

# Fruitful soil

**Julie Butler and Andy Case** explain how slurry is turned into fertiliser and tax relief.

**T**he spreading of fertiliser, including 'slurry', and the question of who spreads it can be very important as part of the portfolio of evidence for proving trading activity and the act of 'agriculture' and farming for a number of tax reliefs. For the trading activity, see 'Focus on trade', *Taxation*, 13 July 2023. Such matters can be questioned by HMRC in agricultural income tax loss claims and agricultural property relief (APR) for inheritance tax (IHT). How the fertiliser/slurry is kept can be very important for claims for capital allowances.

Farm slurry is created from cow manure and water, providing a fantastic natural fertiliser that farmers can use to encourage the growth of grass and other agricultural crops. It is usually stored in slurry tanks or slurry pits (lagoons) before it is applied to farmland as fertiliser and these can have beneficial tax reliefs.

## Capital allowances – first entitlements

It is likely that, when buying a farm, full capital allowances have not been claimed. There is a first entitlement to claim these allowances and the tax adviser must be prepared for such an activity. One classic area where capital allowances have often not been claimed is the slurry tank or pit, together with the silage clamp and grain store. In these instances 'function' and 'temporary storage' are key (for reference *Stephen May and another* (TC6928)). Likewise, the potato storage with 'function' could also have been overlooked before the result in *JRO Griffiths Ltd* (TC8203) which emphasised their potential eligibility for capital allowances claims.

With regard to first entitlements, there are situations where the purchaser of the farm is the first person to be 'entitled' to claim capital allowances. In some cases, it may be apparent that first entitlement to claim allowances lies with the vendor rather than the purchaser. This could be due to improvement expenditure the vendor incurred in the course of their ownership of the building but didn't claim tax relief. If the vendor is not motivated to identify the specific allowances, it is possible to undertake a 'vendor pooling exercise'. This is where the capital



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allowances review is undertaken for the vendor at the buyer's expense, identifying allowances to be claimed by the vendor and subsequently transferred to the purchaser as part of the property transaction. If such an opportunity for a capital allowances claim is identified in an upcoming transaction, it is important to include wording in the sale and purchase agreement of the farm, stipulating that the vendor will co-operate with a capital allowance exercise, and transfer the allowances identified with a s 198 election. It is also useful to note that while the wording would need to be included before the document is signed, the analysis can be undertaken after completion, so the sale is not onerously delayed by the tax advantage and capital allowances analysis that needs to be undertaken. Such an election can be signed up to two years after the completion date. Many parties to the purchase and sale of a farm are so focused on the major deal that this finer detail may be considered of little consequence but the maximising of tax relief can be very worthwhile. The pooling and fixed value requirements apply to assets only on which the vendor was entitled to claim allowances. As mentioned, for various reasons, it may be that the purchaser of the farm is the first entity with entitlement to claim on the asset. This could be where, for example, the vendor has failed to claim capital allowances on assets previously possibly because the marginal nature of capital allowances is confusing. It is essential for the purchaser's tax adviser to obtain the full history of capital allowances previously claimed so that the benefits of tax relief can be considered.

Such responsibility for the first entitlement/increasing capital allowances places emphasis on obscure assets that may qualify for capital allowances but have previously possibly been overlooked in the claim. Silage clamps do qualify for 100% annual investment allowance (AIA). In addition, there are currently grants available for new slurry pits etc, and these must be fully understood by the tax planner.

## Organic fertiliser storage

Let's consider the farming facts that support the use of organic fertilisers and not just the high cost of artificial fertiliser. The UK government's 25 year environment plan (2018) refers specifically

### Key points

- The use of slurry as fertiliser can lead to tax reliefs.
- Farmers should consider their slurry 'liquid gold' in terms of saving money and being carbon and tax efficient.
- The capital allowances on the storage and protection of the slurry must not be overlooked with the interaction of the detail of the relevant grants.

to soil health. A key objective is to improve soil condition and carbon storage by adding organic matter/fertiliser. Organic fertilisers include livestock slurry and manure, 'frass' (insect excrement producing chitin-rich fertiliser), digestates, composts and green manures, as well as organic bioproducts from green production and waste industries. The key for farmers is to ensure that such fertiliser is stored well and for tax advisers that such storage achieves the maximum capital allowances.

