WHAT IS A FULL-TIME FARMER?

Possible Tax Trap For Older Farmers

by Thomson Cooper Managing Partner

DAVID WALKER

Occasionally accountants receive tax enquiry letters from HMRC in relation to a client which are not focussed on routine matters such as stock valuation, capital allowances claims or undisclosed income, but instead the enquiry raises questions about a point of principle. An example of this latter type of enquiry came across my desk a few months ago and, although I am sure that the client under enquiry does not have a case to answer, the point at issue could have repercussions for some farmers, particularly those who, due to old age, are becoming less mobile and unable to carry out the day to day manual work farming requires.

The client in question made a taxable loss from the farm and also received other income out with the farm. Tax legislation allows farming losses to be offset against other income arising in the same tax year and is known as sideways loss relief. Under enquiry, HMRC challenged the claim for sideways loss relief by questioning whether or not the client was a full-time farmer. Legislation only permits a claim for sideways loss relief if the loss derives from a trade in which the claimant works full-time. This legislation was introduced primarily to prevent abuses of the system which were taking place by, for example, film partnerships, and in reality, was not designed to catch bona fide farmers. It is therefore disappointing to note that HMRC appear to be attempting to do just that.

So what is a full-time farmer according to tax legislation? The answer is someone who works at least ten hours per week on the farm. That, at initial glance, does not sound like a very high bar and for the average farmer that target may be exceeded in a day never mind a week. Indeed, I recall one dairy farmer I know complaining bitterly that the national census form he had just completed did not have sufficient space to record working over 100 hours per week.

That said, there is a certain group of farmers who I think should be concerned. The average age of farmers according to most surveys is getting higher every year. Many have been farming for over sixty years and can no longer carry out the physical work, relying instead on children or employees to do so. Older farmers will have other income from pensions and savings so it is not unlikely that in years where a farming loss arises then sideways loss relief will be claimed to generate a tax refund. If challenged by HMRC then the old farmer will need to prove that he has worked at least ten hours on the farm per week. That could be a challenge if the books are also kept by son or daughter.

Work on the farm can be broken down into four categories: - physical farming work; office work, including supervision and non-manual work; training, meetings and other activities; and living on the farm and being on call. Farmers who claim sideways loss relief should calculate their average hours spent on each category.

This type of attack extends HMRC activity in this area and follows the tax tribunal case won by HMRC when it was held that a house occupied by a long time farmer who moved into a care home, no longer qualified for inheritance tax relief.

For the tax system to be widely accepted it has to have an element of fairness about it and seeking to target bona fide farmers at the end of their long careers when circumstances dictate that they can no longer physically farm, is unfair and I would urge HMRC to reconsider their approach.