

### Changing times

In this edition we take the opportunity to notify you of changes...

#### Moving up

In the rural services group Esther Stirling (dispute resolution) and Nicola Boaden (agricultural property) are promoted to associate as from 1 October 2010.



#### The Horse Box

You will notice a new section of the newsletter in this edition. This new section will be edited by Esther Stirling and will bring you updates and articles relating to equine issues every quarter.



#### Recovering debt

As advertised in our last newsletter Esther Stirling and Tamsin Hyland are giving a free seminar on Thursday 30 September 2010. The seminar will help those in the equestrian sector with managing credit control, avoiding bad debtors and exploring the options available to pursue and recover debts. The seminar runs from 6.30pm (finger buffet and wine from 6pm). Please contact our seminars team by emailing seminars@henmansllp.co.uk to be added to the attendee list.

#### Retirement update

Shortly after our article "Old farmers never retire (they just go to seed...)" in the July newsletter, the Government published a consultation document "Phasing out the default retirement age". The consultation document does not include a phased increase in retirement ages but instead proposes:

- No default retirement age from 1 October 2011
- No new notices proposing retirement at the default retirement age may be given to employees after 6 April 2011
- Employers will only be allowed to dismiss employees by reason of retirement after 1 October 2011 if the dismissal can be objectively justified. This is the case even if even if notice of retirement was given to the employee before 6 April 2011
- Employees who have been given notice of retirement before 6 April 2011 but where the default retirement date is between 6 April 2011 and 1 October 2011 will be subject to transitional arrangements
- The procedure for retirement dismissals will be abolished

If these changes are implemented, employers will lose the protection from unfair dismissal claims currently afforded by the retirement dismissal procedure.

## The benefits of structuring your farm as a limited liability partnership

Limited liability partnerships (LLPs) were introduced as a new form of corporate structure ten years ago. They are now well known as the business structure commonly used by professionals. Increasingly farms too are becoming LLPs, attracted by the benefits of the structure that boasts many of the positive features of a traditional partnership yet also offers its members the attraction of limited liability.

As a separate legal entity from its individual members, an LLP enjoys limited liability thereby retaining responsibility for its debts, instead of members shouldering them as partners would in a traditional partnership. This means members are protected not only from an LLP's debts, but from responsibility for the negligent actions of the other members of the LLP.

LLPs also enjoy the organisational flexibility of a partnership. They must be registered at Companies House for a small fee. The LLP agreement defines an LLP's characteristics. It is a private document,

meaning the workings of the business, including profit shares, remain confidential to its members. It can be drafted with great flexibility, which allows the LLP to be structured and run broadly as the members want.

An LLP is taxed as a partnership with members taxed on the gains they receive from it. There are specific tax advantages of a partnership converting to a LLP as it will receive relief from SDLT on any property transferred in its first year, subject to certain conditions.

There are some more onerous obligations on a LLP than on a typical partnership. For example LLPs must produce and publish accounts in the same sort of detail as a similarly sized limited company and submit an annual return.

To explore the potential benefits to your farm by converting into an LLP please contact Rachel McCullough (rachel.mccullough@henmansllp.co.uk) a partner in our commercial team.

# Inheritance tax agricultural property relief: a detailed analysis

## Part 2: The diversified farming business

In the March 2010 newsletter we looked at the 'occupation test' for agricultural property relief and touched upon the implications of letting farm property to a non-agricultural tenant. Property let in this manner will no longer qualify for agricultural property relief as it is no longer occupied 'for the purposes of agriculture'. All may not be lost – we look here at how a claim for inheritance tax business property relief (BPR) may be made for a diversified farming business.

The question of BPR for a diversified farming business was considered in the landmark decision of *Brander (Personal Representative of the late Fourth Earl of Balfour) v HMRC (TC69)*. This case follows on from the decision in *Farmer (1999)* and offers some encouragement to landowners, particularly owners of landed estates. At the time of his death the Fourth Earl of Balfour owned Whittingehame Estate. The estate was run as a single farming business but included 26 houses and cottages which were not used for agricultural purposes and which were let mostly on assured shorthold tenancies.

The Tax Tribunal (the successor tribunal to the Special Commissioners) found in favour of the taxpayer on the basis that there was a single farming enterprise which included diversification in to non-farming activities but which remained principally a farming business. As a result of this, the let houses and cottages were granted BPR as assets in the family business. The decision was upheld on appeal.

The importance of a farming business is further highlighted in the case of *McCall and Another v HMRC* which was heard by the Northern Irish

Special Commissioners in 2008 and upheld by the Court of Appeal in Northern Ireland in 2009. This decision went against the taxpayer and concerned grazing licences. In most cases, property which is the subject of a grazing licence and which satisfies the Inheritance Tax Act requirements, will qualify for agricultural property relief. However, this relief is only available against the agricultural value of the land. In *McCall* the land value was significantly increased by development value. This value was not covered by agricultural property relief but might have attracted BPR over and above the agricultural value.

The taxpayer failed to convince the Court of Appeal that the grazing licence issued by the deceased was part of a farming business. Instead, the court felt that the deceased's involvement was that of an investor receiving rent and maintaining the boundaries. Owners of grazing licences should therefore look to maximise their involvement in the land itself and to run the enterprise as a genuine business with proper accounts. Matters such as hedging, ditching and fertilising of the land should all be the landowners' responsibility.

These are all technical matters which are considered in detail by HMRC. Each case requires its own specific advice and farmers and landowners are advised to seek assistance as soon as they can so that their plans are established and reviewed in good time and on a regular basis.

If you would like to discuss any aspect of inheritance tax planning with our specialist team, please contact Jane Maitland or Philippa Rumary on 01865 781000.

## The Horse Box

**For more information on any of the subjects raised in The Horse Box please contact Esther by email ([esther.stirling@henmansllp.co.uk](mailto:esther.stirling@henmansllp.co.uk)) In this edition Esther covers issues regarding dealing with abandoned animals**

In an already difficult climate and with feed prices set to rise this winter, it may well be that the issue of horses being abandoned on other people's land becomes more common.

If you were to find that horses had been left on your land without your permission, how should you deal with them?

In summary, the law classes horses as livestock. If livestock goes onto another person's land without permission, it trespasses on that land and its owner will be liable for any damage the animal causes, and to reimburse the landowner for whatever expenses they reasonably incur in keeping it while the owner is traced.

That said, finding the owner – and proving that the animal has in fact been abandoned – may, in practice, prove difficult if not impossible. Charities such as World Horse Welfare may be able to provide guidance, but inevitably have limited resources.

Anyone finding a horse left on their land should take steps to trace the owner, including posting notices in the area, searching

the various stolen horse registers and, importantly, posting a clear notice on the land itself, giving the owner at least 14 days to claim the animal. The Police should be informed.

The Animals Act 1971 provides that a landowner can detain livestock which trespasses on their land and, if not claimed within 14 days, sell them, deducting their costs from the sale proceeds. If, having given the above notice, the animal is not claimed within a reasonable period, you may be within your rights to sell it or otherwise deal with the horse as though it were your own. Inevitably, however, issues will arise concerning passports, which can be referred to DEFRA.

Concise records should be kept to protect your position in the event that the owner does subsequently come forward.

The law in this area is complex, with each case depending very much on its own facts, and we recommend that you take early advice.