



## FARMING PARTNERSHIPS AND TAX

Tax is almost always a key driver in farming partnerships; farms require substantial assets in order to be capable of operation and passing these assets safely to the next generation is a key concern. Every farm is different in the way it operates and so the tax situation can be complex and difficult to understand, especially when this position is intermingled with family affairs.

Each farm is different and in order to provide advice, it is important to understand how each aspect of the farm functions. There will usually be considerable farmland with farm buildings together with the farmhouse itself, expensive machinery, animals, food stock, fertiliser and seed. The farm may employ persons to work on the farm, other businesses operating from premises on the farm or have diversification projects such as solar panels, anaerobic digesters or land set aside for camping. Some produce may be sold directly from premises on the farm. There may be rented land, development opportunities. Often the most difficult item to deal with is reaching agreement between family members on objectives and planning for the future.

Some of the key areas of taxation and applicable reliefs in relation to farming partnerships are set out below:-

### IHT - Inheritance Tax

Inheritance tax is payable on death on the market value of assets held by the deceased, subject to the thresholds and reliefs available at the time of death. This is especially relevant to farming partnerships (where assets are held personally) rather than in companies where there is no transfer of the property itself, but a transfer of shares in the company (usually with business property relief), meaning little (if any) tax to pay. Care must be taken where assets are gifted to the next generation but where the person making the gift retains some benefit (such as living in the property).



### APR - Agricultural Property Relief

APR is usually a 100% (but sometimes a 50%) relief from IHT on the agricultural value of property owned and continuously occupied by the owner for at least two years for 'agricultural purposes' (or if not occupied by the owner, owned for at least seven years, together with continuous occupation by the resident for agricultural purposes).

It includes farmhouses and buildings when, considered with the land occupied by them, if they are 'of a character appropriate to the property'. Note that the agricultural value of a property may be substantially different to the market value (which is the basis on which inheritance tax is liable) if, for example, buildings have a development value or if buildings or land are particularly attractive for non-agricultural reasons. Note also there may be issues if, for example, a farmhouse is not used for agricultural purposes - renting, holiday lets or occupation by someone who is not actively farming (such as retired family members) are common issues. APR applies before BPR (see below), but BPR may still be available on assets not covered by APR.

### BPR - Business Property Relief

BPR is another relief on IHT which is designed to allow business assets to transfer more easily on death. The relief is again at either 100% or 50%, but this time of market value, with the 100% rate applying to shares that are not listed on a stock exchange and any interest in a business (such as a partnership share or business run by a sole trader). The 50% relief is available on quoted shares, and to land owned by the deceased and used 'wholly or mainly for business purposes' by either a company controlled by the deceased or a partnership in which they were a partner.

Note that while BPR may be straightforward for farmland or farm buildings held within a partnership, the farmhouse is unlikely to have been used 'mainly or wholly for business purposes'. The underlying business must have been carried out for gain (which has caused some issues for equine related businesses) and must not wholly or mainly be for the purpose of holding investments (which has caused issues for holiday let properties and grazing arrangements).

**“ Politeness, clarity of information.**  
Mr C Pudge, Worcester

## PARTNERSHIPS AND LIMITED COMPANIES - WHAT IS THE DIFFERENCE?

**The primary difference between a limited company and a partnership is that a limited company is a separate legal entity and owns assets and contracts for business on its own account.**

A partnership does not; when one partner contracts on behalf of the partnership, they bind the partnership as a whole and each and every partner, rather than the partnership ‘entity’. If there is a financial problem with a limited company, assuming there is no contractual documentation stating otherwise, and certain other limited situations, liability will stay within the company ‘box’ and the directors and shareholders cannot be reached or sued directly by creditors. The vast majority of businesses in the United Kingdom conduct their business from within a limited company for this reason. Because partners in partnerships contract directly, there is no such limited liability and partners themselves are personally responsible for the contracts, various liabilities and losses of the partnership. This means that persons in a partnership are risking their assets and property in a way that shareholders and directors in a limited company are rarely exposed to without their agreement.

