[23.01.35] Taxation of Farm Payments

Basic Payment Scheme

1. Introduction

The Basic Payment Scheme (BPS) commenced in 2015 as part of the new measures agreed in the reform of the Common Agricultural Policy. It replaces the Single Payment Scheme (SPS) as the main EU income support for farmers. All SPS entitlements expired on 31 December 2014. A new set of entitlements was allocated in 2015 to those eligible for an allocation under the BPS.

The payment that a farmer receives under the new BPS is no longer a 'single payment' but may be a combination of payments under four separate schemes. The elements of the BPS direct payments are:

- The Basic Payment Scheme (BPS)
- The Greening Payment
- The Young Farmers Scheme
- The Voluntary Coupled Support Scheme (Protein Crops)

The general rules for the operation of the BPS are based on Regulation 1307/2013 of the European Parliament and the Council of 17 December, 2013, establishing rules for direct support schemes for farmers under the Common Agricultural Policy.

The purpose of this manual is to address the taxation treatment of the payments. Those who require additional information on the scheme should consult the "Farmer Schemes and Payments" section of the Department of Agriculture, Food and the Marine (DAFM) website at www.agriculture.gov.ie.

2. The Scheme

To be eligible to participate in the new scheme, a farmer must have submitted an application for entitlements under the BPS prior to 29 May 2015. Farmers who submitted a valid application, declared eligible land and fulfilled other eligibility criteria were allocated entitlements under the BPS. An application is required to be submitted each year in which the farmer declares all of his land specifying which hectares are eligible for payment.

The total payment that a farmer receives is only partly based on the entitlements held. The remainder of the payment is based on 'Greening' and any other of the two separate schemes that the farmer may qualify to participate in. All entitlements are subject to a 'two-year usage' rule. Any entitlement that remains unused for two consecutive years will revert to the National Reserve.

2.1. Basic Payment Scheme and Greening

All eligible farmers will receive the BPS and Greening, some farmers may also apply for a further payment under the Young Farmers Scheme or under the Coupled Support for Protein Crops.

2.2. Young Farmer Payment

The purpose of this payment is to encourage the participation of young farmers in agriculture. It will assist young farmers, age 40 years or younger, in the initial stages of establishing a farming enterprise in their own name by providing a top up on the BPS for a maximum of 5 years.

2.3. Voluntary Coupled Support for Protein Crops

Member States may grant Coupled Support to farmers. Such support is restricted to a specified list of sectors. Ireland will implement a Scheme of Coupled Support for Protein Crops i.e. beans, peas and lupins, in the form of an annual payment.

2.4. Active Farmer

Payments may only be made where DAFM is satisfied that the applicant is a farmer who is engaged in an agricultural activity. An 'Agricultural Activity' means:

- The production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes.
- Maintaining an agricultural area in a state suitable for grazing or cultivation.

In order to be eligible for payment each land parcel must have an agricultural activity carried out on it. In the case of owned, leased or rented land, this activity must be carried out by the applicant.

2.5. Payments Dates

DAFM has committed to paying 50% advance payments of BPS and Greening commencing from 16 October each year. Balancing BPS and Greening payments will commence on 1 December each year with a target of paying 100% of all applicants on that date.

3. Taxation of the Basic Payment Scheme (BPS) – for year of assessment 2015 onwards

The principles relating to the taxation of direct payments under the Single Payment Scheme laid out in Tax Briefing Issue 61 of 2005 still apply.

3.1. Receipt as Income

The payment is liable to tax as income. As payment under the BPS is made to applicants who meet the active farmer requirements in respect of entitlements they hold, the BPS payment will generally be taxed under Schedule D Case I as a receipt of a trade of farming.

3.2. Annual Payment

Each BPS payment is paid in respect of a full calendar year. For example, payments issued in respect of the 2016 year will be issued in December 2016. Although in cases where complications arise, the payment for that year may not issue until the following year. The assessable income for tax purposes will be dependent on the basis of accounting adopted by the farmer.

3.3. Basis of Accounting

Revenue will accept either the Receipts Basis or the Earnings Basis, as outlined below, provided taxpayers apply the basis consistently, commencing in the year 2015 (or on commencement of farming) and there is no significant loss of revenue over that which would arise if the accounts were prepared on a full earnings basis.

Where the use of the receipts basis would result in no BPS payment being recognised in a 12 month basis period (e.g. where the issue of the BPS payment is delayed until after the year-end), the returns of that and subsequent periods may be submitted on the Earnings Basis. Revenue reserves the right to carry out reviews if persons change the basis on which their accounts are prepared.

Where a farmer makes up accounts for a period in excess of 12 months, such that an apportionment is required to determine the profits of any year of assessment, BPS payments should not be apportioned in a manner inconsistent with that applied to other income.

3.4. Receipts Basis.

The BPS payment may be recognised as a receipt pertaining to the date the payment is issued by DAFM.

For example:
If accounts are made up to September annually, the BPS payment for the year 2016, if paid on 20 December 2016, will form a receipt of the year ended 30th September, 2017 (the 2017 tax year).

