Pastures new

Julie and Fred Butler outline the recent changes to agricultural law that impact on practitioners dealing with rural property matters

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A recent Savills report, *The Farmland Market*, pointed to a strong market where demand still exceeds supply (tinyurl.com/3jzpmvpn). Farmland values are high and there are often many bidders for farms coming to market. Nevertheless, buying and selling farmland is complex and it is necessary to understand the issues particular to agricultural land to advise clients effectively. Here, we set out the unique considerations around tax planning opportunities and the pitfalls for the conveyancer of rural property.

Mixed-use stamp duty land tax

A subject hitting the headlines recently has been the mixed-use stamp duty land tax (SDLT) on the purchase of small areas of commercial land attached to a house. Such concerns can have a big impact on farmers selling off cottages with land to make them attractive to buyers and those buying farm 'smallholdings'.

In *Withers v HMRC* [2022] UKFTT 00433 TC, the First-tier Tribunal (FTT) found that the outlying land was not a residential amenity and the mixed-use rates accordingly applied to the purchase. The property Mr Withers bought amounted to 39 acres and included a barn conversion with a separate dwelling in an annex, a driveway, a lake and gardens. Most importantly, there was commercial use of the land by the Woodland Trust charity for rewilding and farmland let out for sheep-grazing. Withers conceded that the house and 12 acres of the land were for residential use but argued that the land used for rewilding and grazing was commercial and relatively substantial compared to that involved in other recent tribunal cases. HM Revenue & Customs (HMRC) rejected this claim, so Withers appealed to the FTT.

Withers showed that a long-term formal agreement was in place to charge a local farmer £800 a year for the grazing rights. HMRC was suspicious as the grazing agreement was signed just before the sale – a timely reminder for property professionals to ensure that all long-standing arrangements are formalised with a legal agreement now. In addition, this agreement should be referenced in the conveyance documents. If there is farm machinery to be purchased from the vendor this should be considered – see below on capital allowances.

Although the grazing rights income was relatively low, the FTT accepted that it was not negligible and amounted to a commercial arrangement. Moreover, much of the land was not part of the barn conversion's grounds and most of it could not be seen from the house. HMRC's argument that the land surrounding the dwelling would be suitable for leisure use if there was no commercial use of the land was also rejected. The acreage was substantial for general leisure usage and in practical terms would take lots of upkeep. The land subject to the Woodland Trust agreement could qualify as non-residential even if it were not being put to commercial use.

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It should be noted that the successful *Withers* decision contrasted with *J and C Averdieck v HMRC* (TC8623) which hit the tabloid headlines as it was a small area of land with just a lane being used by a farmer. The *Withers* case was seen by some observers as an opportunity for greater spurious mixed-use SDLT claims, but others saw *Withers* as simply a need for definition of commercial farmland. In the current SDLT climate spurious claims will be sought out by HMRC and relief will be denied.

The *Withers* case showed the importance of the purchaser obtaining tax advice at an early stage of the process, to ensure that any mixed-rate claim that is going to be made can be robustly defended. This and other cases show the importance of the grazing agreement (or other commercial arrangement) being referenced in the contract of sale. Other cases point towards ensuring there is a business registered with HMRC from completion and with commercial activity happening from day one.

Capital allowances on purchasing a farm

A key consideration when buying and selling a farm is the matter of maximising the tax relief on capital allowances. There is a possibility that the historical claims contain errors and the purchase / sale is an excellent opportunity to rectify and clarify all such claims. Recent tax tribunals have shown the 'marginal and varying' treatment of capital allowances and the need to support such claims with evidence.

The pooling and fixed value requirements apply to assets only on which the vendor was entitled to claim. For various reasons, it may be that the purchaser of the farm is the first entity with entitlement to claim capital allowances on the asset. In such cases, the purchaser may allocate a portion of the overall purchase price towards the element that qualifies for capital allowances. Every asset transferred is considered individually so it is entirely possible that some assets in the property must be transferred by section 198 of the Capital Allowances Act 2001 (CAA) or lost, and others may be claimed by the purchaser without interaction with the vendor or a section 198 election, as appropriate. Property lawyers may well need to work with tax advisers to identify these figures.

When considering first entitlement to claim capital allowances on a farm asset, it is important to understand the asset's full history as well as the entitlement to claim of each previous owner – not just the vendor. In practice, this can make an entitlement exercise more challenging for properties that have changed hands several times, although in practical terms properties constantly changing hands is less likely with farming than in other industries. In cases where a leasehold interest is obtained, it is necessary to consider the freeholder's historic entitlement to capital allowances (if any), as first entitlement may lie with them. Such work all takes time when the parties to the transaction do not necessarily want the aggravation of finding out the detail, but the property lawyer must raise and follow through the matter as diligently as they can.

VAT and the supply of land

A basic and historic form of farm diversification has been the car boot sale and the selling of pitches to stallholders. Understanding the VAT status is necessary in assessing the specific VAT treatment here and with other supplies of land. A recent decision from the FTT in the case of *Rufforth Park Ltd v Revenue & Customs* [2022] UKFTT 43 (TC) lends further clarity to the VAT treatment of car boot pitch fees. The facts of the case led the tribunal to regard the charges for 'ordinary' pitch fees as falling within the VAT exemption as a right over land. The VAT position on stall and pitch fees has been an area of debate by HMRC in recent years. When a farm is being purchased the ongoing commitment to the pitch holders (if any) must be reviewed and the buyer must be protected.

