

Rural Business Services

update

Nitrogen Vulnerable Zones Slurry storage and capital allowances



The Nitrate Pollutions Prevention Regulations came into force on 1 January 2009 in response to the 1991 EU Nitrates Directive and although the NFU have won a derogation, it still necessitates the

storing of slurry prior to its application. DEFRA has produced detailed advice and support for farmers preparing for the new regulations. This states that farmers must provide, by 1 January 2012, sufficient facilities for the storage of slurry and poultry manure produced by livestock, whilst in a yard or building, during the following "storage periods":

- 1 October to 1 April (six months) in the case of pigs and poultry
- 1 October to 1 March (five months) in the case of other livestock

However, as noted in our last update in the summer of 2008, there have been significant changes to the capital allowances that came into effect on 5 April 2008, therefore HMRC were asked to clarify their approach to capital allowances claims on slurry storage facilities.

The storage of slurry in England and Wales is dictated by The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 which defines a slurry storage system as including:

- a slurry storage tank, whether above or below ground
- any reception pit and any effluent tank used in connection with the slurry storage tank
- any channels and pipes used in connection with the slurry storage tank and reception pit or any effluent tank

'Slurry storage tank' includes a lagoon, pit (other than a reception pit) or tower used for the storage of slurry.

HMRC's view is that slurry storage systems located anywhere in the UK, which are used for the temporary storage of slurry, qualify as plant or machinery for the purposes of the capital allowances legislation. However, any building or structure which is part of a slurry storage facility does not qualify because it is specifically excluded by legislation, as it is not plant or machinery.

For example, a slurry storage facility at a farm may include the following components:

- an above ground circular store
- a reception pit
- an open sided shed which provides shelter to the tank, preventing rainwater from falling into the store - the circular store is situated inside the shed.

In this example the circular store and the reception pit are plant or machinery and qualify for capital allowances. Any channels or pipes associated with them also qualify, however, the shed is a structure and is therefore specifically excluded from being plant or machinery.

As slurry storage systems may generally be accepted as plant and machinery, business expenditure on them will qualify for plant and machinery capital allowances, including the new Annual Investment Allowance. This provides a 100% first-year allowance on expenditure, though it is capped at £50,000 a year.

Any balance of qualifying expenditure will qualify for capital allowances at the appropriate rate of relief, which after the recent budget will include the temporary First Year Allowance of 40% for the 2009/10 year.

**For more information contact
Gary Abbott on +44(0)1635 35255 or
gabbott@jamescowper.co.uk**

James Cowper takes on **new tax director**



The appointment of the enormously experienced tax director Stephen Barratt has continued to strengthen our Private Client team. Stephen joined

James Cowper in February from Grant Thornton in Oxford.

Stephen brings to the team a wealth of experience and expertise. Having begun his career with HMRC, he has spent the past 20 years with Grant Thornton across the Thames Valley developing its private client practice. He advises private individuals and families on all matters relating to income tax, capital gains tax, inheritance tax planning and residency and domicile issues and has an extensive rural knowledge.

Adrian Rann, head of James Cowper's Rural Business and Bloodstock teams adds: "We are delighted to be able to announce the appointment of Stephen. He has a terrific reputation across the Thames Valley and a strong client base. He will be a real asset to the firm and its clients. We all look forward to working alongside him."

**Stephen Barratt is based in our
Newbury office and can be reached on
+44 (0)1635 35255 or
sbarratt@jamescowper.co.uk**

What's new in Inheritance Tax and some old favourites

The following points focus on some of the key recent developments and offer other food for thought for farmers and estate owners looking to minimise future potential tax charges on death.



Business Property Relief

In the summer 2008 edition we reported the good news that the taxpayer had won a notable victory in claiming Business Property Relief for Inheritance

Tax ('IHT') on the transfer of agricultural land with development value. The decision by the Special Commissioners was appealed by HMRC but this appeal was dismissed by the Courts. Further developments are awaited, but this is encouraging for those contemplating such transfer themselves.

TIP: Whilst the position at present looks to be favourable, those contemplating a transfer of business assets should consider the risk of proceeding before the current case has run its course. If transactions are delayed, one must be aware that action may need to be taken shortly thereafter in case the legislation is changed to give effect to what HMRC thought the rules were in the first place.

