

Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly's* experts can help

Q I have read that I can now get full tax relief if building a grain store. My accountant has doubts on this, what would you advise?



Mark Chatterton
Head of agriculture
Duncan & Topliss

I expect you are referring to the recent SC May case where the First Tier Tax Tribunal decision was to rule in favour of a new grain drying and storage facility being treated as plant and machinery for tax purposes.

This means it will qualify for the annual investment allowance (AIA) which currently allows up to £1m a year spent on plant and machinery by a business to be set against income in the same year. The £1m/year ceiling applies until 31 December 2021.

The SC May case will not be appealed by HMRC, according to the report. While this seems strange, it is not ideal, as we shall never get clarity.

First Tier Tribunal cases do not set a precedent, so in theory HMRC will still treat claims on a case-by-case basis and seek to distance other cases from SC May.

Temporary storage

We expect HMRC will continue to deny that grain stores are plant and machinery. The word silo is not defined in the legislation, although grain silos are specifically permitted as plant and machinery. Evidence in the case stated that the structure was in fact a horizontal grain silo with the tribunal taking it to be a "silo provided for temporary storage".

As with most such cases, the correct descrip-



HMRC will continue to consider applications on a case-by-case basis

Can I get 100% tax relief through AIA on cost of grain store?

tion of the grain facility is the central issue, so the tribunal conducted a site visit a few days prior to the hearing.

It appears that key factors were devices referred to as "pedestals" standing on the floor a number of feet apart, each having a fan assembly to draw the air through it for moisture reduction.

The witnesses for the taxpayer successfully argued that a vertical silo would not be suitable for the high moisture level in grain harvested in North Devon and this was what they

described as a horizontal silo, which avoided moving grain from one place to another and suited the four or five crops a year produced in rotation.

The other key factor was the definition of temporary and the tribunal found the taxpayers' nine or 10 months more persuasive than HMRC's reliance on seven days, established in the only previously reported case of *Schofield v R & H Hall*.

In summary, the tribunal was satisfied that the grain facility performs one function within

the overall farm activities, namely the active function of drying the grain after harvest, and then keeping it in conditioned storage until it has been sold.

The very structure of the building is integral to the successful performance of these functions: the height at which the roof is pitched; the power-floated concrete floor; the thicker-than-normal concrete walls; and the air inlet and exhaust fan located on the walls.

Our advice would be to consider whether your grain store is a similar facility to the one in the SC May case before deciding to claim the whole expenditure as plant and machinery.

If you decide to rely on this and include the total expenditure on your grain store as plant and machinery, we suggest you explain this in the white space on your income tax return.

It is highly likely that HMRC will enquire into your tax return and seek to deny the claim, which might ultimately lead to another tribunal case, which would be a costly exercise.

What can I do about executors ignoring partnership agreement?

Q In a three-partner business, one partner has passed away and intended to leave his shareholding to his wife, although the partnership agreement implies the shares should be divided between the two remaining partners.

The executors refuse to acknowledge the partnership and have submitted the probate, stating they have passed on the deceased's shareholding to his widow.

The widow has been drawing a salary from the partnership account for the past six months without any agreement. Where do the other two partners stand please?



Robert James
Associate
Thrings

The situation set out above is a classic illustration of common problems encountered and issues often misunderstood when a partner leaves a farming partnership.

It is not uncommon to see provisions written into partnership agreements whereby an outgoing partner's share (on death or by retirement) accrues to the others, or the remaining partners have pre-emption rights to acquire the outgoing partner's share for a price to be determined in line with the mechanism set out in the partnership agreement.

The rationale for this is often to preserve the integrity of the business, rather than face a forced sale every time a partner leaves it.

The legal position will be dependent on the exact terms of the partnership agreement and each agreement can be different.

Where a partnership agreement is silent or deficient in one aspect, the fallback position is by reference to the Partnership Act 1890.

The answer may lie in therefore in considering both the partnership agreement and the Act. It sounds as if the position is very uncertain, as the question phrases it as an implication rather than a clear-cut express term.

The position is further complicated because the terms of a partnership agreement are often varied by previous conduct or consents, especially when it is decades old and has not been updated to reflect current practices and agreements between the partners.

The executors will have a duty to ensure that what they submit to probate is true and accurate. Serious questions could be raised if they are on clear notice that the partnership agreement says something very different.

Whatever the rights and wrongs of the executors' submission, nothing they do or say affects the legal position from the viewpoint of the remaining partners if the outgoing partner's share is subject to any accruing or pre-emption rights.

The executors may be subject to an obligation written into the partnership agreement to do all that is necessary and desirable to vest any assets held in the deceased's name and the corresponding share to the remaining partners. For example, if land held in the name of the deceased needs to be transferred, a declaration from the court could be obtained to force the executors to comply.

In terms of the salary being drawn for the past six months, it appears that it has been improperly withdrawn and the widow must pay this sum back to the partnership in full.

The first step is for the remaining partners to issue a demand and if the widow does not comply, they may have recourse to the court for an order compelling her to do so.

How does averaging affect my insurance claim?

Q I've been told that if I don't insure my property at the correct value, I could be subject to average in the event of a claim. What does this mean?



Charlotte Wilson
Account executive
Farmers and Mercantile

Average is a clause applied to the majority of policies to give an element of protection

for the insurance provider in the event of a claim. It aims to stop insurance buyers from listing their property lower than the actual sum insured, to try to save on premium costs.

This may save some money on the final premium but it can be very costly if you have to make a claim. So it's crucial to insure property for the correct amount, whether this is your home, livestock, crops in store or vehicles. Average is applicable to anything your business chooses to insure.

Many people might insure on the basis that not all their cattle (for example) would be stolen at once. However, unless insurance

is taken on a first loss basis, the sum insured needs to reflect the actual full value.

The following examples show how the average clause works in practice:

1) A storm lifts the roof off a section of one of your sheds. The quote is £10,000 to repair it. Your insurer may send out a loss adjuster to assess the damage on their behalf.

The agricultural buildings on the yard are valued at £200,000 to fully rebuild. However, on your policy documents, "All Farm Buildings" are listed at a sum insured of £100,000.

As the premium for the buildings was based on the understanding that the entire value

was £100,000, which is only half the actual value, the claim settlement would be reduced by 50%. Although the repairs to the shed cost £10,000, you would receive only £5,000, less your policy excess, in settlement due to average.

2) You own 500 ewes and 120 of them have been stolen. The sum insured on your policy is £20,000. An auctioneer values the stolen ewes on current market value at £110 a head, totalling a claim amount of £13,200.

On a large claim you may have to complete an itinerary of sheep, stating how many you have at the time of loss. Again each of these will be given a current market value, taking into consideration age and breed. This val-

uation for the example above comes back at £57,000, which is more than double the sum insured.

In this case, average can be calculated using the following equation: sum insured ÷ true value x loss = amount paid in claim.

Therefore the calculation would be: £20,000 ÷ £57,000 x £13,200 = £4,631.58.

So, to ensure you are not left out of pocket in the event of a claim, it is vital to conduct a thorough annual insurance review with your adviser and notify them of any changes you make to your business throughout the year.

Professional valuations can be arranged through your insurance provider, local surveyors or dealerships.

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words, giving as much detail as possible.

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number.

You can also email your question to fwbusinessclinic@rbi.co.uk

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