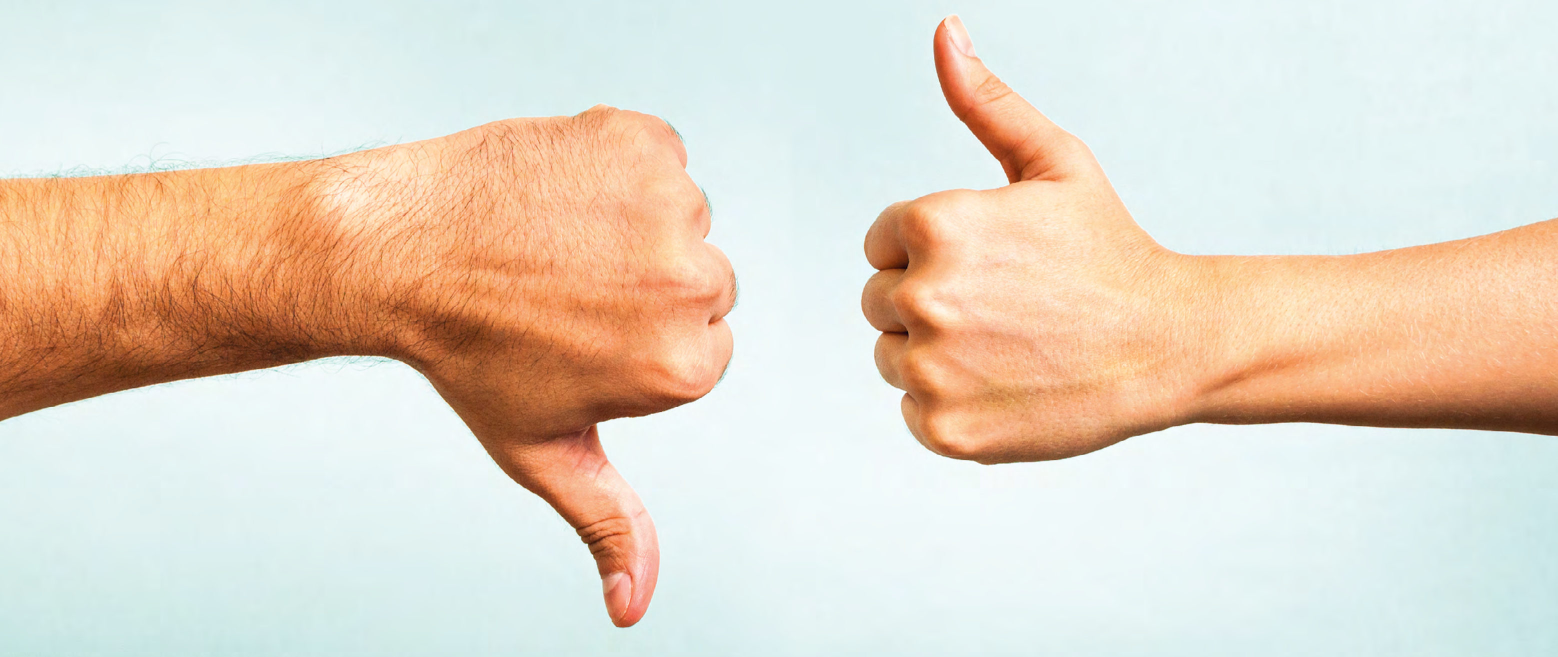
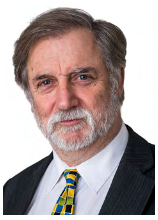


# Conflicting interests



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Welcome to the 15th edition of our Whiting & Partners Farming Newsletter. At our 2019 Farming Seminar we were treated to an overview of the future of agriculture. A synopsis follows.

Also of topical interest is a recent tribunal decision which resulted in a grain store being classified as a silo and thus being eligible for tax relief. A review of new building costs incurred in recent years may be of benefit.

Philip Peters writes about farming partnerships. At a glance, it may seem rather dry but he was prompted by a case in which the courts had to intercede between parents and son to apportion the value of a farm. The farming press recently reported a similar case where it was held that a son was entitled to a significant share of the value of the family farm, despite opposition from the rest of the family including his parents. In his judgement, the judge recognised that a consequence of his decision might be the sale of all or part of the holding. These things require clear documentation.

Finally we consider diversification. New fields, if you will excuse the pun, bring new challenges. These may be of a familiar nature if close to the core activities but where the new venture is far removed from everyday life to date the new disciplines required may be daunting.

