

The move to the calendar tax year involves certain changes to the payment and return filing dates under the self assessment system. The return filing date is being shifted to 31 October, i.e. continuing to allow tax payers and their accountants 10 months after the end of the tax year.

In spite of the fundamental nature of the change in the tax year and the fact that it is going to coincide with the introduction of the Euro on 1 January 2002, apart from some of the sorts of situations referred to above, the transition so far seems to be going smoothly and without undue fuss.

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## Farming

### 192. Protecting the farmhouse

With the move from traditional farming activities and structures as a result of the recent farming crisis a lot of the previously assured reliefs could be lost without careful tax planning.

The self-sufficient family farm unit could exist happily with as little as 100 acres. The farmhouse was part of this 'business' unit and had many advantages such as input VAT claims, business expense claims and, above all, agricultural property relief (APR) for inheritance tax (IHT). A very happy scenario then but where does that leave the farmhouse now? Do these small family farms still exist on a commercial basis? The farmhouse is likely to have a very high value but less likely to achieve all the reliefs it previously enjoyed.

The most valuable tax relief at stake is therefore the APR for IHT purposes. The first point to consider is the 'character appropriate' test. If land is put to a non-agricultural use, or is gifted or sold, then the farmhouse and any land associated with it may no longer be 'of a character appropriate' to the farmland and APR may be restricted. The Capital Taxes Office (CTO) Manual says that the CTO will be interested in cases where the value of the farmhouse is in excess of £250,000 but no more than 100 acres is farmed. Likewise, if the value of the farmhouse is less than £250,000 but no more than 20 acres is farmed.

The instant reaction is clearly that the CTO manual is not geared for the recent increases in property prices. However, what is the impact for today's farming clients? Is the land still used for agricultural purposes? Has the move to diversification meant that the relief has been lost? With so many advisers seeking the benefits of business property relief (BPR) as opposed to APR, has the farmhouse been overlooked? What chance would it have with a BPR claim? The same problem arises where the owner lets the land but retains the farmhouse. It is important to look closely at what qualifies as agricultural property and to look at sections 115 to 117, IHTA 1984. The adviser must be mindful of the occupational or ownership tests of two and seven years respectively.

The definition of farming is found in section 832(1), ICTA 1988 – 'The occupation of land wholly or mainly for

the purpose of husbandry'. So what does not qualify? Grazing by horses (*Wheatley's Executors v CIR* (SPC 149)), fishing rights, industrial units, farm shop selling only bought in produce, a farm as a tourist attraction are but a few examples. The case of *Farmer (Farmer's Executors) v IRC* [1999] STC (SCD) 321 provides great assistance to the farmer who diversifies. Several of the properties at the farm were surplus to the requirements of the farm and had been let to tenants on short leases. The letting activities were held to be ancillary to the farm business and the business as a whole was not one of mainly holding investments. Will this be challenged?

So where does that leave the farmhouse and the professional adviser? One of the first points of concern must be the income tax computation. Is there a clear division of farming and non-farming profits despite the fact that they might be all taxed under Schedule D Case I? Is the adviser mindful of section 397, ICTA 1988, the hobby farming rules, despite the extension under ESC B55?

Under the strict allocation of farming and non-farming income would some enterprises be able to demonstrate recent farming profits? This is not an assumption that the clients are 'bad' farmers, but that for a number of years it has been difficult to show a profit from a small traditional farming unit.

So what planning points are there for consideration by the tax adviser? In addition to looking at the tax computation, all angles of the diversification must be looked at. Farmers are considering (or have been considering) Farm Business Tenancies (FBTs) and various areas of diversification and it is important to review not just the tax computation but what effect that this will have on other tax reliefs.

Perhaps it could be argued that as farming now provides such a relatively small amount of the UK income this is not so relevant, but the land and high asset values still surround us. The land will (should?) have to be put to some commercial use and traditional assumptions will have to be re-thought.

Historically there have been claims of 70 per cent input VAT on farmhouse repairs and one-third claim for business expenses, but the viability of such claims in relation to the newly structured farming enterprise have to be questioned.

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## VAT

### 193. Single or multiple supplies

The Tax Faculty put in a formal response (TAXREP 8/01) to comments made in Customs and Excise Business Brief 2/01 on the issue of single and multiple supplies. This Brief arose from the European Court of Justice (ECJ) decision in *Card Protection Plan* (see [2001] STC 174 HL). The Faculty response included criticism of the tight timetable for implementing changes. Customs have provided the following in reply: