RURAL ADVANTAGE

Summer 2022

SOLAR FARM SCHEMES | SHOULD YOU INCORPORATE YOUR BUSINESS? | GUEST ARTICLE: GIFTS AND TRUSTS FOR GRANDCHILDREN | ⊕ Much more!

Challenges and Opportunities

Smailes Goldie Group
CREATING ADVANTAGE

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WELCOME

Predicting the next challenges and opportunities

Back in our Winter 2019/20 edition, we predicted the potential for several fundamental changes to our sector but no-one could have predicted the major shock of the Ukraine conflict in such an influential region for agriculture. That human tragedy, on top of the two years we have experienced with the pandemic, brings us to a very different place. All sectors within our industry appear to be being impacted in different ways.

Suddenly food security is once again an often heard phrase and a concern for a much wider audience than just those within agriculture who have helped towards providing the UK with it over several decades since the Second World War.

Rising energy costs have brought renewables back into prominence and we include an article on the topical issue of solar farms from our recent senior recruit, renowned North Yorkshire sector specialist and renewables entrepreneur, Stephen Headley.

In April, we also welcomed another renowned North Yorkshire 'name' through Steve Watson and in that case, he has brought his entire team of 30 staff with him and a network of three offices in Scarborough, Pickering and Kirkbymoorside.

We are delighted to expand our reach further into North Yorkshire and strengthen our landed estate and agricultural offering.

Our team have included a wide range of short articles to update you on current talking points and Peter Dearing has also summarised another energy efficient hot topic of electric vehicles whilst on page 8 we outline the topic most rural businesses consider at one point in time; incorporation.

Our guest article looks at the opportunities for families to save income tax and shelter assets from capital taxes and commercial risks using grandparents' trusts.

Turning back to the turmoil mentioned at the beginning of this introduction, a recurring theme within our previous issues and also when I spoke as a participant of the 'resilience panel' at last autumn's Yorkshire Post Rural Conference has been an encouragement to plan ahead. This is even more so the case with the volatility in the grain markets and the increases in input costs we have recently seen so we have included an article driving into the detailed thoughts and plans regarding cash flow that every business should be considering and acting upon now.

Aside from the recent additional challenges the agricultural sector is facing, those previously talked about meander along to varying degrees. Trade deals have begun to happen, but capital taxes have remained the same, for now. We have gleaned some clarity on the subsidy regime (including the capital taxation nature of the Exit Scheme receipt, which is available for only a very short time) and environmental issues but with the recent caveat that the conflict in the Ukraine could cause the Government to rein back on its green ambitions.

So, having hoped that we'd left the worst of the health impacts of Covid behind to give us a summer to look forward to whilst we dealt with the economic aftermath, we now have other monetary problems to deal with. Hopefully, we can all remain positive and cheery for when we meet up at our stands at the Driffield and Ryedale Shows during July and at other events members of our team will be attending in the autumn, including this year's Yorkshire Post events in late September.

Martin Overfield
Partner, Head of Agriculture and Landed Estates

SOLAR FARM SCHEMES

Over the last year or so, several of our farming clients have received approaches from developers looking to lease land to construct large scale solar parks. Typically, this varies from around 50 acres to 1000+ acres.

Stephen Headley, a consultant at Smailes Goldie, and his wife own their farm near Selby. Stephen and his neighbour were contacted by several developers leading to a scheme which, at the time of writing, awaits a decision from planners. As a result, Stephen has experience of advising landowners on the tax implications of such schemes as well as the landowner's perspective. Stephen writes:

Developers will usually offer a rent many times greater than the likely income from farming, with a range around £800 – £1000+ per acre. They offer the promise of a long lease of around 30 – 40+ years, a potential share of the gross revenue from the scheme and an index linking of the revenue stream.

The schemes do not rely on any support from government and changes to the cost of solar panels together with increases in wholesale electricity prices mean that it is becoming increasingly possible to develop commercially viable schemes.

Solar parks can also generate a reasonably secure and reliable long income stream which makes them attractive to purchasers such as pension companies for onward sale. The technology is well proven, and the sun is reasonably consistent year on year.

All in all, it is not surprising that many landowners find them an attractive proposition.

For any developer, the main criterium is the ability to secure a cost-effective grid connection and, following on from this, planning permission. Prior to approaching any landowner, the developer will usually do a degree of homework to check available capacity at the local substation and the suitability of the site for a solar park. Unsurprisingly, sites adjacent to a substation with capacity are likely to receive several offers. The absolute cost of the connection is less important than the cost per unit of generation. And the greater the cost, the more acres that are required to make the scheme cost effective.

As a landowner, I felt it was vital to involve a land agent with experience in this type of project at an early stage to assist with negotiating the deal. We, and our neighbour, used Rod Cordingley at Stephensons Rural.

The developer needs the landowner to sign a letter of authority to apply for a connection which effectively locks out other developers on that site for a period. With us, when a satisfactory grid connection offer was received, the developer looked to negotiate detailed heads of terms. While non-binding, these set out the major terms to be incorporated into an option to lease the land, subject to planning and a draft lease. Rod advised us that “the heads of terms are a vital document to help iron out the key terms and any major issues including the rent, any overage based on the performance of the scheme, drainage and provision for decommissioning.” Once the heads of terms were agreed, our solicitors drafted the formal documentation.

All aspects of the planning process were taken care of by the developer including numerous surveys, reports and other evaluations. I was pleased that the developer always contacted me prior to site visits and that they were happy, within reason, to work around our various farming operations and cropping.

The planning application was submitted in August 2021, and I hope a decision will be made shortly.

Obviously, a solar development is a major change for many farming businesses. I encourage each business to consider the tax position at the earliest opportunity, particularly as the value of the land is likely to increase as the likelihood of a successful planning application increases. The period between the developer’s first approach and the exercise of the option usually offers a window to undertake a review and take any appropriate steps while the land is still being used for farming.

That said, I must emphasise that there is “no one size fits all approach” and it is important to consider the individual circumstances and objectives of those involved. I believe the two main areas to consider are the taxation of the rental income and the effect on the capital tax position.

The scheme is likely to generate a significant long term income stream for the landowner. It is often well in excess of the current profits of the business and many farmers will wish to retain as much of this income as possible, to use to finance land purchases or other projects. The post-tax income could either be accumulated for future use or used to finance a bank loan which in turn is used for capital reinvestment.

Typically, I would expect the land to be leased to the developer by a limited company, often newly established – let’s call it ‘Newco.’ With Newco to benefit from the lower rates of corporation tax (currently 19% rising to 25% in April 2023) on the rental income when compared with the higher rates of income tax of up to 45%. In other cases, the use of pension schemes may be considered which allows the income to roll up tax free.

Careful planning is required to mitigate any capital tax costs of Newco acquiring either a freehold or leasehold interest in the land. The tax reliefs to achieve this usually depend on the land been used for agriculture/trade purposes. Hence the need for early action. It is also necessary to consider any Stamp Duty Land Tax implications of the plan.

The second key area to recognise is that it’s likely that the land will no longer qualify for Agricultural Property Relief which gives 100% relief from Inheritance Tax (IHT). Although sheep may graze under the panels, the predominant use of the land is clearly as a solar park.

Depending on individual circumstances, it may be possible to claim Business Property Relief which also gives 100% relief from IHT. At present this depends on the trading part of the business (i.e. excluding the solar scheme and any other non-trade assets) forming at least 50% of the whole business. However, there are several reports suggesting this 50% test could increase to as much as 80%.

My personal view is that it may be prudent to consider passing the land for the proposed solar scheme to the next generation while it is still being used for farming, if this fits in with the overall family objectives. It should be borne in mind that the land is initially likely to attract a significant development premium which will probably reduce as the lease progresses. Again, advice from your land agent is vital.

Overall, whilst it is attractive, it’s still an area of great complexity and one I’d urge needs evaluation from multiple angles. Do please call either your usual Smailes Goldie contact or myself if we can assist in this area.

COMPANY ELECTRIC CARS

Company cars can be a great way of supporting and rewarding employees, but they come with their own unique set of challenges when it comes to cost and taxation.

Following recent increases in fuel prices we are seeing increased enquiries around the provision of electric cars to employees.

The provision of a car by a business has a taxation effect on both the employee who has the use of the car and the business itself.

As an Employee

If you are driving a car provided by your employer and it is available for you to use personally, it is viewed as a taxable benefit. HMRC attaches a monetary value to the private use of the vehicle and collects tax on it; this is what we know officially as Benefit in Kind Tax (BIK).

There are two separate BIK tables, one for those driving a car registered after 6 April 2020, and one for those that drive a vehicle registered before that date.

Calculation of the tax is based on CO2 emissions of the specific car provided combined with other factors, these being:

- The list price (P11D value) of the car before non-taxable items (e.g. road tax) and after optional extras
- The tax rate you are in (20%, 40% or 45%) based on your annual income
- The type of fuel the car runs on

For the tax years 2022-23, 23-24 and 24-25 it has already been announced that electric cars will attract a 2% Benefit in Kind (BIK) rate which is significantly less than a combustion engine powered car. This rate also applies to hybrid vehicles with emissions from 1 – 50g/km with a pure electric range of over 130 miles.

As an example, an electric car with a P11D list price of £50,000 will have a BIK of £1,000 in tax year 22-23. If the employee is a basic rate taxpayer, the tax payable on the provision of this car with private use is £200 (£400 for a higher rate taxpayer and £450 for a top rate tax payer).

As an Employer

The employer will pay Class 1A national insurance on the benefit in kind. The class 1A rate for the current tax year is 15.05%. Using the above example in tax year 2022-23 the employer would pay £150.20 in Class 1A.

Ultra-low emission cars emitting 75g/km CO2 or less are exempt from the Optional Remuneration Arrangements (“OpRA”) legislation, which ordinarily restricts the tax and NIC savings available on salary sacrifice schemes. Therefore, salary sacrifice is particularly effective for these types of cars.

Salary sacrifice is where an electric car is provided under salary sacrifice i.e. The company pays for the lease and enters the lease agreement, and the employee in return pays for this by giving up the contractual right for a corresponding amount of their salary. The employee is taxed on their remaining salary (i.e. saving them PAYE and NIC contributions). The employee then only pays tax on the Benefit in Kind which is likely to be less than the tax and NI on the salary forgone. The further benefit of this is that the employer will also save on Employer national insurance on the amount of salary sacrificed over and above the value of the Benefit in Kind.

If a car is to be provided by an employer, the employer will also look at how to acquire the car.

