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## Welcome to the July 2016 Agricultural Newsletter.

**Our Agricultural , Property and Private client teams have extensive experience working with, and advising agricultural land owners about Inheritance Tax relief , Land Ownership and Partnerships in Agriculture. We take a look at some of the most recent article written by our specialist team and hope to address some pertinent questions you might have with some sound advice.**

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### ***Is your land ownership/ boundaries protected by electronic registration?***

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Most residential property is now automatically registered on an electronic register at the Land Registry following a sale or transfer- this is not necessarily the case with agricultural land. This land may be the subject of a trust or it has been owned through generations of a family for a considerable period of time. This means that the trigger for compulsory first registration does not happen.

On initial investigation this may seem an advantage. However, registration provides several benefits:

- 1.** It provides a modern scale plan clearly identifying ownership. Historical deeds often have either no plan, or if there is a plan (and generally speaking this will not be to scale) it either refers to neighbours who are long dead or to historical field names or numbers difficult to identify. This makes it tricky to establish where the boundaries of a particular field may be, or indeed where any such field or land is!

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***Most residential property has  
changed hands since 1925– this is  
often not the case with  
Agricultural land.***

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- 2.** Even many professionals are not familiar with unregistered land and are therefore unable or ill qualified to deal with it. This means that when a landowner wishes to sell property a buyer's solicitor often refuses to proceed unless registration is carried out first by the seller. This process can take up to a year.

- 3.** It provides absolute evidence of ownership. This protects a landowner from a third person acquiring "squatters rights" or a neighbour registering it in their own name.

- 4.** If unregistered deeds get lost or are damaged in a fire, there is no way of replacing them and therefore no evidence of ownership remains. The only possible course of action is to

apply to the Land Registry to see if some form of title can be provided. If it can, it will nearly always be a lesser form of title than by deed and it will often prove difficult if not impossible to sell or mortgage.

For further information on Agricultural Land ownership contact **Rachel Blandford-Newson on (01756) 692 882** or email **Rachel.blandford-newson@awbclaw.co.uk**

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***Often the fact that deeds are lost does not come to light until they are required either because the landowner wishes to sell some land, mortgage it or put forward a planning application.***

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## **Inheritance Tax Relief in relation to Farms and Property Development**

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There is a long-established inheritance tax (“IHT”) relief in relation to certain farmland and buildings. This IHT relief is called Agricultural Property Relief (“APR”) and can be available at a rate of either 50% or 100% depending upon how the farming business is structured.

Farmers need to be aware that APR is not automatically available on the whole value of the farmland and buildings. APR is available on the “agricultural value” of the farmland and buildings. This agricultural value is a method of valuation. In arriving at the value, an assumption is made along the lines that the property concerned can only be occupied and used for the purposes of agriculture. This is akin to what is commonly known as an “agricultural tie”. If there is a difference between the market value (i.e. what the property is worth in the real world) and the agricultural value then APR is not available on the difference.

Let us assume that a farm complex includes a couple of stone barns which are capable of being converted into private dwellings.

This possibility of conversion will have an effect on the market value of the barns.

Let us say the barns, used for feed, medicines and sheltering cattle over winter have an agricultural value of £120,000 but a market value of

£320,000- taking into account the development potential (sometimes called “hope value”). APR will only partially help with the IHT issue if the farmer who owns the barns dies.

This is where another IHT relief called Business Property Relief (“BPR”) becomes important. Like APR, BPR is available at different rates, either 50% or 100% depending upon how the farming business is structured. The rules for BPR are quite complex, but the basic premise, is that the farming business needs to be of a predominant trading nature and the business needs to have been owned by the individual for at least two years. If the barns are used for business purposes BPR should plug the gap between the agricultural value (relieved by APR) and the market value.

Some farms have started to rely on rent from holiday-cottages or residential property held on AST’s as part of the overall “trade” of the farming business. If the business is structured correctly BPR may be available on these types of property.



Farmers also need to be very aware of land which has development potential. Is there merit in them transferring this to the generation below before planning permission is obtained to save IHT?

Farmers should explore this. However, the impact on the business, IHT anti-avoidance rules

and Capital Gains Tax issues need to be considered as part of the decision-making process.

For further information on Inheritance Tax Relief, contact **Liam O’Neill** on **(01756) 692 883** or email **liam.oneill@awbclaw.co.uk**



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## Partnerships in Agriculture

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A farming partnership can function without any written agreement however unless there is an agreement in place the partnership will be entirely regulated by the Partnership Act of 1890. A written farming Partnership Agreement can help to formalise the relationship between the partners and can regulate the operation of the business.

The following pointers are valid reasons as to why you should seriously consider a farming Partnership Agreement:

•**Day to day affairs & management**

The decision making process will become more regulated and will often set out how partners should sit down and discuss the business of the partnership and any upcoming matters

•**Assets**

A Partnership Agreement can be

used to set out which assets belong to the Partnership and which assets are owned by the individual partners. In many farming partnerships the legal owner of the farm house and buildings is one of the partners and it remains as their personal asset; therefore the use of the property in the business may need to be agreed by the partners and prevent one partner retaining control which could prejudice the business.

•**Unequal Contributions**

A Partnership Agreement can reflect the different contributions of the partners and can allocate the profits on a basis proportional to these contributions.

•**Finance**

The absence of a formal agreement can often have a detrimental impact when the business is seeking

finance. Banks are keen to ensure that provision is made for succession and to ensure that the partnership does not cease when one partner leaves or dies.

•**Preventing Fall-outs**

A Partnership Agreement can provide a structure to resolve disputes if and when they happen without having to resort to Litigation which can be time consuming and extremely expensive.

•**Protection against death of a partner or if the partner ceases to work.**

Under the law a Partnership needs at least 2 partners. If a partner should die or leave the partnership with only one partner, the partnership will dissolve.

A Partnership Agreement could allow the partnership to continue giving the remaining partner time to find another person willing to enter into the partnership.

A Partnership Agreement is a contractual document that remains private and confidential between the parties. Once in place the agreement can only be amended with the consent of all partners. A Partnership Agreement provides security not only for the partners but also for the business making it an essential document for any business with multiple partners.

For further information on Partnerships in Agriculture contact our Head of Commercial, **Umberto Vietri** on **(01535) 613 674** or email **Umberto.vietri@awbclaw.co.uk**



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- ◆ Farm Sales and Purchases
- ◆ Agricultural Holdings Act Tenancies
- ◆ Farm Business Tenancies
- ◆ First Registrations
- ◆ General Agricultural Matters
- ◆ Property Agreements
- ◆ Sales & Acquisitions
- ◆ Trusts
- ◆ Inheritance Tax
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