



IN THIS ISSUE... Page 1, 2 & 3... **Taxing Grants**...Page 3 & 4... **Pre and Post-Nuptial Agreements**...

Note from the editor



Kelvin Porter

Tel: **01993 886406**
 Fax: **01993 886416**
 Email kelvin@landtax.co.uk

A warm welcome, well perhaps the weather will hold, to the latest issue of our newsletter. May I first introduce Caroline Lovibond and Jane Marshman who both joined us during May.

We wish them both every success in their new positions. Previous newsletter issues and details of all our personnel are available on the website. Advance notice and details of our planned seminar to be held in the autumn are also included in this issue.

Finally, a grateful note of thanks to our contributors to this issue.



Jane Marshman

TEP ATT FMAAT

Tel: **01993 886409**
 Fax: **01993 886417**
 Email jane@landtax.co.uk

Jane has both a tax and accounts background, specialising in trusts (UK & offshore), high net worths including non UK domiciliaries and non UK residents.

Coming from Bath in Somerset, she also has significant experience in the farming sector, including inheritance tax planning. Jane is a member of the Society of Trust and Estate Practitioners and has mainly worked in medium sized practices and joined us from a top 30 firm.

Jane enjoys going to musicals, eating out and pilates/yoga.



Caroline Lovibond

BSc ACA CTA

Tel: **01993 886410**
 Fax: **01993 886419**
 Email caroline@landtax.co.uk

Caroline trained in tax with Arthur Andersen in London, qualifying as a chartered accountant in 1990 and a chartered tax adviser in 1991. Post qualification she worked for BT plc and EMI Music plc specialising in corporate and international tax.

After a career break to raise her young family, Caroline returned to work for Deloitte before moving to a boutique firm specialising in high net worth individuals. Caroline brings to landtax a wide range of experience covering both corporate and personal taxation.

In her spare time, Caroline enjoys skiing, gardening and spending time with her husband and four young children.

Taxing Grants Kelvin Porter

Tax cases date from 1875 (no I did not train then!) and for close to 125 years the lawyers, barristers and judges were at pains to dismiss the accounts largely as an irrelevance.

For them it seemed fortunate that the accounts rarely needed to be given any weight in an argument or decision and thus a body of law has grown up which has rarely considered what they contain or how it is done.

Since 1998 specific provision in the Taxes Acts has been made to define what constitutes GAAP (Generally Accepted Accounting Principles) and over the last decade this has been refined and tested in a number of leading cases. The Courts clearly now accept that the correct accounting practice may be sufficient to settle the most awkward of situations. HMRC have recruited accountants as they have recognised a weakness within

their own historic training methods to ensure that they can keep pace with the change.

In the hope, at this point, that the reader has not been lulled into a gentle slumber I will depart from what could amount to a course about accountancy to address a real issue that the 'authorities' are avoiding.

... Continued on page 2

Any business activity has to be grounded in common sense; relevant and reliable figures have never been more important and for farmers these are being distorted through the lack of any clear guidance on the accounting treatment for receipts under the Single Farm Payment (SFP) scheme.

Bits and pieces...

A quietly introduced paragraph in the Treasury's 'Red Book' for the Budget states that the Government will abolish trading status for Furnished Holiday Lettings from 6 April 2010. We have no further details about this but if tax reliefs are a key part of your strategy in this area then consideration needs to be given now to the effect this may have.

The SFP scheme was created with effect from 1 January 2005 and is based on an annual claim being made by the middle of May in each calendar year in respect of the entitlement for that calendar year. For the years 2005 – 2007 a ten-month qualifying occupation period within the scheme determined when the grant could be recognised in the accounts. There was a window during which a period could be nominated, and possibly altered, which gave most traders sufficient flexibility to 'manage their income' efficiently. Income could be accelerated, if the bank was being difficult or the '5 year rule' was a problem, or it could be deferred to keep something 'in hand' for the future.

Bits and pieces...

Expenses, generally, are allowed against trading and rental income only where they are incurred wholly and exclusively for the purposes of the business. For an employee they also have to be necessarily incurred in the performance of the relevant duties. The Editor would just like you to know!

HMRC and the professional accounting bodies published agreed guidance in June 2005 which gave certainty of tax

treatment if the accounting guidance was followed.