Purchased outright or on HP

Where a vehicle is purchased on HP (or outright) then it will be included in fixed assets and capital allowances can be claimed in the year of purchase (so long as the car is in use). The allowances available as a deduction against tax profits depend on the CO2 emissions of the vehicle. You will get 100% allowances for 0% CO2 emissions, 18% allowances (each year in the general allowances pool) for vehicles with CO2 emissions of 50g/km or less and just 6% annual allowances via the special rate pool where the emissions are over 50g/km.

In addition to the above, a vehicle purchased outright or on HP and included in fixed assets will of course have depreciation charged against it which will reduce any profit in the accounts but will not be deductible for tax.

In the case for sole traders and partnerships, if you also use the car for personal journeys, the capital allowances you will receive are in proportion to the time you use the car for business journeys. That means if you use the car for personal journeys 10 per cent of the time, you will only be able to claim 90 per cent of the cost of the car in Capital Allowances.

Should you subsequently sell the car, however, there will be a tax charge on the amount received.

Generally, you are unable to claim the VAT back on the purchase of electric cars, including where the vehicle is available and used for both business and private use. However, if you are VAT registered and the vehicle is used exclusively for business you can. This is therefore only likely to apply in the case of pool cars or taxis.

Vehicle is leased

If you lease an electric car, you can deduct that cost from your taxable profits.

While this route allows you to spread the cost, you lose the significant tax benefit that comes with first-year Capital Allowances when purchasing an electric car.

Nevertheless, there are benefits to leasing, rather than purchasing, an electric car. Current battery technology means that performance does degrade over only a few years and so batteries – a significant element of the overall cost of the vehicle – will need replacing reasonably quickly. By leasing, you avoid this issue.

There is a 50% block on input VAT recovery if the car is available for private use whether electric or not.

If not available for private use and purely for business 100% of the VAT may be claimed.

For VAT purposes the rules are no different whether the car is electric or not.

Vehicles taken on PCP

These could fall into either of the two scenarios above, based on the specific detail of the agreement in place. Advice should be sought as to which treatment is correct on an agreement-by-agreement basis.

The provision of electricity

With an electric car the provision of electricity is key consideration as well.

If the car is a company car, there is no additional benefit in any scenario to an employee for the car being charged at the employer’s place of business. The cost of the electricity is also tax allowable.

If the employee’s own car is being charged at the employer’s place of business, then providing certain conditions are met, there is no benefit in kind.

If the company owns or leases the car and the employee charges the car at their home, the employee is entitled to a deduction for the electricity cost of business miles travelled. Generally, this is calculated using the HMRC approved mileage rate which is currently 5p per mile for electric cars. This may be reimbursed by the employer or the employee claims this via their own personal tax return.

If an employee owns their own electric car, the employee is entitled to claim 45p per mile for the first 10000 miles and 25p per mile thereafter (each tax year) which is identical to a petrol/diesel or hybrid car.

Any business that installs charging points for electric vehicles between now and 31 March 2023, can claim a 100 per cent first-year allowance for these costs.

The business can also claim back the VAT element of a charging point if you are registered for VAT.

The Government is also currently offering grants to businesses under the workplace charging scheme (WCS). Businesses with off-street parking can claim up to 75 per cent of the installation cost of electric car charging points, capped at £350 each up to a maximum of 40 sockets. The chargers must be installed by an OZEV-authorised WCS installer.

In summary the government is obviously incentivising both employees and employers to make the switch to electric cars. However, like most decisions, the practicalities should be reviewed as well as the taxation effects. For example, local infrastructure relating to charge points. Should the employee require a vehicle in the performance of their role it may be that a commercial vehicle may be a better option.

If you require any advice please contact Peter Dearing, or contact a member of our team.

HANDLING FARMING'S PENDING CASH FLOW ISSUES

It has been well publicised that booming grain prices have caused problems for some of farming's livestock sectors and that rocketing fertiliser costs will soon feed through to potentially cause an issue for the arable sector. However, the high grain prices possibly seem to be lulling some farmers into a false sense of security about their arable operations.

In the spring, farm consultants were already beginning to raise concerns about the future prospects for the arable sector and it is now starting to become clear that financial pinch points may well begin to squeeze arable enterprises, though probably at differing points in time for different businesses. This was before the true effects of the Ukraine conflict began to manifest themselves.

The knock-on consequence of the impending squeeze will inevitably be the threat of cash flow problems.

Some arable enterprises will have bought inputs cheaply for the forthcoming harvest and perhaps a very lucky few for the 2023 harvest establishment too. Information is beginning to come out about cropping choices reflecting the higher prices and some will be taking routes involving less expenditure on inputs.

Despite recent calls by the NFU for the Government to protect subsidies through to 2029, the current position is that they will be greatly changed and depleted well before then. Although the fall in the Basic Payments Scheme payments doesn't appear to have been too harshly felt as yet, it is coming and inevitably it will also contribute to the situation.

So, what might happen when and what should the astute farming business do to help avoid a problem?

Spending and financing choices

Turning to the latter point first, there is an obvious need to plan ahead and do that now to avoid depleting cash resources rather than wait until the squeeze occurs.

The decisions about whether or not to spend will be fairly obvious to consider.

