

# Clear as mud

**Julie Butler** provides clarity on the application of the trust registration service to farming partnerships.

It is fair to say that the trust registration service (TRS) guidance has caused a lot of controversy and confusion with regard to partnership property.

The matter is made more complicated by the fact that many farm advisers do not fully understand the legal concepts of partnership property, beneficial interests, express trusts and the land registry entries not corresponding with these concepts.

Add to this the emotional burden of guidance that states that the existence of a partnership agreement showing the declaration of trust dictates registration. There were perhaps initial outcries regarding the apparent discrimination of those disciplined farming partnerships with a well written partnership agreement.

## Advantages of registration

Many farming partnerships did not meet the 1 September 2022 deadline for registration and could face penalties, although HMRC says that it recognises the need to register a trust is new and unfamiliar for many trustees, so a penalty will not be charged for the first 'failure to register' or the first 'failure to keep the register up to date' offence, so long as the failure was not deliberate.

In many cases, farming partnerships are also missing the benefits of registration:

- Legal clarity.
- Compliance.
- Protection of 100% business property relief.
- Opportunity to review and produce a quality partnership agreement to protect the running of the partnership.
- Opportunity to ensure accounts tie into the legal understanding.

The TRS guidance does not deal with some common farming arrangements where property is purchased in the names of only some of the partners, using only some partnership monies and there is no partnership agreement.

## More guidance is needed

Until further guidance is given on this point, the land held on trust for the partnership parties should proceed with caution and an application to register with the TRS should be made. Clearly if there is a partnership agreement referring to an express trust, in that situation registration with the TRS is required. The consideration for a new partnership agreement to help the trading operation which contains an 'express trust' should be made for the benefits mentioned above.



If the owners of the land – the trustees – and the beneficiaries of the land are the same there is no need to register. However, farm estates can take over two years to wind up and most farm estates take at least two years. There are also many farmers (and farm accountants) who do not realise they have a registrable trust. Having a partnership agreement in place which clearly sets out the ownership of the assets is likely to lead to much greater financial protection for partners compared to the cost of the TRS registration fee and the cost of making any updates.

## Action plan

As stated in the article 'Don't bury your head in the sand', *Taxation*, 30 June 2022, farming partnerships must connect to the dilemma and use it to best advantage. Such action should result in quality partnership agreements, corresponding accounts and, above all, the farming partners understanding and agreeing to all decisions.

There is so much change that a total review of registration and the farming partnership agreement is a real positive. It is not just farming for the environment changes that will have an impact but also the change of basis period still lies ahead for farmers.

The positives are that this is a suitable 'junction' in the farming road map to review all matters around TRS registration to the partners' advantage and to take the 'head out of the sand' and really enjoy clarity and legal definition. ●

### Author details

**Julie Butler FCA** is founding director of Butler & Co Alresford Limited. She is the author of several books and is also editor of *Farm Tax Brief*. Julie can be contacted by email: [j.butler@butler-co.co.uk](mailto:j.butler@butler-co.co.uk) or by phone: 01962 735544.



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