

**'Green' farming****Is fee paid to farmer a subsidy or a supply?**

I act for a farmer who has recently signed a lease agreement with an organisation which relates to land that he owns and uses for arable purposes.

The lease states that my client will continue to farm the land and produce food and crops at a profit but he must use 'green friendly' farming techniques. My client will receive £40,000 a year from the organisation as 'rent' for the ten years.

My question concerns VAT: is this income classed as a subsidy (not subject to VAT) to help my client pay for the extra costs he will incur with the changed nature of his farming techniques? Or is the payment exempt from VAT as rent or – if my client has opted to tax the land in question – possibly standard rated? If the answer is that it is a non-VATable subsidy, will my client have to apportion input tax between VATable and non-VATable costs incurred on the land in question?

Query 20,066

– Farmer Giles.

**There should have been forensic analysis of the work to be undertaken.**

This is a very interesting question at a time when 'green farming' is so in the headlines.

In addition, the question covers subjects of complex VAT definition, such as grants, the supply of land, and the supply of services. The question also raises a classic tax/VAT planning concern and that is that 'post transaction' tax/VAT planning' is the wrong approach and pre-transaction planning is the answer.

The query states the farmer 'has recently signed a lease agreement' – ideally the VAT analysis and advice should have been before the signing of the agreement. Ideally before the finalisation of the legal agreement there should have been forensic analysis of the work to be undertaken and the reason for the payment. There is no official definition of a grant from a VAT perspective, and this makes it difficult to distinguish between grant funding and consideration for a supply. Simply labelling a payment a grant is not conclusive and therefore it is important to identify what happens when the payment is made. In addition, for this payment to be classified as a grant, the organisation must have the legal power to award a grant and the payment must be made after a grant application process.

To be within the scope of VAT there must be a supply, consideration, and a direct link between the supply and the consideration. It is difficult to see that the arrangement with the organisation is a lease and therefore that the payment

is a rent as there is no occupation of the land. It would be essential to see the 'lease' and the reason it could be considered rent. The opt to tax would work if there was a lease but that has other long-term implications for the land to consider. On the subject of long-term implications the lease could be negative for your client's inheritance tax position.

It would appear overall that the supply is for services which is subject to VAT.

The starting point, after the review of the detail of the 'lease' in the context of what actually happens in the farming operation is to consider suggesting that the 'lease' is redrafted to reflect the supply of services and correct the documentation to both reality and an improved VAT position. Experience tells us that more facts could/will emerge from this forensic analysis of the operation and the legal arrangement which could impact on the VAT and tax treatment further ... so good luck! – *The team at Butler & Co.*