3.5. Earnings Basis.

The BPS payment may be recognised as a receipt accrued over the year (January to December) in respect of which it was paid.

For example:
Accounts are made up to 30 September annually. The BPS payment for the year 2016, regardless of when it is paid, will form a receipt 9/12 of which will fall into the year ended 30 September, 2016 (2016 tax year) and 3/12 of which will fall into the year 30 September, 2017 (2017 tax year).

3.6. Forestry

Eligible land planted with forestry since 2009 and which will be afforested under the new Forestry Programme 2014-2020 can be used to activate BPS entitlements. Applicants who wish to benefit from the Basic Payment on afforested land must continue to be an **active farmer**, as defined in the regulations, and also be the person (or persons in joint management) in receipt of the afforestation premium.

The exemption provided for in section 232 Taxes Consolidation Act 1997 applies to the afforestation premium but not to the BPS payment.

3.7. Cessations of farming trade

Where a farming trade is permanently discontinued, special rules apply to the calculation of the Case I profits to be charged to tax in the final and penultimate years of assessment.

Farming activities are treated as a single trade for tax purposes and therefore activities which are derived from different holdings or capacities, are treated as a single farming trade. Similarly, a farmer carrying on an existing farming activity who begins another farming activity is assessed on a continuing basis. The special cessation rules only apply where the farmer has ceased all farming activities, for example if the farm is put to a non-farm use or let out.

There is an exception to this general rule in that a farmer, ceasing as a sole trader, and moving in or out of a partnership is subject to the same treatment as any other trader i.e. the commencement and cessation rules apply.

3.8. Income from Leasing Payment Entitlements

Entitlements are not attached to land but are allocated to a person and become the property of that person. From 2016 onwards, entitlements may be transferred either with or without land.

In these circumstances, income received from renting the land alone will be taxed under Case V, while income received in respect of the BPS entitlement without land will be taxed under Case IV as miscellaneous income.

Where a farmer leases both his land and the basic payment entitlement, the entire amount received will qualify for relief under section 664 TCA 1997 subject to the overall limits.

3.9. Acquiring a Payment Entitlement

The cost of acquiring a payment entitlement, e.g. through a Private Contract Clause, will not be allowed as a deduction for income tax purposes, being expenditure of a capital nature. Capital allowances are not available in respect of expenditure on payment entitlements.

3.10. Interest on borrowings

Where a BPS payment is treated as a Case I trading receipt, interest paid on a loan taken out on an arms length basis wholly and exclusively for the purpose of acquiring the payment entitlement that gave rise to that BPS payment will, in accordance with normal practice, be allowable as a trading expense.

3.11. Registered Farm Partnerships

When forming a Registered Farm Partnership, entitlements under the BPS and other Department schemes must be licensed to the partnership. This license can be built into the written partnership agreement. The Registered Farm Partnership will then receive a combined payment comprising the individual partners entitlements. The combined BPS payment will form part of the assessable profit of the partnership for tax purposes. Should the partnership dissolve in the future, the entitlements will return to the relevant owners.

4. Capital Gains Tax Issues

4.1. Payment Entitlements are Assets

Payment entitlements are chargeable assets for capital gains purposes. Once acquired, they may be disposed of by way of sale, gift, etc. Accordingly, gains arising from transactions involving payment entitlements are chargeable to CGT in the usual manner.

4.2. Payment Entitlements not part of the land

Payment entitlements do not form part of the land for capital gains purposes. As they are separate assets, not derived from any pre-existing asset, their base cost is nil in relation to a disposal of those entitlements by the original owner.

4.3. Payment Entitlements not Wasting Assets

Payment entitlements are not wasting assets for the purpose of Section 560. A wasting asset is one with a predictable life of less than 50 years at the time of acquisition.

4.4. Retirement relief

Sections 598 and 599, which provide relief for disposals of certain business and farming assets, may apply to payment entitlements. Section 598(1)(a)(iia) provides that a payment entitlement is a qualifying asset for retirement relief purposes where it is disposed of at the same time and to the same person as the land that would support a claim to payment in respect of that entitlement.

4.5. Transfer of farming business to a company

The transfer of payment entitlements to a company may qualify for relief under Section 600 if they are transferred with all the assets (other than cash) of the farming business.

5. Capital Acquisitions Tax Issues

5.1. General

Transfers of payment entitlements whether by way of gift or inheritance are liable to capital acquisitions tax as any other asset and are subject to the normal capital acquisitions tax rules.

5.2. Agricultural Relief

Agricultural relief can apply to "agricultural property" only. This is defined in Section 89(1) Capital Acquisitions Tax Consolidation Act, 2003 as:

(a) agricultural land, pasture and woodland situate in a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property, and

(b) a payment entitlement (within the meaning of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 (OJ No L347 of 20 December 2013, p.608).

A payment entitlement can therefore qualify for agricultural relief.

5.3. Business Relief

Agricultural property can qualify for business relief if the donee or successor, for whatever reason, fails to obtain agricultural relief. The agricultural property can qualify for business relief, if it is an asset of a trading business which satisfies the normal conditions of the relief as set out in Part 10, Chapter 2 CATCA 2003.

