



# Challenge of Change



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It is with some surprise that I contemplate this, our seventeenth Newsletter. Society has been rocked by a pandemic originating far from our borders, even from beyond the European Union! I can tell that it is cataclysmic as not only has it lead to the cancellation of our 2020 Farming Seminar but it has delayed the meeting of our Farming Group at which the articles for our newsletter are spawned. Even worse than that, when we did convene our Farming Group it was not in a fuggy boardroom in one of our offices but in a selection of private houses across the Anglian region. I have now Zoomed! I would recommend it. We are all going to have to get used to new ways of doing things because it is clear that tomorrow's normal is going to be different to yesterday's.

Change is the theme of this newsletter. We consider change in Subsidy regimes, in tax legislation and in our assessment of how we manage our businesses. We refer to new rules on planning which may ease the change of use which can unlock value from unrequired buildings. We consider the prospect of changes to Tenancy law and ask what it is to farm, to be a farmer, and how that can impact on us.

I apologise if I seemed flippant in my opening remarks about Covid-19. I don't underestimate the impact that it and the changes it has brought can have on individuals or society. It is here. We have to adjust to it. I fear that when considering change we could have filled this newsletter with speculation about what the future holds without reference to any of our topics. Perhaps this is the biggest argument in favour of a society in which food is produced locally and to monitored standards.

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## Analyse Crop Performance



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What is the first thing that comes to your mind after reading the words ‘crop performance’?

- Yield
- Moisture content
- Nutrient levels

Where would ‘crop profitability’ come on your list of performance measures and, more to the point, do you actually know how profitable

each crop is? Could a cover crop be more beneficial than a break crop?

These are among the many questions that farmers ask on numerous agriculture related topics.

With the current uncertainty around subsidies in the future, as featured on page 3 in this newsletter, it is more important than ever to make a profit from the act of farming itself, and in order to do this you need to understand where you are making money and where you might be losing it.

You will no doubt know what your yield was for each crop and also have a good idea of the price you achieved, but to work out profitability there is another side to the equation that needs to be considered – costs.

Only once you allocate the relevant costs including seed, fertiliser, spray, machinery running costs, paid labour, work done, land

rent, against the crop will you truly know how well it has performed for your business.

Software such as Muddy Boots or Gatekeeper will allow you to track your costs but many farmers we see only use such software for compliance purposes. Most bookkeeping packages will also have functionality that allows this too. The split of the costs doesn’t have to be perfect and need not be overly time consuming; as long as you are using a rational method, the answers you get should be meaningful.

We all know that by its very nature farming is a volatile business and results can vary significantly from year to year, and crop to crop, but by having this additional information available to use alongside other factors like rotation, soil condition and subsidy compliance, you will be in a better position to make informed decisions for your business.

## Agriculture Bill Update



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Defra received 147 responses to their proposed range of options for reforming Agricultural Tenancy Law in England. There are five key areas now being considered in the Agriculture Bill 2019-21 which is currently progressing through parliament.

These include ‘succession on retirement’ with the removal of the minimum age of 65 for when applications can be made to the First-tier Tribunal (Property Chamber). It’s proposed to amend the 1986 Act so that retirement notices-to-quit can only be served by a smallholding authority landlord when the tenant has reached the earliest age that they can be in receipt of the state pension.

Two proposals relate to the previous Agricultural Holdings Act’s ‘succession eligibility tests’ and Suitability Test. The aim of these is to ensure that commercially successful and skilled tenants can succeed to AHA holdings by modernising the 1986 Act. Improving the Suitability Test provisions will focus on future agricultural and business management skills.

The government plans to develop these new regulations in consultation with industry including representatives of tenants and landlords. CUT, the Commercial Unit Test, will continue until the new suitability regulations come into force.

The new Bill will remove a barrier to landlord investment in AHA holdings by ensuring that the return on a landlord’s investment in the property is explicitly excluded from rent review considerations.

Finally, a new timetable is set out for third party dispute resolution in AHA Rent Reviews. The aim is to make a technical change so that third party determination is a useable alternative to arbitration in AHA rent review disputes. The reform will bring the timetable for appointing a third party in line with that for appointing an arbitrator.

## Farm Business Tax – Moving Target



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As the government grapples with the impact of Covid-19 on the UK economy, the tax system will fall increasingly under the spotlight as the Chancellor works out how to get the country’s books back into balance. Both Capital Gains Tax and Inheritance Tax are believed to be the subject of reviews, on the face of it aimed at simplification but likely to result in an increase in the tax take. The future of Agricultural Property Relief is, of course, of particular interest to the farming sector.

In the meantime, in his Spring Budget on March 11, Rishi Sunak announced a significant reduction in the lifetime limit for Entrepreneurs Relief – now re-named as Business Asset Disposal Relief for no apparent

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## Bye Bye CAP.... Hello ELM



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For those whose attention focused on Covid-19 and who thought Brexit was old news, reality calls. The Common Agricultural Policy is no longer for us as the Single Farm Payment, SFP, is phased out between 2021 and 2027 with a strictly English successor, Environmental Land Management, ELM, being introduced from 2024. Already greening is history.