Why are farming businesses (often) different? The reason for this lies within the profession of farming itself. A farm has often gone through several generations of the same family and the business of farming, the farm assets, property and farm workers are usually intermingled with the personal lives of the farmer in a way that a ‘standard’ business rarely is. Business risk and litigation is perceived to be low, and there are substantial assets to fall back on. Partners are frequently family members, meaning that there is (usually but not always!) more of a perception of trust and a common interest in succession planning. The partnership is often seen as the best way of managing this moving situation as, with a well drafted partnership agreement, it can be very flexible in the way assets and income are owned and divided. Various reliefs are also available which accommodate this traditional position and partners will find benefits in the way accounts are prepared and general administration as against a limited company. In addition, if a partnership requires access to funding, it is likely that directors/ shareholders would be required to give guarantees and security in any event, meaning that, in practice, the end position is unlikely to be that different (albeit that in a limited company, directors/ shareholders are required to give their consent to this).

Perhaps the most important reason for using partnerships is tradition; farming in a partnership can stretch back decades within a family and it can be difficult to conceive of operating in a different way. There are also difficulties in how to deal with the land in limited companies, as once the land is in a limited company it can be difficult to move it out again. The reverse side of this flexibility is that each new situation and change in the partnership must be carefully considered from each partner’s individual position and the effect on an individual’s tax position can be complex.



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The entire relief is lost if the test fails on either of the above grounds.

BPR is a key relief where assets are not used for agricultural purposes or where the market value is likely to be significantly in excess of agricultural value.

### CGT - Capital Gains Tax

Partnerships are treated as transparent for the purposes of CGT and partners are each interpreted as having a share in each asset rather than a share of the overall business. This means that CGT will be payable in a partnership if there is an adjustment in any of the partner’s capital shares (i.e. moving the assets around from partner to partner) where assets have increased in value. Common events that would trigger such an event would be the introduction of a new partner or a partner leaving. Care must be therefore taken in adjusting partnership holdings. Consult with your advisor about the best way of handling a proposed transaction (such as the transfer of property or shares in a company) as it may be preferable for it to take place over a number of years to take advantage of the annual CGT exemption and/or any reliefs such as entrepreneur’s relief.



“ *A genuine concern was shown regarding our situation.* ”  
Mr & Mrs C Sanders, Hereford

## BPS AND REMOTE SENSING



**Each year the Rural Payments Agency (“RPA”) inspects 5% of Basic Payment Scheme (“BPS”) applications to check their eligibility. 25% of those inspections are carried out by a physical inspection of the land but 75% (around 4,300 inspections) are done by remote sensing. This uses high resolution and very high resolution satellite images of the land, and computer aided photo interpretation (which allow for automatic control decisions without the intervention of a human to interpret the photos).**

RPA inspectors will check, and where necessary measure, land area, parcel boundaries, crop types and environmental focus area features for which the basic payment and greening payments have been claimed. They look at boundaries and areas, whether the image shows ineligible features, and check land cover for compliance with the greening requirements.

Farmers who are contacted by the RPA following a remote sensing inspection should check carefully the information provided by the RPA. That information should include a list of discrepancies found, and copies of the remote sensing images. Satellite photos can be misleading. For example, shadows cast by hedges can make it very difficult to see where the field boundary actually is, and trees can look much bigger than they are in reality depending on the shadows. Ditches can be missed if they are in shadow, or under a hedge. The RPA admits that the new greening requirements are more difficult

to assess with remote sensing techniques, as there are over 100 types of crops and many look similar on satellite imagery (e.g. fallow and grassland, winter barley and winter wheat). Boundaries can be difficult to detect if, for example, they are identified by marker posts, rather than a hedge; in March this year, Farmers Weekly reported that the RPA had admitted incorrectly merging land parcels in these circumstances.

Bear in mind that the RPA will not use any under claims to offset over claims, and because over claims can result in significant penalties, it is important to ensure that everything is correct and to challenge any errors.

Before responding to the RPA’s notification, it is important for farmers to double check the BPS application (and applications in previous years) and make sure that the applications were correct, and that they have properly understood the eligibility issues etc. If farmers believe that the RPA have made a mistake, they should collect evidence (current photos, old photos, plans, previous inspection findings etc.). Farmers should keep copies of all information received from the RPA, and copies of anything they send to the RPA. Responding promptly, with as much information and evidence as possible, can reduce the time taken for the RPA to review the remote sensing data, and reduce the delays in receiving BPS payments.

