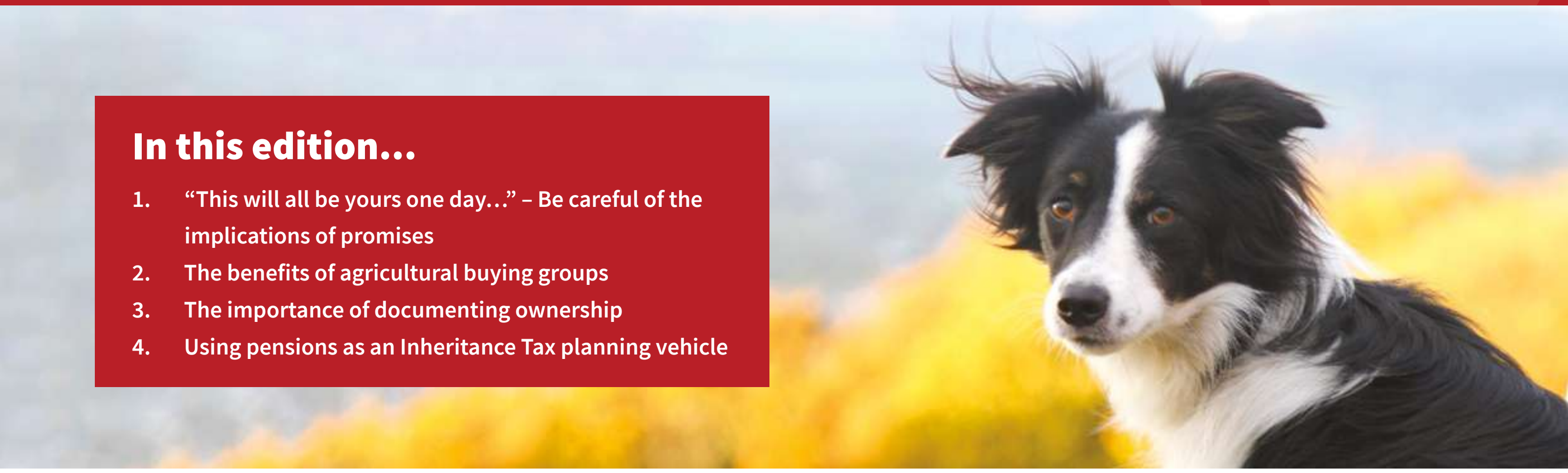
Ellacotts

AGRICULTURAL NEWSLETTER

Autumn 2018 edition



In this edition...

Introduction

At time of writing, after a very tough growing season, many farmers have completed the earliest and easiest harvest in living memory - with average yields, good quality and little need to turn the dryer on. Heavier land inevitably performed through the drought better, whether down to arable or grass. It has been a tough summer for those with grazing stock, or a hay barn or silage clamp to fill.

We look forward to updating you in our winter edition as we receive 2018 harvest results into our clients' accounts, crop price movements, and the various tax planning challenges we solve. We also hope for some more clarity on the effects of Brexit.

As we head into autumn, our team are discussing with clients how to comply with Making Tax Digital (MTD) coming into effect on 1 April 2019. All businesses with a turnover over the VAT threshold (currently £85,000) will have to keep digital VAT bookkeeping records and submit to HM Revenue & Customs (HMRC) digitally. Please see our Making Tax Digital factsheet for more information on what you need to do.

Making Tax Digital is definitely something to plan for over the autumn and winter, particularly if you will be lambing in March and April.

"This will all be yours one day..." – Be careful of the implications of promises

Succession planning is never easy and if not properly considered and discussed with all involved, disputes over inheritance expectations can arise, with potentially serious implications for the family, property and business.

Recent years have seen several cases resulting in sons or daughters making a claim on a farm, where farms have been "promised" but then never received. A claim could be made either on the parent's death or where minds are changed in lifetime such as in Davies v Davies (2016). This case led to parents paying £500,000 to their daughter to compensate her for her loss suffered.

