



Rural Business Law

NEWS AND ADVICE FROM BIRKETT LONG

Partnerships and stamp duty land tax



Transferring land from your partnership to individual partners might seem like a simple structural change with no real impact on the ownership of the land in question.

It might also seem fair that this sort of transaction should not attract stamp duty land tax, particularly where the value of the land being shared out to partners is equivalent to the value of their capital account, for example on retirement of a partner or dissolution of a partnership.

HMRC, unsurprisingly, takes a different view when stamp duty land tax is payable on partnership transactions. The starting point is that the partner taking ownership of a partnership

asset must pay stamp duty land tax on the market value of the land equivalent, less the percentage of their partnership interest.

For example, where two unconnected partners both have 50% shares in the partnership and land with a market value of £500,000 is transferred to one partner, that partner would be liable to pay stamp duty land tax on 50% of the market value, i.e. £250,000. Even where both partners were taking equivalent valued

properties out of the partnership, such as on dissolution, both would be required to pay stamp duty land tax on 50% of the value of the land transferred.

However, there are exemptions and allowances built into the Finance Act 2003 which can be applied, particularly in family farming partnerships, to avoid having to pay stamp duty land tax. Expert legal advice on any transaction will help you avoid unnecessary tax liabilities.

If you are considering a partnership restructure or a transfer of partnership assets and would like to discuss how these rules might apply to your farm, please contact our rural business team.



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Passing on the family farm

Do rising values make it easier or more difficult?

Birkett Long has a long established agricultural practice looking after generations of farming families in Essex and Suffolk and the question of succession is something that crosses our desks on a regular basis.

With reasonable arable land in Essex and Suffolk trading at in excess of £10,000 per acre, even without a special purchaser, the value of land has perhaps doubled in the past 5 years and trebled in the past 10 years. Those with successors tend to regard themselves as under a duty to do as previous generations before them and hand the farm on in good shape to the next generation. The difference now is that the values involved are considerable.

In a previous era, a family with two or more children but only one successor and no assets outside the farm could easily justify a decision to leave the farm to the successor and little (if anything) to his or her siblings on the basis that farming was a tough life, with little reward, while the others had opportunities to prosper in their own chosen careers. In recent years this has altered because so much more is at stake and farming has (with some exceptions) been more profitable.

Higher values, which in turn give greater scope for borrowing to fund diversification

opportunities, make it far more attractive to the younger generation to become involved in the business if (but sometimes only if) they are to be the successors than twenty years ago when a generation was encouraged to gain skills and build careers away from agriculture.

The difficulty is the perceived unfairness in preferring one child over another by giving him or her a farm worth millions without other assets to share amongst the rest of the family. There are relatively few farming families with significant assets outside the business that enable them to achieve a balance based on current values.

There is no magic wand that can be waved to solve this dilemma and every family and its circumstances are different, but essential steps include:

1. Identify the family's assets and their values.
2. Identify the interests and skills of the next generation.
3. Consider whether there is room in the business (whether through diversification or expansion, or both) for more than one successor.
4. Consider the tax implications and do everything in the most tax-efficient manner - but don't let tax be the tail



Sidebar

Looking to the future

The general election will have captured much of our attention of late and I suspect we are all breathing a sigh of relief at a majority of any kind. However, a Conservative majority unfettered by the annihilation of the Liberal Democrats, offers hope that manifesto pledges will truly come into effect and maximise the pace of our economic recovery.

That aside, CAP reforms continue to be somewhat unruly, especially with technology failing to perform to its potential and, perhaps, being implemented without quite the necessary levels of testing.

Birkett Long's rural business team continues to expand: with Katy Humphreys joining David Wybar, Emma Coke, Mark Wrinch and Katie Gibson-Green. Katy is based in our Chelmsford and Basildon offices and offers support for our South Essex clients.

For advice on any aspect of rural business, please contact a member of our team.

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that wags the dog!

5. Consider whether some of the assets (for example cottages or even a farmhouse in some cases) are critical to enable the business to flourish, or can be given to others to help achieve a better balance.
6. And...above all...communication.

This should be discussed with the whole family, not just with the chosen successor. There shouldn't be any surprises and, if there are concerns, it is better to express them at a family meeting while the succession is being planned than for them to surface when it is too late and the family has been split by a perceived injustice. Often this is best done with an outsider to facilitate the process - we all know that families tend to behave far better at Christmas when guests are staying!

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Meet the team

Katie Gibson-Green

A young and enthusiastic member of the rural business team, Katie prides herself on going the extra mile to meet clients' expectations.

She is a solicitor working in the wills, trusts and probate department, and her areas of legal experience include will drafting, tax planning and administration of estates for farming families.

Katie understands the importance of keeping the farming business intact, whilst not excluding other family members who may not be

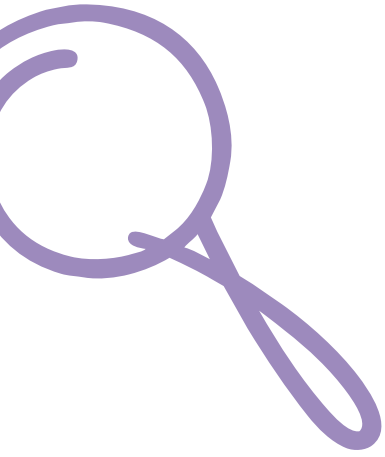
involved in the farm. No two farms or families are the same and Katie knows it is essential to get specific legal advice that fits in with your individual needs.

“Matters are dealt with expediently and we are kept well informed. It's easy to discuss matters with the team, they are very approachable.”

Extract from a client comment in Chambers 2015 Legal Directory



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in brief

Farming in a post EU UK Would the UK farming industry survive EU withdrawal?

Following May's unexpected Conservative triumph and the EU referendum which will follow within two years, will the UK farming industry find itself facing yet another imposed crisis if the British public supports exit from the European Union?

Politicians have acknowledged that there will remain a need for 'austerity' in this parliament and many of their promises remain unfunded. Would a Conservative Government holding c.£4 billion, which would have been spent on the UK's contribution to the CAP, decide to spend the money in more politically expedient ways?

One major advantage of a new system may be that it would start from a clean slate. European legislation on cross-compliance, bio-diversity and the new greening provisions is complex, fragmented and difficult to implement, particularly for smaller operations. Optimists might hope that any new UK system could be simple and concise, with a consequential reduction in compliance costs and maybe even additional money freed by reduced red tape and administrative inefficiencies to offset any budget reduction.

But is such increased efficiency guaranteed? The Welsh Government recently faced judicial review of its distribution scheme for European payments in the Welsh uplands, which faced extensive criticism for its arbitrary and unfair approach. Ultimately, the scheme was withdrawn to avoid facing the judicial review spotlight. This, combined with the recent farcical BPS registration arrangements, suggests UK administration may not automatically be more efficient than its EU counterpart.

Hill and upland farmers, for many of whom subsidy is the sole source for a modest profit, may find that a post-EU UK is untenable for all but the largest. The situation may be less precarious for smaller lowland farmers, but any reduction in subsidy payments may still result in some smaller farms being consumed by larger concerns if they are not able to find efficiency savings or if their financing and structural arrangements are not sufficiently flexible to absorb any disruption.

In the present uncertain circumstances, expert advice on commercial agreements, financing, company or partnership structures, and potential asset disposals or acquisitions, can ensure the protection of the farmer's ability to grow and change with the market and therefore survive any changes which might follow EU withdrawal. Ensuring such agreements are on an appropriate legal basis will protect farmers' interests and avoid costly future disputes when they can least be afforded.

To discuss any rural issues with our specialists, please contact Emma Coke.



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