Ellacotts

AGRICULTURAL NEWSLETTER

Spring 2021 edition

In this edition...

1. Splitting up the farm
2. Gifting developable barns
3. Self Employed Income Support Scheme (SEISS)
4. What does the 2021 Budget mean for farmers?

Splitting up the farm

One of the most difficult decisions faced by many farmers arises when the family diverges in some way, be it geographically after purchasing multiple farms, operationally or more commonly when the family tree has diverged. Splitting the business often results in two very strong operations that benefit from one another's support and close working.

The process

Valuation and mediation

The first step is to review all of the farming assets and to obtain a professional valuation. The valuation will then be discussed in detail between the owners with the aim of achieving a fair outcome for all. This part is difficult and generally requires an impartial advisor, alongside tax and legal advice, to mediate the discussion.

Sometimes the assets on both sides of a natural split are fair, for example Farm A and Farm B, geographically split with their own farmhouse, are worth approximately the same and have roughly the same farmed areas or trading value. All sides need to come out the other side feeling that they had a good deal, or at least no worse than the other side.

Taxation

Whether your business is a partnership or a limited company there are mechanisms, tax reliefs and HM Revenue & Customs clearances that can minimise any tax cost.

Generally the parties exchange interests in assets of equal value. For example if two fields are owned 50% each by two individuals, they will want to achieve a situation where both fully own one field.

The process of giving up assets is a disposal for Capital Gains Tax purposes. Reliefs are available to minimise the Capital Gains Tax due where two joint owners swap ownership to achieve sole ownership of parts of the original shared farm. Where more than two joint owners are involved, the tax system is less straightforward.

Practical considerations

- During the valuation and mediation stage, there may be specific assets that have development potential and 'hope value'. An overage clause may be appropriate to share this potential gain. One side may ask for a right of first refusal if the "other" land is sold.
- Crops, livestock and machinery also need to be valued and factored into the negotiations.
- One of the farmers will need to set up a new business, needing a new bank account, new VAT registration, new payroll, new accounting system, herd records, account with the rpa etc. New contracts may need to be put in place for milk, etc.

- New buildings may be needed, or an agreement to share in the short term (e.g. grain storage). Similarly farm equipment and labour may need to be shared.
- Do you have the necessary skills on your "side"? Training, support and mentoring may be needed.
- The process can span a number of years depending on the complexity of the farm. It can be expensive!
- Family relationships may become strained, before hopefully improving under the new regime.
- Careful business plans and cashflow projections are needed. Can both businesses thrive separately?
- What will happen to debt? Is one side prepared to take more debt with more assets to balance? Or does something need to be sold to clear debt? Security given to lenders will likely need to be adjusted.
- What happens to any tenancies? Are reviews and changes needed?
- The Income Tax, Capital Gains Tax and Inheritance Tax position of each new business, its owners, and the various assets need to be considered. Inheritance Tax reliefs, particularly Agricultural Property Relief and Business Property Relief, need to be considered carefully. Buildings and farmhouses need careful thought.

This list is far from exhaustive. Dividing any farm is unique and complex. As leading farming and rural accountants we have a breadth of experience to draw on, as we work with the chosen solicitor, valuer and banker to achieve the best outcome for all. We would welcome the opportunity to talk to you about your specific circumstances.

Please speak to your usual Ellacotts contact or contact Wayne Glenton on wglenton@ellacotts.co.uk or 01536 646000.

Gifting developable barns

Class Q permitted development has been with us since 2014 and allows certain buildings to change from agricultural to residential use. These buildings are often gifted within the family to provide a home, or to reduce the Inheritance Tax exposure of particularly older owners. We do not offer planning advice, but we are often asked to consider the tax implications.

The current position

Generally, we start with a barn which was last used in agriculture, but has become redundant. Perhaps it is worth £20,000 for agricultural purposes, and £50,000 on the open market as it stands. With planning permission, perhaps it is would be valued at £150,000.

Currently, it will not easily qualify for Inheritance Tax Agricultural Property Relief as it is not used for agriculture. The modest value means this is not a concern. Gifting the barn as it stands would likely require reporting for Capital Gains Tax purposes as a gift of property worth £50,000. If the barn is no longer in farm use, HM Revenue & Customs could potentially challenge a claim for Capital Gains Tax Holdover Relief, so Capital Gains Tax could be charged on the gift. However, the gift would remove the barn from the donor's potential Inheritance Tax estate. Any Capital Gains Tax due on the barn would be charged at a maximum of 20%, and payable by the 31 January after the tax year (i.e. the normal tax due date).

What if works have started?

