Business Clinic

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

Will keeping 2019 crops help smooth out profits?

TIM SCRIVENER

Q Due to poor winter cereal planting, my profits for harvest 2020 will be very low. Should I hold back on selling harvest 2019 to smooth the profits of the two years?

Mark Chatterton
Director
Duncan & Toplis

Our answer in short is no. There are other ways to achieve the same goal.

Crops should be sold for commercial reasons to achieve the best price, taking into account cashflow requirements, but not second guessing future income tax payments.

Crops in store can be valued at cost of production or on the deemed cost method (75% of market value).

The tonnage should be accurate and agree with post year-end sales when completing accounts later in the year.

Most farm businesses have a 31 March or 5 April year end, so many arable units will have crops in store at each year end and some profit will always be deferred into the following year.

Some basic tax planning can reduce the 2020 taxable profit and increase 2021 taxable profits from the expected lower 2020 harvest.

Farmers' averaging has been available since the 1970s and will really come into its own when looking at 2019 and 2020 harvests in preparing 2021 year ends. It is available for sole traders and partnerships.

The relief allows averaging the profits of two consecutive years if the lower of the two profit figures does not exceed 70% of the higher profit figure, or if one of the years shows a loss.

The averaged figure is then used with the next year, and so on. Arable profits were quite high for harvests 2017 and 2018, and using averaging has meant that assessable profits have risen more gradually.

When preparing 2021 returns, averaging will smooth the decrease in profits from the (expected) poorer 2020 crops.

Capital allowance claims can also be deferred. With the annual investment allowance now at £1m/year for each business, most machinery purchases receive 100% tax relief in the year. If not needed, this relief can be deferred.

As machinery spending is likely to reduce in 2020-21 due to a lack of cash, it is essential to look at your capital allowance claims when preparing 2020 returns and plan forward.

Companies can take advantage of these capital allowance rules too.

All businesses have their own unique financial structure. Please speak to your accountant to help devise your optimum strategy to get through the 2020 growing year.

How do I turn holiday lets into residential lets?

Q We have six holiday cottages in one barn, converted more than 17 years ago. They have slowly become more difficult to run, with fewer bookings and more enquiries for short-term lettings. There is a 28-day clause on them and I feel it is time to try to change to either longer-term lettings or residential, as the outgoings make the cottages unviable. Please advise – we are in an English planning authority.

Stephen Richards
Associate partner
Carter Jonas Leisure

It sounds as if, when planning permission was granted 17 years ago, a holiday letting restriction was applied. This means no individual can stay in the property for more than 28 consecutive days.

To allow the cottages to be rented out longer term – for example, on an assured shorthold tenancy (AST), you would have to apply for a change of use for C3 use – a dwelling house.

From the outset, it's important to establish whether there is a Section 106 agreement in place, tying the cottages to the main residence.

If there is, regardless of any change of use, you won't be allowed to sell the cottages independently from the farmhouse or the rest of the land – either individually or as a block, depending on the wording of the agreement.

Subject to this, if you're successful in getting a change of use to C3, you'll be able to let the properties on the open market, or sell them. If you're successful in getting that change of use, you'll be able to let them on the open market.

If not, some planning authorities will extend the 28-day limit, allowing tenancies of up to six months, which could then be renewable.

When applying for change of use, it's a standard requirement to prove that the existing use is no longer viable – so, in this case, you would need to establish that there is no longer a sufficient business need for the holiday letting cottages or demand within the area.

You have the option to start with a pre-application. There is a cost associated, but it allows you to test the water, spending less time than in making a full planning application. The local authority will tell you the likelihood of any application succeeding.

Holiday accommodation for larger groups is increasingly popular

GLOBAL WARMING IMAGES/SHUTTERSTOCK

It would be worth getting advice in the first instance on whether or not your cottages would be suitable for, and compliant with, the requirements for the private rented sector.

Regulations for residential let properties are ever stricter – there may be costs and time implications you have not considered, both to get them up to scratch and to maintain them.

For example, each cottage would need to meet energy efficiency standards, have separate meters for utilities and their own boiler, as well as up-to-date gas and electricity certificates. Parking arrangements and gardens must also be suitable for long-term lets.