Agricultural Property Relief

It is well-known that Agricultural Property Relief ('APR') for farmland and buildings has only been available against the value of property in the UK, Channel Islands and the Isle of Man. A case at the European Court of Justice (the 'Jäger' case) cast doubt upon whether EU Governments can distinguish between land held in one European Free Trade Area jurisdiction and another, as it is seen as offending the principle of the free movement of capital.

Budget 2009: In his Budget on 22 April 2009, the Chancellor extended the scope of UK APR to land held in other European Economic Area ('EEA') jurisdictions. The wider availability of the relief means that those UK farmers considering investment in EEA farmland can expect at least some measure of IHT relief even if the land is held as an investment, so long as it is owned for seven years or more. It will also extend the scope of Capital Gains Tax ('CGT') holdover relief to

shelter gains on gifts of all APR qualifying EEA farmland. Finally the Budget announcement refers to IHT due or paid after 22 April 2003 in relation to agricultural property in an EEA at the time of a chargeable event being available for relief.

Furnished Holiday Lets

Residential property let under an assured shorthold tenancy might qualify for IHT relief if the scale of the rental activity is not substantial in relation to the trading activities, but properties let as furnished holiday lets potentially qualify for IHT relief in their own right as business assets. Certain conditions need to apply, but relief has often been given readily by HMRC.

In November 2008, HMRC issued a statement setting out their current thinking and practice. This is often code for rewriting history but fortunately this does not appear to be the case here, which is good news. It does appear, however, that greater scrutiny will be applied to future claims for relief and so additional hands-on management, planning and care are necessary.

Budget 2009: Whilst the Budget withdraws favourable tax status from furnished holiday lets for income tax and CGT purposes from 6 April 2010 no mention is made of IHT so such lets may continue to qualify for IHT relief. Even if the furnished holiday lets do not qualify for relief in their own right, relief may still be available.

TIP: Farmers and estate owners should review their property interests to identify what IHT reliefs are likely to be due and consider taking advantage of current CGT reliefs, such as holdover relief on gifts, by transferring property down the generations prior to 6 April 2010.

Transferable nil rate bands

Whilst the ability to transfer any unused nil rate band from the first spouse/civil partner to die to the second is welcome, there are still instances in which it might be advantageous to ensure that a nil rate band is fully used on the first death. This could be the case where an asset is likely to appreciate faster than the

Single Farm Payment



The tax and accounting rules for recognising the Single Farm Payment have changed following the recent change in the scheme

rules replacing the ten month occupation period with a single occupation date of 15 May. The claimant must ensure that the land complies with the cross compliance conditions for the whole of the calendar year of the claim, whether or not he occupies the land for the whole year.

HMRC accepts that there are now two possible dates on which the receipt could be recognised in farm accounts:

- 15 May
- 31 December

Professional judgement should be applied to the choice in each individual case, but once chosen, this date should be used consistently from year to year.

For further information please contact Jane Gould on +44 (0)1635 35255 or jgould@jamescowper.co.uk

nil rate band, for example development land, or where one or both spouses have previously been widowed. In the latter situation, it might be possible to benefit from the equivalent of more than two nil rate bands.

TIP: Individuals should review their affairs to ensure that they are organised in such a way as to be able to take full advantage of these new provisions. Where the first death has occurred, action should be taken now to ensure that the necessary paperwork to support a future claim is pulled together.

As always there is plenty to think about! It is essential that landowners work closely with advisers to keep abreast of changes and seek professional advice before taking any action.

For further information please contact Stephen Barratt on +44 (0)1635 35255 or sbarratt@jamescowper.co.uk



NEW PENALTY REGIME FOR ENQUIRIES



A new penalty regime for enquiries is set to take effect from 1 April 2009, which will apply to enquiries raised into 2008/09 tax returns and onwards. The new regime is much more structured

and appears to allow much less scope for negotiation with HMRC, which is likely to lead to higher penalties being levied. Earlier return periods will continue to be dealt with under the previous penalty regime, whereby the maximum penalty would be 100% of the potential tax due, with discounts applied for disclosure (max 20%), cooperation (max 40%), and seriousness (max 40%).

Under the new penalty regime, penalties will be calculated based upon the amount of Potential Lost Revenue (PLR). This is defined as the amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment, but also includes notional lost revenues, which is particularly relevant where trading losses are reduced following an enquiry, even if no additional actual tax is payable as a result of the adjustments. See below:-

	Original Loss	Amended Loss	PLR
Year 6	(£90,000)	(£76,000)	£14,000
Year 7	(£62,000)	(£62,000)	-
Year 8	(£26,000)	(£22,000)	£4,000
Total	(£178,000)	(£160,000)	£18,000

HMRC would seek to apply a penalty on 5% of the PLR of £18,000 i.e. on £900.

