Whitley Stimpson

CHARTERED ACCOUNTANTS AND BUSINESS ADVISORS

Agricultural Spotlight

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Welcome to the Winter 2023 edition of our Agricultural Spotlight.

In this issue, we delve into the insights from the conference season regarding political pledges that affect farming. We explore essential considerations for those expanding their farm partnerships, weighing both advantages and disadvantages. Additionally, we examine the collaborative efforts between the UK and New Zealand, seeking to address post-Brexit challenges through labour exchange. Furthermore, we discuss the involvement of farmers in tree planting as part of the ELMS scheme to tackle the climate crisis.

We trust these articles will prove informative and beneficial to you. Should you have any enquiries or require additional support, please don't hesitate to contact our experts mentioned in the articles. We appreciate your continued involvement in our agricultural community, and we look forward to bringing you our next edition in Spring 2024.

Red horizons or blue sky thinking – what conference season told us about party commitments to farming

With the sun having set on party conference season, we now have a clearer picture of what the main parties will do for farming and rural communities if they succeed at the next general election.

And with Labour significantly ahead in the polls and the bookies' favourite to win next year, it is their policies Britain's farmers will likely be facing.

So, what were the key announcements from Labour, and can they endear themselves to rural Britain enough to attract the countryside vote.

One of their first big policy announcements – to end the badger cull – might go down well with voters in urban areas but doesn't offer great hope to farmers that the party is listening and is prepared to take the tough decisions rather than cave in to popularism.

Building on this theme, Labour has announced mandatory method-of-production labelling on food and a commitment to phasing out the use of cages and crates on farms as part of its animal welfare commitments.

Also included in its welfare manifesto is the proposed establishment of core standards for animal welfare in international trade deals, and a ban on live exports.

The party is yet to make a firm commitment to include these announcements in their election manifesto, however.

Elsewhere, Labour used the conference to announce reform of the apprenticeship levy to fund specific farming and biodiversity apprentices. Shadow rural affairs minister Toby Perkins made the announcement at a fringe event focusing on skills for nature recovery and biodiversity, which may give an indication as to the priorities of the government.

Beyond this, Labour's announcements for farming and the countryside were scant, with shadow farming minister Daniel Zeichner saying the rural offering in the party's manifesto is going to be "broad brush".

"What I don't think you're going to see is lots of line-by-line detail on how we're going to achieve things, because frankly, until we can see all the evidence for ourselves, that's quite hard to do and I think there's a lot we don't yet know," he told delegates.

Equally, the Tory Party Conference did little to wow the nation's farmers, with no new overarching polices announced.

However, the scrapping of phase two of HS2 certainly raised some eyebrows among the farming community.

For some along the route, it was relief as compulsory purchase and the dividing of farms as to render them unworkable will no longer continue.

But the anger and frustration from those who have already been through that process is palpable, and the resentment caused may take generations to forget.

Beyond this, a couple of interesting nuggets did emerge as the conference progressed.

As part of the government's pledge to remove unnecessary regulation, farmers' favourite Therese Coffey announced mandatory tests for Trichinella in breeding pigs might be axed as there have been no cases from meat since 1969.

The National Pig Association welcome the move but stressed the industry needed clear assurances it would not impact on UK farmers' ability to export.

There was also talk of the Red Tractor label being applied to exports, to reassure overseas buyers of the quality of British produce.

Coffey also told an NFU fringe event that she was making some progress on enabling the public sector to buy more British food.

However, her efforts are being hampered by World Trade Organisation rules and UK commitment on public procurement.

Ian Parker, director at Whitley Stimpson and agricultural tax expert, said representation of farming issues at both main conferences this year had been poor.

He said: “It is hard to get a sense from either party the extent to which farming and rural communities will be a priority during the next election and beyond.

“Although from Labour’s announcements, it seems clear animal welfare the nature recovery will be at the heart of their policies.

