EFAC

European Federation of Agricultural Consultancy

PAYMENT ENTITLEMENTS TAX ASPECTS

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Introduction

On 26 June 2003 the European ministers of agriculture reached an agreement on the reform of the Common Agricultural Policy (The CAP). The main principle of the reform is that the income support farmers have received so far, is being replaced by one support system of payment entitlements and that the support system is decoupled form the actual production.

On December 17, 2013, the Ministers of Agriculture of the European Union reached an agreement on the further reform of the CAP.

The special conditions prevailing at payment will thus be completely replaced. In this way, wants to ensure that companies are more innovative, better focus on the market and become less dependent on income support.

In 2015, the countries being represented in EFAC give an overview of the tax aspects of the payment entitlements and the annual payments resulting from the payment entitlements.

Tax aspects of the payment entitlements

1. Income tax

1.1 Are the rights considered as an intangible asset ?

In all countries except for the Netherlands, the payment entitlements are considered to be intangible (business) assets when the payment entitlements have been allowed when exercising a business. The qualification as an intangible asset could be relevant for the application of tax facilities such as depreciation, application of reinvestment reserves and investment grants.

1.2 Other qualifications

If the payment entitlements are not considered to be intangible assets, the questions rises what other legal/tax qualification could apply to the payment entitlements. This question only applies for the Netherlands. There, it looks like the payment entitlements has to be qualified as a future claim.

1.3 Depreciation possible

In all countries, except for Belgium, depreciation on payment entitlements is not possible regardless whether the payment entitlements are granted and subject of trade.

1.4 Book profit taxed

Regardless of the legal/tax qualification of the payment entitlements, a book profit (difference between the selling price and the book value, if any) is taxed for income tax purposes in all countries.

1.5 Book profits to be added to reinvestment reserve

In this respect, a reinvestment reserve is considered to be facility for income taxation which, in general, makes it possible to decrease the book value of a newly purchased asset with the book profit gained on a sold intangible asset in order to postpone the taxation of the book profit. Different conditions may apply such as the time frame for the use of the facility or the economic relation between the sold en bought intangible assets.
Only in Denmark, it is possible to make use of such a reserve.
In Denmark, the facility only applies for sold and purchased payment entitlements within the same year.
As payment entitlements are not considered to be intangible assets in the Netherlands, it is not possible to make use of the reinvestment reserve when selling payment entitlements with a book profit.

1.6 Tax free transfer as a part of a business

When the continuation principle applies and it is possible to transfer a farm free of income tax (transferring the tax claim on the hidden reserves as well) to a purchaser, the question rises if the payment entitlements can be a part of the tax free transfer of the entire business (or an independent part thereof). This is a possibility in all countries.

In Denmark, in The Netherlands and France, however it is only possible, under certain conditions, to have a tax free transfer if you opt for it and meet those conditions.

1.7 Tax free transfer of only the payment entitlements

In all countries it is impossible to transfer only the payment entitlements (as an independent part of a business) free of income tax to a purchaser.

1.8 Payments treated as a farming profit

In most cases, the payment entitlements are allowed to a farmer as being an entrepreneur for income tax purposes. When this is the case, the annual payments will be treated as a farming profit in all countries.

2. Inheritance and gift tax

2.1 Taxed value

As a principle, everything that is acquired from the estate of a deceased or by way of gift is subject to inheritance or gift tax respectively. Basically, in all countries the payment entitlements are included in the value of an inheritance or gift although special arrangements are made when the payment entitlements are part of a business which is transferred at going concern basis by way of inheritance or gift. In France, Germany and The Netherlands special valuation rules may apply.

2.2 How is the value established

As a basic rule, assets are valued at (free) market value. In Germany the payment entitlements are included in the farm value index and in the Netherlands the payment entitlements are part of the farm which is valued with the discounted cash flow method when transferred by way of gift or inheritance.

2.3 Special rate

The value of the payment entitlements included in the taxable inheritance or gift, is in all countries subject to the general tax rates.

3. Value added tax

3.1 Annual payments taxed

In all countries, the annual payments are not subject to VAT.

3.2 Sale of the right taxed

In all countries, except Denmark and The Netherlands, the sale of the payment entitlements is subject to VAT.

3.3 Sale of the right taxed when subject to the farmers flat rate regime

It should be noted that the selling of payment entitlements in Germany and The Netherlands is of course only taxable when the farmer is not subject to the farmers flat rate regime.

4. Transfer tax on real estate

In all countries payment entitlements are not considered to be real estate and therefore the transfer of payment entitlements is not subject to transfer tax.

TAX ASPECTS OF PAYMENT ENTITLEMENTS

1.	**Income tax**	**Belgium**	**Denmark**	**France**	**Germany**	**NL**
1.1	Are the rights considered as an intangible asset	Yes	Yes	Yes	Yes	No
1.2	If not, is it a future claim	-	-	-	-	Yes
1.3	Depreciation possible	Yes	No	?	No	No
1.4	Book profit/capital gain taxed	Yes	Yes[3]	Yes	Yes	Yes
1.5	Book profit to be added to reinvestment reserve[1]	No	Yes[2]	No [5]	No	No
1.6	Tax free transfer as part of the transfer of an entire business	Yes	No [4]	No[6]	Yes[8]	No[9]
1.7	Tax free transfer of only the payment entitlements	No	No	Yes[7]	No	No
1.8	Payments treated as a business profit	Yes[1]	Yes	Yes	Yes	Yes

2.	**Inheritance- and gift tax**	**Belgium**	**Denmark**	**France**	**Germany**	**NL**
2.1	Value taxed	Yes	Yes[4]	Yes	No	Yes
2.2	How is the value established	market value	market value	market value	Included in the farm value index	market value Discounted Cash Flow
2.3	Special rate	No	No	No	No	No

3.	**Value Added Tax**	**Belgium**	**Denmark**	**France**	**Germany**	**NL**
3.1	Payments taxed	No	No	No	No	No
3.2	Sale of the right taxed	Yes/No[2]	No	**Yes ?**	Yes	No
3.3	Sale of the right : subject to the farmers flat rate regime	No	Not applicable	No	No	No

4.	**Transfer tax on real estate**	**Belgium**	**Denmark**	**France**	**Germany**	**NL**
	Taxed	No	No	No	No	No

Notes:

[1] As it a compensation for a lack of income, there is a reduced tax rate of 12.5 %

[2] No VAT on the sale of the right when the right is sold together with the farmland

[3] When selling and buying within the same year, it is possible to decrease the book value of the newly bought payment entitlements with the book profit gained on the sold payment entitlementsss.

[4] It is not a tax free transfer but succession can be selected under certain conditions

[5] Taxation can be postponed, according to the possibility of article 151 octies of CGI

[6] No taxation if exonerated according to the article 151 septies or 238 quindecies of CGI

[7] No taxation if exonerated according to the article 151 septies

[8] Reduced tax rate if the farm is sold in total and tax free if the farm is transferred in the family scope

[9] It’s an option by silently transfer according to article 3.63 of the income tax law of 2001