FORESTRY TAXATION

8th OCTOBER 2013

Presenters:
Declan McEvoy
IFAC Accountants
www.ifac.ie
tax@ifac.ie
Phone: 01 4551036

AGENDA

• Income Tax
• Relevant Contracts Tax
• Capital Gains Tax
• Stamp Duty
• Gift & Inheritance Taxes
• Value Added Tax
INCOME TAX

INCOME TAX EXEMPTION

Conditions

• Profits/Gains

• From OCCUPATION of woodlands

• Managed on a COMMERCIAL basis

• With a view to realisation of profit

• Must be included in Annual Tax Return
OCCUPATION

• Who occupies?

• Profit from sale of trees
  – Standing or felled,
  – Cut up or not,
  – By a land owner,
  – Who planted the trees,
  – Managed on a commercial basis.

TAX ISSUES ARISING

• Not all tree sales are tax exempt.

• Evidencing of “commercial basis”

• Evidencing – “view to realising a profit”

• What about losses?

• What about woodland expenses?
CHRISTMAS TREES

- UK position – Case Law

- Woodlands implies production of timber

- Christmas Trees implies “Nursery”

- Nursery not woodlands

- Irish position to date

WOODLANDS TAX EXEMPTION

- Not strictly correct

- Profits liable to PRSI

- Profits liable to Universal Social Charge

- High Earners Exemption
HIGH EARNERS EXEMPTION

• Applies where the answers to all three questions is YES.
  1. Is adjusted income greater than €125K?
  And
  2. Were specified reliefs used > €80K?
  And
  3. Did specified reliefs exceed 20% of adjusted income?

SPECIFIED RELIEFS

• Stallion Fees
• Greyhound Stud Fees
• Occupation of woodlands
• Corporate distributions from the above
• Writers, composers and artists exemption
• Film, BES and EIIS relief
• Donations to approved bodies
• Donations to sports bodies
EXAMPLE

Farm Profits (T) €50,000
Rental Income (T) €30,000
Woodland Profits (S) €85,000
Film Relief (S) €10,000

T = Taxable
S = Specified
R = Ring-fenced

CALCULATING SPECIFIED RELIEFS (S)

Woodlands Profit €85,000
Film Relief €10,000
Total of specified reliefs €95,000 (S)

======
CALCULATE THE ADJUSTED INCOME (A)

Specified Reliefs    €95,000  
Farm Profit          €50,000  
Rental Income        €30,000  

Adjusted income(A)     €175,000

THE 3 QUESTIONS

1. **Is adjusted income > €125K?**
   
   YES, it is €175K, and,

2. **Were the specified reliefs used > €80K?**
   
   YES, they were €95K, and,

3. **Did specified reliefs exceed 25% of adjusted income?**

   Is €95K > (20% x €175K) €35K

   The answer is YES.

THE HIGH EARNERS RESTRICTION APPLIES

*Does not impact on Universal Social Charge or PRSI i.e. no recalculation.*
EXAMPLE 2.

Mr. Beech has taxable farm profits of €100,000 and exempt woodland income (specified reliefs) of €75K.

The restriction does not apply. While his adjusted income is €175K (taxable income of €100,000 + specified reliefs of €75K) is greater than the Income Threshold Amount of €125K, the use of specified reliefs of €75,000 is less than the Relief Threshold Amount of €80,000.

EXAMPLE 4

Mr. Wood has exempt woodland income of €240,000 and also has taxable income of €100K.

The restriction applies.
The adjusted income of €340K (specified income €240,000 + farming profits €100,000) is greater than the Income Threshold Amount of €125K. The use of specified reliefs (woodland exemption) is greater than the Relief Threshold Amount of €80,000 and also greater than 20% of the adjusted income (20% x €340,000 = €68,000). Calculation of the restriction which results in the recalculated taxable income €260,000 is as follows:
EXAMPLE 4 contd.

The restricted amount of “excess relief” of €160,000 (€240K - €80K) arising in 2011 is carried forward to 2012 and allowed under section 485F TCA 1997. It will be a specified relief to the extent that it is used in 2012 (or subsequent years).

