Farming has a future!

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Welcome to our fourth Farming Newsletter. Since the last issue we have been assured of the Future of Farming – at least that was the title of the long-awaited report to DEFRA produced by David Fursden's committee.

Despite some ageist and potentially controversial thoughts about the future of Agricultural Property Relief the overall tenor of the Report was positive.

Consequently the consideration of tax relief on agricultural buildings and structures and the allocation of expenditure between capital and revenue remains relevant.

Furnished holiday lets may remain as diversified activities for some farm businesses. Land may continue to be owned jointly. Please read on for further thoughts on all these topics and more.

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Annual Farming Seminar

Weather, yields, prices are all uncertainties in farming life. However, there is one certainty in 2014 and that's **Whiting & Partners Annual Farming Seminar** on April 2, 2014.

Ely Maltings is the venue again but speaker details, invitations and more will follow in the New Year. It's a date for your diaries now.

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Capital allowances on agricultural buildings

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Tax relief on structures was phased out from 2007 and abolished in 2011. Today, it is more important than ever to identify where capital expenditure is eligible for a deduction from business profits.

A recent client assignment involving expenditure of over £2 million highlighted the fact that the tax relief available may take several forms.

The first, Land Remediation Relief, is available to companies only. It gives relief at 150% for the cost of cleaning up contaminated land or buildings. It is aimed at a company that buys contaminated property in the UK for the purpose of its trade and incurs capital expenditure in dealing with that contamination. If the company does not have sufficient profits to give immediate tax relief for the expenditure incurred, it can claim a tax credit instead.

The second is Plant and Machinery Allowances. The Annual Investment Allowance giving 100% relief for eligible expenditure of up to £250,000 before December 31, 2014, creates an ideal time to consider investment in agricultural buildings where at least part of the expenditure qualifies as plant and machinery. The key is to maximise the claim for the qualifying part whilst recognising that there is no tax relief for expenditure on buildings and structures.

The range of qualifying items is as broad as it is long, ranging from plant and machinery to electrical systems and cold stores. In certain circumstances, expenditure qualifying as plant can extend to walls and floors.

Expenditure will typically be integral to the construction or re-development of a building. It is essential to plan well in advance, get detailed costings and supporting documentation from contractors and suppliers. It is also important to take professional advice because consideration of the relevant legislation, guidance and case law is essential to maximise the claim for allowances which will be accepted by HMRC

The third area of relief is that of Enhanced Capital Allowances. 100% allowances are available for expenditure on certain green technology items that are either energy or water saving plant and machinery which appear on the Energy Technology Product List or the Water Technology List produced by the government.

In summary, where substantial expenditure is contemplated on new or re-developed farm buildings, forward planning of the timing and nature of the expenditure to be incurred will pay dividends by ensuring available tax reliefs are exploited to the greatest possible extent.

Conflicts of interest

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One tends to think of 'conflicts of interest' as being a concern for professionals dealing with their clients' affairs and certainly of no great concern to most. However, when there is joint ownership of land real issues can emerge. There's no problem if there is a united front but if intentions differ, the story can change.

Problems often tend to surface following a death when the land has been left to joint owners under a will or has passed on intestacy. One part owner may want to farm the land, another may want to sell or rent. Arguments arise as both try to achieve their objectives. Further complications arise if one is an executor.

Executors act in a position of trust and are charged with administering the deceased's estate fairly. A personal preference can lead to a breach of trust.

As if tenancy law did not come with enough complications, questions can arise as to the respective rights of the part owners. Only referral to a lawyer may lead to an understanding of these rights but understanding does not necessarily equate to an agreed settlement. Indeed it may not even be possible to agree the basic facts. In this type of situation a negotiated settlement is likely to lead to the least unsatisfactory outcome.

The moral of this must be to think carefully before embarking onto joint ownership. If you are already in this position try to anticipate future issues and address them early. In particular do not leave land passing on intestacy in the deceased's name rather than establishing and registering the new ownership.

Be wary too of 'informal agreements' entered into in good faith but which may have triggered consequences as a result of over-riding legislation. The informality of these arrangements, even if honoured by all parties, can have tax repercussions. Tax rules ascribe open market value on the disposal of an asset between connected parties; a tenancy is an asset, which can have a high value and consequently give rise to significant tax issues. Overlook these at your peril.

Partnership tax rules under review

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The Farming Group, an inter-disciplinary group of representative bodies including the NFU, CAAV and the Farming and Rural Business Group of the ICAEW have voiced their concerns over proposals to change the tax rules around partnerships.

