



## ‘Blitz’ on rural business tax

For more information, please contact Andrew Heskin on 01775 711333



By Andrew Heskin

**Diversified farm businesses are being targeted by HM Revenue & Customs for failing to charge VAT.**

New regulations which came into play in April mean the authorities can recover up to three years' back tax as well

as charge penalties and interest, and HMRC are eager to ensure businesses such as livery and stabling, accommodation, leisure activities and open farm admissions are abiding by rules on VAT, self-assessment income tax, corporation tax and inheritance tax.

Problems can occur where farmers have diversified their business to make ends meet, but many may not be aware of the VAT and tax implications that now apply to their business.

Unless an accurate structure and appropriate practices are in place to show the new business is run separately, HMRC sometimes finds that the diversification is too close to the farm business, and decides it should be VAT-registered. Where this is the case, VAT should be charged on all eligible goods and services, not just those of the core farming operations.

If this happens you will have to pay the additional tax and any interest that is due, but HMRC say they will not charge a penalty if it can be proven 'reasonable care' was taken to get things right, even if a mistake has still been made.

B&B and holiday cottages, farm contracting, hiring sporting facilities like golf courses, caravan and camping pitch fees, and open-farm admissions are all examples where VAT should be charged.

With proper advice and planning this scenario can easily be avoided.

Where one business benefited from the facilities, staff or equipment of the other, commercial charges should be made. For example, a B&B business which is part of a tenanted farm should pay the main business farm rent for the accommodation and an appropriate share of services such as water, electricity and council tax.

The new inaccuracy penalties apply to returns or documents filed on or after 1<sup>st</sup> April 2009. The return, document or under-assessment relates to a tax period beginning on or after 1<sup>st</sup> April 2008.

The penalties will relate to:

- ◆ Capital Gains Tax
- ◆ Construction Industry Scheme
- ◆ Corporation Tax
- ◆ Income Tax
- ◆ NICs (but not Class 1A NICs)
- ◆ PAYE
- ◆ VAT

# Farmers win access to business loan scheme

For more information, please contact Bill Creasey on 01775 711333



By Bill Creasey

**Farmers have been given a credit lifeline after the government included the sector in the Enterprise Finance Guarantee Scheme.**

The agricultural sector was initially excluded from the £1.3 billion EFG scheme, which was

introduced to support bank lending during the credit crunch.

But lobbying from the NFU brought about a U-turn on the government's decision.

It offers loans of between £1,000 and £1 million available until next April, and gives a government guarantee for up to 75 per cent of a company's debt.

Farmers can ask for loans of up to €56,000 depending on the terms and conditions of the loan.

NFU Director of Policy, Martin Hawthorn, said: "The scheme will give farmers and growers access to secure loans to safeguard businesses and convert existing overdrafts during the economic downturn where access to credit has been tight.

"Farmers can contact their banks as normal – all the major agricultural lenders are taking part."



# Clarification on new VAT and rent reviews laws

For more information, please contact Chris Wright on 01945 465767



By Chris Wright

**The Government is seeking to clarify the laws on VAT and rent reviews following a landmark legal ruling last year.**

After the case of Mason vs Boscawen in December 2008 there was concern

in the industry that there was a risk that the ability of tenants and landlords to have a statutory rent review could have been frustrated unintentionally.

A proposed amendment to the Government's Finance Bill has clarified the situation. The proposed amendment would mean that any changes in the level of VAT set by the Treasury (as expected in January 2010) or in the apportionment between the commercial and residential element of the farm have been clarified to not retrigger the three-year rent review cycle.

The NFU has worked hard over the past six months within the Tenancy Reform Industry Group (TRIG) to secure clarification on the Mason vs Boscawen court case which affected rents under the Agricultural Holdings Act 1986.



# Plan ahead for your future – and minimise the tax bill

For more information, please contact Andrew Heskin on 01775 711333



By Andrew Heskin

**You've worked hard over the years to build up your business, and it would be nice to think that, once you retire, the business could carry on and succeed without you.**

But all too often the handover can mean

undue internal conflict or even the failure of the business, simply because plans for the succession are not made early enough.

With worries about the current downturn, it's understandable if you put off planning for the future of your business, but it is a vital element to survival. Getting a thorough succession plan into action way before the actual retirement takes place means that all the owner managers are working to the same tune, heading towards a common goal.

## What are my options?

There are a number of choices you can make, and the right one for you will of course depend on the circumstances of your business.

- ♦ Handing over the ownership to a family member
- ♦ Appointing an external successor
- ♦ Disposing of the business

Each of these options carries potential tax costs, so you must make sure you know the best strategy for you and organise your business structure to minimise the tax outlay.

## The tax options for keeping it in the family...

Owners who wish to pass on their business to the family should make sure they have a well-drafted, tax efficient Will in place to ensure that their shareholding will pass to those they have chosen to run the company. If there is no Will their share will pass in accordance with intestacy provisions.

