farming **finance**

Taxman sets the record straight

New guidelines provide clarity on taxation of BPS entitlements, writes **Martin O'Sullivan**

The taxation of Basic Payment Scheme (BPS) entitlements is a continuous source of uncertainty and the basis of many an enquiry that I receive.

Revenue has recently published comprehensive guidelines on the taxation of these entitlements, which have clarified a number of important points that farmers and indeed their accountants and advisors were unsure about up until now.

The guidelines cover all taxes including income tax, capital gains tax, capital acquisitions tax, stamp duty and value added tax insofar as they relate to payment entitlements.

INCOME TAX

Similar to sales of farming produce, Basic Payment receipts are subject to income tax. However, Revenue have provided clarification in regard to how the payment is treated in the context of when it is paid.

For example, if the payment is delayed beyond the end of accounting year, should it be included in that year's accounts as being owed or can it be taxed in the year it is actually received?

Revenue will accept two accounting treatments, namely a receipts basis or an earnings basis, but whichever treatment you choose you have to stick with in future years.

In the case of the receipts basis, the BPS payment will be accounted for on the date it was received.

For example, if accounts are made up to December annually, and the BPS payment for the year 2018 is not paid until January 2019, well then the payment will be treated as income in the year ended December 31, 2019.

A possible consequence of adopting this method is that you may be taxable on both the 2018 and the 2019 payments in the same year, possibly driving you into the high tax bracket.

Prudent tax-planning would suggest that the earnings basis is the way to go as the payment is applied to the year that it was due irrespective of whether it was paid or not.

Income from BPS entitlements which are leased out without land will be taxed under Case IV as miscellaneous income and will not be eligible to be included in an income averaging calculation.

Situations where a farmer leases both his land and entitlements will continue to qualify for the tax exemption on the entire amount received subject to the various overall limits related to the duration of the lease.

REGISTERED FARM PARTNERSHIPS

When forming a registered farm partnership, entitlements under the BPS 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.

CAPITAL GAINS TAX

Entitlements are chargeable assets for capital gains purposes and apart from those entitlements that were purchased or inherited since 2015, they have no base cost.

If they are sold without land, the proceeds minus any allowable costs will be liable to tax at 33pc.

Where entitlements are being disposed of with land (at least one hectare per entitlement) at the same time and to the same person, the combined proceeds will qualify for retirement relief subject to the usual conditions attaching to the land being satisfied.

The transfer of payment entitlements to a company should not trigger a disposal resulting in a gain providing they are transferred with all the other assets of the farming business. In such cases the 'change of legal entity' option should be exercised when transferring the entitlements.

CAPITAL ACQUISITIONS

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

Agricultural relief or business relief, either of which can grant a 90pc reduction in the taxable value of agricultural assets, can also apply to payment entitlements. Business relief in respect of agricultural property can apply if the donee or successor, for whatever reason, fails to obtain agricultural relief.

While business relief is available only where the transferor has owned the relevant property for two years in the case of an inheritance, and five years in the case of a gift, there is no requirement that the payment entitlements satisfy these time limits in order to qualify for business relief.

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.

STAMP DUTY

Transfer of payment entitlements are exempt from stamp duty on the sale, transfer or other disposition of a payment entitlement.

Where the payment entitlement forms part of a transaction also comprising land and buildings, the valuation or purchase price will need to be apportioned on a realistic 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.

Since July 1, 2018 certain leases of farmland to active farmers are exempt from stamp duty — but this does not extend to the leasing of payment entitlements.

VALUE ADDED TAX

VAT-registered farmers are obliged to charge VAT on the sale of entitlements, regardless of the amount received.

For non-registered farmers where the sale proceeds exceed the VAT registration threshold of €37,500, 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.

Where payment entitlements and land are sold together as part of a single contract, the VAT liability will depend upon the actual terms of the contract, but Revenue hold the view that it is most likely that two separate supplies will have occurred, each with its own VAT implications, namely the land being generally exempt and the entitlements being liable, assuming the registration threshold is exceeded.

Where a farm business, including payment entitlements, is sold to a person who intends to carry on farming, 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 liable to VAT as described above.

Martin O'Sullivan is the author of the ACA *Farmers Handbook*. He is a partner in O'Sullivan Malone and Company, accountants and registered auditors; *www.som.ie*

Since July 1, 2018 certain leases of farmland to active farmers are exempt from stamp duty — but this does not extend to the leasing of payment entitlements