Business Clinic

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

Who should pay mother's care home fees and has the partnership been properly administered?

Q My mother is 91 and a partner in the farm business, with full mental capacity but quite frail. She has always lived frugally, never taking money out of the business, with profits divided between her son (my brother) and daughter-in-law.

She is now in a care home, with low personal assets due to fees. The farm was purchased in 1993. Mother has made a will leaving her share to her son, and passed ownership of her bungalow to her son and daughter-in-law in around 2000.

When she went into the care home I said that my brother was responsible for fees if mother's money ran out. I have never received any money from father's estate or from my mother.

Last autumn my brother and sister-in-law decided to move mother to a much smaller room in another home where the council would pay fees. I said they should consult her, as she was very upset about the move.

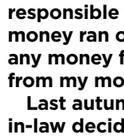
They told me I would be responsible for the fees if I didn't agree, as she would have no assets left after six months in the current home.

Later my brother said she would stay in the present home for 12 months, when her share in the business would be gone, then her fees would be up to me.

A year ago mother's accountant told me mother was a very wealthy woman but now he says that as there is no partnership agreement she actually has no wealth.

My mother is adamant that my brother and sister-in-law are responsible for her fees. She has not been shown the accounts for 10 years, but I understand should changes have been made that benefit other partners, she should have been informed.

I am not in a financial position to pay her fees. Suggestions appreciated.



Mike Westbrook
Partner
Thrings

Those with capacity must be consulted about care home accommodation

INGRAM IMAGE

Jack Rogers
Solicitor
Thrings

A There seem to be two key issues here. First, the transfer of your mother's interest in the partnership over time and whether your mother was aware of this. Second is the query regarding care home fees. Your query indicates there is no formal partnership agreement in place. In the absence of any formal partnership agreement, the farming partnership will be governed by the Partnership Act 1890.

First, it would need to be determined whether your mother's share of the farm is held as a partnership asset. Under the 1890 Act, partnership property includes "property originally brought into the partnership stock or acquired…for the purposes and in the course of the partnership business".

When no formal partnership agreement is in place, it can be difficult to ascertain exactly what is and what is not a partnership asset. It may be possible to draw inferences from the partnership accounts and from any other written evidence, and this would need to be considered further.

We will assume it is clear that it is held as a partnership asset.

It seems there may have been transfers of your mother's share in the partnership to the other partners over time. It is important to establish whether your mother was fully aware of this. Day-to-day management decisions of the partnership can generally be made by a majority vote of the partners.

However, significant changes, particularly those involving changes to the rights of the partners (to capital, for example), must be made with the consent of all partners.

In addition, any transfers of her capital interest in the partnership would be gifts which, to be effective, would need her agreement and full knowledge.

As there has been a significant change in the capital assets of the partnership, your mother should have been consulted in and agreed to these decisions. If that was not the case, it may be that those transfers were not valid.

With regards to your mother's care home fees, we assume from your enquiry that your mother has been assessed and that her financial contribution towards her care has been calculated by the local authority and she has qualified for funding by it.

The responsibility for the payment of care home fees is governed by the Care Act 2014. If your mother has capacity she must be consulted about where she would want to live and the local authority must accommodate this where possible.

If your mother has stipulated that she wishes to live in a care home and the costs are in excess of the amount the local authority is prepared to pay (under her assessment), then any additional cost or 'top-up' payments must be met by your mother or a third party who is willing and able to meet these costs.

You therefore might have been asked to pay for the top-up fees if your mother does not have the means to pay for the care home fees herself. However, she is insisting that your brother and sister-in-law are responsible for her care home costs and she should address this issue with your brother and sister-in-law.

There is a potential further issue here in that if your mother has made recent transfers of capital (which would be gifts) resulting in her not having sufficient assets to meet her care costs, then the local authority can 'look through' these gifts when assessing her assets for care fees funding.

If your mother does have mental capacity she might want to consider making a lasting power of attorney relating to property and financial affairs and for her health and welfare.

This would mean decisions about her finances and her care can be made by the attorneys on her behalf. This is a helpful and protective measure to take to safeguard any further conflicts you might face with you brother and sister-in-law if your mother did lose capacity.

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 to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number.

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

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THRINGS SOLICITORS

DUNCAN & TOPLIS CHARTERED ACCOUNTANTS AND BUSINESS ADVISERS

VAT on let land and crops – what's the deal?

Q Is there any distinction between the VAT treatment of land on an annual let for, say, growing maize whether for milk or power production, or maize for shooting?

Clare Hulme
Associate director
Duncan & Toplis

A This is an interesting question and one on which you will find little guidance when searching both the internet and legislation.

There are currently three rates of VAT in the UK:

- Standard 20% – applicable to most goods and services
- Reduced 5% – applicable to some goods and services, such as home energy
- Zero 0% – applicable to goods and services such as basic foodstuffs

In addition to the above three rates, some supplies are exempt from VAT, such as supplies of land and property.

The ability to reclaim VAT if you are VAT registered is dependent on the type of supplies that you're making. If you make supplies that are standard-, reduced- or zero-rated you will be able to reclaim all VAT on inputs relating to these supplies.

If you are making solely exempt supplies, i.e. renting properties, you will not be able to reclaim any input VAT that is directly attributable to these supplies.

However if you are making a mix of standard, reduced, zero and exempt supplies you will be considered to be partially exempt for VAT, and you will have to perform a Partial Exemption (PE) calculation when preparing each VAT return and an annual PE calculation for the return that includes the month of March, which adds to the VAT complexities.

It is the general assumption that VAT for farmers is a simple matter, as all their outputs are zero-rated and that this means that they have the ability to reclaim all input VAT incurred.

Unfortunately, this is no longer the case. Farmers are having to diversify into new crops that are no longer always intended as food for human or animal consumption – for example biofuels. Other activities, such as property and land rental, storage facilities and so on all come with their own VAT rules and intricacies.

In very general terms, VAT legislation considers the letting of land to be an exempt supply for VAT, which means no VAT is charged on the rent, but it also means the farmer will not be able to reclaim any input VAT on costs incurred to maintain this land.

The supply of land is one of the more unusual areas of VAT law, which allows the VAT rate to be changed by choosing to tax the supply at the standard rate of 20%. This is known as the Option to Tax but is a subject all of its own and one for another day!

If as a farmer you were growing these crops and selling them, the end use of the product would affect the rate of VAT that is applied to these outputs.

Maize grown for livestock feed would be a zero-rated supply. Maize grown for power production would be standard-rated.

As I have previously stated, the general rule is that the letting of land is exempt for VAT but the interpretation of the agreements and services provided may change the VAT status.

The VAT status of land let for game cover for shooting will depend on the terms of the agreement to determine if this is a supply of land or a supply of shooting rights.

As the agreements between the farmer and shoot can vary significantly, there is no simple answer. It is recommended that advice be sought from a specialist agricultural VAT adviser in each instance.

New uses for crops can bring VAT complications

TIM SCRIVENER