



Farm Losses

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Farm losses are a troubling subject for the farming industry. The judgement in *Ardeshir Naghshineh v HMRC* [2022] EWCA Civ 19 is of huge importance for farmers making continued losses from the actual farming operation, although some of the other farm enterprises might be profitable.

The history of the case starts with the First Tier Tribunal allowing sideways loss relief claims for a farming business where losses were made for 17 years in *Naghshineh v HMRC* [2018] UK FTT 453 (TC). The success of the decision caused some surprise among professional advisers and indeed it was overturned in the Upper Tribunal (UT). The Court of Appeal has now upheld the UT judgement.

The judgement of 13 January 2022 comes at a time when the farming industry is going through significant change and is faced with much uncertainty. It is ironic that the findings of the case were published in the same month as the House of Commons Committee of Public Accounts report on the Environmental Land Management scheme (ELMs). The report is very negative about the work by the Department for

Environment, Food and Rural Affairs (DEFRA) so far, stating: “The Department has not established metrics or clear objectives which would allow it to measure the success of the scheme.”

It is key for farmers and farm advisers to look at the basics under the “hobby farming” rules. Where a farming business makes losses for five consecutive years, loss relief is not available in the sixth and subsequent years unless the reasonable expectation of profits test is met and demonstrated to HMRC.

An important learning point from the case is that, as soon as losses look like they will exceed five years (this could be from the original business plan or ongoing financial review), the farm business plan must be reviewed. With the move to ELMs for farmers, the ability for farmers to produce accurate business plans is difficult. However, they must persevere as business plans are essential. Not just for sideways loss relief but also to prove the farmer has a commercial approach for Inheritance Tax (IHT) reliefs such as Business Property Relief and Agricultural Property Relief.



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