Don't bury your head in the sand

Julie Butler and Philip Whitcomb advise that partnership agreements should be reviewed as part of full succession planning.

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Much of the farming press is saying that farming partnerships could fall foul of new rules on the registration of trusts if they don't act before 1 September 2022.

The fact that farmers look at the ownership of partnership property in this context is a positive for current and future ownership understanding. It is a timely reminder of the need to register land and to update the partnership agreement.

Complex rules introduced by the government to implement relevant parts of the EU's Fifth Money Laundering Directive following Brexit require many trusts to be registered with HMRC's Trust Registration Service (TRS) for the first time. As general partnerships are not legal entities in their own right the legal title to a property cannot be in the partnership's name. Instead it is held by some or all of the individual partners as trustees on behalf of the partnership. The position is different for a limited liability partnership which can own land.

Partnership models and farming

The commercial fact is that family farming partnerships are the most popular form of trading vehicle in this industry. While companies have their advantages for larger enterprises, even more so following the attractive introduction of the 'super-deduction' capital allowance at 130%, together with the availability of research and development tax credits, the partnership model still tends to be very much part of the majority of core farming operations.

Such an arrangement is typically put in place for inheritance tax purposes, specifically to improve the prospects of claiming business property relief (BPR) at 100%, but there must be an updated partnership agreement to support this and clarify any subsequent changes made. This is a timely reminder for all partnership agreements to be reviewed as part of full succession planning against the background of so much change in farming – see the article 'All Change' (*Taxation*, 25 February 2021, page 24).

The work could be incorporated into updating business plans for anything that comes out of the forensic work in deciding if trust registration is required. Ideally this work should be incorporated into the review of farming arrangements such as joint venture, contract farming agreements and shared farming – see the article 'Farming arrangements' (*Taxation*, 1 July 2021, page 14). Work should also be undertaken on ensuring that the partnership land capital accounts are correctly recorded in the accounts, the partnership agreement and understood in the context of succession planning.

Key points

- The partnership model is still the majority of core farming operations.
- Partnerships cannot own the legal title to a property – it is held by partners as trustees. An limited liability partnership can, however, own land.
- Partnership property achieves 100% BPR (non-partnership property only 50% BPR).
- Farming partnerships need to register land, update partnership agreements, and ensure that the partnership land capital accounts are correctly recorded in the accounts and the partnership agreement.
- Farmers must check whether they must register their partnership trust with the trust registration service before 1 September.

Tax considerations

The tax advantage of partnership property is that it achieves 100% BPR, whereas non-partnership property is only 50% BPR. It is important that the land capital account is correctly shown in the accounts and corroborates to the agreement to ensure the exemptions from trust registration. For example, if the owners of the land, ie the trustees and the beneficiaries of the land, are the same, there is no registration requirement. There could also be an exception if there are more than four partners – for example, two parents, an uncle and two children farming together – as only four people can be on the legal title.

Other exemptions may apply, for example a trust enabling or facilitating a transaction effected for genuine commercial reasons and the trust is incidental to the principal purpose of the transaction.

Act now

The key is to act now at reviewing the position in anticipation of 1 September. The big inheritance tax compliance point is that if farming partnerships fall into debate with HMRC as to whether the farm qualifies for 100% or 50% BPR, it will be very easy to ask for clarity around the registration for capital taxes in the future. The notes and arguments for not registering will have to be to hand to confirm the evidence of partnership property.

The action points are:

1) Assess legal and beneficial ownership and the accounts recording through the land capital account.
2) Ensure it is correctly recorded in the partnership agreement and succession planning accounts.
3) Ensure the farmland is registered.
4) Review the exceptions and exemptions and where appropriate register the trust.
5) Review all partnership business plans in the context of 1) to 4).
6) Update all partnership agreements to comply with 1) to 5).

What is clear is that farming partnerships must not put their 'heads in the sand'. This is a good opportunity to have clarity, to tie into their updated succession planning and to ensure all the legals are in place.

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