You may consider changes to make your cottages more appealing to holiday makers. As a leisure specialist, I have seen this market change dramatically in the past 20 years.

I recently worked with a landowner to upgrade a holiday cottage complex to interconnect their cottages, increasing their flexibility and, therefore, appeal to a wider range of holidaymakers and to attract larger groups, for which there is a growing market.

There will likely be other, lower-cost changes that could increase the holiday letting business. Employing a company to deal with cleaning and changeover, as well the marketing and letting, is an option if time has become an issue.

If the business succeeds, the income from holiday letting cottages could be higher than on a long-term residential tenancy.

Employed, self-employed or worker status?

Q I am a self-employed general farmworker who has been working for a single client for more than a year. I recently stopped working for them. My work has been consistent through the year and I believe I should have been employed, not self-employed, as I have missed out on holiday pay, pension contributions and national insurance (NI) contributions. We didn't implement any contract or have a written record of terms when I started working there. I only provided labour, as I used their tools, personal protective equipment, cars, tractors equipment and so on. I invoiced them monthly on an hourly rate. Who is liable to pay for my tax contributions and am I able to claim compensation for holiday pay, as I feel I was a disguised employee?

Natalie Ward
Senior associate
Thrings

Employment status is a hot topic in employment and tax arenas and the subject of a considerable body of case law.

Your query about employment benefits, which would include holiday pay and pension contributions, is something that would be decided by the employment tribunal.

You would need to issue a claim, and assert in your claim form that you were actually employed or a worker of the farm business and not merely self-employed.

During a hearing, the tribunal would apply a number of tests to determine your correct status. In the absence of written documentation between you and the farm, the tribunal would want to understand at whose request it was that you work on a self-employed basis in order to establish the understanding of the parties at the time your engagement began.

The fact you refer to yourself as self-employed and issued the farm with monthly invoices would suggest a self-employed arrangement was envisaged, at least at the outset. On the other hand, the fact you used the farm's tools, equipment, vehicles and PPE, and that this was the only farm you worked for, is more consistent with employment.

However, the tribunal would look beyond that and examine in more detail the day-to-day reality of your relationship and the manner in which you worked for the farm. It would seek evidence from both parties about who determined when you worked and how you carried out that work; whether you were integrated into the workforce and treated like an employee; and whether you had the ability to turn down work. The more control the farm exercised, the more likely that you were their employee, rather than self-employed.

If the tribunal doesn't find that you satisfy the tests for employment, it may find that your correct status is that of a worker. A worker is entitled to some of the same rights as an employee, such as holiday pay and sick pay, but not full employment protection such as the right not to be unfairly dismissed. A worker performs work personally to the engaging business, but the relationship between them is not that of client and service provider (as with a self-employed contractor and their farm business client).

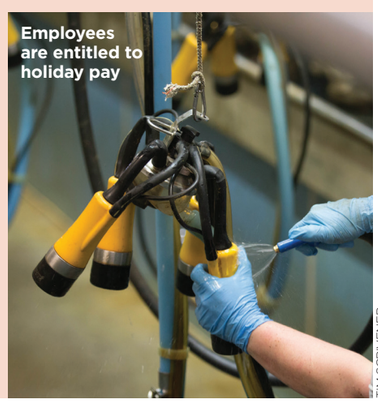
If the tribunal finds that you were an employee or a worker, it is likely to award you backdated holiday pay for a certain period of time. However, employment tribunals do not deal with tax issues, and a separate determination would need to be made by the tax tribunals – most likely at the instigation of HMRC – that you were an employee and should have had deductions of PAYE and employee's NI applied to your earnings.

That being the case, your employer would be liable for tax which should have been deducted through PAYE and for employer's NI contributions, as well as penalties and interest for late payment.

A finding of employment in employment tribunals does not necessarily mean the tax tribunals will make the same finding, although because they apply similar tests, the outcome is likely to be the same.

We recommend you seek advice from a qualified tax accountant in relation to your employment status for both tax and NI contributions.

You could also use HMRC's online employment status tool, known as the Check Employment Status for Tax tool, or "CEST", to give you an indication of your status.



Employees are entitled to holiday pay

TIM SCRIVENER