Difficult times encourage the exploitation of opportunities

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We recently held our annual farming seminar at which the state of the farming industry and its prospects, including BREXIT was considered.

Our newsletter has articles encouraging a fresh search for new income streams, the opportunities for developing redundant farm buildings and limiting capital gains tax where asset disposals occur. Technical changes and associated matters are addressed in connection with probate, averaging and the presentation of accounts.

Rules and their changes are generally viewed negatively. In an increasingly regulated world we must learn to identify the opportunities that exist among the restrictions.

I hope that the following articles may point the way.

Energy Barns

The reduction of feed-in tariffs for new solar panels and wind turbines may have reduced the attraction of new installations but the next opportunity to benefit from our need for energy may emerge with Energy Barns.

Sites, typically about a quarter of an acre, are being sought. They must have access to suitable 33 Kw cables with either other buildings, or suitable landscaping around them. Premium rents may be available.

Planning regulations apply to these buildings which, when constructed, will house batteries to be charged when demand on the grid is low and then boost supply when demand peaks.

We have contacts with surveyors working in this field if this is of interest.

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Work those Assets

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In difficult times the more enterprising find ways to work their assets harder. By the nature of farming 'yield' is of key interest and there are few farmers who do not look to optimise their performance on their land available. Lateral thinking may reveal opportunities to enhance income that have hitherto been overlooked.

In previous newsletters we have referred to opportunities to obtain income both from woodland and individual trees by realising the timber value. Woodland may however offer further scope for income. Businesses regularly advertise to thin stocks of snowdrops, bluebells and other flowers from woodlands. I have seen similar adverts offering to remove fish from enclosed waters to enable restocking of fisheries elsewhere.

Doubtless there are rules and regulations covering such activities and subject to compliance with them, opportunities may exist.

A client explained that in clearing a derelict yard beneath the bramble jungle he found two crawlers. One started up after a small amount of work. No doubt there are other forgotten corners containing old equipment; while the value of scrap is not currently high vintage equipment seems to find a ready market.

Any farm with fishing or mooring rights could obtain a new income stream. If they are exploited the VAT position needs to be taken into account but material revenue may be created without undue investment.

Position can be crucial but for those in the right setting there may be ready opportunities for diversification like campsites, regular car boot sales or paint balling. A colleague recently told me of a farmer who had maximised his location by allowing hang gliding devotees to launch themselves from the cliff edge that formed the boundary of his farm.

Government reports Total Income From Farming amongst its statistics. Perversely this includes diversified income. Perhaps the reality of life is that for many farmers the incidental income sources available, often as a consequence of land holdings and location, are integral to survival. Spotting opportunities may be a lifesaver.

Entrepreneurs' Relief

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Development opportunities, whether building plots arising through permitted development rules or larger scale, make the mitigation of Capital Gains Tax (CGT) significant.

Entrepreneurs' Relief (ER) may reduce the rate of capital gains tax to 10%. On a business cessation, obtaining ER should pose no difficulty; the relief can apply to disposals in the three years following termination. However ER does not apply to the disposal of individual assets, other than where their disposal is associated with either a full or partial withdrawal from a business.

The conditions are interpreted strictly. It is foolhardy not to arrange the business withdrawal and the associated disposal to occur simultaneously.

Until March 18, 2015 there was no restriction on how small such a withdrawal should be but thereafter any withdrawal must be at least 5%. A series of disposals of business assets may be accompanied by a corresponding series of 5% withdrawals. This may be important where there are staged sales of development land but beware options or conditional contracts.

How will the vendor know in advance when to dispose of their business interest? Proper documentation as evidence of changes is advisable.

On the sale of a farm as part of the closure of a business ensure there are no ongoing business activities. A right to harvest and store crops for sale after the land has been sold may prejudice an ER claim. If this is required, consider forming a limited company to take over immediately the sale takes place.

As house building picks up and opportunities for development profits arise, ER will become an increasing important tax mitigation opportunity for farmers. Planning for development means more than dealing with architects.

Averaging

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Since 1977 farmers have been allowed for tax to average profits after capital allowances for any consecutive two years if they differed by 30%, with special rules if between 25% and 30%. If appropriate, averaged profit for a year could be averaged with the following year's profit to provide further relief. The advantage came from moving income from a higher tax rate to a lower rate.

Only farming profits could be averaged so other income, such as contracting income, had to be disregarded.

From April 6, 2016 there is now the option of averaging back with either the profits of the previous year or the previous four years. There remains a test of the percentage difference to establish the right to average.

