



**A world leader of the  
accountancy and finance profession**

## **CAP reform and restructuring**

 You have exclusive access to this article as a Farming and Rural Business SIG subscriber.

**There is currently much uncertainty surrounding the Common Agricultural Policy (CAP) reform post-2013 and the future of the farming grant known as the Single Farm Payment (SFP).**

Proposals for a basic payment scheme starting in 2014, which involves a number of changes to current arrangements, are meeting with resistance from farmers. These proposals are set out below:

### **Active Farming**

There is a proposed “active farmer” rule which is understood to exclude certain claimants from the scheme, ie, those whose receipts from non-agricultural activities exceed their direct payments by a certain amount, and possibly those who fail to carry out a minimum level of farming activity on their agricultural land. There is also a capping of the subsidy for large farming organisations. Active husbandry has always been a positive step towards the claiming of Business Property Relief (BPR). In the case of *Balfour (Earl of) v HMRC* [2010] UK UT 300 a positive point raised for the claim for BPR was the active involvement in the overall “mixed estate” enterprise.

Obviously the aim of the active farmer definition was to stop non farming organisations receiving payments, but in so doing the changes seem to have incorporated a large amount of the farming community in some way. Under the proposals it is understood that only farmers whose CAP direct payments are greater than 5% of their total receipts for non-agricultural activities will apply. This could be very difficult for integrated farming businesses who process as well as produce food and have a large amount of non-agricultural income due to diversification.

### **Dual Use**

There are also the concerns over the “dual use” issues in situations where claimants are making dual use of land, such as the landlord tenant arrangement, share farming etc. The Rural Payments Agency has recently been contacting English farmers to obtain more information about dual use claims. It has been suggested that when negotiating new tenancies, licences and other arrangements, farmers must consider the dual use issue and

it is an important consideration for the drafting of legal agreements.

## **Restructuring to maximise grant payments**

Many land agents (and those who study the CAP Reform proposals with enthusiasm) are proposing that farming businesses are restructured to ensure that the maximum payments are received. Such restructuring proposals obviously raise concern on all areas of farming tax. However, the CAP rules include provisions to try to prevent artificial restructuring simply to maximise subsidies and this in itself could create restrictions.

In order to utilise the tax advantages of the corporate structure and to minimise the onerous punishment of the 50% (soon to be 45%) tax rate and Class 4 National Insurance, many farms have considered “corporate partners”. As a result of this, many elements of the farming community have recently been through their own restructuring with the introduction of the corporate partner and will perhaps not want to make further adjustments in the immediate future.

One point for concern with restructuring will be inheritance tax (IHT) planning. The case of *Balfour* showed a mixed estate having achieved BPR on let property. *Balfour* followed on successfully from the case of *Farmer (Farmer’s Executors) v IRC* [1999] STC SCD 321 where BPR was achieved on 22 let properties. Many advisers have highlighted the problems of a mixed estate owning too much investment activity in a farm business, which would “tip the balance” under s105(3) of the Inheritance Tax Act 1984, (ie, to remove investment assets away from the main trading operation). Restructuring has been suggested to protect both BPR relief and grants and to try and help avoid “partial exemption” for VAT.

With the Mirlees Report and the Office of Tax Simplification (OTS) considering the review of BPR and APR, there have also been suggestions of passing property down to the next generation while the generous IHT reliefs exist and thus effectively carrying out restructuring through tax planning.

In the “melting pot” of tax concerns it is important not to overlook the capital gains tax implications of any such restructuring.

Whatever happens, it is going to be a very hectic time for the advisers to the farming community, and lawyers are going to be particularly busy trying to sort out robust legal agreements to protect all the concerns. For example, partnership agreements, shareholders agreements, leases and licences which clearly show who is entitled to what. These must take into account not only the grants that are available now but the grants that will be available when the CAP Reform proposals come into force.

While a large number of farmers try to avoid tax planning, legal documents and family discussions on tax planning like the plague, they do try and ensure they claim the

maximum amount of farm subsidies with enthusiasm and devotion. It is likely that these farmers will approach restructuring if needed to maximise grants with far more enthusiasm than possibly restructuring for future IHT planning purposes.

**Julie Butler, FCA, Butler & Co.**

**Farming and Rural Business Group, April 2012**

Julie Butler FCA is the author of Tax Planning for Farm and Land Diversification, Equine Tax Planning, and Stanley: Taxation of Farmers and Landowners.

**Please note:**

Views expressed in this article are those of the author and may not represent ICAEW policy. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the publisher or authors.

---

**BUSINESS WITH CONFIDENCE**

Copyright 2012 © ICAEW