However, a relatively cash rich business might have plans to invest in its future operations but the funding of those plans could have a significant impact further down the line. It may be tempting to avoid interest costs and purchase fixed assets from cash reserves or out of overdraft. However, interest rates are still relatively low so in those circumstances there is often a great deal of sense in matching funding terms with planned asset usage to preserve as much of the currently available cash as possible 'just in case'.

What might happen to arable enterprises?

What seemed then to be higher prices for 2020 harvest will likely not have been achieved for all of the crop due to sales forward agreed beforehand. Inputs for the 2022 harvest will likely have been purchased at the lower prices in autumn 2021. It is 2023 harvest when the full effects of cost inflation will likely hit.

Using the more up to date information your Making Tax Digital compliant software might provide you with information which can be used to plan ahead to estimate your results and assist you to make early decisions.

For farmers, these decisions can be about investment and business choices in tandem with your farm advisors to make sure your business is organised to be robust against the multiple threats the industry is currently facing. They can also be about financing options, as mentioned above, but they could also assist with projecting future tax payments.

Impending increased tax payments and eventually reducing payments on account

We expect the higher arable profits coming through in the 2022 accounts now being prepared to result in high total tax payments for the 2021/22 tax year due in January 2023 with little scope to reduce July 2022 tax payments on account.

However, the potential slight decline in profitability for the arable sector for the 2022 harvest falling within the 2023 accounts might provide scope for possible reductions in farmers' payments on account for those tax bills which will also fall due to be paid by 31 January 2023 and 31 July 2023.

The consultants forecasted deeper decline in profitability for the arable sector for the 2023 harvest and should it still look like that will come to pass nearer to January 2024, this might allow for that month's farmers' tax payment on accounts to be significantly reduced too.

There are potential interest consequences for getting reductions in payments on account wrong but HMRC rates are not likely to be so much more than a bank would charge, so the best possible forecasts are needed at the right point in time.

Others affected

Farmers, but also businesses in the farming supply chain should be looking at seeking forecasts to help identify and therefore mitigate risks at an early stage.

If you'd like to know more about how Smailes Goldie Group can work with you, please get in touch with Martin Overfield or one of our agricultural and landed estates team.

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED) - NEW VALUATION DATE

ATED is a tax which applies to Non-Natural Persons being mainly companies, partnerships with corporate partners, and collective investment vehicles which hold an interest in a UK dwelling with a value of £500,000 or more, subject to certain reliefs.

Properties are required to be revalued every five years with the next valuation date being 1 April 2022 for the 2023/24 ATED return due 30 April 2023. If ATED tax is due it must also be paid by that date to avoid interest and penalties.

With the UK property market seeing some significant increases in values, some properties may have moved into a higher ATED band since the 1 April 2017 valuations. Likewise, those which were valued below the £500,000 starting threshold, may now be caught by ATED.

We would recommend that those affected by ATED obtain a 1 April 2022 valuation shortly. The valuation provided is your responsibility, therefore a professional valuation carried out by a surveyor or estate agent would be prudent but is not compulsory.

If you are unsure whether you need to complete a return or would like to understand whether any reliefs might apply, please get in touch with a member of our team.

BASIC PAYMENT SCHEME - LUMP SUM EXIT SCHEME

In last Summer's publication we noted Defra's announcement of de-linking of the remaining Basic Payment Scheme (BPS) payments from 2024 and the lump sum exit scheme which at that time, offered no clarity on the tax implications of a farm exit.

The guidance issued by HMRC back in February of this year confirmed that the lump sum will be treated as a capital gain, rather than income. With rates of capital gains tax at either 10% or 20% and possible reliefs available, this was welcome news for the sector.

The lump sum exit scheme extends to companies and partnerships, provided the business surrenders all of its BPS entitlements and the shareholders holding more than 50% of the shares, or partners with an entitlement of more than 50% of the profits, exit the business. If the business continues following the exits, it is prevented from claiming BPS in the future.

Business Asset Disposal Relief (BADR), which enables the gains from the disposal of a business to be taxed at the rate of 10% up to a lifetime limit of £1m, might be available but this will require careful planning.

It is likely that those interested in taking the lump sum exit will already have had an eye on retirement. With applications for the scheme only open until 30 September 2022, and agricultural land needing to be transferred out by 31 May 2024, it is necessary to act fast but imperative that you initiate discussions with your professional advisors at the earliest possible stage.

CORPORATION TAX - PROPOSED RATE INCREASE FROM 2023

April 2023 brings a number of proposed changes for corporate businesses. Just as capital allowance reliefs are expected to be reduced, the corporation tax rates are set to increase for those companies with taxable profits over £50,000.

Currently all companies, regardless of profit levels, suffer corporation tax at the historically low rate of 19%. In the March 2021 budget the Chancellor announced that, from 1 April 2023, the main rate of corporation tax would increase to 25% for companies with taxable profits in excess of £250,000.

The new rules will also see the return of marginal relief where taxable profits fall between £50,000 and £250,000. Marginal relief acts to adjust the rate of tax gradually increasing the liability from 19% to 25%.

For those companies with year ends prior to and including 31 March 2022, and who have generated taxable losses, decisions will be needed as to whether it would be more beneficial to take advantage of the temporary three year loss carry back rule, or carry forward the losses given the proposed increase in corporation tax rates.

