

The super complex super deduction

Julie Butler and **Fred Butler** consider feedback concerning the application of the super deduction to farmers wishing to diversify into holiday accommodation.

In our article 'Happy Glampers' (*Taxation*, 29 April 2021, page 20) we considered the application of the – super complex – super deduction (SD) tax relief in connection with glamping operations. There has been very interesting feedback to this, possibly not quite at the level of debate as for the plot for the season finale of *Line of Duty* but nevertheless significant.

As was set out in the 'key points' of the original article, 'There will be much debate as to what actually qualifies for the allowances but the tax advantages are obvious and potentially one-off.'

This certainly seems to be the case with the subject clearly catching the attention of many advisers, but then that reflects the potential tax saving opportunities available.

General exclusions: section 46

In determining which assets qualify for the SD, it is important to note that the general exclusions of CAA 2001, s 46 apply. Some of the focus of the feedback has related to the interpretation of this, specifically assets bought for lease or hire as per general exclusion 6: 'The expenditure is on the provision of plant or machinery for leasing (whether in the course of a trade or otherwise).'

This is certainly worth dissecting further as some may argue moveable lodges in a holiday operation would fall under this category. However, anybody involved in the glamping industry knows such a business is more than merely hiring out a tent. Given the amount of involvement required to attract and keep holidaymakers happy and comply with stringent health and safety criteria, especially on farms, the reality is that glamping must be a trade.

Provision of services and an 'operator'

The answer to any uncertainty has to be the forensic analysis of the operation and how the plant is used. One of the queries we received in relation to s 46 was the following:

'Does this really mean the act of renting out the glamping unit is leasing for this purpose? I would have assumed that it meant that if the trader had leased the glamping units



from another trade which he/she then used on land to rent out to glampers, then the act of leasing initially was the issue, not the onward rentals?'

This is a reasonable viewpoint. Another stance taken looked to CA23115 for guidance, which distinguishes between paying for a service involving the use of an asset rather than just leasing or hiring an asset – many consider that the service on a glamping site falls into that category.

We all agree that the new allowances do not apply to assets that are used for 'leasing purposes' and therefore plant and machinery fixtures installed in a building that is let do not qualify. However, if we review the level of services undertaken in the course of providing glamping accommodation, there is a stark contrast to simply letting a building. The glamping operation will have communal buildings provided by the business and used by a number of customers, such as showers, toilet facilities, saunas, gyms, cafés, restaurants and hot tubs. Parallels with the inheritance tax case of *Graham (personal representatives of Graham (deceased))* (TC6536) can be drawn here.

Many would argue that CA23115 relates solely to the construction industry in stating that 'plant provided predominantly with an operative is more than mere hire'. However, there are still some valid parallels to running a glamping site. Our focus has been on the glamping accommodation provided as part of diversification for farms. In our experience these glamping operations are not only very eco minded in construction but also need higher standards of health and safety, especially given the past year has been the worst for farm deaths. For example, health and safety protection is required for use of all the kit (including complicated moveable accommodation), as well as someone who stays on site to help use the equipment, meet any requests the glampers

should have and keep them away from the dangerous and vulnerable areas of the farm, such as rewilding areas and ancient woodland. Such an employee is arguably an 'operator', and the operation would not be able to run without them.

The purpose of the super deduction

When attempting to interpret new legislation it is always beneficial to consider its purpose. The aim of the SD is to 'stimulate business investment' and the glamping arena is both a sector hit by Covid-19 that needs business stimulation and will be in high demand moving forward as part of UK hospitality and tourism. Furthermore, as a form of farm diversification, it also offers a means for farmers to support other areas of their businesses that may have suffered as a result of the pandemic.

Farming has been undergoing a period of change and uncertainty like no other even before Covid-19 hit. While detail is still needed around the Environmental Land Management Schemes and the Agriculture Act 2020, farming for the environment and access have been on the 'public products' list as part of new farming. As a result, farmers across the country are having to redesign their business models accordingly and consider which parts of the farm require investment. With glamping thought to be a popular choice, it is likely that large areas of facilities needed for and as part of the glamping operation will qualify for the SD, such as heat pumps, solar panels, electric vehicle charging points and wastewater heat recovery systems.

The SD will be available in addition to the ongoing annual investment allowance (AIA) which already gives 100% relief for costs of qualifying plant and machinery in the year of purchase. The AIA has been set at £1m per business again until 31 December 2021 and also applies to the unincorporated. Again, this highlights the very small window in which to undertake the forensic analysis necessary to adequately advise clients on how to invest – the queries on s 46 received in relation to the last article alone demonstrate it is not easy.

We agree that with hindsight much more detail and reasoning of the basis for being able to claim this 'super complex' relief in this glamping context could have been made by ourselves. Sorry, perhaps another *Line of Duty* plot prediction contract is in order – did we predict such interested feedback?

For all companies that can claim it, the SD will generally be more beneficial than to claim AIA for a main pool asset purchase. Please note that the SD will go into a separate category and must be set up in the capital allowances computation.

SD: not always the best solution

An added complication is that many argue that for the smaller company it may be more beneficial to claim the AIA in the first instance than special rate allowance on relevant assets, unless the total expenditure on SR pool assets exceeds the AIA threshold of £1m. Serious calculations must be carried out tying in estimated special balancing charges, as well as full and detailed business plans which focus on the tax reliefs, the company year, the exact timing and the predicted corporation tax computation.

If the disposal takes place before 1 April 2023, a special balancing charge calculation is needed for assets on which the SD was previously claimed. Basically, the disposal value for the

year of sale is 1.3 times the sale proceeds of the asset. The factor does not apply to disposals after April 2023, as in most instances the balancing charge will be subject to the higher corporation tax rate of 25%.

Some farmers even with the BPS subsidy and diversification have been experiencing lack of profitability and if the full SD cannot be used by the business to set against profits a tax loss will be created which can be carried forward. The loss could be carried back under the new temporary three-year loss carry back rules but the differing trades within the company (possibly a new company for carried forward) must be understood.

Second-hand purchases

As with all interesting and valuable legislation the devil is in the detail. Second-hand equipment does not qualify for the SD, so it will be important to clarify this should you be advising a diversifying farmer who has taken on the equipment from a 'failed' glamping business. Likewise, construction and equipment used by an 'improving' glamping business wanting to upgrade will have strong negatives for the SD claim and again full negatives will apply.

'Each case must be decided on its own facts'

As set out in CA23115, what is important is 'the distinction between leasing and the provision of services' and each case will be decided on the facts. The tax adviser will not have the luxury of assumptions, generalisations and time – there is a short window to look at each case separately based on facts, usage and predicted usages. It is interesting to see the broad range of feedbacks of understanding that something like the trade of glamping has generated.

As with the generics of the tourist industry in lockdown, and as with new businesses starting out, plans will change. The tax adviser will have to consider the tax impact of all changes as the associated tax price could be high. And no, we don't know what happened to the 'donkey' in *Line of Duty* or the associated tax relief. ●

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