In terms of tax and commercially this can be a disaster.

Discretionary trusts may be the preferred option for asset protection. While using a trust it is still possible for them to retain control over the shares held in trust by being a trustee.

But trusts and succession planning can be complex to the uninitiated, so owner/managers need to seek professional advice before they implement this.

For businesses run essentially as a partnership between independent individuals or families, a shareholders' agreement should be in place to ensure that, in the event of the death of one of the key members, either the other

key shareholders or selected key managers or family members will take over their share of the business. The incoming shareholder may need to compensate the exiting shareholder's family.

Financial provision for this needs to be anticipated, and the tax consequences considered.

Arguably the impact of inheritance tax is less for businesses, because of the availability of business property relief and agricultural property relief. But beware - often advice tends to either over-simplify the position or fails to highlight potential pitfalls.

Ownership structures required to achieve inheritance tax reliefs may run counter to other objectives, such as profit extraction or control issues, and Inheritance tax business property relief (BPR) is not as widely available as you may believe.

Inheritance tax BPR is available for unincorporated business interests, unquoted shares in a trading company and assets owned personally and used in the business of the owner's company or partnership.

However, only up to 50% relief is available on assets owned personally and used by the business, and only then as long as the owner has control of the business. There is also a minimum two-year ownership requirement to qualify.

Business property relief is available at 100% rate on the shares, but is not available in respect of the value of the loan made to the company.

## ...Or selling on

You might decide that a non-family member – a current employee, someone who knows the business and is committed – is best placed to take the business forward.

If such a person does not exist, you might be forced to bring someone in from the outside.

Disposal (selling the business) is the best option if there is a need to raise cash, perhaps to fund retirement, an absence of successor or the family has no desire to continue its involvement in the business.

It can take several years to get to the stage where a business is ready for sale, so should you decide this is the most appropriate option, then you need to establish a plan and some objectives for preparing the business for sale, perhaps by seeking guidance from an experienced corporate finance adviser.

Before being in a position to sell, you need to maximise its appeal. There should be no major issues that could jeopardise the sale, such as legal action or a tax investigation.

If the business is being sold with a property being retained, there are further considerations that need to be made. Depending on the value of the capital gain on the property, which could be relatively low in the current economic climate, consideration might be given to establishing a pension scheme and transferring the property into it.

A lot of thought needs to go into effective succession planning, but the recession is a good time to reorganise ownership of assets or business structures to ensure that, when recovery arrives, the subsequent gains may be realised at minimal tax cost.

There are many ways of reining in tax costs, but each carries its own commercial, personal and tax implications, and it is wise to seek advice before any specific action is taken.

Moore Thompson has a dedicated and highly trained team who can offer advice on running the family business and partnership matters through the generations, as well as tax planning.



- ◆ Raising finance
- ◆ Succession issues
- ◆ Taxation planning
- ◆ Outsourcing
- ◆ Land transaction planning
- ◆ Tax legislation
- ◆ Property transaction planning
- ◆ New ventures and diversification

# Farmers warned over interest rates for long-term borrowing

For more information, please contact Chris Wright on 01945 465767



By Chris Wright

**Farmers are being warned to reconsider their business plans following news that the real cost of long-term borrowing is rising.**

Lloyds TSB Agriculture and the Agricultural Mortgage Corporation has warned that

although the Bank of England has kept its base rates at 0.5%, the real cost of long-term borrowing is increasing and farmers need to consider the impact this could have on their business plans.

The base rate of interest is currently at a historically low level, with economists predicting it could remain at this level into 2011. However, they also caution that when the economy shows signs of sustained recovery base rates could return quickly to pre-recession levels.

"The current low bank base rate is advantageous for those looking to borrow on a variable rate basis

and over the short term this could represent a good value-for-money option," says Paul Spencer, Agriculture Director for Lloyds TSB Agriculture and the Agricultural Mortgage Corporation.

"This will help especially with overdraft arrangements or those smaller projects with a low capital demand and short payback period. For a large number of farm businesses this has resulted in savings on the cost of finance - in turn enhancing farm profitability."

But the link between base rates and longer term fixed rate borrowing is less straightforward and Mr Spencer warns those looking to secure funds on this basis should be aware that the market rate for long-term borrowing has been rising steadily since the start of 2009.

"Given its current GDP growth and generally positive outlook, agriculture is clearly one of these sectors and many farmers are looking to develop their business plans accordingly," he said.

"There is, however, a danger in waiting for an indication that the base rate is about to rise

before fixing to fund such plans. In doing so, farmers run the risk of missing the best fixed rates available for the longer term."

"Whatever your borrowing needs or outlook on interest rates may be, it is important to seek independent professional advice and guidance regarding your own specific circumstances," he concludes.



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