WANT TO MANAGE INCOME TAX ON PROFITS? CONSIDER AN INCORPORATION OF YOUR BUSINESS

If you operate your business as a sole trader or through a partnership, you will pay income tax and national insurance contributions on your full annual profits at the following rates – regardless of whether you draw the profits from or reinvest them into your business:

<table>
<tr><th colspan="3">Income tax</th><th colspan="3">Class 4 national insurance contributions (NIC)**</th><th>Total deductions</th></tr>
<tr><td>Band</td><td>Taxable income</td><td>Tax rate</td><td>Band</td><td>NICable income</td><td>NIC rate</td><td></td></tr>
<tr><td>Personal allowance*</td><td>£0 to £12,570</td><td>0%</td><td>Lower profits limit</td><td>£0 to £9,881</td><td>0%</td><td>0%</td></tr>
<tr><td>Basic rate</td><td>£12,570 - £50,270</td><td>20%</td><td>Primary profits</td><td>£9,881 to £50,270</td><td>10.25%</td><td>30.25%</td></tr>
<tr><td>Higher rate</td><td>£50,270 - £150,000</td><td>40%</td><td rowspan="2">Upper profits limit</td><td rowspan="2">Over £50,270</td><td rowspan="2">3.25%</td><td>43.25%</td></tr>
<tr><td>Additional rate</td><td>Over £150,000</td><td>45%</td><td></td></tr>
</table>

* The personal allowance is tapered by £1 for every £2 of income in excess of a £100,000 threshold
** Class 2 NICs also apply at £3.15 per week for businesses with profits in excess of £6,725

As many of our farming clients have made significant profits over the past couple of years, those that are still operating as sole traders or partnerships may have been pushed into the higher income tax brackets if averaging and capital allowances claims have not reduced taxable incomes, leaving less profits after tax to reinvest into the business – which may impact the future cashflow of the business given the rising fertiliser, fuel and energy costs (as well as the phasing out of BPS payments).

What would be the tax saving on profits for reinvestment?

It is currently planned by Government that with effect from April 2023, profits realised by a business operated via a company will be charged to corporation tax at a maximum rate of 25% where annual profits are in excess of £250,000. It is yet to be seen, however, whether the next prospective leader of the Conservative party following Boris' impending departure will retain the proposed increase to corporation tax.

Within the current proposals to the increase to corporation tax, businesses with profits less than £50,000 will continue to be charged at the current 19% rate of corporation tax, with businesses with profits between £50,000 and £250,000 being charged to corporation tax a rate between 19% and 25% (although details of the calculation to compute the rate are yet to be released).

The tax savings on profits may therefore be as much as 23.25% as set out below.

For businesses with profits	Maximum income tax and NICs	Maximum rate of corporation tax	Potential tax saving / (cost) on profits
Less than £50,270	30.25%	19%	(11.25%)
£50,270 to £150,000	43.25%*	25%	18.25%
More than £150,000	48.25%	25%	23.25%

*Ignoring the loss of the income tax-free personal allowance where income is in excess of £100,000

For every £100,000 of profits realised, the total tax saving may therefore be as much as £23,250 per year – subject to income tax on extraction of profits from the business. Over a ten-year period, this could equate to an additional £235,250 being available to reinvest into your business (including paying down borrowings) based on current tax rates.

How about tax on extraction of profits from the business for living costs and personal expenditure?

The shareholders (business owners) and company are separate legal and tax entities. Shareholders are therefore only subject to income tax on extraction of profits from the company (whilst the company is charged to corporation tax on profits realised). How shareholders are charged to income tax depends on the method of tax extraction, which may include:

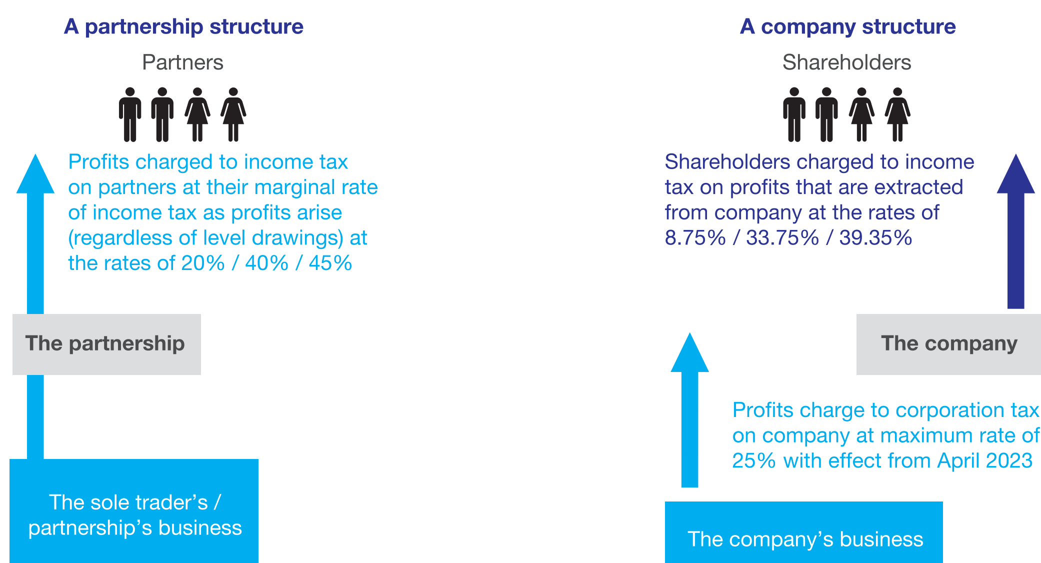
1. **Salary** – which is charged to income tax and NIC but should be deductible for the company's corporation tax purposes (so long as the payment is wholly and exclusively for the purpose of the company's business);
2. **Dividends** – which are not charged to NIC and are charged to a lower rate of income tax than salary, but are not deductible for the company's corporation tax purposes; and
3. **Pension contributions paid by the company** – which should be corporation tax deductible and income-tax free (on contribution) subject to the availability of the pension member's annual allowance (so long as the payment is wholly and exclusively for the purpose of the company's business).

