



Bulletin

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for practical solutions



RETURN TO THE LAND

We are all aware that we live in uncertain times, in the last twelve months we have become used to headlines about our commercial environment which we just would not have thought credible a few years ago.

Over the last twenty years there has been an exodus of talented farmers children who have gone off to the city to seek their fortunes taking with them an image of agriculture of grinding hard work, little financial reward and minimal opportunities for growth.

But perhaps that should start to change as one of the benefits of this financial meltdown is that the next generation will take a harder look at their parent's lifestyles and perhaps be not so quick as to cast doubt on agriculture as a career choice.

Agriculture badly needs those talented children to choose agriculture as a career.

I understand that stockbrokers are now of the opinion that the worst is over, and we are about to bounce right back as we start the next bull market.

But I thought there were some fundamental issues in the city which cannot be repaired overnight and I would not be at all surprised if we're now entering a period of false dawns.

BUT, at the same time I believe there are some wonderful opportunities in Agriculture, where the fundamentals are right for a sustained period of growth.

So let us welcome back the next generation, get them properly trained and develop the next phase of the food industry in this country, through local produce, reducing food miles, exciting product developments, expanding farm shops, with farmers getting back in touch with their customer base, all this provides ample opportunity for the next generation to make their mark.

So now more than ever, we want to get those succession plans right. Let's make it possible for our youngsters to develop some exciting new food businesses.

- Bill Ballard

In this edition

- Farmhouses Update
- Grazing Agreement and Business Property Relief
- Passing Farm Cottages to the Next Generation
- Negligible Value Claims
- Fixed or Variable Loans
- Tax Credits
- Annual Investment Allowance and First Year Allowance

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Farmhouses Update



For many years farmers have benefited from generous tax reliefs on their home.

In the past the Revenue accepted without question claims of 1/3 farmhouse costs against business profits, the gain on the sale of the farmhouse has been exempt from capital gains tax and the farmhouse has qualified for 100% agricultural property relief for inheritance tax.

The Revenue is increasing its challenges on these reliefs.

They look for the proportion of farmhouse costs claimed against profits to be attributable to the business use of the farmhouse and the capital gains tax exemption is disallowed to the extent that part of the farmhouse, such as an office, has had exclusive business use.

However the Revenue attacks remain greatest against claims for agricultural property relief.

Farmhouses can qualify for 100% agricultural property relief but there are a number of tests that the Revenue applies including:-

1. The 'elephant test' – would a member of the public recognise the house as a farmhouse or consider it a large country manor? The farmhouse must be of a character appropriate to the land owned and farmed by the person living there. Care is needed here not to separate the ownership of the land from ownership of the farmhouse.
2. The 'dirty fingernail test' – is the farmhouse occupied by the day to day farmer? This causes problems when the working farmer retires but continues to live in the farmhouse.

Other points to watch out for are

The reduction in the rate of relief to 50% where a landlord lets the farmhouse and land under a pre 1.9.1995 tenancy agreement and does not have the right to vacant possession within 12 months. Some land and buildings let under pre 1.9.1995 tenancies will still qualify for the higher rate of 100% relief under transitional rules or by concession but if you let land under an old tenancy agreement you should confirm your entitlement to agricultural property relief. You can then make changes to secure the higher rate of relief.

Separating ownership of the farmhouse from the land by holding the land through a limited company. While you control the company, own more than 50% of the voting rights, you are treated as occupying the land personally for agricultural property relief and can still claim relief for the farmhouse. This is not the case if you hold 50% or less of the voting rights and relief for the farmhouse would be lost.

Agricultural Property relief is still available on farmhouses but thought needs to be given to the ownership of land by the family and the farming duties of the family member who lives in the farmhouse.

Grazing Agreement and Business Property Relief

Farmers can qualify for 100% agricultural property relief against the agricultural property value of land and property. To qualify the land must have been occupied for the purposes of agriculture for the requisite period (2 years prior to the date of death where owner occupied otherwise 7 years).



