



Whiting & Partners Farming Group



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After more than 80 years of supporting East Anglian farmers we have formed a dedicated Farming Group to enable those partners and staff most involved with agriculture to meet and share their knowledge and experiences.

At one time, every partner in every office would have spent a significant proportion of their time working with farming clients but the decrease in the numbers of farmers and

increase in the sizes of the farms has led to a polarisation of this work for a smaller number of partners and staff.

This has enabled the development of agricultural specialists best able to keep abreast of the ever-increasing complexity of the industry and its taxation. The Farming Group is the next step in ensuring that our farming clients enjoy the best service and advice.

Based on the first few meetings there will be plenty to discuss, so much so that we believe that clients may be interested in many of the topics. This newsletter is the result and subsequent issues will follow our future meetings. I hope that you find something of interest within it and will welcome your feedback.

IN THIS ISSUE

The Devil is in the detail ...

We discuss Agricultural Property Relief (APR) and Business Property Relief (BPR)

Page 2

Mineral Royalties and Tax ...

The Government has announced that it is repealing Mineral Royalties' Relief

Page 2

Lining up the Ducks ...

There have recently been occasions when bankers had wanted farm balance sheets to reflect all assets at current value

Page 3

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Devil in the detail



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They say the devil is in the detail. It is widely known that there are Inheritance Tax Reliefs available against agricultural property. What is not always appreciated is that the principle relief, Agricultural Property Relief (APR), extends only to the agricultural value of an asset.

Many will nod and think 'of course, that's why relief on farmhouses is problematic and likely to be restricted' but fewer think more broadly

and realise that APR will also fall short to the extent of any potential development value attaching to land.

Fortunately not everything is lost as Business Property Relief (BPR) does cover development value. The difficulty is that not every owner of agricultural property will also qualify for BPR. This can result in Inheritance Tax being payable on development value long before the land comes up for building even before it is included within the planning boundaries.

Often a situation like this can be avoided by restructuring the arrangements through which the land is used. The key lies in addressing the detail.

A second trap for the unwary can occur where agricultural or business property has been gifted by a donor who dies within seven years. While quite properly qualifying for APR or BPR at the date-of-gift, those reliefs may be lost depending on what has happened in the period since the gift was made. For APR



to apply the property must still be used for agriculture. This normally excludes grazing for horses. It also must remain in the ownership of the donee and not be subject to a binding contract for sale. For BPR the donee must continue to own the property and it must qualify as business property in his or her hands. As an example, take a barn with conversion potential - it will not qualify for APR if not still being used for agriculture and will miss out on BPR if being used in a business which does not involve the donee.

If you feel that these issues may apply to land in which you have an interest please talk to us.

Mineral Royalties and Tax



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Following a review of reliefs by the Office of Tax Simplification the Government has announced that it is to repeal Mineral Royalties' Relief in the Finance Act 2011. As tax rates are now much lower than they were in the 1970s, the Government believes that this relief is no longer necessary.



It will be withdrawn in relation to Mineral Royalties received on or after April 1, 2013, for those businesses subject to Corporation Tax. For those subject to Income Tax it will be withdrawn from April 6, 2013.

Normally, mineral royalties are chargeable to income tax or corporation tax as income. The relief allowed businesses to treat 50% of the total amount of eligible mineral royalties received as a chargeable gain and liable to tax at the generally lower rates of tax on gains. The

remaining 50% is subject to income tax or corporation tax as income.

The new rules will apply to mineral royalties under existing agreements or leases, as well as to mineral royalties under leases or agreements entered into after March 31, 2013 - for those companies subject to corporation tax. For those subject to income tax April 5, 2013, is the key date.

In addition, the Reliefs around capital losses on mineral leases will no longer be available for leases or agreements entered into, on or after the operative dates.

For farmers and landowners this change could significantly change the attraction of opening up land for mineral extraction although careful structuring of any deal may lead to significantly lower tax liabilities.

Each case will vary and should be considered carefully. For help and guidance, please get in touch.

Lining up the Ducks



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Among the topics which were raised and discussed at our latest Farming Group meeting was a brace of burning issues.

The first is the trend among banks to prefer farm balance sheets to reflect all assets at current value before they take those assets and values into account when assessing lending applications. This applies to both applications for new loans and renewals of overdraft facilities.

This has been attributed to the Basel Agreement which it was suggested, when first published, would involve all banks. The Basel Agreement was drawn up by the Committee

on Bank Supervision with recommendations on banking regulations in relation to capital risk, market risk and operational risk.

Not all banks are toeing the line but in the meantime it would be sensible to get your ducks in a row and check with bank managers just what they require the farm accounts and balance sheet to show before these are submitted to them.