It's expected that entitlements will be redundant from 2022 as the final throes of the SFP will move away from any connection to the occupation of land but rather be based on historic claims. The problem is we do not yet know which year's claim, or perhaps years' claims, will determine who gets the run-off funding. This means that changes of claimant between 2020 and 2021 could influence who receives the cash. It also leaves wide open how and what level of rents will be appropriate going forward. Indeed it may be that the final years will be paid off by a lump sum.

ELM will work on a completely different premise. Claimants will have to earn their income, more perhaps in the style of Countryside Stewardship. You maintain your drystone walls, we will pay you for your trouble. I don't think that alternative will find many East Anglian takers but you get the idea.

Will being upstream of a regularly flooded community be like three cherries appearing on the slot-machine? Perhaps it will, but only if you can take measures to help keep your neighbours dry. This is the 'delinking' around which the policy is built.

We can conjecture but there is little that is certain. Perhaps more clarity will come when consultation starts, expected in late Autumn.

For a heavily intensive farming business will ELM hold attraction? This may seem unlikely but until agricultural finances become more predictable then chasing any income may seem prudent. These changes will bite. Rents, and probably land values, will have to adjust. But then Brexit and Covid-19 bring a host of other uncertainties and, like icebergs calved by global warming, all will have to be avoided by our Titanic industry.

reason - from £10m to £1m but no other changes to the CGT regime. This change will clearly impact farmers leaving the industry as well as those hoping to cash in on development value.

A change in the opposite direction is an increase in the rate of the relatively new Structures and Buildings Allowance from 2%pa to 3% thereby shortening the period over which the cost of new or refurbished buildings may be written off for tax purposes from 50 to 33 years.

In his Summer Statement on July 8, the Chancellor announced two temporary measures in direct response to the crisis caused by the pandemic. These will be of interest to some farmers. The first was a 'holiday' until March 31, 2021, for Stamp Duty Land Tax on residential property purchases up to £500,000. The second is the 5% reduced rate of VAT for supplies in the hospitality sector. This will last until January 12 next year and includes furnished holiday accommodation, B&B, caravan pitches and farm-based attractions.

Some experts say the coronavirus will never go away – we just have to learn to live with it. Much the same may be said for our ever-changing tax system!.

## Changes to CGT and SDTL



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Reporting requirements for residential property sales changed at the beginning of this 20-21 tax year. We're half-way through the 20-21 tax year and it's worth reminding what the new rules mean in practice.

A 'UK property return' has to be filed within 30-days of the sale of a residential property to report the taxable gain arising, and a payment on account must be made by the same date for the estimated Capital Gains Tax (CGT) due.

If you complete a self-assessment tax return, you will also need to include the gain on your return in the usual way.

Where properties with a mixed use are sold, the residential proportion of the sale will need to be reported on the UK property return, with

the commercial proportion being reported via the self-assessment tax return only.

Where the split between residential and commercial use is not clear, estimates may be used when completing the UK property return where formal valuations are not available by the filing deadline.

Due to the shorter deadline for calculating and reporting CGT, we recommend where you are planning to sell a property in the near future that you alert your tax advisers early so they can begin preparing draft computations in advance of completion.

The Chancellor, Rishi Sunak, has recently announced a holiday for Stamp Duty Land Tax (SDTL) until March 31, 2021. There will be 0% charged on the purchase of residential property up to the value of £500,000.

This does not affect the SDTL charges on mixed use properties as they are met under the commercial property rates, which have historically been more tax beneficial.

However, now that the residential rates may be more favourable in the short term, it is worth considering in more detail whether a property genuinely has a mixed use for SDTL or whether it should be treated as residential.

## Your Status Is Important



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What is an active farmer? Why does it matter?

Is the person working for you employed, self-employed or do they have worker status? Because they say they are self-employed and send you an invoice does not mean that they are!

If HM Revenue & Customs or an Employment Tribunal find that someone you have been paying as self-employed is actually employed then it's your business which will be liable for any tax and national insurance that should have been deducted as well as penalties and interest. The employee will have full employment rights and you will be liable for back-dated holiday pay.

VAT registration requires some business activity. Recently a farming business had to repay £19,720 in VAT when HMRC argued that it should be deregistered as its activities had declined. It had been active over many years but its only income was £440 in hay sales. VAT had been reclaimed on expenses, including the cost of a new building.

If a farmhouse is occupied by an active farmer, this impacts on whether Agricultural Property Relief (APR) can be claimed. We have seen HMRC challenge APR claims when, for example, an older farmer retires but still remains in the farmhouse on the basis that the property has become a 'home for retirement'.

HMRC may want to treat separate businesses run in different ownerships as a single business for VAT purposes. If they are connected, HMRC has power to deem them to be a single business for VAT purposes. In a farming context, this could arise with a B&B or holiday letting business. The income of both these businesses is standard rated but it may be possible to benefit by the diversified business not being registered. There may be few expenses on which VAT is incurred and no scope to increase income by adding VAT. In this situation great care needs to be taken that there is genuine separation of the businesses to preclude challenge by HMRC.

In all sorts of situations status matters.

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## Class ZA Development

In the wake of Class Q Permitted Development, Class ZA has been announced.

Effective from the end of August 2020, it suggests that detached commercial buildings can potentially be demolished and replaced with a dwelling.

The commercial building must have been built before 1990 and have been unoccupied for at least six months before the application.

There are further requirements and no doubt some planning authorities will resist the change but least there may be a move away from some of the more bizarre designs dictated by the terms of Class Q.