In conclusion I was heartened by the theme of Anderson's presentation. The Future of Agriculture. As a society we seem to delight in wallowing in pessimism.  When even the Governor of the Bank of England can get away with predictions of economic calamity, proved wrong by events, it is refreshing to see acknowledged that we have a future, that we will still be here next year and, hopefully, in the years after, even if there may be challenges.

## IN THIS ISSUE



Whiting & Partners
Chartered Accountants & Business Advisers

# 2019 Farming Seminar – Divergences from EU Rules

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Our annual farming seminar at the Maltings held on 25 April was particularly interesting this year with significant focus on the potential consequences of the Brexit carousel. While the two Andersons speakers, Richard King and Michael Haverty, were certainly better informed than most as to the potential consequences, they were none the less unsure as to precisely what the future would hold.

We were told that in the next 12 months the expectation is that UK agriculture will perform reasonably well. In East Anglia, we should generally be at the higher end of the anticipated results.

However, it is the Brexit uncertainty which causes the big issues. Brexit was purported to lead to an end in of red tape but export issues in the future may lead to an increase in bureaucracy. We can however anticipate little or no divergences in EU rules until 2020 and this could also see us bound to new rules introduced during that period.

Andersons analysed three potential Brexit outcomes. In some scenarios and for certain sectors, there are potential upsides but, the general impact on UK agriculture is negative. Faced with this outlook the message seemed to be, if you can strengthen your business do so now. Why put this off until it is forced upon you? This is clearly good sense, with or without those Brexit concerns, which seem to be everyone's current focus. Aside from this we need to be mindful of technology, disease control, water/irrigation, general environmental aspects, food trends and the like. Each brings risks but also opportunities for some farm enterprises to step ahead of their peers.

However well informed an individual is, much of this is beyond our ability to look into the future and act with certainty. We must therefore focus on what we know and what we can currently control. We must then seek to improve upon this where at all possible and position ourselves to seize any opportunities that arise but to also to be prepared to act and have a mind-set for change.

# Farmer Wins Tax Appeal

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The outcome from a recent First Tier Tax Tribunal case has supported a farmer's bid to allow a grain store to qualify for capital allowances. Historically, many grain storage facilities have been ineligible for capital allowance claims as 'plant', instead falling under the building and structures legislation. However, in the case of Stephen May vs HMRC (2019), the grain store qualified for capital allowances as it was proven to be:

- A silo under normal definitions
- Used only for temporary storage
- A building with specialist integrated features rendering it unfit for any other purpose and enabling it to function as apparatus with which the farmer carried on his farming trade, in particular facilitating the drying and conditioning of grain.

A result of this case means farmers, who have constructed a grain store in previous years without claiming capital allowances, may wish to consider whether the asset is still owned and used by the business and should therefore be brought into the tax computations.

Careful consideration should be given before claiming capital allowances on a grain store, including referral to the specifics of the above case and specialist advice should be sought. The principles of this case could extend to specialist storage facilities for other crops such as potatoes. It is interesting to note that this is a First Tier Tribunal ruling meaning HMRC have the right to appeal this to the Upper Tribunal, although it is understood that no appeal is planned.

# Indexation

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HM Revenue and Customs have now frozen indexation relief available to Companies as at December 2017. Whilst in theory the frozen relief should be available in perpetuity, it is not inconceivable that the legislation might be changed in the future to remove this relief entirely.

The relief available on land and buildings held at March 1982 can be valuable as the additional deduction for tax is equivalent to two and a half times the cost of asset.

It is possible to crystallise the indexation relief by transferring the land between group companies and in this way, ensure that the relief is not lost, even if there is a change in legislation in the future.

One way to achieve this is to place a new ‘holding company’ above the existing farming company. This can be achieved without any tax or stamp duty cost if completed correctly. The land and property can then be transferred to the holding company with the associated indexation relief.

This can have the added commercial advantage of protecting the land and property from any commercial risks from the trading company. Whilst this has typically not been a concern for farming companies, where the farming business is diversifying there may be added commercial risks involved that make this worth considering.

If you would like to find out more about this dual-purpose reorganisation of your business, don’t hesitate to contact us.

# Farming Partnerships

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Ham v Ham could be taken for the title of a local ‘derby’ sports fixture, far from it. It was a long-running courtroom battle between a son and his parents over a farming partnership and its assets. Submissions relied heavily on ‘evidence’ contained in the business accounts. The final judgement underlined the need for well drafted partnership agreements particularly for farming partnerships, to ensure that in the event of disagreements, the intended outcome is achieved.