The latest case of Gee v Gee & Anor (11 June 2018) concerned a farm in Oxfordshire. A father and one of his sons disputed the ownership of the family farm. The son had worked on the farm for around 40 years and claimed that his father had repeatedly promised that he would inherit the "lion's share" of the farm. The son had spent his working life on the farm, working long hours for low wages. After a family feud, the father transferred the farm to one of his other sons.

The court found that promises had been made to the son about him inheriting the farm, which the son had relied upon to his detriment. The son was awarded a 52% share of the family company and a 46% share of the farm land.

Claims of this type are known as a proprietary estoppel claims. The key elements of such claims are as follows:

- A representation or an assurance has been made of sufficient clarity, e.g. making a promise that one day your child will inherit the farm
- Reliance on it by the claimant, e.g. the child spends their working life on the farm for a low wage
- A loss of some kind is suffered as a result of the promise being broken, e.g. the child does not inherit the farm as promised and has effectively forgone the chance of some other opportunity

Within the farming community it is customary for sons and daughters to work long hours on the family farm for little return, in the belief that one day they will inherit the farm. This makes the farming industry high risk for proprietary estoppel cases.

Inheritance Tax and succession planning go hand in hand. It is essential that you are clear about your intentions and open discussions are had with all involved. The Ellacotts team understand the challenges farming and land owning families face and regularly assist with these discussions. With proper structures in place a farming business can be passed down in a way which is both tax efficient and meets the wishes of all involved. Please do not hesitate to contact us if you wish to discuss succession planning for your family and business. We would be delighted to help.

The benefits of agricultural buying groups

The principle of a buying group is that farmers collaborate to get better deals on buying in bulk. Groups can work in different ways, but most are owned by the members and are not for profit organisations. While buying groups have to cover their costs, they are still able to pass considerable savings on to the members who are usually shareholders in the business.

Additionally, many of the agricultural stores and machinery dealers for spares and repairs will give buying groups a greater discount than individual farmers because they know they're going to get paid by the group.

Ouse and Cherwell (O&C), which is based in Brackley, South Northants is a local buying group. O&C members do not have to put everything through the group, it is up to the individual member how much or how often they use it. This means that members can keep their individual relationship with suppliers if they wish.

Geoff Snell, farmer and Vice Chairman of O&C explains why he is a member of the Buying Group:

"My father joined as a family partnership over 30 years ago, and after working away from the family farm, then coming back nearly twenty years ago, I see the significant benefits of belonging to O&C.

We feel reassured to know there are more sets of eyes looking at the figures, ensuring suppliers aren't charging us more than they should be on products. Plus, receiving the invoices from all suppliers along with a supporting statement makes bookkeeping and VAT reconciliation easier.

We reap the rewards of the office team supporting us with getting competitive prices on all major commodities including fuel, fertiliser, sprays, seed, feed and animal health. I estimate the direct savings we make per year on commodities on our 500 acres are over £2,000. This figure doesn't take into account the savings we make on utilities, fuel cards, insurance, building materials or bank fees. Unlike some buying groups O&C doesn't charge a levy on expenditure and only has a low monthly charge which gives us excellent value for money."

For more information, please visit ouseandcherwell.co.uk or speak to your usual Ellacotts contact.

The importance of documenting ownership

It is surprising how often property ownership isn't quite as the owners think it is. This risks arguments and unexpected outcomes, in terms of various taxes, and what can happen to ownership on a death.

Before we look at the importance of documenting ownerships, it is crucial to ensure that the difference between beneficial and legal ownership is understood. Legal ownership focusses on who is responsible for the property and who is the registered owner on the Land Registry. Beneficial ownership reflects who has the right to enjoy and benefit from the asset, whether in monetary or another form.

Taxation wise, we are concerned with the beneficial ownership. It is the person who has the right to the income or the proceeds of a sale who bears the tax liability, regardless of who legally owns the asset. Similarly, for Inheritance Tax purposes, the beneficial interest determines if an asset falls within the Death Estate. It is therefore vital that ownership is clearly documented, particularly whilst those with historical knowledge are here and able to share it.

There are various ways to show ownership of property. There are two key ways farming partnerships in particular can document ownership:

Partnership agreements

Partnership agreements are very useful. Without one, Section 33 of the Partnership Act 1980 automatically ceases the partnership on the death of a partner. Partnership agreements also outline the terms the partners are to abide by and what each partner is entitled to, in terms of income shares and capital shares. Where these differ, a clear Partnership Agreement is particularly important.

