

## Briefing

### The problem 'benefits' of providing farm accommodation

Farming has been going through a very profitable period in many sectors of the industry with high prices, positive levels of production and strong farming grants.

As a result, there have been many interesting angles of farm tax planning. For example, there is potential for increased use of the farmers' averaging calculation to protect higher rates of tax, and there has been a flurry of incorporation ideas including the corporate partner. With the 50% highest rate of tax (reducing to 45% from 6 April 2013) and the onerous charge to class 4 national insurance, it is fair to say that the farming community have embraced incorporation with enthusiasm. A high that there is no benefit in kind on the provision of accommodation in the farming community as exemption can be achieved through the availability of the provisions for the proper performance of duties (s99(1) ITEPA 2003) and also the customary provision of accommodation for better performance (s99(2) ITEPA 2003). It is important to note here that these two exemptions do not apply to directors of companies unless the director has no material interest in the company and either works full time for it or it is non-profit making or established for a charitable purpose (s99(3) ITEPA 2003). This is of little help to the typical family farming company, where the directors and those connected with them invariably have more than a 5% shareholding in the company.

The fact that directors of farming companies, therefore, do not effectively qualify (in the majority of cases) for the exemptions from the benefit in charges for the provision of accommodation can often be simply 'missed'. There could be some hefty charges and penalties for those who have overlooked the 'director problem'. The predicament has highlighted the fact that employers relying upon the proper performance exemption to avoid a benefit in kind charge should draft employment contracts with care to ensure that the employee's duties necessitate occupation of particular accommodation in order to minimise any liability.

### Accommodation provision for security and money problems

There is another tax planning angle to be considered as rural estates have recently started to begin a new custom of providing estate employees with accommodation to improve security of the estate. Many local police forces have given notice to estate owners that it is impossible to police farms and rural estates to the extent that the owners would like. Employers relying upon this motive for the tax-free provision of accommodation to their employees should re-examine the employment contracts of the duties to ensure that the security provision is included. If security is the only reason for the employee being provided with the accommodation

proportion of farm profits are not withdrawn, instead they are spent on increased stock and improvement and therefore the lower corporation tax rate on retained profits, which is very attractive to the farming community.

### Benefit in kind in accommodation and the director problem

In the dedication to achieve the benefits of incorporation the spotlight has fallen on another area of 'benefits' – the question of 'benefits in kind' provided by the corporate entity for its employees. One such benefit is the provision of accommodation to all employees and particularly directors of the limited company. There is often an assumption without a taxable benefit in kind, it is important that the security duty will have to be carried out frequently (see EIM 11350). It will also be important that records should be maintained to establish that staff with security duties are regularly performing security tasks. Where these duties involve training it is important to be able to evidence that training is regularly given. Another consideration is regarding the case of *Vertigan v Brady* [1988] STC 91 where Mr Justice Knox remarked that the proper performance exemption 'is directed to a necessity based on the relationship between the proper performance of the duties and the dwelling house and not a necessity based upon the personal exigencies of the taxpayer in the shape of his inability to finance the acquisition of suitable accommodation'.

### Action plan

Employees within the agricultural industry have conventionally been provided with living accommodation by their employers and the question as to whether the provision of this accommodation becomes a taxable benefit has recently been brought under the spotlight by the large number of changes to the farming industry, the incorporation question and the fact that directors do not always qualify for the exemption. The issue of security is currently a problem for so many farms and estates.

The action plan has to be to review all accommodation that is provided for employees, check that the employment contract ties into the ability to claim the exemption and the specific duties and there is evidence that the claim can be justified. And it is important to recall that directors of their own companies are still employees as well as owners!

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