The majority of farming businesses in the UK operate as unincorporated sole trades or family partnerships. Often spanning more than one generation, the flexibility of a partnership structure can be helpful where succession and retirement are under consideration.

As in any family situation, disagreements can arise and with valuable assets built up over many years at stake, the ramifications of a partnership dispute can be very serious. In these circumstances, it is vital that ownership of the assets is clear to all concerned. Many farming partnership businesses occupy land and buildings owned by one or more of the partners. However, for sound capital tax planning reasons it may be beneficial for such assets to be included on the partnership balance sheet. If a partner is to leave the business following a dispute, it is important that he or she understands the extent of their partnership interest, how much it is worth and how they may be compensated on leaving the partnership.

As in the Ham v Ham case, the partnership accounts may provide important evidence of what land and buildings belong to the partnership, while the partnership agreement - if there is one - should explain the partners’ intentions. To minimise the financial disruption caused by a partnership dispute it is vital that the partners, their accountants and legal advisers work together to ensure they know and understand the intentions of the partners and the ownership of all assets belonging to and used by the partnership business. Expensive litigation will be of no benefit to the business at all.

# Challenge of Diversification

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If you are thinking of diversifying by adding new business activities to traditional farming, then be warned because diversification is not always a guaranteed boost to your business and can be a complex process. It can also be very rewarding.

As many farmers can attest, agricultural diversification may be driven by various factors ranging from technological developments to simply answering consumer demand. If you are mulling over the temptation or wondering whether to add another string to your bow, then there are some important questions to be answered.

The first is quite simple - is it right for you and your current farm?

Why do you want to diversify – are you looking to the next generation or are profits falling?

Are current or impending risks in markets and prices, in crop and livestock management practices or land degradation through drought or flood, not providing income to the farm?

Do you have time, staff, land or buildings available in addition to your core farm business activities?

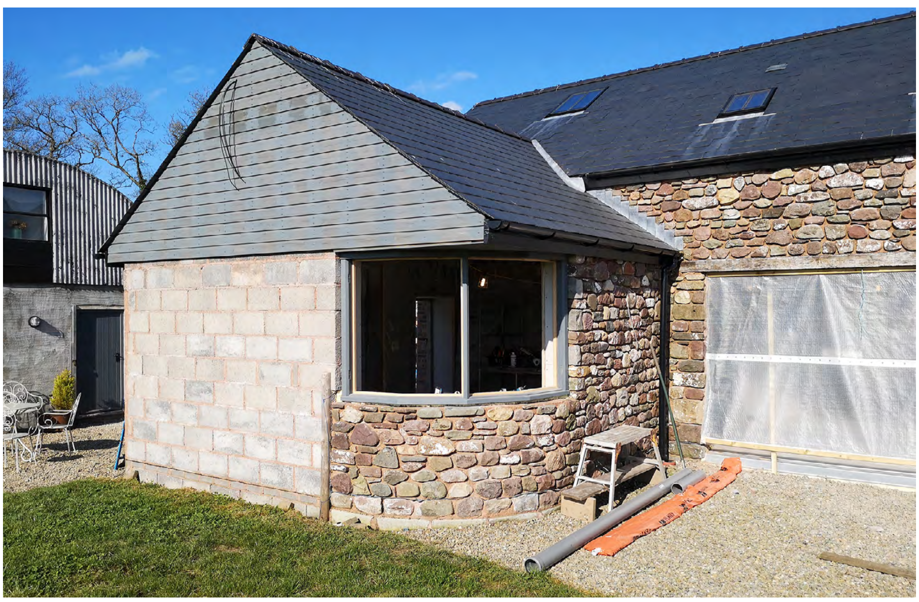
Will you have the skills to run a 'new' business within the usual farm activities?

A sensible opening step is to seek independent advice from business consultants, local government planners, your accountant and your bank. They can all help with analysis and advice on diversification to help you decide if it's the right step.

Then there's the money: set-up costs including legal fees, price of any finance, possible profits and a business plan with a cash flow forecast. Inevitable marketing costs – even the social media platforms come with a price tag. Are there any grants available?

Have you considered the tax implications to VAT, Inheritance Tax or Capital Gains Tax?

As I wrote at the beginning, diversification can be a complex business. Our advice is to take a considered approach and use all resources and advice available.



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