Where the land has development value a claim for business property relief can cover the difference between the open market value and the agricultural value but the conditions are more stringent. Now the land must be both owned by the farmer and occupied by him for a trading purpose.

This is fine while the farmer still actively farms the land but what happens when the land is let to a third party on a grazing agreement?

Well the Revenue's latest view is that the farmer is not actively farming the land and business property relief is not available against any development value. A bit of a blow for the executors of Eileen McLean where the market value of her land was £5.8 million but the agricultural value was only £165,000.

You could consider the use of partnerships as an alternative to traditional grazing agreements to get round this.



Passing Farm Cottages to the Next Generation

Farm cottages do not qualify for inheritance tax reliefs where they are let as residential accommodation.

You may have considered giving farm cottages to your children to avoid inheritance tax charges on your estate but been prevented from doing this because of the capital gains tax cost. When you give the farm cottage to your children you are treated as if you had sold the cottage at its open market value and this can give rise to a substantial tax charge.

With business assets you can elect to hold over the gain but let farm cottages do not qualify as business assets.

There is still a way to give the cottage to your children and still hold over the capital gain – make use of a trust.

A transfer to a trust is a chargeable lifetime transfer for inheritance tax which means that lifetime inheritance tax is potentially due when the gift is made. This enables you to hold over the gain but no inheritance tax will be due if the gift is covered by your nil rate inheritance tax band (currently £325,000).

Once the farm cottage is in the trust and a suitable interval has elapsed the cottage can be transferred out of the trust into your children's own hands. The cottage has ended up in the hands of your children but your capital gain has been held over.

Negligible Value Claims

The owner of an asset which has become of negligible value may claim to have the asset treated as though it had been sold and immediately reacquired for the amount specified in the claim. The claim will result in a loss for Capital Gains Tax purposes and will be of use only where there are chargeable gains on other disposals.

There is no requirement to claim within a specified time of the asset having become of negligible value.

Claims will include assets such as shares, buildings, goodwill, and quota. In particular milk quota.

The date of the deemed disposal and reacquisition is the date of the claim. Any resulting loss thus arises at the date of the claim allowing a degree of retrospection.

Fixed or Variable Loans

'With Base Rate currently 0.5% is a fixed or variable loan preferable? To fix for 3/5/10/20 years currently the premium above Base would be between 2.2% and 3.87%. If servicing a loan is tight financially, fixing gives certainty but variable rate loans are more flexible if you want to pay off lump sums or repay early without penalty.

On deposits, interest rates seen of 0.1%. but 2% to 3.5% is available for instant access/terms up to 12 months respectively, with strong institutions.'

TAX CREDITS

You do not have to have a child to claim Tax Credit. If your income for tax credit purposes is less than £13,500 for an individual or £18,000 for a couple, you may be entitled to working tax credit. If you have a child you may be entitled to Child Tax Credit. It is important to have a protective claim in place which can only be backdated 3 months. This is particularly worth thinking about if you are in business and are considering a capital investment. Income can be dramatically reduced as there is currently a 100% writing down allowance on the first £50,000 of some capital expenses which can have an implication for tax credits.

Annual Investment Allowance and First Year Allowance

Since 1 April 2008 (corporation tax) or 6 April 2008 (income tax) most businesses, regardless of size, have been able to claim the new Annual Investment Allowance (AIA) on the first £50,000 spent on plant or machinery (subject to certain exclusions). Where businesses spend more than £50,000 in any chargeable period, any additional expenditure will be dealt with in the normal capital allowances regime and will usually qualify for a 20% writing down allowance.

However, following the budget a new, temporary First Year Allowance (FYA) for expenditure on general plant and machinery has been introduced. Businesses incurring expenditure in excess of the AIA cap that would normally be allocated to the main pool and qualify for a 20 per cent WDA in the 12 month period beginning on 1 April 2009 and 6 April 2009 will now be able to claim a 40% FYA instead.

As with previous and existing FYA's, there are exceptions where the expenditure will not qualify and it is therefore important to ensure that the allowance is correctly claimed

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