### Adjusted Income

<table>
<thead>
<tr>
<th></th>
<th>€</th>
<th>Recalculated Taxable Income</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>T – Taxable Income</td>
<td>100,000</td>
<td>T – Taxable Income</td>
<td>100,000</td>
</tr>
<tr>
<td>S – Specified Reliefs</td>
<td>240,000</td>
<td>S – Specified reliefs</td>
<td>240,000</td>
</tr>
<tr>
<td>R – Ring fenced Income</td>
<td>(0.00)</td>
<td>Y – greater of €80,000 and 20% of Adjusted Income</td>
<td>(80,000)</td>
</tr>
<tr>
<td>Adjusted Income</td>
<td>340,000</td>
<td>Recalculated Taxable Income</td>
<td>260,000</td>
</tr>
<tr>
<td>20% of Adj. Income</td>
<td>68,000</td>
<td>Recalculated Taxable Income</td>
<td>260,000</td>
</tr>
</tbody>
</table>

Reducing exposure to restriction on woodland income

- **Replanting** — Replanting of trees is a revenue expense. Wilson-Wright v Connolly (1976)
- **Staggered Sales**
- **Joint Ownership** — Avail of additional €80K specified reliefs. *If each spouse has specified reliefs of less than €80K in that year, no restriction will apply even though combined reliefs may exceed €80K.*
RELEVANT CONTRACTS TAX

- Forestry Operations

- Obligation to deduct tax from sub-contractors

- 0%, 20%, 35%

- Who is the principle contractor?
CAPITAL GAINS TAX

• Sale of trees exempt for individuals

• Insurance compensation for trees – exempt for individuals.

• Sale of land and trees
  – Trees exempt
  – Land taxable
CAPITAL GAINS TAX
Sale of Land and Trees

• Identify sales proceeds of trees
  (not taxable)
• Identify land sale proceeds
  (taxable)
• What can be deducted from the land sale
  proceeds?
• Determine date of acquisition of land
• Determine cost/valuation at date of
  acquisition

CAPITAL GAINS TAX
Sale of Land and Trees
contd.

• If part of larger parcel
  – Part disposal
  – Today’s valuation of remaining portion not
    disposed of
• Cost of trees to be excluded
• Capital Gains Tax Retirement Relief
  allowability?
• Anti-avoidance/valuations
STAMP DUTY

- Land liable to Stamp Duty
- Trees not liable to Stamp Duty
- Necessary to split the cost
- 2% rate
- Agreement between vendor/purchaser
  - Purchaser’s stamp duty exemption amount
  - Seller’s capital gains tax trees exempt amount
Trees growing on the land qualifies as “agricultural property”.

Agricultural property qualifies for “Agricultural Relief”

Agricultural Relief allows 90% write-down in value subject to asset test.

Trees qualify for “Agricultural Relief” without asset test.

Trees with market value of €1m
  – Taxable value €100K
GIFT & INHERITANCE TAX contd.

- No clawback of relief on subsequent tree sales.
- Land is subject to the “Agricultural Relief” asset test.
- Split value of gift/inheritance between growing trees and land (Form CA6).

VALUE ADDED TAX
VALUE ADDED TAX

• Forestry deemed to be “farming activity”
• “Farming Activity” of vat unregistered farmer qualifies for 4.8 % flat rate refund.
• “Normal” farming activity carried on by a “normal” farmer – the farmer can remain vat unregistered.
• “Normal farmer” – a person who engages in agricultural production on land he owns or occupies and whose turnover from non-agricultural activities does not exceed €37,500 per annum.
• Being forced to register
• Carrying on another vatatable business e.g. pub etc.

See separate note on agricultural services

VAT INCLUSIVE/EXCLUSIVE PRICING

<table>
<thead>
<tr>
<th></th>
<th>VAT INCLUSIVE</th>
<th>VAT EXCLUSIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash to farmer</td>
<td>100,000</td>
<td>104800</td>
</tr>
<tr>
<td>VAT (4.8%)</td>
<td>4,580</td>
<td>4800</td>
</tr>
<tr>
<td>Cost to merchant</td>
<td>95,419</td>
<td>100,000</td>
</tr>
</tbody>
</table>

• It is vitally important to speak with the merchant prior to the deal being struck.
• For vat unregistered farmer the difference is €4800 on each €100,000 sale.
VAT REFUNDS - Unregistered Farmer

- VAT 58
- Vat refund on fixed capital costs
- Forestry is farming
- Vat refund on fencing and roadways
- Invoice must be in the name of the farmer

VAT RATES FOR Vat Registered Farmers

- Timber Sales 23%
  - For both cut or standing timber (including Christmas trees)
- Firewood 13.5%
- Forest and Land 23%
VAT on Inputs

• Plantation stock sold by nursery 13.5%

• Contractors charges for planting and harvesting 13.5%
  – Includes lopping, tree felling, pruning, hedge trimming, and similar forestry services (including sowing and planting)

FARMERS SUPPLY TO GENERAL PUBLIC

• All retailers of horticultural produce including Garden Centres and flat rate farmers whose annual retail sales of horticultural produce exceeds €75K (including Christmas trees and firewood) – subject to VAT registration.

• Farmers supplying combination of above and agricultural services – the registration threshold is €37,500
ENTERPRISES WITH CLOSE ECONOMIC TIES

• Two enterprises, one vat registered the other not, having close economic ties could be deemed to be a VAT group thereby leading to compulsory registration.

• VAT de-registration