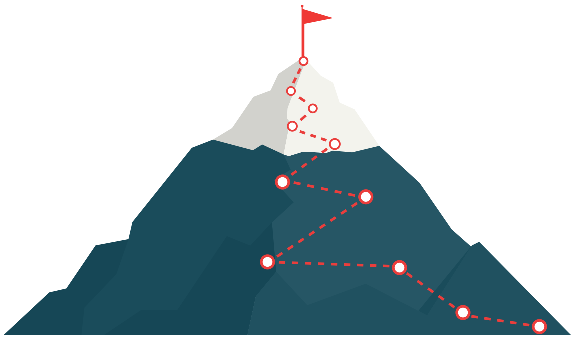
Starting well

Julie Butler emphasises that tax advisers and their clients need to engage in tax planning from the 'get go' to avoid potential problems.



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There are always problems with having to consider tax solutions and identifying tax problems after business decisions have been made and legal agreements signed. Tax planning should be from the 'get go'.

A recent report *Spotlight: The Farmland Market 2023* from Savills on the farmland market stated: 'the demand for farmland remains high, and is not likely to be satiated anytime soon, with environmental motivations becoming ever more prevalent' (tinyurl.com/y99s7h8n). The report also mentioned: 'The average value of farmland is at an all-time high, offering an opportunity for investors to cash out profit and secure a fixed return on the capital released.'

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The quantum of tax risks can therefore be high where farmland is involved due to the high values. As a result, it is important for tax advisers to ensure their and their clients' tax position is protected in advance. This is best seen in examples where tax advisers and farmers can be exposed to risk.

Example 1 – the partnership – 100% BPR

Farmer Giles is elderly and decides to take on his daughter as a business partner to help him cope with all the environmental changes to farming and administration. His daughter obtains a simple partnership agreement (PA) from a non-agricultural lawyer, Mr Brown. At the very least Mr Brown should have suggested that independent tax advice should be sought.

When the first accounts are produced, the accountant, Mr Smith, has to ask how the freehold property should be shown with the introduction of the partner. Mr Smith checks the PA and sees that freehold property is not mentioned. Mr Smith refers the matter to his tax team who points out that if the farm is not made partnership property only 50% business property relief (BPR) is available. The accounts and business are reviewed and there are a number of assets on the farm that would need BPR as opposed to agricultural property relief (APR) – let cottages and commercial property and some non-agricultural activities, eg a farm shop and café selling bought in products together with a working campsite and service liveries. There is even a 'camp and ride' angle to the business.

A loan was taken out for some diversification and a valuation of the whole farm has revealed that the calculation of the loss of 50% BPR for farm property held outside the partnership is £400,000 (the non-agricultural property value is £2m at 50% with 40% IHT liability). The PA is rectified and the accounts reflect partnership property via the land capital account. Had Farmer Giles died before the omission was noted this would have been a substantial tax bill.

Key points

- The market for farmland remains strong and the value of such property is at an all-time high.
- High value of farmland equals high tax risks.
- Advisers should train clients to not change legal entity, sign documents or spend money without asking for tax advice.
- Don't wait until it is too late to implement tax planning.

Example 2 – development land

Farmer Francis, a sole trader, owns a farm with potential development land. Francis is elderly and has moments of lack of clarity and has been ill in hospital. Francis is persuaded to enter into a promotion agreement with a very pushy developer, Mr Carpenter, who suggests Francis uses a new limited company with his son Marcus as a director in case anything happens to Francis.

The solicitor that Francis uses is very busy, so for ease takes instructions from Mr Carpenter and does not suggest that independent tax advice is sought. Marcus has his own company and is also very busy.

The development land is transferred into Newco and the hurried promotion agreement is in the name of Newco not Francis. Marcus panics and calls his own tax adviser and his father's adviser. A few costly tax bills surface, eg the stamp duty land tax due on the transfer into the limited company, the capital gains tax due on the transfer of land to the company and possible negatives for Marcus. Following independent tax and legal advice the transactions are reversed.

Example 3 – qualification for capital allowances

Farmer Wheat has read the results of the tribunal cases of *S May and others* (TC6928) and *JRO Griffiths Ltd* (TC8203) and decides to build a new grain store with a view of taking advantage of the £1m annual investment allowance. The funding is based on the strong value of the farmland.

When producing the accounts, the farm tax adviser asks for details of the grain storage facility and how much function it has with regard to drying the grain and how temporary the storage facility is.

The facts emerge that the claim for capital allowances is marginal and that part of the old grain drying facilities have been retained alongside to save financial outlay. The tax adviser explains that, had the advice been given before the build, then the function of the store could have been established and incorporated into the design. Farmer Wheat is of the view that *Farmers Weekly* says: 'All grain stores achieve capital allowances!'

The takeaway

The three examples are specifically focused to explain the need to plan ahead. It can be argued that examples 1 and 2 have a very clear message of not signing any legal agreements nor changing the legal entity without advance tax planning.

The moral of example 3 is do not spend large amounts of money before undertaking planning to mitigate any tax risks.

The overall message is to train clients not to change legal entity, sign documents or spend money without asking for tax advice. Some clients are very focused and would not dream of anything but obtaining pre-event tax planning. However, sometimes pressures of work, ill health or persuasion from other parties, can cause healthy tax mitigation and protection to be forgotten until it is too late.

Author details

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