“The Tories could be accused of being complacent and counting on the countryside vote regardless, which after nearly 14 years of Conversative rule, would be a mistake. They would have been wise to use the conference to reassure rural voters the Tory party still represents them, and they are a safe pair of hands. But that didn’t come.

“Hopefully, as we move towards the general election, both parties will announce more positive policies for rural Britain, leading to a healthy farming sector for all, whoever wins power.”

Loose lips sink ships …

So goes the older saying. But it is one farmers might want to take particular heed of in the light of a recent court case.

In Spencer vs Spencer, Lincolnshire farmer Michael Spencer recently won his case against the estate of his late father, John Spencer, leading to him successfully inheriting the family farming business.

The court heard that John had promised to leave the farming business to Michael but had changed his mind and in the third iteration of his will, he instead opted to put the farmland into a trust.

This was a change from a previous will that bequeathed the land to Michael and prompted him to dispute the new will.

This type of claim is known as “proprietary estoppel” and requires that the claimant demonstrates that a promise was made to them, that it is a promise they relied on, and that it had been to their detriment to do so.

As Michael had left school at 15 to work on the farm and John’s previous will had listed Michael as the beneficiary of the farmland, Mr Justice Rajah, who presided over the case, accepted Michael’s claim that his father had promised him that one day all of the farm would be his.

The judge added that this had been John’s way of mollifying Michael and ensuring he remained committed to the farm.

Summing up the case, Mr Justice Rajah said: “From 1993 to 2018 John’s wills did indeed leave Michael the farmland and it is therefore likely that in his conversations with Michael about succession to the farm that John intended to communicate, and did communicate, to Michael that Michael would inherit the farmland.”

Commenting on the case, Ian Parker said farmers must be careful what they say to family members who work on the farm if they want to avoid future claims.

Proprietary estoppel claims can tear families apart after the death of the farm owner, he added, despite such damage being the last thing they would have wanted to cause.

“It can be very tempting to hint or suggest the next generation will inherit a farm outright as a way to ensure they remain committed to the business, or as a reward for hard work,” Ian said.

“But unless you are 100% sure you are going to do that, making such claims can be very dangerous.

“As the case of Spencer vs Spencer demonstrates, making promises to a family member and then reneging on them could well end up in court and with the farm not going to who the owner intended it to.

“As the defendants in this case were Michael Spencer’s sisters, you can imagine the damage it has done to the family.”

Ian added that farm succession should be carefully planned well ahead of the time it is likely to occur.

“The best way to avoid situations like this is to have transparent conversations about what will happen to a family farm and why,” he said.

“Although this can be difficult, it could avoid a far more painful outcome in the future.”

To discuss succession planning, contact Ian on (01295) 270200 or email ianp@whitleystimpson.co.uk.

Labour exchange set to open up access to seasonal workers

One of the many impacts of Brexit on UK farming has been the lack of seasonable labour, with many European workers now unable to travel to Britain to work.

But a partnership between groups in the UK and New Zealand is aiming to resolve the issue via an labour exchange between the two countries.

The National Association of Agricultural Contractors (NAAC) and Rural Contractors New Zealand (RCNZ) have joined forces to help source labour in each country during seasonal peaks.

The idea is that agricultural workers would spend the winter in New Zealand – that country's summer – and return to the UK in the spring, in time for the busy period here.

British workers could apply for visas for the scheme in October, to ensure they could travel to New Zealand in time to fill demand.

Ian Parker, welcomed the move, adding it had the potential to ease the burden on British growers unable to source seasonal workers.

"This scheme sounds like it could be very good news for British farmers and growers, as well as those in New Zealand," Ian said.

"Labour shortages have blighted the agricultural and horticultural industries since Britain left the EU, and although government initiatives have eased the burden to a degree, there is still a significant shortage.

"By coming together to address the problem in a complementary labour exchange such as this, there is a great opportunity to share skills and best practice between the two countries and make farming better and more efficient in both countries."

