Carrots but a little stick too…

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At our annual 'State of UK Agriculture' seminar we were reminded of the uncertainties of farming. It is daunting when exchange rate fluctuations can distort the performance of an industry and when political Brexit uncertainty looms.

Perhaps articles looking at hobby farming, partnership planning, death bed planning and pensions reflects a sombre mood. In contrast the Rollover Relief article suggests that there is some optimism for the future.

I believe that there will continue to be rewards for hard work, innovation and flair but that there will also be some bumps along the road for everyone. Perhaps nothing changes.

Please enjoy our Newsletter.

James Cater

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Fields of Bricks

Although we hear of decline in the value of development land, growing houses remains more attractive than growing crops. Onerous section 102 levies may apply but the tax regime remains gentle. CGT at 20% maximum on development land profits is, in historical terms, generous. To be able to halve that rate by planning the sale so that entrepreneur's relief can be obtained or avoiding the tax by claiming rollover relief is just the icing on the cake.

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It's Not Too Late

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The increase in the value of assets over recent years, especially in property and shares, coupled with a tax-free allowance of £325,000 - unchanged for nine years - has led to a significant increase in the number of estates liable for Inheritance Tax, IHT, at 40%.

Phased introduction of the Residence Nil Rate Band, RNRB, will no doubt help to mitigate the threat of IHT for some estates by increasing the tax-free amount for a married couple to £1m by 2020/21. Numerous conditions mean that eligibility for the new relief is by no means guaranteed.

Much IHT planning is undertaken with a long-term perspective like, for example, substantial lifetime gifts in excess of the £3,000 annual exemption for which the donor must survive for at least seven years to escape IHT altogether.

So, is it too late to take steps to minimise IHT if someone has only a short life expectancy due to ill health? The answer is 'no' for the following opportunities:

- Maximise use of the available exemptions for lifetime gifts and, if there is a surviving spouse, ensure the Will optimises the use of the spouse exemption.
- Review tenancies to ensure that 100% Agricultural Property Relief is available for let agricultural property.
- Ensure maximum Business Relief is obtained for the farming business by reducing cash in the business, converting loans to the farming company into shares and transferring personally owned assets.
- Make a lifetime gift to reduce the gross estate to £2 million or less to maximise the available RNRB.

Even where life expectancy is short or impaired, it is not too late to take steps to keep as much of the estate as possible in the family and out of the taxman's reach. Above all, make sure the Will is up to date and tax efficient.

Business Asset Rollover Relief

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Business Asset Rollover Relief, BARR, lets you defer any Capital Gains Tax due when you dispose of certain assets. If you acquire 'new' assets costing the same as or more, the relief allows you to postpone paying tax until you dispose of those new assets. It may be possible to get limited relief even if less than the full proceeds are reinvested.

The rules differ if you invest only part of the proceeds from selling the old assets; if the old assets were only partly used in your business or if you use the proceeds to buy 'depreciating assets' for example fixed plant or machinery.

You can claim the relief if:

- trading as a sole trader or within a partnership
- occupying commercial woodlands and managing them commercially for profit
- carrying on a profession, vocation, office or employment
- providing an asset to your personal company or
- disposed of land by a compulsory purchase.

Both the old assets that you have disposed of and the new ones you have acquired must qualify and have to be of a type that falls within the list of assets. These are the options:

- interests in buildings or parts of buildings
- interests or options in land
- fixed plant or machinery
- goodwill
- quotas

To qualify for BARR, new assets must be acquired in a four-year window - within three years from the date of disposal or up to one year before. Your business must be trading when you sell the old assets and buy the new ones. HM Revenue & Customs will extend these time limits in certain circumstances. Provisional relief may be available on the gains you make from disposal if your intention is to reinvest all the proceeds.

If you declare an intention to reinvest but do not acquire new assets and make a claim to rollover relief, you will have to pay the amount of deferred tax, together with interest on that tax from the date on which it was originally due to be paid, to the date on which you actually pay it.

‘Fail to Plan, Plan to Fail’

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What does the future hold? Without doubt Brexit, and the wider ramifications of trading with other countries does pose a significant level of uncertainty to UK farming. Some of this relates purely to financial aspects like the impact on subsidies. Will ‘capping’ be introduced and if so at what level? However, practical operational matters need to be addressed, for example the availability of seasonal harvest labour

Planning for this is not easy and no one has a crystal ball. One thing is for certain, change is coming and as the old adage says, ‘fail to plan, plan to fail’.

This was the general message delivered to our annual ‘State of UK Agriculture’ seminar by Graham Redman and Michael Haverty of Andersons.

Whilst commodity prices have been variable the weak Pound has helped farming to improve income levels with the expectation being that 2017 and 2018 will be better than 2016. The industry average does hide individual variations.

Andersons also spoke of various levels of income against tractor sales. It’s perhaps unsurprising that higher income levels result in raised machinery sales. Higher income leads to greater tax and this is, for many, a motivation to spend. Perhaps the biggest incentive though it positivity. Certainly, the feel-good factor after a decent year makes individuals feel happier about the future and they are then willing to invest in it.

Sibling Partnership – Say No

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With the publication of her second book Harper Lee has had something of a renaissance. In her first, To Kill a Mockingbird, she wrote *‘you can choose your friends but you sho’ can’t choose your family’.* Perhaps this should be considered before siblings commence trading as partners.

I have spent much time helping disentangle brothers from partnerships or limited companies. To fathers, I caution against tying their children together. Better they each own half the farm and can choose whether to trade together than they own it all, half each. Perhaps, perversely many fathers do not like their children because many shackle them together regardless!

When a split develops, things can get messy. A conflict of interest arises when the client is the ‘business’. Nevertheless, there is a role for an adviser, an arbitrator, who can highlight the common advantages and steer away from a confrontational and destructive approach. With separate advisers whispering in each partner’s ear bloodshed is guaranteed; individual advantage overshadows collective benefit.

To finish the quotation *‘and they’re still kin to you no matter whether you acknowledge ‘em or not, and it makes you look quite silly when you don’t’.* Makes me wonder if Harper Lee advised on business demergers.

When is a Farmer not a Farmer?

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The rules are that after five successive years of losses the farmer becomes a hobby farmer and, as such, is denied further tax relief for losses other than against future farming profits.

The measure for profit is taxable profit before capital allowances and ignores averaging. The inclusion of an inappropriate loss relief claim in a tax return can result in a tax enquiry, penalties and interest.

Various arguments have been put forward contesting the disallowance of losses. These have ranged from the business clearly not being merely a hobby – dismissed as irrelevant - to the loss relief being unclaimed in all of the previous five years - unfortunately the legislation refers to losses made, not losses claimed.

There is a defence known to anoraks as ITA 2007, S 68 which requires that a competent farmer at the start of the period of loss would not have expected a profit by the relevant year of loss but would reasonably expect future profits.

Generally, claims for losses relying on this defence have failed. Perhaps the best advice is to avoid losses and stick to stamp-collecting or bird watching as a hobby.

Changes in Pension Rules

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Pensions have long represented a tax efficient vehicle through which property assets could be acquired. For many years' tax relief has been available on premiums paid into pension funds and, with the advent of Self-Administered Pension Schemes and Self Invested Personal Pensions, this cash pool could be easily accessed to purchase business property, expenditure which would attract no tax relief. Although market-value rents had to be paid, this resulted in tax-free growth within the pension fund, while tax relief against business profits was obtained on the contributions and the rent paid.

As the advantages were recognised, pension contributions were often made specifically to fund land purchase. Inevitably, rules changed and the ability to rapidly build up a pension pot has become restricted.

As this brake was being applied to the speed of contribution, simultaneously issues which had existed at the other end of the arrangement were eased. Typically, farmers prefer to retain their land within their family or business. Previously the rules required a pension fund to be converted to cash and an annuity be purchased before the pensioner reached 75 years of age. This has been relaxed.

Now its permissible to pass one's pension fund on to the next generation and potentially beyond. On a death before age 75 the assets can be taken free of tax and without falling into the pensioner's estate for Inheritance Tax purposes, by the individuals nominated by the pension holder. In the case of the death of a pension holder over age 75, then the pension fund can still be passed on free of IHT, with no immediate taxation, but when assets are withdrawn by that beneficiary, tax will be charged as on any payment of pension at that beneficiary's relevant tax rate.

This relaxation represents a generous opportunity to see the next generation benefit from a tax break on the transfer of wealth but also avoids the need for land to be sold so that an annuity can be purchased. Remember, the primary purpose of a pension fund is to provide an income in retirement but nevertheless the rules do extend the possibilities. If the savings are not required to maintain the pensioner's life-style, then the current rules do offer attractive planning opportunities.

MTD Gains Momentum

The Making Tax Digital VAT 'live' testing pilot has already started in preparation for April 2019 when businesses with turnovers exceeding the VAT threshold will need a digital tax account and be able to file quarterly returns on-line.

In addition to our free seminars we are also currently offering a free MTD healthcheck for those wanting advice on the best way forward for their business requirements. Naturally, we update on the latest MTD moves and offer the solutions we have for the specific needs of both our existing and potential clients.

More information is available on our website **www.whitingandpartners.co.uk**

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