AUTUMN/WINTER 2016

LIFE on the FARM

DEDICATED NEWS AND SUPPORT FOR FARMING FAMILY BUSINESSES FROM **ENSORS CHARTERED ACCOUNTANTS**

Meet the Barleymow family

Every issue we will be following the fortunes of the Barleymow family and the issues they face as a family farming business.

George

Henry *m* Mary

John *m* Sarah

David *m* Carolyn

Mark

Emma

Barleymow Farm – 2500 acres.

A farming partnership consisting of Grandfather (George), father and wife (Henry and Mary) and son (David).

500 acres owned by Henry.

250 acres owned by John and his wife Sarah and let to the partnership under AHA tenancy.

Farmland bought by Henry and John with inheritance from Great Uncle Albert.

100 acres owned by George and let under AHA.

One principle farmhouse occupied by George.

Two further cottages occupied by Henry, Mary and David and his family.

EPISODE 4

INHERITANCE TAX & TENANTED LAND

George is having a cuppa at the farmhouse kitchen when David walks in and throws down his notebook...

George: *Ah, was just thinking about you... how did the meeting go with the accountants at Ensors?*

David (pours himself a cup): *Good and bad news grandad.*

George: *Here we go...*

David: *The good news is our accounts are looking quite healthy in the circumstances and in comparison to quite a few others. Although the land prices have slipped a bit in recent months we are still in a strong position.*

George: *So what's the bad?*

David: *This could give us a quite a big Inheritance Tax problem.*

George: *Why? Our land is all proper farmland and this is a partnership farm so doesn't it get that agricultural relief?*

Henry (walks in): *What's this?*

David: *Ensors have just confirmed that the land does indeed qualify for Agricultural Property Relief, or APR.*

Henry: *Ah good news!*

David: *Hang on dad, the problem is with the rate of relief on the tenanted land. It might only cover 50% of the value.*

Henry: *Not my land? That's all owned by me and farmed by the partnership.*

David (checks notes): *That's right, it does all qualify for APR at 100%.*

Henry: *So?*

David: *The accountants are focusing on the 250 acres which Uncle John owns... how long's he had it?*

Continued overleaf ➤

ENSORS

Making you more than just a number

Henry (thinks): *Great Uncle Albert died in the late eighties leaving quite a bit to John and I. John bought 250 acres plus his first house with it and I bought the other 500 acres. But this is irrelevant surely as John's never been interested in farming, has he dad?*

George: *I blame it on that school teacher of his, putting fancy ideas into his head...*

Henry (interrupts): *John just leased the land to Grandad and we pay him rent, but the partnership has always farmed it, along with my land. We agreed, the farmland stays in the family and as John and Sarah have no kids their Wills leave it to me.*

David: *Yes, and that's the problem.*

Henry: *But we sorted this in the nineties. There was mention of Inheritance Tax problems on that land, something about having to wait seven years to get the APR because John was a landowner and not a farmer. But that seven years has long passed so we're OK...*

David: *Unfortunately not Dad. The accountants said that while he is entitled to APR, this is only at the rate of 50% where the land is tenanted, the lease giving the farmer the legal right of occupation was signed before 1 September 1995 AND it has at least two years left to run at the relevant time.*

Henry: *How annoying; the lease we have meets all three. And with the land values being what they are...*

(They fall quiet)

George: *Come to think of it, the 100 acres I own is let on one of those old tenancies too. And I bought that in 1975. But I'm sure I was told something about a double discount...*

Henry: *Oh yes!*

David (nods): *Ensors mentioned a 'working farmer' relief that applies to land owned before 10 March 1981 provided certain conditions are met, like time limits and the amount of time engaged in farming. If that applies, 100% relief could be due. They suggest a review.*

George: *Good idea.*

Henry (thinking): *But what about John's land? That's the bigger problem and it was definitely acquired later than 1981.*

David: *Not only that Dad but part of it is within the local plan. In the long term there might be some development value.*

George: *None of this would be a problem if John had come into farming like the rest of us, would it?*

David: *Agreed. If he farmed on his own all of his problems would be solved. Ensors said that 100% APR applies to land farmed by the owner once it's been owned for more than two years. And in that situation, business relief should cover the development value. But we would need to get rid of the tenancy to the partnership first.*

Henry: *Hang on, didn't you say the problem is just with the old tenancies?*

David: *Yup. Ensors also said that if agricultural tenancies were granted on or after 1 September 1995 then tenanted land still gets 100% APR...*

Henry opens his mouth and closes it again.

