

Trust your Farm to be an Asset ...

There has been a tradition over many generations in the countryside that farmers do not regard their farmland as an asset which they can sell, or otherwise benefit from the capital value. Rather, farmers see themselves as holding the land on trust for the benefit of future generations to farm, in the same way as their fathers and grandfathers did for them. This "trust" has in the vast majority of cases not been set out in any legal document but rather has been an informal understanding between the different generations as to what was to happen.

My question; is this informal type of arrangement still appropriate in the present day, or should there be a proper legal settlement created, with the consequent estate planning advantages this could bring.

Let's consider for a moment the changes which are taking place in agriculture. In my own part of the country, in East Anglia, new purchasers of agricultural land are appearing on the scene from a non agricultural background and are paying premium prices. This could give rise to a situation where a farmer, perhaps in his 70s or older, receives an offer he cannot refuse for his farm, leading to the replacement of an asset which qualified for 100% relief for inheritance tax purposes with cash, which creates a significant tax problem. The situation would perhaps have been better if the land had been held in a trust, as the ability to spread the cash around succeeding generations would not have been as restricted as it is when limited to a single individual of advancing years.

Those of us who are still working are also faced with reducing pensions in our retirement, and farmers who own their land outright could in the future be tempted to "cash in" the farm to provide an effective pension fund. Whilst they would personally benefit from doing this, the tradition of passing the farm from generation to generation is broken. If the land was instead held in trust this one-off "cashing in" could be prevented.

What I would envisage instead is that the older generation would continue to draw some income from the farm, to supplement pension income as required, but on a reducing basis as their active participation reduces.

Another possibility is part of the farm being sold for development with an enhanced cash value. Again holding the land that is to be sold in trust offers more opportunities for estate planning in using this to help future generations. There is also the possibility of structuring the transaction in a way that will qualify for capital gains tax entrepreneurs' relief by setting up a separate business which just farms that part of the trust land.

Whilst a trust provides an effective vehicle to deal with a one off cash bonanza, I see its primary purposes as: a) a way of retaining ownership of the farm as an income producing source for generations into the future and b) avoiding conflict between different generations who have alternative views on what should happen when the older members of the family reach retirement age.

For those who are persuaded by my proposal, the next question is when the current owners should pass it into trust. For many, this would be done on death because this also carries the advantage of the value of the farm being uplifted tax-free for capital gains tax purposes. However, if the intention is to retain ownership on a long-term basis, capital gains tax becomes less of a consideration, subject of course to the offer no one can refuse. Under the current tax regime it is possible to make a lifetime gift into trust without tax implications but that favourable climate could change in the future.

A land owning farmer reading this article might say "Why should I give my land away during my lifetime, as that also means I am losing the right to earn income from it." Care would need to be taken to ensure that the gift into trust is not caught by the gift with reservation of benefit rules that apply for inheritance tax purposes, but if the transaction is structured carefully, there is no reason why the individual cannot receive some income out of the profits generated from the farming of the land.

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I realise that the suggestions I am making may appear somewhat radical and unattractive. However, what I am trying to do is envisage a structure that can cope with the changing situation, both in agriculture and the economy generally. Given a scenario where we are all living longer, but are faced it would seem with reducing pension incomes in our retirement, to me it makes sense to retain assets within families that can provide income from one generation to another. The use of a trust as I have outlined above ensures continuity and maintains the tradition that has operated by word-of-mouth for previous generations, but which now I feel needs to be established on a more formal basis.

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