



## Farmers live with uncertainty, can our economy?



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It seems that perceived wisdom must always be wrong. Firstly the Brexit vote confounded the pollsters and then Hillary Clinton found herself Trumped. Farmers are used to living with uncertainty; they now have the rest of the economy to keep them company as further developments are awaited.

To compound the woes of many, HM Revenue & Customs are consulting on proposals that every business with over £10,000 turnover should file quarterly figures online and keep their records on a computerised bookkeeping package from April 6, 2018 - definitely a prompt to speak to your contact with us.

Hopefully this edition will divert you from such concerns with items covering option agreements, tenancies, leasing, divorce, trusts and how the vagaries of the tax system can result in big tax bills in bad years but lower liabilities in good years.

Please enjoy.

### IN THIS ISSUE

#### *Developing Your Land*

Be careful and make sure you understand the tax rules...

**Page 2**

#### *Trusts offer a Sweet Option*

Cake could be there for eating...

**Page 2**

#### *Leasing Plant and Machinery*

There are several options worth considering...

**Page 3**

#### *Double Taxation Confusion*

It's about profit and reinvestment not overseas income...

**Page 4**

### Book Early for our Seminar

Now is the time to book your place at our increasingly popular annual spring seminar – 'The State of British Farming'. Once again Andersons the farm business consultants who are perfectly placed to offer sound advice across the farming sector will lead it. Members of Whiting & Partners Farming

Group will be on hand to deal with your questions and queries on the day. The date is Wednesday, April 25 at The Maltings, Ely. For additional information contact Andrew Band on 01354 652304 or browse our website [www.whitingandpartners.co.uk](http://www.whitingandpartners.co.uk).

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## Development Land – Timing is Everything



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A well-understood principle in Capital Gains Tax (CGT) law is that the point at which a capital gain occurs is when the contract between the parties becomes unconditional rather than when the asset itself is conveyed or transferred.

Understanding and fixing the date on which a capital gain arises is particularly important in property transactions when the amounts involved are large and there may be a significant delay between exchange of contracts and completion. The tax point determines the tax year in which a capital gain arises. This may be important for making best use of any available allowances and losses and it

may also be critical for claiming reliefs such as Entrepreneur's Relief and Roll-over Relief.

However, it may not always be possible or commercially expedient for the parties involved in a transaction to agree in advance the precise date and terms on which it is to occur. The sale of land with development potential is an example where the parties will not know the full value of the land at the time when the sale is agreed in principle. The property developer will not want to commit to buying the land until planning permission is secured and neither will he be willing to invest time and money in a planning application without the certainty that the owner will not sell the land to someone else.

The solution to this conundrum will usually be some form of option agreement or conditional contract, often with an initial payment for the grant of the option or the signing of a contract with a further payment made when the option is exercised or the condition(s) in the contract is satisfied.

In these circumstances it is vital that both vendor and purchaser understand the tax treatment of the transactions not only for CGT purposes but also for VAT and Stamp Duty Land Tax purposes.



## Trusts for Farmers



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Planning for the future, as we've stressed in the past, is of utmost concern to our farming clients where great value will often be involved in any tax planning strategies.

Currently, Agricultural Property Relief continues to be a generous relief from Inheritance Tax but 100% relief is not always available and even where it is, many analysts wonder for how much longer.

Trusts are vehicles often used to avoid payment of Capital Gains Tax on a gift of property but agricultural property attracts relief from that tax in its own right. So, when might farmers want to consider Trusts?

The real, non-tax benefit of settling property on trust, as opposed to an outright gift, is asset protection. The donor may be concerned about future financial claims - matrimonial statistics speak for themselves! No one wants to pass a valuable family asset to the next generation only to see a matrimonial claim

dissipate both that asset and the family business a few years later.

Trusts facilitate a gift with strings attached - a 'half-way house', if you like. The asset is removed from the estate of the donor who, in reality, retains control of the asset's management, its income generation and the ultimate beneficiaries of the capital or income and when they get it.

In these uncertain times, Trusts offer a valuable mechanism through which advantage can be taken of the substantial Inheritance Tax Reliefs to remove value from a farming estate yet allowing continued involvement by the donor in the future of the asset.

You can have your cake and eat it!

## Divorce and Farmers



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Divorce is never easy but there are specific issues relating to the divorce of a farmer which can mean that the process is especially difficult to deal with.

The main concern of the Court will be to ensure that the future housing and living needs of the parties, particularly any children of the marriage, are met. The asset rich, cash poor nature of farming will often mean that the sale of assets to generate funds cannot be avoided. The assets of the parties will need to be valued and often these can involve complex ownership structures with Partnerships, Limited Companies and Trusts.