Another change is that penalties will be calculated as a percentage of the PLR. The rate will be determined on the behaviour of the taxpayer and on the quality of the enquiry. Taxpayer behaviour is now categorised as either 'taking reasonable care' (no penalty), 'careless error' (maximum 30% penalty), 'deliberate error' (maximum 70% penalty) or 'deliberate and concealed' (maximum 100% penalty). The quality of the offence is then considered, with factors of telling (30%), helping (40%) and access (30%) potentially reducing the penalty further. One aspect of the old system remains, in that any penalty may also be reduced if the disclosure is unprompted, but the amount of reduction is no longer discretionary.

Finally and perhaps most importantly, there are now minimum penalties which will be applied to prompted enquiries and the lowest possible penalty will now be 15%; the ability to apply penalties to PLR is likely to encourage more HMRC officers to raise enquiries into trading losses and unfortunately we expect to see a significant increase in the level of enquiries opened.

For more information contact
Lucy Bryant on
+44 (0)118 959 0261 or
lbryant@jamescowper.co.uk



Changes to HMRC compliance visits

From 1 April 2009, HMRC will have new powers to carry out tax compliance visits with the ability to look at risks across different taxes in a single visit, PAYE, VAT, Income Tax, Capital Gains Tax, and the Construction Industry Scheme. There are some safeguards for the taxpayer.

- The taxpayer must be given seven days notice of a compliance visit, unless a shorter notice period is justified and authorised by 'a specially trained HMRC officer'.
- There is no automatic right to visit the taxpayer's home unless the business operates from home and there is a clear reason why this is necessary.
- Inspectors can only inspect, they cannot 'search, rummage or wander around unaccompanied without the taxpayer's consent.'

Time limits for assessments and claims are being set at four years across the taxes. For VAT, the existing three year time limit is being extended to four years from 1 April 2009 and the current six year time limit for Income Tax, Capital Gains Tax and Corporation Tax is being reduced to four years from 1 April 2010. Anyone who has any tax claims to make that go back over several years is advised to make this sooner rather than later. In theory, this change should limit the number of years that HMRC can go back to recover unpaid tax from the past, but be warned, there are powers to extend this four year limit where there has been fraud etc.

For further information please contact
Jane Goold on +44 (0)1635 35255 or
jgoold@jamescowper.co.uk

HOW CAN I REDUCE MY TAX PAYMENTS?

In these difficult times, it is even more important that tax payments are kept to a minimum.

- Are profits going to be lower than last year?
- Am I anticipating a loss?
- I do not have the money to pay the tax due on 31 July 2009.
- When is the best time to replace equipment?

If any of these apply to you, contact your accountant. It is possible to reduce a large tax liability, but you need to liaise with your accountant early. Here are a few tax saving strategies to consider.

- Farmers averaging election to spread high profits into adjacent years.
- Loss relief claims against other income in the same year and the previous year.
- Some additional loss relief is available against income from earlier years, but timings of the loss are important and restrictive, so take advice.
- Reducing payments on account. Tax paid in January 2009 could be repaid and tax due in July 2009 postponed.
- National Insurance elections.
- Time plant and machinery purchases to take maximum advantage of the £50,000 100% Annual Investment Allowance.

- Is a tax credit claim beneficial? This can only be backdated by three months, so make the claim early.

If you are still going to have genuine difficulty paying your tax, contact the HMRC Business Payment Support Line on 0845 3021435 in good time. They will try and agree a payment strategy with you that you can afford. Interest will be payable on payments deferred but this is a small price to pay for this peace of mind.

For more advice please contact
Jane Goold on +44 (0)1635 35255 or
jgoold@jamescowper.co.uk

Inheritance Tax and agricultural landlords



There are two breeds of agricultural landlord: the fortunate and the less fortunate. The fortunate have tenants on leases that commenced after 1 September 1995.

They have the prospect of 100% Agricultural Property Relief (APR) for Inheritance Tax (IHT) on death. Less fortunate landlords have tenants on old Agricultural Holdings Act (AHA) tenancies that commenced before 1 September 1995. There, the maximum rate of APR will be just 50%.