If planning permission has been granted, and our example barn is worth £150,000, the Inheritance Tax and Capital Gains Tax exposure has increased.

However, if works have actively started, beyond just applying for planning permission, the property being gifted is treated as residential property. Any Capital Gains Tax due on the gift will be charged at 28%, and due within 30 days of the gift completing. I.e. the tax cost has been significantly increased, and speeded up!

What does the new owner hope to do with the barn?

Does the recipient want to develop the barn themselves? Can they afford it? The property title needs to stand alone in terms of access etc. so that a mortgage can be taken out to fund the works.

If the recipient applies for planning permission and sells the barn on, HM Revenue & Customs may look to charge Income Tax and National Insurance Contributions on a profit made from a trade of property development, rather than seeing it as a Capital Gains Tax matter.

VAT and property is a complex area requiring specific consideration. Different rules apply if the gift was proposed to be to a trust.

Do please call our team if this triggers any thoughts: either your usual Ellacotts contact, or Helen King on hking@ellacotts.co.uk or 01295 250401.

Self Employed Income Support Scheme (SEISS)

Many businesses were impacted by the Coronavirus (COVID-19) pandemic and as a result claimed the Self-employment Income Support Scheme (SEISS) grant offered by the Government. This was available for those with profits of less than £50,000 and whose business suffered a new or continued impact from the Coronavirus, and as a result believed that they would see a reduction in profits. The grant was equal to 80% of profits up to a maximum of £2,500 per month for 3 months (£7,500 in total for each quarter/claim made).

Where claims have been made, the income received in respect of the grant will form part of taxable income and tax will therefore likely be payable on these amounts for the tax year ended 5 April 2021. SEISS counts as earned income when considering making pension contributions, and if related to a farming business, it counts as farming income when considering the availability of farmer's averaging relief.

In a partnership, depending on the partners' other income, some partners may be able to claim SEISS whilst others cannot. The accounting and tax treatment of the SEISS grant will need to be considered alongside any written Partnership Agreement.

SEISS and farmer's averaging relief

Farmer's averaging relief averages profits of the last two or five years, resulting in tax savings and, in some cases, repayments from HM Revenue & Customs (HMRC) of tax paid in earlier years.

We have historically seen farmer's averaging relief achieve tax savings of anything from a few hundred pounds, up to tens of thousands across a farming family. The largest savings arise when we are able to remove clients from the Higher Rate tax bracket and/or retrieve personal allowance that would have otherwise been lost, for those with total income over £100,000.

Ellacotts review the availability and benefit of making a claim for Farmers averaging relief when preparing all non-company farming tax returns, and will automatically calculate and include the tax saving where possible. SEISS will be included in these calculations and potentially impact on tax due.

If you have claimed SEISS in error

You can voluntarily pay back some or all of the grant that has been received and notify HMRC of this when submitting your 2020/21 tax return. Penalties may arise if HMRC deem the claim to have been made in error and not repaid.

Further information

Further details on the SEISS grant can be found on our website in the dedicated Coronavirus section, which is kept up to date with the latest information regarding support available.

Contact your usual Ellacotts contact or Andrea Thornton on athornton@ellacotts.co.uk or 01295 250401 for more information on this.

What does the 2021 Budget mean for farmers?

Personal Taxation – 2021/22

- **Income Tax** – personal allowance will increase from £12,500 to £12,570 and the higher rate band will increase from £50,000 to £50,270. These rates will remain frozen until 2026.
- **National Insurance** – Primary Threshold and Lower Earnings Limit remain at £9,568 and the Secondary Threshold remains at £8,840.
- **Capital Gains Tax** – annual exemption of £12,300 will remain at this level until 2026.
- **Pensions** –the annual allowance taper threshold of £200,000, the level against which adjusted income is tested of £240,000 and the minimum tapered pension contribution of £4,000 for an adjusted income level of £312,000 and above remain the same until 2026.
- **Inheritance Tax** – nil rate bands remain the same until 2026.
- **Temporary Stamp Duty Land Tax (SDLT) cut** – The SDLT nil rate band remains at £500,000 until 30 June 2021 and reduces to £250,000 until 30 September 2021 returning back to the original £125,000 from 1 October 2021.