Although the scheme is likely to increase access to high quality seasonal workers for British farmers, it does not address the financial and tax implications of employing them, Ian added.

He advises farmers who have not employed temporary labour before to ensure they have everything in order from an employment and tax point of view.

He said: "Gone are the days when employers could just pay temporary workers in cash and not declare it – every expenditure has to be accounted for.

"There is also a large body of legislation that governs what migrant workers must be paid, what deductions can be legally charged, and what they cannot be charged for.

"Keeping up with this legislation is the job of the farmer and it must be adhered to, to avoid falling foul of the law.

"So, if you're looking to take advantage of this scheme, or any other that opens up access to seasonal labour,

Tax case provides good news for landowners

An interesting tax case that recently concluded has shed light on the application Private Residence Relief (PRR) to newly developed or redeveloped properties.

HMRC vs Gerald and Sarah Lee [2023] dates back to 2010 and concerns a dwelling built on a plot of land purchased by the Lees.

The Lees bought the land, known as 8 Nuns Walk, in October 2010 and demolished an existing dwelling on the site to make way for a new one.

They then spent the next two-and-a-half years building the house, which they moved into as their main residence in March 2013.

Shortly afterwards, however, in May 2014, the Lees decided to sell the property and lands, and it is this decision that prompted a legal challenge.

Understandably, the Lees considered themselves eligible for 100% PPR and therefore exempt from paying any Capital Gains on the sale.

HMRC disagreed, however, arguing that the ‘period of ownership’ applied to the acquisition of the land and not just the time the couple lived in the completed house, and therefore PPR did not apply in full.

This was because the property was not the couple’s main residence while it was being built, and therefore this period, until the Lees moved in, may not be eligible for PPR.

The case went to tribunal and although the tribunal agreed with some of HMRC’s arguments, it ultimately sided with the Lees.

Key to this decision was the wording of the legislation, which states that the period of ownership specifically refers to a dwelling house, meaning the land could not be taken into consideration when calculating PPR. HMRC appealed the decision, but the Upper Tribunal upheld the original decision.

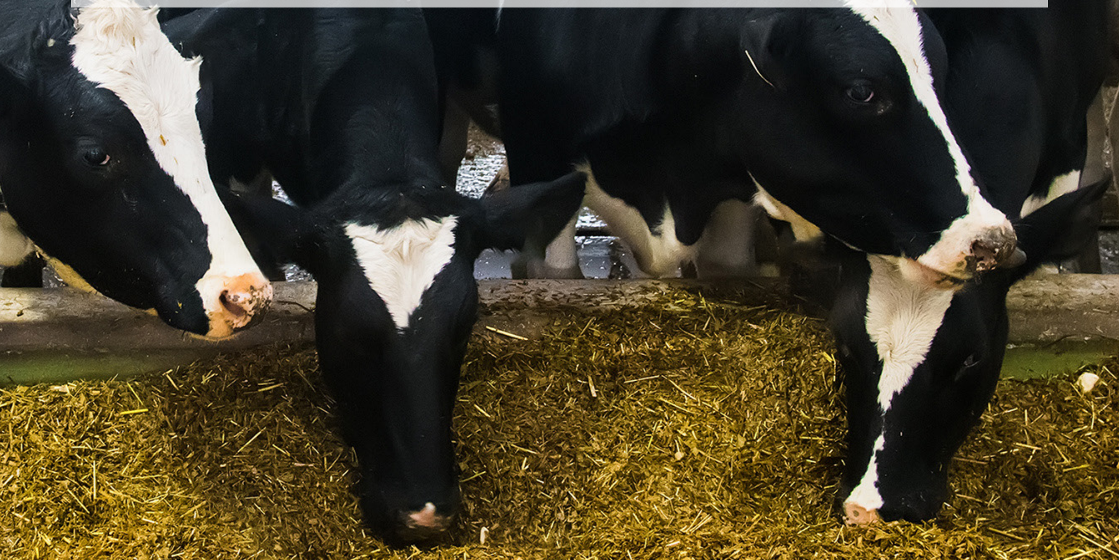
The case will come as good news to landowners and farmers who have purchased land specifically to create a new dwelling.

