become an investment business with too much rental income. There are concerns under the *HM Revenue & Customs v A M Brander as Exec of the Will of the late fourth Earl of Balfour* [2010] STC 2666 case and *Farmer (Farmer's Executors) v IRC* [1999] STC SCD 321 case that the enterprise will be an investment activity. Tests are:

1. Turnover
2. Profit
3. Time spent
4. Capital employed
5. General overview

The farming enterprise that holds the 'battery barn' proposal must consider the most tax efficient trading structure. If the move towards diversification results in more rental income and less trading then consideration must be given to removing some investments into different ownership possibly before the agreement for 'battery barns' is more advanced. With the new principal residence £Nil Rate Band applying from 6 April 2017 with a cap on estates worth more than £2m some transfers to the next generation are being considered to reduce farm estates. The available CGT reliefs that can be used must be reviewed at an early stage. If the land is to be passed to the next generation then holdover elections can be considered, but at the potential expense of the 'tax free' CGT uplift on death of the base cost.

### Heads of terms

A landowner who is considering a 'battery barn' and indeed any 'renewable energy' project is likely to be presented with heads of terms to sign and he should instruct his agent and solicitor to help with the negotiations and tax planning must be considered. Often the developer will agree to pay the landowner's professional costs for some of the project. When reviewing the heads of terms of the agreement, a landowner needs to be careful to ensure they do not contain terms which prevent him from dealing with any other potential developer apart for a short initial

period in the event that the first developer does not have the resources or desire to proceed. Likewise if full property development is available this must not be put at risk. The full planning consideration must be fully understood.

Tax planning needs to be carried out at the 'heads of terms' basis so that the full tax implications can be understood prior to action. The worst tax planning in these situations is 'post transactional planning'. These plans might include transfer of the property to the next generation prior to the barn becoming available for battery storage. On the assumption the barn was used for agriculture prior to the 'battery barn' option then as mentioned a holdover election for CGT could be considered from the owner of the barn to the next generation whilst looking at all taxes in the round.

### The use of an option

Once heads of terms are agreed, the developer will often insist on an option, so that they have the opportunity to obtain planning permission, grid connection and ensure the project is commercially viable. The option will attach the form of lease which will be entered into once the option is exercised. The landowner needs to consider rent terms. The permitted use of the development needs to be considered as to storage only, or is there scope for the project to include other uses such as generation from the site? The latter will be a trade as the supply of energy is a trade.

### Lease terms

Lease terms for a battery barn will generally be for at least 25 years (possibly with the right for the developer to extend the term). The landowner needs to see how this impacts on any of his adjoining land especially if there is possibility for developing that land. As so many landowners are, clearly the 25-year lease might need to be considered in terms of probate, IHT and all tax planning. Hence why passing down to the next generation has been considered. The developer will often use a special purpose vehicle with no assets as their trading vehicle, thus a landowner may want the developer to put in place a security bond which can be used to decommission the site if the tenant developer does not. The impact of a joint venture can be considered.

### Tax planning in the round

These are such difficult times for the farming industry with uncertainty over the future of subsidies and markets. This 'battery barn' example has been used as a picture of the alternatives available to landowners. For the farmers to understand the legal, commercial, tax planning and timing considerations of the array of projects is perhaps a minefield, especially as many of the landowners were not trained to do anything but farm the land for food production.

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