END OF FARMING PARTNERSHIPS?

HMRC's consultation on limited liability partnerships places corporate farm structures under scrutiny too, says Julie Butler

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A recent announcement by HMRC has meant a very large potential problem for the current fashion in farming, 'corporate partners'. The mixed partnership can provide flexibility and yet save income tax and Class 4 National Insurance Contributions (NICs) through the corporate entity by not having to pay higher rate tax until profits are 'drawn down'.

HMRC has published a consultation on changes to two aspects of the tax rules on partnerships in order to prevent tax loss arising from disguising employment relationships through limited liability partnerships (LLPs), and certain arrangements involving allocation of profits and losses among partnership members, ie, the corporate partners. The proposals are an attempt to counter perceived abuse of these structures for tax avoidance purposes. This follows the March 2013 Budget announcement that HMRC intended to focus on this area as it estimated that countering abuse of LLPs and partnerships would yield £300m within two years. The changes will take effect from 6 April 2014; feedback on the consultation is due by 9 August 2013.

At a practical level, there have been instances where ill-researched structures as well as corporate partners have been introduced without the protection of a partnership agreement. The consultation sets out proposals to change the tax treatment of those described as 'salaried' members of LLPs and on taxing profits in mixed partnerships which would impact on the 'corporate partners' in farming.

CORPORATE PARTNERS IN FARMING

One of the key focus areas of the consultation is 'mixed partnerships' and how they are taxed. Mixed partnerships (including LLPs) are those comprising of a mix of individuals and companies as partners. In these arrangements, the companies are usually owned by some or all of the individual members. HMRC believes there has been an increase in 'corporate partner planning' for tax purposes and this has been seen in the farming world and such planning is trying to get the best of both worlds, combining the flexibility of partnerships with the benefit of lower corporate tax rates.

The government proposals seek to reverse the advantage of the corporate partner where profit allocations in a mixed partnership are made to attempt to secure a tax advantage, by making the allocation for tax purposes to the individual partners subject to income tax on a 'just and reasonable basis'.

The proposal will also affect farms who have introduced a company into their ownership structure to hold profits back within the farm for working capital purposes. Farming obviously involves a high level of working capital so corporate partners have been seen as very beneficial to farmers with high profit and a substantial and increasing quantum of working assets held in the business. The profits held back will prospectively be assessed to tax on the individuals at income tax rates, rather than on the company at corporation tax rates.

Overall, HMRC presents the proposals as an attack on abuse and to support fairness in the tax system. For many farming partnerships that enjoy positioning themselves below the glare of HMRC, this will place all their affairs under the spotlight.

> **"There is no doubt that some accounting firms have allowed artificial or 'sham' arrangements to evolve – these need to be reviewed**

Farms will no doubt be spending time over the next few months ensuring that their structure and internal arrangements are such that they are clearly not affected by the proposals. Will this mean the 'death' of the corporate partner? There is no doubt that some accounting firms have allowed artificial or 'sham' arrangements to evolve – these need to be reviewed carefully. Examples include the lack of a company bank account; the lack of a specific company purpose such as, for example, contracting farming or a specific risk project, or a balance sheet which simply reflects a loan with a limited company.

As detailed above, it is proposed that the new legislation will affect all structures and arrangements concerned from 6 April 2014, not just new arrangements and structures affected on or after that date.