Farming and Succession Planning

WANSBROUGHS
SOLICITORS

For many families farming is a way of life rather than a job. Farms have often been handed down through generations and often farmers work long beyond the normal retirement age.

Planning for the future of a farm, or indeed any family business, is challenging but incredibly important. Farmers should consider how best to structure their affairs and the business as a whole so that their successor can step in when required without a hitch; after all livestock will still need to be fed and crops tended. Dealing with these issues during your lifetime may not only save your estate considerable amounts of money, it also reduces the stress on your family, who may otherwise be forced to make difficult, and often contentious, decisions about your estate.

Wansbroughs has considerable expertise in this area. We can help:

- Implement a plan to enable your successor to take over the farm after your retirement or death;
- Empower someone to step in if you are too unwell to look after the farm; and
- Make sure you pay no more tax than necessary.

Making a Will

The first step is to make a Will and keep this up to date. If you do not, then it may be the intestacy rules rather than you that dictate what happens to your estate. You may also wish to consider making gifts now so that your successor can start to play a bigger part in the business.

Using a Trust

We often recommend that farmers and those who own their own business consider using a trust either in their Will or for making gifts. This can give you or those you trust control as well as the flexibility to manage these assets as family circumstances change. This may be useful if you are not sure which child will want to make a future in farming or if you have concerns about a child's marriage. These arrangements can also offer the opportunity to save tax.

Lasting Powers of Attorney

This simple document can allow someone to take control of your finances if you are unable to deal with these yourself and should be considered essential for all those with businesses.

Tenancies/Property Arrangements

Many farms operate as partnerships or through limited companies even when the farm itself may not be owned by those entities. Where there are such arrangements in place you need to consider what happens to the tenancy on your death. If there is no formal tenancy in place you also need to consider whether one should be prepared, particularly if the people to whom the farm itself is to be left are not the same as the people carrying on the farming business. As with other aspects of estate planning you need to anticipate where there will be issues that will need to be addressed on your death and to put in place measures now to ensure those issues don't turn into problems.

Partnership Agreements

Farming assets are commonly held by family members as partners. As such, we recommend that a partnership agreement is put in place and regularly reviewed. Partnership agreements should deal with how the farming assets are held, how the capital and income of the farming partnership is allocated to the partners, and how a partner's share may be distributed in the event of their retirement and, in alignment with their Will, upon death. If you are farming in partnership and you don't have any formal agreement then we strongly advise you to consider this, not only does this simplify matters if one of the partners dies, it also makes any possible disagreements between the partners a lot simpler (and cheaper) to resolve.

Tax

Whether you are planning to give away the farm in your lifetime or on your death it is critical that you consider the tax implications.

Inheritance tax

Inheritance tax usually becomes payable when assets are left on someone's death; however, lifetime gifts can also be caught.

The general rule is that everyone can leave up to £325,000 free of inheritance tax although this can be reduced by certain gifts made in the 7 years prior to one's death. Above this threshold assets can be taxed at 40%.

However, to ensure that farms are not burdened with tax bills that might make them unviable, agricultural and farming assets may be sheltered from inheritance tax by Agricultural Property Relief and Business Property Relief. If available, these reliefs can reduce the tax payable by either 50% or 100%. The difference between full or partial relief can be little more than a few words in the partnership agreement so expert advice can pay dividends.

Tax advice will be even more important if the farm has diversified or if it has development potential, for example, if the farmhouse and/or cottages are not seen as "character appropriate" or are occupied by an elderly farmer or if property is owned by a partner outside the partnership. We can advise on changes to the structure of the business, or the ownership of assets, which can help to boost the tax reliefs available.

Capital gains tax

Farm land held for decades will have increased significantly in value; whilst capital gains tax is not usually an issue when someone passes away it may be an issue where assets are given away or sold for development for example. We can advise on the options available to gift or sell assets in the most tax efficient manner.

The Residential Nil Rate Band

In addition to the standard Inheritance Tax nil rate band of £325,000, the residential nil rate band will be £175,000 for the 2020/2021 tax year and looks set to be frozen at that level until the 2025/2026 tax year.

Strict criteria apply including the requirement that your estate be worth less than £2m for full relief. Careful planning can increase the relief available as even deathbed gifts can be used to bring someone within the threshold. This could save a couple Inheritance Tax of up to £140,000.

Due to the importance and complexity of this relief we would urge all farmers to review their tax situation sooner rather than later.

Contact us

If you would like more information about the topics covered by this update please contact:

E: farming@wansbroughs.com
DD: 01380 733356

Our legal services for you, your family and your business:

- Business & Corporate
- Commercial Property
- Dispute Resolution
- Employment & HR
- Family
- Farming & Agriculture
- Personal Injury Litigation
- Relationship Breakdown
- Residential Property
- Wills, Tax, Trusts & Probate

WANSBROUGHS SOLICITORS

www.wansbroughs.com
Email: **farming@wansbroughs.com**

Northgate House, Devizes, Wiltshire SN10 1JX **T:** 01380 733300 | **F:** 01380 733600