There are safety problems with slurry storage – a significant cause of slurry-related pollution incidents is often overflowing slurry storage. At present, the silage, slurry and agricultural fuel oil (SSAFO) rules require a minimum of four months' storage for slurry to meet the farming rules for water. Where exceptional circumstances arise that result in farmers generating more than four months' slurry, temporary storage measures constructed without the same structural integrity as permanent storage can fail, leading to pollution and Environment Agency enforcement so care must be taken by the farming industry. Obviously, these works can be expensive, and doubly so in the event that a farmer fails to comply with such a notice. In those circumstances the Environment Agency can prosecute farmers for non-compliance, the penalty for which can be an unlimited fine based on the farmer's means which is a real negative in these difficult times.

Farming is never entirely without risk, and slurry storage is no exception to that rule. The consequences of taking unnecessary risks with slurry storage or of systems failing can be catastrophic for the environment and cause lasting damage even on a localised scale. In addition, farmers can find themselves involved in protracted legal proceedings and face an unlimited fine if prosecuted and convicted. That said, when it works well it can be cost effective, the tax relief on storage can be beneficial and there are grants readily available. Repeated applications of organic fertilisers over several years can create a measurable change in soil organic carbon. If managed correctly, organic fertilisers have the potential to reduce long-term reliance on artificial or 'synthetic' fertilisers, further reducing the carbon footprint of nutrient management plans which is an overall positive for the farmer lately.

### Advantages of organic fertiliser?

Farmers have had a demanding time lately (see 'Under pressure', *Taxation*, 9 November 2023). They are being tasked with addressing the emissions they are releasing into the atmosphere, and are faced with more restrictions on what they can and cannot do in terms of fertilisation. Such restrictions have been causing pressure for farmers, especially since the nitrogen cost spikes of synthetic fertiliser. The farmer together with the tax adviser/accountant must make sure that the activity of applying and storing is as tax efficient as possible. Spreading slurry accurately and evenly at times when crops are growing will maximise economic returns and minimise losses to air and water.

Farmers are always considering more economic and environmentally friendly ways of manure application, especially where grants are involved. For tax purposes the capital grant should be deducted from the cost of the capital asset and the AIA claimed on the net amount. The tax adviser/planner should have full details of the grant terms available so it is correctly treated for tax. Farm storage of key areas together with capital allowances claims are very important to the farming industry as

a quality slurry pit and silage clamps are essential for environmental protection as well as health & safety concerns. 100% AIA is key. It could be that these claims have been previously omitted and costs on which first entitlement capital allowance claims could be considered could be in the £millions. The grants will be obtained from the land agent acting for the farm operation. These agents will have the details to help with the correct capital allowances claim and the sale of the farm and the history of the farm, the grants and the exact details of the assets will all be important. The omitted claims could be identified on the change of farm accountant/tax adviser.

### Transparent accounting

Where slurry has been produced by the farm operation there must be evidence of the use of fertiliser for various tax reliefs and it is essential that this is correctly shown in the farm accounts. The correct internal entries should be applied in the accounts. For example, the slurry should be quantified and charged as a cost of the business with the correct double entry. In the example below, 'x' should equal the quantitative understanding of the internal cost.

Dr fertiliser cost	x
Cr sale of fertiliser (internally)	x

Farmers should consider their slurry as 'liquid gold' in terms of saving money and being carbon as well as tax efficient. In addition, applying the fertiliser could help farm capital tax relief, etc. The role of the farm accountant/tax adviser who understands the farm operation and maximising tax relief will be important throughout, for example:

- Ensuring that the slurry fertiliser is identified at a cost to the business and shown in the accounts.
- Making sure that maximum capital allowances and grants are claimed on storage, etc.
- Ensuring that the internal cost of the fertiliser is there to emphasise the farming and trading for tax relief in terms of agricultural property relief and inheritance tax relief.
- Ensuring that the information is available on the sale of business or on the transfer to a new business.

This is an area of farming activity and tax that does require a specialist (*Mehjoo v Harben Barker* [2014] EWCA Civ 358). There must be strong interaction from the farming business partners and their land agent. ●

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