



## Never Ending Change...



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We all live in a world in which the only constant is change; after 93 years Whiting & Partners has morphed into Whitings LLP. Although there is a change in name and in branding you should discover that the things that matter are constant. Partners and staff remain and will continue to provide the service developed over nearly a century. Computers may have replaced quill pens but client care remains the priority.

I recently took part in the virtual Farming Conference organised by the Institute of Chartered Accountants in England and Wales in which change and how to achieve and survive it could be taken as the theme. The key ingredient is information. Our own

Farming Group meeting shortly after also reflected on this theme. Indeed, we started with a change as for only the second time we were addressed by an external speaker from a leading independent grain and oilseeds marketing consultancy, ODA. For more details, see page 4.

Also, on the following pages is a brief update on farm subsidies. The opportunities for corporate reorganisations are considered. Some of the practicalities arising on the death of a farmer are addressed and, in this context, the value of a tenancy and Inheritance Tax Reliefs have relevance.

At a time when farming may seem threatened by change it must be remembered that as well as threats change brings opportunity. It is not change which is dangerous but failure to address it. To quote a sound-bite from a speaker at the ICAEW conference, a farmer, 'manage change before it manages you'.

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We hear that a combination of luck and information are keys to farming success.

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## Not Just Any Old Relief



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Recent tax legislation allows assets passing on death to be received by beneficiaries at market value at the date of death. This gives a tax-free uplift for the purposes of Capital Gains Tax (CGT) and means that assets can be sold CGT free. This has been particularly attractive because many assets will have been inherited without an Inheritance Tax (IHT) liability by reason of Agricultural Property Relief, Business Property Relief and the nil rate band.

If recommendations put forward by the Office of Tax Simplification (OTS) are adopted, then this favourable treatment may come to an end. It's proposed that where IHT reliefs apply re-basing for CGT should not happen.

In another of its reviews, the OTS was asked to look at reducing areas of complexity that affected CGT for companies rather than individuals. This seemed a clear pointer towards the removal of indexation relief for companies. Perhaps bizarrely, rather than following what seemed a preordained path, its recommendations instead addressed the reintroduction of indexation relief for individuals and the re-basing of values to a more recent date, perhaps the year 2000.

The recommendations did include an assessment that the differential between rates of tax for income and capital were distorting the behaviour of taxpayers as they attempted to arrange their affairs to minimise their tax liabilities.

Currently, we enjoy generous Capital Tax Reliefs with Holdover Relief being available for gifts of business assets and, as referred to above, APR and BPR applying to the transfer of many assets. The tone set by the OTS and a widening ripple of suspicion that tax might become a heavier burden may lead to thoughts of the early transfer of assets, regardless that re-basing for CGT will not occur on lifetime gifts.

## Ease Succession Headaches



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When a farming business is handed down to the next generation tensions between family members may arise if they have diverse views of how the business should be run, or if some members are actively involved in the farming whereas others have limited practical involvement.

If you are planning to pass the family farm on to the next generation it may be worth considering practical steps to ease the transition and ensure that the relationship between siblings or cousins is completely amicable.

A partnership agreement that all new partners need to sign up to or, if the business is run as a limited company, a shareholders' agreement, may prevent any disputes in the future.

If the business has distinct areas of farmland or diverse activities such as holiday lettings and other rental income, it may be worth considering a reorganisation before the business is passed on to the next generation. For example, if the farming business is run through a limited company, a number of subsidiary companies can be set up and distinct parcels of land or trades can be transferred to those subsidiaries. This can be achieved without any tax consequences for either the companies or the shareholders. Using different classes of shares in the holding company to reflect ultimate ownership of each separate

subsidiary company, will then make it possible for each family member to have complete control of the trade and assets of their respective subsidiary and choose their own remuneration and dividend strategies

Alternatively, the businesses held within a farming company can be separated into distinct companies owned by separate shareholders by way of a formal demerger. This too can be achieved in a tax-efficient way.

Complications which can arise from extended ownership of the business can be avoided through these measures. Should you want to discuss the options available, please contact us.

## AHA Tenancy Values



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In a nutshell, Farm Business Tenancy legislation applies to all tenancies created since September 1, 1995: FBTs, as they are known, can typically be terminated on 12-months' notice; they carry no succession rights. Prior to September 1995, tenancies fell under the 1986 Agricultural Holdings Act (AHA) and have lifetime security of tenure. Those granted before July 12, 1984, carry statutory succession rights on death or retirement.

There are further complications: A company tenancy can continue in perpetuity as a company never dies, although specified circumstances give the landlord the right to apply for possession. One example - where the land is required for other than agriculture and planning permission is granted. A tribunal will usually not agree to a Notice-to-Quit if the tenant has complied with his obligations.