Partnership agreements can also document the legal and beneficial ownership of assets held within the partnership, predominantly where land and buildings are concerned. Plans of the areas involved can also be included to add further clarity. Who owns buildings attached to land often needs thought to avoid potential confusion or conflict.

Capital accounts

The beneficial owner of property used within the partnership is easily recorded in capital accounts within the annual accounts.

There are also key tax benefits of bringing farmland onto the balance sheet of a partnership. The most influential relief in deciding whether land is to be held on the balance sheet is Business Property Relief (BPR). Land held on the balance sheet should qualify for 100% relief whereas land held outside the partnership but used by the business will only qualify for 50% relief. BPR is particularly effective in protecting the value of land from Inheritance Tax (IHT) where the market value exceeds the agricultural value, for example due to development potential.

A clear partnership agreement, complemented by capital accounts in the annual accounts, will help you protect your assets from IHT and avoid potential litigation. Ellacotts can help ensure you are in the best position you can be. Get in touch today.

Using pensions as an Inheritance Tax planning vehicle

Many Inheritance Tax (IHT) planning strategies involve making significant payments or property transfers, to reduce the taxable estate. A trust is often used to retain control over the ultimate destination of assets and timing of benefits.

Another option is to use the tax advantages offered by contributions to registered pension schemes for others, with significant potential benefits:

- The estate of the donor reduces
- As contributions to a pension scheme are not usually lifetime transfers of value for the purposes of IHT, they are immediately excluded from the member's estate
- Contributions are not limited to £3,600 per annum if the child has earned income
- Basic rate relief at source from HMRC effectively increases the gift by 25%
- The recipient, not the contributor, may benefit from a reduction in their tax bill if they are a higher or additional rate payer - particularly valuable if they are affected by the Child Benefit or other high earner tax traps
- The fund enjoys tax advantaged growth – it suffers no Income Tax or Capital Gains Tax charges
- It can be used to relieve children and/or grandchildren of the need to fund their pension at a time when their resources may be stretched, but when the benefit of pension contributions could be greatest
- The recipient usually has no access to the gift until he/she attains normal minimum pension age which is currently 55
- Should the recipient die before age 75, tax-free death benefits may be payable from the pension pot

Example

The table below shows the effect of investing £1,000 per month and the value of the investment remaining in the investor's estate:

Surplus income per month	£1,000
Value (if invested) after 10 years *5% return net of charges, paid monthly in advance (source Prudential 10.8.18)*	£155,929
IHT payable on death (where no Nil Rate Band available)	£62,372
Net Value after IHT	£93,557

However, if £1,000 per month is paid into a pension, the fund receives an additional £250 top up from HMRC. The position then would be:

The recipient's tax position	Basic rate taxpayer	Higher rate taxpayer	Additional rate taxpayer
Accumulated pension fund after 10 years	£194,912	£194,912	£194,912
Tax saving for beneficiary in year of contribution	£0	£3,000	£3,750

Summary

- IHT saved for 'the parent' would be £62,372 assuming 40% IHT rate
- The accumulated value is greater due to the tax relief at source reclaimed by the pension provider
- Children with exposure to Income Tax at above basic rate tax will see a further tax saving.

The team at Ellacotts would be pleased to discuss how making pension contributions for a child or grandchild could form a valuable Income Tax and Inheritance Tax planning tool for your family.

Forthcoming events

Benchmarking seminar

This autumn, we will once again be hosting a Benchmarking seminar on Wednesday 28th November 2018 at our Kettering office.

We will reveal, amongst other things, our clients' 2017 harvest data and early observations of 2018 harvest data. We will also discuss possible tax planning opportunities due to the significant improvements on 2018 arable outputs. If you would like to attend, please contact Alex Taylor on 01536 646000 or alextaylor@ellacotts.co.uk.

The Oxford Farming Conference

On Thursday 3 January 2019 we are joining some of the most influential speakers from the farming community and sponsoring a debate at the Oxford Union as part of the Oxford Farming Conference 2019.

Meet some of our team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