The total effective tax rate on company profits that are extracted is dependent on a number of factors, but (generally) it is more tax efficient to extract profits as dividend after corporation tax and the business owners can control the timing of extractions.

Where profits are extracted from a company by way of dividend, the blended effective rate tax of the corporation tax on profits realised and income tax on extraction of profits is slightly more expensive compared to a business operated as a sole trader or partnership – but only if all profits are wholly extracted from the business – as set out below:

For businesses with profits	Maximum income tax and NICs	Max total corporation and income tax rate	Potential tax saving / (cost) on profits
Less than £50,270	30.25%	31.56%*	(1.31%)
£50,270 to £150,000	43.25%**	50.31%*	(7.06%)
More than £150,000	48.25%	54.51%	(6.26%)

*Assuming a 25% rate of corporation tax.
**Ignoring the loss of the income tax-free personal allowance where income is in excess of £100,000



The use of a company to manage the business is likely to only be beneficial where profits are reinvested into the business each year and not extracted in full.

Next steps

The incorporation of a business is a major event and a decision that should not be taken lightly, or without considering commercial or practical aspects – and there are also other tax consequences to be aware of in relation to capital allowances, income tax on personally used assets (such as farmhouses and cars), capital gains tax, inheritance tax, stamp duty land tax and VAT, as well as enhanced compliance obligations and company financial statements being on public record.

If, however, the prospect of being able to manage income tax on profits realised as well as controlling income tax on extraction of profits appeals to you, please contact us to understand whether a full or even partial incorporation may be beneficial for your business.

Please note the information in this article is correct at the time of writing but specific advice should always be sought.

GUEST ARTICLE:
ESTATE PLANNING: GIFTS AND TRUSTS FOR GRANDCHILDREN

As we move through life, we naturally start to think about succession and how we are going to provide for future generations.

Our children may have flown the nest and started families of their own, and our minds begin to focus on the legacy we will leave behind.

Typically, our first thoughts are with our children and how we might help them, but increasingly individuals are looking to provide for younger members of their families – their grandchildren and possibly beyond, perhaps even skipping a generation in the process. This article explores the reasons why an individual may consider providing for their grandchildren and the ways in which they may do so through outright gifting and the use of trusts.

Why might an individual wish to benefit their grandchildren?

There are a multitude of reasons why someone may wish to provide for their grandchildren directly, instead of their children, and this will very much depend on their own unique family and financial circumstances.

One significant reason why an individual may wish to benefit their grandchildren, instead of their children, is that their children may already have their own wealth. Should further assets/funds be given to them by way of inheritance, either during their parents' lifetimes or on their deaths, this will only increase the size of their own estates and negatively affect their Inheritance Tax position. Skipping a generation and passing inheritance on to grandchildren instead can, therefore, be a helpful way of assisting your children with their own estate planning.

An individual may also have concerns about their children which make them reluctant to pass assets to them; they may struggle managing their own finances or have a partner that they disapprove of, for example. Or, an individual may simply want to help their grandchildren with education costs or give them a helping hand on to the property ladder.

How might an individual benefit their grandchildren?

How a person provides for their grandchildren will depend on whether they wish to make provision for them during their lifetime or on death.

Lifetime gifting

Lifetime gifting can potentially be an invaluable way of minimising your exposure to Inheritance Tax.

There are a number of exemptions that can be utilised during a person's lifetime, which can mean that certain gifts can be made free of Inheritance Tax. This in turn has the effect of reducing the value of an individual's estate and their potential Inheritance Tax liability on death (so ultimately enabling them to pass on more to their family).

For gifts that do not qualify for these exemptions, then provided an individual survives seven years after making an outright gift the value of that gift will no longer be considered part of their estate for Inheritance Tax purposes. This means that their estate is reduced in value and for taxable estates, so is the Inheritance Tax liability.

If a gift is made and it exceeds an individual's available Nil Rate Band allowance – this is currently a maximum of £325,000 but is reduced by the total value of chargeable gifts or transfers into trust made in the preceding seven years – and they die within seven years of making the gift, Inheritance Tax will be payable on that gift on their death. The amount of tax due may be less than the death rate of 40%, depending on when in the seven years the individual has died. There can, therefore, still be some advantages to lifetime gifting even if an individual does not survive the whole seven-year period. Often the risk is something that may be insured against.

When contemplating lifetime gifting, it is very important for an individual to consider their current and future needs and resources. Once a gift has been made, it cannot simply be undone if you have second thoughts, or your circumstances change. An individual should also consider any previous gifts that they may have made in the seven years prior, and the Inheritance Tax and Capital Gains Tax consequences of making such a gift.