Most readers will be aware that the system was altered with effect from 1 January 2008 and we are now seeing firms grappling with the new rules as a result of inadequate guidance as to the accounting requirements (in the Editor's view). The ten month period has been dropped in favour of a single day, 15 May each year, when occupation has to occur in order to qualify and the previous accountancy guidance has been withdrawn which, at the date of writing, still has not been acknowledged in the HMRC manual.

Thus for periods of account ending before 15 May 2008 no credit can be taken to the Profit & Loss Account. However, under the new rules the income that should be recognised on and after 16 May 2008 needs to be ascertained. One of the key elements of GAAP relates to the matching of expenses with the relevant income. Clearly costs required to be incurred, e.g. for cross compliance purposes, may arise in the period before 15 May 2008 and this could be said to give rise to an accelerated tax deduction. This possibility exists in both the original scheme and the amended version and is a common feature for any expense incurred in one period when the matching income is in a later period. It needs to be borne in mind when evaluating the commercial results for any period but adjustment of the accounts or tax computations is accepted as not being required as income must not be anticipated.

The matching concept would seem to indicate that the SFP for 2008 should be recognised on a time basis. Thus a 31 May period end would include 5 months of the 2008 receipt and a 30 September period end would recognise

9 months and so on. This is the Editor's preferred treatment as income is being recognised equally as it is being earned and will match with any related expenses. If a significant expense needed to be incurred in respect of cross compliance but arose after the accounting period end there would also seem to be a reasonable case to accrue the relevant proportion of the cost in the earlier set of accounts.

Bits and pieces...

The new £50,000 Annual Investment Allowance (AIA) for plant and machinery must be apportioned between related businesses. These are defined widely and can apply where premises are shared and similar activities (defined by an EU statistical business classification system) are carried on.

There may be a transitional year where more than a single year's entitlement will be included in the farm accounts and some have argued that this 'double counting' is wrong when the problem is clearly the lack of recognition of income in the earlier year. The choice of a 'sympathetic' financial year end (possibly 30 April) might provide a technical solution to the issues now faced by farmers bearing in mind that only one change in a five year period is allowed.

The Institute of Chartered Accountants in England & Wales have issued a statement, with HMRC approval, through its Farming & Rural business group newsletter. Two options of accounting methods are offered:

- The payment being recognised on 15 May, as this is the only day that the claimant has to hold the land. They should be aware of the likely future use of the land and hence its eligibility for the remainder of the calendar year, or

- The payment not being recognised until 31 December of the year in question, since the eligibility criteria include the requirement that the land must be eligible for the entire calendar year.

Bits and pieces...

The apportionment of an AIA (see above) is carried out as the businesses think fit. As legal control is not required, and different owners may be involved, agreement on the amounts to be claimed may be impossible to agree...

It then goes on to say "Ultimately, members will need to exercise their professional judgement in this

matter, and will need to account for any payments received on a consistent basis. Following discussions, HMRC agrees with the opinions and guidance given".

The last few years have seen many instances of poor or questionable accounting arising, some amounting to fraud, and it is sad to note the lack of strong leadership in this area from both the professional bodies and HMRC.

In the Editor's view the issue has clearly been fudged and the present position is highly unsatisfactory particularly in the light of the new penalty regime.

Bits and pieces...

Electronic filing took off for the 2008 season with compulsory e-filing required for all returns submitted after 31 October if a penalty were to be avoided. Trust returns, however, could not be electronically processed by HMRC... they had to be printed and manually keyed into the HMRC computer!

At some point the issue may be tested by the courts or possibly investigated by the media but the Editor for one would like to be able to think that the accounts ought to be capable of reflecting the true results of a business.

Pre and Post-Nuptial Agreements



Sofie Hoffman

Solicitor
Private Client and Tax Team,
Boodle Hatfield

Tel: 020 7079 8193

Fax: 020 7079 8354

Email
shoffman@boodlehatfield.com

To the extent that the Family Division uphold them, pre and post-nuptial agreements can regulate by agreement financial provision between spouses on divorce. Such agreements may also avoid the acrimony and costs associated with protracted legal proceedings. Whilst not yet enshrined in statute, it is starting to be recognised that it is unfair to prevent people from regulating their own financial affairs if they want to, particularly in England and Wales where divorce settlements can be very substantial and the outcome is often uncertain.

