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Business Succession and restructuring

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Date: November 2016

Handing on the farm

- Are the “older” generation ready to let go?
- Do they have enough money for their retirement?
- Where will they live?
- Is the younger generation ready (and willing)?
- Does they have enough cash to run the farm?

Tax Considerations

Inheritance Tax

- 40% of the value of the deceased's estate (after the nil rate band)
- Agricultural Property Relief
- Business Property Relief
- Farmhouses
 - Character appropriate
 - The centre of the farming business
 - Occupied by the (actual) farmer
 - Agricultural value v “amenity” value

Tax Considerations

Capital Gains Tax

- 28% of the “gain” (sale price – (acquisition price + expenditure + costs of disposal))
- Payable on basis of “loss to the donor” for gifts
- Holdover relief
 - If the asset gifted would qualify for APR or BPR
 - Business continuing
 - The donee takes it at the original acquisition or base cost
- Entrepreneur’s relief

Business (Re-)Structuring

Some traps to avoid - the law of unintended consequences!

- Basic Payment Entitlements
- Tenancy agreements and other land rights
- What paperwork do you have, and what should you have?
- What is the bigger picture?

Basic Payment Entitlements

- Is it a partnership asset (very probably)
- Restructuring the business might mean:
 - The Farmer no longer exists,
 - The Farmer isn't an Active Farmer,
 - The Farmer doesn't have the land "at his disposal"

Leases and other agreements

Proposed re-structuring might mean:

- The “Tenant” might no longer exist (and the lease falls as a result)
- The Tenant might be engaged in sub-letting
- There might be an effect on any prospective “successor” to the Tenancy

Partnership assets - Land

- Who “owns” the farm?
- If it is a partnership asset (on the balance sheet or by a “course of dealing”) then:
 - It becomes “moveable” property,
 - All the title holder has is a right to (a share of) its value, and
 - The title holder cannot bequeath the farm by Will

Documentation

- What agreements do you have now?
- Do they reflect what actually happens?
- What changes are needed?
- Make sure you sign the new agreements (whatever they are)
- Make sure what happens on the ground is what the agreements say is happening

Business and Succession Planning

- Think about the bigger picture, not just avoiding the tax issue
- What are the long terms objectives for the business, and for your family to run it (successfully) when you are gone/retired/living in Bermuda
- Get a written partnership agreement if you don't already have one (but remember variation by “course of dealing” issue)
- Have a good look at your (Limited) Company's Articles
- Do you need a separate Shareholder's Agreement?

Questions?