

SUMMER 2024

Hazlewoods

# Agricultural Focus



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# Biodiversity Net Gain

Having first been introduced in The Environment Act 2021, Biodiversity Net Gain (BNG) has now become mandatory in England for most major developments and some small development sites.

The principle of BNG is to ensure that the natural environment is in a measurably better state than it was before the development commenced.

Damage to habitat caused by the development must be offset by improvements in biodiversity, with an overall net gain of 10%. Developers must look to source the 10% BNG requirement onsite and if this is not possible, they can buy statutory biodiversity credits.

## What does all this mean for our landowners?

Since it is expected that there will be an increased demand for BNG habitat creation, landowners can play a part in supplying suitable sites.

There are various ways in which land can be used for BNG, which ranges from landowners leasing the land, to organisations who will create the habitat and manage it, to registering land for BNG credits with Natural England and creating and managing the habitat themselves.

Before entering into an agreement, landowners will need to consider the following:

- These schemes have a 30 year commitment.
- There is an ongoing liability with the contract.
- Are you receiving a reasonable market price.
- There will be an ongoing requirement to manage the habitat.

Whilst there are opportunities for landowners, the tax position around the various legal structures is complex and careful review is essential.



Landowners should also consider the following:

## 1. Taxing the receipts

As yet, HMRC have not provided any guidance on how BNG payments will be taxed. In particular, whether the receipt would be taxed as income, or capital.

If the land is held by individuals, then the receipt would be taxed at up to 45% if it is income and 20% if it is capital.

For companies, the tax rate would be up to 25% regardless of whether it is an income or capital receipt.

If receipts are regarded as capital, then there may also be an opportunity to rollover the gain into new replacement assets and defer the tax payment.

## 2. Inheritance tax position of the land

Following HMRC's consultation, it has been confirmed that land managed under an environmental agreement will qualify for agricultural property relief (APR).

There are certain conditions which must apply before APR will be available on this land, which includes the following:

- The land is managed under an environmental agreement with, or on behalf of, the UK government, Devolved Administrations, public bodies, local authorities, or approved responsible bodies.
- An agreement must be in place on or after 6 March 2024. This includes an agreement entered into before 6 March 2024 if it remains in place on or after 6 March 2024.
- Relief will continue to be available where an agreement has concluded if the land continues to be managed in a way that is consistent with that agreement.
- Relief will only apply if the land was agricultural land for at least two years immediately prior to the land use change.
- The existing holding period for APR will not be restarted by the land use change.

This is good news for the availability of APR on the farmhouse, which only qualify for APR if the house is occupied in connection with agricultural land. Therefore, creating areas of habitat for BNG on a farm shouldn't necessarily reduce the availability of APR on the farmhouse.

If agricultural property relief is no longer available for whatever reasons, then landowners should factor this into their wider estate planning.



# Recent tax changes to furnished holiday lettings

It was announced in the Spring Budget that the advantageous tax regime for furnished holiday lets (FHL's) will be abolished from April 2025. While there is still a significant gap in the finer details, the next year provides a window of opportunity for planning, action, and a review of current business structures.

To recap, to qualify as a FHL, the property must be:

- Let on a short-term basis, and with a view to make a profit.

- Available for 210 days of the year.
- Let commercially for at least 105 days of the year.
- It cannot be let by one customer for more than 31 consecutive days, or more than a total of 155 days in one year.
- The property must be actively marketed and promoted.

Below we have summarised the proposed changes:

Proposed changes from April 2025	Planning opportunity
FHL's benefit from 100% tax deduction against income for interest and borrowings. From April 2025, finance costs will receive the same tax relief as typical residential let properties with tax being reduced at the basic rate of 20%.	If appropriate, the FHL property could be transferred to a company where the interest would remain wholly deductible against profits. Extracting cash from the company would need to be considered along with any stamp duty land tax (SDLT) and capital gains tax (CGT) on transfer.
FHL's will lose eligibility for business asset disposal relief (BADR) from CGT. Currently, a disposal of a qualifying FHL attracts a tax rate of 10% where the lifetime allowance of £1m has not been used elsewhere.	If a sale of the property is being considered, this should be accelerated to ensure the sale is made ahead of April 2025. The government has announced anti-forestalling measures in connection with CGT which may eliminate the benefit of this.
Rollover and gift holdover relief are currently available to defer gains made on FHL's, and on other business asset gains which are reinvested into FHL's.	For individuals who are considering retiring or passing FHL assets to successors, now is the time to put that plan into action ahead of April 2025. Disposal proceeds can be rolled over into other trading assets within three years, CGT free.
Currently, profits are treated as net relevant earnings when calculating pension contribution allowance.	Consider making maximum pension contributions in tax year 24/25.
FHL's are set to lose the ability to claim capital allowances on plant and machinery, white goods and fixtures. This also extends to integral features such as electrics and plumbing.	If there are significant works to be done on the FHL, consider timing of bills to get maximum relief ahead of April 2025.

Assuming these changes are enacted, they will predominantly affect property owners with borrowing, higher rate taxpayers who rely on FHL income for their net relevant earnings for pensions, and those who own FHL's as investments to sell.

We are still awaiting further detail on the above changes, including the CGT anti-forestalling measures. As yet, no guidance has been released regarding carried forward losses and written down capital allowance pools.

It is not all doom and gloom. For those who have diversified into FHL's, and those who are lucky enough to be finance free, these changes could bring about a positive shift in the marketplace with some individuals exiting the FHL business. Also, whereas currently FHL losses can only be carried forward and set against future FHL profits, the change could bring FHL's into the same pool as other rental income where profits and losses can be offset against each other.