One such Inheritance Tax consequence is whether or not there is an immediate Inheritance Tax charge (i.e., a charge to Inheritance Tax as soon as the gift is made). There is no immediate Inheritance Tax charge for outright gifts to individuals. Gifts into certain types of trusts, however, may potentially have an immediate Inheritance Tax charge of 20%, if the gift is in excess of an individual's available Nil Rate Band allowance and any other available reliefs. If an individual dies within seven years of making such a gift into trust, further Inheritance Tax will be payable.

Gifting on death

An individual may choose to include a gift in their Will for their grandchildren. This could be a simple legacy of an asset or money, or, alternatively, an individual may choose to include their grandchildren as beneficiaries of a trust in their Will, with an accompanying non-binding, but morally persuasive, Letter of Wishes detailing how and when they would like their grandchildren to benefit from the trust.

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From an Inheritance Tax perspective, both children and grandchildren are non-exempt beneficiaries, which means that gifts made to them on death are not free of Inheritance Tax. There are therefore no particular disadvantages, from the testator's Inheritance Tax point of view, of choosing to benefit one over the other.

With that being said, testators may be concerned that their estate will fail to qualify for the Residence Nil Rate Band – an additional Inheritance Tax allowance, which is currently a maximum of £175,000 – should they decide to leave their main residence (or the sale proceeds) to their grandchildren, instead of their children. Grandchildren do, however, fall within the definition of "direct descendants" and, provided all the other criteria for the allowance is satisfied, an estate should still qualify for the Residence Nil Rate Band if the deceased's main residence (or the sale proceeds) is left to their grandchildren.

Should the gift be an outright gift or a gift into trust?

Once an individual has decided that they would like to make a gift to their grandchildren, either during their lifetime or in their Will, they should carefully consider whether they wish for the gift to be an outright gift or a gift into trust.

Legally, children cannot hold property whilst they are under the age of 18. Any outright gifts made to them whilst they are under this age will therefore belong to them beneficially, but the legal title to (and therefore control of) such assets will be held in the names of one or more chosen adults (usually their parents) as 'bare trustees', and will pass into their own names and into their direct control once they attain the age of 18.

There are many considerations which may influence an individual's decision as to whether the gift should be an outright gift or a gift into trust and the reasons will again very much depend on an individual's own unique family and financial circumstances. The age and personal circumstances of the recipient, the nature or value of the gift, whether they are happy for the recipient to be free to do with the gift as they please or whether they wish to restrict that, the set-up and ongoing costs of running a trust and the associated tax charges (and benefits), for example, are all factors that should be considered and on which advice should be sought.

Income tax efficiency will also be important. One reason why an individual may wish to benefit their grandchildren via a trust, is the significant income tax advantage in grandparents setting up a trust for grandchildren, compared with parents setting up a trust for those same beneficiaries. In a grandparental trust, the distributed income is taxed on the beneficiaries (with each grandchild having their own income tax allowance). In a parental trust, however, the distributed income is taxed on the parents until the beneficiaries reach 18 years old due to the anti-avoidance rules. This is something that appeals to a lot of clients, and often swings the argument in favour of setting up a trust for their grandchildren's education, rather than making gifts to their children so that they can pay school fees themselves.

Conclusion

Gifting to grandchildren is a very important, and somewhat under-utilised, aspect of estate planning. Whilst gifting, either during lifetime or on death, should be carefully considered, there can be major benefits, not least from an Inheritance Tax perspective, to assets skipping a generation and being passed down to younger members of the family, through outright gifting and the use of trusts.

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Wrigleys Solicitors can advise you in relation to estate planning issues. For more information or if you have any questions regarding this article, please contact Zahra Al-Moozany or any other member of the private client team on 0113 244 6100.

The information in this article is necessarily of a general nature. The law stated is correct at the date of writing. Specific advice should be sought for specific situations. If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors.

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UK RESIDENTIAL PROPERTY DISPOSALS - CAPITAL GAINS TAX DEADLINE EXTENDED TO 60 DAYS

Our Winter 2019 edition advised of the changes effective 6 April 2020 for UK resident individuals, including trustees and personal representatives to report and pay capital gains tax ("CGT") on the disposal of UK residential property within 30 days of completion. For disposals completing on or after 27 October 2021 the deadline was extended to 60 days, as announced in the Autumn Budget.

A return will not be required where the disposal relates to a taxpayers only or main residence and has been occupied as such throughout the period of ownership.

The report is made online through HMRC's Government Gateway account and by registering for a Capital Gains Tax on UK Property account, which we are unable to set up for you. However, we can talk you through this process if needed and once set up we can complete the capital gains tax report on your behalf.

Failure to report and pay within the 60-day timeframe is likely to result in late filing penalties and interest on unpaid tax.

If you are planning on disposing of residential property (by way of sale or gift) we would recommend you speak to us as soon as possible to determine whether the transaction will need to be reported within 60-days and if relevant to begin the process of collating the information required to calculate the capital gain in good time.

CAPITAL ALLOWANCES CHANGES - 1 APRIL 2023

As outlined in our Summer 2021 edition, the Government introduced the new super deduction, which gives companies 130% tax relief on new plant and machinery capital purchases.

This temporary enhanced allowance ends 31 March 2023, with transitional rules applying for those companies with an accounting year end straddling 31 March 2023. The 130% rate will be time apportioned for days falling prior to 1 April 2023 over the total number of days in the accounting period to give an amended rate which would be applied to all eligible expenditure in the period regardless of when it was incurred.