The second topic related to discrepancies that could arise between partnership agreements, tenancy agreements, cropping licences, accounts and the host of other legalities which bedevil modern life.

Our particular concern related to the legal interpretation of unwritten agreements that might differ to from the way in which the parties involved had intended. This is particularly relevant in a context of disputed wills where there have been instances of the courts holding that legacies were ineffective because the assets were no longer in the testator's ownership, despite never having been conveyed. This had resulted because their treatment was indicative of them being

partnership assets rather than individually owned assets and consequently either the partnership agreement, or if no written agreement, partnership law dictated how they were dealt with on the death of a partner.

It makes good sense for wills to be dusted off and re-read every three or four years and it seems that this discipline should now be applied to partnership agreements. Where partnership agreements are not recorded in writing there is a strong case for committing them to print. Certainly, if there is sustained pressure from banks to revalue assets in accounts and to bring individually owned assets onto balance sheets the effect on wills must be considered and the need for written partnership agreements is strengthened.



Agricultural Wages Board



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The AWB will disappear on October 1 this year and the current Agricultural Wages Order (AWO) is due to expire the day before, September 30. With the demise of the AWO the pay of all agricultural workers

will be regulated through the National Minimum Wages (NMW) and Working Time Regulations. Farm workers aged 21 or over will be entitled to the adult NMW with rates for apprentices and younger workers on par with other industries.

For existing workers the precise terms and conditions of their current contracts will need to be examined before any changes are made. The normal rules on making changes to contractual terms will apply, so it is important for the employer to agree any revisions with employees in order to avoid future claims for breach of contract.

Likewise, for any new employee taken on after October 1, 2012, consideration will have to be given to the new terms and conditions of employment offered and entered into. This

may be particularly relevant in the employment of seasonal workers.

A note of caution – If, as an employer, you seek unilaterally to make changes to the terms and conditions of your employees' contracts of employment and they are not in agreement with them, it is generally perceived generally a breach of contract.

We recommend legal advice be sought.

Minimum agricultural wages will be increasing by 2.6% with effect from October 1 follows:

- Grade 1 workers rate increases by 1.8% to £6.21 per hour.
- Grade 2 and above will increase by 2.8% with the minimum Grade 2 rate being £6.96 per hour.

Entrepreneurs' Relief



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The Capital Gains Tax regime has changed considerably over recent years. Many will recall the Taper Relief provisions and the advantages applying to the sale of business assets whereby the tax charge was limited to 10%. The current rules also include a relief to limit the tax payable to 10% but the legislation surrounding Entrepreneurs Relief is far more restrictive and difficult to satisfy. Those failing to tick the necessary boxes will be faced with a tax bill of 18% or 28% for higher rate taxpayers.

The provisions are complex but to benefit from the relief one must essentially dispose of a business, shares in a trading company or an interest in a trading partnership. The mere sale of an asset without the corresponding disposal of the business will not qualify. A common example quoted in the context of farming clients is that the sale of land associated with the cessation of the farming business will qualify but the sale of a field where the farming continues will not.

A partner will also benefit from the relief on

assets held outside the partnership which are sold-off of in conjunction with the disposal of partnership interest provided they have been used in the business for 12 months prior to the breaking up of the partnership. The sale of an asset that takes place prior to the partnership interest being dissolved will not qualify. Similar provisions apply to company shareholders owning assets personally which have been used in the trade of the company.

The legislation recognises that it is rarely possible to sell all assets immediately upon ceasing a business or withdrawing from a partnership and those sold within 3-years therefore continue to benefit from the relief.

The relief is restricted where an asset has not been used in the business throughout its ownership and also where, in the case of assets held personally outside a partnership or company, a rent has been charged after 5th April 2008.

A number of planning opportunities present themselves where a disposal is envisaged which is likely to give rise to a capital gain in the future. These may include, for example, advising a transfer of a business to a company; ceasing to charge a rent on land leased to a partnership or company; and the restructuring of company shareholdings to ensure all satisfy the 5% holding test. What is clear is that it is dangerous to assume that the relief will apply and the tax payable will only be 10%. A review of the position well before any anticipated sale could achieve a significant reduction in the ultimate capital gains tax liability.

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Woodland Creation Grant

The Forestry Commission has increased grants under the Woodland Creation Grant.

Basic grants for both conifers and broadleaves have increased by £1,000 per Ha with a basic planting rate of £2,800 and £2,200 for both species.

Further grants of £2,000 per Ha are available for woodlands meeting 'key priorities', with £1,000 per Ha available where 'other priorities' are delivered.

More details and applications forms are available of the forestry commissions website:

www.forestry.gov.uk/forestry/INFD-6DCEGU