Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly*'s experts can help

Machinery tax implications of a company structure

Q We currently trade as a farming partnership and are about to transfer all the trade and assets, excluding any land, to a limited company. We have plant and machinery worth approximately £1m that has a tax written down value of almost zero. What are the tax consequences of transferring the machinery to the limited company?

Peter Griffiths
Tax director
Hazlewoods

A Tax relief on the acquisition of eligible plant and machinery, such as a tractor or a combine, is obtained by a business through what are known as capital allowances.

The capital allowances annual investment allowance (AIA), currently allows annual expenditure of up to £200,000 to obtain a 100% tax deduction in the year of expenditure.

However, the AIA has in recent years been as high as £500,000. As a result, what is known as the tax written down value of plant and machinery could be very low and even zero. Therefore, when a significant amount of machinery is sold and not replaced by acquiring other plant and machinery, the proceeds may well be chargeable to tax.

Election to transfer

Where plant and machinery is transferred as part of a trade between what are "connected parties" for tax purposes – which would usually be the case on incorporation of a partnership business – it is possible to make an election to transfer the machinery at tax written down value for tax purposes. This means that no tax arises on the transfer.

However, the value of the machinery to be included in the accounts of the limited company can still be the market value of £1m. This means that £1m of value will be available to the former partners to be withdrawn from the company at a later date with no tax effect, as long as the market value is not greater than the original cost of the machinery.

If a farming partnership is trading "alongside" a farming company, this would mean each business is entitled to an AIA for capital allowances on new machinery of £200,000. Therefore, there may be good tax reasons not to incorporate the whole of the partnership.

It is also important to consider the partners' inheritance tax position before transferring the whole of a farming trade to a company, as only the person who has a controlling shareholding will be deemed to be in occupation of the land farmed by the company and so potentially eligible for agricultural property relief on a farmhouse owned personally.

However, if a farming partnership has four partners, each with a partnership interest of 25%, then it can be possible for each of the partners to obtain agricultural property relief on farmhouses that they own.

A partnership trading in tandem with a limited company would each be entitled to an annual investment allowance on machinery

TIM SCRIVENER

ONLINE

From planning to inheritance and diversification to the merits of liquid fertiliser, read more Q&As online at **www.fwi.co.uk/business-clinic**

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words. Please give as much information as possible.

Send your enquiry in to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and make sure you include a telephone number.

You can also send in your question by email to fwbusinessclinic@rbi.co.uk

Our expert partners

DUNCAN & TOPLIS CHARTERED ACCOUNTANTS AND BUSINESS ADVISERS
THRINGS SOLICITORS
savills
HAZLEWOODS DRIVING LIFELONG PROSPERITY

How can I recruit good farm staff?

Q I have expanded my farm business and would like to employ an assistant manager. Where do I start?

William Baillie
Food and farming consultant **Savills**

A There are always additional costs to factor in when expanding any enterprise. Taking on an extra member of staff is often one of the highest. As well as the basic salary, there will be employer's national insurance and pension contributions, accommodation, a vehicle, ongoing training, perhaps a discretionary bonus, phone, laptop or tablet, and so on.

Accommodation is usually an important consideration for potential employees, so make sure you either have a suitable property available or are willing to offer enhanced pay to cover rent.

Once you are clear that it stacks up financially, create a full job description that sets out the role, responsibilities and duties required.

At this stage it is worth discussing the opportunity with the existing team to ensure they understand how the role will fit in with the current staff structure.

This is especially true when appointing an assistant manager who is likely to be directing and supervising other farm staff and taking a lead role in your absence. This also offers your current staff the opportunity to apply for the role.

To attract good candidates, it is important that you show your business in the best light. A well-written advert including the business ethos and an accurate job description is key. If you have a website or use social media for your business, this is likely to be the first place a candidate will look, so ensure these are professional and up to date.

Recruitment isn't cheap when you take into account advertising costs, professional advice and your own time but trying to cut corners will ultimately be more costly, either through an unsuccessful recruitment exercise or employing the wrong person.

Use your contacts

Spreading the word widely is key – consider social media, word of mouth and your local media as well as the more traditional farming press. Don't be shy to ask your agronomist, feed rep and any other appropriate contacts if they know of anyone suitable.

Set a reasonable application deadline date that will fit in with your workload and that of potential applicants and make sure those you want to interview know of the dates as early as possible.

Start by interviewing a good number of candidates before narrowing it down to a final two or three for a second interview. Allow plenty of time for the interview and ask set questions where possible.

Give yourself time to make some notes afterwards and refresh your knowledge of the next candidate. It can be useful to have another person to assist with the interviews, perhaps a trusted adviser or another family member.

The second interview is a good time to take the candidates on tour of the farm and the accommodation, if offered. Use this time to talk more informally so you can establish how they might fit in with the team. Candidates will be motivated by opportunities to learn new skills, so be clear about what you can offer.

Don't leave candidates waiting. Make a decision within a couple of days of the final interviews once you have their references. They may have applied for other roles so any job offers should be made as soon as practically possible.

The keys to finding and retaining good staff are being open and honest from the very outset, ensuring that there is trust between all parties. Don't forget there are legal employment obligations which shouldn't be overlooked, including drawing up an employment contract.

Can my uncle use partnership assets for wife's separate farming business?

Q My dad has a 50% share in a farming partnership. He has been having trouble with my uncle, who is the other partner in the business. My uncle has let his wife, who has nothing whatsoever to do with the farming partnership, set up a farming business of her own on another part of the farm. He has transferred more than 120 cattle into her name over a number of years and has been claiming some of the Basic Payment for land owned by the farming business for himself. I am worried. Can you help?

Robert James
Associate
Thrings

A As a starting point, the options and relief available to your father depend on the terms governing the business relationship between him and your uncle.

It is not clear from the information provided whether a formal partnership deed exists.

If one does exist, one would expect that deed to set out most of the relevant terms. In the absence of a deed, or a specific provision dealing with a particular issue, the fall-back position is to look at the Partnership Act 1890, which is the key piece of legislation.

Caveats

In principle, there is nothing preventing your uncle supporting his wife. This is not without its caveats, however. Each partner owes the others a duty of good faith. It is not unusual to see a term that states each partner must devote his or her whole time and attention to the partnership.

One of the questions a court might ask is whether your uncle's involvement with his wife's business is diluting his contribution to the partnership? From what you describe, I am concerned that your uncle's involvement with his wife's business may mean that he is competing with the partnership, and he may be using the partnership's property in furtherance of the wife's business.

Certainly, the use of the land for a separate business and the transfer of 120 cattle to his wife without your father's consent requires some serious explanation.

As for the Basic Payment issue, the position seems relatively straightforward. Provided the partnership is the occupier of the land and the owner of the relevant entitlements, then the funds received in relation to the claim will be the partnership's property. If your uncle has simply pocketed the monies for himself, he is in the wrong.

The simplest relief is to ask your uncle to account for any unlawful monies retained or private profits made, so your father is placed back in the position he would have been in but for any breach.

This solution assumes that your father wants to continue in business with him. If he does not want to carry on, it is unlikely that your father can simply throw your uncle out of the business. Rather, he would need to dissolve the partnership.

On a practical note, during that process he may try to buy out your uncle's interest to enable him to continue trading as he was. In terms of a nuclear option, if the breaches persist, your father may be able to obtain an injunction restraining any unlawful conduct on the part of your uncle.

FWE_270418_026-027.indd All Pages 25/04/2018 17:02