Business Taxation – 2021/22

- **Extended loss carry back** – the trading loss carry-back rule is temporarily extended from the existing one year to three years. This will be available for both incorporated and unincorporated businesses. Relief of up to £2 million of losses in each of 2020-21 and 2021-22 could be available.
- **Super Deduction** – From 1 April 2021 until 31 March 2023, companies investing in qualifying new plant and machinery assets will benefit from a 130% first-year capital allowance. This upfront super-deduction will allow companies to cut their tax bill by up to 25p for every £1 they invest, ensuring the UK capital allowances regime is amongst the world's most competitive. Investing companies will also benefit from a 50% first-year allowance for qualifying special rate (including long life) assets.
- **Corporation Tax** – The rate of Corporation Tax remains at 19% until 2023. However, the rate of Corporation Tax will increase from April 2023 to 25% on profits over £250,000. The rate for small profits under £50,000 will remain at 19% and there will be relief for businesses with profits under £250,000 so that they pay less than the main rate. In line with the increase in the main rate, the Diverted Profits Tax rate will rise to 31% from April 2023 so that it remains an effective deterrent against diverting profits out of the UK.
- **IR35** – Off-payroll working rules that apply to the public sector will apply to the private sector large and medium-sized businesses from April 2021.

Ellacotts Top Ten Tax Tips

1. Despite the rumours, Capital Gains Tax rates remain the same and Business Asset Disposal Relief (BADR) (formerly known as Entrepreneurs' Relief) remains and continues to reduce the rate to 10% for qualifying gains up to £1 million on trading asset disposals. Business owners should **check whether they qualify for BADR**.

2. Stamp Duty Land Tax holiday extended further. **Consider accelerating that property purchase whilst rates remain low**.

3. Loss relief extended to three years increasing the **opportunity to accelerate a tax refund**. We recommend businesses revisit their tax computations to maximise loss relief early.

4. Super deduction of 130% first year allowance on qualifying plant and machinery bought by companies. Tax payback for capital-intensive businesses (e.g. farmers, hauliers & manufacturers). **Timing of planned capital expenditure is crucial to ensure tax relief falls into the best tax year**.

5. The Corporation Tax rate remains at 19% until 2023 and will remain at 19% for taxable profits of £50,000 or less. Some partnerships and sole traders could **consider incorporating into a limited company** to benefit from lower tax rates. However, beware of the new off payroll working rules that apply to the public sector. There are other factors to consider when considering incorporation, notably whether or not profits would be retained in the company, or withdrawn by the shareholders or directors. We would be pleased to discuss incorporation with you, and regularly review the merits of a corporate structure for our existing clients.

6. For owner-managed companies with profits in excess of £50,000, the dividend route may no longer be the most tax efficient route to extract profits from your company. Owner-managed companies should **recalculate their remuneration strategy**.

7. With a personal allowance of £12,570 and the basic rate band of £37,700 the 40% tax rate applies to chargeable annual income exceeding £50,270. Family businesses should therefore **consider how each member withdraws profits from the business** to maximise the use of the tax allowances and lower rate bands.

8. A 60% Income Tax rate applies to those whose income falls between £100,000 and £125,140 in 2020/21. **Anyone who believes their personal income may exceed £100,000 per annum should consider whether they can claim tax relief (e.g. pension payments) or share income with other members of the family**. We can advise you about your pension planning.

9. The annual limit for Individual Savings Accounts (ISAs) remains at £20,000. ISAs are very tax-efficient and **make it easier to make investments that save Income Tax**. Please ask for advice on this.

10. The Inheritance Tax nil rate bands remain the same, at £325,000 to £500,000 (for family homes) per individual (£1m per couple) until 2026. This encourages longer-term planning to start at an earlier age and the use of family trusts or companies to protect assets for younger beneficiaries. **So what's your family succession strategy?**

Expansion of the Ellacotts Agriculture team

We are delighted and excited to welcome two new colleagues into the team. Wayne Glenton joins the team in Kettering as a Director, having previously led the Agriculture department of a regional firm covering the East of England. Neil Thorn joins as a Manager in our Agriculture & Property team in Banbury. Neil has broad experience in advising individuals on various business and taxation matters. Well-deserved internal promotions see Amy Moulton, Andrea Thornton and Katie Morton progress in their Ellacotts careers. The team is now led by four partners, with over forty-five dedicated rural professionals and is a market leader in the sector.

John Thame, Senior Partner, said: “We are very excited to welcome both Wayne and Neil to the Agriculture and Property team. These new appointments along with the recent, significant promotions will be an invaluable resource for our growing team and the firm as a whole, further allowing us to expand the range of services and solutions we are able to offer our valued farming clients.”

Changes to our paper newsletters

In an effort to reduce our paper consumption and use more sustainable methods of communicating with our clients, we will be reducing the number of paper newsletters we send out. The next paper version of this newsletter will be sent in the autumn. However, we will be sending regular digital newsletters via email. If you would like to receive these emails, please sign up on our website: **www.ellacotts.co.uk/news/newsletters/**

Meet some of our team

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