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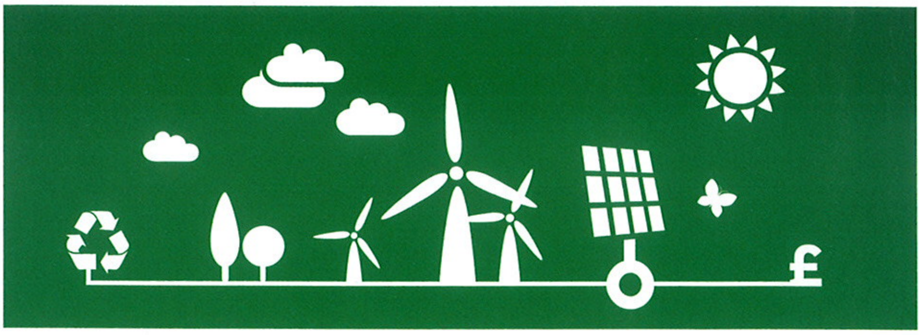
PROFITABLY GREEN

Julie Butler discusses renewable energy enterprises and inheritance tax

All UK landowners should be considering the potential additional income and profitability from renewable technology. Some of the alternative renewable energy schemes are wind – the much-debated turbine; solar photovoltaic – maybe a field of solar panels; hydro – the power of water; and anaerobic digestion – the importance of recycling and breaking down organic waste. From wind turbines to solar panels, with consideration for rainwater harvesting to breaking down organic waste, the potential is endless for the landowning and farming community to consider commercial return.

The opportunity to be profitably green with regard to renewable technology was further encouraged on 10 March 2011 when the renewable heat incentive (RHI) was announced to use heat from renewable energy. In April 2010, the nationwide feed-in tariff was introduced, offering a guaranteed price for electricity generated from renewable sources.

'A RENEWABLE SCHEME ON THE FARM OR ESTATE HELPS TOWARDS BUSINESS PROPERTY RELIEF'



BESPOKE PLANNING

The commercial decisions to be taken about the use of the renewables will vary from enterprise to enterprise and every tax planning review will have to be tailor-made to the landowner – no two situations will be the same as there will be such a variance of commercial energy potential on the land, tax drivers and business opportunities.

The risks will have to be assessed and decisions made as to whether there should be a separate limited company for the renewable energy enterprise to seek shelter. With the drop in the corporation tax rate from April 2011 and the increase in class 4 national insurance contribution rates from the same date, using a limited company as the trading vehicle for the renewable energy project becomes very attractive.

It can be argued that when looking at an RHI project, the same tax principles have to be considered as with any diversification project. It is important to consider all the tax reliefs and, for purposes of inheritance tax (IHT), active involvement or active husbandry will be required to maximise the use of business property relief (BPR) and agricultural property relief.

Clearly a renewable scheme with active involvement on the farm or estate helps towards BPR as there should be the badges of trade to help promote the BPR argument.

ACTIVE OPPORTUNITY OR LETTING

The question to be asked is should the operation be a share in a joint venture or lease of the site to an operator and will *HMRC Commissioners* v *Brander (executor of the fourth earl of Balfour)* [2010] UKUT 300 (TCC) give the IHT protection that is needed? The choices are basically between a passive let with a guaranteed income stream or a share in a business. Will *Farmer* v *IRC* [1999] SpC 216 and *Balfour* give the confidence to allow another let investment activity and maybe take tax advantage of enterprise investment scheme (EIS) relief in a separate company in which there are other investors?

Farming does not qualify for EIS, but a renewable energy project can meet the criteria. If the decision is a letting operation, it is important that the site integrates into overall farm and landed estate. In the same way it is important to have sheep grazing on the grouse moor, so must they graze around the turbines and solar panels, or the arable surrounding the turbines?

TAX TIP

When the renewable energy activity is letting, the BPR argument is endorsed if the operation is integrated into the predominant activity of farming. There must be a review of the criteria established in *Farmer* and *Balfour* to see if the income, etc, from the RHI activity tips the balance of the investment activity, i.e. there is greater investment activity than farming activity on the criteria of turnover, profit, asset values and staff employed.

Carry out a 'business' audit to review the chances of achieving BPR on the whole farm enterprise and highlight the weak areas, including RHI, that could be caught under s105(3) *Inheritance Tax Act 1984*. This could help in the final decision-making about the trading vehicle for the RHI.

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