Most forms of farm diversification involve the supply of land as part of the activity. It is key for farmers to consider with all land supply both the VAT treatment and other taxes in the round, especially, for example, inheritance tax (IHT). Car boot sales have been a positive source of income for farms as indeed has the provision of livery for horses, and both have very complex VAT rules. Like car boots, the legal position of liveries and

the ability to obtain vacant possession must be considered when selling a farm. It could be that the purchaser wants to include the livery business or wants nothing to do with liveries at all – all such facts must be ascertained.

The *Rufforth* case hopefully provides a clear view that pitch fees for an 'ordinary' car boot type pitch fall into the VAT exemption liability, as stated in Public Notice 742 at para 2.6. This does raise the question as to why HMRC thought the case worthwhile to take to the tribunal.

Nitrate mitigation and carbon credits

Natural England, the Department for Environment, Food and Rural Affairs (Defra) and the Forestry Commission have launched a support framework for decision-making on where to establish trees and where to restore peat. The framework intends to provide greater certainty, consistency and quicker decision-making for all stakeholders, while considering potential biodiversity value, future site conditions in a changing climate, water and archaeological interests. For new proposals for tree felling or woodland creation on peatland this applies to England only and shows the need for professional advice, including from property lawyers. Understanding the position on sale is also key.

The 2023 budget featured land used for environmental purposes. Essentially, agricultural property relief (APR) is to be extended to include such land uses. Previously APR has been extended to include vineyards and cider-making.

The validity of tax treatment of the associated legal agreement is part of required professional advice, especially considering what impact this would have on future sales and purchases of the property. At a time when farm subsidies are being reduced and there are volatile farm commodity markets and growing interest in environmental improvement, alternative income streams are very attractive. Long-term legal agreements offering guaranteed payment rates mitigate risk and can maximise income from more marginal farmland that would not produce the best yield. Note, however, that long-term agreements come with complex considerations for property practitioners.

Land remediation relief

Another problem that property lawyers need to be aware of is the purchase of potentially contaminated farmland. Understanding basic workings of land remediation relief (LRR) is also an important consideration.

A recent case helps explain land remediation tax relief in context for property lawyers – *Northern Gas Networks Ltd v Commissioners for HMRC* [2022] EWCA Civ 910 (tinyurl.com/TX-NorthernGas), a Court of Appeal (CA) case. The facts were that Northern Gas Networks Ltd (NGN) owns and operates a regional UK gas distribution network, which consists of 37,000 kilometres of pipeline, which it acquired from its former parent company via a hive-down in 2005. The details of the case were:

1. NGN acquired land in the UK.
2. The land was acquired for the purposes of NGN's trade.
3. At the time of acquisition, all or part of the land was contaminated.
4. NGN incurred qualifying land remediation expenditure in respect of the land
5. The qualifying land remediation expenditure was allowable as a deduction in computing the profits of NGN's trade.
6. The land must not have been in a contaminated state wholly or partly as a result of anything carried out or omitted to be carried out at any time by NGN or a person with a relevant connection to NGN.

NGN appealed to the Upper Tribunal following the FTT rejection, which agreed that conditions four and six were not satisfied. NGN followed this decision with an appeal to the CA – the sums involved were very significant. HMRC also challenged the previous decision as to whether condition three was met by NGN.

The CA first considered condition six and found that the contamination of the land arose from the possibility of harm due to an escape of gas. The iron pipes themselves did not give rise to any harm – the harm, or possibility of harm, was caused because NGN pumped gas through the iron pipes so that:

- the land would not have been contaminated if no gas had been pumped through the pipes, and
- the pumping of gas was an act by NGN which gave rise to or caused contamination.

It was decided that as the

contamination arose from an action of NGN, this meant that condition six was not met and LRR was not available. As condition six was not satisfied, it was decided that the court did not need to consider conditions three and four. Whether the land was in fact in a contaminated state when acquired (condition three) or whether the expenditure had been incurred in respect of land (condition four) was not considered. The court dismissed NGN's appeal on the basis of not complying with condition six. For property practitioners dealing with the purchase of contaminated land in relation to condition three, it is key to ensure that the contamination is ideally identified at the time of purchase or, if not, that the history of contamination is available.

The case serves as a timely reminder of the problems associated with landowners achieving land remediation tax relief and what to consider when forensically analysing the details of a farm purchase and any possible contamination. For many agricultural tax advisers, it is also a useful reminder not only of the existence of the relief but also at what point to take advantage of the relief and what to action at an early stage. Farmers and landowners must be advised of the need to utilise and research this relief if they do have contaminated land or are about to purchase contaminated land, and to refer the matter to the professionals as applicable.

All work involving the conveyance of farmland and the associated leases in respect thereof is extremely complex and a basic understanding of the tax considerations associated with agricultural land is essential. However, if in doubt it is always wise to use an agricultural specialist for the possible tax issues.