“The way that everything was explained clearly and in ‘non legal terms’ - totally reassuring!

Mrs V Piccioni, London

## METAL DETECTING by Claire Vale

**Metal detecting and the prospect of unearthing buried treasure is something that has always fascinated me. I wanted to be an archaeologist when I was at school but my teachers seemed less keen, so that was that. The rest, as they say, is history.**

I have visited the British Museum in London many times over the years and marvelled at some of the finds that are displayed there, particularly the artefacts from the Sutton Hoo ship burial and the Mildenhall Treasure. The Staffordshire Hoard of Anglo-Saxon gold and silver is probably the most recent metal detecting hoard that I have been to see. Now that I have just begun my fifth decade, I am hoping soon to become the proud new owner of my very own metal detector. The fields of Shropshire await!

But what rules do I need to abide by?

First, the owner of the land, where I intend to use my metal detector must be contacted, and their written permission sought, to allow me to search with my detector on the land.

It is illegal to search on public or private land without permission, or to search on a designated area, such as a site of Special Scientific Interest. The National Council of Metal Detecting website has a model agreement which can be downloaded ([ncmd.co.uk](http://ncmd.co.uk)). Also, the National Farmers' Union's website has its own model clause for the use of NFU members. These agreements can help determine issues such as the area to be searched, and how any income received from a find will be split between the metal detectorist and the landowner (a potentially important consideration).

Second, follow the Code of Practice for Responsible Metal Detecting. All finds should be recorded with the Portable Antiquities Scheme.

Third, the Treasure Act 1996 redefined the meaning of “treasure” for England, Wales and Northern Ireland. In broad terms, “treasure” now includes all objects containing precious metal that were buried for any reason and are at least 300 years old. Failure to record a find of “treasure” could result in a fine and/or up to three months

in prison. Finds must be reported to the coroner in the district in which it was found within 14 days.

The local finds liaison officer at your local county council can do this for you. If the coroner declares the find to be treasure, museums will have the opportunity to purchase it. The treasure is valued by the Treasure Valuation Committee and they recommend a figure to the Secretary of State for Culture. The museum pay that amount if the valuation is agreed and a reward (equal to the full market value of the treasure) is usually paid to the finder and/or the owner/occupier of the land.

If the reward is payable to more than one person, the Secretary of State will determine how much is to be paid to each, although it is usually split equally between the finder and the landowner (this is where a written agreement may come in useful). If a museum does not want to acquire the treasure, it can be disclaimed and given back to the finder or landowner.

Fourth, non-treasure finds are governed by the British Museum's Portable Antiquities Scheme, where finders are encouraged to voluntarily record their archaeological finds. In the last 20 years the number of recorded finds – both treasure and non treasure – has increased exponentially. Apparently, about 95% of finds are discovered by members of the public and there are up to 10,000 regular metal detectorists. Again, a prior written agreement with the landowner will be helpful in determining what is to happen to any object found.

It is thought that there is a huge amount of treasure just waiting to be discovered and therefore there is no time to waste - I had better get that metal detector and start searching!



### OFFICES

[info@lblaw.co.uk](mailto:info@lblaw.co.uk) • [www.lblaw.co.uk](http://www.lblaw.co.uk)



#### SHREWSBURY

Chapter House North  
Abbey Lawn  
Abbey Foregate  
Shrewsbury  
SY2 5DE

T: 01743 280280

F: 01743 282340

DX: 144320 Shrewsbury

#### BROMYARD

44 High Street  
Bromyard  
HR7 4AE

T: 01885 488442

F: 01885 488533

#### HEREFORD

Beaumont House  
Offa Street  
Hereford  
HR1 2LH

T: 01432 352345

F: 01432 263708

DX: 17201 Hereford

#### LUDLOW

12 The Business Quarter  
Eco Park Road  
Ludlow  
SY8 1FD

T: 01584 872333

F: 01584 876459

DX: 26883 Ludlow 1

#### OSWESTRY

39 - 41 Church Street  
Oswestry  
SY11 2SZ

T: 01691 652241

F: 01691 670074

DX: 26603 Oswestry

#### TELFORD

Hazledine House  
Central Square  
Telford Town Centre  
TF3 4JL

T: 01952 291222

F: 01952 292585

DX: 28071 Telford