Although pre-nuptial agreements are not legally binding, provided each spouse gives full financial disclosure,

receives independent legal advice before signing the agreement, enters into the agreement in good time before the marriage and gives consideration to the arrival of children, the court will take the agreement into consideration and retains wide discretion as to the weight it should carry. Factors the court will consider in deciding how to exercise its discretion include:

- the bargaining power of the parties;
- whether there was undue influence on one of the parties to sign the agreement;
- how soon before the wedding the agreement was signed;
- the fairness of the terms when they were negotiated and at the time of divorce; and
- whether adequate financial provision was made for future children.

Post-nuptial agreements, on the other hand, have been recognised as legally binding. In the recent case of

Macleod the Privy Council outlined the circumstances in which such agreements will be enforceable and when the court will intervene. The relevant circumstances are similar to those the court considers in deciding how to exercise its discretion in ascribing weight to the terms of pre-nuptial agreements.

The decision in Macleod is likely to lead to post-nuptial agreements becoming more popular. In terms of the impact of Macleod on the treatment of pre-nuptial agreements, a distinction still exists. In fact, the courts have taken the view that (unlike in the case of post-nuptial agreements) the validity of pre-nuptial agreements is a matter for legislation rather than judicial determination, particularly while the issue is under review by the Law Commission.

... Continued on page 4

However, the outcome of a case currently in the Court of Appeal may alter this position.

A German paper industry heiress is appealing against a High Court decision to set aside a pre-nuptial agreement. Katrin Radmacher and her former husband, Nicolas Granatino, had agreed under German Law that neither party would make any financial claims against the other in the event of a divorce. Nevertheless, the High Court ruled that the arrival of the couple's children 'so changed the landscape' of the marriage that the agreement should be disregarded.

The judge awarded the husband a lump sum of £5.6 million. The wife appealed the judgment. The wife's arguments are said to relate to the sanctity of contract, that she would not have married the husband had she known the pre-nuptial agreement would not be upheld and has also challenged the jurisdiction of the English Court to determine the validity of the agreement. Those of

the husband are likely to have related to the lack of disclosure before the agreement was entered into and that he took no independent legal advice. The Court of Appeal's decision is expected imminently.

While it is widely expected that Katrin Radmacher's argument will fail, there are those who believe that the Court of Appeal may be willing to uphold such an agreement if it is seen as fair to do so in all the circumstances.

In the meantime, couples who have decided to enter into a pre- or post-nuptial agreement should pay careful attention to the pre-requisites for recognition (whether as influential to the court, in the case of pre-nuptial agreements, or as legally binding, in the case of post-nuptial agreements). Above all it must be demonstrated that the deal is not profoundly unfair. The court will intervene where the document fails to provide for children born during the marriage or the spouse's basic housing needs, or the provision is far below any order that

the court might conceivably make. A judge is also likely to vary an agreement where the circumstances have changed fundamentally from those that existed at the time the agreement was made.

Couples who have signed pre-nuptial agreements should consider periodically updating their agreements or entering into post-nuptial agreements. Careful drafting is essential to ensure the agreement is in accordance with the guidance from courts. Where there has been a change in circumstances both spouses should seek legal advice as to how best to vary the agreement to reflect their new positions. Those considering entering into an agreement will require advice in each individual case as to whether a post-nuptial agreement should be entered into in preference to (or in addition to) a pre-nuptial agreement.

Sofie Hoffman is a solicitor in the Private Client and Tax Team of Boodle Hatfield in London. She can be contacted at 020 7079 8193 or by email at: shoffman@boodlehathfield.com

SEMINAR

The family holdings – strategy update and ideas for the future

Blenheim Palace – 23 November 2009 – 3:00-7:30pm – The Marlborough Room

In association with the CLA, the seminar will look at a case study to outline the thinking processes to managing an estate and to illustrate some of the present challenges and opportunities facing landowners.

The case study can be downloaded here <http://www.landtax.co.uk/resources>

For further information contact info@landtax.co.uk



Country Land & Business Association

RURAL ECONOMY IS OUR BUSINESS

your feedback...

We would like to know if there are any particular issues which are important to you and that you feel we should cover. Please do get in touch...

landtax

Mitre House, Lodge Road, Long Hanborough Business Park, Long Hanborough, Oxfordshire, OX29 8SS

Email: info@landtax.co.uk Web: www.landtax.co.uk