So, less fortunate landlords need to keep an eye open for opportunities to grant a new tenancy (that is dated after September 1995) to create the chance of 100% APR. There might, for example, be the possibility of a deal with the tenant which involves a surrender of the old tenancy and the grant of a new farm business tenancy. Or the tenant may die or retire and a new succession tenancy is granted to the tenant's son or other close relative. Either of those routes would create the chance of 100% APR.

However, since October 2006 there is a third possibility. It is now possible to grant a new Agricultural Holdings Act tenancy to an existing AHA tenant, provided he is already the tenant of the same or substantially the same holding. This presents the possibility of a pre-1995 AHA tenancy being surrendered in return for a new AHA tenancy – thereby improving the landlord's IHT position whilst preserving the tenant's AHA protection.

There are, though, some potential pitfalls. The first is that the new tenancy needs to be of the same or substantially the same holding as the old tenancy. This will not be a worry if there is no change in the holding; otherwise care is needed.

The other two issues relate to tax. The surrender by the tenant of his old tenancy is a disposal for CGT purposes, but provided he is not receiving any consideration, other than the grant of the new tenancy, there should be no CGT to pay. Consideration, however, does not just mean a payment in cash. It could, for example, be a contribution to the tenant's professional fees in taking advice on the transaction or even a concession on the terms of the tenancy (e.g. a relaxation on rent or the lifting of a restriction contained in the tenancy agreement).

The other tax to look at is Stamp Duty Land Tax (SDLT). The new tenancy will be within the SDLT regime and therefore there could be a SDLT charge at some point in the future. This is less of an issue if there is a low rent (for example, a rent of £10,000 per year would not trigger a charge for 22 years whereas a rent of £50,000 per year would trigger a charge in year four).

So, care is needed to avoid the pitfalls. Yet despite the difficulties, there will be cases where the landlord and tenant are able to agree to a new tenancy, thereby creating a potential IHT saving for the landlord, whilst preserving the tenant's security of tenure.

**For more information contact
Tom Hewitt of Burgess Salmon LLP
on +44 (0)117 902 2717 or
tom.hewitt@burgess.salmon.com**

Tax on Diversification

Farm Diversification can provide farmers with significant amounts of additional income; however, Income Tax and VAT must be properly accounted for on this. Following the success of their enquiries into shoots, HMRC have become aware that in many instances this is not the case and have stated that they will be looking at Farm Diversification more closely in the future. Now is a good time to review the tax and VAT treatment of your own diversification projects to ensure that this is correct.

- If the diversification project is being run through a separate business, ensure that the businesses are genuinely separate and that they should not be amalgamated with any other business for VAT purposes.
- Ensure that all expenses and income are properly accounted for, apportioned and if necessary recharged between the different sources.

Contact Jane Gould on +44 (0)1635 35255

James Cowper LLP offices:

North Lea House
66 Northfield End
Henley-on-Thames
Oxfordshire RG9 2BE

Phoenix House
Bartholomew Street
Newbury
Berkshire RG14 5QA

Willow Court
7 West Way
Botley
Oxford OX2 0JB

3 Wesley Gate
Queen's Road
Reading
Berkshire RG1 4AP

Tel: +44 (0)1491 572565
Fax: +44 (0)1491 411705

Tel: +44 (0)1635 35255
Fax: +44 (0)1635 40500

Tel: +44 (0)1865 200500
Fax: +44 (0)1865 200501

Tel: +44 (0)118 959 0261
Fax: +44 (0)118 939 3385

KEY CONTACTS IN RURAL BUSINESS SERVICES

Adrian Rann

Head of Rural Business Services and Bloodstock

01635 35255

arann@jamescowper.co.uk



Stephen Barratt

Tax Director

01635 35255

sbarratt@jamescowper.co.uk



Fiona Hawkins

Senior Manager

01635 35255

fhawkins@jamescowper.co.uk



Anne Marie Cocker

Manager

01635 35255

acocker@jamescowper.co.uk



Gary Abbott

Manager

01635 35255

gabbott@jamescowper.co.uk



Jane Gould

Tax Manager

01635 35255

jgould@jamescowper.co.uk



Terry Dockley

VAT Director

01635 35255

tdockley@jamescowper.co.uk



Accountants & Business Advisers

email: info@jamescowper.co.uk

www.jamescowper.co.uk