The March 2013 budget reported a review of partnerships and some of the tax rules around them. In May the consultation document 'Partnerships: A review of two aspects of the tax rules' was published. Comments were invited by August 9 so any changes could be introduced in the 2014 Finance Bill to take effect from April 6.

The consultation document looked into partnerships involving companies and individuals and how profit and loss allocations were being 'manipulated' to achieve a tax advantage. It did not cover cases where family members use partnership structures to allocate profits between them tax-efficiently.

HMRC believe it is increasingly common for profit to be allocated to a company partner which other partners own but in which the profits will be subject to lower rates of tax.

They also believe that where there are losses, the share of these losses is being allocated preferentially to individuals to enable losses to be set against their general income.

Counter measures are proposed which would reallocate profits to the shareholders or restrict the availability of loss relief.

The final outcome is still unclear but where there are partnerships involving individual partners and company partners it will be essential that developments are closely monitored. Indeed it is not unreasonable to expect that HMRC may be examining all situations where partnerships and companies in the ownership of a partner or partners have trading relationships.

Are you ready to retire at 70?

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In July 2013 DEFRA published its review into the future of farming in the UK and identified a number of key issues facing agriculture. At the forefront was 'progression' within the industry.

The biggest obstacle facing new entrants to agriculture is the low number of farmers getting out.

Farmers decide not to retire for a variety of reasons but DEFRA's report singled out the current inheritance tax (IHT) framework as one of the key factors which discouraged older farmers from handing over to the next generation.

They currently receive some very favourable inheritance tax reliefs and have done for a number of years.

These ensure that a farm business does not have to be disrupted on inheritance by selling off its vital assets like land or machinery to pay the IHT bill. The farm can therefore continue to feed our ever-growing population.

Agricultural Property Relief (APR) is the main IHT relief available to working farmers and the DEFRA report recommended the following; *"after a necessary period of warning, APR should not be available to individuals occupying property after a stated age (say 70)."*

It was proposed that APR would still be fully available on its present rule for transfers made at or below that age.

That recommendation would significantly change inheritance tax relief in this country and would require a period of warning before its adoption because it could mean some comparatively large IHT bills for the estates of farmers who continue beyond 70.

The recommendations have to be taken seriously, their preparation was instigated by DEFRA.

Some would argue that they are logical and necessary. Others will oppose as many farmers are very active well into their 80's and the recommendations could be considered ageist because, as we are all aware, farming is a way of life.

Our advice, as always, is to consider your succession planning as early as possible and to make sure that your professional advisers are involved even during preliminary discussions with the family or other successors.

The report is available on https://www.gov.uk/government/publications/future-of-farming-review-2013-report

Agricultural works – are they repairs

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New or repairs? Once a simple question but now complicated by recent changes in tax legislation. Any farmer considering a new build or remedial works to infrastructure should take advice and proceed with care.

Until their abolition in 2011 Agricultural Buildings Allowances offered tax relief on capital expenditure on new buildings and other works. Although no reliefs or capital allowances normally apply to the shell of a building, some integral features may qualify for relief as may anything that qualifies as plant and machinery.

Moving away from items specifically qualifying for capital allowances we reach the accountants' favoured 'grey area' where the division between capital and revenue expenditure is blurred.

If expenditure can be categorised as repairs, a full write off can be claimed. Lawyers dine out on the case law around the definition of 'repairs' and HMRC's guidance notes seem to deny relief where there is some element of improvement although, for example, there are specific paragraphs in the Revenue Manuals confirming that a drainage scheme can qualify as repairs provided it replaces a prior comparable scheme.

Works which restore buildings or infrastructure to their original function are in line with the general principle of 'making good' provided any element of improvement represents no more than the application of contemporary materials. Where there are elements of improvement and of repair, costs should be split. Giving earlier thought to this can enable the gathering of appropriate evidence in support of the claim for relief.

Business Property Relief

Hopes of being able to obtain Business Property Relief in respect of a Furnished Holiday Letting Business have been dashed following leave to appeal against the original decision in the Pawson case being denied.

Rules around SIPP

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A Self Invested Personal Pension (SIPP) is generally not permitted to hold residential property. It may of course hold non-residential property including farmland and a SIPP may apply for planning permission, including residential permission, on its property.

Once planning permission for residential property is obtained the SIPP must dispose of the property before the permission is implemented. Any profit on disposal of the property will be free of tax within the SIPP.

If the permission is for commercial development this can be undertaken by the SIPP and it can borrow to fund the development provided total borrowing does not exceed 50% of the net fund value of the SIPP.

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