A loss is treated as nil profit for averaging and loss relief is separately claimed. The first and last years of farming income cannot be averaged.

It will now be necessary to consider which, if either, of the two reliefs to claim. We are used to submitting claims to average back, reviewing those claims subsequently and, if appropriate, withdrawing them and averaging forwards. With four-year averaging it is, at best, going to be more complicated to consider the options; potentially we may find ourselves locked into what later seems not to be the best alternative.

How this will all work in practice remains to be seen. Reliance on tax software is unlikely to conclusively divulge the 'best' option and it will be even more important that the tax adviser has a feel for the business, its track record and its prospects.

Permitted Development

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A gentle drive around our green and pleasant land brings home the reality that barn conversions make up a significant proportion of the rural housing stock. Conversions of attractive brick barns and cattle yards proliferate.

Recently the Town and Country Planning Order 2015 has dramatically extended the type of structure for which conversion to residential may be allowed, detailing under Class Q what can and cannot be done.

Broadly, the site must have been occupied solely for an agricultural purpose on March 20, 2013 or was so used when last in active use. Cumulative floor space cannot exceed 450 m² and the maximum number of separate houses developed within an agricultural unit is three. For tenanted sites there must be the express consent of both landlord and tenant.

The site cannot be an SSI site, a listed building, in a conservation area, an Area of Outstanding Natural Beauty, a National Park, the Broads or a World Heritage Site. Reassuringly, nor can it be a military explosives storage area!

Further considerations include transport and highways impact, noise, contamination and flood risks, practicality of design and external appearance. Despite this prior approval under class Q is being granted in many cases, free of any agricultural tie.

Despite the apparent limitations on planners to resist such applications one practical difficulty can arise from a requirement that the development must be a conversion, not a rebuild and not exceed the envelope of the existing building at any given point. Demolition of part is permitted.

Some designs may not be pretty but making extra land available may improve their attraction. A Dutch Barn may not be everyone's idea of home but for the right person may provide somewhere to rest their head. The farmer may also sleep better if the value of his redundant building can be enhanced.

Probate

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Bereavement can be particularly difficult where there is a family farming business. Hopefully arrangements will have been made for farm succession with the minimum of disruption. An up-to-date Will taking advantage of available Inheritance Tax (IHT) reliefs can help.

Absence of a Will results in the Estate being divided between the spouse and children according to the rules of Intestacy, often leading to family disputes and even the break-up of the farming business. For a partner, consistency between the Partnership Agreement and the Will is vital.

Whilst lifetime planning can ease matters, the Probate process and responsibilities for the Personal Representatives can be onerous. Tasks include establishing the assets and liabilities of the deceased, ensuring proper valuations of assets, applying for the Grant of Probate, preparing IHT Returns, settling liabilities, distributing assets to beneficiaries and preparing estate accounts and Tax Returns for the period of administration. Usually the Personal Representatives will want professional help. The Accountant will be well placed to assist.

The preparation and submission of the Probate Papers is a reserved legal service and has therefore historically remained within the domain of qualified solicitors. Recently however, the Institute of Chartered Accountants in England & Wales has been granted the status of approved regulator of non-contentious Probate Services. Chartered Accountants and others can now apply to provide reserved legal services in relation to non-contentious probate work. In the future, suitably qualified Accountants will be able to provide a complete Probate service to the Personal Representatives, thus lightening their burden at a difficult time.

Accounting for Change

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Despite the BREXIT furore business is worldwide and standardised presentation of accounts becomes ever more important. FRS102 enshrines the latest rules on accounts preparation. For the first time a section on agriculture is included within UK Generally Accepted Accounting Principles.

The key areas of impact on farm accounts deal with inventory (stock), income recognition, financial instruments and property valuation and depreciation.

For the valuation of Inventories there is now an option to move from the 'lower of cost' or 'net realisable value' to fair value. For produce and growing crops this is market value less costs to be incurred before sale.

The change with regard to income recognition is most significant in connection with the receipt of grants and subsidies. This change will apply to the Basic Payment and is obligatory.

Rules relating to Financial Instruments, which include loans and forward contracts, are also compulsory.

The new rules give us an option to revalue property assets and to decide upon a depreciation policy.

These changes may seem of little relevance but could significantly alter the impression given by the financial statements. In particular, revaluing property could dramatically strengthen the balance sheet. This may influence the opinions of some users of accounts. For example, bankers may feel happier with borrowers whose balance sheets include assets at a higher value.

Accounting for your success throughout East Anglia

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