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Planning for the future – accounts and tax
Shetland Monitor Farm

Saturday 1 December

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What is succession?

"The action or process of inheriting title, office or wealth" – Wikipedia

Essentially this is

The measured discussion and decision about the sensible destination for your hard earned wealth

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Taxation of succession

Inheritance tax (IHT)

- Farms and crofts are free of IHT surely?
- Sometimes, not always and not fully
- Issues with non farming assets

Capital gains tax (CGT)

- Lifetime transfers between family members may be held over
- Some transfers cannot be fully held over, so are chargeable
- Uplift on death if still held

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How does IHT work?

- Everyone gets £325,000 of value they can transfer at 0% (known as the nil rate band)
- Now also a residence nil rate band as well
  - if you pass your home to a linear descendant
  - up to £175,000 of value also at NIL
  - moving up by £25,000 annually so currently £125,000 and will be £175,000 by 2020-21
- These nil rate bands can transfer between spouses
- Everything above that is at 40% unless relief available.

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What reliefs might be relevant to farms/crofts?

- Agricultural property relief
  - 2 years owned and farmed yourself
  - 7 years owned and someone farms
- Business property relief
  - 2 years owned

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What creates issues?

- Non farming assets – e.g.
  - Development land
  - Let cottages
  - Large cash balances
  - Possibly Furnished holiday lets
  - Diversification - is it agriculture, is it a business?
- "Hobby farming" – often an issue with crofts
- Secure tenancies
- Ownership in the wrong hands

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Balfour Case

- Business Property Relief for Inheritance Tax (IHT)
- Wholly or mainly an investment business?
- Mainly is 50% - at present…
- Look at the entity as one business - in the round
- Consider:
  - Turnover
  - Capital Values
  - Profit
  - Time spent
  - Context of the overall business (geography etc)

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What does your Balfour Matrix look like?

- What constitute the non-investment parts of the business?
- Farming/crop sales
  - In hand
  - Contract
  - Grazing lets… consider Allen
- Holiday lets – consider Ross and Graham

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Grazing lets

- *John Carlisle Allen* – First Tier Tribunal
- Conacre arrangement in Northern Ireland
- Key points
  - Grass grown by Allen
  - Grazed by stock of Mr Crooks
  - Stock removed in winter
  - Supply of fertiliser and water
  - Drainage and maintenance
  - Use of ground for lairage
- Verdict: in occupation of land and farming

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Grazing lets

- Practical implications
  - Spreading of fertiliser
  - Access rights to landowner
  - Agreement supported by facts
  - APR, BPR, holdover, rollover, Entrepreneurs' Relief
- Comparison with *McCall and Keenan*

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Furnished Holiday Lets

- Pawson (2013)
- Exors of Ross v HMRC (2017)
  - HMRC argued that the guests were paying for "access to a cottage to call their own" and therefore letting of land
  - The judge agreed with HMRC and appeal dismissed
- Exors of Grace Joyce Graham (2018)
  - Massive level of services
  - In particular – real personal service by the family.
  - Is this what differentiated it from Ross?
  - *"An intelligent businessman would in our view regard it as more like a family-run hotel than a second home let out in the holidays"*

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So now we know the issues for tax

- When should you start discussing with your accountant?
- What should you be considering?

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When should you discuss it?

TODAY !

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The useful child!

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How do you provide for the family?

- Does the useful child get the farm, and the non useful child the rest?
- Is there actually a "rest" to leave them?
- Can you provide for them – perhaps using non core assets
  - Furnished holiday lets?
  - Peripheral building plot?
  - Cash build up?
- If there are no non core assets
  - Can you insure yourself?
  - Pension destination?
- Or just accept inequality?

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When to move assets on?

- On death?
  - IHT ? – not if you have planned it well.
  - CGT uplift on your death – so heirs get at the market value at that date.
  - Do you actually want to farm till then?
- In life?
  - Watch the CGT…. Any transfer of assets has to be done at market value.
  - IHT – Potentially exempt – survive seven years

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What is right for you?

No-one can answer that but yourself.

Each family is different.
Two families that look identical may have a different solution.

We cannot tell you.

- But what we can do is tell you where you are now, and the tax consequence thereof.
- We can advise on the layout of accounts, and the steps to improve it.
- If you plan to gift assets, we can spend time moving these in steps, to avoid CGT.

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In Conclusion

1. Talk to us

2. Talk to each other

Do it often, then it’s less of a chore.

Minds can change, and plans can too.

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Any questions?

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