David: *Provided the land has been owned for long enough, of course. Doesn't help with the development value issue though...*

Henry: *So we just need to get John to replace the old tenancy with a new one. I'm sure he'd help if it saves tax and avoids having to sell land.*

David: *The accountants mentioned it's a possibility. But then there's the age old problem...*

Henry (groans): *Tax!*

David: *Yes. If you give up the existing tenancy it could have quite a high value and result in Capital Gains Tax. Although Ensors suggest there may be a way around that...*

David: *Well if anyone can help, Ensors can... Maybe they can help solve the development value problem too!*

CAPITAL ALLOWANCES

The common forms of Capital Allowances available on plant and machinery currently comprise of; Annual Investment Allowance (AIA) of up to £200,000 per annum and Writing Down Allowance (WDA), set at 18% per annum.

These are the maximum allowances available, but it may not always be wise to claim them.

1. Wasted personal allowances

(a) Sole trader – There is no compulsion to claim all of the allowances that one is entitled to, since one can disclaim all or part of the allowances due. It is not therefore usually sensible to claim relief where the remaining profit arising would in any event be covered by personal allowances. The advice would normally be to claim such relief as it would reduce profits to the personal allowance relief threshold. However it is not usually good tax planning to lose the benefit of personal allowances.

(b) Partnership[1] – Claiming Capital Allowances may not be straightforward in a partnership with differing personal circumstances for each partner. A claim of capital allowances is made against partnership profits, which are then allocated according to the profit sharing ratio. Whilst this is not always easy, it is usually possible to come up with a compromise which benefits the majority of the partnership's members. It is also important to remember that other reliefs (e.g. averaging) may be available to be claimed on an individual basis to mitigate any negative effects.

2. Preserving 'in year' losses

The effect of disclaiming Capital Allowances is to preserve the value of the plant and machinery pool. This will give rise to higher Writing Down Allowances (more tax relief) in future years and may also reduce any balancing charges which may arise on the disposal of assets, minimising the likelihood of a tax charge when assets are sold.

Losses brought forward may only be used against profits of the same trade, while losses made in a current year can be claimed against other sources (e.g. rental income and capital gains) subject to a £50,000 restriction for sole traders and partnerships. Current year losses are therefore much more flexible.

3. Business cessation[2]

Preserving the value of the plant and machinery pool is also very useful as a business approaches the end of its life. As mentioned above a high pool value brought forward will mitigate any balancing charges and may give rise to a balancing allowance, which could potentially feed into a terminal loss claim, where many options are available to maximise tax relief.

4. Hire Purchase agreements

If plant and machinery is purchased under a hire purchase contract you can only make a claim for the outstanding payments when the item is put into use. This rule has particular relevance to machinery with seasonal use, for example a Combine Harvester purchased in February is unlikely to have been used before the 31 March year end, and therefore only the payments made can be claimed in that tax year.

It is possible though that this rule may work to a trader's advantage, in that the AIA relief may be legitimately split between the two tax years.

In summary

Think before you claim, you do not want to waste allowances.

A partial disclaim could lead to greater relief in the future, which could give rise to an in-year loss claim available against rental income and/or a capital gain.

If your business is approaching the end of its life, the flexibility of a terminal loss claim could be beneficial.

A split year AIA claim for the purchase of a seasonal machinery under HP could be advantageous.

1. Please note that a mixed partnership which includes a limited company, a trust or estate is not entitled to claim AIAs.
2. Annual Investment Allowance claim is not available in the final accounting period.

N.B Companies are not entitled to personal allowances.

MEET THE TEAM

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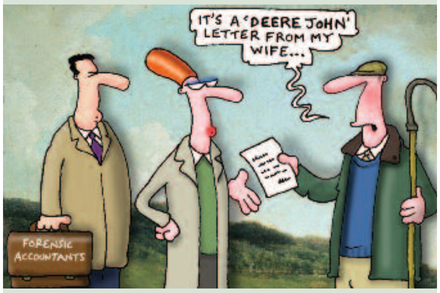
FARMING AND FORENSIC ACCOUNTING



Our Forensic Accounting team led by Fiona Hotston Moore, have been involved in a number of areas in the farming sector working for both existing clients and also accepting instructions following a referral from a lawyer or other accountant.

Fiona is an Accredited Expert Witness and Accredited Counter Fraud Specialist and began training to become a Chartered Accountant and Tax Adviser over 25 years ago in the farming practice Chater & Myhill. She is supported by an experienced team that can assist in areas such as:

1. Family/partnership/trust/will disputes and divorces –valuing the farming business and advising on the tax aspects of the proposed resolution of a dispute or proposed divorce settlement.
2. Providing reports to support an insurance claim
3. Acting as an expert witness in contractual disputes such as tenancies and post sale.
4. Advising clients in tax disputes with HMRC
5. Investigating suspected business fraud including employee fraud and preventative reviews of internal controls
6. Due diligence and strategic input ahead of sales, mergers or other business transactions
7. Providing expert witness reports as to the potential loss that can be claimed for failings in, for example, tax advice or audit opinions.

ENSORS OFFICES

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