Business relief is available for transfers of "relevant business property" which the transferor has owned for two years in respect of an inheritance taken on the death of the disponer and five years in every other case. However, there is no requirement that the payment entitlement itself, as an individual asset of the business, be held for a minimum period in order to qualify for business relief.

"Relevant business property" includes certain categories of business (or an interest in a business, for example a partnership interest) and some types of shares and securities. Payment entitlement will qualify for business relief as an asset of the business on the assumption that the resulting payment will be used in the business or be required for future use in the business. As with any asset, the transfer of payment entitlement by someone who is not carrying on a trading business will not qualify for business relief. Similarly, the transfer of payment entitlement as an individual asset, rather than the business itself, or an interest in the business, will not qualify for business relief.

6. Stamp Duty Issues

6.1. Transfer of Payment Entitlement

Section 101A Stamp Duties Consolidation Act, 1999 (SDCA) provides for an exemption from stamp duty on the sale, transfer or other disposition of a payment entitlement.

This exemption applies to instruments executed on or after 1 January 2005.

6.1.1. Apportionment

Where the payment entitlement forms part of a transaction consisting also of chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the payment entitlement and the other property. The part of the consideration attributable to the payment entitlement should be disregarded when determining the liability to stamp duty on the chargeable property.

6.2. Consanguinity Relief

Transfers between certain blood relatives qualify for a reduced rate of stamp duty subject to certain conditions. From 2016 the relief only applies where the individual transferring/conveying the farmland has not reached the age of 67 at the date of transfer/conveyance. The reduced rate is half the rate of stamp duty which would otherwise apply. The relief will be discontinued with effect from 31 December 2017.

6.3. Young Trained Farmer Relief

Section 81AA SDCA, 1999 provides for an exemption from stamp duty on the transfer of land to young trained farmers where certain conditions are met. "Land" is defined in Section 81AA of that Act as agricultural land including such farm buildings, farm houses and mansion houses (together with lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the land. As payment entitlement is a separate asset from land, the exemption in Section 81AA would not apply to the transfer of payment entitlement.

6.4. Relief for certain leases of farmland (subject to a commencement order by the Minister for Finance)

Section 81D SDCA 1999 provides for relief from stamp duty on the leasing of lands to active farmers where certain conditions are met. The relief applies to land which must be used exclusively for farming carried on by the lessee. The relief in section 81D would not apply to the leasing of payment entitlement.

7. Value Added Tax Issues

The BPS gives rise to a number of distinct issues, each of which must be considered separately for the purpose of applying VAT.

7.1. No supply

A basic payment does not represent consideration for any supply between the farmer and the State and is, therefore, outside the scope of VAT. The receipt of such a payment will not:

a. give rise to a VAT liability or an entitlement/requirement to register for VAT,
b. be taken into account for the purpose of the VAT registration threshold, or
c. give entitlement to deductibility where a farmer incurs expenditure in relation to the payment.

7.2. Sale of payment entitlement only

The sale by a farmer of his payment entitlement is considered to be the supply of a service for VAT purposes and liable to VAT at the standard rate (currently 23%) subject to the normal rules. The service is not considered to be an agricultural service and is not therefore within the flat rate scheme and on that basis it will be chargeable to VAT if:

a. the farmer is already an accountable person making taxable supplies for VAT purposes or
b. the amounts received from the sale of his entitlements exceed the VAT registration threshold (currently €37,500 for services in a twelve month period). In such circumstances the treatment of the sale price received will be ring fenced for the purposes of VAT registration and the farmer will only be required to register for VAT in respect of that single transaction. Non-VAT-registered farmers who purchase payment entitlement and suffer VAT will not be permitted to register solely in respect of that single transaction, but will have the normal registration option open to them.

7.3. Sale of payment entitlement and land

Where a payment entitlement and land are sold together as part of a single contract, the VAT liability will depend upon the actual terms of the contract, but it is most likely that two separate supplies will have occurred, each with its own VAT implications.

7.4. Lease of a payment entitlement only

Where a payment entitlement is transferred by way of lease it is considered to be a supply of a service and is liable to VAT subject to the normal rules. Again, it is not a service within the flat rate scheme and will be chargeable to VAT if:

a. The farmer is already an accountable person making taxable supplies for VAT purposes, or
b. The income received under the lease, together with income received from any other non farming activity, exceeds the appropriate VAT registration threshold. In these circumstances the income received from leasing the entitlement will not be ring fenced for the purposes of VAT registration and the farmer will be required to register and account for VAT, as appropriate, on all his activities including his farming activities.

7.5. Lease of a payment entitlement with land

If payment entitlement is transferred with underlying land in a leasehold arrangement, the VAT liability will depend upon the actual circumstances of the lease agreements but it is most likely that two supplies will be taken to have occurred, each with its own VAT implications.

7.6. Sale of a business including a payment entitlement

Where a farm business, including a payment entitlement, is sold to a person who intends to carry on the farming business, then the sale may be treated as the transfer of a business or part thereof, provided all the relevant conditions are met. If the sale fails to meet the necessary criteria then the sale of the payment entitlement will be taxable as described above.