# The Agricultural Holdings Act – Tenancy succession

## The basics

An agricultural tenancy granted before 1 September 1995 will, in general, fall under the Agricultural Holdings Act 1986 (AHA tenancies). The implication of these, and the succession rights are as important today as they were 20 years ago.

An AHA tenancy allows the tenant the benefit of securing generational succession of the farm, whereas the landlord has a valuable asset tied up for years with detrimental inheritance tax (IHT) implications.

Most tenancies granted on or after 1 September 1995 are farm business tenancies (FBTs). These generally run for a shorter period, and offer no succession terms for the next generation.

IHT relief on a pre-1986 tenancy will only qualify for 50% agricultural property relief (APR), whereas a post 1986 tenancy, including FBT's qualify for 100% APR.

## When does succession occur?

Succession to an AHA tenancy can occur on retirement, or the death of a tenant.

On retirement, a succession application must be made within one month of the retirement notice. On death, the application must be made within three months of the date of death.

## Qualifying criteria

A successor must meet the following criteria:

- Close relative test: The applicant is a close relative of the tenant.
- Livelihood test: The applicant's principal source of income is from the holding.
- Commercial unit test: The applicant does not occupy other land which by itself is economically viable for agriculture.
- Suitability test: The applicant is a suitable person to succeed the tenancy.

From 1 September 2024 the Agriculture Act 2020 comes into force, this changes some of the requirements by:

- Removing the minimum retirement age – a retirement application can be made at any time.
- Removing the commercial unit test – the applicant can have an interest in a separate holding.
- The successor will now need to show they can farm commercially, and at high standards.

## The livelihood test

The livelihood test continues to be a key part of a succession application. It is a question of fact whether most of the applicant's income is derived from agricultural activities from the holding. This test must be met for five out of the last seven years.

Diversified farm income such as rental and some contracting is classed as non-agricultural activities and will need to be considered when looking at the livelihood calculations. It is helpful, therefore, for a future tenant to continue to review the business activities, and their income from outside of the holding.

## Summary

AHA tenancies face complicated succession rules. There can be significant legal and accountancy costs for both the landlord, and tenant if a full review of the livelihood test is required.

Where landlord and tenant can work together, it is possible for an old AHA tenancy to be surrendered for a post 1986 tenancy on similar terms, this can be mutually beneficial to both parties.

Due to the changing picture of agriculture, with more farms becoming diversified, tenants need to make sure that they will pass the livelihood test.





# Employing family members

Help from family members in farming businesses is a common occurrence. There are various areas to consider when deciding who to employ, and what rate of pay should be made.

Family members aged 13 and above can be paid for work they do on the farm. To ensure you do not fall foul of any employment and tax legislation, payments should be:

- At the market rate for the work undertaken; and
- Meet the national minimum wage (NMW).

For example, you cannot pay a family member £50 per hour for fruit picking where other employees are being paid £15 per hour.

## What are the tax benefits?

The business can receive a tax deduction for the wages paid. Where the family employee has little or no other income, this can create an overall tax saving.

For example, if a partnership where the business owners are 40% taxpayers pays a wage of £12,570 (2024/25 tax year) to a family member with no other income, there is an overall a tax saving of up to £4,700.

## Things to be aware of

- A PAYE scheme may be required.
- Depending on the level of pay, employee's and employer's national insurance may be due.
- Pension scheme auto-enrolment may be necessary.
- There is no NMW for employees under the age of 16.

## In summary

Help from family members in farming businesses can be both helpful in ensuring the farm runs smoothly, and beneficial from a tax perspective. It is essential to understand the tax position of all family members, and to make sure you remain compliant with PAYE, NMW, and pension regulations.

# Meet the team: Heidi Bradley, Associate Director

## Tell us a bit about your career so far

My accountancy career started when I left school after completing A-Levels. I started working at a local agricultural accountancy firm where I gained a year's experience in the sector and started studying Association of Accounting Technicians (AAT) under an apprenticeship scheme. I moved to Hazlewoods a year later to join the, then, Agricultural Team, (now Farms and Estates) where I completed AAT. Following that I studied Association of Chartered Certified Accountants (ACCA), qualifying in 2005.

## What is it like being an accountant in the agricultural sector right now?

The agricultural sector is always an interesting one! There have been big changes in grants available to the agricultural sector, in particular with the delinking of Basic Payment Scheme (BPS) and the new Sustainable Farming Incentive (SFI). The reduction of BPS has created cashflow and profitability concerns amongst the industry. There are incentives for farmers to join the SFI scheme to replace part of the lost income, but there has been a lot of uncertainty surrounding the impact this new stream of income will have on the inheritance position of assets used for these purposes.

Biodiversity Net Gain (BNG) is continuing to be a popular discussion point amongst farmers and landowners. Any new agreements need careful review and consideration which is discussed in this publication.

## Why Hazlewoods?

I started my career at Hazlewoods a few too many years ago to mention, and I am one of few people in the team that does not have an agricultural background. Working with so many people who have the industry knowledge has given me a huge insight into the agricultural world, where everyone pretty much knows everyone! The Farms and Estates teams is a really supportive team which is ever expanding; the team was a total of three when I started, now we stand at around 40.

The clients are also one of the best things about Hazlewoods. They bring lots of opportunities to challenge us, and are great people to work with.





# Your key contacts



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