

Binding independent tax and legal advice

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Many farming families who trade in partnerships do not always agree on tax and legal treatment of various areas surrounding the farming partnership. There have been a number of disputes reaching the courts. Examples of tax/accounts debate can be:

- Improvements to farmhouses, partnership v non-partnership
- Private use adjustments (where one partner has increased private usage)
- The correct treatment of drawings
- Repairs v capital
- Ownership of farm property, eg beneficial interests tax implications

There are some farming partnerships where one partner persuades the others to "divide the drawings equally". Drawings should be analysed out and any adjustment of this nature is effectively some partners making financial gifts to other partners and should be recorded as such.

Example of legal disputes that can arise regarding ownership, eg

- Is the farmland partnership or non-partnership property?
- Understanding of the detail of the Partnership Agreement

It is more likely that legal debate will involve independent advisers. However, where "binding independent advice" can apply there are advantages of "common goals" and not involving too many professionals.

If a simple agreement cannot be reached, the answer is always to seek "independent advice" that the partners will agree beforehand as "binding". Where there is a history of disagreement the partnership advisers should consider whether they need to cease to act for all the individual partners. Indeed, if the farm adviser ceases to act for one farming partner it can be argued if there is a risk of dispute and they are of the view that there are conflicts they should cease to act for all the individual partners. Such independent advice provision should be included in the farm Partnership Agreement.

Where there are disputes within the partnership the whole consideration of "independence" of the advisers needs to be reviewed. Who the professionals can act for must be considered by all advisers. Likewise, clients should be advised to seek independent advice if they have concerns over either the advice or the independence. It can be argued that such a protection of "binding independent tax and legal advice" should be included in the Partnership Agreement.

The alternative to such a condition in the Partnership Agreement is for the farming partnership to be "swamped" with advisers who could ignite a situation or ongoing "bad feeling" within the partnership. It is much more streamlined for the main advisers to stay acting for the family, the partnership and the individual members but to have a "binding independent advice" clause.

Disputes within farming families have made both the newspaper headlines and the courts. The key is to try and minimise professional fees on disputes and to focus this expenditure on strong legal agreements that give clarity on tax and legal disputes. It is important that farming partners realise that the cost of

protection is so much less than the cost of dispute both in financial and emotional terms. It is also important to try and keep farm partnership disputes under control.

Independent legal and tax advice is just an example on clauses to include in the Partnership Agreement. The need for the agreement to be understood by all partners and signed in a partners' meeting with all partners having access to independent legal and tax advice from the outset is key. Historically, farm Partnership Agreements have been "signed blind" by some partners as part of trust, ignorance, an imbalance of power or a combination of all of these influences. It is literally a case of a "stitch in time saves nine" – take good legal and tax advice from the beginning.

Farm, Tax



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