Whilst the Court may be keen to maintain the continuity of the business and may not bring inherited assets into the normal sharing division of assets the sale of at least part of the farm might be inevitable. It's vital that the tax consequences of any necessary restructuring are understood and budgeted for.

An alternative to sale of assets might be refinancing. However, any lender will be concerned at future profitability and affordability of loan repayments in these difficult and uncertain times for farming.

A further consequence may involve any impact on other family members involved in the business. Again the Court may be mindful to limit the impact on third parties but the existence of robust Partnership and Shareholders Agreements should help.

Pre-nuptial and post-nuptial agreements are becoming increasingly popular in setting out the parties intentions should the worst happen. Whilst many may view these as unromantic, such an agreement can limit the disruption, cost and heartache of a divorce.

## Plant and Machinery Leasing



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Leasing is commonplace within the agricultural industry through three principle types of agreements – operating, hire purchase and finance agreement. Here are the definitions:

**Operating lease** - the asset, the risks and rewards of ownership like repairs, insurance and the like remain with the finance provider.

**Hire purchase** - all responsibility for the asset transfers to the purchaser at the outset.

**Finance lease** - the lessee must maintain the asset, but the legal title remains with the lessor.

Different accounting treatments apply to each. Payments under an operating lease, relating to a given financial period, are deducted from

profits. For a hire purchase agreement, typically an up-front deposit is followed by regular repayments. The cost of the equipment is recognised as an asset in the accounts on day one and will be available for a capital allowance claim.

At the moment, the Annual Investment Allowance means up to £200,000 spent on equipment is deductible from profits per annum, provided the asset is brought into use by the year-end. Any interest included within the repayments receives tax relief as incurred.

Finance leases have to be split between short term, typically less than 5 years, and long term.

The first are treated in the same way as operating leases and the second follows the track of hire purchase agreements. There is an alternative option for a long-term lease. Instead of claiming capital allowances, the depreciation charge applied to the asset can be offset against profits, provided this is at a commercial rate. This results in the treatment for tax purposes being the same as the account's treatment.

As always, the varying options provide an opportunity to plan if reviewed in advance of taking out any finance.



## Double Taxation



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Double Taxation usually refers to income being taxed in a foreign country as well as in the UK. Recently I've twice heard the expression used by unrelated farming clients so it seems worthy of further exploration. To clarify, in neither instance did the term relate to taxing foreign income but rather to the UK tax on UK trading profits. For both clients their most recent accounts show a greatly reduced profit against the previous year's. However once we delve into the tax liabilities based on these profits the unexpected emerges.

In the earlier year the better results prompted some capital reinvestment in new equipment. This attracted a 100% tax deduction via the Annual Investment Allowance. Consequently a high accounts profit resulted in a significantly

lower liability than the profits multiplied by the rate of tax. Roll forward twelve months and take in other factors - depressed commodity prices, some higher input costs, plus the higher depreciation on the previous year's new assets, we see the accounting profits greatly reduced. With this expectation, and a pessimistic outlook, capital reinvestment is cut back or non-existent.

The position is therefore completely reversed; once the depreciation is disallowed for tax purposes there can be very little, if any, capital allowances to be claimed. These were all used in earlier years so the tax liability works out higher than might otherwise have been expected. In both instances the tax compared to the accounting profit was twice the actual rate of tax, hence the 'double taxation'!

For an ongoing business this does cause some confusion but for a company the financial impact is at least at the same tax rate and 'averaging' can give a similar position for the unincorporated client. However, on the cessation of a business the tax charges arising on the machinery sales can result in significant liabilities.

Although complicated the impact can be reduced. Thought, planning and regular dialogue between client and accountant are paramount to achieve the best result.

## Tenancies



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On September 1, 1995 Farm Business Tenancies (FBTs) were introduced so restricting any new Agricultural Holdings Act (AHA) tenancies. For Inheritance Tax purposes land subject to tenancies starting after this date attracts Agricultural Property Relief (APR) at 100%; for earlier tenancies relief is at 50% unless other grounds for 100% allowances exist.

For many tenancies, and particularly in family situations, no written agreements exist. A history of payment of rent extending back before September 1, 1995 supports an AHA tenancy and consequent security of tenure. Any surrender of such a tenancy is a chargeable event for Capital Gains Tax and if landlord and tenant are connected parties market value will apply to the transaction for CGT purposes.

Before the advent of FBTs the addition of land to an AHA tenancy resulted in a new AHA tenancy. A division of ownership of the underlying land did not result in new tenancies. All of these facts can have profound effects on future tax liabilities.

Before any decision regarding an unwritten tenancy is made a full analysis of the facts is recommended. Not only can unpleasant CGT consequences be avoided but also it is surprising how often APR claims for IHT purposes are understated.

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