

Business Clinic

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

How to correctly charge VAT on cropping

Q I am a farmer and I grow crops to sell to different types of customers and do not charge VAT because they are a food item. However, I am told that sometimes I should be charging VAT on some of my sales? Please advise.



Mary McLachlan VAT specialist
Duncan & Toplis

A The answer is that it depends. The law states that seeds or other means of propagation of plants comprised of food of a kind used for human consumption or animal feeding stuffs is zero-rated for VAT, so no VAT is charged.

HMRC in its VAT manual states that theoretically this interpretation is not strictly correct in law as it would only cover those plants which are themselves harvested and eaten and not those which simply produce yearly crops.

For example, it would cover vegetable plants such as turnips or sugar beet but not apple trees or raspberry canes.

However, since the intention of the law is to keep VAT out of the food chain as far as possible, HMRC has always interpreted the zero-rate as including plants yielding or producing food for human consumption, as well as plants that are food in their own right.

This enables relief to apply to the full range of food-bearing plants and crops.

However, HMRC does not accept food as including all edible products, so it does not allow relief to all edible plants and crops, but restrict it to those whose primary purpose is to provide food.

Therefore, plants and crops grown for non-food purposes will be standard rated for VAT at 20%.

What is the law on non-food crops?

Maize and rye grown for anaerobic digester plants are not grown to provide food but to be used for a non-food purpose.

Similarly, straw sold to market gardeners for use as composting material is sold for a non-food purpose.

Therefore the sale of crops, for these non-food purposes, is standard rated for VAT at 20%.

Farmers can also make supplies of domestic



fuel and power and charge at the reduced rate of VAT of 5%.

For example a supply of wood, peat or charcoal that you hold out for sale solely as fuel qualifies for the reduced rate of VAT provided that your customer does not intend to resell it.

Ready-cut pieces of wood held out for sale specifically as firewood can also be sold at the

reduced rate of VAT of 5%.

In summary, if the crops are sold for the primary purpose of providing food then you can charge your customers without VAT (zero rated) but if you are selling the crops for non-food purposes, such as for anaerobic digesters, then you will have to charge standard rated VAT of 20%.

My neighbour is draining water on to my land. Is there anything I can do about it?

Q My neighbour has a 10-acre field next to my boundary wall where he has what is known as a dew pond. He had an excavator to clean out the pond and then put a drain pipe through my wall so the water will flow on to my land. It is now seeping into my draw well which is 17ft deep.

I use this well water supply for my cattle and sheep all year round. I spoke to my neighbour and he replied he could do what he liked on his land.

In the past I have also asked him not to spread cow slurry too close to my boundary wall because, with his field sloping toward my wall, during wet weather the slurry water contaminates the drinking water for my animals. What should I do?



Fred Quartermain Solicitor
Thrings

A Your query raises a number of questions. I have assumed that the works to the dew pond have led to an excess of surface water, which is now flowing on to your land through the new drainpipe.

It would be worth checking the property deeds, or with the Land Registry, to confirm who the boundary wall belongs to, and what right your neighbour has to direct this surface water through the wall.

Potentially, even if they have a right to allow water to pass through the wall, it is causing a private nuisance.

What we already know about 2019 Basic Payment Scheme rates

Q Can I assume that our government will simply look over the hedge in 2019 at the subsidy values in euros and then convert into sterling at the going rate, given its commitment to maintain support at same level?



Ashley Lilley Director of food and farming
Savills

A The National Audit Office states that the UK will continue to contribute to the EU's annual budgets in 2019 and 2020 as if it had remained a member state.

By implication, the UK will continue to receive payment via the EU for the subsidy. However, if no agreement is reached this expectation might evaporate.

Seven-year transition

While the seven-year transition period starts in 2021, the agricultural bill allows adjustment to financing. This introduces another threat.

A euro definition for the subsidy is not as odd as it sounds. Future UK tariffs applied to imports from the rest of the world and to imports from the EU in the absence of agreement will continue to be stated in euros.

In the longer term, there is no logical reason why subsidy payment should be defined in euros.

It adds complexity, EEA countries, such as Norway, are not within the CAP and payment rates across Europe vary enormously.

This is caused by a party doing something on their own land, which they are entitled to do, but which has consequences that extend to neighbouring land, by, for example, causing physical damage to your draw well.

The remedy for private nuisance will be an injunction requiring the nuisance to cease as well as the payment of damages (although it is possible for the court to decide that damages alone are sufficient).

The object of damages is to place the claimant in the position they would have been had the nuisance not occurred, as far as possible.

Damages awarded will usually be limited to the costs incurred or that need to be incurred to remedy the damage plus any evidenced consequential losses.

Actual physical damage can be relatively straightforward to identify with evidence and to calculate objectively and precisely.

It is also possible for the person affected by the nuisance to act to reduce or remove the nuisance and in these situations reasonable



Does it matter? For 90% of farmers not really. English farmers can be confident that the payment will be in the same order as it is now and for Scotland and Wales the progression will continue as expected.

There may, or may not, be changes with exchange rate but there always has been.

Q I usually forward-fix my BPS payment to reduce the risk of exchange rate movements. Should I do this for 2019-20?

A For the relatively few farmers that manage the subsidy exchange rate there is an issue.

We might expect that the sterling euro rate will be particularly volatile over the next year and consequently a euro-defined subsidy would vary in sterling terms.

Exchange rates are fixed in the following ways:

- So that the subsequent subsidy payment is at a known exchange rate that suits the business, rather than the default September rate (both are like selling all the wheat crop on one day – although in the former, the farmer chooses the day)
- To average the positive and negative currency movement to achieve an average of two or more exchange rates (the equivalent of selling wheat on two or more days).

No doubt, there are also speculators gambling on strengthening or weakening sterling. While the 2019 subsidy may be defined in euros, it is not certain. It will become clearer and it would be worth waiting before taking action.

Exchange rate threat

However, the subsidy is only part of the farm output and the remainder is equally affected by exchange rate.

The use of wheat options helps to manage risk of currency movement and changes in supply and demand, so might prove a useful substitute.

Selling forward can also help manage exchange rate risk, but consider whether imposition of tariff would raise or lower prices.

remedial expenditure may also be recoverable through a claim.

Take full legal advice

Given that a private nuisance requires a court action, it is important to take full legal advice.

You should also consider whether alternative remedies that don't involve going to court might be more appropriate.

It may be that some form of alternative dispute resolution is a better option.

It is also worth noting that any contamination from slurry may be a separate actionable nuisance and could result in enforcement action by the Environment Agency.

My advice would be to raise the issue with your neighbour in the first instance so that they are on notice of any possible contamination that is occurring.

As the clear-up costs for contamination can be considerable, you may also need to involve your insurance company at some point to ensure you are suitably protected.

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words. Please give as much information 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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