



## VAT

### 183. INPUT TAX ON FARM ENTITLEMENTS

The reality of farming in 2016 is that the farm subsidy now known as the Basic Payment Scheme (BPS) - previously the Single Payment Scheme (SPS) - supports the farming industry to a point where, at a general level, the grant and subsidy income received makes up the net profit in farming, or indeed in recent years, more than the net profit received from the trade of farming.

The BPS is an annual income stream and the entitlements, formerly Single Farm Payment Entitlements (SFPE), are the registered right to receive this income. Where there are 'naked acres', meaning any eligible land without entitlements, farmers will need to purchase entitlements on the open market to enable them to claim any BPS on the land.

At the FTT in the case of *Frank A Smart & Son Ltd*, HMRC argued that the input VAT could not be claimed against the purchase of the SFPE. The FTT found that the SFPE had a link with the farming business and was in the nature of an overhead. The case was decided in the appellant's favour at the FTT, ie input VAT could be claimed. HMRC took the case to the UT, which agreed with the FTT (*Frank A Smart & Son Ltd* [2016] UKUT 0121 (TCC)).

The UT considered that the SFPE was of significant value compared to the needs of the farms. The UT agreed that the cost of the SFPE had sufficient link with the farming business to be an overhead and input VAT could

therefore be reclaimed. This went against HMRC's views, that the entitlement purchased was a right to a stream of income, as it lacked sufficient direct and immediate linkage with the trade of farming. This despite the fact of the farming industry's dependency on the income stream for survival.

As the UT decision goes against the HMRC manual, there could be many input VAT claims to be made by those who have purchased entitlements and not claimed the input VAT.

The chairman of the UT stated: "It is unnecessary for the company to prove that the cost in question was actually built into the price charge for the supply". This goes against the so-called 'cost component' approach by HMRC, whereby it rejects claims for input VAT where the costs are not reflected in the prices of supplies made by the claimant of the input VAT.

The tribunal considered that the purchase of SFPE units was not a separate business and the cost was a business expense, therefore the claim for input VAT was allowable.

**Contributed by Julie Butler, Butler & Co**