Ian Parker said: “HMRC vs Gerald and Sarah Lee [2023] was a very interesting case which ultimately sided with the defendants.

“It sets a welcome precedent that recently acquired land for the purposes of creating a new dwelling will not attract Capital Gains if the land and dwelling are later sold as a single asset.

“Had the tribunal ruled the other way, that would have had significant ramifications for landowners, and might even have sparked retrospective demands for Capital Gains for people in similar circumstances.

“Thankfully that scenario has been avoided.”



Growing your farm partnership? Here’s what you need to consider…

Many of the farm businesses in the UK are partnerships, and it is easy to see why.

Partnerships are flexible and enable new partners to be added relatively quickly and simply. So, when the time comes to extend the farm business to the next generation, partnerships offer an efficient way to do this.

However, there are a number of things to consider when deciding to introduce a new member to the partnership, and these should be given full consideration before a final decision is made.

Can the partnership afford it?

The first thing to consider is whether or not the partnership can actually afford a new member. Partners are renumerated by dividing up the profits (or losses) on a profit-share ratio and unless the new member introduces significant assets into the partnership, the money each member receives is likely to reduce, at least in the immediate future. This is particularly the case when bringing children into a partnership, as often they hold no extra assets beyond the family farm.

However, this can be accounted for by giving them a small percentage share in the early days, with the intention of growing it as they take on more responsibility.

With non-family members, it is important to consider what they are bringing to the partnership and how that will impact on the level of remuneration each partner receives.

Are you ready to relinquish control?

With more members in the partnership, control over the farm business is naturally diluted. A question for farmers who are used to leading from the front – not to mention having tight control over the purse strings – is, are you really ready for this?

Many people find delegation difficult, especially those who have been used to running things by themselves for any length of time. But not allowing new members much responsibility is likely to lead to them becoming disgruntled.

So, before making a final decision, take time to consider whether a new working relationship works for you.

Is the proposed partner ready?

Perhaps another one to consider when it comes to the next generation, but becoming a member of a farm partnership is a big responsibility. Will the new person really add value, enough to be given a share of the profits? Introducing a new partner should be a business decision first and foremost, and the future health and sustainability of the business the first priority. Will this person help to facilitate that or is it too early in their career for that level of responsibility.

Again, another challenging question that deserves proper consideration.

Financial issues

As well as deciding if the new member will be the right fit for the partnership, and if the partnership can afford it, there are a number of financial issues that will need addressing before committing to introducing a new partner.

One of these is VAT.

In a partnership, each member is treated individually for the purposes of income tax and capital gains. If a proposed new partner is VAT registered and intends on moving their existing business assets into the partnership, they may need to deregister for VAT before doing so. Otherwise, it could cause problems for other partners. So, this is a discussion to have before the new member comes on board.

Also, because each member of the partnership is treated as an individual, the founding partners will continue to pay income tax and NI as they have been doing when the new member joins the partnership.

But with the arrival of a new member, it will be up to the partners to determine how the profits are to be shared. Should the new partner receive a fixed amount initially or a percentage share? And will there be any return of capital invested?

Again, these are the types of decisions members will have to hammer out between themselves as they prepare to accept a new partner.

Informing HMRC

Once the new member has joined the partnership, they must inform HMRC of this change by registering for self-assessment, if they are not already registered. From then on, they are responsible for paying their own tax and NI.

The partnership must also notify HMRC within 30 days of admitting the new partner if the partnership is VAT registered. The partnership must also include details of the new member on its annual tax return.