A tenant holding an AHA tenancy benefits from a valuable asset giving security of occupation and usually the right to compensation upon termination. Valuation is the domain of professional valuers but a rule-of-thumb suggests the value of an AHA Tenancy is 50% of the difference between the vacant possession value and the freehold value subject to the tenancy

Existence of AHA Tenancies in family farms can create headaches for parents

attempting to equalise value between their children. Land subject to an AHA tenancy will be depressed in value compared to land farmed in-hand or subject to FBTs.

Tax legislation dictates that Tenancies are considered and valued at open market value, notably in transactions between family members and other connected persons. The death of a shareholder causes the shares to be valued in his estate and tenancy value has to be included. Agricultural Property Relief can provide some benefit but the tax implications should not be overlooked, similarly tenancies have to be considered on a reorganisation. Both of these scenarios can have significant tax consequences if not addressed in advance.

To consider your specific circumstances talk to your usual Whitings LLP contact.

## 'Old Farmers Never Die, they just get Ploughed Under...'



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The saying in my headline has appeared many times including on farmers' headstones! However, in all seriousness, the death of a farmer clearly impacts on the farming business. Those left behind, whether as executors, business partners or fellow directors, have to pick up the reins but they may not, in every case, have the expertise to manage a farm.

Relevant authorities must be notified of the death. These include both the Department for Work and Pensions, assuming State Pension or other benefits are received, HM Revenue & Customs and the bank, to name just a few.

Different business structures produce assorted issues. If the deceased was a Sole Trader and the bank account is in his name alone, then it will be frozen pending probate being obtained. The freezing of a partnership's bank account may depend on whether the partnership agreement stipulates that the partnership continues and the bank accepts this.

For a limited company the death of any farming director or shareholder in theory has no impact on either the Company or the trade. A Shareholders' Agreement may determine what and how matters proceed. Similarly, a Partnership Agreement may give options as to future arrangements.

For VAT, death may mean deregistration followed by re-registration. The executor may apply to HMRC to temporarily carry on the business until it is transferred to beneficiaries or sold on as a going concern.

How jointly owned properties and land are held is important. Joint tenants own

the property equally and it passes to the survivors; tenants-in-common each own a specified share and can dispose of their interest as they wish.

Where the estate passes, in total, to the deceased's spouse or civil partner or where it's less than £325,000 there is normally no Inheritance Tax liability. On larger estates reliefs like Agricultural Property Relief and Business Property Relief come into consideration.

Matters can be complicated and, rather than leave others with problems, Whitings LLP advice to any farmer is to make plans using all the professional advice available and don't rely on the 'plough'.





## News on Subsidies



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As Basic Farm Payments (BPS) start to reduce, DEFRA has released some vital information about the new Environmental Land Management Scheme (ELMS) and other 'bridging' funds.

Understandably most of the information is focused around the Sustainable Farming Incentive (SFI) tranche of the new ELMS as this will have the biggest impact for the majority of farmers and landowners.

So, what's the news? I hear you cry.

The SFI will be split into different standards. These will consist of groups at three different levels – Introductory, Intermediate and Advanced. So far DEFRA has announced the following standards which will go 'live' when the scheme officially opens to current BPS claimants in 2022 with the following indicative payment rates which are due to be confirmed later this year:

- Arable and horticultural soils - £26, £41, £60 per hectare (depending on level)
- Improved grassland soils - £26, £44, £70 per hectare (depending on level)
- Moorland and rough grazing – no current payment rate released
- Annual health and welfare review - £269 – £775 (depending on animal and testing required)

When we consider that the BPS receipt for the 2020 scheme year was £162 per hectare for an arable farmer, it's clear that more than one of these criteria would have to be met in order to achieve a payment on the same level as the BPS. That is before considering any additional input costs associated with these new schemes.

To help bridge the funding gap, and to maintain the government's policy of re-directing all BPS reductions into farming, DEFRA has also announced further funding schemes and grants including a Slurry Investment Scheme, Tree Health Pilot, Future Farming Resilience Fund and a New Entrant Support Scheme.



## Informed Grain Marketing

The message which I took from a recent Farming Conference, produced by the Institute of Chartered Accountants in England and Wales (ICAEW), was that any farming business would only prosper through luck or having good information. This may be financial, performance focused or marketing biased.

ODA is an independent grain and oilseeds marketing consultancy which provides a training, intelligence and advisory service to farmers and aims to minimise risk through information and to ensure that better than average returns are achieved from sales. Our Farming Group was treated to a whistle-stop tour of both international commodity prices and production prospects which concluded with an assessment of the current trading situation and its future prospects. Clearly UK prices are largely driven by international factors.

Inevitably, there are limitations on the conclusions presented as situations, like prices, can change from day-to-day. This is doubtless why the service which ODA presents to its customers includes a weekly email update report reviewing and updating the prospects for each product together with considered and justified recommendations as to whether or not to sell and, if so, the proportion. These are backed by periodic meetings.

This service clearly has a price but if the result is that sales income improves then this can be an investment rather than a cost. If you would like further information or an introduction to ODA please speak to us.

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