The Annual Investment Allowance (AIA), provides businesses (including companies, partnerships and sole traders) with 100% tax relief on qualifying capital expenditure, currently up to a limit of £1m. The government proposed to reduce this limit to just £200,000 from 1 April 2023. Again, transitional rules will apply for businesses with year ends straddling 31 March.

These changes, which coincide with the change in corporation tax rates, mean that businesses will need to carefully consider the timing of capital purchases to maximise tax relief. Such decisions may be complex and involve reviewing cashflow due to rising energy, fertiliser and feed costs, as well as use of tax losses.

We can help you plan the timing of any capital purchases to optimise the available allowances. If you need any advice or assistance please get in touch.

MAKING TAX DIGITAL FOR INCOME TAX

Making Tax Digital (MTD) already applies for VAT reporting, and from 6 April 2024 it will extend to income tax.

MTD for income tax will require UK residents, who are registered for self-assessment and have business and/or property turnover or gross income over £10,000 annually, to submit quarterly digital updates to HM Revenue & Customs, as well as continue to submit an annual tax return.

Although the legislation makes clear that there will need to be an accompanying digital record for each transaction, it is the summary of these transactions, akin to a profit and loss account, which will be reported on a quarterly basis for each trade or property business. There will be no requirement to include any accounting or tax adjustments in the quarterly reports, instead these will be dealt with on the annual, end of period statement which will continue to be due on the current self-assessment deadline of 31 January.

Those individuals affected by MTD for income tax will come into the regime from 6 April 2024 and will have one month from the end of each quarter to submit their quarterly update, therefore the first MTD return will be due by 5 August 2024.

Change to basis period

Currently partnerships and sole traders are taxed on year end profits falling into a tax year, so the profit of a business with an accounting year end of 30 April 2022 will be taxed in the 2022/23 tax year. However, from 6 April 2024, such profits will be taxed in the year in which the profit arises. Therefore businesses with a year end different to 5 April (or 31 March which can be deemed to be 5 April for these purposes) will be required to apportion profit arising in different accounting periods into the relevant tax years. For example, a business with a 30 April year end will be taxed on profits from two accounting periods in the 2024/25 tax year; 25 days of profit arising in the accounting period to 30 April 2024 (6 – 30 April 2024) and 340 days of profit from the accounting period to 30 April 2025 (1 May 2024 to 5 April 2025).

A transitional year will apply for 2023/24, which will deal with brought forward overlap profits and the use of terminal losses. HMRC guidance includes more than 20 different examples of how reform might affect the calculation of profits for different businesses. As a consequence of the changes, cashflow will be affected for many businesses who may see an acceleration of their tax payments. In some cases it may be worthwhile changing the accounting year end date to align with the tax year end but this should be carefully considered and advice taken before a decision is made.

We would recommend that you speak to a member of our team to understand how MTD for income tax and the basis period reform will affect you.

DATES FOR DIARIES & SOCIAL NEWS

- **22 in 22** – During 2022 we are aiming to raise £22K for charity. Our team at Smailes Goldie Group are planning lots of fundraising activities for charities of their choice. To find out more information about how we are getting on please visit our website www.smailesgoldie.co.uk.

  At the time of writing we have already raised £11,127 of our target!

- **Driffield Show** – Come and see us at this year's event where our team will be at stand E93, serving up refreshments to our fantastic clients and contacts. As well as chatting to our lovely team, you'll be able to enjoy a delicious hog roast and a range of beverages. For the children we even have a Smailes Goldie colouring competition with a prize being awarded for best picture.

- **Ryedale Show** – Our team will be at this year's event with refreshments and snacks, come and join us on Tuesday 26 July at Welburn Park, Kirkbymoorside.

- **Lincolnshire Rural Charities Dinner** – We were delighted to once again to be sponsors of the Lincolnshire Rural Charities Dinner which supports three charities, Lincolnshire Rural Support Network (LRSN), The Lincolnshire Agricultural Society and The Lincolnshire Rural and Agricultural Chapliancy for their forth dinner at the Lincolnshire Showground. This year the event celebrated Lincolnshire's resilience and fortitude with the theme of 'Thinking Bigger Together' based on a poem by Walter D. Wintle that symbolises the way the three charities have adapted, to continue working positively throughout the coronavirus pandemic. Guests were treated to a magnificent meal of Lincolnshire produce designed and introduced by Lincolnshire's own celebrity chef, Rachel Green. There was a great attendance and once again lots of money raised for these charities.

- **Sponsorships** – We have continued our sponsorships of Derwent, Holderness and Brocklesby Point to Points, as well as Driffield RUFC.

- **Yorkshire Post Country Week Conference and Rural Awards 2022** – We are proud to be sponsoring the 'Rural Business of the Year' at the Yorkshire Post Rural Awards this year, which is being held on Thursday 29 September at The Pavillions Harrogate. This follows the Yorkshire Post Country Week Conference which is held on the same day and which some of our team members will also be attending.

CONTACT US

Our specialist Agriculture and Landed Estates team have a breadth of sector experience in providing the diverse range of services that farmers, landowners and agri-businesses require. We are committed to understanding the complexities of your business to ensure that we provide a valued service and ongoing support. If you wish to discuss any of the topics covered in our newsletter please contact any of our specialist senior team.

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