Ian Parker said anyone considering starting a farm partnership or introducing a new member into an existing partnership would be wise to consult their accountant to ensure the timing was right from a tax perspective, and everything was done in accordance with the law.

“Taking on a new member can be an exciting time, with new blood coming into the farm business,” he said.

“However, there are a lot of decisions to be made and a number of regulations to follow. This includes updating the Partnership Agreement or putting one in place. This is an essential document which the partnership will need to rely on in the future, so having a professional guide you through the process should provide peace of mind.”

To speak to Ian about any aspect of farm partnerships, call (01295) 270200 or email ianp@whitleystimpson.co.uk.

If you go down to the woods today, you're sure of a big… tax break!

Planting trees has been lauded as the saviour of the planet for some time, with the power to suck up carbon from the atmosphere, lock it away, and thereby resolve the climate crisis.

Indeed, the government is so keen on trees, it is looking to treble rate at which they are planted in England by the end of the current parliament.

To aid this, tree planting is one of the bedrocks of the ELMS scheme, designed to pay farmers 'public money for public goods'.

However, this demands farmers foot the bill for planting trees up front, and then have to claim the money back, which is likely to put many off.

There is another way, however, and one that might make greater sense for farmers or landowners with some land spare.

As well as incentivising the creation of woodland for public goods and carbon sequestration, the government is also incentivising planting trees for profit by granting significant tax relief for commercial woodlands.

According to Ian Parker, the tax breaks apply to three key areas.

He said: "Commercial woodlands offers tax advantages in relation to income tax, capital gains, and inheritance tax.

"As long as the wood passes the commercial test, profits from the sale of timber won't be taxed, and the woodland should attract 100% inheritance tax relief via Business Property Relief.

"In the event of selling the land with a standing crop, Capital Gains Tax only applies to the land element of the sale, which usually makes up the smaller part, therefore such a sale is extremely tax efficient."

Ian added to qualify as commercial, the woodland must be managed with a view to generating a return.

"Proof of this must be documented in terms of annual accounts and the enterprise's own P&L account, separate bank account, VAT registration if applicable, and active management which might include employing a professional forester," he said.

"However, farmers who are already well placed to manage woodland with existing plant and machinery may want to consider commercial forestry.

"Commercial woodlands take much more management than those grown under land management schemes for purely environmental purposes.

"But many farmers already have access to the types of machinery needed to manage such an enterprise, so diversifying into commercial forestry may be an opportunity worth exploring.

"Of course, such a diversification is a long-term plan, but for family farms wanting to secure the future for generations to come, it may provide a very tax efficient solution while not compromising on inheritance relief."

To discuss the tax benefits of commercial woodlands further, or any other form of farm diversification, get in touch with Ian on (01295) 270200 or email ianp@whitleystimpson.co.uk.

Talk to someone who understands the real issues

Accounting for agriculture, farming and rural business is a specialist area that requires expertise and an understanding of the industry. Our dedicated team come from farming backgrounds and offer a clear understanding of the issues facing farmers.

We provide professional knowledge and hands-on experience in the agricultural sector. We have worked with agricultural businesses for over 90 years, providing the expert advice that is required to help you enhance the potential of your farming business.

Meet our agricultural experts

Ian Parker
Director
ianp@whitleystimpson.co.uk

Martin Anson
Director
martina@whitleystimpson.co.uk

Banbury

01295 270200

ban@whitleystimpson.co.uk

Penrose House
67 Hightown Road
Banbury
Oxfordshire
OX16 9BE

Bicester

01869 252151

bic@whitleystimpson.co.uk

Claremont House
1 Market Square
Bicester
Oxfordshire
OX26 6AA

High Wycombe

01494 448122

hw@whitleystimpson.co.uk

29-31 Castle Street
High Wycombe
Buckinghamshire
HP13 6RU

Witney

01993 700010

wit@whitleystimpson.co.uk

13-15 High Street
Witney
Oxfordshire
OX28 6HW

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