

There are currently a large number of new electricity and other pipeline arrangements being proposed in the UK. There are also land agents/professionals offering to review current wayleave arrangements that might have never been paid to the landowner for a percentage of the increased receipts.

Wayleave compensation payments (WCPs) are universally known as wayleaves. The payment is generally to an individual or farm business landowner. The power or mobile phone company is 'renting' the space above the land. The electricity need not be for great big pylons but can be wooden poles and lines. The wayleave can also be the renting of the space for a pipeline. Wayleaves are defined by s22(5), ITTOIA 2005 as follows: "an easement, servitude or right in or over land which is enjoyed in connection with:

- (a) an electric, telegraph or telephone wire or cable,
- (b) a pipe for the conveyance of any thing, or
- (c) any apparatus used in connection with such a pipe."

This definition applies to vocations, professions and trades. The receipt of a wayleave can be taxed as:

- profits of a property business (Ch 3, Pt 3, ITTOIA 2005);
- rent receivable in connection with a UK section 12(4) concern (Ch 8, Pt 3, ITTOIA 2005); or
- rent receivable for UK electric-line wayleaves (Ch 9, Pt 3, ITTOIA 2005).

#### TRADING INCOME

The wayleave can be treated as trading income rather than property income under certain circumstances. If:

- a person (the trader) carries on a trade on some or all of the land to which a wayleave relates;
- rent is receivable, or expenses are incurred, by the trader in respect of the wayleave; and
- apart from any rent or expenses in respect of the wayleave, no other receipts or expenses in respect of the land are brought into account in calculating the profits of any property business of the trader,

then both the rent receivable and the expenses incurred may be brought into account in calculating the profits of the person's trade (s22, ITTOIA 2005).

The emphasis is on the word may, but in practical terms this must be consistent year on year by the landowner.

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#### CAPITAL RECEIPTS

Under s22(1)(d), TCGA 1992 where a capital sum is paid to a landowner for a term of years or perpetuity, this can be subject to capital gains tax (CGT). The exact tax treatment of the receipt will depend on the facts and the detail of the legal agreement. Where there is restoration of a damaged asset, s23, TCGA 1992 prevents the receipt of a capital sum from being subject to the CGT. Likewise, where the receipt is applied in replacing an asset which has been lost or destroyed, this will not be treated as a capital sum but offset against the original asset.

As always, determining whether there is compensation for damage depends on facts, the legal agreement and the evidence.

#### TAX PLANNING 'IN THE ROUND'

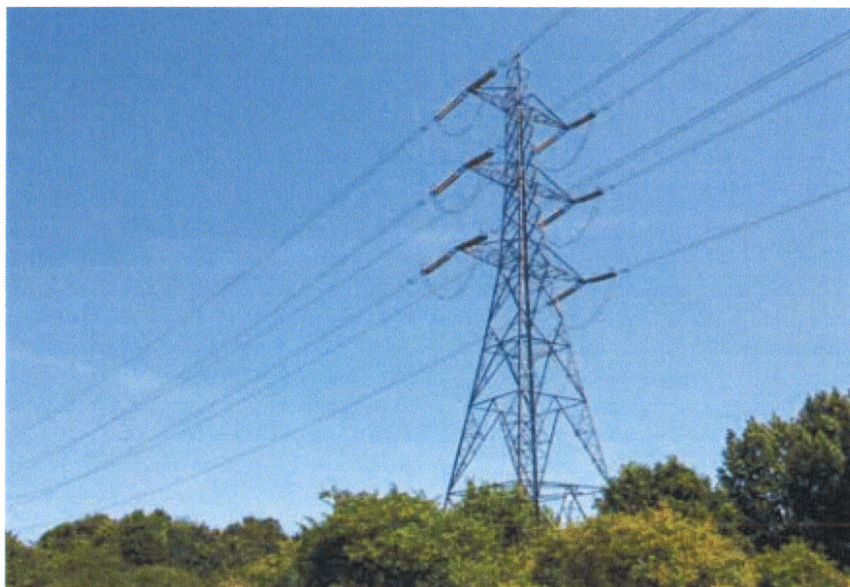
It would suit some farmers to have the wayleave treated as trading income, for example where under the 'hobby farming' rules the farmer needs to make a profit to be able to continue to offset farm losses against other income.

Treating a wayleave as property income can have advantages for Class 4 NIC and could benefit from the property allowance, if available. The advantage of the capital receipt can be the possible use of the CGT annual exemption if such allowance has not been used elsewhere and the possible lower rates of CGT.

Once again, tax planning 'in the round' must be undertaken, reviewing the current and future tax positions of the parties involved. With farmers and landowners having such diverse income tax and capital tax positions, it is essential for tax advisers to approach wayleaves with an open mind. ●

# WAYLEAVES

**Julie Butler** looks at whether wayleaves are farm property income, trading income or capital sums



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