Mixed farming partnerships – time for your clients to review their arrangements?

By **Julie Butler** on October 16, 2013 in **Tax**
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HMRC consultation on partnership/LLP draws to a close. Is this a sledgehammer to crack a nut?

In the spring a consultation document was published by HMRC concerning the allocation of profit and losses between partnership members, following warnings in the 2013 Budget that there would be a review of 'mixed partnerships'. There has also been a scrutiny of supposed tax avoidance that is seen to arise through profit and loss sharing arrangements. Mixed partnerships generally arise where a more routine family farming partnership chooses to take in a corporate entity as a partner. Such companies have taken a number of different formats and many are put in place for purely commercial reasons, often seeking the protection of limited liability or bringing in members of the family as directors who are not in the main partnership etc. In a large number of cases there are valid reasons for the farm restructuring which has resulted.

Huge Impact on Farming

The consultation document is potentially one of the most disruptive and possibly worrying fiscal impacts on the commercial design of the farming industry in the last decade. The announcement comes at the same time as the change in the treatment of farm loans and inheritance tax relief. It is important to take the positives from such close scrutiny of farming operations and all farms MUST use the opportunity to undertake a dynamic strong review on all their structures and legal arrangements.

Despite the arguments for mixed partnership commerciality, there are some farm corporates which have been set up with tax planning as the main aim. Such companies could well be entitled "Chuck Profits into Me Limited" where high farming profits have been put into the limited company without the existence of a company bank account, a trading operation nor any legal ethos or agreement. It is fair to say the only benefit of such a business design is to save tax. Many tax advisers would argue that it is a pity that the corporate partner was pushed too cynically by many and as a result did put at risk the very genuine mixed partnership arrangements that are currently in existence.

Review of Mixed Farming Partnerships

All mixed partnership structures should be immediately reconsidered. It is essential to look at the original advice concerning the company that has become a member of the partnership and ensure there is genuine commercial justification for the existence of the company, trading operation and share of profits.

Partnership Agreement

With the introduction of the corporate partner there should have been a new Partnership Agreement drafted by qualified advisers. Partnership Agreements help in the case of disputes between partners whilst also help to try and ensure that 100% Business Property Relief (BPR) for Inheritance Tax is achieved, not just 50% BPR. It is generally considered good protection for all farmers to set out profit share rules etc in the Partnership Agreement. A detailed review of the Partnership Agreement must be undertaken, and if there is no such Agreement, it is imperative to try and put one in place ready for the final decision regarding the consultation.

It has been said that HMRC are "inputting a dominant tax avoidance motive where none exists" in relation to the proposed changes to the taxation of business partnerships.

Overall Action Plan

The 2013 Budget was a 'tax firework display' for farmers. The various potential 'tax punishments' handed out by the tax authorities have provided very big warnings that there is much work to be undertaken in the months ahead in the administration of trading ventures within the farming industry.

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