Business Structures in Farming

Is there an optimum structure for tax?

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Farming – A unique business

• Diversity of business
  - Location
  - Activities

• Income dependent on natural and market forces
  - Climate
  - World commodity prices
  - Exchange rate movements
A unique business – continued

- Factor in the history of the farm
  - Age of participants
  - Potential number of participants
  - Land ownership
  - Existing business structure
- Key participants live and work on the farm
  - Farmhouse plays a key role in the business
Farming as a single trade

- Farming seen as a single activity for taxation
  - Allows for aggregation of profit and losses from farming
  - Avoids commencement and cessation when moving farms
  - Can use different structures to create new business entities

- Fluctuations in the farming industry has driven the need for diversification
  - Alternative stable income streams
  - Utilising spare land capacity
Business Structures

- Sole Trade, and individual in business on his/her own
Sole Trader

Mr A B Jones
Business Structures

- Sole Trade, and individual in business on his/her own
- Partnership, a group of individuals (or other businesses) in business together
Partnership

Mr A B Jones  Mrs D Jones  Mr T Jones

A B JONES & SONS
Business Structures

- Sole Trade, and individual in business on his/her own
- Partnership, a group of individuals (or other businesses) in business together
- Company, a separate legal entity in business, generally owned by individuals
Business Structures

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• LLP, a partnership that offers the members a form of limited liability status

• Hybrid business, partnership or LLP with individual and corporate members
Hybrid Structure

A B Jones LLP

A B Jones Ltd

T Jones Ltd

Mr A B Jones

Mrs D Jones

Mr T Jones
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• Trusts, Discretionary or Life Interest
Business Risk

• Public and commercial liability
  - Can this be insured?

• Changing markets
  - Increased competition
    - Local, National and International level
  - Legislative changes
    - CAP Reform
  - Changes in consumer choice
Succession Planning

• What is the exit strategy for the existing owners?
  - Family succession
  - Sale of the business
    - Whole or part
  - Alternative use of the assets
    - Letting the land
    - Share farming
Taxation Issues

• Taxation of Income
  - Income Tax v Corporation Tax
  - Availability of funds from the business
    - Personal expenditure and benefits in kind
  - Corporate Partners
    - Is this an arrangement or does the company have a business purpose?
    - Is it acceptable to all relevant authorities?
  - Loss of AIA
Taxation

• Impact of Capital Gains Tax
  - Who owns the assets of the business?
    - Business v Members
  - Holdover Election – gift relief
  - Rollover Relief – replacement of business assets
  - Entrepreneur’s Relief
    - Effective rate of tax of 10% on £10 million business gains
    - Sale of whole or substantial part of business
Taxation

• Inheritance Tax Relief
  - Business Property Relief
    - Interest in a trading business, including certain shares
    - Beware assets owned individually and used by a company or partnership – 50% Relief (APR may replace)
  - Agricultural Property Relief
    - Occupied for the purpose of agriculture:
      - 2 years own business
      - 7 years in any other business
Agricultural Property Relief

- Beware loss of relief on the farmhouse
  - Must be a place from which farming operations are conducted
  - Must be the dwelling for the farmer from which the farm is managed
  - Must be of character appropriate to the property
    - History, size, consistent with area, value, “the elephant test”
  - Relief is only available on the “Agricultural Value”
Trusts

- All trusts created after 22 March 2006 are relevant property
  - Not part of beneficiaries estate for IHT
  - Any gain going into Trust can be held over
  - Donor still needs to live 7 years
  - Periodic charge every 10 years
  - Potential exit charge
  - Gains taxable at 28%
  - Income taxable 20% (IIP) and 50% (DT)
Is there a right answer?

- Farming is a unique business
  - Can planning be achieved with the existing structure?
  - Consider the members available for each structure
  - Consider the cost and benefit for alternative structures
  - Review the ownership of the assets
    - Capital Accounts and Current Accounts
    - Held within and outside the business
    - Partnership Agreements
    - Shareholder Agreements